

NORTH CAROLINA
WAKE COUNTY

10:56 AM

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 30

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

HORACE LOCKLEAR, ATTORNEY
Defendant

ORDER OF DISCIPLINE

This cause was heard on June 8, 1990 by a duly appointed hearing committee of a Disciplinary Hearing Commission consisting of John G. Shaw, chairman; Fred E. Folger, Jr., and Emily W. Turner. In addition to the Findings of Fact and Conclusions of Law made following the evidentiary hearing, the hearing committee makes additional findings of fact as follows:

ADDITIONAL FINDINGS OF FACT

1. Defendant received a Public Censure dated November 26, 1984 from the North Carolina State Bar Grievance Committee.
2. Defendant was suspended from the practice of law for nine (9) months by the Disciplinary Hearing Commission of the North Carolina State Bar on April 26, 1985.
3. As a result of Judge Samuel T. Currin's order in the Defendant's criminal charges, Defendant's license was suspended until action was taken by the North Carolina State Bar.

Based upon the Findings of Fact and Conclusions of Law entered in this case and the further Findings of Fact set forth above, the hearing committee enters the following:

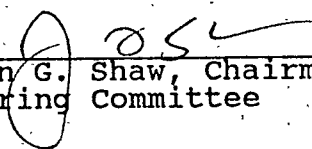
ORDER OF DISCIPLINE

1. The following disciplines are imposed for the violations found in the hearing committee's Conclusions of Law:
 - a) As to the violations found in paragraph 1 of the Conclusions of Law, Defendant's license is suspended for 30 days.
 - b) As to the violations found in paragraph 2 of the Conclusions of Law, Defendant is

disbarred.

- c) As to the violations found in paragraph 3 of the Conclusions of Law, Defendant is disbarred.
 - d) As to the violations found in paragraph 4 of the Conclusions of Law, Defendant is disbarred.
 - e) As to the violations found in paragraph 5 of the Conclusions of Law, Defendant's license is suspended for 30 days.
 - f) As to the violations found in paragraph 6 of the Conclusions of Law, Defendant's license is suspended for 30 days.
2. All of the above orders of disciplines set forth above are to run concurrently.
 3. The Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar.
 4. The Defendant shall comply with the provisions of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar regarding the winding up of his practice, if such has not already been done.
 5. The Defendant is taxed with the costs of this action.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 25 day of July, 1990.



John G. Shaw, Chairman
Hearing Committee

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WAKE COUNTY

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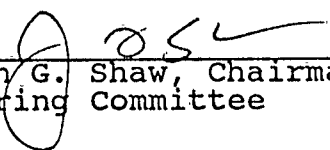
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FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came on to be heard and was heard on June 8, 1990 before a hearing committee of the Disciplinary Hearing Commission composed of John G. Shaw, Chairman; Fred Folger, Jr., and Emily W. Turner. The North Carolina State Bar was represented by Fern E. Gunn and the Defendant was represented by Woodberry Bowen. Based upon the stipulations and admissions of the parties and the evidence derived at the hearing, the committee finds the following facts by clear, cogent, and convincing evidence.

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, Horace Locklear, was admitted to the North Carolina State Bar on August 28, 1972, 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 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 Lumberton, Robeson County, North Carolina.
4. On September 1, 1988, Leroy Locklear (hereafter Locklear) pled guilty to conspiracy to trafficking in marijuana, trafficking by growing marijuana, and possession of drug paraphernalia. Judge Robert H. Hobgood was the judge presiding at the hearing and he deferred sentencing until November 28, 1988 so

that Locklear could harvest his bean crop, per agreement of Locklear's attorney, John W. Campbell, and the District Attorney's office.

5. Locklear was convicted pursuant to North Carolina Gen. Stat. Sec. 90-95. This statute provides that one must receive a mandatory minimum prison sentence unless evidence is produced that the convicted person has provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals. If such evidence is presented a judge may reduce the fine or prison term or suspend the prison term imposed and place the convicted person on probation. At the time of and following his conviction of the drug offenses, Locklear had no knowledge of drug dealers and he could not provide substantial assistance to law enforcement agents in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals. Defendant knew that Locklear knew nothing about drugs or drug dealers.
6. The Defendant told Jimmy Locklear, Leroy Locklear's brother, that he (the Defendant) was a good friend of Judge Robert Hobgood, the judge in Leroy Locklear's drug case. The Defendant also told Jimmy Locklear that he could help Leroy Locklear because Judge Hobgood was the Defendant's friend. Jimmy Locklear told his brother that Defendant's friendship with Judge Hobgood could help Leroy Locklear in his sentencing in the drug case.
7. Defendant and Locklear met and discussed Locklear's sentencing and Defendant agreed to assist him. Shortly after that meeting, on September 9, 1988, Locklear paid the Defendant \$1,500.00 as part of the Defendant's attorney's fee to assist Locklear in avoiding an active prison sentence. Defendant later requested an additional \$7,500.00 from Locklear as Defendant's attorney's fee. Defendant did not receive this amount from Locklear.
8. Four conversations between Locklear and the Defendant were recorded on October 28, 1988, November 3, 1988, November 15, 1988, and November 16, 1988. These tape recorded conversations were played at the disciplinary hearing. The Defendant stipulated to the authenticity of the tapes.
9. The Defendant told Locklear that Robert Morgan, Director of the State Bureau of Investigation, was his (Defendant's) "ace in the hole". The Defendant indicated that if he could not receive assistance from the sheriff on Locklear's case, Robert Morgan would assist him. Defendant also told Locklear that he had called Robert Morgan on the telephone and told him that he needed a favor.

