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12-12-70 M.C.

NORTH CAROLINA

FILED

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
79 DHC 9

WAKE COUNTY

1980 JAN 25 AM 9 54

W.E. JAMES, CLERK  
DATE 8/5

THE NORTH CAROLINA STATE BAR, )  
Plaintiff, )  
-VS- )  
GARY A. DAVIS, Attorney )  
Defendant. )

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

THIS CAUSE coming on to be heard before the undersigned Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on November 16, 1979, in the office of The North Carolina State Bar, 208 Fayetteville Street Mall, Raleigh, North Carolina at 10:00 A.M., and said Hearing Committee, proceeding under Section 14(6) of Article IX of the Rules and Regulations of The North Carolina State Bar makes the followings findings of fact:

1. That 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, Gary A. Davis, was admitted to the North Carolina State Bar in September, 1965, and is and was at all times referred to herein, an Attorney at Law, licensed to practice law in the State of North Carolina, subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of The North Carolina State Bar and of the laws of the State of North Carolina.

3. At and during all of the times hereinafter referred to, 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. On August 6, 1979, a Summons and Complaint was served on the Defendant alleging misconduct on his part in violation of the Code of Professional Responsibility and the North Carolina General Statutes. Services was accomplished by causing delivery of a copy of the Summons and Complaint to the Defendant by The Mecklenburg County Sheriff's Department on August 10, 1979.

5. No Answer or other pleading was filed by the Defendant or by an attorney on his behalf within the time prescribed by the Rules and Regulations of The North Carolina State Bar and as set forth in the "Summons and Notice" duly served upon him.

6. A "Notice of Hearing" was sent to the Defendant via the United States Mail by Mr. Harold K. Bennett, Chairman of the Disciplinary Hearing Commission on August 16, 1979, notifying the Defendant of the time and place of the Hearing and the composition of the Hearing Committee; said Notice was sent by United States Mail, directed to the Defendant at the same address which appeared on the Summons and Complaint, to wit: 301 S. McDowell Street, #807, Charlotte, North Carolina 28202. A subsequent Order was mailed to Defendant continuing the matter until November 16, 1979.

7. This matter came on for Hearing on November 16, 1979; neither the Defendant nor anyone on his behalf appeared; upon a Motion for Entry of Default filed by Plaintiff, default was entered in the cause pursuant to Section 14(6) of Article IX of the Rules and Regulations of The North Carolina State Bar.

Although by Defendant's default, the allegations contained in the Complaint are hereby found to be admitted, the Hearing Committee heard evidence and makes the additional Findings of Fact:

8. During August, 1975, Defendant was employed by Rosemary Warner to represent her daughter, Candis McCoy in a domestic case seeking support and maintenance from Mrs. McCoy's estranged husband. A FIVE HUNDRED DOLLARS (\$500.00) retainer was paid to Defendant on August 22, 1975. The Defendant advised Mrs. Warner that the retainer was FIVE HUNDRED DOLLARS (\$500.00) because the case might go into court for a hearing. Defendant advised Mrs. Warner that he would begin work immediately in order to be the initiating party in the dispute. Thereafter, Defendant failed to perform any services for which he was employed, in spite of many calls and urgings on the part of Mr. Warner. On March 30, 1976 Mrs. Warner wrote a letter to Defendant requesting a return of the retainer in order that she might employ other counsel. No part of the FIVE HUNDRED DOLLARS (\$500.00) retainer was ever returned to Mrs. Warner by the Defendant.

9. Sometime prior to August 22, 1979, Mrs. Warner delivered to the Defendant the original of a promissory note payable to Mrs. Warner from a third party which was in default. The Defendant agreed to attempt to effect collection. Although repeated requests and demands were made on Defendant by Mrs. Warner, Defendant failed to take steps to collect on

said note or to return it to Mrs. Warner. After demands from other attorneys, Defendant finally delivered said note to Mrs. Warner's new attorneys in the fall of 1979.

10. In the spring of 1976, the Defendant was employed by Candis McCoy to represent her in connection with an automobile accident which occurred in the spring of 1976. Following this employment, Mrs. Candis McCoy as well as her mother, Mrs. Rosemary Warner, kept in touch with the Defendant as pertained to the progress of the case. Defendant failed to take any steps toward recovering any damages for Mrs. McCoy. By letter dated November 28, 1978 the Defendant was discharged by Mrs. McCoy and other counsel was employed to represent her in connection with her claim. Her case was settled through her new attorney to her satisfaction without any additional expenses on her part.

