

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 36

THE NORTH CAROLINA STATE BAR)
Plaintiff)
v.)
JAMES F. MOCK, ATTORNEY)
Defendant)

CONSENT ORDER OF DISCIPLINE

This matter coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to Section 14(8) of Article IX of the Rules and Regulations of the North Carolina State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter; and it further appearing that both parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee therefore enters the following:

FINDINGS OF FACT

1. 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. The Defendant, James F. Mock, was admitted to the North Carolina State Bar in 1971 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, Code of Professional Responsibility and the Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the relevant periods referred to herein, Mock was engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Lexington, Davidson County, N.C.

4. In February, 1988, William Aldine Martin (hereafter Martin) paid Mock \$300 to investigate the possibility of obtaining honor grade status and work release privileges for Martin, an inmate at a medium security prison. Martin agreed to pay Mock an additional fee if Mock actually represented Martin in any hearings or proceedings.

5. Between February, 1988 and March, 1988, Mock went to Mocksville three times to visit Martin in prison to discuss his case. Mock contacted prison officials in Raleigh on several occasions respecting Martin.

6. Mock communicated with members of Martin's family respecting Martin's case on numerous occasions.

7. Mock's discussions with prison officials and with Martin revealed that Martin had been sentenced to a lengthy prison term for second degree murder and that his previous work release privileges had been lost when Martin attempted to escape in December, 1987.

8. After evaluating the case, Mock advised Mrs. Martin that, owing to Martin's prison record, (including infractions committed after Mock's employment), he could do nothing further to assist Martin.

9. Mock offered to return Martin's file materials to him, but Mrs. Martin directed him to retain the materials. Mock later delivered the file in person to Martin, upon receiving another request for the file.

10. In February, 1989, Martin filed a grievance against Mock with the N.C. State Bar.

11. The N.C. State Bar sent a letter of notice to Mock on March 29, 1989 respecting Martin's grievance.

12. Mock received the letter of notice on March 30, 1989.

13. The N.C. State Bar sent a follow up letter to Mock on June 9, 1989, reminding him that he had not answered the letter of notice.

14. On June 16, 1989, Mock wrote to the N.C. State Bar, requesting an extension of time in which to answer the letter of notice. Mock's June 16 letter did not propose a date by which he was to submit a response nor did Mock take steps to determine if an extension had in fact been granted him.

15. On July 21, 1989, the State Bar issued a subpoena ordering Mock to appear at the Bar's offices to respond to the letter of notice respecting Martin's grievance on August 4, 1989. Mock was served by certified mail with the subpoena and signed the registered receipt on August 2, 1989.

16. Mock failed to appear as ordered by the subpoena and failed to provide a full and fair response to the letter of notice of March 29, 1989.

17. At the time Mock received the letter of notice and subpoena, he was suffering from chronic depression. The depression was a causal factor in his failure to respond to the State Bar's letter of notice and subpoena.

18. Mock recognized the need for psychiatric treatment and has been treated by Dr. Thomas Gresalfi, whose deposition was taken in this proceeding and who has treated Mock since December 1988 and up to the present time.

This the 23rd day of March, 1990.

James E. Ferguson II

James E. Ferguson, II, Chairman
Disciplinary Hearing Committee
For the Committee

CONCLUSIONS OF LAW

1. The Defendant did not neglect Martin's case, nor did he fail to carry out the contract of employment entered into on Martin's behalf.
2. The Defendant did not fail to return Martin's file to him within a reasonable period after receiving a request for the file.
3. The Defendant communicated adequately with Martin and his family members about Martin's case.
4. Martin paid the Defendant \$300 to investigate Martin's case. The Defendant investigated the case adequately and fully earned the \$300 fee.
5. By failing to respond to the March 29, 1989 letter of notice within 15 days and by failing to appear as commanded by the N.C. State Bar's subpoena of July 21, 1989, the Defendant failed to respond to a lawful request for information of a disciplinary authority, in violation of Rule 1.1(B).

ORDER OF DISCIPLINE

1. The allegations in Plaintiff's First Claim for Relief are hereby dismissed.
2. The Defendant, James F. Mock, is hereby reprimanded for failing to respond to the State Bar's letter of notice of March 29, 1989 and for failing to appear as commanded by the State Bar's subpoena of July 21, 1989.
3. The Defendant shall pay the costs of this proceeding.

This the 23 day of March, 1990.

James E. Ferguson II
James E. Ferguson II, Chairman

Robert C. Bryan
Robert C. Bryan

Sammy L. Beam
Sammy L. Beam