

NORTH CAROLINA
WAKE COUNTY



15498

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
01 DHC 13

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
K. C. DOZIER, Attorney,)
Defendant.)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE**

This matter was heard on December 14, 2001 before a committee of the Disciplinary Hearing Commission composed of James R. Fox, Chair, Richard T. Gammon, and Betty Ann Knudsen. The Defendant, K. C. Dozier, was represented by Joseph B. Cheshire, V and Alan M. Schneider. The plaintiff was represented by Michael D. Zetts, III. Based upon the pleadings and the evidence introduced at the hearing, 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 General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar.
2. Defendant, K. C. Dozier, (hereafter, Defendant), was admitted to the North Carolina State Bar in 1988, 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 the times relevant to this complaint, the Defendant was actively engaged in the practice of law in the State of North Carolina and was employed as an assistant district attorney in Prosecutorial District 19B, including Randolph, Montgomery, and Moore Counties, North Carolina.

4. On February 23, 1998, Shirley Andrews (hereafter, Ms. Andrews) was indicted for murder. Two co-defendants were charged with lesser offenses: aiding and abetting and accessory-after-the-fact, respectively.

5. The Defendant was the Assistant District Attorney for the State assigned to prosecute the case.

6. The Court appointed Paul L. Biggs (hereafter, Biggs) to represent Ms. Andrews on a charge of first-degree murder.

7. On March 16, 1998, Biggs served a Request and Motion for Voluntary Discovery on Garland Yates, District Attorney of Prosecutorial District 19-B.

8. Biggs' discovery requests to the prosecutor included, among other things, "any and all promises of leniency, negotiated pleas, or promises not to arrest, indict, dismiss, voluntarily dismiss, or not to prosecute, concerning any criminal charges of any kind and nature whatsoever made to co-defendants or witnesses for their cooperation or testimony in the instant case. . . ."

9. In response to the discovery requests, the Defendant produced a packet of material in the district attorney's possession, including the statements of the co-defendants given to law enforcement during the investigation.

10. During the two-week period preceding Ms. Andrews' murder trial, the Defendant made arrangements with the two attorneys representing the co-defendants in the case. The arrangement was to dismiss the charges or to consider dismissing the charges if the co-defendants testified truthfully.

11. North Carolina General Statute §15A-1054(c) requires a prosecutor to provide defense counsel with written notice fully disclosing the terms of any arrangement with witnesses of charge reductions or sentence concessions.

12. The Defendant failed to provide Biggs with the requisite notice, under North Carolina General Statute §15A-1054(c) and in response to Biggs' discovery requests that the two co-defendants would testify pursuant to an agreement, arrangement, or understanding with the State.

13. Ms. Andrews' murder trial commenced on February 1, 2000. During the trial Biggs asked co-defendant Tomika Williams (hereafter, Ms. Williams) whether she had a "deal" with the State. Ms. Williams stated that she did not have a deal with the State "that she had been notified of."

14. The Defendant did not take any remedial measures to correct or clarify Ms. Williams' testimony concerning the existence of an agreement, arrangement, or

understanding with her counsel that if she testified truthfully, the State would consider dismissing her charges.

15. Biggs did not pursue that line of questioning any further, and he did not ask co-defendant Veatrice Cheek (hereafter, Ms. Cheek) whether she had any agreement, arrangement, or understanding with State in exchange for her testimony.

16. The jury returned a verdict of second-degree murder against Ms. Andrews.

17. After the trial, the State filed voluntary dismissals in favor of both co-defendants, stating in each written dismissal that the reason for the dismissal was that the defendant had "testified for State against co-D." Biggs learned of the State's arrangement with the co-defendants while reading a newspaper account of the trial.

18. On April 19, 2000, Ms. Andrews' new attorney brought a Motion for Appropriate Relief, asserting as its basis the Defendant's failure to disclose the agreements he had with the co-defendants. Ms. Andrews engaged new counsel because Biggs testified at the hearing.

19. Judge Catherine Eagles, the Superior Court judge presiding over the Motion for Appropriate Relief, found that the testimony of Ms. Williams and Ms. Cheek was adverse to Ms. Andrews. Judge Eagles further found that while there was substantial evidence against Ms. Andrews, including her own testimony, that Ms. Andrews shot the victim in a reckless manner, the testimony which provided the basis for a murder conviction, as opposed to a manslaughter conviction, came primarily from Ms. Williams and Ms. Cheek.

20. Judge Catherine Eagles found as fact that a statement by a prosecutor to a witness that he will "consider" dismissing the charges if the witness/defendant testifies truthfully in another case carries with it the implicit statement that if the witness/defendant does not testify or does not testify truthfully, then the prosecutor will not "consider" dismissing the case.

21. Judge Eagles found that jurors might well have found Ms. Williams and Ms. Cheek less credible if they had known that Ms. Williams and Ms. Cheek testified for the State based, at least in part, upon an agreement, arrangement, or understanding that The Defendant would dismiss, or consider dismissing, the charges against them.

