

SEP 2004
FILED
DHC

BEFORE THE
JUDICIAL HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 30

V.

GENE A. DICKEY, ATTORNEY
Defendant

FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

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. The Defendant, Gene A. Dickey, (Dickey) was admitted to the North Carolina State Bar in 1991 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 relevant hereto, Dickey was engaged in the practice of law in Winston-Salem, N.C.
4. The State Bar's complaint in this case was filed on June 8, 2004.

5. Dickey was personally served with the summons and complaint by the Forsyth County Sheriff's Department on June 15, 2004.

6. On June 17, 2004, before Dickey answered the complaint, the State Bar filed an amended complaint as permitted by N.C. Civ. Pro. Rule 15.

7. Dickey was personally served with the amended complaint on June 18, 2004.

8. Dickey never filed an answer or other responsive pleading to the State Bar's complaint or the amended complaint.

9. The Secretary of the N.C. State Bar entered Dickey's default on July 20, 2004.

10. Dickey was properly served with notice of the hearing herein.

11. Dickey acknowledged that he did not have good cause within the meaning of N.C. Civ. Pro. Rule 55 to justify setting aside the order of default previously entered in this matter.

12. At the hearing herein, Dickey was afforded the opportunity to present evidence and testimony on his own behalf, object to the State Bar's exhibits, cross examine the State Bar's witnesses and make legal arguments based on the evidence.

13. Prior to November 2001, Dickey undertook to represent Michael Phillips (Phillips) regarding a civil action that Phillips and his company, M&J Concrete Construction, Inc. (M&J), desired to pursue against Steve A. Plemmons (Plemmons) and Bear Creek Log Homes.

14. Dickey agreed to handle the civil action against Plemmons for a 25% contingent fee.

15. The matter was tried in Forsyth County Superior Court in early 2003 and a \$3,399.28 judgment was entered in Phillips' favor.

16. On or about July 15, 2003, Elliot A. Fus (Fus), the attorney for Plemmons, tendered his client's check for \$3,399.28 to Dickey in payment of the judgment. The check was made out to M&J Concrete Construction Co.

17. On or about July 16, 2003, Dickey cashed the \$3,399.28 check.. He deposited \$2,266.19 of the proceeds (M&J judgment proceeds) into his attorney trust account 5114916082 at Branch Banking & Trust Co. (trust account).

18. Dickey retained the remaining \$1,133.09 of the M&J judgment proceeds as a fee in the case, without Phillips' consent and in violation of the parties' 25% contingent fee agreement.

19. The \$2,266.19 that Dickey deposited into his attorney trust account after cashing the M&J judgment proceeds check belonged to Phillips and should have remained in Dickey's trust account intact at all times until the funds were disbursed to Phillips.

20. As of Sept. 26, 2003, the balance in Dickey's trust account was \$132.57. The balance in the trust account remained below \$2,266.19 at all times between Sept. 26, 2003 and January 12, 2004.

21. Dickey misappropriated all or a portion of the \$2,266.19 belonging to Phillips without Phillips' knowledge or consent.

22. On numerous occasions between July and December 2003, Phillips telephoned Dickey to inquire about the status of the M&J judgment proceeds. Dickey was evasive and unresponsive and failed to turn over the judgment proceeds to Phillips.

23. On or about Dec. 3, 2003, Phillips wrote a formal letter of complaint to Dickey and demanded the return of the M&J judgment proceeds.

24. On or about Jan. 12, 2004, Dickey deposited \$2,325.85 in personal funds into his trust account.

25. On or about Jan. 13, 2004, Dickey gave Phillips a check for \$2,325.85, which he contended represented Phillips' share of the M&J judgment proceeds, minus certain expenses incurred during the course of the litigation.

26. On or about Jan. 16, 2004, the N.C. State Bar issued a letter of notice to Dickey regarding his handling of the M&J judgment proceeds and directed him to respond to the grievance within 15 days.

27. Dickey was served with the letter of notice by certified mail on January 17, 2004.

28. Dickey did not respond to the letter of notice regarding his handling of the M&J judgment proceeds until March 11, 2004.

29. In approximately August 2001, Dickey undertook to represent Phillips respecting claims arising out of an ankle injury Phillips suffered in July 2001 on a construction site.

