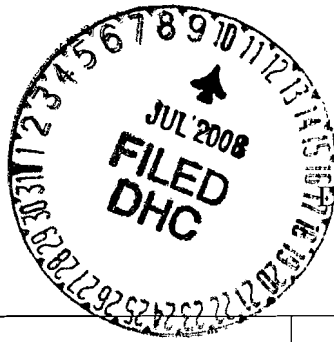


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 DHC 1

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ERNEST C. DUMMIT, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER
OF DISCIPLINE

THIS MATTER was heard on May 29, 2008 before a hearing committee of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair; Robert F. Siler; and Donald G. Willhoit. The defendant, Ernest Clarke Dummit was present at the hearing represented by Urs Gsteiger. Leanor Bailey Hodge and Brian Oten represented the North Carolina State Bar. Based upon the pleadings and the evidence introduced at the hearing, the Hearing Committee hereby enters the following:

FINDINGS OF FACT:

1. Plaintiff, the North Carolina State Bar (hereinafter "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. Defendant, Ernest Clarke Dummit (hereinafter "defendant" or "Dummit"), was admitted to the North Carolina State Bar on September 26, 1986, 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During the times relevant herein, defendant was actively engaged in the practice of law in the State of North Carolina and maintained law offices in Forsyth and Stokes Counties, North Carolina.
4. Before December 2004, Mark Badgett (hereinafter "Badgett") was a practicing attorney engaged in the general practice of law in Stokes County, North Carolina and maintained an office in the town of King.

5. Badgett became a district court judge in Stokes and Surry Counties and had wound down his private law practice by December 2004.
 6. Defendant was not a partner, associate, or otherwise a member of Badgett's law firm before Badgett was sworn in as district court judge.
 7. As district court judge for Stokes and Surry Counties, Badgett routinely presided over trials involving traffic offenses, rendered verdicts from the bench and approved plea bargains for disposition of traffic offenses, among other matters.
 8. Beginning in or about December of 2004, defendant leased Badgett's former office space in King, North Carolina, from Badgett.
 9. The lease was in effect and defendant occupied the leased premises during a period of time that included February and March, 2005.
 10. During the lease term, Badgett was serving as district court judge in Stokes and Surry Counties.
 11. For approximately six months of defendant's lease term, there was a sign in the front yard of the leased premises that read "Mark Badgett Attorney at Law."
 12. For approximately six months of the lease term, defendant hung a banner in the front yard of the leased premises that read "The Dummit Law Firm" at the same time that the sign that read "Mark Badgett Attorney at Law" hung in the front yard of the leased premises.
 13. For approximately six months of the lease term, the sign that read "Mark Badgett Attorney at Law" and the sign that read "The Dummit Law Firm" were both clearly visible to pedestrians and to motorists passing by the leased premises.
 14. Hanging the banner that read "The Dummit Law Firm" at the same time that the sign which read "Mark Badgett Attorney at Law" was posted created the impression that Badgett and The Dummit Law Firm were at that time involved in a professional association or relationship.
 15. Badgett and The Dummit Law Firm were not involved in a professional association or relationship (other than a landlord-tenant relationship) at the time the banner that read "The Dummit Law Firm" and the sign which read "Mark Badgett Attorney at Law" were posted on the leased premises.
 16. During the month of February 2005, defendant, on behalf of the Dummit Law Firm, mailed direct mail solicitation letters to persons who had received traffic citations in Stokes and Surry Counties.
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17. Defendant mailed the direct mail solicitation letters for the purpose of persuading persons who had been charged with traffic offenses to retain the Dummit Law Firm to represent them in connection with those traffic offenses.
18. The direct mail solicitation letters contained the sentence "[m]y Firm's [sic] new office is located in the building which Judge Mark Badgett just left to become a judge."
19. The direct mail solicitation letters contained the sentence "[w]e will make a more formal announcement in the near future, to let all of Judge Carter's and Judge Badgett's former clients know that they can still be served at the same location by our Firm [sic]."
20. The direct mail solicitation letters contained the sentence "I have agreed to store and maintain all of the old files as a courtesy to Judge Carter's and Judge Badgett's clients."
21. The direct mail solicitation letters contained the sentence "[m]y firm will be able to represent you in the areas of Criminal and Traffic Matters, Personal Injury and Auto Accidents, Workers' Compensation claims and Domestic and Family Law."
22. The direct mail solicitation letters contained the sentence "[c]ourthouse records show that you were charged with a **Speeding Ticket** which is set for court on **3/16/2005**." The entries in bold in the preceding sentence are variables that stated the nature of the offense and the date shown on the citation for the first court date.
23. The direct mail solicitation letters contained the sentence "[e]ven if you are guilty, we may be able to get you a judicially approved plea bargain to a lower speed or to a different charge such as Improper Speedometer."
24. The content of the direct mail solicitation letters implied to prospective clients that, at the time the letter was sent out, defendant or The Dummit Law firm had a relationship with Judge Badgett which enabled defendant or The Dummit Law Firm to obtain results for his or its clients which were more favorable than the results which could be obtained by a different attorney who did not enjoy such a relationship with Judge Badgett.
25. The direct mail solicitation letters could be construed to imply an ability to influence a government official improperly.
26. In a letter dated March 7, 2006, defendant mailed to Judge Mark Badgett and to District Attorney Ricky Bowman a document entitled "Remittal of Disqualification."
27. The March 7, 2006 letter stated "Paul Ross suggested we sign and file" the Remittal of Disqualification in Stokes County.
28. Paul Ross is the Executive Director of the North Carolina Judicial Standards Commission.

