

APR 1997
FILED
DHC

5237

THE NORTH CAROLINA STATE BAR
Plaintiff

y.

MALCOLM GRANDY, ATTORNEY
Defendant

FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

This matter was heard on the 28th day of March, 1997, before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; Kenneth Smith and Robert Frantz. The Defendant, Malcolm Grandy, appeared on his own behalf. The Plaintiff was represented by Carolin Bakewell. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters 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, Malcolm Grandy, was admitted to the North Carolina State Bar in 1961, and is, and was at all times relevant hereto, 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, Grandy was actively engaged in the practice of law in the State of North Carolina.

4. Grandy was properly served with process and the hearing was held with due notice to all parties.

5. In early August, 1995, Grandy undertook to represent Fred T. Moore (Moore) respecting speeding and DWI charges then pending against Moore.

6. Moore paid Grandy a total of \$725 as a fee in three installments.

7. In August 1995 Moore notified Grandy of his address and home and work telephone numbers. Grandy assured Moore that he would let him know when the case was set for trial.

8. At Moore's request, Grandy had the hearing on Moore's traffic charges continued until Sept. 7, 1995.

9. Grandy had car trouble which prevented him from attending the Sept. 7, 1995 court hearing and he therefore had the hearing on Moore's traffic charges continued until Oct. 19, 1995.

10. Grandy was aware that the hearing in Moore's case had been set for Oct. 19, 1995 well in advance of the trial date.

11. Grandy did not notify Moore of the Oct. 19, 1995 hearing date.

12. Grandy knew by the afternoon of Oct. 19, 1995 that Moore had not appeared for his court date and that an order for his arrest had been issued. Nevertheless, Grandy failed to contact Moore to advise him of the arrest order and failed to assist Moore respecting his traffic cases.

13. Moore learned about the arrest order in late October 1995 when he received a notice from the Scotland County courts.

14. After receiving the notice, Moore made a number of unsuccessful attempts to contact Grandy by telephone. Although he left messages for Grandy, Grandy did not return these calls until Nov. 25, 1995.

15. Moore retained other counsel to represent him respecting the traffic charges and the order for arrest, at an ultimate cost of approximately \$2,300.

16. In 1996, Moore filed a grievance against Grandy with the North Carolina State Bar. Grandy did not file a timely response to the letter of notice sent to him by the N.C. State Bar respecting Moore's grievance.

17. In his response to the Grievance Committee, Grandy stated that he had attempted to call Moore on Oct. 18, 1995 at his home and place of business to notify Moore of the Oct. 19 hearing date. Grandy stated further that he was unable to leave a

message at Moore's home because the telephone had been disconnected, but that he did speak with Moore's "foreman" at Moore's business number.

18. Grandy's response to the Grievance Committee was untruthful, in that Moore's home telephone was not disconnected at any time in October 1995 and in that Grandy did not speak with or leave a message with Moore's supervisor at his place of business.

19. Grandy refunded \$375 to Moore in March 1997, after he was ordered to do so following a fee arbitration hearing conducted pursuant to Rule 2.6(E) of the Rules of Professional Conduct.

20. Beginning in December 1996, the North Carolina State Bar Office of Counsel sought copies of Grandy's telephone records covering the period during which he represented Moore. The State Bar served Grandy with a request to produce the telephone records on Feb. 5, 1997. Grandy did not respond to these requests and did not produce any telephone records until ordered to do so by the Disciplinary Hearing Commission following a hearing on the State Bar's motion to compel production of the records on March 20, 1997. Grandy produced partial, original phone records to the N.C. State Bar Office of Counsel on Monday, March 24 and produced additional copies of his phone records during the hearing of this matter. Grandy failed to produce any telephone records for October 1995, however.

21. In approximately March 1995, Grandy agreed to assist James Fitzpatrick to seek a reduction in the prison sentence which Fitzpatrick received following his 1992 guilty plea to arson charges.

22. Fitzpatrick's father, Dennis Fitzpatrick, delivered a \$5,000 check to Grandy as an advance fee in March 1995. Grandy agreed to hold the advance fee in trust and to refund any unearned portions of the fee.

23. Grandy cashed the \$5,000 check promptly after receiving it and before he had performed any services for Fitzpatrick or his family, without the knowledge or consent of Dennis Fitzpatrick. Grandy failed to place any portion of the proceeds of the \$5,000 check into a trust account.

