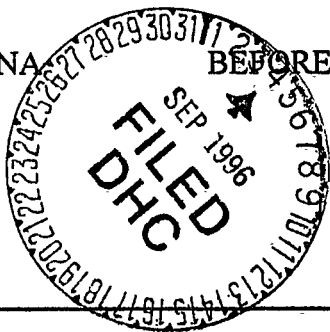


NORTH CAROLINA
WAKE COUNTY



BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
95 DHC 20

16954

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
vs.)
)
HAROLD H. MARTIN, ATTORNEY)
)
Defendant.)

CONSENT ORDER OF DISCIPLINE

This matter came on before the hearing committee of the Disciplinary Hearing Commission composed of James R. Fox, Chair, Franklin E. Martin and Anthony E. Foriest pursuant to Section .0114(h) of the Discipline and Disability Rules of the North Carolina State Bar. Mr. Martin has agreed to waive a formal hearing in the above referenced matter. All parties stipulate that these matters may be resolved by the undersigned Hearing Committee, and that Defendant further hereby waives his right to appeal this consent order or challenge in any way the sufficiency of the findings. 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, Harold H. Martin, was admitted to the North Carolina State Bar in 1989, and was at all times referred to herein, an attorney at law licensed to practice law 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, who was also licensed in Pennsylvania, was actively engaged in the practice of law in Harrisburg, Pennsylvania with the firm of McNees, Wallace & Nurick ("the McNees firm").

4. Defendant was hired by the McNees firm in February 1993 as an associate. Early in the morning of January 3, 1994, Defendant drove to the home of Mr. Rod Pera, a partner in the McNees firm. At 12:46 a.m., Defendant removed a .22 caliber rifle from his car and fired 17 rounds of ammunition into the Pera home shattering several windows on the first floor and causing approximately \$5,000.00 in damages. At the time, Mr. Pera and his wife were asleep in their home but were not harmed.

5. On February 22, 1994, Defendant was charged with 2 counts of aggravated assault with a weapon (felony), two counts of recklessly endangering another person (misdemeanor) and one count of criminal mischief (misdemeanor).

6. On April 14, 1994, Defendant entered a plea agreement whereby the charges of aggravated assault with a weapon were dismissed in exchange for his plea of guilty to two misdemeanor counts of recklessly endangering another and one misdemeanor count of criminal mischief. Sentencing was postponed so that Defendant could undergo a psychiatric evaluation to be used by the Court in sentencing.

7. On August 1, 1994, Defendant was sentenced as follows: for the first count of recklessly endangering another person, \$50.00 fine and not less than five months nor more than 23 months in prison; for the second count of recklessly endangering another person, \$50.00 fine and not less than five months nor more than 23 months to run concurrent with the first count; and for the charge of criminal mischief, \$25.00 fine and not less than five months nor more than 23 months to run concurrent with the first count. In addition, Defendant was given credit for the 160 days served from February 22, 1994 to August 1, 1994 and was granted immediate parole.

8. Between 7:00 p.m. on January 16, 1994 and 6:30 a.m. on January 17, 1994, Defendant attached an anonymous note to a brick and threw it through the window of the offices of the McNees firm. The brick broke a window valued at approximately \$500.00.

9. The note demanded that John Oyler, one of the McNees Firm partners, terminate Rod Pera's employment with the firm. The note also said that if Oyler did not obey this demand, violence would come to both Oyler and Pera similar to the January 3 incident in which shots were fired into Pera's home.

10. On February 22, 1994, Defendant was charged with one count of making terroristic threats (misdemeanor) and one count of criminal mischief (misdemeanor) arising out of this incident.

11. On August 1, 1994, Defendant entered a plea of guilty to the terroristic threats charge and was sentenced to 23 months probation and a fine of \$100.00 plus costs. On the same

day, Defendant entered a plea of guilty to the criminal mischief charge and was sentenced to 90 days probation and costs.

12. On July 24, 1995, the Defendant's law license was suspended on an interim basis by the Chairman of the Disciplinary Hearing Commission pending the disposition of this disciplinary proceeding pursuant to .0115 of the Discipline and Disability Rules of the North Carolina State Bar. The Defendant's interim suspension became effective August 24, 1995 and he is presently suspended from the practice of law.

13. The Defendant was diagnosed as having a bi-polar disorder for the first time in 1994. The Respondent presently suffers from bi-polar disorder, which disorder is also referred to as manic-depressive illness or disorder.

14. There was uncontradicted psychiatric opinion evidence presented to the Committee in support of the proposed consent order by counsel for the North Carolina State Bar and counsel for the Defendant that, at the time of Defendant's criminal conduct in January of 1994, Defendant was following his treatment plan and was taking the medication as prescribed by his treating psychiatrist; however, the Defendant's medication for his disorder was not adequately controlling the disorder.

