

NORTH CAROLINA :
WAKE COUNTY :

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

REGINALD L. FRAZIER,
Defendant

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter was heard on September 29, 1989 by a hearing committee composed of John B. McMillan, Chairman, W. Harold Mitchell, and Emily W. Turner; with A. Root Edmonson representing the North Carolina State Bar and Reginald L. Frazier appearing pro se; and based upon the stipulation on pre-hearing conference entered into by the parties, the testimony of the witnesses and the exhibits admitted into evidence, the hearing committee finds the following facts 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, Reginald L. Frazier (hereafter Frazier), was admitted to the North Carolina State Bar in 1960. At all times relevant hereto, Frazier was 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. Prior to January 6, 1989, Frazier was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of New Bern, County of Craven.

4. Frazier was the defendant in a disciplinary proceeding in 88 DHC 8 and a hearing of that case was held by a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar, on November 7, 1988.

5. In the November 7, 1988 hearing, the Hearing Committee found that Frazier contacted Willis Jarman, the primary witness in that matter, by telephone in August, 1988 and offered Jarman \$650.00 if he would request that his complaint against Frazier be withdrawn. As a result, the hearing committee found and concluded that Frazier had violated the Rules of Professional Conduct and suspended Frazier's license for two years for that violation.

6. The Order of Discipline in 88 DHC 8 was served upon Frazier by certified mail on December 6, 1988.

7. On December 29, 1988, Frazier entered a notice of appeal in 88 DHC 8.

8. Frazier filed a petition for writ of supersedeas and motion for temporary stay in the North Carolina Court of Appeals which petition was dated January 4, 1989.

9. The motion for temporary stay was denied by an order of the North Carolina Court of Appeals dated January 5, 1989.

10. Frazier filed a petition for writ of supersedeas and motion for temporary stay in the North Carolina Supreme Court which petition was dated January 12, 1989.

11. Jarman was subsequently contacted by Frank Bryant who sought to have Jarman sign a statement Bryant wrote and had read by a magistrate to Jarman which indicated that Jarman's prior testimony had been a result of a misunderstanding.

12. The statement was read to Jarman because Jarman could not read. Jarman was capable of signing his name, however.

13. After having the statement read to him by the magistrate, Jarman refused to sign it since he did not consider it to be the truth.

14. In late January of 1989 and as a result of a telephone call from Bryant to Jarman, Jarman and his daughter Elsie Bailey met Bryant at a drugstore in New Bern and followed Bryant to Frazier's office.

15. Frazier was not at his office when Bryant, Jarman, and Elsie Bailey, arrived. Frazier subsequently arrived and met with Elsie Bailey in his inner office while Jarman remained outside Frazier's office in Frazier's waiting room.

16. Frazier met with Bailey in his office for approximately one hour during which time Frazier reviewed the documents from the previous disciplinary hearing and a prior deposition of Jarman with Bailey. Frazier explained to Bailey how he thought Jarman's prior testimony was a result of the documents being misexplained to Jarman and Jarman misunderstanding what Frazier had said to Jarman in the August telephone conversation that ultimately led to Frazier's being suspended from the practice of law.

17. At the conclusion of his conversation with Bailey, Frazier asked Bailey to talk with her father and read an affidavit to him that Frazier wished Jarman to sign indicating that Jarman's prior testimony had been a result of the misunderstanding Frazier had just explained to Bailey.

18. Bailey then read the affidavit to her father in Frazier's inner office while Frazier waited outside the office.

19. Jarman refused to sign the affidavit that was read to him because he did not think that it was true that his prior testimony had been the result of any misunderstanding. Frazier was told that Jarman refused to sign any such statement.

20. On February 1, 1989, Frazier prepared and sent to the North Carolina Supreme Court a petition for remand which alleged that he had newly discovered evidence that would likely result in the hearing committee of the Disciplinary Hearing Commission arriving at different findings and conclusions on whether Frazier engaged in unethical conduct.

