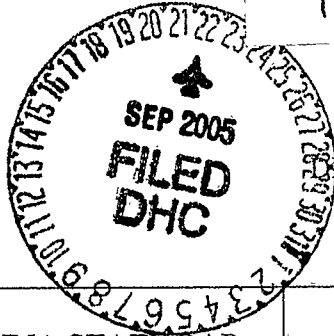


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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 24

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JAMES R. VANN, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISCIPLINE

This matter was heard on the 1st day of September, 2005, before a hearing committee of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair; M. Ann Reed, and H. Dale Almond. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Alan M. Schneider represented the Defendant, James R. Vann. Based upon the pleadings, the stipulations of the parties, and the evidence introduced at the hearing, the hearing committee hereby find by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. Defendant, James R. Vann ("Vann"), was admitted to the North Carolina State Bar in 1992, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.
3. During all or part of the relevant periods referred to herein, Vann was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.
4. Defendant was properly served with process and the hearing was held with due notice to all parties.
5. In December 1999, Vann represented H. Dewey Young, Jr. ("Young") and The Young Group regarding Young's purchase of the property and casualty accounts of

Jeffreys Insurance Services. Young and A.J. Jeffreys ("Jeffreys"), owner of Jeffreys Insurance Services, negotiated directly regarding the terms of the purchase. Vann drafted a purchase agreement for Young. This purchase agreement was subsequently revised by Vann and by Garland B. Kincheloe, Jr. ("Kincheloe"), attorney for Jeffreys and Jeffreys Insurance Agency. Young and Jeffreys executed the purchase agreement on or about June 9, 2000.

6. The contract executed by Young and Jeffreys required Young to execute a "UCC Statement to be filed with the Secretary of State's Office and the Register of Deeds." In the contract, Young agreed to pay the recording fee.

7. On or about January 10, 2003, Kincheloe wrote to Vann and notified him that the UCC statement had not been filed. Kincheloe stated this failure had harmed his client, Jeffreys, by placing him in an unsecured creditor position in Young's subsequent bankruptcy. Kincheloe stated he felt Vann had a responsibility, as Young's attorney, to ensure that Young had met his contractual obligation to file the UCC statement and indicated an intent to explore Vann's liability in the situation.

8. In January 2003, Vann asked his assistant, Lucie Lea Robson ("Robson"), to gather all documentation and correspondence regarding the Young and Jeffreys matter from the firm's files and to file those documents in one file for him. Vann gave Robson the letter from Kincheloe described above.

9. Robson searched the applicable files and gathered the documentation and correspondence related to the Young and Jeffreys matter.

10. Robson gave the consolidated file of documents she had gathered to Vann in January 2003.

11. Vann notified his legal malpractice carrier, Lawyers Mutual, of Kincheloe's allegation in January 2003. Vann and Will Graebe ("Graebe") of Lawyers Mutual discussed the matter on several occasions between January and March 2003. In the course of these conversations, Graebe asked whether there was documentation regarding the UCC filing. Vann told Graebe he thought there were two or three letters addressing the UCC filing issue. Graebe requested that Vann send him a copy of the file.

12. On March 24, 2003, Vann asked Robson to fax three letters to Will Graebe at Lawyers Mutual and then to mail a complete copy of the consolidated file to Graebe. In the process of assembling the fax, Robson noticed a letter dated June 15, 2000 and another dated June 30, 2000 ("the June 2000 letters"). Both letters contained a paragraph stating that if Young would like Vann to assist Young with the filing of the UCC statement, that Vann would be glad to do so.

13. The June 2000 letters with this language did not exist when Robson had gathered all the documents and correspondence for the Young and Jeffreys matter in January 2003. Vann created the June 2000 letters with the language on March 24, 2003.

14. On or about September 23, 2003, Vann was served with a letter of notice from the Grievance Committee of the North Carolina State Bar regarding the June 2000 letters. Vann had a duty to respond to the State Bar and to make a full, open, and truthful disclosure of the pertinent facts. Vann responded to the State Bar's letter of notice in a letter dated June 28, 2004, in which he stated the following:

"The substance of the grievance as stated was that I created the June 15, 2000 and June 30, 2000 letters addressed to Mr. Young to support my claim that I had never undertaken the responsibility to file the UCC statement. This is not true."

15. On or about November 1, 2004, the State Bar sent counsel for Vann a letter notifying him that evidence known by the State Bar indicated that Vann had created the June 15 and June 30, 2000 letters on March 24, 2003 and requesting Vann's response.

16. In a letter dated December 6, 2004, Vann admitted that he created the letters dated June 15 and June 30, 2000 described above on March 24, 2003. The December 6, 2004 letter was received by the State Bar before the matter was considered by the Grievance Committee.

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, James R. Vann, and the subject matter.

2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

a. By creating letters dated June 15 and June 30, 2000 on March 24, 2003 with language regarding the filing of the UCC statement, Vann falsified documentation with potential evidentiary value in violation of Rule 3.4, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and

b. By initially denying in his response to the State Bar's letter of notice that on March 24, 2003 he had created the June 15 and June 30, 2000 letters with language regarding the filing of the UCC statement, Vann knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning appropriate discipline, the hearing committee hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:
 - a. One prior disciplinary offense, an admonition issued in 2001;
 - b. Dishonest or selfish motive, but not for monetary gain;
 - c. A pattern of misconduct;
 - d. Multiple offenses;
 - e. Submission of a false statement to the Grievance Committee; and
 - f. Substantial experience in the practice of law.
2. The Defendant's misconduct is mitigated by the following factors:
 - a. Full and free disclosure to the hearing committee;
 - b. Cooperative attitude toward the proceedings;
 - c. Good character and reputation;
 - d. Interim rehabilitation; and
 - e. Genuine remorse.
3. The weight of the mitigating factors outweighs the weight of the aggravating factors.
4. Defendant's dishonest conduct over a seemingly minor matter is conduct of concern. It is also a matter of concern that the letters falsified by Defendant were provided to Lawyers Mutual as potential evidence and that the letters would tend to shift responsibility for filing the UCC statement from Defendant to his client. Defendant's conduct caused significant potential harm to his client, to Lawyers Mutual, and to the profession.
5. The clear, cogent, and convincing evidence before the Hearing Committee, however, showed that Defendant is a person of excellent character and reputation and that the conduct was an aberration and was unlikely to be repeated. The

evidence also showed that Defendant clearly understands the nature and wrongfulness of his conduct and is genuinely remorseful.

6. Although this Hearing Committee considered imposing some type of suspension in this matter and finds that a suspension can be appropriate and can be necessary to protect the public when the attorney's misconduct involves dishonesty, the Hearing Committee reached a different decision regarding discipline in light of the evidence before it in this case. Based upon the testimony of Defendant, the testimony of the character witnesses, and the totality of the evidence before it, the Committee determined that, in this case, a censure is appropriate and will be sufficient to protect the public. In light of the significant potential harm presented by Defendant's conduct, however, the Committee finds that discipline of less than a public censure would not sufficiently protect the public and would not be appropriate.

Based upon the foregoing factors and the arguments of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The Defendant, James R. Vann, is hereby censured.
2. The Defendant shall pay the costs in this matter within 30 days of service upon him of a statement of the costs.

Signed by the Chair with the consent of the other hearing committee members, this the 21st day of September, 2005.



Tommy W. Jarrett
Chairman, Disciplinary Hearing Committee