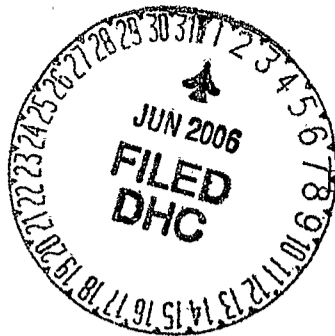


NORTH CAROLINA
WAKE COUNTY



16333

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 51

The North Carolina State Bar,
Plaintiff,

v.

Marshall F. Dotson, III
Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, and
CONSENT ORDER OF DISCIPLINE**

This matter came on to be heard and was heard before a Hearing Committee of the Disciplinary Hearing Commission composed of Karen Eady-Williams, Chair, Michael J. Houser, and Stephen E. Culbreth. The Defendant represented himself. William N. Farrell represented the Plaintiff. Both parties stipulate and agree to the findings of fact and conclusions of law recited herein and to the order of discipline imposed. Based upon the consent of the parties, the Hearing Committee hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar, (hereinafter "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, Marshall F. Dotson, III, (hereinafter "Defendant"), was admitted to the North Carolina State Bar on February 28, 1989, 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 Revised Rules of Professional Conduct of the State of North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina.

4. In July 2003, Defendant represented a client named John M. Bell (hereafter "Bell") in an equitable distribution proceeding with Bell's former spouse, Patricia Ann Bell (now Ruggiero, hereinafter "Ruggiero") in Guilford County case number 98 CVD 9563. On July 2, 2003, Judge Joseph E. Turner entered a consent order, attached to the Complaint as Exhibit A, in Guilford County case number 98 CVD 9563. Paragraph 7 of the order provided that "[T]he parties shall sign any and all documents necessary to effectuate the transfer of assets as set forth herein, including but not limited to, the non-warranty deed and consent to the entry of a Qualified Domestic Relations Order to divide the plaintiff's North State Chevrolet 401(K) as set forth herein."

5. On or about July 29, 2003 counsel for Ruggiero, drafted the Qualified Domestic Relations Order (hereinafter "QDRO") pursuant to the July 2, 2003 consent order, and gave the order to Defendant sometime between July 29 and September 26, 2003.

6. On September 26, 2003 an order, attached to the Complaint as Exhibit B, was entered in Guilford County case number 98 CVD 9563 by Wendy M. Enochs, District Court Judge Presiding. The order recited that the "QDRO has been prepared awaiting approval from company."
7. On or about March 12, 2004 counsel for Ruggiero made a calendar request and gave notice of hearing to be held on May 3, 2004 for entry of the QDRO.
8. On or about May 25, 2004 counsel for Ruggiero again sent the QDRO to defendant for execution by Defendant's client, Bell.
9. On or about June 11, 2004, counsel for Ruggiero sent a writing to Defendant requesting to be advised "as to the status of the execution of the Qualified Domestic Relations Order." Defendant did not respond in writing to this request.
10. On or about July 1, 2004, counsel for Ruggiero sent a Second Request in writing to Defendant requesting to be advised "as to the status of the execution of the Qualified Domestic Relations Order." Defendant did not respond in writing to this request.
11. On or about November 19, 2004, counsel for Ruggiero sent a Third Request in writing to Defendant requesting to be advised "as to the status of the execution of the Qualified Domestic Relations Order." Defendant did not respond in writing to this request.
12. On or about January 10, 2005, Ruggiero personally wrote Defendant requesting information from defendant as to the specific date that Bell would sign the QDRO and return it to Ruggiero's counsel.
13. On or about February 11, 2005 Ruggiero personally wrote Defendant for a second time, requesting to be advised of the status of the QDRO.

14. On or about April 26, 2005, Ruggiero personally wrote Defendant for a third time, noting that he had not responded to the letters of January 10 and February 11, 2005, and requesting that the QDRO be signed and sent to Ruggiero's counsel.
15. On or about May 16, 2005 Ruggiero filed a grievance with the North Carolina State Bar against Defendant regarding the delay in the execution of the QDRO, consented to by the parties and ordered by the court on July 2, 2003.
16. A Letter of Notice from the Chair of the Grievance Committee, regarding defendant's neglect and delay in the QDRO matter was sent to defendant on or about June 1, 2005.
17. After receiving an extension of time until July 1, 2005, within which to respond to the Letter of Notice, Defendant failed to respond on or before July 1.
18. On or about July 13, 2005, Defendant was sent a follow-up letter from the State Bar reminding him that he had not responded to the Letter of Notice and requesting that he respond by July 19, 2005.
19. By letter dated July 20, 2005, and post-marked July 25, 2005, Defendant responded to the Letter of Notice. In his response Defendant denied that he had failed to respond to Ruggiero. Defendant further stated that he had told Ruggiero and her "previous counsel" of problems with the language of the QDRO regarding the survivors benefit language. Defendant stated that at such time that the survivors benefit language was removed from the order and that at such time the order contained the appropriate language, that his client would approve it and the court would enter such order.
20. By letter dated July 26, 2005, Deputy Counsel for the State Bar requested further documents from Defendant and requested that he provide same by August 8, 2005. Defendant did not respond to this request until September 12, 2005.

