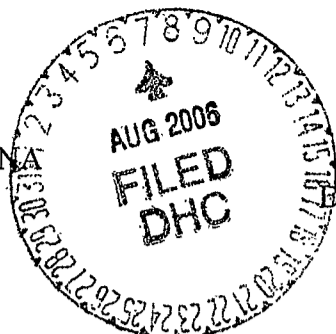


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NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
06 DHC 12

THE NORTH CAROLINA STATE BAR, )  
Plaintiff, )  
v. )  
FRANK G. PINKSTON, Attorney, )  
Defendant. )

FINDING OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER OF DISCIPLINE

On July 28, 2006, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair; Tommy W. Jarrett, and Donald G. Willhoit. A. Root Edmonson represented the North Carolina State Bar and the Defendant did not appear and was not represented by counsel. Based upon the facts alleged in the Complaint that are deemed admitted by the Defendant's default, the hearing committee finds the following has been established by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The North Carolina State Bar (hereinafter "Plaintiff"), 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, Frank G. Pinkston (hereinafter "Pinkston"), was admitted to the North Carolina State Bar on August 21, 1999 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, Pinkston was actively engaged in the private practice of law in the State of North Carolina and maintained a law practice in the City of Winston-Salem, Forsyth County, North Carolina.

4. On December 29, 2003, Pinkston was retained by Priscilla B. Herbin ("Herbin") to represent her son, Anthony G. Brown ("Brown"), on a criminal charge.

5. The fee contract that Herbin signed with Pinkston on Brown's behalf was a flat fee contract for a fee of \$5,000 if the case was resolved by plea agreement and \$10,000 if a trial was required.

6. Between December 29, 2003 and May 24, 2004, Herbin paid Pinkston \$10,000 because Pinkston had consistently stated that Brown had a good chance of getting a favorable result at trial.

7. On June 1, 2004, before Brown's trial, Pinkston recommended that Brown accept a plea bargain. Brown did so.

8. By letter served upon Pinkston by certified mail, return receipt requested, that Pinkston received on June 14, 2004, Herbin asked for a refund of the \$5,000 she had paid to Pinkston that was only to be due if Brown's case resulted in a trial.

9. Pinkston failed to refund to Herbin, on Brown's behalf, the unearned \$5,000.

10. On July 6, 2004, after Pinkston failed to refund the unearned fee to Herbin, Herbin filed a grievance against Pinkston with the North Carolina State Bar. The grievance was assigned file number 04G0777R.

11. On July 20, 2004, Herbin's grievance number 04G0777R was referred to the 21<sup>st</sup> Judicial District Bar's grievance committee for investigation.

12. On July 26, 2004, Pinkston was notified of Herbin's grievance by James T. Robinson ("Robinson"), Executive Director of the 21<sup>st</sup> Judicial District Bar, and was directed to file a written response within 15 days of receipt of Robinson's letter.

13. Pinkston failed to respond to the Herbin grievance.

14. On October 11, 2004, the attorney assigned to investigate Herbin's grievance for the 21<sup>st</sup> Judicial District Bar, Charles D. Luckey ("Luckey"), contacted Pinkston in an effort to get a response from Pinkston.

15. Pinkston failed to respond to Robinson or Luckey while the Herbin grievance was pending before the 21<sup>st</sup> District Bar's grievance committee.

16. On October 20, 2004, a fee dispute file was opened against Pinkston based upon a petition mailed by Gilbert Monk, Jr. ("Monk"). The Monk fee dispute was assigned file number 04FD0713 by the North Carolina State Bar.

17. On October 19, 2004, Debra Holland ("Holland") sent Pinkston a Notification of Mandatory Fee Dispute Resolution ("notification") by certified mail that directed Pinkston to provide a written response to Monk's petition within 15 days of his receipt of the notification.

