

FILED

STATE OF NORTH CAROLINA 1993 MAY -2 AM 8:49
COUNTY OF WAKE

J.E. JAMES, SEC.
THE N.C. STATE BAR

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

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
vs.)
)
FRANCIS C. CLARK, ATTORNEY)
AT LAW,)
)
Defendant.)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause coming on to be heard and being heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of W. Osborne Lee, Chairman, John B. McMillan and W. Colon Byrd, Jr., on April 12, 1983; with The North Carolina State Bar being represented by A. Root Edmonson and the Defendant by Henry A. Mitchell, Jr.

BASED UPON the Stipulations entered into by counsel for the parties and the evidence produced at the hearing, the Hearing Committee makes the following:

FINDINGS OF FACT

1. On April 19, 1980, Defendant registered as a walk-in candidate to take the Law School Admission Test (LSAT) given on that date at Wake Forest University in Winston-Salem.

2. After entering the test center at Wait Chapel, Defendant wrote, dated and signed the following statement on a form provided by the examiners:

"I certify that I am the candidate whose name appears on this answer sheet. I am here to take

the LSAT for the sole purpose of being considered for admission to law school."

3. At the time Defendant signed the foregoing certification, he was already an attorney and had no intention of being considered for admission to law school.

4. After each had filled out the identification forms provided by the examiners, Defendant switched examination booklets and answer sheets with another walk-in registrant, William J. Boyle, who was seated next to Defendant in the test center.

5. William J. Boyle had previously taken the LSAT on the following dates with the following scores:

10/13/79	354
12/01/79	391
02/02/80	394

6. Defendant completed the LSAT for William J. Boyle by filling in the answer sheet identified as being the answer sheet of William J. Boyle.

7. At the time the Defendant took the LSAT for William J. Boyle, Defendant was aware that the resulting score he achieved for William J. Boyle would be a factor in evaluating Boyle for admission to Law School.

8. Defendant had previously taken the LSAT in October, 1972 prior to entering Law School. His score on that previous examination was 718.

9. The test booklet and answer sheet identified as that of Francis C. Clark but which was actually completed by William J. Boyle was given to a proctor at the conclusion of the examination. The

proctor was requested not to report the score of that examination to any Law School because the candidate was ill. The unreported score for that examination was 374.

10. On December 30, 1980, the Chairman of the Subcommittee on Irregularities: Law Schools of the Law Schools Admission Council (LSAC), Andrew J. Simons, wrote a letter to Defendant seeking Defendant's co-operation in the investigation of an impersonation and swap of answer cards at the April 1980 LSAT.

11. Defendant sought the aid of a friend and partner in his law firm, Stephen Camp, in responding to the letter of Andrew J. Simons. Defendant failed to tell Stephen Camp the truth about having switched LSAT answer sheets with William J. Boyle. As a result, Stephen Camp's January 12, 1981 letter of response to Mr. Simons did not reveal that the swap of answer sheets had taken place.

12. Andrew J. Simons addressed additional inquiries into the matter to both Defendant and his attorney, Stephen Camp. Stephen Camp made two further responses to Simon's inquiries by letters August 24, 1981 and May 11, 1982. Because Defendant had not yet told Stephen Camp the truth about the incident, the responses of Stephen Camp did not reveal the fact that the swap of answer sheets between Defendant and Boyle had occurred.

13. In the fall of 1982, senior members of Defendant's firm questioned Defendant about the incident after learning of the same. Initially, Defendant did not admit the true facts about the incident. However, a short time later, Defendant did voluntarily admit to these senior members of the firm and to Stephen Camp the true facts about the swap of answer sheets.

14. Defendant resigned from the Law firm in October of 1982. He began winding down his practice at that time and did not commence representation of any client in any new matters. Defendant totally ceased his practice with the firm on December 3, 1982. Defendant has not engaged in the practice of law from that time through the date of this hearing.

15. William J. Boyle was admitted to Wake Forest University School of Law in part, as a result of the 712 score being used in the evaluation of Boyle for admission. Boyle was a third year law student when the law school advised him that a disciplinary proceeding would be initiated against him as a result of the switch of LSAT exams. At that time, Boyle withdrew from Law School.

16. Conduct involving dishonesty, fraud, deceit or misrepresentation is normally one of the highest forms of violation of the Code of Professional Responsibility. There is no excuse for defendant's conduct. However there are mitigating circumstances.

17. In the Spring of 1980, Defendant was undergoing an extremely difficult separation from his first wife.

18. This separation caused Defendant to become emotionally depressed and to change his usual and normal circle of friends and social habits.

19. During the period of time Defendant was so depressed, he agreed to help his friend in the taking of the LSAT examination.

20. Defendant finally realized the mistake he made and told his friends, law firm, counsel and Bar Officials the true facts.

21. This Committee was most impressed with the fact that Defendant has fully admitted his guilt and believes that this is the

first important step toward becoming rehabilitated and becoming a useful member of society and his profession.

22. This Committee was further impressed with the intelligence, educational background and general good character of Defendant in all respects prior to this incident in April of 1980 as shown by the testimony of Defendant's witnesses such as his former law professor, member of his former law firm, his friends and the support of his present wife.