30. Dickey failed to take effective action to pursue any claim for relief on Phillips' behalf.

31. Dickey failed to keep Phillips reasonably informed about the status of his claims arising out of the ankle injury.

32. On or about December 2001, Dickey undertook to represent Glenda Orvin (Ms. Orvin) regarding a claim she had against a local company.

33. Ms. Orvin paid Dickey an initial retainer of \$150.

34. After Ms. Orvin paid the \$150 retainer, Dickey failed to take any effective action to resolve her legal matter.

35. Dickey failed to return Ms. Orvin's calls or otherwise keep her informed of the status of the case.

36. On or about March 21, 2002, Ms. Orvin filed a fee dispute petition against Dickey with the North Carolina State Bar.

37. By letter dated April 2, 2002, the North Carolina State Bar notified Dickey of Ms. Orvin's fee dispute and directed him to respond in writing within 15 days.

38. Dickey was served with the April 2, 2002 notice by certified mail on or about April 4, 2002.

39. Dickey did not respond to the April 2, 2002 notice of fee dispute petition.

40. On or about April 29, 2002, the State Bar issued a follow up letter to Dickey, reminding him that he had not responded to Ms. Orvin's fee dispute petition.

41. Dickey did not respond to the April 29, 2002 follow up letter, nor did he participate in the fee dispute resolution process regarding Ms. Orvin.

42. On or about March 21, 2002, Ms. Orvin filed a grievance against Mr. Dickey with the North Carolina State Bar.

43. The North Carolina State Bar referred Ms. Orvin's complaint to the 21st Judicial District Grievance Committee for investigation.

44. On or about April 22, 2002, the 21st Judicial District Bar notified Dickey of Ms. Orvin's complaint and directed him to respond within 15 days.

45. Dickey did not respond to the April 22, 2002 letter of notice.
46. On June 17, 2002, the 21st Judicial District Bar sent Dickey a follow up letter, reminding him that he had not responded to Ms. Orvin's complaint.
47. Dickey did not respond to the June 17, 2002 follow up letter.
48. On or about Oct. 22, 2002, Dickey appeared in person in the office of the State Bar pursuant to a subpoena issued to him by the Bar regarding Ms. Orvin's complaint. Dickey agreed to provide a written response to Ms. Orvin's grievance but failed to do so.
49. Prior to April 19, 1999, Dickey undertook to represent Kenneth A. Allen, Jr. (Allen) regarding a civil action against Allen's former employer, Grandfather Home for Children and its Executive Director, Jim Swinkola (Swinkola).
50. On or about April 19, 1999, Dickey filed a complaint on Allen's behalf in the U.S. District Court for the Western District of North Carolina against Grandfather Home for Children and Swinkola (the defendants).
51. On or about Nov. 6, 1999, the defendants' attorney served Dickey with the defendants' interrogatories.
52. Dickey did not file timely responses to the interrogatories.
53. On or about July 5, 2000, the defendants' attorney filed a motion for summary judgment against Allen.
54. Dickey did not respond to the motion for summary judgment.
55. On or about Aug. 11, 2000, Dickey filed a motion to enlarge the time for responding to the defendants' motion for summary judgment up through and including Aug. 15, 2002.
56. The court allowed Dickey's motion but Dickey failed to file a brief or other response to the defendants' motion for summary judgment.
57. On Aug. 29, 2000, a hearing was held on the motion for summary judgment. Dickey did not appear at the hearing, nor did he notify the court or the defendants' attorney that he would not attend.
58. On Aug. 30, 2000, the court granted the defendants' motion for summary judgment and dismissed Allen's complaint with prejudice.

59. Dickey did not tell Allen that the complaint had been dismissed with prejudice. In February 2001, Allen discovered that the complaint had been dismissed when he telephoned the U.S. District Court Clerk of Court's office.

60. Prior to March 17, 1999, Dickey undertook to represent Sam Robinson (Robinson) regarding injuries Robinson received in an automobile accident in 1995.

