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5 MAY 93 11:00

TO THE CLERK OF THE COURT

WAKE COUNTY
NORTH CAROLINA

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

THE NORTH CAROLINA STATE BAR,)	
PLAINTIFF)	
v.)	CONSENT ORDER
MALCOLM B. GRANDY, ATTORNEY,)	
DEFENDANT)	

This matter coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to Section 14(I) of Article IX of the Discipline & Disbarment Procedures of the North Carolina State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter and that the Defendant has specifically waived the right to a finding of probable cause by the Grievance Committee respecting the McCann matter referred to below; and it further appearing that both parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee therefore 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 B. 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 the 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 engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Raleigh, Wake County, N.C.
4. On or about Sept. 29, 1990 Brian Weavil (hereafter, Weavil), was charged with speeding 45 mph in a 35 mph zone in Columbus County (hereafter, Columbus County matter).
5. On or about Nov. 7, 1990, Weavil was charged with speeding 44 mph

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in a 25 mph zone in Wake County (hereafter, Wake County matter).

6. On or about Nov. 28, 1990, Weavil retained Grandy to represent him regarding the Columbus County and Wake County matters.

7. Weavil paid Grandy \$100 on Nov. 28, 1990. Weavil was to pay Grandy \$250 each for the Wake County and Columbus County matters, for a total fee of \$500.

8. Grandy failed to appear on Weavil's behalf when the Wake County matter was set for hearing on Dec. 18, 1990.

9. Grandy failed to appear on Weavil's behalf when the Columbus County matter was set for hearing on Jan. 28, 1991.

10. Grandy did not advise Weavil of the court dates respecting the Wake County and Columbus County matters, nor did he advise Weavil that he would not appear on his behalf.

11. As a result of Grandy's failure to appear in court on Weavil's behalf in the Wake County and Columbus County matters, Weavil's driver's license was suspended by the Department of Motor Vehicle.

12. Weavil notified Grandy of the notice of suspension of his driver's license.

13. Grandy assured Weavil that he would represent him regarding the suspension of his driver's license. Despite these assurances, however, Grandy failed to take effective action to assist Weavil regarding the suspension of his driver's license.

14. Grandy failed to respond to a number of inquiries from Weavil regarding his traffic cases and the suspension of his license by the Department of Motor Vehicles.

15. On or about Oct. 30, 1991, Grandy was served with a letter of notice by the N.C. State Bar regarding a grievance which Weavil had filed against Grandy.

16. Grandy failed to respond to the letter of notice within 15 days after receipt of the letter, as required by the Discipline & Disbarment Rules of the N.C. State Bar. Grandy did not seek or receive additional time in which to respond to the letter of notice.

17. On Jan. 16, 1992, Grandy undertook to represent Joseph McCann (hereafter, McCann), respecting charges then pending against McCann, including DWI, driving left of center and careless and reckless driving.

18. On Jan. 16, 1992, McCann paid Grandy \$500.

^{FBI}
^{Division} 19. On or about Jan. 24, 1992, McCann received a letter from the ~~Department~~ of Motor Vehicles, indicating that his license would be suspended, based upon his refusal to submit to a breathalyzer test at the time of his arrest on Jan. 8, 1992.

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20. On or about Jan. 24, 1992, McCann delivered a copy of the Jan. 23, 1992 letter from the Department of Motor Vehicles to Grandy. Grandy assured McCann that he would "take care of" the DMV matter for McCann.

21. Despite Grandy's assurances, Grandy failed to take any effective action on McCann's behalf regarding the Jan. 23, 1992 notice of suspension of his driver's license.

22. On or about Feb. 24, 1992, a hearing was held regarding the driving left of center charges then pending against McCann. Grandy did not appear on McCann's behalf nor did he advise McCann that he would not appear for him.

23. On or about April 8, the ^{DIVISION FGE} Department of Motor Vehicles issued a notice of revocation of McCann's driver's license, based upon his failure to appear in court regarding the driving left of center charge.

24. McCann telephoned Grandy a number of times, inquiring about the status of his case. Grandy did not return these calls or otherwise communicate with McCann about the case.

25. On April 13, 1992, McCann wrote to Grandy, discharging him and asking him to return his file and the \$500 fee.

26. McCann repeated this request in letters dated April 27, and June 2, 1992.

27. Grandy did not respond to any of McCann's letters, nor did he return the file or McCann's \$500 fee.

28. On or about Sept. 9, 1992, Grandy was served with a letter of notice regarding a grievance which McCann had filed with the N.C. State Bar against Grandy.

29. Grandy failed to respond to the letter of notice within 15 days after receipt of the letter, as required by the Discipline & Disbarment Rules of the N.C. State Bar. Grandy did not seek or receive additional time in which to respond to the letter of notice.