21. On September 8, 2005, a Qualified Domestic Relations Order, attached to the Complaint as Exhibit C, was entered in Guilford County case number 98 CVD 9563 by Joseph E. Turner, District Court Judge Presiding. The order was signed by Defendant, his client, Ruggiero and her counsel.
22. This order was identical in all respects to the order as initially drafted by Ruggiero's counsel and given to Defendant between July 29, 2003 and September 26, 2003 except for the changes as to dates sent to Defendant in May 2004. The order consented to by the parties and entered by the Court on September 8, 2005 contained the same language that Defendant stated was holding up the execution of the order by his client.
23. In October 1999 Ms. Jo Ellen Barley and husband retained Defendant to represent them regarding custody of their granddaughter, Cheyene Taylor Noah. Defendant was paid \$2,200.00 for his services.
24. Defendant told Ms. Barley that he would need court records pertaining to the divorce of Ms. Barley's son, Joseph A. Noah, and Janet B. Noah. Defendant advised he would send his assistant to gather these documents.
25. At some point during the representation of Ms. Barley, Defendant suggested that she hire a private investigator to gather information to verify the mother's conduct and to determine whether circumstances existed which would warrant a custody action by Ms. Barley, the child's grandmother.
26. On or about August 16, 2005, Ms. Barley contacted Defendant's office and asked for a copy of her file. The request for the file was to provide the file to the investigator to avoid duplication of any effort already made by Defendant. Ms. Barley was asked what the investigator needed out of the file.

27. Defendant did not return a copy of Ms. Barley's file to her nor did he explain to Ms. Barley why he was not doing so.

Based upon the foregoing Findings of Fact, the Hearing Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over the Defendant, Marshall F. Dotson, III, and the subject matter of this proceeding. By agreeing and consenting to this order of discipline, Defendant has waived any and all defects in the service of the summons and complaint and in the notice of hearing.
2. Defendant's conduct, as set forth in the findings of fact above, constitutes grounds for discipline, pursuant to N.C. Gen. Stat. Section 84-28 (b) in that the conduct violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:
 - a. By delaying the execution of the Qualified Domestic Relations Order and failing to respond to opposing counsel or voice any objections to the proposed QDRO, Defendant failed to act with reasonable diligence and promptness in violation of Rule 1.3, failed to make reasonable efforts to expedite the litigation in violation of Rule 3.2 and engaged in conduct that was prejudicial to the administration of justice in violation of Rule 8.4 (d).

- b. By failing to give Ms. Barley a copy of her file, upon her request, Defendant failed to reasonably consult with a client about the means by which the client's objectives were to be accomplished in violation of Rule 1.4 (a) (2) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4 (a) (4).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee enters the following:

FINDINGS REGARDING DISCIPLINE

1. Defendants conduct is aggravated by the following factors:
 - a. Substantial experience in the practice of law;
 - b. Issuance of four letters of warning to the Defendant within the three years immediately proceeding the filing of the complaint;
 - c. The letters of warning involved similar conduct as the conduct in the present proceeding.
2. Defendants misconduct is mitigated by the following factors:
 - a. Cooperative attitude toward the Bar proceedings;
 - b. Acknowledgement of the wrongful nature of his conduct.
3. The aggravating factors outweigh the mitigating factors.
4. Defendants conduct caused harm to the standing of the legal profession, undermining trust and confidence in lawyers and the legal system.

5. The Hearing Committee has considered lesser alternatives and finds that a public censure or reprimand would not sufficiently protect the public and that a stayed suspension is necessary to allow implementation of conditions to ensure the protection of the public and Defendant's future clients.
6. The Hearing Committee finds Defendants conduct in delaying the execution of the QDRO caused significant harm to the administration of justice and that a stayed suspension is necessary to protect the public and the standing of the legal profession.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant's license to practice law in the State of North Carolina is hereby suspended for one year, effective upon service of this Order of Discipline on the Defendant. The suspension is stayed for a period of two years as long as Defendant complies with the following conditions:
 - a. Defendant will advise the Bar in writing of any changes in his address within 10 days of all changes.
 - b. Defendant will respond to all letters of notice and request for information from the N.C. State Bar by the deadlines stated in the communication.
 - c. Defendant will timely pay all State Bar membership dues and Client Security Fund assessments.
 - d. Defendant will timely comply with his State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline.

