

WAKE COUNTY  
NORTH CAROLINA



1067  
BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
03 DHC 4

THE NORTH CAROLINA STATE BAR  
Plaintiff

v.

RICHARD M. DAILEY, ATTORNEY  
Defendant

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER OF DISCIPLINE

THIS MATTER came on to be heard and was heard on March 28, 2003 by a hearing committee of the Disciplinary Hearing Commission composed of Elizabeth Bunting, Chair; Charles M. Davis and Marguerite P. Watts. The defendant, Richard M. Dailey, did not appear in person or through counsel. Carolin Bakewell represented the N.C. State Bar. Based upon the evidence presented at trial and the pleadings herein, the hearing committee hereby 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, Richard M. Dailey (Dailey), was admitted to the North Carolina State Bar in 1965, 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 relevant hereto, Dailey maintained an office for the practice of law in Greensboro, N.C.

4. Dailey was properly served with all process herein and the Disciplinary Hearing Commission has jurisdiction over Dailey's person and the subject matter of this proceeding.

5. Dailey was aware of the time, date and place of the disciplinary hearing herein.

6. On May 20, 1994, Tong Lee (Lee), who was then eight years old, was struck by an automobile while he was riding a bicycle. Lee suffered a broken collarbone and substantial injuries to his knee and lower leg.

7. On June 14, 1994, Lee's mother, Hong Joo Lee (Ms. Lee), retained Dailey's services to recover damages for her son's injuries. As of June 1994, Ms. Lee, who had emigrated to the United States from Korea, had been in this country for less than two years, spoke very little English and was unfamiliar with the American justice system.

8. Between June 14, 1994 and Aug. 7, 1997, Dailey did virtually no work to resolve Lee's claim.

9. In approximately 1995, Ms. Lee's application for a credit card was denied because Lee's medical bills had not been paid and the medical care providers had not been notified that Ms. Lee had a personal injury claim pending.

10. Although Dailey agreed to help Ms. Lee repair her credit rating, he failed to do so. Ms. Lee ultimately paid her son's medical bills, which totaled approximately \$14,000, out of her own pocket.

11. On Aug. 8, 1997, more than three years after Lee's accident, Dailey filed a complaint on behalf of Lee and Ms. Lee against the driver and owner of the car that had hit Lee.

12. On Oct. 1, 1998, Dailey filed a voluntary dismissal of the action. He re-filed the complaint on Sept. 29, 1999.

13. Between October 1998 and early April 2001, Dailey took no effective action to serve the summons and complaint on the defendants, nor did he attempt to negotiate a settlement with their insurance carrier.

14. In April 2001, the driver of the car that hit Lee was finally served with the summons and complaint. The owner of the car had died by that time and could not be served.

15. Although the defendant driver did not file a timely answer to the 1999 complaint, Dailey failed to enter his default or obtain judgment against him.

16. Dailey also failed to conduct discovery or otherwise prepare the case for trial.

17. On July 2, 2001, the trial court dismissed Lee's complaint with prejudice because Dailey failed to appear for a scheduled hearing.

18. Dailey did not tell Ms. Lee that the case had been dismissed.

19. Dailey also misled Ms. Lee about the status of the case on a number of occasions prior to July 2, 2001 as follows:

a. He never advised her that the defendants' insurance adjuster had raised a contributory negligence defense as early as 1994.

b. He did not tell Ms. Lee that he had not served the defendants after the action was re-filed in 1999.

c. Although he took no effective steps to resolve the case by negotiation or trial, Dailey nevertheless repeatedly assured Ms. Lee that "everything was fine."

d. At various times Dailey told Ms. Lee that the insurance adjuster had not made a settlement offer because he or she was on vacation or because the adjuster was reluctant to make settlement offers during the holidays. On other occasions, Dailey promised to call the adjuster to work out a settlement, but never did. These assertions were not accurate.

e. On one or more occasions Dailey told Ms. Lee that he would be able to collect a settlement for her.

20. By 2000, Dailey had become increasingly uncommunicative. On more than one occasion, Ms. Lee went to his office before Dailey's normal arrival time and waited for more than an hour, in hopes that he would appear and provide some information about the case. Dailey never was present in his office on any of the visits and failed to return any of the numerous calls that Ms. Lee placed to him.

21. On Oct. 23, 2000, Ms. Lee wrote to Dailey, complained about his lack of communication and neglect and asked him to complete the case that month or withdraw as her attorney.

22. Dailey did not respond to Ms. Lee's Oct. 23, 2000 letter, nor did he resolve the case or withdraw.

23. In a letter dated May 2, 2001, Ms. Lee discharged Dailey as her attorney and directed him to return her son's client file to her.

24. When Dailey did not return the file to Ms. Lee, she contacted the N.C. State Bar Client Assistance Program (CAP) for assistance.

25. On May 9, 2001 and again on Aug. 13, 2001, a CAP employee wrote to Dailey and asked him to return Lee's client file to Ms. Lee.

