

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
85 DHC 12

NORTH CAROLINA STATE BAR,
Plaintiff,

vs

ELVIS LEWIS, JR., Attorney,
Defendant.

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

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This matter being heard on August 2, 1985 by a hearing committee composed of Philip A. Baddour, Jr., Chairman, Alice W. Penny, and Garrett D. Bailey; with Fern E. Gunn representing the North Carolina State Bar and the Defendant not appearing; and based upon the admissions of the Defendant deemed by his default for failure to file an answer or other pleading in this matter and the evidence offered at the hearing, the hearing committee finds the following 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, Elvis Lewis, Jr., was admitted to the North Carolina State Bar on February 13, 1976 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 Code of Professional Responsibility 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 Fayetteville, Cumberland County, North Carolina.
4. The Defendant was retained to represent Harry L. Jones in a real estate closing.

5. The Defendant received approximately \$1,125 on behalf of Mr. Jones, from the closing. Mr. Jones has never received this sum from the Defendant.
6. Mr. Jones also retained the Defendant to defend him in a lawsuit against Council Real Estate, Inc. Mr. Jones lost this lawsuit against Council Real Estate, Inc.
7. Mr. Jones secured the services of the Defendant to appeal the trial court's decision in the lawsuit against the real estate company.
8. The Defendant neglected to perfect the appeal of Mr. Jones' case. Mr. Jones' appeal was dismissed and a judgment of \$3,900 was entered against Mr. Jones.
9. The Defendant then negotiated with and settled Mr. Jones' case involving the real estate company.
10. Mr. Jones never authorized or informed the Defendant to settle his case or withdraw the appeal.
11. To partially satisfy the judgment against Mr. Jones, the Defendant told Mr. Jones that he (the Defendant) had used \$835 from the \$1,125 of Mr. Jones' proceeds from the real estate closing. The Defendant stated that he also paid a court reporter's fee of \$315 from the \$1,125 funds owed to Mr. Jones.
12. Mr. Jones never authorized or informed the Defendant to satisfy the judgment by using Mr. Jones' funds from the real estate closing.
13. Richard D. Evans employed the Defendant to defend him in an action for alimony pendente lite, child support, child custody, and possession of certain property.
14. The Defendant neglected to provide to Mr. Evans a copy of the judgment in the action, until a year after the judgment was entered. Mr. Evans had made numerous requests to the Defendant for a copy of the judgment.
15. Mr. Evans later contacted the Defendant to represent him in a Motion in the Cause, to review the custody and support issues which were heard earlier and to secure a final divorce for Mr. Evans.
16. The Defendant informed Mr. Evans that the divorce case had been calendared in court on several different dates. Mr. Evans appeared in court on each date that he was told, but learned that his case had not been calendared for that date.
17. Mr. Evans later learned that a complaint in his case had never been filed with the court.

18. The Defendant then returned to Mr. Evans \$150 of the fee that complainant had paid to the Defendant and returned the file to Mr. Evans.
19. In accordance with Rule 12 of the Discipline and Disbarment Rules, the Defendant was ordered by subpoena to appear before the Grievance Committee of the North Carolina State Bar on April 10, 1985, to testify in a grievance investigation and produce any and all records of the receipt and disbursement of funds belonging to Harry L. Jones, the complainant in 85G 0324(II).
20. In accordance with Rule 12 of the Discipline and Disbarment Rules, the Defendant was ordered by subpoena to appear before the Grievance Committee of the North Carolina State Bar on April 10, 1985, to testify in a grievance investigation and produce any and all records, papers, and documents pertaining to his representation of Richard D. Evans, complainant in 85G 0330(II).
21. The Defendant failed to appear before the Grievance Committee of the North Carolina State Bar and produce documents and papers pertaining to the two grievances.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

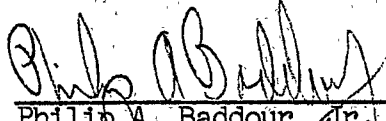
CONCLUSIONS OF LAW

1. The conduct of Defendant as set forth above constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(B)(2) in that Defendant violated the Disciplinary Rules of the Code of Professional Conduct as follows:
 - (a) By failing to perfect the complainant's appeal in a timely manner and allowing a judgment to enter against the complainant, the Defendant has neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A)(3); failed to seek the lawful objectives of his client in violation of Disciplinary Rule 7-101(A)(1); failed to carry out a contract of employment in violation of Disciplinary Rule 7-101(A)(2); and has prejudiced or damaged his client during the course of the professional relationship in violation of Disciplinary Rule 7-101(A)(3).
 - (b) By failing to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive, in violation of Disciplinary Rule 9-102(B)(4).
 - (c) By failing to file a complaint in the complainant's action and failing to calendar the complainant's case for court, the Defendant has neglected a legal matter entrusted to

him in violation of Disciplinary Rule 6-101(A)(3) and failed to seek the lawful objectives of his client through reasonably available means permitted by law in violation of Disciplinary Rule 7-101(A)(1).

- (d) By failing to appear pursuant to the subpoena and testify or produce the necessary documents, the Defendant has failed to respond to a formal inquiry of the North Carolina State Bar and has engaged in professional conduct adversely reflecting on his fitness to practice in violation of Disciplinary Rule 1-102(A)(6).

Signed by the undersigned chairman with the full accord and consent of the other members of the hearing committee this the 7 day of August, 1985.


Philip A. Baddour, Jr.
Chairman, Hearing Committee

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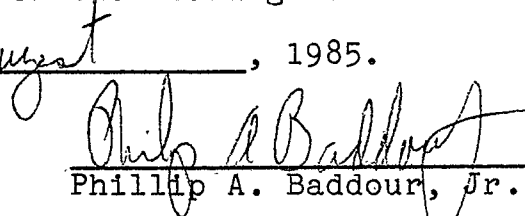
ORDER OF DISCIPLINE

This matter coming on to be heard and being heard on August 2, 1985, before the Hearing Committee composed of Phillip A. Baddour, Jr., Chairman; Alice W. Penny and Garrett D. Bailey; and based upon the Findings of Fact and Conclusions of Law entered by this Hearing Committee of even date herewith, the Hearing Committee enters the following ORDER OF DISCIPLINE:

- (1) The Defendant, Elvis Lewis, Jr. is hereby SUSPENDED from the practice of law in North Carolina for a period of three years.
- (2) Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar.
- (3) As a condition precedent to reinstatement of his North Carolina law license, Defendant shall comply with the provisions of §24 of Article IX of the Rules and Regulations of the North Carolina State Bar, regarding the winding up of practice, contained in the Red Book.
- (4) As a condition precedent to reinstatement of his North Carolina law license, Defendant must pass the Multistate Professional Responsibility Exam or such comparable testing as the State Bar may accept upon Defendant's application for reinstatement.
- (5) Defendant is taxed with the costs of this action.

Signed by the Undersigned Chairman with the full accord and consent of the other members of the hearing committee.

This the 7 day of August, 1985.


Phillip A. Baddour, Jr., Chairman