23. That based upon the evidence presented, this Committee finds that there is no danger to the public for the Defendant to resume the practice of law after being suspended from the practice of law as provided in the Order Imposing Discipline entered contemporaneously herewith, and that this incident was an isolated event and an aberration from Defendant's normal behavior which is not likely to ever be repeated and that Defendant is very unlikely to breach the Code of Professional Responsibility in the future.

24. Rehabilitation of this Defendant is in the best interest of the public, the bar and the Defendant.

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 violations of N.C. General Statutes §84-28(a) and (b) (2) in that:

(a) Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation when he made the false certification that he was taking the LSAT for the sole purpose of being considered for admission to Law school at a time when he was

already an attorney in violation of Disciplinary Rule 1-102(A) (4) of the Code of Professional Responsibility.

(b) Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation when he switched LSAT exams and answer sheets with William J. Boyle for the purpose of taking the LSAT for Boyle in violation of Disciplinary Rule 1-102(A) (4) of the Code of Professional Responsibility.

(c) Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation when he was not truthful as to Andrew J. Simons' inquiries into the possible exchange of LSAT exams in violation of Disciplinary Rule 1-102(A) (4) of the Code of Professional Responsibility.

2. The conduct of the Defendant as set forth above constitutes a violation of N. C. General Statutes §84-28(b) (3) in that Defendant knowingly misrepresented facts or circumstances surrounding a charge of misconduct when he was not truthful and misrepresented facts and circumstances concerning his conduct in response to the inquiries and all questions of misconduct by Andrew J. Simons.

This the 28th day of April, 1983.



W. Osborne Lee, Chairman
Hearing Committee of the
Disciplinary Hearing Commission

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FILED

STATE OF NORTH CAROLINA
COUNTY OF WAKE

1993 MAY -2 AM 8:46
B.E. JAMES, SEC.
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BEFORE THE
DISCIPLINARY HEARING COMMISSION
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83 DHC 1

THE NORTH CAROLINA STATE BAR,)
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Plaintiff,)
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vs.)
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AT LAW,)
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Defendant.)

ORDER IMPOSING DISCIPLINE

This cause was heard by a duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of W. Osborne Lee, Chairman, John B. McMillan and W. Colon Byrd, Jr. on Tuesday, April 12. Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this cause and the evidence presented relevant to the discipline to be imposed, including all aggravating and mitigating evidence, the Hearing Committee enters the following ORDER IMPOSING DISCIPLINE:

1) The Defendant is hereby suspended from the practice of law for a period of one year commencing thirty days after service of this Order upon the Defendant or affirmation of this Order on appeal or Order dismissing any appeal or upon written acceptance of this Order by Defendant which would make this Order effective upon such acceptance.

2) The Defendant shall surrender his license and membership card to the Secretary of The North Carolina State Bar who will maintain them in his possession for the duration of the suspension.

3) The costs of these proceedings shall be taxed to the Defendant.

4) The Defendant will comply with the Rules of The North Carolina State Bar governing the winding up of his practice upon suspension, refrain from the practice of law during the period of suspension, and not be convicted of any crime which would constitute grounds for discipline during the period of suspension.

The above Order is SUSPENDED on the following CONDITIONS:

1) The Defendant is suspended from the practice of law for a period of one year commencing thirty days after service of this Order upon the Defendant or affirmation of this Order upon appeal or Order dismissing any appeal or upon written acceptance of this Order by Defendant which would make this Order effective upon such acceptance.

2) The Defendant shall surrender his license and membership card to the Secretary of The North Carolina State Bar who will maintain them in his possession for the duration of the suspension.

3) The costs of these proceedings shall be taxed to the Defendant.

4) The Defendant will comply with the rules of The North Carolina State Bar governing the winding up of his practice, refrain from the practice of law during the period of suspension, and not be convicted of any crime which would constitute grounds for discipline during the period of suspension.

5) The Defendant may work for a law firm or corporate legal office during the period of such suspension on the following terms and conditions:

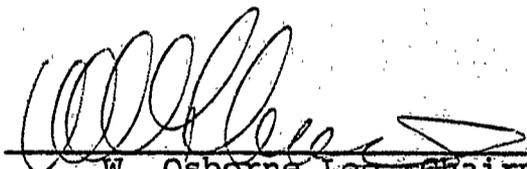
(a) That he not have direct client contact with any person represented by that law firm or corporate legal office;

(b) That his employer, the Lawyer or group of lawyers that he works for with a corporation or otherwise, shall monthly report to the Secretary of The North Carolina State Bar the activities that the Defendant has performed during that period of time, the attitude of the Defendant and the Defendant's job performance;

(c) That for each thirty days that Defendant is so gainfully employed, his period of suspension shall be reduced by the comparable period of thirty days;

(d) That Defendant comply with each and every request of the Secretary of The North Carolina State Bar during this period of time for any further information the Secretary may deem to be needed.

This the 28th day of April, 1983.



W. Osborne Lee, Chairman
Hearing Committee of the
Disciplinary Hearing
Commission

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AT LAW,)
Defendant.)

ACCEPTANCE OF ORDER

The undersigned hereby accepts the Order Imposing Discipline entered in this cause pursuant to Paragraph 1 of the conditions of said Order.

This the 4th day of ~~April~~^{May}, 1983.


Francis C. Clark