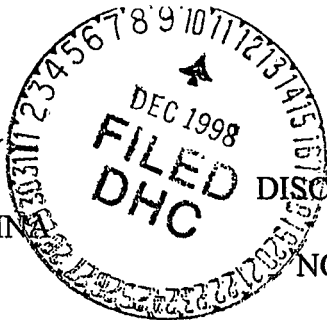


WAKE COUNTY
NORTH CAROLINA



9812

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
98 DHC 19

THE NORTH CAROLINA STATE BAR
PLAINTIFF

v.

WILLIAM GERALD, ATTORNEY
DEFENDANT

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

THIS MATTER came on to be heard and was heard by a hearing committee of the Disciplinary Hearing Commission of the N.C. State Bar composed of Henry C. Babb, Jr., Chair; Michael L. Bonfoey and Catharine Sefcik. Carolin Bakewell appeared for the Plaintiff. The Defendant, William Gerald, was not present nor was he represented by counsel. Based upon the pleadings filed herein and the evidence presented by the State Bar, the hearing committee makes 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. The Defendant, William Gerald (hereafter, Gerald), was admitted to the North Carolina State Bar in 1981 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 relevant periods referred to herein, Gerald was engaged in the practice of law in Wake County, N.C.

4. The State Bar's complaint was filed on June 12, 1998. Various unsuccessful attempts were made to serve Gerald at his last known address. Thereafter, the State Bar served Gerald with notice of the summons and complaint by publication in the News & Observer Newspaper as provided for in N.C. Civ. Pro. Rule 4(j).

5. Gerald's answer to the State Bar's complaint was due no later than Nov. 14, 1998.

6. When Gerald failed to file a timely answer or other responsive pleading, the Secretary of the N.C. State Bar entered Gerald's default on Nov. 17, 1998.

7. Gerald was given proper notice of the entry of default and of this hearing.

8. The Disciplinary Hearing Commission has jurisdiction over Gerald's person and over the subject matter of this proceeding.

9. In February 1995, Matthew Brogdon, a minor (hereafter, Brogdon), was injured while at a McDonald's Restaurant.

10. Shortly thereafter, Gerald undertook to assist Brogdon's mother, Leslie P. Smoot (hereafter, Smoot), in obtaining compensation for Brogdon's injuries.

11. In the late spring or early summer of 1995, Gerald assured Smoot that he was working on Brogdon's case.

12. In approximately November 1995, Gerald told Smoot that Brogdon's case would probably be settled around Christmas of 1995.

13. In January 1996, after having heard nothing from Gerald, Smoot contacted Gerald. During this conversation, Gerald admitted that he had mislaid information which Smoot had previously given him about the case.

14. On a number of occasions between January and October 1996, Smoot tried unsuccessfully to contact Gerald to discuss the status of Brogdon's case.

15. In October 1996, Smoot finally reached Gerald, who had changed his telephone number without advising Smoot. During this conversation, Gerald told Smoot that he had not contacted her about the case because he had been ill and had had personal problems.

16. Also during the October 1996 conversation, Gerald told Smoot that he was going to refer her to another attorney. Despite this assurance, however, Smoot heard nothing from Gerald or any other attorney about her case after the October 1996 conversation with Gerald.

17. Gerald failed to withdraw properly as Brogdon's attorney and failed to take steps to prevent prejudice to his claim.

18. Gerald failed to take adequate steps to pursue Brogdon's claim for damages and failed to communicate adequately with Smoot concerning her son's case.

19. In June 1997, Gerald was suspended from the practice of law. Gerald did not return Brogdon's file to Smoot, nor did he inform Smoot that he was no longer able to engage in the practice of law.

20. Gerald undertook to represent Lester Cross, Jr. (hereafter, Cross), respecting two traffic charges then pending against Cross.

21. Gerald failed to appear in court on Cross' behalf respecting the traffic matters and failed to take other effective measures to resolve the charges against Cross.

22. As a result of Gerald's failure to resolve the traffic charges, Cross' driver's license was suspended by the Department of Motor Vehicles.

23. Gerald failed to communicate with Cross about his traffic cases.

24. In the fall of 1996, Gerald undertook to represent Patrick Arrington (hereafter, Arrington) respecting criminal charges then pending against Arrington.

25. In October and November 1996, Arrington's mother, Janice Arrington (hereafter, Ms. Arrington), paid Gerald a total of \$4,000 in attorney's fees to represent Arrington.

26. Gerald failed to take adequate steps to handle Arrington's criminal case and failed to communicate adequately with either Arrington or Ms. Arrington about the case.

27. Gerald failed to return any portion of the fee which he was paid by Ms. Arrington on her son's behalf, despite the fact that Gerald did not earn all of the fee which he received from Ms. Arrington.

28. On or about April 8, 1997, Smoot filed a grievance against Gerald with the N.C. State Bar.

29. On or about October 7, 1997, Cross filed a grievance against Gerald with the N.C. State Bar.

30. On or about Sept. 25, 1997, the N.C. State Bar issued a letter of notice to Gerald, directing him to respond to Smoot's grievance. The State Bar also issued a substance of grievance, which summarized Smoot's grievance.

31. On or about Oct. 7, 1997, the N.C. State Bar issued a letter of notice to Gerald, directing him to respond to Cross' grievance. The State Bar also issued a substance of grievance which summarized Cross' grievance.

32. On Dec. 10, 1997, an employee of First National Legal Support Services personally served Gerald with the letter of notice and substance of grievance in Smoot's case, which had been assigned State Bar File No. 97G 537 (II) and with the letter of notice and substance of grievance in Cross' case, which had been assigned State Bar File No. 97G 1362.

