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STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 78 CRS 15880

STATE OF NORTH CAROLINA
VS
JERRY DAVIS BAGLEY

IN THE MATTER OF §
MICHAEL J. MULLIGAN §

ORDER

THIS CAUSE coming on to be heard before the undersigned Presiding Judge at the May 11, 1981 mixed session of Superior Court, upon the Order of the Honorable R. Michael Bruce, Judge of the Superior Court, dated April 3, 1981, directing the Respondent, Michael J. Mulligan, Attorney at Law, to appear before the Honorable James H. Pou Bailey, Judge Presiding at the May 11, 1981 session of Superior Court and Show Cause, if any there be, why he should not be punished by means of a fine, imprisonment or disbarment for the conduct alleged in the Order of Judge Bruce, also dated April 3, 1981, attached to the Order to Show Cause;

AND the Honorable James H. Pou Bailey having orally Ordered that this cause be referred to the undersigned Judge for hearing, of which due notice was given to the Respondent and his attorneys;

AND the Respondent, represented by his attorneys, Mr. Robert F. Baker and Mr. William G. Harriss, being before the Court as Ordered, he having been duly served with process on April 9, 1981; and the prosecution being represented by Mr. Albert Root Edmonson, Counsel for the North Carolina State Bar, who was appointed by Judge Bruce in his Order of April 3, 1981, to investigate and prosecute the Disciplinary Proceedings upon his findings of probable cause, as set forth in paragraphs one through seven of the Order of Judge Bruce dated April 3, 1981, and attached to his Order to Show Cause of the same date;

AND it appearing to the Court that this is a Disciplinary Proceeding against Michael J. Mulligan, Attorney, of the Durham County Bar, who is duly licensed to practice law in the courts of the State of North Carolina, pursuant to the inherent power of the Court to discipline its attorneys and the provisions of Chapter 84 of the General Statutes of North Carolina,

which Disciplinary Proceeding was directed by Order of the Court of Appeals dated September 26, 1980, in Court of Appeals File No. 80SC464PC;

AND having heard and considered the evidence presented and the contentions argued by both the prosecution and the respondent, THE COURT
[REDACTED] ES THE FOLLOWING FINDINGS OF FACT, having been satisfied by clear, cogent and convincing proof;

(1) THAT the respondent, Michael J. Mulligan, as court appointed counsel for an indigent, represented the defendant, Jerry Davis Bagley, in case number 78 CRS 15880 before the Durham County Superior Court, on a first count of felonious breaking or entering, and a second count of felonious larceny, and a third count of feloniously receiving stolen property, at a September 1978 session of court before the Honorable John C. Martin, Judge Presiding;

(2) THAT the defendant, Bagley, was convicted on the first and second counts and received consecutive sentences of not less than seven (7) nor more than ten (10) years imprisonment as to each of the two counts;

(3) THAT following sentencing on September 11, 1978, the defendant through his court appointed counsel, gave notice of appeal in Open Court to the Court of Appeals, and was allowed thirty (30) days thereafter in which to serve the proposed record on appeal; that respondent attorney was duly appointed by the Court to prosecute the appeal in the Court of Appeals by Order dated September 11, 1978;

(4) THAT by Order of the Superior Court of Durham County, time in which to serve the proposed Record on Appeal was extended, first to October 5, 1978; then to November 6, 1978; then to December 6, 1978;

Thereafter time was extended by the Court of Appeals to the 9th day of March, 1979, in which to file in the Office of the Clerk of Superior Court and serve upon the State a proposed record on appeal;

(5) THAT in late February and on or before March 6, 1979, respondent attorney left with Assistant District Attorney, Ralph B. Strickland, Jr., of the Durham County District Attorney's Office, and incomplete proposed record on appeal;

That at the suggestion of the Assistant District Attorney that the proposed narrative summary did not comply with the appropriate appellate rules as to format, the respondent attorney withdrew the proposed record on appeal to make corrections and to complete same;

That the proposed record on appeal was never formally served on the State before the 9th day of March, 1979, as extended by Order of the Court of Appeals, nor was a copy thereof filed in the Office of the Clerk of Superior Court;

(6) THAT in late February and early March of 1979, and prior to March 9, 1979, respondent attorney was led to believe by the defendant, Bagley, and the defendant's sister, Diane Bagley, that the defendant intended to withdraw his appeal, and respondent attorney's secretary provided a type-written form to accomplish such withdrawal to the defendant's sister, Diane Bagley, for her to deliver to the defendant to sign, instead of the respondent attorney himself pursuing what he believed the defendant's intentions to be;

(7) THAT respondent attorney never personally followed through with his client to complete a written and filed withdrawal of appeal in apt time, prior to the expiration of the date on which the proposed record on appeal might have been served and filed;

That a written withdrawal of the appeal has never been executed and filed with the Clerk as provided by law in such cases;

(8) THAT during a hearing involving the defendant, Bagley, before the Honorable F. Gordon Battle, Presiding Judge, the respondent attorney on March 27, 1979, in response to Judge Battle's inquiry regarding the defendant's pro se application for "Writ of Habeas Corpus Prosa Quendum and Appropriate Relief", regarding his appeal, his appearance bond, and his recent arrest, stated to Judge Battle that "...the record on appeal is now in the District Attorney's office".

