

WAKE COUNTY

NORTH CAROLINA



12461

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
97 DHC 12

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

BOYD L. LAMBERT, JR, ATTORNEY
Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard on the 13th through the 15th day of August, 1997, before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; James R. Fox and Robert B. Frantz. The defendant, Boyd L. Lambert, was represented by Wade M. Smith and Douglas E. Kingsbery. The plaintiff was represented by Douglas J. Brocker. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.

2. The defendant, Boyd L. Lambert, Jr. (hereinafter "Lambert"), was admitted to the North Carolina State Bar in 1984 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.

3. During all times relevant hereto Lambert was actively engaged in the practice of law in Durham, North Carolina, and maintained a law office in the City of Durham, Durham County, North Carolina.

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

5. Anthony Samuel ("Samuel") was charged with second degree murder in 1992 in Durham County ("murder charge").

6. Samuel was represented by the Durham County Public Defender's Office on the murder charge. Assistant Public Defender Elaine Gordon ("Gordon") assumed responsibility for Samuel's murder charge in the Public Defender's Office in February 1993.

7. In 1994, Samuel was arrested for the possession of a firearm by a convicted felon ("gun charge"). For a \$1,500 retainer, Lambert agreed to represent Samuel on the gun charge and other related charges.

8. In January 1995, both cases against Samuel were still pending and were being handled by Durham County Assistant District Attorney David Saacks ("Saacks").

9. Both Lambert and Gordon understood from communications with Saacks, that Saacks would not proceed with the gun charge until the murder charge was resolved.

10. During plea negotiations on the murder charge, Saacks disclosed to Gordon that the State was having difficulty locating the necessary witnesses for the murder charge and confirmed that the murder charge might be dismissed.

11. In the course of dealing with Lambert on Samuel's gun charge, Saacks subsequently communicated to Lambert on several occasions in May 1995 that the State was having witness problems in the murder case. Saacks also communicated to Lambert in these conversations that he had set a thirty day deadline for the widow of the murder victim to find additional witnesses or the murder charge would be dismissed. Gordon later called Lambert and told him that the murder charge was likely going to be dismissed, that she would be on vacation the week of June 5 - 9, 1995 -- the week the gun charge was set for trial -- and that she had not told Samuel about the impending dismissal of the murder charge. This conversation occurred sometime prior to June 5, 1995.

12. On or about June 5, 1995, Lambert met with Samuel.

13. During that meeting, with knowledge that Gordon was out of town on vacation that week and that the murder charge was going to be dismissed, Lambert told Samuel that if Samuel paid him \$10,000 that week he could guarantee that he could get the murder charge dismissed. Lambert emphasized to Samuel that he could only do it that week.

14. In this and subsequent conversations, Lambert implied that he could get the murder charge dismissed that week because he had influence with the District Attorney's Office.

15. When Samuel told Lambert that he did not have \$10,000, Lambert suggested that Samuel pay him \$5,000 at the time and \$5,000 later.

16. Samuel obtained several personal loans, giving his automobile as collateral, and sold various personal items to raise the \$5,000.

17. On June 8, 1995, Samuel met Lambert in the Durham County courthouse to enter a guilty plea in the gun case. Samuel gave Lambert the \$5,000 in cash, with the clear understanding that it was for the dismissal of the murder charge and not representation on the gun charge.

18. Samuel previously had paid Lambert the entire agreed upon fee of \$1,500 for representing him on the gun charge before Samuel gave Lambert the additional \$5,000.

19. After Samuel entered a guilty plea on the gun charge, Saacks dismissed the murder charge.

20. Lambert gave Samuel a copy of the order dismissing the murder charge on June 8, 1995, and at that time claimed credit for obtaining the dismissal.

21. Lambert did not disclose to Samuel Lambert's knowledge that the murder charge was going to be dismissed or his conversations with Gordon and Saacks about the impending dismissal, at any time prior to accepting the \$5,000 payment from Samuel or prior to the dismissal of the murder charge.

22. Prior to June 8, 1995, Samuel did not know that the State had communicated to Gordon and Lambert that it was having witness problems and that the murder charge likely would be dismissed.

23. Lambert never had a written fee agreement with Samuel on the murder charge, never filed an appearance for Samuel on the murder charge, never communicated his alleged representation to Saacks, had nothing to do with the dismissal of the murder charge or the setting of the deadline for dismissal of the charge, and took no action to represent Samuel on the murder charge, other than obtaining a copy of the order dismissing the charge.

24. Saacks was never aware, at any point during the pendency of Samuel's murder charge, that Lambert was representing Samuel on the murder charge and never had any communications with Lambert about the murder charge, in which Saacks knew, thought or understood that Lambert was representing Samuel on the murder charge.

25. After the dismissal, Gordon had a conversation with Samuel in December 1995.

26. During this conversation and in response to Gordon's question, Samuel told Gordon about Lambert's misrepresentations that he had gotten the murder charge dismissed. Gordon related to Samuel for the first time her conversations with Saacks and Lambert in approximately May 1995 regarding the impending dismissal of the murder charge.

27. On December 28, 1995, after his conversation with Gordon, Samuel sent a letter to Lambert demanding a refund of the \$5,000 fee.

28. After receiving Samuel's letter, Lambert asked Samuel to come into his office for a meeting on January 4, 1996.

29. At the January 4 meeting, Lambert implied to Samuel that he had earned the \$5,000 fee because he had "pull" with the District Attorney's Office. Lambert also represented that Gordon had been handling the murder case for over a year and had not done anything on it and that he had had the case for less than a week and had gotten it dismissed almost instantly. Lambert still did not disclose his earlier conversation with Gordon and refused Samuel's request to meet with her to discuss the matter.