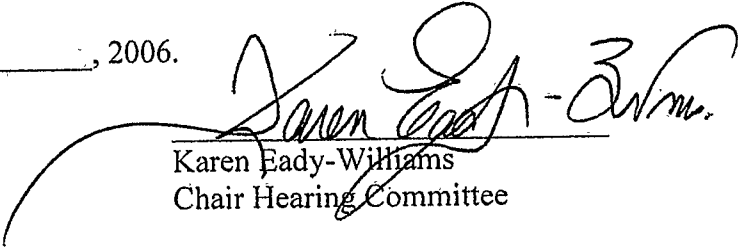
- e. Defendant will not violate any law of the United States or the laws of any state.
- f. Defendant will not violate any provision of the Rules of Professional Conduct.
- g. No later than 30 days from the entry of the Order of Discipline Defendant shall contract with a licensed North Carolina attorney who maintains a private laws practice in the judicial district in which Defendant maintains his practice to serve as a practice monitor. Defendant will first secure the approval of his proposed practice monitor from the Office of Counsel of the North Carolina State Bar, which approval will not be unreasonably withheld. Defendant will personally meet with his practice monitor at least once each quarter beginning in July 2006 during the period of stayed suspension. Defendant will keep the monitor apprised of all open and pending client matters and the status of all such matters. Within 15 days after the end of each calendar quarter of each year of the stayed suspension, Defendant will deliver to the Office of Counsel a written report signed by the practice monitor confirming that the meetings are occurring and that the Defendant is reporting on the status of Defendant's client matters to the practice monitor and that the practice monitor is satisfied with the status of such client matters. Defendant will be solely responsible for all costs associated with the monitoring of his law practice.

- h. Defendant shall complete within the first three months of the stay at his own expense, a course of training of at least eight hours, in law office management approved by the North Carolina State Bar, and expressly waive any right he might otherwise have as to confidential communication with persons associated with the management training program in regard to the prescribed course of training. Within ten days of completion of the management training program, Defendant will be responsible for seeing that the provider of the training course has certified to the Bar that he has satisfactorily completed the course and paid the costs of the course.
 - i. Within 90 days of the entry of this Order of Discipline, Defendant pay Patricia Ann Ruggiero the sum of \$720.00 for counsel fees incurred from the delay in the execution of the QDRO.
 - j. Within 10 days of the entry of this Order of Discipline, Defendant will deliver an entire copy of Jo Ellen Barley's file to her, except for Defendant's notes, drafts of documents and telephone log records.
2. Defendant shall pay the costs of this proceeding within 30 days of service of the statement of costs upon him by the Secretary of the State Bar.
3. If the stay of the suspension is lifted at any time and the suspension of Defendant's law license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

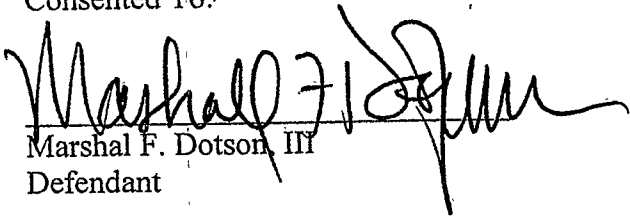
- a. Submitted his license and membership card to the Secretary of the N.C. State Bar within 30 days after the effective date of the order suspending his law license
- b. Complied with all provisions of 27 N.C.A.C. Chapter 1, Subchapter B, Section .0124 of the State Bar Discipline & Disability Rules on a timely basis.
- c. Demonstrated that he is not suffering from any addiction, disability or condition that would impair his ability to competently engage in the practice of law.
- d. Paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar.
- e. Complied with all continuing legal education requirements imposed by the North Carolina State Bar.

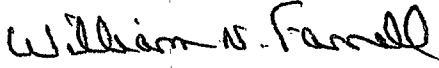
Signed by the Chair of the Hearing Committee with the knowledge and consent of the other Committee members:

This the 25th day of May, 2006.


Karen Eady-Williams
Chair Hearing Committee

Consented To:


Marshal F. Dotson, III
Defendant


William N. Farrell
Attorney for Plaintiff