15. There was uncontradicted psychiatric opinion evidence presented to the Committee in support of the proposed consent order by counsel for the North Carolina State Bar and counsel for the Defendant that, the inadequacy of the medication taken by Defendant in 1994 to control his bi-polar disorder contributed to Defendant's criminal conduct.

16. After his arrest on February 18, 1994, and his resulting hospitalization, the Defendant's treatment for his bi-polar disorder was modified to include the drugs Tegretol and the anti-psychotic Haldol, both taken in addition to Lithium.

17. The Haldol medication is taken to control the paranoia and voices the Defendant heard during the acute phases of his bi-polar disorder.

18. The Defendant will have an indefinite need for at least the Lithium and the Tegretol.

19. According to Robert H. Davis, M.D., a psychiatrist who recently treated the Defendant, the Defendant's medication regimen, as modified, has controlled his bi-polar disorder.

20. According to Dr. Davis, the Defendant, since his 1994 hospitalizations, has not suffered from mood swings as manifested by depressive and/or manic episodes and he has functioned normally.

21. The medical prognosis is "favorable" for the Defendant's ability to avoid mood swings caused by his bi-polar condition as long as he remains on medication and in psychiatric

treatment for the disorder.

BASED UPON the foregoing Findings of Fact, the Committee enters the following:

CONCLUSION OF LAW

1. Defendant's convictions of the offenses of Reckless Endangerment, Criminal Mischief, and Terroristic Threats reflect adversely on his fitness to practice law in violation of Rule 1.2(b) of the North Carolina Rules of Professional Conduct.

Based on the foregoing FINDINGS OF FACT and CONCLUSION OF LAW and upon the consent of the parties, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The license of Harold Martin to practice law in the State of North Carolina is hereby suspended for five years. The Defendant shall receive credit for the one year his license was suspended pursuant to the Order of Interim Suspension. The remaining four years of suspension shall be stayed so long as the Defendant strictly complies with the following conditions:

(a) During the period of the stay, a board certified psychiatrist licensed to practice medicine in North Carolina who is approved by and continues to be approved by the North Carolina State Bar shall advise the Office of Counsel of the North Carolina State Bar, on at least a quarterly basis, whether: (1) the Defendant is complying with his prescribed course of treatment, and (2) the treatment plan is controlling the bi-polar disorder. The report shall be based upon a psychiatric assessment conducted by the psychiatrist within the past three months and a blood test to determine whether the Defendant is taking the prescribed medicine. All costs associated with this report will be paid by the Defendant. The first report shall be due no later than October 1, 1996 with the other reports being due no later than January 1, 1997, April 1, 1997, July 1, 1997, October 1, 1997, January 1, 1998, April 1, 1998, July 1, 1998, October 1, 1998, January 1, 1999, April 1, 1999, July 1, 1999, October 1, 1999, January 1, 2000, April 1, 2000, July 1, 2000, and October 1, 2000 respectively. If at any time the psychiatrist has reason to believe that Defendant is not complying with his prescribed course of treatment or that the treatment plan is proving to be inadequate to control Defendant's disorder, he/she shall immediately notify the State Bar. In the event that the Defendant moves out of state, a board certified psychiatrist licensed to practice medicine in the state in which Defendant resides and subject to the State Bar's approval shall submit the reports referred to herein. By his signature consenting to this order, the Defendant authorizes any physician, hospital, or other medical provider to furnish the State Bar with all information which may be requested with respect to the Defendant's physical and/or mental condition provided the treating psychiatrist has reason to

believe the Defendant is not complying with his prescribed course of treatment.

(b) During the period of the stay, the Defendant agrees to submit a blood sample to an independent lab designated by the State Bar within 24 hours of notice by the State Bar. Defendant shall direct the lab to send the report to the State Bar. The purpose of the blood analysis will be to determine whether the Defendant is taking the prescribed medicine on a regular basis. The cost of the analysis will be paid by the Defendant.

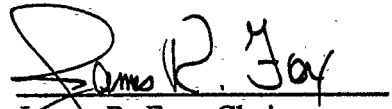
(c) Defendant shall violate no provisions of the Rules of Professional Conduct during the stay period.

(d) Defendant shall violate no laws of the State of North Carolina during the stay period.

(e) Defendant shall be assessed with the costs of this proceeding as determined by the Secretary of the North Carolina State Bar.

Signed by the undersigned chairperson with the full knowledge and consent of the other members of the hearing committee.

This the 29th day of August, 1996.


James R. Fox, Chair
Disciplinary Hearing Committee

consented to:

Harold H. Martin

Harold H. Martin, Defendant

Alan M. Schneider

Alan M. Schneider
Attorney for Defendant

R. David Henderson

R. David Henderson
Attorney for Plaintiff