

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
95 DHC 18

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff)
)
v.)
)
JACK B. CRAWLEY JR.,)
Attorney)
)
Defendant)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause came on to be heard and was heard on December 15, 1995 before a hearing committee composed of James R. Fox, chairman; Michael L. Bonfoey, and Anthony E. Foriest. The North Carolina State Bar was represented by Fern E. Gunn. The defendant, Jack B. Crawley Jr., appeared pro se. Based upon the admissions of the defendant in his answer to the complaint filed by the North Carolina State Bar, the stipulations on prehearing conference, the defendant's admissions at the hearing, and the evidence presented at the hearing, the hearing committee finds the following to be supported 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, Jack B. Crawley Jr., was admitted to the North Carolina State Bar on December 3, 1971, 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 North Carolina and maintained a law office in Raleigh, North Carolina.

4. On July 21, 1987, David S. Toves pled guilty to first degree sexual offense. He received a life sentence in prison.

5. On May 4, 1990, Mr. Toves hired defendant to investigate the possibility of obtaining post-conviction relief. Mr. Toves' parents, Mr. and Mrs. Roland Williams, paid \$1000.00 to defendant.

6. In September 1990, defendant agreed to represent Mr. Toves for \$10,000.00 in a motion for appropriate relief. Defendant agreed to charge an hourly rate of \$150.00 against the \$10,000.00 retainer.

7. On September 20, 1990, Mr. and Mrs. Roland Williams paid defendant \$10,000.00 as his attorney's fees on behalf of their son, Mr. Toves.

8. Mr. Toves and his parents repeatedly wrote defendant and inquired as to when the motion for appropriate relief would be filed.

9. From mid-1992 to 1994, defendant promised Mr. Toves and his parents that he would complete drafting the necessary papers to get a hearing on a motion for appropriate relief.

10. In a letter dated October 22, 1992, defendant told Mr. and Mrs. Roland Williams that he planned to file Mr. Toves' petition during the week of November 2, 1992.

11. Defendant did not file a motion for appropriate relief during the week of November 2, 1992.

12. Defendant promised Mr. Toves that a hearing on a motion for appropriate relief would be calendared during the week of October 25, 1993.

13. Defendant did not schedule a hearing during the week of October 25, 1993.

14. In a letter dated October 22, 1993, defendant promised Mr. Toves that a hearing on a motion for appropriate relief would be placed on the Onslow County Superior Court calendar during the week of November 15, 1993.

15. Defendant did not schedule a hearing during the week of November 15, 1993.

16. Defendant did not communicate regularly with Mr. Toves. Most of the defendant's communications with Mr. Toves were in response to Mr. Toves' request for information on his case. The last time that defendant wrote Mr. Toves regarding his case was in a letter dated August 17, 1994.

17. The last time defendant visited Mr. Toves in prison was on August 16, 1994.

18. Mr. Toves telephoned defendant some months ago in an attempt to find out about his case. Defendant did not return Mr. Toves' telephone calls.

19. Defendant spoke with Mr. Toves for the first time in about a year when defendant talked with him at the disciplinary hearing on December 15, 1995.

20. Defendant filed the motion for appropriate relief in Onslow County Superior Court on October 16, 1995.

21. Defendant did not file the motion for appropriate relief until after the North Carolina State Bar filed this disciplinary action against him.

22. During the course of the attorney-client relationship, Mr. Toves cooperated with defendant by providing information that defendant requested. Therefore, Mr. Toves' action did not impede defendant's ability to file timely the motion for appropriate relief on his client's behalf.

23. Defendant testified that he conducted legal research, reviewed the files regarding Mr. Toves' criminal case, and prepared several drafts of an affidavit of Mr. Toves which would accompany the motion for appropriate relief. Defendant was unable to produce any descriptive time records concerning the work he performed on his client's behalf.

24. Defendant testified that the delay in filing the motion for appropriate relief was due in part to his desire to "fine-tune" and make "perfect" Mr. Toves' affidavit which would accompany the motion for appropriate relief. However, there were no major changes in the several drafts of the affidavit that defendant prepared and the one that was actually filed with the motion for appropriate relief on October 16, 1995.

25. On October 19, 1995, Williams Andrews, the district attorney for the Fourth Prosecutorial District, filed a motion seeking a summary dismissal of Mr. Toves' motion for appropriate relief.

26. On October 23, 1995, Defendant asked Judge James R. Strickland for an evidentiary hearing on Mr. Toves' motion.

27. By letter dated November 20, 1995 and addressed to defendant, Judge Strickland advised him that a hearing would be held to further address the motion for appropriate relief on December 6, 1995 at 10:30 a.m. in Jacksonville, North Carolina.