24. Grandy did not maintain a client trust account at any time during his representation of James Fitzpatrick.

25. Grandy failed to take any effective steps on James Fitzpatrick's behalf and he remained in prison as of the date of this hearing. Despite promises to do so, Grandy did not speak with the sentencing judge, Hon. Robert L. Farmer, about the matter, did not file any motions on Fitzpatrick's behalf, and did not review N.C. Gen. Stat. § 15A-1415, the statute which governs motions for appropriate relief filed more than 10 days after entry of judgment.

26. Grandy visited James Fitzpatrick in prison on two occasions. He did not respond to any of the letters which Fitzpatrick wrote to him and did not otherwise communicate adequately with his client about the case.

27. Grandy also failed to communicate adequately with Dennis Fitzpatrick and other members of James Fitzpatrick's family about the case, although he was authorized to do so.

28. Grandy transferred \$5,000 to Raleigh attorney George Barrett in February 1997, after the State Bar's formal complaint in this matter had been filed. Later in February, Barrett tendered a check for \$2,500 to Dennis Fitzpatrick. Fitzpatrick returned this check uncashed, as it was offered as a "resolution of the fee dispute" between Fitzpatrick and Grandy and as it was made out jointly to Dennis, Deirdre and James Fitzpatrick.

29. As of the date of the trial, Grandy had failed to refund any portion of the \$5,000 advance fee to Dennis Fitzpatrick.

30. Grandy failed to provide any written accountings to Dennis or James Fitzpatrick regarding the \$5,000 advance fee which he was to have held in trust.

31. Dennis Fitzpatrick did not authorize Grandy to transfer any portion of the \$5,000 advance fee to George Barrett or any other individual.

32. Dennis Fitzpatrick filed a grievance against Grandy with the North Carolina State Bar in 1996. Grandy did not provide a full, fair and accurate response to Fitzpatrick's grievance to the North Carolina State Bar.

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, Malcolm Grandy, and the subject matter.

2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. 84-28(b)(2) as follows:

(a) By failing to notify Moore to be in court on Oct. 19, 1995 and by failing to respond to Moore's numerous inquiries about his case, Grandy failed to communicate adequately with a client in violation of Rule 6(b)(1).

(b) By failing to take adequate steps to assist Moore in resolving his traffic cases Grandy neglected a client matter in violation of Rule 6(b)(3).

(c) By failing to take effective action to assist James Fitzpatrick to obtain a reduction in his prison sentence or other post conviction relief, Grandy neglected a client matter in violation of Rule 6(b)(3).

(d) By failing to communicate with James Fitzpatrick and his family about James Fitzpatrick's legal matter, Grandy failed to communicate with his client in violation of Rule 6(b)(1).

(e) By failing to refund the unearned portion of the \$5,000 advance fee paid to him on behalf of James Fitzpatrick, Grandy violated Rule 2.8 and charged or collected an excessive fee in violation of Rule 2.6.

(f) By failing to account to Fitzpatrick for the \$5,000 advance fee, Grandy violated Rule 10.2(d).

Based upon the Foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes the additional:

FINDINGS OF FACT REGARDING DISCIPLINE

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

- a. prior discipline
- b. pattern of misconduct.
- c. multiple violations of the Rules of Professional Conduct.
- d. bad faith obstruction of the disciplinary process.
- e. substantial experience in the practice of law.
- f. indifference to making restitution.
- g. issuance of a letter of warning in the last 3 years.

2. There are no mitigating factors.


3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors, and the arguments of the parties, the hearing committee hereby unanimously enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Malcolm Grandy, is hereby disbarred from the practice of law in North Carolina, beginning 30 days from service of this order upon him.
2. The Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon the Defendant.
3. On or before Sept. 1, 1997, the Defendant shall pay the costs of this proceeding as assessed by the Secretary, including the costs incurred by the N.C. State Bar in deposing James Fitzpatrick, Debbie Grumbles, Tina Sherrill, Dwayne Nelson and Boyce Grooms.
4. The Defendant shall make full restitution to Dennis Fitzpatrick by remitting \$5,000 to Dennis Fitzpatrick by May 1, 1997. The Defendant shall provide to the Secretary of the N.C. State Bar written proof of payment of restitution to Fitzpatrick no later than 5 days after restitution is tendered.
5. The Defendant shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline & Disability Rules.

Signed by the chair with the consent of the other hearing committee members,
this the 4th day of April, 1997.



Henry C. Babb, Jr., Chair
Hearing Committee