18. Pinkston received Holland's October 19, 2004 notification on October 20, 2004.
19. On November 17, 2004, Holland sent Pinkston a letter by certified mail reminding him that he had a duty to respond to the fee dispute sent to him on October 19, 2004.
20. On November 18, 2004, Pinkston received Holland's November 17, 2004 letter.
21. Pinkston failed to respond to the Monk fee dispute petition.
22. On August 18, 2004, Kathryn M. Allen ("Allen"), Assistant Director of the Board of Continuing Legal Education ("CLE") of the North Carolina State Bar, prepared a Notice to Show Cause directing Pinkston to file written documentation showing compliance with the 2003 CLE requirements within 30 days of receipt of the notice or face suspension of his license.
23. On August 31, 2004, L. Thomas Lunsford, II ("Lunsford"), Secretary of the North Carolina State Bar, prepared a Notice to Show Cause In Re Mandatory Membership Fees directing Pinkston to pay his delinquent 2004 dues, Client Security Fund assessment and late fee by October 18, 2004 or the Council of the North Carolina State Bar would suspend his license at its October meeting.
24. Allen's August 18, 2004 Notice to Show Cause and Lunsford's August 31, 2004 Show Cause In Re Mandatory Membership Fees were served on Pinkston by certified mail, return receipt requested, on September 1, 2004.
25. Pinkston failed to respond to the Notice to Show Cause showing that he had cured the deficiencies in his 2003 CLE obligations.
26. Pinkston failed to pay his mandatory 2004 dues and Client Security Fund assessment by October 18, 2004.
27. On November 19, 2004, the President of the North Carolina State Bar signed an order suspending Pinkston from the practice of law for his failure to pay his mandatory dues and Client Security Fund assessment and his failure to comply with the mandatory CLE requirements for 2003 ("administrative suspension").
28. Pinkston was served with the administrative suspension order by certified mail, return receipt requested, on December 4, 2004.
29. Pinkston was not reinstated from the administrative suspension prior to June 29, 2005.

30. In February 2005, Pinkston accepted the final \$200 due from Calvin Johnson ("Johnson") toward the fee Pinkston had previously quoted Johnson on a driver's license revocation matter.

31. By accepting the final payment of Johnson's fee while administratively suspended, Pinkston held himself out as being able to represent Johnson during the period of his administrative suspension.

32. After learning that Pinkston had held himself out as able to practice law while he was administratively suspended, the North Carolina State Bar opened a grievance file against Pinkston. The grievance was assigned file number 05G0722.

33. On July 20, 2005, Pinkston was sent a Letter of Notice by certified mail that directed Pinkston to respond to the substance of the grievance in 05G0722 that was attached to the letter within 15 days.

34. Pinkston received the July 20, 2005 Letter of Notice on July 21, 2005.

35. Pinkston failed to respond to the Letter of Notice in 05G0722, even after receiving an August 12, 2005 follow-up letter and at least two telephone calls advising him of his duty to respond.

36. On September 6, 2003, Collette L. C. McLean ("McLean") retained Pinkston to represent her in pursuing a claim for damages resulting from a February 28, 1999 automobile accident that had previously been filed and voluntarily dismissed by other counsel. McLean gave Pinkston her complete file materials, including her medical records.

37. When she retained Pinkston, McLean paid him \$1,000 up front and agreed to a 25% contingency fee for representing her in the claim.

38. On or after December 4, 2004, Pinkston failed to advise McLean of his administrative suspension.

39. Thereafter, McLean attempted to communicate with Pinkston about the status of her civil claim without success.

40. In October 2005, Pinkston left a voice message on McLean's telephone answer machine advising her of a Monday court date. McLean was out of town and didn't receive the message until that Monday evening.

41. Thereafter, McLean attempted to communicate with Pinkston seeking information on the status of her civil claim.

42. Pinkston failed to communicate with McLean.

43. After not getting any communications from Pinkston, McLean sought to have Pinkston return her file to her, including her medical records.

44. Pinkston failed to return McLean's file materials to her, even after receiving communications from the North Carolina State Bar seeking to get him to return her file.

45. On June 21, 2005, McLean filed a fee dispute against Pinkston with the North Carolina State Bar. McLean's fee dispute was assigned file number 05FD00347 by the North Carolina State Bar.

46. On June 21, 2005, Luella C. Crane ("Crane") sent Pinkston a notification by certified mail that directed Pinkston to provide a written response to McLean's petition within 15 days of his receipt of the notification.

47. Pinkston received Crane's June 21, 2005 notification on June 27, 2005.

48. On September 13, 2005, Crane sent Pinkston a letter by certified mail reminding him that he had a duty to respond to the fee dispute sent to him on June 21, 2005.