28. Defendant did not attend the hearing on December 6, 1995 at 10:30 a.m. in Jacksonville.

29. Defendant testified that he was confused about the time of the hearing on December 6, 1995.

30. Judge Strickland entered an order dated December 6, 1995 which dismissed Mr. Toves' motion for appropriate relief.

31. Defendant never told Mr. Toves that his motion for appropriate relief had been dismissed on December 6, 1995.

32. Defendant did not file a motion to reconsider the court's action or take any other affirmative action to rectify the situation.

33. It took defendant five years to file a motion for appropriate relief on Mr. Toves' behalf.

34. Defendant did not represent Mr. Toves with reasonable diligence and promptness.

35. On April 6, 1993, Diana L. Leffingwell hired defendant to represent her in two medical malpractice claims. Defendant agreed to handle the case on a contingent fee basis.

36. Defendant testified that he spoke with Ms. Leffingwell on several occasions.

37. Defendant also filed a notice of claim for malpractice against the estate of a deceased doctor.

38. The notice of claim was referred to the deceased doctor's professional malpractice carrier. In a letter dated February 23, 1994, the insurance company's representative asked defendant to send any information which would assist in evaluating the claim. Defendant was also asked to send a report regarding the malpractice claim from his client's expert.

39. Defendant testified that he spoke by telephone with the insurance company's representative shortly after receiving the February 23, 1994 letter. However, defendant did not send any information or an expert's report to the insurance company.

40. Defendant did not contact the deceased doctor's malpractice carrier at any time after March 1994.

41. Ms. Leffingwell wrote defendant on October 25, 1994 to receive an update on her case. Defendant did not respond to Ms. Leffingwell's letter. Ms. Leffingwell sent the same letter to defendant in November 1994. Defendant did not respond to Ms. Leffingwell's request for information about her case.

42. Ms. Leffingwell also telephoned defendant on many occasions, but defendant responded infrequently to her telephone calls.

43. On March 16, 1995, David S. Toves filed a grievance against defendant with the State Bar.

44. Defendant was served with the letter of notice and substance of Mr. Toves' grievance by certified mail, return receipt requested on April 6, 1995.

45. Defendant was told to respond to Mr. Toves' grievance within 15 days of his receipt of the grievance. Defendant requested and received an extension to respond to the grievance.

46. On May 8, 1995, the State Bar issued a subpoena to produce documents or objects to defendant, commanding him to appear at the State Bar office on May 12, 1995. Defendant received the subpoena and appeared at the State Bar office on May 12, 1995 where he spoke with a State Bar staff attorney and investigator.

47. At the conclusion of the discussion regarding Mr. Toves' grievance, the State Bar staff attorney asked defendant to do the following by June 2, 1995: submit an accounting of his time in Mr. Toves' case and file a motion for appropriate relief if Mr. Toves consented to defendant's continued representation.

48. Defendant did not provide the information to the State Bar.

49. Defendant indicated in his answer to the State Bar's complaint that he would provide an accounting of his time in Mr. Toves' case by October 16, 1995. Defendant never provided an accounting of his time in Mr. Toves' case to the State Bar.

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

CONCLUSIONS OF LAW

(a) By failing to file promptly the motion for appropriate relief on behalf of his client, David Toves, defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(b)(3); failed to seek the lawful objectives of his client through reasonably available means permitted by law and the Rules of Professional Conduct in violation of Rule 7.1(a); failed to carry out a contract of employment entered into with a client for professional services in violation of Rule 7.1(b); prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(c); and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d).

(b) By telling Mr. Toves on at least three occasions that he would file the motion for appropriate relief and then he did not file it, defendant has engaged in conduct involving misrepresentation in violation of Rule 1.2(c).

(c) By not communicating with Mr. Toves in the last year by visiting him in prison, returning his telephone calls, or writing him, defendant failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of Rule 6(b)(2).

(d) By neglecting Ms. Leffingwell's case, defendant failed to act with reasonable diligence and promptness in representing his client in violation of Rule 6(b)(3); failed to seek the lawful objectives of his client through reasonably available means permitted by law and the Rules of Professional Conduct in violation of Rule 7.1(a); failed to carry out a contract of employment entered into with a client for professional services in violation of Rule 7.1(b); prejudiced or damaged his client.

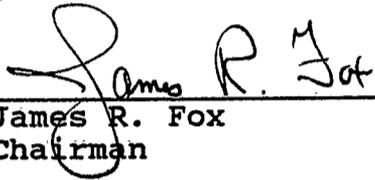
during the course of the professional relationship in violation of Rule 7.1(c); and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d).

(e) By not responding to Ms. Leffingwell's telephone calls and letters when she tried to determine the status of her case, defendant failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of Rule 6(b)(2).

(f) By not providing a written response to the grievance filed by Mr. Toves with the State Bar, defendant has knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(b).

(g) By not providing information as requested by the State Bar pursuant to a subpoena to produce documents or objects, defendant has knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(b).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 29th day of January, 1996.



James R. Fox
Chairman

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