

.NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 29

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

v.)

PERRY W. MARTIN, Attorney,)
Defendant)

ORDER OF DISCIPLINE

THIS MATTER was heard on July 8, 2011 before a hearing panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, Fred M. Morelock, and Patti Head pursuant to 27 N.C.A.C. 1B §.0114 of the Rules and Regulations of the North Carolina State Bar. Defendant, Perry W. Martin, was represented by Lloyd C. Smith, Jr. and Lloyd Clifton Smith, III. Plaintiff was represented by Deputy Counsel Margaret Cloutier.

Based upon the record and the evidence introduced at the hearing, the hearing panel finds by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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. Defendant, Perry W. Martin (hereinafter "Martin" or "Defendant"), was admitted to the North Carolina State Bar on August 5, 1950 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. Defendant was properly served with process and the matter came before the hearing panel with due notice to all parties.

4. During the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Ahoskie, Hertford County, North Carolina.

5. Defendant was retained to represent DeAnna Dodway in a matter relating to divorce and property distribution.

6. Defendant represented Ms. Dodway from approximately November 2008 until October 2009.

7. In or about January 2009, Defendant met with Ms. Dodway in his office to consult about the case. When Ms. Dodway got up to leave, Defendant moved toward her and placed his hands on either side of her against the wall preventing her from moving freely. Defendant then tried to kiss Ms. Dodway on the lips. When she protested and moved away Defendant told Ms. Dodway she was too beautiful not to kiss.

8. In or about April 2009, Defendant again met with Ms. Dodway in his office to consult about the case. During that meeting, Defendant asked Ms. Dodway whether she believed he was too old to have a personal relationship with her. When Ms. Dodway said yes, Defendant told Ms. Dodway that when he used his tongue on her during oral sex she would holler and make all kinds of noise. Defendant asked Ms. Dodway how much each button on her blazer would cost to unbutton. Defendant then came around behind Ms. Dodway where she was seated and tried to kiss her on the neck before she moved away.

9. In or about April 2009, Defendant and Ms. Dodway were in the courthouse hallway after Ms. Dodway had been granted a divorce from bed and board. In response to her inquiry about the implication of the court's decision, Defendant told Ms. Dodway she was now free to have sex with anyone she wanted to, including Defendant.

10. During the representation, Defendant contacted Ms. Dodway by telephone and requested that Ms. Dodway allow him to come to her residence for dinner and that she do so at a time when her children would be visiting with their father and she would be alone. Defendant did not specify that the meeting would be to discuss Ms. Dodway's legal matters. Ms. Dodway understood Defendant to be asking to come to her home and engage in sexual relations.

11. In or about September 2009, Defendant and Ms. Dodway attended a mediation scheduled in her legal matter. In Ms. Dodway's vehicle in the parking lot after the mediation, Defendant asked if Ms. Dodway were willing to work out payment for his services. When Ms. Dodway pointed out that Defendant's services were paid in full in advance of the representation, Defendant said that was not the kind of payment he was referring to. Defendant told Ms. Dodway he knew of a motel on I-95, that the people who ran it were discreet, and that no one

would find out. Ms. Dodway understood Defendant to be asking her to go to the hotel and engage in sexual relations.

12. On October 19, 2009, Defendant again met with Ms. Dodway in his office for a consultation regarding her case. Because of Defendant's prior statements and conduct, Ms. Dodway felt that it was necessary to tape record this meeting. During that conversation Defendant asked Ms. Dodway if she wanted to drive Defendant back to the hotel where she was staying. When Ms. Dodway asked what he would expect, Defendant responded, "If I went to Roanoke Rapids to spend the night with you at the motel? I would expect us to explore everything in the world sexually tonight that we could think of . . ."

13. When Ms. Dodway was leaving the meeting of October 19, 2009, Defendant tried to hug and kiss Ms. Dodway.

14. Defendant admitted making the statements set out in paragraph 12 above which were tape recorded by Ms. Dodway. Defendant acknowledged that he "might have" said something similar to the statement attributed to him as set out in paragraph 9 above. Defendant denied making any of the other statements attributed to him as set out in paragraphs 7, 8, 10 and 11. The panel did not find Defendant's testimony in this regard to be credible.