49. On September 14, 2005, Pinkston received Crane's September 13, 2005 letter.

50. Pinkston failed to respond to the McLean fee dispute petition.

51. On October 10, 2005, as a result of Pinkston's failure to respond to the McLean fee dispute petition, the North Carolina State Bar opened a grievance against Pinkston. The grievance was assigned file number 05G1086.

52. On October 13, 2005, Pinkston was sent a Letter of Notice by certified mail that directed Pinkston to respond to the substance of the grievance in 05G1086 that was attached to the letter within 15 days.

53. On October 17, 2005, Pinkston received the October 13, 2005 Letter of Notice.

54. Pinkston failed to respond to the Letter of Notice in 05G1086, even after receiving a November 10, 2005 follow-up letter reminding him of his duty to respond.

55. On December 4, 2003, Kenneth Lee ("Lee") retained Pinkston to represent him in a family law matter.

56. Between December 4, 2003 and June 29, 2004, Lee paid Pinkston \$1,400 in attorney fees.

57. On April 19, 2005, after not being able to get any communication from Pinkston, Lee filed a fee dispute against Pinkston with the North Carolina State Bar. Lee's fee dispute was assigned file number 05FD00219 by the North Carolina State Bar.

58. On April 19, 2005, Crane sent Pinkston a notification by certified mail that directed Pinkston to provide a written response to Lee's petition within 15 days of his receipt of the notification.

59. Pinkston received Crane's April 19, 2005 notification on April 21, 2005.

60. Pinkston responded to Crane's April 19, 2005 notification with an undated letter that indicated that he had prepared a "show cause Complaint" on Lee's behalf.

61. On August 3, 2005, Crane sent Pinkston a letter requesting a copy of the show cause complaint he had prepared on Lee's behalf. The show cause complaint was a document that was necessary for a proper resolution of the Lee fee dispute.

62. On September 13, 2005, Crane sent Pinkston a second letter by certified mail advising him that if he failed to respond to her letter within 10 days, the Lee fee dispute matter would be referred to the Grievance Committee.

63. On September 14, 2005, Pinkston received Crane's September 13, 2005 letter.

64. Pinkston failed to respond to Crane's requests for information.

65. On October 10, 2005, as a result of Pinkston's failure to fully respond to the Lee fee dispute petition, the North Carolina State Bar opened a grievance against Pinkston. The grievance was assigned file number 05G1087.

66. On October 13, 2005, Pinkston was sent a Letter of Notice by certified mail that directed Pinkston to respond to the substance of the grievance in 05G1086 that was attached to the letter within 15 days.

67. On October 17, 2005, Pinkston received the October 13, 2005 Letter of Notice.

68. Pinkston failed to respond to the Letter of Notice in 05G1087, even after receiving a November 10, 2005 follow-up letter reminding him of his duty to respond.

69. In December 2002, Peggy B. Martin ("Martin") retained Pinkston to represent her in a civil matter. Martin paid Pinkston \$2,500 in attorney fees at that time.

70. On May 19, 2005, after receiving no communication from Pinkston about the status of her civil matter, Martin filed a fee dispute against Pinkston with the North Carolina State Bar. Martin's fee dispute was assigned file number 05FD00280 by the North Carolina State Bar.

71. On May 23, 2005, Holland sent Pinkston a notification by certified mail that directed Pinkston to provide a written response to Martin's petition within 15 days of his receipt of the notification.

72. Pinkston received Holland's May 23, 2005 notification on May 25, 2005.

73. On September 13, 2005, Crane sent Pinkston a letter by certified mail reminding him that he had a duty to respond to the Martin fee dispute he received on May 25, 2005.

74. On September 14, 2005, Pinkston received Crane's September 13, 2005 letter.

75. Pinkston failed to respond to the Martin fee dispute petition.

76. On October 10, 2005, as a result of Pinkston's failure to respond to the Martin fee dispute petition, the North Carolina State Bar opened a grievance against Pinkston. The grievance was assigned file number 05G1088.

77. On October 13, 2005, Pinkston was sent a Letter of Notice by certified mail that directed Pinkston to respond to the substance of the grievance in 05G1088 that was attached to the letter within 15 days.

78. On October 17, 2005, Pinkston received the October 13, 2005 Letter of Notice.

79. Pinkston failed to respond to the Letter of Notice in 05G1088, even after receiving a November 10, 2005 follow-up letter reminding him of his duty to respond.