33. Pursuant to the State Bar's Discipline & Disbarment Rules, Gerald's response to the grievances filed by Smoot and Cross were due no later than Dec. 29, 1997.

34. Gerald did not respond to the State Bar's letters of notice respecting the grievances filed by Smoot and Cross.

35. On or about April 21, 1997, Ms. Arrington filed a grievance with the N.C. State Bar against Gerald.

36. On May 6, 1997, the N.C. State Bar issued a letter of notice to Gerald respecting Ms. Arrington's complaint. The State Bar also issued a substance of grievance which summarized Ms. Arrington's complaint.

37. The State Bar's letter of notice and substance of grievance in Ms. Arrington's grievance, which were assigned file no. 97G 480, were personally served upon Gerald by the Wake County Sheriff's Department on June 10, 1997.

38. Pursuant to the N.C. State Bar's Discipline & Disbarment Rules, Gerald's response to the letter of notice in Ms. Arrington's grievance was due no later than June 25, 1997.

39. Gerald did not file any response to the letter of notice in Ms. Arrington's case.

Based upon the foregoing Findings of Fact, the hearing committee hereby enters the following:

CONCLUSIONS OF LAW

1. By failing to take adequate steps to pursue Brogdon's claim for compensation for personal injuries, by failing to represent Arrington in his criminal case and by failing to take adequate steps to resolve Cross' traffic charges, Gerald neglected his clients' legal matters in violation of former Rule 6(b)(3) and prejudiced a client in violation of former Rule 7.1(a)(3)) of the Rules of Professional Conduct.

2. By failing to communicate adequately with Arrington or Ms. Arrington, Cross and Smoot about their legal matters and by failing to tell Smoot that he had been

suspended from the practice of law in June 1997, Gerald failed to communicate with clients in violation of former Rule 6(b)(1) of the Rules of Professional Conduct.

3. By failing to notify Smoot that he had been suspended from the practice of law in June 1997, Gerald failed to comply with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 and is therefore in violation of the order of the Disciplinary Hearing Commission entered in the case of N.C. State Bar v. Gerald, 97 DHC 15, which conduct amounts to contempt of the Commission in violation of N.C. Gen. Stat. 84-28(b)(3).

4. By failing to return Brogdon's file to Smoot and otherwise failing to withdraw properly and by failing to take steps to avoid prejudicing Brogdon once he decided to withdraw as Brogdon's attorney, Gerald violated former Rule 2.8 of the Rules of Professional Conduct.

5. By failing to respond to the letters of notice issued to Gerald by the N.C. State Bar respecting grievances filed by Smoot, Cross and Ms. Arrington, Gerald failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct.

6. By retaining the entire \$4,000 fee which he had been paid by Ms. Arrington respecting Arrington's case at a time when he had not earned the entire fee, Gerald retained an excessive fee in violation of former Rule 2.6 of the Rules of Professional Conduct.

Based upon the evidence introduced in the disciplinary phase of this case, the hearing committee hereby enters the following:

ADDITIONAL FINDINGS OF FACT CONCERNING DISCIPLINE

1. Gerald received two censures from the N.C. State Bar Grievance Committee in 1996.

2. In July 1997, the Disciplinary Hearing Commission entered a consent order of discipline whereby Gerald was suspended from the practice of law for three years. The 1997 order requires Gerald to comply with a number of conditions prior to seeking reinstatement of his license to practice law.

3. Gerald has failed to pay his 1996 and 1997 mandatory N.C. State Bar dues.

4. Gerald has a deficit of 21.75 hours of mandatory continuing legal education and owes the Continuing Legal Education Board a late compliance penalty of \$125.

5. Two of Gerald's former clients, Peter Traylor and Jacqueline Holloman, filed claims with the Client Security Fund of the N.C. State Bar, requesting reimbursement of

sums which they represented that had been lost as a result of Gerald's misconduct. Traylor indicated that Gerald neglected his criminal case in late 1996 by failing to appear in court or communicate with him about his case. Holloman stated that Gerald had withheld \$1,100 from the settlement of her personal injury claim to pay her medical care providers. Gerald failed to pay the medical care providers and failed to hold Holloman's funds in trust.

6. Gerald's misconduct is aggravated by the following factors:

- a) Prior discipline
- b) Failure to make restitution
- c) Pattern of misconduct
- d) Multiple violations
- e) Substantial experience in the practice of law.

Based upon the foregoing Findings of Fact and Conclusions of Law and Findings Respecting Discipline, the hearing committee hereby enters the following:

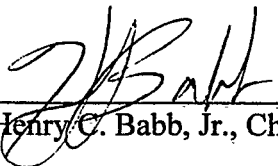
ORDER OF DISCIPLINE

1. Defendant, William Gerald, is hereby disbarred from the practice of law.
2. Gerald shall surrender his license and membership card within 30 days of service of this order upon him.
3. Gerald shall pay the costs of this proceeding.
4. Prior to seeking reinstatement, Gerald shall:
 - a) comply with the conditions required of all disbarred attorneys set out in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the State Bar Discipline & Disability Rules.
 - b) shall comply with all the conditions set out in the consent order of discipline in State Bar v. Gerald, 97 DHC 15.
 - c) present evidence that he has made restitution to the Client Security Fund of the N.C. State Bar for all sums paid by the Client Security Fund to former clients of Gerald's.
 - d) make restitution to Peter Traylor in the amount of \$500.
5. Pay all outstanding mandatory dues owed to the N.C. State Bar and the 10th Judicial District Bar.

6. Comply with all orders and requirements of the Board of Continuing Legal Education of the N.C. State Bar.

Signed by the hearing committee chair with the permission of the other committee members.

This the 11th day of December, 1998.


Henry C. Babb, Jr., Chair