

9812

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
97 DHC 15

THE NORTH CAROLINA STATE BAR)	
PLAINTIFF)	
v.)	CONSENT ORDER OF DISCIPLINE
WILLIAM GERALD, ATTORNEY)	
DEFENDANT)	

This matter came on before a hearing committee of the Disciplinary Hearing Commission composed of Joseph G. Maddrey, Chair; Vernon Russell and B. Stephen Huntley. The defendant, William Gerald, was represented by Alan M. Schneider. The plaintiff was represented by Carolin Bakewell. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. The defendant waives the necessity of a finding of probable cause by the Grievance Committee as to the matters referred to in paragraphs 52 - 68 which are not referred to in the Complaint and stipulates that the hearing committee has jurisdiction to consider those matters. Based upon the consent of the parties the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.
2. The defendant, William Gerald (Gerald), was admitted to the North Carolina State Bar in 1981 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.
3. During all times relevant hereto Gerald was engaged in the practice of law in Wake County, North Carolina and maintained a law office in Raleigh, N.C.

4. Gerald waived his right to a formal hearing in this matter before the Disciplinary Hearing Commission.

5. Gerald was properly served with process and had due notice of the proceedings herein.

6. Gerald has waived his right to a finding of probable cause by the Grievance Committee as to the matters referred to in paragraphs 52 - 68 herein which are not mentioned in the State Bar's Complaint and stipulates that the hearing committee has jurisdiction to hear and resolve those matters as well as all other matters mentioned herein.

7. On or about April 6, 1995, Gerald undertook to represent Jawan Gary (hereafter, Gary), respecting drug trafficking charges which had been filed against Gary in New Hanover County.

8. Charles W. Gary (hereafter, Charles Gary), who is Gary's father, paid respondent \$5,000 to handle his son's case.

9. Gerald neglected Gary's case.

10. Gerald failed to communicate adequately with Gary or Charles Gary about the case.

11. Prior to September 1996, Gerald closed his office in New Hanover County. Gerald did not advise Gary or Charles Gary that he was closing his office, nor did he keep them informed of his new number and address.

12. Thereafter, the Assistant DA assigned to prosecute Gary's case, Mike DiSilva (hereafter, DiSilva), determined to dismiss the charges against Gary, as he had previously determined that the charges were not strong.

13. Gerald did not accompany Gary when Gary appeared to have the charges dismissed by DiSilva and did not advise Gary of his court date.

14. Gerald did not fully earn the \$5,000 fee paid to him by Charles Gary on behalf of his son.

15. Gerald has not refunded the unearned portion of the \$5,000 fee paid to him for handling Jawan Gary's case.

16. On or about Oct. 2, 1996, the N.C. State Bar sent Gerald a letter of notice and substance of grievance respecting Charles Gary's grievance.

17. Gerald received the letter of notice on Oct. 3, 1996. Pursuant to the State Bar's Discipline & Disbarment Rules, Gerald's response was due no later than Oct. 18, 1996.

18. Gerald did not respond to the letter of notice respecting Gary's grievance.

19. On Nov. 25, 1996, the State Bar sent a follow up letter to Gerald, reminding him that he had not responded to Gary's grievance.

20. Gerald did not respond to the Nov. 25, 1996 follow up letter, nor did he file a response to Gary's grievance.

21. On or about Dec. 12, 1996, the N.C. State Bar issued a subpoena to Gerald, commanding to appear in the State Bar's offices to respond to Gary's grievance on Jan. 20, 1997.

22. Gerald filed a written response to Gary's grievance on or about Jan. 23, 1997.

23. In January 1995, Gerald undertook to represent Victor Lee Zenuh (hereafter, Zenuh), respecting a charge of possession with intent to deliver marijuana and a charge of possession of a weapon on school grounds, both of which are felonies, then pending against Zenuh in Wake County Superior Court.

24. On or about Oct. 26, 1995, Gerald appeared in Wake County Superior Court on Zenuh's behalf. The court entered a prayer for judgment and continued the matter until Dec. 21, 1995 to enable Zenuh to enlist in the military.

25. Zenuh's case was not heard on Dec. 21, 1995 and was ultimately rescheduled for May 28, 1996.

26. Gerald failed to communicate with Zenuh or respond to his telephone calls after February 1996.

27. Gerald did not appear with Zenuh for the May 28, 1996 court date nor could he be reached by court officials who attempted to contact him on that date.