15. After considering all of the evidence and testimony of all of the witnesses, the panel finds the testimony of Ms. Dodway to be credible.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Disciplinary Hearing Commission and the Disciplinary Hearing Commission has jurisdiction over Defendant, Perry W. Martin, and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

By making sexually explicit comments to Dodway, attempting to touch her in a sexual manner, and attempting to convince her to have sex with him, Defendant attempted to have sex with his client which constitutes an attempted violation of Rule 1.19(a) in violation of Rule 8.4(a) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the evidence presented at the hearing, the hearing panel also finds by clear, cogent and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Ms. Dodway borrowed from a close family member the funds necessary to engage Defendant's services at the outset of the representation. That same family member initially suggested Ms. Dodway consult with defendant. Ms. Dodway felt embarrassed to tell anyone about the advances Defendant was making toward her and felt that no one would believe her. For these reasons, Ms. Dodway did not immediately tell anyone about Defendant's actions.
2. Ms. Dodway terminated Defendant's services after the October 19, 2009 meeting with Defendant. Ms. Dodway hired another attorney who was able to resolve her remaining legal matters promptly.
3. Ms. Dodway stated that, because of her experiences with a male attorney, should she be in need of legal services in the future she will only consider engaging a female attorney.
4. During the grievance process Defendant submitted a written response to the Letter of Notice and written responses to follow-up inquiries of State Bar counsel. During this DHC proceeding Defendant filed an Answer and testified in a deposition. These written and testimonial responses were inconsistent with Defendant's testimony at the hearing in this matter and contained statements or allegations for which Defendant had no factual basis.
5. Defendant was disciplined by Admonition for dissimilar conduct in 1989. The prior discipline issued to Defendant was so remote in time as to have no bearing on the discipline in this matter.
6. Defendant's conduct demonstrated that he put his own personal interests and desires before the legal interests of his client. He showed no remorse during these proceedings and did not acknowledge that his course of conduct during his representation of Ms. Dodway was improper.
7. Defendant presented several witnesses whose testimony demonstrated that Defendant enjoys a good reputation within the community.
8. Defendant's conduct toward Ms. Dodway was purposeful and was of a nature that it would be obvious to Defendant that the conduct was exploitive of his client's trust and reliance upon him and from which a conflict of interest would inherently arise.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and determines that the following factors are applicable in this matter:

- a. Defendant's selfish motive;
- b. Defendant's cooperative attitude toward the proceedings;
- c. Defendant's submission of false evidence, false statements or other deceptive practices during the disciplinary process;
- d. Defendant's refusal to acknowledge the wrongful nature of his conduct;
- e. Defendant's lack of remorse;
- f. Defendant's reputation for good character within the community;
- g. The vulnerability of the victim, Defendant's client; and
- h. Repeated instances of conduct that violated the Rules of Professional Conduct involving the same victim.

2. The hearing panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and determines that the following factors are applicable in this matter:

- a. The intent of Defendant to commit acts where the harm or potential harm was foreseeable;
- b. Defendant's elevation of his own interest above that of the client; and
- c. The negative impact of Defendant's actions on the client's perception of the profession.

3. The hearing panel has considered the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and determines that none of the factors are established by the evidence in this case. The panel therefore does not consider disbarment to be necessary to protect the public in this case.

4. The hearing panel has carefully considered all of the different forms of discipline available to it. An admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the potential harm Defendant's conduct caused to the public, the administration of justice, and the legal profession.

5. The panel determines that discipline short of suspension would not adequately protect the public, the legal profession or the administration of justice for the following reasons:

a. The factors under Rule .0114(w)(1) that are established by the evidence in this case are of a nature that support imposition of a suspension as the appropriate discipline; and

b. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offense Defendant committed and would send the wrong message to attorneys and to 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 and Conclusions Regarding Discipline, the hearing panel enters the following

ORDER OF DISCIPLINE

1. The license to practice law in the State of North Carolina of Defendant Perry W. Martin is hereby suspended for three years from the date this Order of Discipline is served upon him.

2. The period of suspension is stayed for three years as long as Defendant complies and continues to comply with the following conditions:

a. Defendant will engage the services of a member in good-standing of the North Carolina State Bar to serve as a practice monitor for Defendant. Defendant will ensure that such practice monitor is present at any time Defendant is in the presence of any female client. Defendant shall comply with and submit to any and all measures by the State Bar to monitor and determine compliance with the terms of this condition, including but not limited to complying with the following:

i. Defendant will ensure that the practice monitor submits to the Office of Counsel an affidavit identifying each client with whom Defendant met or spoke in the practice monitor's presence. Each affidavit shall include the date and time of each client interaction. Such affidavit shall

be submitted by the seventh day of each month during the stay designating the client interactions for the previous calendar month;