30. During this conversation, Lambert told Samuel that he could file a request with the fee arbitration board and report any complaints to the State Bar. Lambert also represented to Samuel in that meeting, however, that if Samuel made such a complaint to the State Bar that he would waive the attorney-client privilege and that he would be forced to reveal confidential communications that Samuel made to Lambert during the course of their attorney-client relationship.

31. Lambert and his law office did not give receipts for cash payments made by all clients and did not give one to Samuel for the \$5,000 paid to Lambert for the murder charge.

32. At the request of the Chairman of the Panel on August 14, 1997, Lambert agreed to produce documents demonstrating how the Samuel's payment of \$5,000 was treated in his office books and accounting records.

33. Lambert decided on August 15, 1997 to consent to disbarment and not proceed further with the hearing.

34. Lambert never produced the accounting books and records requested by the Chairman that he had agreed to produce.

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 Boyd L. Lambert, Jr. and the subject matter.

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

a. By knowingly making misrepresentations to Samuel that he could get the murder charge dismissed and that he had influence with the District Attorney's office, which misrepresentations were made with the intent to deceive Samuel into giving him money, and which in fact did deceive Samuel and induce him to give Lambert \$5,000, Lambert:

- I. committed a criminal act that reflects adversely on his honesty, trustworthiness, and fitness to practice law in violation of Rule 1.2(b) of the Rules of Professional Conduct, by obtaining money by false pretenses from his client, Samuel, in violation of North Carolina General Statutes section 14-100;
- II. engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 1.2(c) of the Rules of Professional Conduct;
- III. entered into an agreement for and collected an illegal and excessive fee in violation of Rule 2.6(a) of the Rules of Professional Conduct;
- IV. made false and misleading communications about his services in violation of Rule 2.1(b) of the Rules of Professional Conduct; and
- V. implied an ability to influence improperly a government official in violation of Rule 1.2(e) of the Rules of Professional Conduct.

b. By telling Samuel in the January 4, 1996 meeting that he had earned the \$5,000 fee because he had influence with the District Attorney's office and because Elaine Gordon had had the murder charge for over a year but that he had gotten it dismissed almost instantly, Lambert:

- I. made a false and misleading communication about his services in violation of Rule 2.1(b) of the Rules of Professional Conduct; and
- II. stated or implied an ability to influence improperly a government official in violation of Rule 1.2(e) of the Rules of Professional Conduct.

c. By threatening to disclose confidential information he gained about Samuel during the course of his professional relationship and by threatening Samuel that the murder charge might be reinstated if he filed a complaint with the State Bar, for the purpose of dissuading Samuel from reporting the incident and thereby retaining the \$5,000 fee and preserving his law license, Lambert:

- I. committed a criminal act that reflects adversely on his honesty, trustworthiness and fitness to practice law in violation of Rule 1.2(b) of the Rules of Professional Conduct, by threatening Samuel to

wrongfully retain something of value and to wrongfully gain an advantage, in violation of North Carolina General Statutes section 14-118.4;

- II. engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d) of the Rules of Professional Conduct; and
- III. knowingly made false statements of law and fact in violation of Rule 7.2(a)(4) of the Rules of Professional Conduct.

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. Lambert's misconduct is aggravated by the following factors:

- (A) dishonest or selfish motive; the committee finds that Lambert's actions and motives amount to stealing money from a client and as such are as egregious and serious as an attorney who takes or steals money from a client trust account; in fact, the committee finds that Lambert's actions and motives are more egregious in that he committed an active fraud to steal money from his client, Samuel;
- (B) a pattern of misconduct;
- (C) multiple offenses;
- (D) submission of false evidence, false statements or other deceptive practices during the disciplinary process;
- (E) refusal to acknowledge wrongful nature of conduct;
- (F) vulnerability of victim;
- (G) substantial experience in the practice of law; and
- (H) indifference to making restitution.

2. Lambert's misconduct is mitigated by the following factor:

- (A) absence of a prior disciplinary record.

3. The aggravating factors outweigh the mitigating factor.

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

ORDER OF DISCIPLINE

1. The defendant, Boyd L. Lambert, Jr., is hereby disbarred from the practice of law beginning 30 days from the service of this order upon Lambert.

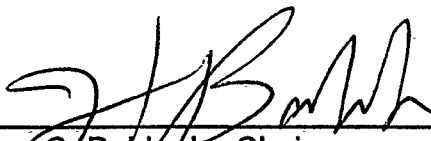
2. Lambert shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Lambert.

3. Lambert shall pay the costs of this proceeding as assessed by the Secretary within 30 days of receiving notice of the costs in this action.

4. Lambert shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules.

5. Lambert is required to keep and maintain indefinitely all documents requested in the attached Subpoena for Cause Audit and is required to turn over those documents and records to the State Bar should he file a petition for reinstatement at any time in the future, subject to the resolution of any Fifth Amendment objections he may raise at that point to producing those records; provided, however, the condition precedent to reinstatement will not be satisfied if defendant does not produce the records because those records have been lost or destroyed; provided further that if Lambert applies for reinstatement, to satisfy the condition precedent, he must turn over sufficient documents and records to permit the State Bar to audit the records set forth in the attached subpoenas and determine whether he was in compliance with State Bar rules regarding client and fiduciary funds and with State and Federal tax and other laws.

Signed by the chair with the consent of the other hearing committee members,
this the 9th day of October 1997.


Henry C. Babb, Jr., Chair
Disciplinary Hearing Commission