28. Because Gerald did not appear in court on his behalf, Zenuh was forced to negotiate a plea bargain on his own behalf with the Assistant District Attorney assigned to the case, Joshua Tharrington.

29. In November 1995, Gerald undertook to represent James Blue (hereafter, Blue), respecting charges of sexual assault and indecent liberties with a minor then pending against Blue in Wilson County.

30. Bertha Smith (hereafter, Smith), a friend of Blue's, paid Gerald a \$3,500 fee to handle Blue's cases through trial.

31. Gerald neglected Blue's case.

32. Gerald failed to communicate with Blue or Smith about the case.

33. In January 1996, Blue discharged Gerald.

34. Gerald has failed to refund the unearned portion of the \$3,500 fee paid to him, despite requests for a refund.

35. On or about Aug. 5, the N.C. State Bar sent Gerald a letter of notice and substance of grievance respecting the grievance which Smith had filed against Gerald.

36. Gerald received the letter of notice on Aug. 21, 1996. Pursuant to the State Bar's Discipline & Disbarment Rules, Gerald's response was due no later than Sept. 6, 1996.

37. Gerald did not respond to the letter of notice respecting Smith's grievance.

38. On Sept. 11, 1996, the State Bar sent a follow up letter to Gerald, reminding him that he had not responded to Smith's grievance.

39. Gerald did not respond to the Sept. 11, 1996 follow up letter and did not respond to Smith's grievance until Sept. 23, 1996.

40. Prior to September 1995, Gerald undertook to handle a personal injury action for Alicia Hundley Dunn (hereafter, Dunn).

41. In September 1995, Gerald settled Dunn's case for \$7,000. At Gerald's direction, his staff issued a check to Dunn in the amount of \$3,000, which represented Dunn's share of the settlement proceeds.

42. Pursuant to his agreement with Dunn, Gerald was entitled to a fee of 1/3 of the settlement amount, or approximately \$2,331. Dunn directed Gerald to pay the remaining proceeds of the \$7,000 settlement check, some \$1,669, to Dunn's medical care providers.

43. Gerald directed his paralegal, Jan Hornsby (hereafter, Hornsby), to disburse the appropriation make the necessary disbursements, but she failed to do so. Instead, Hornsby converted some or all of the funds which should have gone to Dunn's medical care providers to the benefit of third parties other than Dunn or her medical care providers, without Dunn's knowledge or consent.

44. Gerald failed to take reasonable efforts to ensure that Hornsby's conduct was compatible with Gerald's professional obligations to Dunn respecting the handling of trust funds belonging to Dunn.

45. Gerald failed to reconcile his attorney trust account at least quarterly.

46. Gerald has failed to make restitution to Dunn for the losses which she incurred as the result of the dishonesty of his staff, despite requests therefore from Dunn.

47. On or about July 23, 1996 the N.C. State Bar sent Gerald a letter of notice and substance of grievance respecting Dunn's grievance.

48. Gerald received the letter of notice respecting Dunn's grievance on July 31, 1996. Pursuant to the State Bar's Discipline & Disbarment Rules, Gerald's response was due no later than Aug. 15, 1996.

49. Gerald did not respond to Dunn's grievance.

50. On Sept. 11, 1996, the State Bar sent a follow up letter to Gerald, reminding him that he had not responded to Dunn's grievance.

51. Gerald did not respond to the Sept. 11, 1996 follow up letter nor did he file a response to Dunn's grievance until Sept. 23, 1996.

52. Prior to Oct. 10, 1996, Bethany Haas (hereafter, Haas), retained Gerald to represent her in a traffic matter. Haas paid Gerald \$750 as a fee.

53. Thereafter, Gerald failed to notify Haas of at least one court date in her case. Neither Gerald nor Haas appeared in court on that date and a warrant was issued to Haas for failing to appear in court.

54. Gerald neglected Haas' case and Haas ultimately had to retain other counsel to represent her respecting the traffic matter and arrest warrant.

55. Gerald has failed to refund any portion of the \$750 which Haas paid to him.

56. Prior to Sept. 16, 1996, Gerald undertook to represent Irvin Winstead (hereafter, Winstead), respecting a matter in Edgecombe County Superior Court.

57. Gerald knew that Winstead's case was set for hearing on Sept. 16, 1996 in Edgecombe County Superior Court.

58. Gerald did not appear in Edgecombe County Superior Court on Sept. 16, 1996. Thereafter, the presiding Judge, Frank R. Brown, held Gerald in criminal contempt for failing to appear in court.