11. Prior to a finding of probable cause in this matter and pursuant to the Rules and Regulations of the North Carolina State Bar, the Chairman of the Grievance Committee of the North Carolina State Bar caused a "Letter of Notice" to be delivered to the Defendant advising him of the grievance filed against him by Mrs. Warner and requiring him to respond within fifteen (15) days. This "Letter of Notice" is a formal inquiry of the North Carolina State Bar and was delivered to the Defendant by registered mail, return receipt requested on July 17, 1978. Defendant failed to respond to the "Letter of Notice" in any manner.

Based on the foregoing findings of fact, the Hearing Committee makes the following conclusions of law:

1. The Defendant's conduct in accepting a FIVE HUNDRED DOLLARS (\$500.00) fee in connection with Candis McCoy's domestic case and his failing to perform any services concerning the same constitutes a violation of Disciplinary Rule 6-101(A) (3) and 7-101(A) (1), (2), and (3) of the Code of Professional Responsibility of the North Carolina State Bar.

2. The Defendant's conduct in accepting employment in Mrs. Candis McCoy's claim arising from an automobile accident and his neglect and failure to perform any services in connection therewith constitutes a violation of Disciplinary Rule 6-101(A) (3) and Disciplinary Rule 7-101(A) (1) and (2) of the Code of Professional Responsibility of the North Carolina State Bar.

3. The Defendant's conduct in retaining Mrs. Warner's promissory note and his refusal to promptly deliver it to her upon her request, constitutes a violation of Disciplinary Rule 9-102(B) (4) of the Code of Professional Responsibility of the North Carolina State Bar.

4. The Defendant's failure to answer a formal inquiry or complaint issued by or in the name of the North Carolina State Bar in a disciplinary matter, to wit" A "Letter of Notice," constitutes a violation of Chapter 84-28(b) (3) of the General Statutes of North Carolina.

This the 23rd day of January, 19 80.

*William Owen Cooke*

William Owen Cooke, Chairman  
Disciplinary Hearing Committee

*Leander R. Morgan*

Leander Morgan

*E. James Moore*

E. James Moore

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
79 DHC 9

THE NORTH CAROLINA STATE BAR, )  
Plaintiff, )  
 )  
-vs- )  
 )  
GARY A. DAVIS, Attorney, )  
Defendant. )

ENTRY OF DEFAULT

WHEREAS, it has been made to appear to the undersigned upon Motion duly filed by the office of Counsel of The North Carolina State Bar:

1. The North Carolina State Bar filed its Complaint in this cause on August 6, 1979;
2. The Summons and a copy of the Complaint were served on the Defendant on August 10, 1979 by the delivery of said Summons and Complaint by the deputy sheriff of Mecklenburg County.
3. More than TWENTY (20) days has elapsed since service of the Complaint and Summons and the Defendant has failed to file an Answer or otherwise plead to the allegations contained in the Complaint;
4. The Defendant, although duly notified of the composition of the Hearing Committee and the time, date, and place of the Hearing has failed to make any appearance in this action; and

WHEREAS, the Defendant is neither an infant nor incompetent; and

WHEREAS, the Disciplinary Hearing Commission of The North Carolina State Bar has personal jurisdiction over the Defendant under the provisions of Chapter 84 of the General Statutes of North Carolina and Article IX of the Rules and Regulations of The North Carolina State Bar; and

WHEREAS, Counsel for The North Carolina State Bar has filed a timely Motion for Entry of Default;

NOW, THEREFORE, default is hereby entered against Gary A. Davis, the Defendant in this action as provided by Section 14(6), Article IX of The Rules and Regulations of The North Carolina State Bar.

This the 16 day of November, 1979.

*William Owen Cooke*  
William Owen Cooke, Chairman  
Disciplinary Hearing Committee  
The North Carolina State Bar

NORTH CAROLINA

WAKE COUNTY

FILED

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BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
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RECEIVED  
JAN 25 1980

NORTH CAROLINA STATE BAR, )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 GARY A. DAVIS, Attorney, )  
 Defendant. )

ORDER

BASED upon the Findings of Fact and Conclusions of Law entered in this cause and pursuant to Article IX, of the Rules and Regulations of The North Carolina State Bar, "Discipline and Disbarment of Attorneys," the undersigned Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar hereby issues the following Order:

IT IS HEREBY ORDERED that the Defendant, Gary A. Davis, be and he is hereby suspended from the practice of law in the State of North Carolina for a period of six (6) months commencing December 17, 1979.

IT IS FURTHER ORDERED that Gary A. Davis be taxed with the costs of this Hearing.

This the 23rd day of January, 1980.

*William Owen Cooke*

William Owen Cooke, Chairman  
Disciplinary Hearing Committee

*Leander R. Morgan*

Leander Morgan

*E. James Moore*

E. James Moore