

WAKE COUNTY
NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
88 DHC 23

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

JOEL L. KIRKLEY, JR. ATTORNEY
Defendant

FINDINGS OF FACT & CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of G. Ward Hendon, Chairman, Fred L. Folger, Jr., and Sam Beam. The Defendant appeared on his own behalf and was also represented by William J. Eaker and Joel L. Kirkley, III. The Plaintiff was represented by Carolin Bakewell. Based upon the pleadings and the evidence, the Committee makes the following

FINDINGS OF FACT

1. 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, Joel L. Kirkley, Jr., was admitted to the North Carolina State Bar in 1965, 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, Code of Professional Responsibility and the Rules of Professional Conduct and the laws of the State of North Carolina.

3. During all of the periods referred to herein, Kirkley was engaged in the practice of law in Charlotte, North Carolina.

4. In 1979 or 1980, Kirkley undertook to represent Donnie R. Williams (hereafter, Williams).

5. In November, 1980, at Kirkley's request, Williams signed a deed transferring ownership of his home at 537 Moretz Avenue, Charlotte, N.C. to Kirkley to secure legal fees owed or to become due to Kirkley.

6. Following the conclusion of the legal matter, Williams failed to pay Kirkley's legal fee.

7. In July 1981, Kirkley recorded the deed.

8. Kirkley has failed and refused to deed the house back to Williams.

9. In August, 1981, Williams and his wife sold the house to Tyme Construction Co., despite the deed to Kirkley which had been recorded in

July, 1981.

10. Funds due to Mr. and Mrs. Williams from the Tyme closing have been held in escrow by the closing attorney, pending some resolution of the cloud on the title created by the deed from Williams to Kirkley.

11. In July, 1984, Kirkley agreed to represent Karen Newkirk respecting a domestic action.

12. At Kirkley's suggestion, Newkirk signed a deed to property Ms. Newkirk owned in Burke County to secure legal fees owed or to become due to Kirkley.

13. In August, 1984, Kirkley recorded the deed from Newkirk.

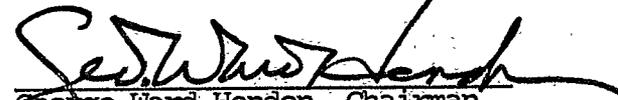
14. In 1987, Kirkley sold the house to a third party.

Based upon the foregoing findings of fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. By obtaining deeds rather than deeds of trust to secure fees owed or to become due to him by Williams and Ms. Newkirk, Kirkley engaged in conduct prejudicial to the administration of justice, in violation of DR 1-102(A)(5) and engaged in conduct which reflects adversely on his fitness to practice law, in violation of DR 1-102(A)(6).

This the 15 day of June, 1989.


George Ward Hendon, Chairman
For the Committee

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Plaintiff)
v.)
JOEL L. KIRKLEY, JR. ATTORNEY)
Defendant)

ORDER OF DISCIPLINE

This cause was heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, May 5, 1989. Based upon the evidence adduced at trial and the arguments of counsel, the Committee found the following:

1. The Defendant has not previously been the subject of professional discipline.

2. The Defendant's misconduct is aggravated by his experience as an attorney, the fact that there were multiple offenses and a pattern of misconduct and by the Defendant's refusal or inability to recognize his wrongdoing.

Based upon the Findings of Fact and Conclusions of Law entered in this cause and the foregoing considerations bearing upon the appropriate measure of discipline, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant shall be and is hereby suspended from the practice of law for a period of 12 months commencing 30 days after service of this order upon the Defendant. This suspension is stayed for one year upon the following conditions:

a. The Defendant shall violate no provision of the Rules of Professional Conduct during the one-year stay period.

b. The Defendant shall pay the costs of this proceeding.

c. On or before June 5, 1989, the Defendant shall draft and sign a quitclaim deed, releasing all interest in the property at 537 Moretz Avenue, Charlotte, North Carolina to Mr. Donnie R. Williams and Gwen Williams McManus.

d. On or before June 5, 1989, the Defendant shall deliver the quitclaim deed to David E. Byrum, Esquire upon condition that funds presently held in escrow by Mr. Byrum be distributed to those persons lawfully entitled thereto.

e. On or before June 5, 1989, the Defendant shall provide to the Office of Counsel, N.C. State Bar a copy of the closing statement and proof of distribution of the funds now held in escrow by Byrum to Williams and Ms. McManus.

f. Defendant shall execute a waiver of all claims he may have to legal fees from Donnie R. Williams and Karen Newkirk.

This the 15 day of June, 1989.


George Ward Hendon, Chairman
For the Committee

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