61. In 1998, Dickey filed a civil action in Guilford County Superior Court on Robinson's behalf.

62. Thereafter, opposing counsel served Dickey with discovery requests.

63. Dickey failed to file complete responses to the discovery requests and opposing counsel ultimately filed a motion to compel.

64. The court granted the motion to compel and ordered Robinson to pay \$700 in costs.

65. On or about March 17, 1999, Dickey asked Robinson to reimburse him for the \$700 that Dickey claimed he had paid "in order to keep the case going." Dickey did not make it clear that the \$700 had been awarded because of Dickey's failure to respond to the opposing party's discovery requests.

66. Dickey did not communicate with Robinson about the case after March 17, 1999 and failed to return Robinson's calls about the matter.

67. Dickey failed to take effective action to resolve Robinson's case.

68. On or about Aug. 12, 2002, Robinson filed a grievance against Dickey with the N.C. State Bar.

69. On or about Feb. 11, 2003, the North Carolina State Bar issued a letter of notice to Dickey regarding Robinson's complaint and directed Dickey to respond to the complaint within 15 days. Dickey was served with the letter of notice on Feb. 15, 2003.

70. On March 5, 2003, the State Bar sent Dickey a follow up letter, reminding him that he had not responded to Robinson's complaint.

71. Dickey did not respond to the letter of notice or the March 5, 2003 follow up letter.

72. On or about May 14, 2001, Dickey undertook to represent Denise Evans (Ms. Evans) respecting her divorce, equitable distribution and child support

case. He also agreed to seek an order preventing Ms. Evans' estranged husband from entering the marital home.

73. In December 2001, Dickey filed a complaint for divorce, equitable distribution and child support for Ms. Evans.

74. Dickey falsely told Ms. Evans on at least one occasion that he had filed the motion to prevent her estranged husband from entering the marital home.

75. Dickey failed to keep Ms. Evans reasonably informed about her case.

76. Dickey failed to take effective steps to resolve Ms. Evans' legal matter.

77. On or about Feb. 13, 2003, Ms. Evans discharged Dickey and asked him to return the unearned portion of the \$1,250 retainer she had paid to him.

78. Dickey did not refund any part of the fee.

79. On Nov. 7, 2003, Ms. Evans filed a petition for resolution of a fee dispute against Dickey with the North Carolina State Bar.

80. On Nov. 7, 2003, the N.C. State Bar notified Dickey of Ms. Evans' fee petition by certified mail and directed him to respond within 15 days.

81. The State Bar's Nov. 7, 2003 letter of notice to Dickey regarding Ms. Evans' fee petition was returned to the State Bar unclaimed.

82. On Dec. 11, 2003, the State Bar sent a second notice regarding Ms. Evans' fee dispute petition to Dickey by certified mail. Dickey was served with the notice on Dec. 15, 2003 and was directed to respond within 15 days.

83. Dickey did not respond to Ms. Evans' fee dispute petition nor did he participate in the fee dispute resolution process. Accordingly, a State Bar grievance file was established against Dickey on Jan. 7, 2004 and was assigned grievance file number 04G0047.

84. On Feb. 4, 2004, the State Bar issued a letter of notice to Dickey regarding file number 04G0047.

85. On March 24, 2004, a State Bar investigator personally served Dickey with a copy of the letter of notice and substance of grievance in file number 04G0047. The letter of notice directed Dickey to respond within 15 days.

86. Dickey failed to respond to the letter of notice in file 04G0047.

87. On or about Sept. 1, 2000, Dickey agreed to represent Sabrina Hunter (Ms. Hunter) respecting a personal injury claim arising from an automobile accident in which Ms. Hunter was involved on Aug. 30, 2000.

88. On one occasion, Dickey spoke with Ms. Hunter by telephone and relayed an offer of settlement that had been made by the insurance company in the case. Ms. Hunter rejected the settlement offer.

89. After the telephone conversation regarding the offer of settlement, Dickey did not return any of Ms. Hunter's calls nor did he keep her apprised of the status of the case.

90. Dickey failed to take effective action to resolve Ms. Hunter's case and failed to file a formal complaint before the statute of limitations ran on Aug. 30, 2003.

