

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
88 DHC 22

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

LAWRENCE U. DAVIDSON, III, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of John B. McMillan, Chairman, John Shaw, and Harry Sherwood on Friday, April 28, 1989. The Defendant was represented by Donnie R. Hoover. The Plaintiff was represented by Carolin D. Bakewell. Based upon the pleadings, pretrial stipulations, exhibits and the testimony at trial, the Committee makes 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, Lawrence U. Davidson, III, (hereafter Davidson), was admitted to the North Carolina State Bar in 1983, and is, and was at all times referred to herein, an Attorney of Law licensed to practice in North Carolina, subject to the rules, regulations, 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 was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Charlotte, Mecklenburg County, North Carolina.

4. In 1985, the Defendant was retained to represent the estate of Sarah Davis Tate and Barbara Crawford (hereafter Crawford), as Executrix of the estate.

5. In September, 1985, pursuant to his representation of the estate, Davidson filed a petition to take possession of realty at 815 Woodside Avenue, Charlotte, which formerly belonged to the decedent and which was occupied by one of the decedent's heirs, Sarah Frances Carruthers (hereafter Carruthers).

6. In October 1985, Ms. Carruthers received a copy of the petition to take possession of the realty but was not served with a summons informing her of her right to file an answer or other response to contest the petition.

7. On March 5, 1986, Davidson wrote to Ms. Carruthers informing her that the 815 Woodside Avenue house had been sold and giving her five days to remove

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herself and her property.

8. On March 25, 1986, Davidson sent a second letter to Ms. Carruthers again informing her that the 815 Woodside Avenue house had been sold and ordering her to vacate the premises or face eviction by the Mecklenburg County Sheriff's Office.

9. In the March 25, 1986 letter, Davidson stated that if Ms. Carruthers was evicted from the property she would be unable to retrieve her personal effects from the residence.

10. In March 1986, Gary L. Murphy (hereafter Murphy), undertook to represent Ms. Carruthers.

11. By March 27, 1986, Murphy notified Davidson that he represented Ms. Carruthers, indicated that his client opposed the petition, and asked him to notify Murphy of any hearings on the petition to take possession of the house.

12. On May 2, 1986, Davidson obtained an order granting his petition without first notifying Ms. Carruthers or Murphy.

13. On May 9, 1986, Murphy filed a motion for relief from the order of May 2, 1986, granting the petition for possession. Thereafter, the May 2, 1986 order was vacated.

14. On May 16, 1986, Davidson filed a new petition for possession of the 815 Woodside Avenue house and a hearing was set for June 16, 1986.

15. The June 16 hearing was later rescheduled for June 20, 1986, before the assistant Clerk of Superior Court Estates Division, Cynthia L. Williams.

16. At the June 20, 1986 hearing, Ms. Carruthers presented evidence that all bills and debts of the estate of which she was aware had either been paid or arrangements had been made to pay them.

17. Davidson and Ms. Crawford were present at the June 20, 1986 hearing.

18. A second hearing was held on July 10, 1986 at which neither Davidson nor Ms. Crawford was present.

19. During the July 10, 1986 hearing, Murphy presented additional evidence that the remaining debts of the Tate estate had been paid and Ms. Williams entered an order denying Davidson's petition for possession of the property.

20. Davidson entered notice of appeal and a hearing was held on November 20, 1986 in Mecklenburg County Superior Court.

21. At the November 20, 1986 hearing, Davidson called Ms. Crawford to the stand and elicited testimony from her that the debts of the estate had not been paid and that it was therefore necessary to sell the 815 Woodside Avenue house to produce assets to pay the debts of the estate.

22. Davidson failed to take adequate steps to determine which, if any, bills of the Tate estate remained unpaid as of the November 20, 1986 hearing.

23. The issue of what bills, if any, remained unpaid was material to Davidson's petition for possession of the estate property.

24. In a letter to the North Carolina State Bar dated September 17, 1987, Davidson falsely stated that following the first hearing before Ms. Williams, a second hearing was scheduled by Ms. Williams, but that this

hearing was cancelled owing to illness of Ms. Williams.

