

NORTH CAROLINA
WAKE COUNTY

6595

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

L. SAMUEL DOCKERY, III, Attorney)
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause coming on to be heard and being heard on May 8, 1992 before a hearing committee composed of L. P. Hornthal, Jr., Chairman, Robert C. Bryan, and William H. White; with A. Root Edmonson representing the N. C. State Bar and the Defendant, L. Samuel Dockery, III appearing pro se; and based upon the admissions of the Defendant in his Answer to the Complaint in this matter, the Stipulation on Prehearing Conference, and the evidence presented in the hearing, the hearing committee finds the following 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, L. Samuel Dockery, III, was admitted to the North Carolina State Bar on September 25, 1975, 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 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 High Point, Guilford County, North Carolina.

4. Defendant was disciplined in the United States District Court for the Middle District of North Carolina (Middle District) by order dated September 5, 1989.

5. On September 21, 1989, Defendant received a notice from the Chairman of the Grievance Committee of the North Carolina State Bar that the Grievance Committee would impose substantially similar discipline as the discipline imposed against Defendant in

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the Middle District unless Defendant claimed that imposition of discipline by the North Carolina State Bar would be unwarranted pursuant to Section 16(B) of Article IX of the Rules and Regulations of the North Carolina State Bar. The discipline imposed by the three judges of the Middle District was a 91 day suspension of Defendant's license for his failure to return a Declaration of Admissions form as ordered by the court on June 8, 1989 and served upon Defendant on August 15, 1989.

6. Defendant responded by letter dated October 16, 1989 which indicated that his office had returned the document to the court.

7. Defendant was informed by telephone that he and the North Carolina State Bar would be bound by the facts found in the Middle District's order pursuant to Section 16(B)(5) of Article IX of the Rules and Regulations of the North Carolina State Bar. Defendant was informed that he could take his evidence before the federal court in an effort to have the court change its findings or that he could make some other response to the Grievance Committee.

8. The Chairman of the Grievance Committee reissued the former Notice of Intent to Impose Reciprocal Discipline on October 31, 1990. That notice was received by Defendant by certified mail on November 8, 1990.

9. On or about December 6, 1990, Defendant requested a hearing before the Grievance Committee pursuant to Section 16(B)(4) of Article IX of the Rules and Regulations of the North Carolina State Bar.

10. On January 17, 1991, Defendant appeared for a hearing before the Grievance Committee of the North Carolina State Bar at their regularly scheduled quarterly meeting.

11. At that hearing, Defendant told the members of the Grievance Committee the following:

- a) He had sent the Declaration of Admissions form to the clerk of the Middle District in June, 1989 after receiving a copy of the court's order dated June 8, 1989 by regular mail.
- b) He had talked with the former secretary of the firm who had mailed the Declaration of Admissions form to the clerk of the Middle District, she remembered having sent it, and that she would prepare an affidavit swearing that she had sent it.
- c) He had a copy of the Declaration of Admissions form which he did not bring with him.
- d) Another attorney, Robert R. (Dusty) Schoch, had seen the Declaration of Admissions form in the clerk's office and had a file stamped copy of it.

12. The Grievance Committee continued the matter for Defendant to be able to produce the documents in support of his declarations to the committee and to allow him to attempt to locate the Declaration of Admissions form in the clerk's office in the Middle District.

13. On January 31, 1991, an investigator for the North Carolina State Bar, Robert F. Hartsell, interviewed Defendant in his office. Hartsell asked Defendant to provide him with any further information and copies of any documents Defendant had to support his declarations made before the Grievance Committee.

14. Defendant provided Hartsell with three pages of documents he had retrieved from the office of the clerk of the Middle District on January 17, 1991. They consisted of two pages of the docket sheets from Defendant's disciplinary file that led to his September 5, 1989 suspension and a copy of a National Disciplinary Data Bank Report Form filled out by an employee in the clerk's office in the Middle District after the order suspending Defendant was entered.

15. Defendant further advised Hartsell of the following:

- a) He had searched his files and could not locate either a filed or non-filed copy of the Declaration of Admissions form which he said was sent to the Middle District within weeks after he received that court's order in June, 1989.
- b) He had a copy of an envelope at his home with a metered stamp which showed a July, 1989 date which he contended was the envelope used to mail the Declaration of Admissions form to the clerk of the Middle District.
- c) The secretary that had prepared and sent the Declaration of Admissions form to the clerk of the Middle District was Lisa George. He had contacted his former law partner, Barbara Moreno, in an effort to locate Lisa George who no longer lived in High Point. He expected to get an affidavit from Lisa George soon that would confirm his version of the facts.

16. Defendant's statements made to the Grievance Committee, as set out in paragraph 11, subparagraphs (b), (c), and (d) above, were knowing misrepresentations and/or false statements knowingly made in a disciplinary matter in that:

- a) Defendant had not talked to any former secretary who told him that she remembered having sent the Declaration of Admissions form after June 8, 1989 and would prepare an affidavit swearing to it. In fact, Defendant had been told by his former partner, Barbara Moreno, prior to January 17, 1991 that Lisa George did not remember sending the form and

could not sign an affidavit saying that she did.