ii. Defendant shall provide to the Office of Counsel and to the practice monitor a statement signed by each new female client at the outset of each representation in which the client acknowledges that she has been apprised of the existence and content of this Order of Discipline. Defendant shall provide to the Office of Counsel each such statement signed during a calendar month by the seventh day of the next month during the stay. Defendant shall further provide to the Office of Counsel and to the practice monitor within 30 days of service of this Order upon him a statement signed by each female client currently existing as of the date of this Order in which the client acknowledges that she has been apprised of the existence and content of this Order of Discipline;

iii. Defendant shall provide to the Office of Counsel and to the practice monitor a complete list of any and all clients during each calendar month during the stay, designating the gender of each individual client and including the address and telephone number for any female clients. Defendant will provide this list no later than the seventh day of each month designating his clients for the previous calendar month. The first list is due the earlier of fifteen days from the entry of this Order or August 7, 2011; and

iv. Defendant and his office staff shall fully and completely permit and comply with any visit, inspection, or audit of Defendant's practice by the North Carolina State Bar.

b. No later than 45 days from the entry of this Order, Defendant shall undergo evaluation by a psychiatrist or psychologist approved in advance by the Office of Counsel of the North Carolina State Bar who specializes in treating sexual offenders in the professions and will comply with any and all treatments, programs, plans, and/or counseling determined by the evaluating psychiatrist or psychologist to be appropriate to ensure Defendant gains an appropriate perception of women, can have an appropriate professional relationship with female clients, and to address any other mental health issues. Defendant shall provide the Office of Counsel of the State Bar with reports from his psychiatrist or psychologist every quarter during the stay describing the treatment received by Defendant, Defendant's progress, diagnosis, prognosis, and continuing treatment plan. These reports shall be provided to the Office of Counsel of the State Bar by Defendant no later than January 1, April 1, July 1, and October 1 of each year of the stay of the suspension.

If no specific condition is diagnosed or if no treatment program is prescribed by the evaluating psychiatrist or psychologist, then Defendant shall attend and complete once a year throughout the stay of the suspension a

diversity training program approved in advance by the Office of Counsel of the North Carolina State Bar that includes a large component addressing sexual harassment. The initial program must be an intense live program and the subsequent ones should be programs that build upon the initial program. Defendant must provide written proof of attendance and completion of such diversity training to the Office of Counsel no later than June 30 of each year during the stayed suspension.

Defendant is solely responsible for paying, and shall pay, all costs associated with the above described evaluation, treatment, and reports. Defendant shall sign releases or authorizations to all providers providing treatment or evaluation under this order instructing the provider to discuss the treatment and/or evaluation of him with counsel in the Office of Counsel of the State Bar and to release any corresponding notes, test results, and records to the Office of Counsel of the State Bar.

c. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;

d. Defendant shall respond to all State Bar requests for information by the earlier of the deadline stated in the communication or within 30 days, as required by Rule 8.1(b) of the Rules of Professional Conduct;

e. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and

f. Defendant shall keep the North Carolina State Bar membership department advised of his current home and business street (not P.O. Box) addresses and telephone numbers.

3. If the stay granted herein is revoked or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

a. Submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of his law license;

b. Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following the order lifting the stay and/or activating the suspension of his law license;

c. Paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with all continuing legal education requirements imposed by the State Bar;

d. If Defendant has not complied fully with paragraph 2(b) above, Defendant shall submit to comprehensive psychiatric evaluations by two separate psychiatrists or psychologists selected by or acceptable to the Office of Counsel of the North Carolina State Bar who specialize in treating sexual offenders in the professions who, based on independent comprehensive evaluations of Defendant, have certified under oath whether in their professional opinion Defendant suffers from any condition creating a predisposition for inappropriate sexual behavior and whether Defendant suffers from any mental, psychological, or emotional condition that significantly impairs his professional judgment, performance, or competence in the representation of female clients.

Defendant is solely responsible for paying, and shall pay, all costs associated with the above described evaluations, treatment, and reports. Defendant shall sign releases or authorizations to all providers providing treatment or evaluation under this order instructing the provider to discuss the treatment and/or evaluation of him with counsel in the Office of Counsel of the State Bar and to release any corresponding notes, test results, and records to the Office of Counsel of the State Bar; and

e. Complied with the conditions set forth in Paragraph 2(c) through (f) above.

4. Defendant is taxed with the costs of this action as assessed by the Secretary, including reasonable and necessary expenses for the deposition taken by Plaintiff, which shall be paid within ninety days of service of the notice of costs upon Defendant.

Signed by the undersigned Chair of the hearing panel with the full knowledge and consent of the other panel members, this the 17 day of August, 2011.



Sharon B. Alexander, Chair
Disciplinary Hearing Panel