10. Robert Morgan had not talked with the Defendant by telephone or at any time about Locklear's case. Morgan could not assist the Defendant in securing a non-active prison sentence for Locklear.
11. During several conversations, the Defendant told Locklear that:
 - a) Judge Hobgood had said that the sheriff only had to say that Locklear provided "substantial assistance." Defendant said that Judge Hobgood stated that the sheriff would not have to say to whom the substantial assistance was given, but Judge Hobgood would accept whatever was said by law enforcement agents. Furthermore, Defendant told Locklear that Judge Hobgood would not ask any questions about what Locklear had done to assist law enforcement officers.
 - b) Defendant had asked Judge Hobgood to meet with Locklear, the Defendant, and Sheriff Stone.
 - c) Judge Hobgood could put Locklear on probation.
 - d) Judge Hobgood wanted the Defendant to research the question of whether Locklear could receive a split sentence.
 - e) Defendant had Judge Hobgood "worked out".
 - f) Defendant had Judge Hobgood controlled.
 - g) Defendant had Judge Hobgood "right" and Defendant wasn't worried about that.
12. Judge Hobgood did not make any of the representations found in paragraph 11 which Defendant attributed to Judge Hobgood.
13. Defendant told Locklear that they would not inform John W. Campbell, Locklear's attorney of record, of Defendant's participation and involvement in Locklear's case. Defendant never told John W. Campbell about Defendant's representation of Locklear.
14. On February 27, 1990, the Defendant pled guilty to two counts of misdemeanor obstruction of justice. The guilty pleas involved the Defendant's knowing and acknowledging that Leroy Locklear had not provided substantial assistance as defined in G.S. 90-95(h)(5), nonetheless [he] solicited Sheriff Hubert Stone and Deputy Sheriff Michael Stogner to falsely state to Superior Court Judge Robert Hobgood that Leroy Locklear had provided substantial assistance in order for Leroy Locklear not to receive a mandatory five-year sentence in State v. Locklear, 88 CRS 80.

15. Defendant's guilty pleas to misdemeanor obstruction of justice are admissions to the State Bar's allegations in its complaint relative to Sheriff Stone and Deputy Sheriff Michael G. Stogner.
16. The Defendant engaged in ex parte communications with Judge Hobgood regarding Locklear's sentencing in his drug cases. The Defendant did not inform the district attorney that he (the Defendant) was discussing Locklear's sentencing with Judge Hobgood. Furthermore, the Defendant did not inform Judge Hobgood that no discussions had been held between the Defendant and the district attorney's office regarding Locklear's sentencing at the time the Defendant engaged in the ex parte communications with Judge Hobgood.

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

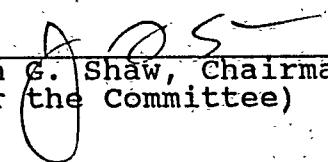
CONCLUSIONS OF LAW

1. By not informing John W. Campbell (Locklear's attorney of record) of his advice and participation in Locklear's case, the Defendant has engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D).
2. By telling Leroy Locklear and Jimmy Locklear that the Defendant had Judge Hobgood under control and that Defendant's friendship with Judge Hobgood could help the outcome of Locklear's case, the Defendant has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D); stated or implied an ability to influence improperly a government official in violation of Rule 1.2(E); and made a false or misleading communication about himself or his services in violation of Rule 2.1(A) and (B).
3. By asking Sheriff Hubert Stone to lie about Locklear's rendering substantial assistance to law enforcement agents, the Defendant has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C), engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D); and participated in the creation or preservation of evidence when he knew or it was obvious that the evidence was false in violation of Rule 7.2(A)(6).
4. By telling Deputy Sheriff Michael G. Stogner that Judge Hobgood would not question a statement from the sheriff's department about Locklear rendering

substantial assistance to law enforcement agents, even if the statement was untrue, the Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D); knowingly made a false statement of law or fact in violation of Rule 7.2(A)(4); and participated in the creation or preservation of evidence when he knew or it was obvious that the evidence was false in violation of Rule 7.2(A)(6).

5. By engaging in ex parte communications with Judge Hobgood regarding Locklear's sentencing when the Defendant had not informed the district attorney of his (Defendant's) discussions with Judge Hobgood and the Defendant had not informed Judge Hobgood that the district attorney was unaware of the discussions, the Defendant has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); and communicated as to the merits of the cause with a judge or an official before whom the proceeding is pending without giving adequate notice to opposing counsel in violation of Rule 7.10(B).
6. By telling Leroy Locklear that Robert Morgan, Director of the State Bureau of Investigation, was his "ace in the hole", and Morgan would assist Defendant in getting Locklear a non-active prison sentence, Defendant has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C); engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(D); stated or implied an ability to influence improperly a government official in violation of Rule 1.2(E).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 25 day of July, 1990.



John G. Shaw, Chairman
(For the Committee)

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