91. On or about Dec. 15, 2003, Ms. Hunter filed a grievance against Dickey with the North Carolina State Bar.

92. On or about March 23, 2004, Dickey filed a response with the North Carolina State Bar regarding Ms. Hunter's grievance. In his response, Dickey falsely represented that he had told Ms. Hunter in a letter in June 2002 that he would not handle her case.

93. In April 2002, Mark L. Stack (Stack) retained Dickey's services to assist him in resolving civil claims against a contractor named Andrew Bowersox (Bowersox) and ABI Development.

94. In June 2002, Dickey falsely told Stack that he had filed a complaint on Stack's behalf in Forsyth County Superior Court against Bowersox and ABI Development.

95. In November 2002, Dickey falsely told Stack that a hearing regarding the case would be held in December 2002.

96. Dickey did not file a complaint on Stack's behalf against Bowersox and/or ABI Development nor did he take other effective action to resolve Stack's claims.

97. Dickey failed to return a number of telephone inquiries Stack made regarding his case and failed to keep Stack reasonably informed about the status of his legal matter.

98. On April 2, 2003, Stack discharged Dickey and asked him to return his file.

99. Dickey did not respond to Stack's letter and failed to return Stack's file to him.

100. On or about April 17, 2003, Stack filed a grievance against Dickey with the North Carolina State Bar.

101. On or about July 7, 2003, the N.C. State Bar issued a letter of notice to Dickey regarding his handling of Stack's case and directed him to respond to the grievance within 15 days.

102. Dickey was served with the letter of notice and substance of grievance regarding Stack's complaint by certified mail on July 8, 2003.

103. Dickey did not respond to the letter of notice.

104. On Aug. 1, 2003, a follow up letter was sent to Dickey, reminding him that he had not responded to Stack's grievance.

105. Dickey did not respond to the Aug. 1, 2003 follow up letter.

106. On Oct. 9, 2003, the Executive Director of the N.C. State Bar issued a subpoena to Dickey, commanding him to appear at the State Bar's offices on Nov. 5, 2003 to respond to Stack's grievance. Dickey was served with the subpoena by certified mail on or about Oct. 14, 2003.

107. Dickey did not appear as commanded by the State Bar's subpoena.

108. On or about July 15, 2002, Amy Jo Riggs (Ms. Riggs), retained Dickey's services to assist her in handling a domestic case and two real estate-related matters. Riggs paid Dickey a \$250 advance fee.

109. Dickey failed to take any effective action to resolve Ms. Riggs' legal matters.

110. Dickey did not respond to Ms. Riggs' inquiries about the status of her legal matters.

111. Thereafter, Ms. Riggs discharged Dickey and demanded that he return the \$250 advance fee.

112. Dickey did not respond to Ms. Riggs nor did he return the \$250 advance fee.

113. On or about July 25, 2003, Ms. Riggs filed a petition for mandatory fee dispute resolution with the North Carolina State Bar.

114. By letter dated July 28, 2003, the State Bar notified Dickey of Ms. Riggs' fee dispute petition and directed him to respond within 15 days. Dickey was served with notice of Ms. Riggs' fee dispute petition by certified mail on July 29, 2003.

115. Dickey did not respond to the notice of fee dispute petition.

116. On Aug. 27, 2003, the State Bar sent a follow up letter to Dickey, reminding him that he had not responded to Ms. Riggs' fee dispute petition. Dickey was served with the Aug. 27, 2003 follow up letter by certified mail on Aug. 28, 2003.

117. Dickey did not respond to the Aug. 27, 2003 follow up letter nor did he participate in the fee dispute resolution process.

118. The N.C. State Bar established a grievance file against Dickey based upon his failure to respond to Ms. Riggs' fee dispute petition and assigned the grievance file number 03G 1482.

119. On or about Oct. 23, 2003, the State Bar issued a letter of notice to Dickey regarding his failure to respond to Ms. Riggs' fee dispute petition and directed him to respond to the grievance within 15 days.

120. Dickey was served with the letter of notice and substance of grievance regarding file 03G 1482 by certified mail on Oct. 25, 2003

121. Dickey did not respond to the letter of notice.

122. Nov. 14, 2003, a letter was sent to Dickey, reminding him that he had not responded to the grievance file 03G 1482 arising from Riggs' fee dispute

123. Dickey did not respond to the Aug. 1, 2003 follow up letter.

124. Prior to October 2, 2000, Dickey undertook to represent Hazel Dean Marshall (hereafter, Dean), regarding an equitable distribution case.

