

NORTH CAROLINA

WAKE COUNTY

1981

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
80 DHC 13
80 DHC 14

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 and being heard before the undersigned Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on December 12, 1980, and the two cases being consolidated for purposes of this hearing, and the said Hearing Committee, having heard the evidence and arguments of counsel, finds the following by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar, is a body fully 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.

Paragraphs 4 through 8 relate to 80 DHC 13.

4. In June 1976, Mr. Curtis J. Whitley employed the Defendant to represent his corporation, Whitley & Sons, Inc., in a civil action against Bache Halsey Stuart, Inc. for certain alleged unauthorized securities transactions in the commodities market. The Defendant neglected

to file any civil action against Bache Halsey Stuart, Inc.

5. In August 1976, Bache Halsey Stuart, Inc. instituted a civil action against Whitley & Sons, Inc. Curtis J. Whitley entrusted this matter to Defendant for appropriate action.

6. Defendant neglected to file Answer or other responsive pleading on behalf of Whitley & Sons, Inc., causing a Default Judgment to be entered against Whitley & Sons, Inc. on September 21, 1976.

7. Although Defendant subsequently succeeded in having the Default Judgment set aside on July 11, 1977, Whitley & Sons, Inc. was not permitted to assert its alleged claim against Bache Halsey Stuart, Inc. as a result of Defendant's neglect.

8. Curtis J. Whitley attempted to discharge Defendant by registered letter dated August 9, 1979. The letter was returned unclaimed.

Paragraphs 9 through 12 relate to 80 DHC 14.

9. In December 1977, C. Durant Whitley employed the Defendant to represent him in the defense of a civil action filed against him by Bache Halsey Stuart Shields, Inc. C. Durant Whitley further requested Defendant to file a Counterclaim.

10. The Defendant neglected to file an Answer or other responsive pleading or a Counterclaim on behalf of C. Durant Whitley. As a result of Defendant's neglect, a Default Judgment was entered against C. Durant Whitley on April 7, 1978.

11. Defendant was subsequently successful in having the Default Judgment set aside and an Answer and Counterclaim filed on behalf of C. Durant Whitley.

12. C. Durant Whitley discharged Defendant by letter dated August 15, 1979 which was delivered to Defendant's office on August 23, 1979.

13. The Defendant appeared at the hearing and offered testimony. The Defendant was very candid in his testimony.

14. The Defendant admitted that he neglected legal matters entrusted to him by Curtis J. Whitley and C. Durant Whitley. Defendant further admitted that his neglect in these matters constitutes a violation of Disciplinary Rule 6-101(A) (3).

15. The Defendant admitted that he was an alcoholic. The Defendant further admitted that he was drinking heavily during the period in which he neglected the legal matters of Curtis J. Whitley and C. Durant Whitley.

16. The Defendant has sought help for his alcoholism. The Defendant stated he has not consumed an alcoholic beverage since some time prior to an earlier disciplinary hearing involving the Defendant, 79 DHC 9, in the latter part of 1979.

17. There was considerable evidence that, prior to his problems with alcohol, the Defendant enjoyed a reputation as a highly skilled attorney.

18. The Defendant lacks confidence in his present ability to practice law effectively. The Defendant does not desire to resume the practice of law until he is confident that he can do so with the high level of competence and skill for which he had previously attained a reputation.

19. The testimony of the Defendant's former law partner, Nelson M. Casstevens, Jr., transcribed from the Defendant's earlier disciplinary hearing, was carefully considered along with the other evidence offered at the punishment phase of this hearing.

20. The Plaintiff took a voluntary dismissal of all charges other than the charges of neglect of a legal matter in violation of disciplinary Rule 6-101(A) (3).

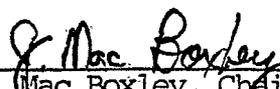
21. The Plaintiff and the Defendant each consented without objection to this matter being heard by only the two undersigned members of the Hearing Committee after being given the opportunity to delay the hearing until the third committee member could be present.

Based on the foregoing Findings of Fact, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

The conduct of the Defendant, Gary A. Davis, as set forth above constitutes a violation of North Carolina General Statute 84-28(A) (B) (2), in that the Defendant, Gary A. Davis, neglected legal matters entrusted to him by Curtis J. Whitley, on behalf of Whitley & Sons, Inc., and C. Durant Whitley in violation of Disciplinary Rule 6-101(A) (3) of the Code of Professional Responsibility.

This the 5th day of February, 1981.



J. Mac Boxley, Chairman
Disciplinary Hearing Committee



W. Colon Byrd, Jr.

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ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to Section 9 of Article IX, Discipline and Disbarment of Attorneys, the undersigned Hearing Committee of the Disciplinary Hearing Commission hereby issue the following Order.

IT IS HEREBY ORDERED that the Defendant, Gary A. Davis, be suspended from the practice of law in the State of North Carolina for a period of two (2) years.

IT IS FURTHER ORDERED that the Defendant, Gary A. Davis, may petition for reinstatement at the third quarterly meeting of The North Carolina State Bar Council in 1981. Upon receipt of a petition from the Defendant, the Hearing Committee recommends to the Council that the Council consider referring the matter to a Hearing Committee of the Disciplinary Hearing Commission where the Defendant will have the burden of proving by clear, cogent, convincing evidence that he is qualified to practice law and that he is in control of his alcoholism and has no emotional disability as a result of said alcoholism. Should the Defendant meet the necessary burden, the Hearing Committee may make a recommendation to the Council that the remainder of the Defendant's suspension under this Order terminate and Defendant be reinstated.

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

This the 5th day of February, 1981.

J. Mac Boxley
J. Mac Boxley, Chairman
Disciplinary Hearing Committee

W. Colon Byrd
W. Colon Byrd