21. In February, 1989, Gertrude Fenner had a conversation with Jarman concerning his testimony in the earlier disciplinary proceeding.

22. Following Fenner's conversation with Jarman, Frazier prepared a statement for Fenner to present to Jarman to sign. Frazier prepared the statement without any input from Jarman as to the contents of the statement.

23. The statement prepared by Frazier, identified as plaintiff's exhibit 19 at the hearing, indicated that things had been "misexplained" to Jarman, that Jarman had never intended to

intentionally misquote Frazier about the August 17, 1988 telephone conversation, and that Jarman had serious misgivings about misunderstanding what was said over the telephone.

24. Jarman refused to sign the statement and told Fenner that he wanted his friend, Ms. Carawan, to read it.

25. On February 3, 1989, Fenner and Jarman went to New Bern to Carawan's place of employment. Carawan read the statement to Jarman. Jarman refused to sign it because the statement was not true.

26. On February 3, 1989, Frazier prepared an affidavit for Fenner to sign which indicated that Jarman wanted to sign the statement, but Carawan had advised him not to.

27. On February 3, 1989, Frazier prepared and filed an "Addition to Petition" in the North Carolina Supreme Court which had Fenner's affidavit and Jarman's unsigned statement attached to it.

28. On at least two occasions in 1989, Frazier attempted to secure Jarman's signature on documents prepared by Frazier and containing false information.

29. In each such instance Frazier intended to use such a signed statement or affidavit to seek relief from his prior disciplinary order.

30. The hearing committee was unable to find that the evidence was clear, cogent and convincing that Jarman was offered money as an inducement to sign the untrue statements.

BASED UPON the foregoing FINDINGS OF FACT, the hearing committee makes the following

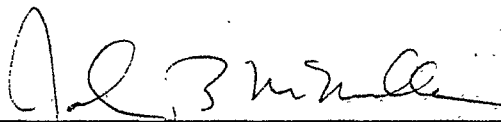
CONCLUSIONS OF LAW:

Defendant's conduct as set forth above, constitutes grounds for discipline in that defendant violated N. C. Gen. Stat. Sec. 84-28(b)(2) by violating the following Rules of Professional Conduct:

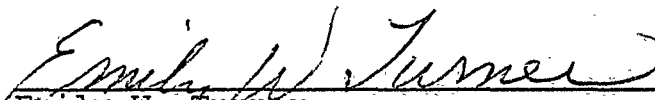
(1) By attempting to induce Willis Jarman to sign false statements for defendant's use in seeking relief from the prior disciplinary order, Frazier engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 1.2(c).

(2) By attempting to induce Willis Jarman to sign false statements for defendant's use in seeking relief from the prior disciplinary order, Frazier attempted to induce or counsel a witness to testify falsely in violation of Rule 7.9(c).

This 6th day of ^{November} ~~October~~, 1989.


John B. McMillan, Chairman


W. Harold Mitchell


Emily W. Turner

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ORDER OF DISCIPLINE

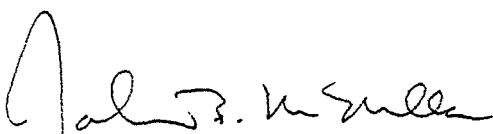
This matter came on to be heard and was heard on September 29, 1989 before the Hearing Committee composed of John B. McMillan, W. Harold Mitchell, and Emily W. Turner. Based upon the Findings of Fact and Conclusions of Law entered by this Hearing Committee, the Hearing Committee enters the following ORDER OF DISCIPLINE:

1. The defendant, Reginald L. Frazier, is hereby DISBARRED from the practice of law in North Carolina.

2. The defendant, Reginald L. Frazier, is to comply with the provisions of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar.

3. The defendant, Reginald L. Frazier, is taxed with the costs of this proceeding as certified by the Secretary of the North Carolina State Bar.

Signed by the undersigned Chairman with the full consent of the other members of the Hearing Committee this the 6th day of November, 1989.



John B. McMillan, Chairman
The Disciplinary Hearing Commission