26. Dailey did not return Lee's client file to Ms. Lee until Sept. 6, 2001.

27. On April 23, 2001, Ms. Lee filed a grievance against Dailey with the North Carolina State Bar.

28. On March 19, 2002, Dailey was served with the letter of notice concerning Ms. Lee's grievance. His response was due no later than April 9, 2002.

29. On April 19, 2002, the N.C. State Bar sent a letter to Dailey, reminding him that the Bar had not received his response to Ms. Lee's grievance.

30. Dailey did not respond to the March 19, 2002 letter of notice or to the State Bar's April 19, 2002 follow up letter.

31. On June 5, 2002, the N.C. State Bar issued a subpoena to Dailey directing him to appear at the State Bar's office on July 5, 2002 to respond to Ms. Lee's grievance.

32. On July 4, 2002, Dailey filed a written response to Ms. Lee's grievance with the State Bar and was released from appearing in person in response to the subpoena.

33. In late 1994, Dailey undertook to represent David Lee McKinney (McKinney) regarding injuries McKinney received in an automobile accident on Nov. 22, 1994.

34. McKinney had not incurred substantial medical bills and had no lost wages as a result of the accident. Consequently, the value of the claim consisted primarily of McKinney's claim for pain and suffering.

35. Between December 1994 and late 1997, Dailey took no effective action to resolve McKinney's claim.

36. In late 1997, Dailey filed a civil complaint against Karen C. Greeson (Ms. Greeson), the driver of the other car involved in the Nov. 22, 1994 accident, on McKinney's behalf.

37. Although Dailey testified in his deposition in this case that his plan was to delay service of the summons and complaint to make it easier for him to negotiate a settlement with Ms. Greeson's insurance carrier, Dailey did not contact the insurance company or take other steps to settle the claim. Meanwhile, Ms. Greeson was not served with the summons and complaint.

38. Dailey did not take steps to preserve his client's testimony or gather evidence regarding damages in the case.

39. McKinney died in December 1997 and his mother, Allie Freeman (Ms. Freeman), administratrix of McKinney's estate, was substituted as the plaintiff in the personal injury lawsuit against Ms. Greeson.

40. The value of the claim decreased significantly after McKinney's death, since Dailey had not preserved evidence of his client's pain and suffering and other damages. Dailey estimated that the settlement value of the claim after December 1997 was approximately \$5,000.

41. In December 1998, Dailey voluntarily dismissed the personal injury action against Ms. Greeson. He re-filed the complaint on Dec. 1, 1999.

42. Dailey failed to make any effort to serve Ms. Greeson or to settle the claim.

43. Dailey failed to respond to Ms. Freeman's repeated requests for information about the lawsuit and failed to keep her advised about the status of the case.

44. Meanwhile, in early 1998, Dailey also undertook to act as attorney to Ms. Freeman in her capacity as administratrix of McKinney's estate.

45. Dailey failed to file timely accountings for the McKinney estate for each of the years 1999 - 2001. As a result, Ms. Freeman was served with orders to show cause by the clerk of court.

46. On Nov. 14, 2001, Ms. Freeman discharged Dailey and directed him to return the client file to her.

47. On Nov. 19, 2001, Ms. Freeman filed a complaint against Dailey with the N.C. State Bar.

48. Dailey did not return the client file to Ms. Freeman until July 23, 2002, after he was notified that Ms. Freeman had filed a complaint against him with the N.C. State Bar.

49. On June 11, 2002, Dailey was personally served with the letter of notice concerning Ms. Freeman's complaint.

50. Dailey's response to Ms. Freeman's complaint was due no later than June 26, 2002.

51. On July 4, 2002, Dailey responded to Ms. Freeman's complaint.

52. Ms. Freeman never obtained any recovery on behalf of her son's estate and ultimately dismissed the lawsuit against Ms. Greeson.

Based on the foregoing Findings of Fact, the Disciplinary Hearing Commission hereby enters the following:

#### CONCLUSIONS OF LAW

1. By failing to take timely, effective action to resolve the personal injury claims of Tong Lee and David McKinney, Dailey neglected two clients' cases, in violation of Rule 6(b)(3) of the superseded Rules of Professional Conduct and Rule 1.3 of the Revised Rules of Professional Conduct.

2. By failing to respond to calls and letters from Ms. Lee and Ms. Freeman about their respective cases and by failing to keep his clients reasonably informed of the status of their cases, Dailey failed to communicate with his clients, in violation of Rule 6(b)(1) of the superseded Rules of Professional Conduct and Rule 1.4 of the Revised Rules of Professional Conduct.

3. By failing to return the Lee and McKinney client files to his clients within a reasonable period after they requested the files, Dailey failed to return to his clients all property of the client, in violation of Rule 2.8(a) of the superseded Rules of Professional Conduct and Rule 1.16(d) of the Revised Rules of Professional Conduct.

4. By failing to respond in a timely fashion to the State Bar's letters of notice and follow up inquiries regarding the grievances filed by Ms. Lee and Ms. Freeman, Dailey failed to respond to inquiries of a disciplinary authority, in violation of Rule 1.1 of the superseded Rules of Professional Conduct and Rule 8.1 of the Revised Rules of Professional Conduct.

