NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 1

THE NORTH CAROLINA STATE BAR, Plaintiff	)	
vs.	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW
PERRY W. MARTIN, ATTORNEY Defendant	)	

This matter was scheduled for hearing on June 9, 1989 before a hearing committee of the Disciplinary Hearing Commission composed of John G. Shaw, Chairman, Karen P. Boyle, and Donald L. Osborne. Based upon the stipulations contained herein and the consent of the parties, 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 of Regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, Perry W. Martin, was admitted to the North Carolina State Bar in September, 1950, and is, and was at all times referred to herein, an Attorney of Law licensed to practice in North Carolina, subject to the rules, regulations, 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 referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Ahoskie, Hertford County, North Carolina.

4. This matter arises out of a grievance that was noticed to the defendant by the letter received by him February 9, 1987.

5. On or about January 20, 1986, Defendant undertook to represent Donald Ray Daniels (hereafter Daniels) on drug charges brought against Daniels in the United States District Court, Eastern District of

North Carolina, case no. 86-0019M-3.

6. On January 21, 1986, Daniels' mother, Beatrice Daniels, paid Defendant $10,000 to be applied to the fee Defendant was charging to represent Daniels.

7. On January 28, 1986, Defendant employed Joseph B. Cheshire, V (hereinafter Cheshire) to associate with him in defending Daniels.

8. On January 28, 1986, Daniels' brother Johnny Daniels, paid Defendant an additional $15,000 in fee for his representation of Daniels.

9. On January 29, 1986, after going to the jail in Fayetteville to speak with Daniels, Cheshire agreed to file the necessary pretrial motions for Daniels.

10. On January 30, 1986, Defendant sent Cheshire $5,000 as a partial fee.

11. On April 9, 1986, Defendant was paid an additional $13,500 by Daniels' sister, Barbara Daniels Pitts, as additional fee for Defendant's representation of Daniels.

12. On April 10, 1986, Defendant sent Cheshire an additional $3,000 as partial fee.

13. Defendant actively took part in the preparation of Daniels' case prior to being discharged by Daniels on April 30, 1986.

14. After his discharge, demand was made upon Defendant by two attorneys purporting to represent Daniels for a refund of the unearned portion of the fee Defendant had received.

15. On May 28, 1986, Defendant met in Cheshire's office with a Fayetteville attorney who had represented Daniels at the trial of his case. The purpose of this meeting was to discuss the amount, if any, that the Defendant should refund to Daniels of the fee that had been paid to him. The Defendant and Daniels' then attorney negotiated an oral settlement of the amount of fee refund the Defendant should make to Daniels. This agreement was confirmed by a letter dated May 29, 1986, from Daniels' attorney to the Defendant and received by him June 2, 1986.

16. Defendant subsequently received a letter June 18, 1986, from the Fayetteville attorney then representing Daniels informing the Defendant that he was no longer representing Daniels in his claim

for a refund. This letter advised the Defendant that "we would request that any future correspondence be directed to the individual concerned or his or her legal representative".

17. Defendant did not thereafter hear from Daniels or anyone purporting to represent him in his claim for a refund until August 1, 1988, when Daniels called him from what Daniels referred to as a "half-way house". Daniels was incarcerated in Federal Prison from June 18, 1986 until he contacted the Defendant by telephone on August 1, 1988.

18. In the telephone conversation between the Defendant and Daniels on August 1, 1988, the Defendant gave Daniels an appointment to see him on August 2, 1988 to discuss the refund that the Defendant had agreed to make to Daniels. Daniels did not keep the appointment. Daniels called the Defendant again August 3, 1988 and Defendant gave him an appointment for August 5, 1988. Daniels kept this appointment and his mother was with him. Defendant explained to Daniels that they were in an adversary position and that he should employ counsel. Daniels mentioned the name of an attorney who had assisted him in seeking early release. Defendant did not hear from the attorney Daniels mentioned to him. Defendant did not make any further effort to contact Daniels until after the Complaint in this proceeding was filed and he was contacted by an attorney that he knew had theretofore represented Daniels.

19. After the filing of the Complaint in this matter and after Daniels had obtained legal representation, the Defendant and his attorney and Daniels' attorney negotiated and agreed upon an appropriate refund. Defendant refunded Daniels the agreed amount.

Based upon the above Findings of Fact, the hearing committee enters the following CONCLUSIONS OF LAW:

Defendant's conduct constitutes a grounds for discipline pursuant to N.C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

(a) By failing to promptly refund an unearned portion of the fee received on behalf of Daniels after his discharge, Defendant violated Rule 2.8(A)(3).

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee this the 31 day of August, 1989.

John G. Shaw

#979