30. Grandy has been previously disciplined by the N.C. State Bar. He was privately reprimanded in 1975 and 1979 respectively and received a public reprimand in 1989. Pursuant to a consent order dated April 9, 1992, Grandy was suspended for six months for neglecting client matters and failing to return the unearned portion of a client's fee.

Based upon the consent of the parties and the foregoing Findings of Fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. By failing to appear in court on Weavil's behalf regarding the traffic tickets which Weavil received in Wake and Columbus Counties, and by failing to assist Weavil regarding the suspension of his driver's license, the Defendant neglected legal matters of a client, in violation of Rule 6(B) (3) of the Rules of Professional Conduct and prejudiced or damaged a client in violation of Rule 7.1(A) (3) of the Rules of Professional Conduct.

2. By failing to notify Weavil of the dates on which his traffic cases were to be heard and by failing to answer Weavil's inquiries about the status of his cases, the Defendant failed to respond to reasonable requests for information from a client and failed to keep a client reasonably informed of the status of a legal matter, in violation of Rule 6(B)(1) of the Rules of Professional Conduct.

3. By failing to notify Weavil that he would not appear on his behalf in the Wake County and Columbus County matters, the Defendant failed to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation, in violation of Rule 6(B) (2) of the Rules of Professional Conduct.

4. By failing to refund the \$100 fee to Weavil and the \$500 fee to McCann, the Defendant failed to return the unearned portion of a fee, in violation of Rule 2.8 of the Rules of Professional Conduct.

5. By failing to respond in a timely fashion to McCann's requests for information regarding his case, the Defendant failed to respond to reasonable requests for information from a client and failed to keep a client reasonably informed of the status of a legal matter, in violation of Rule 6(B) (1) of the Rules of Professional Conduct.

6. By failing to return McCann's file to him, the Defendant failed to return file documents to a client upon discharge, in violation of Rule 2.8 of the Rules of Professional Conduct.

7. By failing to appear in court on McCann's behalf regarding the left of center charge and by failing to assist him regarding the notice of suspension of his driver's license, the Defendant neglected legal matters of a client, in violation of Rule 6(B) (3) of the Rules of Professional Conduct and prejudiced or damaged a client in violation of Rule 7.1(A) (3) of the Rules of Professional Conduct.

8. By failing to respond in a timely fashion to the letter of notice issued by the N.C. State Bar regarding the McCann and Weavil grievances, the Defendant failed to answer a formal inquiry of a disciplinary authority, in violation of Rule 1.1(B) of the Rules of Professional Conduct.

9. Grandy's misconduct is aggravated by the fact that he has been disciplined by the N.C. State Bar on several other occasions for similar misconduct. However, Grandy's misconduct regarding Weavil occurred prior to the 1992 disciplinary hearing.

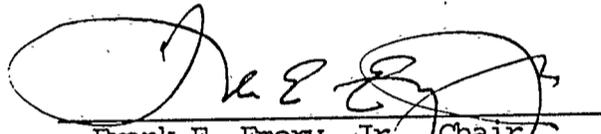
Based upon the consent of the parties and the foregoing Findings of Fact and Conclusions of Law, the Committee hereby enters the following:

CONSENT ORDER OF DISCIPLINE

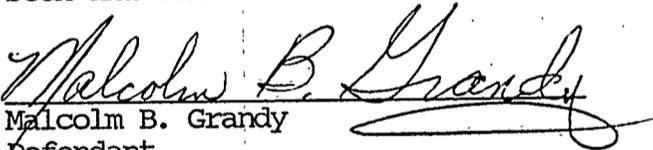
1. The Defendant shall be and hereby is suspended from the practice of law for a period of six months, effective from the date of this order.
2. The Defendant shall refund \$500 to Joseph McCann no later than June 1, 1993.
3. The Defendant shall refund \$100 to Brian Weavil no later than June 1, 1993.
4. The Defendant shall make restitution to all individuals as ordered in the Consent Order of Discipline in 91 DHC 24 no later than June 1, 1993. The Defendant shall provide written proof of restitution to the Counsel of the N.C. State Bar no later than June 8, 1993 regarding all the payments referred to in paragraphs 2 - 4.
5. The Defendant shall pay the costs of this proceeding.

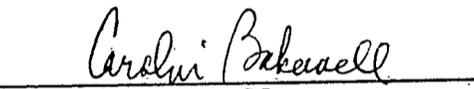
This the 12th day of May, 1993.

Signed by the Chair of the Disciplinary Hearing Committee with the express consent of all Committee members and the parties hereto.


Frank E. Emory, Jr., Chair
Disciplinary Hearing Committee

Seen and consented to:


Malcolm B. Grandy
Defendant


Carolin Bakewell
Attorney for Plaintiff


George Barrett
Attorney for Defendant