In addition to the foregoing Findings of Fact and Conclusions of Law, based upon the evidence adduced at hearing, the Hearing Committee hereby also enters the following:

## FINDINGS OF FACT RELEVANT TO DISCIPLINE

1. The violations of the Revised Rules of Professional Conduct by Dailey are aggravated by the following factors:

a. Dailey has substantial prior discipline:

- i. Dailey was disbarred in 1978 following his conviction of a felony count of receiving stolen property.
- ii. In January 1997, Dailey was reprimanded for failing to communicate with a client and for neglecting the client's appeal of his criminal conviction.
- iii. In February 2000, Dailey was issued a letter of warning for failing to respond promptly to a client's request for an accounting of fiduciary funds.

b. Dailey has engaged in a pattern of misconduct, which occurred over a period of at least six years.

c. Dailey has violated multiple provisions of the Revised Rules of Professional Conduct.

d. Dailey has failed to make any restitution to his clients.

e. Dailey has substantial experience in the practice of law.

f. Both of Dailey's clients were vulnerable.

g. Dailey failed to file responses to the State Bar's discovery requests, as directed by the Chair of the Disciplinary Hearing Committee and is therefore in contempt of the Committee and failed to appear at the disciplinary hearing, which hampered the Committee's ability to determine a cause for his conduct.

h. Dailey engaged in dishonest conduct by misleading Ms. Lee about the status of her son's case.

2. Dailey's conduct is mitigated by the following factors:

a. Dailey did not profit financially from his violations of the Rules.

- b. Dailey admitted the allegations in the State Bar's complaint.
3. The aggravating factors substantially outweigh the mitigating factors.
4. Dailey's misconduct caused significant actual harm to his clients and members of the public as follows:
  - a. Ms. Lee and Ms. Freeman were denied the opportunity to seek compensation for their sons' injuries, as a result of Dailey's misconduct.
  - b. Ms. Lee suffered substantial emotional distress as a result of Dailey's misconduct.
  - c. Ms. Lee suffered damage to her credit because Dailey failed to notify her creditors that her son's personal injury case was being negotiated and/or litigated and because he failed to assist her in repairing her credit rating as promised.
5. Dailey's misconduct has also caused actual harm to the standing of the legal profession by undermining his clients' trust and confidence in lawyers and the legal system.
6. Dailey's failure to respond to the State Bar's letters of notice and his failure to comply with the Chair's discovery order undermine the State Bar's ability to regulate attorneys and undermines the privilege of lawyers in this state to remain self-regulating.
7. An order calling for discipline short of a substantial suspension of Dailey's law license with appropriate conditions precedent for reinstatement, would not sufficiently protect the public for the following reasons:
  - a. Dailey engaged in multiple violations of the Revised Rules of Professional Conduct over a lengthy period of misconduct, as opposed to an isolated act or mistake, and it therefore appears that his misconduct is the result of some problem or personality defect that is not readily changeable.
  - b. Dailey failed to provide any assurances that he has addressed whatever problem or character flaw caused his misconduct and therefore there is a substantial risk that his misconduct would be repeated if he is permitted to continue to practice law.
  - c. Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses which Dailey committed, would be inconsistent with orders of discipline entered by this body in similar cases

and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this state.

d. The protection of the public requires that Dailey not be permitted to resume the practice of law until he demonstrates that he understands his ethical obligations to his clients, that he understands principles of law office management and that he is not suffering from any addiction or mental illness or condition that prevents him from practicing law competently.

Based upon the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Relevant to Discipline and the consent of the parties hereto, the Hearing Committee hereby enters the following:

#### ORDER OF DISCIPLINE

1. The law license of the Defendant, Richard M. Dailey, is hereby suspended for a period of three years.

2. Prior to resuming the practice of law, Dailey must file a petition demonstrating compliance with the following conditions:

a. Not later than 45 days before filing a reinstatement petition, Dailey shall provide to the Office of Counsel a written report from a psychiatrist approved by the N.C. State Bar Office of Counsel, certifying that Dailey does not suffer from any addiction or physical or mental disability or condition that prevents him from competently practicing law. The report and evaluation shall be completed at Dailey's expense.

b. Not later than 45 days before filing a reinstatement petition, Dailey shall execute a written waiver authorizing the Office of Counsel to contact the psychiatrist concerning Dailey's evaluation and condition.

c. Dailey did not violate the laws of any state or of the United States during the suspension period.

d. Dailey paid the costs of this proceeding within 30 days after being served with written notice of the costs by the Secretary of the N.C. State Bar.

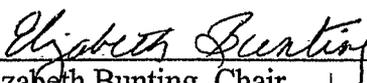
e. Dailey has successfully completed at least 6 hours of continuing legal education in ethics offered by a provider approved by the N.C. State Bar.

f. Dailey has successfully completed a one-year course in law office management offered by Nancy Byerly Jones or another provider approved by the N.C. State Bar. The course shall be completed at Dailey's expense.

g. Dailey properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disbarment Rules.

Signed by the Chair with the consent of the other hearing committee members:

This the 9<sup>th</sup> day of April, 2003.

  
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Elizabeth Bunting, Chair  
Disciplinary Hearing Committee