80. On October 19, 2005, Lemonn Washington filed a grievance against Pinkston. The grievance was assigned file number 05G1171.

81. On November 7, 2005, Pinkston was sent a Letter of Notice by certified mail that directed Pinkston to respond to the substance of the grievance in 05G1171 that was attached to the letter within 15 days.

82. On November 8, 2005, Pinkston received the November 7, 2005 Letter of Notice.

83. Pinkston failed to respond to the Letter of Notice in 05G1171.

84. On February 21, 2003, Jesse B. Conrad ("Conrad") retained Pinkston to represent him in a domestic matter. Between February 21, 2003 and May 3, 2005, Conrad paid Pinkston \$450 in attorney fees.
85. On October 14, 2005, after receiving no communication from Pinkston about the status of his domestic matter, Conrad filed a fee dispute against Pinkston with the North Carolina State Bar. Conrad's fee dispute was assigned file number 05FD0595 by the North Carolina State Bar.
86. On October 14, 2005, Crane sent Pinkston a notification by certified mail that directed Pinkston to provide a written response to Conrad's petition within 15 days of his receipt of the notification.
87. Pinkston received Crane's October 14, 2005 notification on October 15, 2005.
88. Pinkston failed to respond to the Conrad fee dispute petition.
89. On November 17, 2005, as a result of Pinkston's failure to respond to the Conrad fee dispute petition, the North Carolina State Bar opened a grievance against Pinkston. The grievance was assigned file number 05G1239.
90. On November 22, 2005, Pinkston was sent a Letter of Notice by certified mail that directed Pinkston to respond to the substance of the grievance in 05G1239 that was attached to the letter within 15 days.
91. On November 25, 2005, Pinkston received the November 22, 2005 Letter of Notice.
92. Pinkston failed to respond to the Letter of Notice in 05G1239.
93. On March 22, 2006, the Complaint in this matter was filed against Pinkston.
94. On March 29, 2006, Pinkston was served with the Complaint by certified mail, return receipt requested, restricted delivery.
95. On April 19, 2006, Pinkston was notified of the composition of the hearing committee and the time, date and place of the hearing.
96. Pinkston's answer was due by the close of business on April 28, 2006.
97. On May 1, 2006, upon motion of the North Carolina State Bar, Pinkston's default was entered by the Secretary due to Pinkston's failure to file an answer or other responsive pleading.

98. On May 5, 2006, the North Carolina State Bar filed its Motion for Order of Discipline based upon Pinkston's default which was served upon Pinkston.

99. Just prior to the commencement of the hearing on July 28, 2006, Pinkston called requesting a continuance of his hearing.

100. It is not in the best interest of the public to grant a continuance in this matter.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee of the Disciplinary Hearing Commission and the hearing committee has jurisdiction over Pinkston and the subject matter.
2. Pinkston's belated request for a continuance is denied.
3. Pinkston's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & §84-28(b)(3) as follows:
  - (a) by failing to refund the \$5,000 that Pinkston was not entitled to since Brown's case did not go to trial, Pinkston failed, at the termination of the representation, to refund an advance payment of fee that was not earned in violation of Rule 1.16(d).
  - (b) by failing to provide responses to the Monk, McLean, Lee, Martin, and Conrad fee dispute petitions, Pinkston repeatedly failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2).
  - (c) by failing to respond to lawful demands for information from a disciplinary authority in the Herbin, State Bar, McLean, Lee, Martin, Washington and Conrad grievances, Pinkston repeatedly violated Rule 8.1(b).
  - (d) by accepting payment for the final portion of Johnson's fee while on administrative suspension, Pinkston held himself out as being admitted to practice law in this jurisdiction, when he was not, in violation of Rule 5.5(b)(2).
  - (e) by failing to notify his client, McLean, that his administrative suspension prohibited him from practicing law after December 4, 2004, Pinkston held himself out as being admitted to practice law in

this jurisdiction in violation of Rule 5.5(b)(2), failed to promptly inform his client of a decision or circumstance with respect to which the client's informed consent was required in violation of Rule 1.4(a)(1) and/or failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(b);

- (f) by failing to communicate with McLean in response to her attempts to get an update on the status of her civil claim, Pinkston failed to keep his client reasonably informed about the status of her matter in violation of Rule 1.4(a)(3); and
- (g) by failing to return McLean's file materials to her, Pinkston failed, upon termination of his representation, to surrender papers and property to which the client was entitled in violation of Rule 1.16(d).