That it was obvious that in part, Judge Battle's inquiry dealt with the status of the defendant's appeal, and though the respondent attorney stated to Judge Battle that, "Mr. Strickland and I have had discussions with Judge Martin concerning that.", he took the position that such was not at issue, and offered to discuss the matter in chambers;

That respondent attorney knew at the time that the proposed record on appeal had not been filed or served on the State and that the time for serving the same had expired on March 9, 1979; but respondent attorney also believed that the defendant, Bagley, was going to withdrawal his appeal, which he did not do; however, respondent attorney took no action to see that a

properly executed written withdrawal of the appeal was filed prior to the expiration of the time in which the proposed record on appeal might have been filed and served, nor did he serve and file such record on appeal;

That respondent attorney wilfully and intentionally, with the intent to deceive, misrepresented to Judge Battle, the true facts regarding the status of the defendant's appeal by not telling the whole truth in stating that "...the record on appeal is now in the District Attorney's office";

(9) THAT on August 15, 1980, a Hearing was held before Judge D. Marsh McLelland on the defendant, Bagley's, Motion for Appropriate Relief relative to his right to perfect his appeal, the defendant being represented by his Court Appointed Counsel, Mr. Thomas F. Loflin, III, where the relief prayed was denied on jurisdictional grounds; but counsel was instructed to pursue the matter before The Court of Appeals where jurisdiction lay;

That respondent attorney was aware of said hearing before the Superior Court, and the result thereof.

That respondent attorney thereafter prepared, served and filed in the North Carolina Court of Appeals a "Motion to Extend Time for Filing the Record on Appeal" in the Jerry Davis Bagley case dated August 22, 1980, assigned Court of Appeals File No. 80SC472M, wilfully, knowingly, falsely representing in paragraph 19 thereof that "defendant's attorney had on March 6, 1979, and still has the record on appeal fully prepared and ready to be served.", when in truth it was not;

Upon the foregoing finding of fact THE COURT CONCLUDES AS A MATTER OF LAW;

THAT by reason of the matters and things above found, the respondent attorney, through his acts of commission and omission, has been wilfully and inexcusably derelict in his duty and his conduct, both to his client, and to the Court, so as to constitute gross negligence, and contempt for the Courts and the Proceedings and Rules of the Courts;

THAT he has intentionally and wilfully mislead both the Superior Court and the Court of Appeals by knowingly and intentionally failing to disclose the whole truth as to the status of the appeal of the defendant, Jerry Davis Bagley;

THAT his dereliction, and his conduct, has been such as to bring contempt upon the administration of justice and he should be punished therefore;

IT IS NOW, THEREFORE, ORDERED that the right of the respondent, Michael J. Mulligan, to practice before the trial and appellate divisions of the Courts of this State be and the same is hereby suspended for a period of one year from and after the first day of June, 1981;

OR, should this matter be appealed, then from and after the date of the certification to the Clerk of the Superior Court of Durham County of a final Order of the Appellate Division affirming this Order;

IT IS FURTHER ORDERED that the respondent, Michael J. Mulligan shall pay the cost of this proceeding as taxed by the Clerk;

IT IS FURTHER ORDERED that the respondent's name be stricken from the list of counsel to be appointed in indigent cases, without prejudice to his right to apply to the Senior Resident Superior Court Judge of this District for reinstatement subsequent to termination of the suspension from practice before the Courts imposed herein;

AND IT IS FURTHER ORDERED that the Clerk of Court shall forthwith certify a copy hereof to the North Carolina Court of Appeals with reference to Court of Appeals File Number 80 SC 464 PC, and a copy to the North Carolina State Bar Association at Raleigh, North Carolina.

This the 14th day of May, 1981.

D. B. Herring, Jr.
D. B. HERRING, JR.
JUDGE PRESIDING

I certify the foregoing to be a true and correct copy of the original as the same appears on file in this office
14 day of July, 1986
Clerk Superior Court

Durham County, N. C.

By C. M. Brunson
Assistant, Deputy Clerk

pieces mailed to:
at R. Edmondson
C. State Bar
C. Court of Appeals
Robert Baker
the Mulligan
Bill Harris

hand delivered to:
Judge Bailey,
Martin
Braswell
Brannon

5-15-81
Debra Jones
decc