59. Prior to Oct. 29, 1996, Gerald undertook to represent Philip Nordi (hereafter Nordi), respecting a traffic matter. Nordi paid Gerald a \$200 fee.

60. Gerald failed to appear in court on Nordi's behalf and, as a result, a warrant was issued for Nordi's arrest. Gerald failed to return a number of calls which Nordi placed to him, inquiring about his case.

61. Nordi ultimately had to hire other counsel to handle his traffic case.

62. Gerald has failed to refund any portion of the \$200 fee which he received from Nordi.

63. In 1995, Gerald undertook to represent Bobbie Bass (hereafter, Bass) respecting tax charges then pending against her in Wake County.

64. Bass paid Gerald a \$500 fee to represent her in the tax matter.

65. Gerald failed to appear in Wake County Superior Court on Bass' behalf at hearings held in Bass' case on Jan. 20, 1997, Jan. 27, 1997 and Feb. 3, 1997.

66. Following Gerald's failure to appear on Bass' behalf, Judge Gordon Battle issued an order to Gerald to appear and show cause why he should not be held in contempt. As a result of that order, Gerald ultimately tendered his law license to the Wake County Superior Court on Feb. 17, 1997 and was transferred to disability inactive status by the Court.

67. Gerald has refunded the \$500 fee which he received from Bass.

68. On April 22, 1997, Gerald was served with letters of notice from the N.C. State Bar respecting grievances which had been filed against Gerald concerning the Bass, Haas, Winstead and Nordi matters. Gerald did not respond to any of the letters of notice respecting those four grievances.

Based upon the consent of the parties and the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant, William Gerald, and the subject matter of this proceeding.

2. Gerald's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

a. By neglecting the legal matters of Jawan Gary, Victor Zenuh, James Blue, Bethany Haas, Philip Nordi and Bobbie Bass, Gerald neglected client matters in violation of Rule 6(b)(3).

b. By failing to communicate adequately with Jawan Gary, Victor Zenuh, Bethany Haas and James Blue, Gerald failed to communicate with clients in violation of Rule 6(b)(1).

c. By failing to refund the unearned portion of the fees paid to him to handle legal matters of Jawan Gary, James Blue, Philip Nordi, and Bethany Haas, Gerald charged or collected an excessive fee in violation of Rule 2.6.

d. By failing to respond in a timely fashion to the State Bar's letter of notice and follow up communications respecting grievances filed respecting Jawan Gary, Victor Zenuh, James Blue, Alicia Hundley Dunn, Irwin Winstead, Bobbie Bass, Philip Nordi and Bethany Haas, Gerald failed to respond to a lawful inquiry of a disciplinary authority in violation of Rule 1.1(b).

e. By failing to appear in court on behalf of Victor Zenuh, Bobbie Bass, Philip Nordi and Bethany Haas, Gerald neglected client matters in violation of Rule 6(b)(3) of the Rules of Professional Conduct and prejudiced clients in violation of Rule 7.1(a)(3).

f. By failing to take reasonable steps to supervise his paralegal, Jan Hornsby, and to ensure that her conduct was compatible with his own obligations respecting the handling of Dunn's trust funds, Gerald failed to supervise a non-lawyer assistant in violation of Rule 3.3(b).

g. By failing to make restitution to Dunn of funds improperly converted by Hornsby as a result of his own failure to supervise Hornsby, Gerald prejudiced a client in violation of Rule 7.1(a)(3) and failed to pay over to a client sums belonging to the client, in violation of Rule 10.2(e).

h. By failing to reconcile his attorney trust account at least quarterly, Gerald failed to reconcile his trust account quarterly, in violation of Rule 10.2(d).

i. By failing to appear in Edgecombe County Superior Court on Sept. 16, 1996, Gerald engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d).

Based upon the consent of the parties, the hearing committee also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Gerald's misconduct is aggravated by the following factors:
 - a. Pattern of misconduct.
 - b. Multiple acts of misconduct.
 - c. Failure to make restitution.