29. Defendant drafted the Remittal of Disqualification.
30. The Remittal of Disqualification states "[n]ow come the undersigned, pursuant to an opinion rendered by the Judicial Standards Commission of the State of North Carolina in accordance with Canon Three of the Judicial Code of Ethics, finding the relationship of landlord-tenant which exists between Mark Badgett and Clarke Dummit to be both insubstantial and immaterial to the administration of Justice in the District Courts of Stokes County, and hereby provide Public Notice that the relationship is insubstantial and immaterial pursuant to the opinion rendered by the Judicial Standards Commission, and do hereby remit any impuned [sic] disqualification pursuant to Canon Three of the Judicial Code of Ethics."
31. Paul Ross did not suggest defendant sign and file the Remittal of Disqualification.
32. Paul Ross did not suggest Badgett sign and file the Remittal of Disqualification.
33. Paul Ross did not suggest District Attorney Ricky Bowman sign and file the Remittal of Disqualification.
34. Defendant sent the March 7, 2006 letter and Remittal of Disqualification to the District Attorney, at Judge Badgett's suggestion, with the intention of obtaining the District Attorney's signature on the Remittal of Disqualification and then filing the Remittal of Disqualification in the court file of cases pending before Badgett in which defendant or the Dummit Law firm represented a client.
35. At the time he mailed the March 7, 2006 letter and Remittal of Disqualification, defendant did not reasonably believe that the Judicial Standards Commission had not rendered an opinion finding the relationship of landlord-tenant between Mark Badgett and Clarke Dummit to be both insubstantial and immaterial to the administration of Justice in the District Courts of Stokes County.
36. At the time he mailed the March 7, 2006 letter and Remittal of Disqualification, defendant should reasonably have been aware that Paul Ross had not suggested defendant, Badgett or Bowman sign and file the Remittal of Disqualification.
37. Defendant's representation that the Judicial Standards Commission had rendered an opinion finding the relationship of landlord-tenant between Mark Badgett and Clarke Dummit to be both insubstantial and immaterial to the administration of Justice in the District Courts of Stokes County was false and misleading.
38. Defendant made the representation that the Judicial Standards Commission had rendered an opinion finding the relationship of landlord-tenant between Mark Badgett and Clarke Dummit to be both insubstantial and immaterial to the administration of Justice in the District Courts of Stokes County intentionally and without exercising proper diligence to determine its truth or falsity.

39. Defendant intentionally made the representation that the Judicial Standards Commission had rendered an opinion finding the relationship of landlord-tenant between Mark Badgett and Clarke Dummit to be both insubstantial and immaterial to the administration of Justice in the District Courts of Stokes County for the purpose of inducing the District Attorney to execute the Remittal of Disqualification.

40. Defendant's representation that "Paul Ross suggested we sign and file" the Remittal of Disqualification was false.

41. Defendant made the representation that "Paul Ross suggested we sign and file" the Remittal of Disqualification intentionally and with knowledge of its falsity.