BASED UPON the foregoing Findings of Fact, the Conclusions of Law, and the argument presented at the hearing, the hearing committee hereby makes the following:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. Pinkston's misconduct is aggravated by the following factors:
  - (a) a pattern of misconduct; and
  - (b) multiple offenses;
2. Pinkston's misconduct is mitigated by the following factors:
  - (a) absence of a prior disciplinary record;
  - (b) absence of a dishonest or selfish motive; and
  - (c) probable physical or mental disability or impairment.
3. An order calling for discipline short of a suspension of Pinkston's license, with appropriate conditions precedent for reinstatement, would not sufficiently protect the public for the following reasons:
  - (a) Pinkston failed to respond to at least one attempt, and sometimes multiple attempts, to get responses in twelve fee dispute or grievance matters pending before the North Carolina State Bar.
  - (b) Pinkston also failed to answer the Complaint filed in the Disciplinary Hearing Commission.

- (c) If Pinkston is unwilling or unable to respond to formal requests in his professional matters as required by the rules of his profession, it raises the question of whether Pinkston is willing and able to handle his clients' legal matters.
- (d) Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of Pinkston's failure to attend to his professional obligations.
- (e) The protection of the public requires that Pinkston not be permitted to resume the practice of law until he demonstrates that he understands his obligations to his clients and his profession and that he demonstrates that he is not suffering from any physical or mental condition that prevents him from practicing law competently.

BASED UPON the foregoing Findings of Fact Regarding Discipline and the arguments of counsel, the hearing committee hereby enters the following:

#### ORDER OF DISCIPLINE

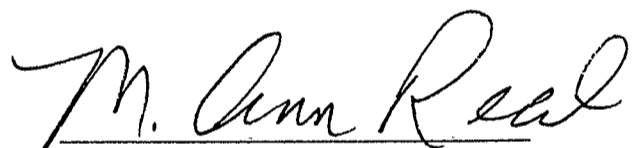
1. The license of the Defendant, Frank G. Pinkston, is hereby suspended for two years, effective 30 days after the date that this order is served upon him.
2. All but 6 months of Pinkston's two-year suspension may be stayed upon Pinkston proving that he has satisfied the following conditions:
  - a) He has entered into a Lawyers Assistance Program (LAP) contract that includes a requirement for a physical and mental examination by a psychiatrist approved by LAP within thirty days of service of this order. The examination and evaluation shall be obtained at Pinkston's expense.
  - b) He has complied with the terms of the LAP contract, including following all treatment recommendations of the psychiatrist or other treatment professional during the period of suspension of his law license. The treatment shall be obtained at Pinkston's expense.
  - c) The psychiatrist has submitted a written report to LAP confirming that Pinkston is not suffering from a mental or physical condition that substantially impairs his judgment or competence as an attorney.
  - d) He has executed a written release authorizing the Office of Counsel of the North Carolina State Bar to contact the psychiatrist who performed any evaluation and to obtain copies of the medical records

relating to his evaluation and treatment from the psychiatrist and all other treating medical personnel.

- e) He has reimbursed the following individuals the amounts listed below:
- |    |                       |         |
|----|-----------------------|---------|
| 1) | Priscilla B. Herbin   | \$5,000 |
| 2) | Collette L. C. McLean | \$1,000 |
| 3) | Kenneth Lee           | \$1,400 |
| 4) | Peggy B. Martin       | \$2,500 |
| 5) | Jesse B. Conrad       | \$ 450  |
- d) He has responded to all communications from the North Carolina State Bar within 30 days of receipt or the deadline stated in the communication, whichever is earlier.
- e) He has not violated the Revised Rules of Professional Conduct or the laws of any state or of the United States.
- f) He has paid all past due membership fees owed to the North Carolina State Bar.
- g) He has complied with all mandatory continuing legal education requirements.
- h) He has paid the costs of this proceeding as assessed by the Secretary.

3. If Pinkston does not seek a stay of any portion of his suspension, then Pinkston must comply with all of the conditions contained in subparagraphs 2(a)-(h) above as a condition of filing a petition for reinstatement of his license.

Signed by the chair with the consent of the other hearing committee members, this the 3<sup>rd</sup> day of August, 2006.



M. Ann Reed, Chair  
Hearing Committee