125. On or about Oct. 19, 2000, Dickey received a check on Dean's behalf in the amount of \$48,017.71. These funds, which Dickey deposited into his trust account, represented the proceeds from the sale of the marital property formerly owned by Dean and her husband.

126. Sometime between October 2000 and Oct. 12, 2001, Dickey received a second check for Dean in the amount of \$45,245.36. These funds represented additional proceeds from the equitable distribution case and were the property of Dean. The \$45,245.36 check was deposited into Dickey's trust account on Oct. 12, 2001.

127. Between May 16, 2002 and March 10, 2003, Dickey also received an additional \$1,170 on Dean's behalf and deposited those sums into his trust account. The total amount Dickey received on Dean's behalf was \$94,433.07.

128. Dickey disbursed a total of \$11,245.60 from his trust account to Dean or to third parties on her behalf.

129. Dean did not give Dickey permission to use any part of the equitable distribution proceeds for his own benefit.

130. On or about July 14, 2003, Dickey gave Dean an undated check for \$29,000 drawn on his attorney trust account. There were insufficient funds in the account to cover the check and it was never negotiated.

131. As of Oct. 12, 2001, the balance in Dickey's trust account for Dean should have been \$84,718.07. The actual balance in the account for all clients on Oct. 12, 2001 was \$40,339.57. The balance in the trust account never was equal to or higher than \$84,718.07 at any time after Oct. 12, 2001 and there were negative balances in the account on June 6, 2002, June 13, 2002, and Oct. 1, 2003.

132. As of Oct. 24, 2003, the balance in Dickey's trust account for Dean should have been \$83,187.47. The actual balance in the account on that date for all clients was \$55.47. The balance in Dickey's trust account never was equal to or higher than \$83,187.47 at any time on or after Oct. 24, 2003.

133. Dickey misappropriated \$83,187.47 belonging to Dean without her knowledge or consent.

134. On June 9, 2004, the State Bar issued a letter of notice, substance of grievance and subpoena for cause audit to Dickey regarding the Dean matter. The subpoena was served on Dickey by certified mail on June 12, 2004.

135. The State Bar served Dickey with a subpoena for cause audit, which required him to appear at the State Bar's office and produce to the State Bar all documents regarding his handling of Dean's equitable distribution proceeds no later than 10 a.m. on June 16, 2004.

136. Dickey did not appear as commanded by the subpoena nor did he produce the required records.

137. On Wednesday, Aug. 25, 2004, Dickey wrote to counsel for the N.C. State Bar and offered to surrender his law license.

Based on the foregoing Findings of Fact, the hearing committee hereby makes the following:

CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission has jurisdiction over the person of the Defendant, Gene A. Dickey, and over the subject matter of this proceeding.

2. By misappropriating funds belonging to his clients, Michael Phillips and Hazel Dean Marshall, without the clients' knowledge and consent, Dickey engaged in criminal conduct that reflects adversely on his honesty, fitness or trustworthiness as attorney in violation of Revised Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule 8.4(c).

3. By paying himself \$1,133.09 from the M&J Concrete Construction Co. judgment proceeds as a fee in the case, in violation of his fee agreement with Michael Phillips, Dickey collected an illegal or excessive fee in violation of Revised Rule 1.5.

4. By failing to disburse the M&J Concrete Construction Co. judgment proceeds to Phillips promptly after receiving them from Elliott Fus, Dickey failed to deliver Phillips' property to him promptly, in violation of Revised Rule 1.15-2(m).

5. By failing to respond to Phillips' telephone calls or otherwise keep him accurately informed of the status of the M&J judgment proceeds and about the personal injury case, Dickey failed to communicate with a client in violation of Revised Rule 1.4. Dickey also failed to respond to reasonable requests for information from his clients Glenda Orvin, Sam Robinson, Denise Evans, Sabrina Hunter, Mark Stack and Amy Jo Riggs.

