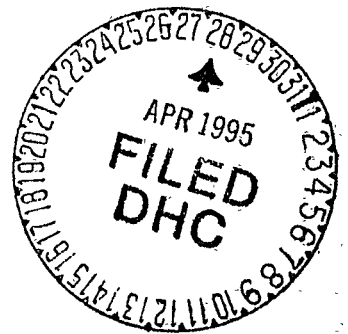


2501

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR

95 DHC 2



THE NORTH CAROLINA STATE BAR,	)	
Plaintiff	)	FINDINGS OF FACT
vs.	)	AND
GENE H. KENDALL, ATTORNEY,	)	CONCLUSIONS OF LAW
Defendant	)	

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This cause was heard by a hearing committee of the Disciplinary Hearing Commission comprised of Frank E. Emory, Chairperson, L. Patten Mason, and James Lee Burney, on Friday, April 28, 1995. Plaintiff was represented by R. David Henderson and defendant appeared pro se. Based upon the consent of the parties, the committee makes the following:

FINDINGS OF FACT

1. The North Carolina State Bar (hereafter "plaintiff") 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. Gene H. Kendall (hereafter "Kendall") was admitted to the North Carolina State Bar on September 9, 1968, 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. On November 12, 1992, Kendall was suspended from the practice of law in North Carolina for the non-payment of 1992 membership fees and client security

fund assessment.

4. Kendall became aware of the suspension no later than the beginning of November, 1993. On or about November 10, 1993, Kendall submitted an application to the Membership Committee of the N.C. State Bar ("the Membership Committee") to have his license reinstated. By order dated January 24, 1994, Kendall's license was reinstated.
5. In mid-December, 1993, Kendall was advised by the State Bar that he was not permitted to practice law until the Membership Committee had considered his application and an order of reinstatement had been entered.
6. Even though Kendall knew his license was suspended and he was not permitted to practice law until his license had been reinstated, Kendall engaged in the practice of law regarding the following matters prior to his reinstatement:
  - a. Marsha Gail Busby - Kendall appeared in court in Statesville on January 18, 1994, on behalf of Ms. Busby who was charged with no operator's license, driving 60 m.p.h. in a 45 m.p.h. zone, and obstructing and delaying a public officer. Kendall met with the assistant district attorney, Lynn Gullett, and negotiated a plea of guilty to the charge of obstructing and delaying a public officer in exchange for a dismissal of the no operator's license and speeding charges. Kendall subsequently appeared before the presiding judge and entered a plea of guilty on behalf of his client to the charge of obstructing and delaying a public officer.
  - b. Thomas Dion Daye - Kendall appeared in court in Statesville on January 18, 1994, on behalf of Mr. Daye who was charged with driving while license permanently revoked. Kendall advised the assistant district attorney, Lynn Gullett, that his client was willing to plead guilty as charged. Kendall subsequently appeared before the presiding judge and entered a plea of guilty on behalf of his client to the charge of driving while license permanently revoked.
  - c. Teresa Elaine Gilleland - Kendall appeared in court in Mooresville on January 19, 1994, on behalf of Ms. Gilleland (pursuant to a power of attorney and waiver dated January 17, 1994) who was charged with driving 60 m.p.h. in a 45 m.p.h.

zone. Kendall met with the assistant district attorney, Jean Rogers, and negotiated a plea of improper equipment. Kendall subsequently appeared before the presiding judge and entered a plea of guilty on behalf of his client to the charge of improper equipment.

7. On January 20, 1994, Carolin D. Bakewell, Counsel to the State Bar, and Harry B. Warren, Director of Investigations, spoke with Kendall by telephone. Ms. Bakewell asked Kendall whether he had been practicing law since learning that he had been suspended.
8. Kendall at first denied that he had been practicing law but later admitted that he had met with an assistant district attorney concerning Leon Daye, who was charged with possession of cocaine and several traffic offenses. Kendall advised that this meeting occurred in the anteroom of the courthouse and that the assistant district attorney had agreed to dismiss the traffic charges against Daye in return for a waiver of probable cause as to the drug charge. Kendall assured Bakewell and Warren that he did not appear before the court and was not attorney of record.
9. During this conversation, Kendall did not disclose that in the previous two days he had represented Marsha Gail Busby, Thomas Dion Daye, and Teresa Elaine Gilleland with the criminal matters described in paragraph six above.
10. Immediately following this telephone conversation, Kendall wrote Ms. Bakewell and after further discussing the Leon Daye case, stated: "I have not practiced law since made aware of my suspension." However, as alleged above, in the two days prior to this letter, Kendall had appeared in court on behalf of Marsha Gail Busby, Thomas Dion Daye, and Teresa Elaine Gilleland.