22. Judge Eagles found that a jury should generally be aware of such an inducement.

23. Judge Eagles found that Ms. Andrews' statutory rights under N.C. Gen. Stat. §15A-1054(c), her constitutional right to a fair trial, and her right to be advised of all information in the possession of the State which would materially aid in her defense were violated by the Defendant's failure to inform the defendant of its agreement or understanding with the co-defendants.

24. Judge Eagles granted Ms Andrews' Motion for Appropriate Relief in an order signed and dated April 20, 2000.

25. On May 18, 2000, pursuant to a negotiated plea arrangement, Ms. Andrews pled guilty to voluntary manslaughter and received a probationary sentence.

Based upon 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, K. C. Dozier, and of the subject matter.
2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(3) as follows:
 - a. By failing to disclose to Biggs the State's arrangement or understanding with the two co-defendants that the State would dismiss or consider dismissing the charges against them if they testified for the State, the Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Revised Rules of Professional Conduct.
 - b. By failing, at trial, to take reasonable remedial measures after one of the co-defendants testified that there was no deal with the State, the Defendant violated Rule 3.3(a)(4) of the Revised Rules of Professional Conduct.

FINDINGS OF FACT RELEVANT TO DISCIPLINE

1. The committee did not find any aggravating factors.
2. The defendant's misconduct is mitigated by the following factor: no prior discipline
3. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing mitigating factor, the evidence, and the arguments of the parties, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, K. C. Dozier, is hereby suspended from the practice of law in North Carolina for two years, effective 30 days from the date of service of this order upon him.
2. The two year suspension is stayed for two years, based upon the following conditions:

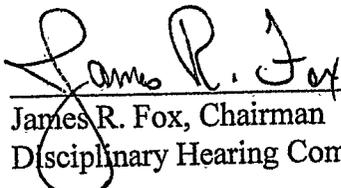
- a. The Defendant shall not violate any of the Revised Rules of Professional Conduct during the period of the stay.
 - b. The Defendant shall not violate any laws of the State of North Carolina or of the United States during the period of the stay.
 - c. The Defendant shall pay all costs incurred in this proceeding, *N.C. State Bar v. Dozier*, 01 DHC 13, and taxed against him within 180 days of notice of such costs.
 - d. Within 30 days of entry of this order, the Defendant shall select a member of the office of the District Attorney who is willing to serve as a mentor (hereafter, Mentor) for all felony cases in which Defendant serves as prosecuting attorney during the stayed suspension. The member of the District Attorney's office selected by Defendant shall serve as Mentor subject to the approval of the N.C. State Bar Office of Counsel. Service of the Mentor in this role shall be voluntary and uncompensated.
 - e. The Defendant shall meet with the Mentor at least once per month during the period of the stayed suspension to discuss and review each of the Defendant's felony cases.
 - f. The Defendant and the Mentor shall create a form that shall be filed in the court file of each and every felony case pending during the period of the stayed suspension assigned to the Defendant. In each such case the Defendant shall indicate on the form whether the State was under an obligation, pursuant to applicable law, to disclose any arrangements, explicit or implicit, that the Defendant has made with any person that might testify for the State. Both the Mentor and Defendant shall certify on the form that the State has complied with all rules of discovery under applicable law.
 - g. The Mentor shall report to the N.C. State Bar Office of Counsel the Defendant's failure to substantially comply with any of the above conditions.
 - h. The Defendant shall attend 12 hours of continuing legal education (CLE) over the two year period of stayed suspension in addition to the 12 hours per year mandated by the State Bar Rules. The additional 12 hours shall relate to a prosecutor's responsibilities in prosecuting criminal cases and shall include a component dealing with discovery obligations. The Defendant shall complete the additional CLE requirements no later than 60 days before the end of the period of stayed suspension and provide written proof of compliance to the Office of Counsel of the State Bar within 30 days of completion.
1. If the Defendant fails to comply with any of the conditions stated in paragraph 2, then the stay of the suspension of his law license may be lifted as provided in §.0114(x) of the

North Carolina State Bar Discipline & Disability Rules.

2. If the stay of the suspension of the Defendant's law license is lifted, the Disciplinary Hearing Commission may enter an order providing for such conditions as it deems necessary for reinstatement of the Defendant's license at the end of the two-year period wherein Defendant's license is actively suspended.
3. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0114(x) of the North Carolina State Bar Discipline & Disability Rules throughout the period of the stayed suspension.
4. If the suspension of the Defendant's law license is activated for any reason, the Defendant shall complete each of the following as conditions precedent to seeking reinstatement:
 - a. The Defendant must pay all costs incurred in this proceeding, *N.C. State Bar v. Mr. Dozier*, 01 DHC 13, and taxed against him.
 - b. The Defendant shall attend 12 hours of continuing legal education (CLE) in addition to the 12 hours per year mandated by the State Bar Rules. The additional 12 hours shall relate to a prosecutor's responsibilities in prosecuting criminal cases and shall include a component dealing with discovery obligations. The Defendant shall provide written proof of compliance to the Office of Counsel of the State Bar prior to applying for reinstatement.

This the 14th day of January, 2002. *None pres June 12/31/01*

Signed by the Chairman of the Hearing Committee with the consent of the other Hearing Committee Members.



James R. Fox, Chairman
Disciplinary Hearing Committee