6. By failing to respond to the State Bar's letter of notice regarding Phillips' grievance until March 11, 2004, Dickey failed to respond in a timely fashion to an official inquiry of a disciplinary authority in violation of Revised Rule 8.1(b). Dickey also violated Rule 8.1(b) by failing to file any response whatever to letters of notice sent to him by the State Bar and/or the 21st Judicial District Grievance Committee concerning grievances filed by Glenda Orvin, Sam Robinson, and filed by the State Bar concerning Denise Evans' fee dispute matter, Amy Jo Riggs and Mark Stack.

7. By failing to take any effective action to resolve legal matters he undertook for Michael Phillips, Glenda Orvin, Sam Robinson, Denise Evans, Sabrina Hunter, Mark Stack and Amy Jo Riggs, Dickey neglected client matters in violation of Revised Rule 1.3. Dickey also violated Rule 1.3 by failing to file timely responses to the defendants' discovery requests, failing to respond to the motion for summary judgment and by failing to attend the hearing on the summary judgment motion on Allen's behalf.

8. By failing to respond to the notice regarding the fee dispute petitions filed by Glenda Orvin, Denise Evans and Amy Jo Riggs, Dickey failed to participate in good faith in the mandatory fee dispute resolution process in violation of Revised Rule 1.5(f).

9. By failing to tell Allen that the defendants had served him with discovery and with a motion for summary judgment and that the Court had granted the defendants' motion for summary judgment, Dickey failed to communicate with a client in violation of Revised Rule 1.4 and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule 8.4(c).

10. By demanding that his client pay the entire \$700 in court costs imposed in the civil action without clearly disclosing that the costs had been assessed owing to Dickey's lack of diligence, Dickey engaged in a conflict of interest in violation of Revised Rule 1.8, failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions in violation of Rule 1.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

11. By falsely telling Ms. Evans that he had filed a motion to restrain her estranged husband from entering the marital property, falsely representing to the Grievance Committee of the North Carolina State Bar that he had sent Ms. Hunter a letter dated June 14, 2002 advising her that he would not handle her civil case, falsely advising Stack that a complaint had been filed on his behalf against Bowersox and/or ABI and by falsely telling Stack that a hearing would be held in December 2002 Dickey engaged in conduct involving fraud, deceit, misrepresentation or dishonesty in violation of Revised Rule 8.4(c).

12. By failing to refund the unearned portion of the \$1,250 fee retainer when Ms. Evans discharged him in February 2003 and by failing to refund the unearned portion of the \$250 retainer paid to him by Ms. Riggs, Dickey violated Revised Rule 1.5 and Revised Rule 1.16.

13. By failing to appear on Nov. 5, 2004 and produce documents as commanded by the State Bar's cause audit subpoena, Dickey failed to produce trust account documents in violation of Revised Rule 1.15-3(g) and failed to respond to a lawful demand for information from a disciplinary authority in violation of Revised Rule 8.1(b).

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:

- a. Multiple violations of the Revised Rules of Professional Conduct.
- b. Pattern of misconduct.

- c. Failure to make restitution.
- d. Defendant was motivated by a selfish and dishonest motive.
- e. Defendant received a letter of warning on Oct. 17, 2001.
- f. Defendant failed to cooperate with the State Bar's investigation of the complaints against him.
- g. Defendant submitted false or misleading information to the Grievance Committee of the N.C. State Bar.

2. The Committee finds the following mitigating factors:

- a. The Defendant has no prior discipline

3. The aggravating factors outweigh the mitigating factors.

4. Dickey's misconduct has caused substantial actual harm to his clients and has harmed the standing of the legal profession in the eyes of Hazel Dean Marshall and Michael Phillips, both of whom testified that Dickey's misconduct undermined their trust in all lawyers.