42. Defendant made the representation that "Paul Ross suggested we sign and file" for the purpose of misleading the District Attorney.

43. The District Attorney was not misled by Defendant's false representations and refused to sign the Remittal of Disqualification.

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over the defendant, Ernest Clarke Dummit and over the subject matter of this proceeding.

2. Dummit's foregoing actions constitute grounds for discipline pursuant to N. C. Gen. Stat. § 84-28(b)(2) as follows:

(a) By sending out direct mail solicitation letters that referenced Dummit's landlord-tenant relationship with Judge Badgett coupled with the language "[e]ven if you are guilty, we may be able to get you a judicially approved plea bargain to a lower speed or to a different charge such as Improper Speedometer" Dummit implied an ability to influence improperly a government official in violation of Revised Rule of Professional Conduct 8.4(e).

(b) By failing to take down Judge Badgett's former law office sign for approximately six months after Judge Badgett assumed the bench and Dummit began practicing out of Judge Badgett's old law office Dummit implied that he practiced in a partnership or other professional organization with Mark Badgett when this was not a fact in violation of Revised Rule of Professional Conduct 7.5(e).

(c) By signing and sending to District Attorney Ricky Bowman the remittal of disqualification and associated cover letter that falsely stated that (i) Paul Ross of the Judicial Standards Commission suggested that the parties sign the remittal of disqualification, and (ii) the Judicial Standards Commission had rendered an opinion finding the landlord-tenant relationship between Dummit and Badgett insubstantial and

immaterial to the administration of justice in the District Courts of Stokes County
Dummit engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule of Professional Conduct 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the Hearing Committee hereby makes the following additional:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. Dummit's misconduct is aggravated by the following factors:
 - a) dishonest or selfish motive;
 - b) multiple offenses;
 - c) refusal to acknowledge wrongful nature of conduct;
 - d) substantial experience in the practice of law; and
 - e) prior disciplinary offenses, including a reprimand in 1994 and censure in 1999.
2. Dummit's misconduct is mitigated by the following factor:
 - a) remoteness of prior offenses.
3. The aggravating factors outweigh the mitigating factors.
4. Dummit's misconduct had the potential to cause significant harm to the administration of justice and to the profession as a whole as a result of Dummit's misconduct. However, there was no evidence that the defendant's misconduct caused any actual harm to the public. Additionally, while Dummit's misconduct had the potential to cause harm to the administration of justice and the profession, there was no evidence that the misconduct caused any actual harm to the administration of justice or the profession. There is no evidence that the misconduct was a matter of public knowledge before the proceedings involving Judge Badgett and Dummit were made public.
5. The Hearing Committee considered less serious discipline but concluded that because of the potential significant harm to the administration of justice and the profession less serious discipline is not appropriate.
6. The Hearing Committee considered more serious discipline but determined that under the particular circumstances of this proceeding, the defendant's misconduct does not require an active suspension of his license and there are no conditions that could be

imposed that would make a stayed suspension meaningful. The Hearing Committee believes that Dummit is unlikely to repeat this misconduct.

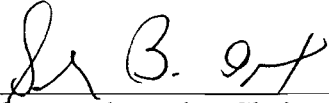
7. The expenses incurred by Plaintiff for stenographic assistance in the taking of defendant's deposition in this matter, the production of the deposition transcript, and the acquisition of a certified copy of defendant's testimony before the Judicial Standards Commission were reasonable and necessary in the litigation of this case. These costs should be taxed to defendant.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. The defendant, Ernest Clarke Dummit, is hereby censured for his misconduct.
2. Defendant is taxed with the costs of this action, which costs shall specifically include, but are not limited to, the expense of the deposition taken of the defendant on May 21, 2008, as assessed by the Secretary and the expense of the certified copy of the transcript of the defendant's January 18, 2007 testimony in the matter of the Inquiry Concerning a Judge, Mark H. Badgett, Respondent, as assessed by the Secretary. The defendant shall pay the costs assessed within thirty days of service of the notice of costs upon the defendant.

Signed by the Chair with the consent of the other hearing committee members, this the 10 day of July, 2008.



Sharon Alexander, Chair
Disciplinary Hearing Committee