25. In the September 17 letter, Davidson also falsely stated that "about a month or so after the cancellation of the hearing," he called Max Blackburn, the Clerk of Superior Court, and that the reason he did so was that he was "having trouble getting an order for either sale or possession" of the property.

Based upon the foregoing Findings of Fact, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

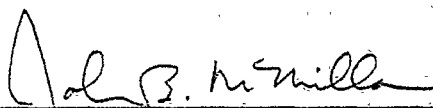
1. By telling Ms. Carruthers that she would be unable to retrieve her personal property if she was evicted from the 815 Woodside Avenue house, and by stating that the house had been sold as of March 1986, Davidson made a misrepresentation of fact in violation of Rule 1.2(C) and took action merely to harass or maliciously injure another in violation of Rule 7.2(A) (1).

2. By failing to notify Murphy or Carruthers before he obtained the order of May 2, 1986 granting the petition for possession of the estate property, despite his knowledge that Ms. Carruthers wished to oppose the petition and despite his knowledge that she was represented by counsel, Davidson engaged in conduct prejudicial to the administration of justice, in violation of Rule 1.2(D) and engaged in offensive tactics in violation of Rule 7.1(A) (1) and took action merely to harass or maliciously injure another, in violation of Rule 7.2(A) (1).

3. By failing to take reasonable steps to determine what bills, if any, remained unpaid by the estate prior to the November 20, 1986 hearing, Davidson handled a legal matter without adequate preparation under the circumstances, in violation of Rule 6(A) (2) and neglected a legal matter in violation of Rule 6(B) (3).

4. Davidson's statements in his September 17, 1987, letter constitute knowing misrepresentation of facts or circumstances surrounding an allegation of misconduct in violation of G.S. 84-28(b) (3).

This the 18th day of July, 1989.


John B. McMillan, Chairman
For the Committee

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LAWRENCE U. DAVIDSON, III,)

Defendant)

ORDER OF DISCIPLINE

THIS CAUSE was heard by the undersigned Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, April 28, 1989. In addition to the Findings of Fact and Conclusions of Law made herein, the Committee makes the following additional Findings of Fact:

1. In mitigation, the Committee finds that the Defendant has not previously been the subject of professional discipline.

2. The Defendant's violations of the Rules of Professional Conduct are aggravated by the fact that there were multiple violations of the rules, that Defendant was apparently motivated in part by selfish reasons, and further aggravated by the Defendant's reluctance or inability to recognize his own wrongdoing.

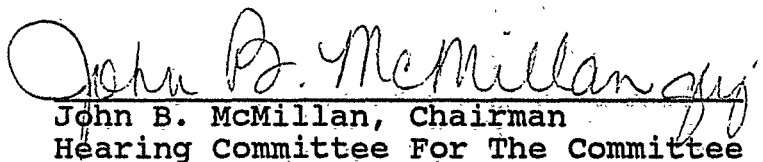
Based upon the Findings of Fact and Conclusions of Law entered in this cause and the foregoing additional Findings Of Fact bearing upon the appropriate measure of discipline, the Hearing Committee enters this Order of Discipline:

1. The Defendant shall be and is hereby suspended from the practice of law for a period of six (6) months commencing thirty (30) days after the service of this Order upon the Defendant. The suspension is stayed for one (1) year upon the following conditions to which the Defendant consents:

A. The Defendant shall not violate any provisions of the North Carolina State Bar's Rules of Professional Conduct for a one-year (1) period beginning with the effective date of this Order.

- B. The Defendant shall pay the costs of this proceeding.
- C. The Defendant shall pay the costs incurred by the North Carolina State Bar Counsel in attending the deposition of the Defendant on February 20, 1989 at which the Defendant did not appear, in the amount of One Hundred Ninety-One and 93/100 (\$191.93) Dollars.
- D. The Defendant shall take and successfully complete a total of three (3) hours of continuing legal education on the subject of Professional Ethics. These hours are in addition to the CLE requirements imposed on all attorneys and shall be completed by the end of the one (1) year period of suspension. Proof of compliance shall be submitted to the Office of Bar Counsel. The course work shall be taken from a sponsor approved by the Continuing Legal Education Department of the North Carolina State Bar.

This the 18th day of July, 1989.


John B. McMillan, Chairman
Hearing Committee For The Committee