5. An order calling for discipline short of disbarment would not sufficiently protect the public for the following reasons:

- a. Dickey engaged in a multiple violations of the Revised Rules of Professional Conduct over a period of approximately five years. His misconduct was not the result of a mistake, nor did it appear to be an aberration and it therefore appears that his misconduct is the product of a character flaw that is not readily changeable.
- b. Dickey has offered no plausible evidence or assurances that he has addressed the problem or flaw that led to his misconduct. Consequently, the Committee finds that there is a substantial risk that his misconduct would be repeated if he were permitted to retain his law license.
- c. The protection of the public requires that Dickey be disbarred and that he not resume the practice of law until he demonstrates that he understands the Rules of Professional Conduct, will abide by them and that he has reformed.
- d. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses which Dickey committed, would be inconsistent with the orders of discipline entered by this body in similar cases and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

- c. Failure to make restitution.
- d. Defendant was motivated by a selfish and dishonest motive.
- e. Defendant received a letter of warning on Oct. 17, 2001.
- f. Defendant failed to cooperate with the State Bar's investigation of the complaints against him.
- g. Defendant submitted false or misleading information to the Grievance Committee of the N.C. State Bar.

2. The Committee finds the following mitigating factors:

- a. The Defendant has no prior discipline

3. Dickey's misconduct has caused substantial actual harm to his clients and has harmed the standing of the legal profession in the eyes of Hazel Dean Marshall and Michael Phillips, both of whom testified that Dickey's misconduct undermined their trust in all lawyers.

4. An order calling for discipline short of disbarment would not sufficiently protect the public for the following reasons:

- a. Dickey engaged in a multiple violations of the Revised Rules of Professional Conduct over a period of approximately five years. His misconduct was not the result of a mistake, nor did it appear to be an aberration and it therefore appears that his misconduct is the product of a character flaw that is not readily changeable.
- b. Dickey has offered no plausible evidence or assurances that he has addressed the problem or flaw that led to his misconduct. Consequently, the Committee finds that there is a substantial risk that his misconduct would be repeated if he were permitted to retain his law license.
- c. The protection of the public requires that Dickey be disbarred and that he not resume the practice of law until he demonstrates that he understands the Rules of Professional Conduct, will abide by them and that he has reformed.
- d. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses which Dickey committed, would be inconsistent with the orders of discipline entered by this body in similar cases and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.

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

ORDER OF DISCIPLINE

1. The defendant, Gene A. Dickey, is hereby DISBARRED from the practice of law in this state, effective 30 days from the date of service of this order upon the defendant.

2. Within 90 days of service of the statement of costs upon him, the Defendant shall pay the costs of this proceeding.

3. The defendant shall surrender his law license and bar membership card within 30 days after service of this order upon him.

4. Prior to filing a petition for reinstatement of his law license, the Defendant shall

a) present written evidence to the N.C. State Bar that he has made restitution to Ms. Dean in the amount of \$83,187.47. If Ms. Dean receives compensation from the Client Security Fund, then Defendant shall reimburse the Client Security Fund for \$83,187.47 or the amount paid by the Fund to Ms. Dean, whichever sum is greater.

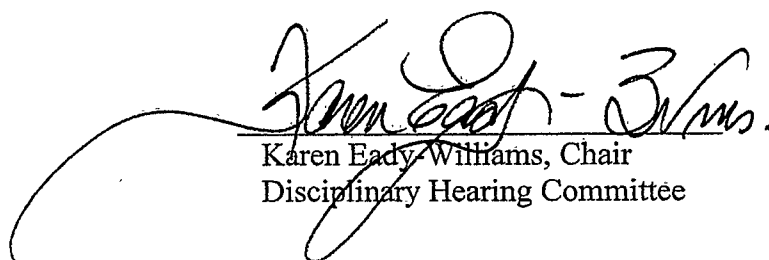
b) obtain a mental health assessment from a psychiatrist approved by the N.C. State Bar and provide the State Bar with a release permitting Bar representatives to contact the psychiatrist and obtain all records relating to his evaluation. The evaluation shall demonstrate that Defendant is physically and mentally competent to practice law. The evaluation shall be obtained at the sole expense of the Defendant.

c) present proof that he has successfully completed 6 hours of continuing legal education from a sponsor approved by the North Carolina State Bar regarding the proper handling of client funds.

5. Counsel for the N.C. State Bar is hereby directed to send a copy of the order herein to the District Attorney for the 21st Judicial District.

Signed by the Chair of the Hearing Committee with the consent of the other hearing committee members.

This the 24th day of September, 2004.


Karen Eady-Williams, Chair
Disciplinary Hearing Committee