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

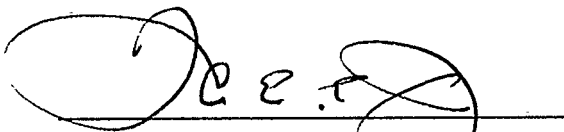
#### CONCLUSIONS OF LAW

1. By defending Marsha Gail Busby, Thomas Dion Daye, and Teresa Elaine Gilleland in court concerning their various criminal charges while his license was suspended, Kendall practiced law without a license in violation of N.C. Gen.

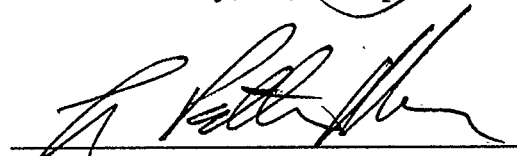
Stat. Section 84-28(b)(2) and Rule 3.1(B) of the North Carolina Rules of Professional Conduct.

2. By practicing law after learning that his license was suspended and prior to the order of reinstatement, after he was specifically advised by the State Bar that he was not permitted to practice law until his license was reinstated, Kendall knowingly engaged in contempt of the council's order of suspension dated November 12, 1992 in violation of N.C. Gen. Stat. Section 84-28(b)(3).
3. By failing to disclose his representation of Marsha Gail Busby, Thomas Dion Daye, and Teresa Elaine Gilleland in his 1/20/94 telephone conversation with Bakewell and Warren, Kendall failed to disclose a fact necessary to correct a misapprehension known by Kendall to have arisen in the matter and/or knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(B).
4. By stating in his 1/20/94 letter to Ms. Bakewell that he had not practiced law since December 1993, Kendall knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 1.1(A) and/or engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C).

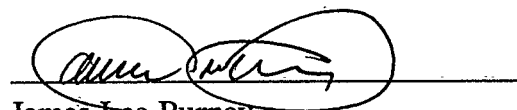
Signed by the hearing committee members, this the 28th day of April, 1995.



Frank E. Emory, Jr., Chairperson



L. Patten Mason



James Lee Burney

WE CONSENT:

R. David Henderson

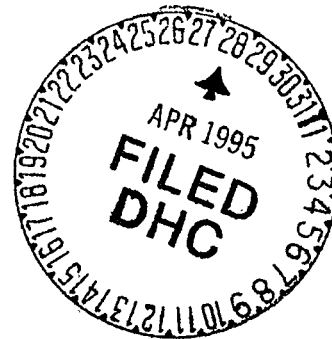
R. David Henderson

Gene H. Kendall

Gene H. Kendall

[50]

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR



95 DHC 2

THE NORTH CAROLINA STATE BAR,	)	
Plaintiff	)	
vs.	)	<u>ORDER OF DISCIPLINE</u>
GENE H. KENDALL, ATTORNEY,	)	
Defendant	)	

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Based upon the foregoing Findings of Fact and Conclusions of Law, and further based upon the evidence and arguments presented by the parties concerning the appropriate discipline, the hearing committee finds the following additional facts:

1. There are five aggravating factors in this case: a prior disciplinary offense; a pattern of misconduct; multiple offenses; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and substantial experience in the practice of law.
2. There are four mitigating factors in this case: personal problems; full and free disclosure to the hearing committee and cooperative attitude toward the proceedings; remorse; and remoteness of prior offenses.
3. The aggravating factors outweigh the mitigating factors.

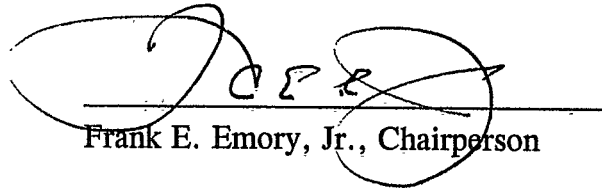
Based upon the evidence and arguments presented and the above aggravating and mitigating factors, the hearing committee enters the following Order of Discipline:

1. Defendant, Gene H. Kendall, is suspended from the practice of law in North Carolina for a period of six months.
2. Defendant shall submit his license and membership card within 30 days of service

of this order.

3. Defendant shall pay the costs of this proceeding.

Signed by the chairperson with the consent of the other committee members, this the 28th day of April, 1995.



Frank E. Emory, Jr., Chairperson

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