- b) Defendant did not have a copy of a Declaration of Admissions form prepared on or after June 8, 1989.
- c) Defendant spoke with Robert R. (Dusty) Schoch about the reciprocal discipline matter after receiving the initial notice from the Chairman of the Grievance Committee. Schoch never contacted the clerk's office of the Middle District, never obtained any documents from the clerk's office, and never advised Defendant that he had done so.

17. Defendant's statements to Robert F. Hartsell, investigator for the North Carolina State Bar, as set out in paragraph 15, subparagraphs (b) and (c) above, were knowing misrepresentations and/or false statements knowingly made in a disciplinary matter in that:

- a) No envelope existed in which a Declaration of Admissions form was sent to the clerk's office in the Middle District on or after June 8, 1989.
- b) Defendant had contacted his former law partner, Barbara Moreno, in an effort to locate their former secretary, Lisa George, who then worked in Washington, D.C. Moreno had advised Defendant that she had contacted Lisa George and that Lisa George had no recollection of preparing or sending a Declaration of Admissions form to the clerk's office in the Middle District. Moreno gave Defendant Lisa George's telephone number, but he never called her. Defendant was aware of Lisa George's position and should have had no reason to believe that Lisa George would provide an affidavit supporting Defendant's version of the facts. Defendant's contact with Moreno and Moreno's response to Defendant occurred months prior to Defendant's hearing before the Grievance Committee on January 17, 1991.

Based upon the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

The conduct of the Defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Sec. 84-28(b)(2) and (3) as follows:

- a) Each of Defendant's misrepresentations and/or false statements made to the Grievance Committee at the


reciprocal discipline hearing on January 17, 1991 constituted knowing misrepresentations of facts or circumstances surrounding any complaint, allegation or charge of misconduct in violation of N.C. Gen. Stat. Sec. 84-28(b)(3) and constituted violations of N. C. Gen. Stat. Sec. 84-28(b)(2) in that each false statement violated the Rules of Professional Conduct as follows:

1. By knowingly making false statements of material facts in a disciplinary matter, Defendant violated Rule 1.1(A).
2. By engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, Defendant violated Rule 1.2(C).

b) Each of Defendant's misrepresentations and/or false statements made to Robert F. Hartsell, an investigator for the North Carolina State Bar inquiring into Defendant's representations previously made to the Grievance Committee, constituted knowing misrepresentations of facts or circumstances surrounding any complaint, allegation or charge of misconduct in violation of N.C. Gen. Stat. Sec. 84-28(b)(3) and constituted violations of N. C. Gen. Stat. Sec. 84-28(b)(2) in that each false statement violated the Rules of Professional Conduct as follows:

1. By knowingly making false statements of material facts in a disciplinary matter, Defendant violated Rule 1.1(A).
2. By engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, Defendant violated Rule 1.2(C).

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee this the 22 day of May, 1992.


L. P. Hornthal, Jr.
Chairman
Hearing Committee

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WAKE COUNTY

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Defendant

ORDER
OF
DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law of even date herewith; and further based upon the evidence presented in this hearing, including the evidence of prior discipline introduced in the second phase of this hearing; and further based upon the arguments and cases presented by counsel; the hearing committee, composed of L. P. Hornthal, Jr., Chairman, Robert C. Bryan, and William H. White, finds the following:

FACTORS IN AGGRAVATION

1. Prior disciplinary offenses;
2. Dishonest or selfish motive;
3. A pattern of misconduct;
4. Multiple offenses;
5. Submission of false evidence and false statements during the disciplinary process, including during this hearing;
6. refusal to acknowledge wrongful nature of conduct; and
7. substantial experience in the practice of law.

FACTOR IN MITIGATION

The hearing committee finds that Defendant probably suffers from an emotional or mental disability or impairment which is undiagnosed. Defendant told this hearing committee of some of the things he had learned from the psychiatrist he began seeing in late 1991. That psychiatrist died in an airplane crash in late January, 1992. Defendant did not produce evidence from any other psychiatrist at the hearing.

BASED UPON all of the factors listed above, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, L. Samuel Dockery, III is DISBARRED from the practice of law in North Carolina. The effective date of


this disbarment is August 16, 1991, the date that Defendant was eligible for reinstatement from the 91 day suspension imposed as reciprocal discipline with the Middle District. Although Defendant was eligible for reinstatement on August 16, 1991, he did not apply for reinstatement because of the pendency of this matter.

2. As a condition precedent to reinstatement, ^{HAK} and in addition to other conditions precedent therefore provided by law, the Defendant must demonstrate by clear and convincing evidence the following:

- (a) From a board certified psychiatrist that Defendant does not suffer from any mental impairment or disorder which would render him unfit for the practice of law in accordance with the standards of this profession; and
- (b) That he has demonstrated a meaningful and sustained period of successful rehabilitation such that recurrence of similar misconduct will be unlikely.

3. The Defendant is taxed with the costs of this hearing as assessed by the Secretary.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee this the 22 day of May, 1992.



L. P. Hornthal, Jr.
Chairman
Hearing Committee