2. Gerald's misconduct is mitigated by the following factors:
 - a. Physical and/or emotional problems, including the break up of Gerald's family, diabetes and depression.
 - b. Gerald was addicted to several substances at the time of the misconduct, which addiction is causally linked to the misconduct.
 - c. Gerald voluntarily turned in his license to the Wake County Superior Court on Feb. 17, 1997.
 - d. Gerald sought treatment for his substance abuse problem prior to the filing of the complaint herein.
 - e. The misconduct respecting Alicia Hundley Dunn occurred at the same time as other similar misconduct regarding Gerald's trust account, for which Gerald has previously been disciplined by the State Bar.
 - f. Gerald was not motivated by selfishness as to the Dunn matter and did not have actual, contemporaneous knowledge of the misconduct of his paralegal, Jan Hornsby.

3. The hearing committee concludes that imposition of additional discipline as to the Winstead matter is not warranted, as Gerald has already been held in criminal contempt of court by Judge Frank Brown, arising out of Gerald's failure to appear in Edgecombe County Superior Court on Sept. 16, 1996.

Based upon the foregoing findings of fact and conclusions of law and the findings regarding discipline and based upon the consent of the parties, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. Gerald is hereby suspended from the practice for law for three years, beginning on Feb. 7, 1997 the date on which Gerald turned in his license to the Wake County Superior Court and ceased the practice of law.

2. Gerald shall submit his law license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from service of this order upon the defendant.

3. Gerald shall pay the costs of this proceeding as assessed by the Secretary by Jan. 1, 1998.

4. Gerald shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules.

5. Prior to seeking reinstatement of his license, Gerald shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules.

6. Prior to seeking reinstatement of his license, Gerald shall demonstrate by clear, cogent and convincing evidence that he no longer suffers from any mental or physical condition which would prevent him from competently engaging in the practice of law in North Carolina. Contemporaneously with the filing of any petition for reinstatement, Gerald shall provide written waivers to the N.C. State Bar to permit the Bar to obtain records from and consult with Gerald's physicians, therapists, psychologists, counselors and other clinicians regarding Gerald's treatment and medical condition.

7. Prior to seeking reinstatement of his license, Gerald shall demonstrate by clear, cogent and convincing evidence that he has arrested his chemical dependency by performing the following:

a. That during the two year period immediately preceding his reinstatement petition, he has not consumed any alcohol and/or illegal substances and/or any mind altering prescription medication (except where the prescribing physician is aware of Gerald's chemical dependency and finds such prescription medically necessary).

b. That he has submitted to monthly random drug screens for alcohol, cocaine, marijuana and other mind altering drugs throughout the two year period immediately preceding his reinstatement petition and has not had a positive screen.

c. That he has worked a twelve-step program of recovery within AA or NA and that he demonstrates that he has satisfactorily worked through each of the twelve steps since his last sobriety date.

d. That he has attended an average of at least three AA or NA meetings a week, and no less than eight meetings in any one month, during the two year period immediately preceding his petition for reinstatement.

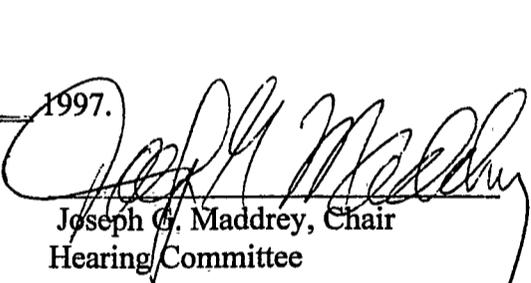
e. That during the two years immediately preceding his reinstatement petition, he has obtained such other counseling and/or treatment as has been prescribed or recommended by his treating physicians, clinicians and/or counselors to ensure his recovery and freedom from active chemical addiction.

8. Prior to seeking reinstatement of his license to practice law, Gerald shall provide written evidence to the Secretary of the N.C. State Bar that he has made restitution to the following individuals in the following amounts:

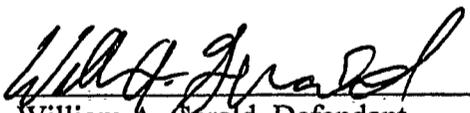
- | | |
|------------------------|---------|
| a. Charles Gary | \$4,000 |
| b. Bertha Smith | \$3,500 |
| c. Alicia Hundley Dunn | \$934 |
| d. Phillip C. Nordi | \$200 |
| e. Bethany Haas | \$750 |

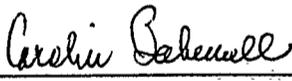
Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 28 day of June 1997.


Joseph C. Maddrey, Chair
Hearing Committee

Seen and consented to:


William A. Gerald, Defendant


Carolin Bakewell, Plaintiff's Attorney


Alan M. Schneider, Defendant's Attorney