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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 21

THE NORTH CAROLINA STATE BAR, Plaintiff,	)	
v.	)	STIPULATED FINDINGS OF FACT AND CONCLUSIONS OF LAW
CLARA D. KING, ATTORNEY, Defendant.	)	

Pursuant to Section 14(A) of the Rules of Discipline and Disbarment of the North Carolina State Bar, the parties to this action have agreed to a settlement and waiver of a formal hearing in this matter. Both parties have agreed to a settlement upon the following stipulated findings of fact and conclusions of law. In consequence of this settlement and these stipulations, the hearing committee has entered an order of discipline to which the parties have consented. The North Carolina State Bar was represented by Fern E. Gunn and the Defendant, Clara D. King, was represented by Lacy M. Presnell III. Based upon the representations of the plaintiff and defendant, the hearing committee accepts and adopts these stipulations and makes the following Findings of Fact:

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 Star Bar promulgated thereunder.

2. The defendant, Clara D. King, was admitted to the North Carolina State Bar on March 19, 1983, 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 and Code of Professional Responsibility of the North Carolina Star Bar and the laws of the State of North Carolina.

3. Defendant did not begin practicing law until April 1, 1984 when she began working for another attorney.

4. On August 9, 1983, the defendant was asked by either her sister, Elizabeth Ann King or defendant's nephew, Jefferson Michael King Crowder, to prepare a codicil to defendant's father's will. The codicil, dated August 9, 1983, tended to abrogate a prior buy/sell agreement regarding Halifax Linen, Inc. The codicil prevented her father's business partner from receiving defendant's father's interest in Halifax Linen, Inc. and would enable Crowder to receive that interest, including the land and buildings that housed Halifax Linen, Inc.

5. On August 9, 1983 defendant's father suddenly became ill. At the time the defendant prepared the codicil for her father's execution, her father was seriously ill and he died unexpectedly in the hospital later that day.

6. With the two witnesses and her nephew Jefferson Michael King Crowder present, the defendant took her father's hand, placed a pen in it, and an "X" was made for his mark on the codicil.

7. Plaintiff has alleged that at the time defendant's father purportedly executed the codicil, defendant had doubts about whether her father had sufficient mental capacity to make the codicil. Defendant does not contest this allegation and further admits that she should have had doubts on August 9, 1983 about her father's mental capacity. On August 19, 1983 defendant made a full disclosure of all facts surrounding the execution of the codicil to the attorneys for her father's estate in which defendant said that she could not remember specifically what her thoughts were at the time the codicil was executed.

8. Prior to August 9, 1983, defendant's father never asked defendant to prepare the codicil.

9. The codicil in question conferred no pecuniary or other benefit to King, and, in fact, it was against her own personal financial interest.

10. In August, 1983 King was not an experienced attorney, having just been licensed to practice law, and she had not yet worked in any law office or previously prepared a will, codicil or any other legal document.

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11. King voluntarily made a full disclosure of all facts surrounding the preparation and execution of the codicil to the attorneys for the executor of her father's estate within ten days after her father's death. King also made herself available to counsel for further discussions and she provided all information requested concerning the case.

12. The issues surrounding the validity of the codicil in question were tried before a jury in August of 1984, with the Honorable Hamilton H. Hobgood presiding. Attorneys for Jeff Crowder called two witnesses to the codicil, who testified that they believed that Emmett King had affirmatively indicated that he agreed with the terms of the codicil, that he understood what was happening around him and that he knew he was executing a codicil. The executor of the estate countered with testimony from Emmett King's doctor, who testified that in his opinion Emmett King was not competent to sign the codicil. Although King was present, available and willing to testify as to the events surrounding the signing of the codicil, she was not called as a witness by any party. The jury apparently found the testimony of the lay witnesses more credible than the testimony of the doctor, and returned a verdict upholding the codicil. Judge Hobgood allowed the codicil to stand, and his decision was affirmed by the North Carolina Court of Appeals <u>In The Matter of</u>

the Will of Emmett James King, 80 N.C. App. 471, 342 S.E.2d 394, disc. rev. denied, 317 N.C. 704, 347 S.E.2d 43 (1986).

13. No other complaints or grievances have been filed against King with the North Carolina State Bar.

Based upon the foregoing Findings of Fact, the parties stipulate to the following Conclusions of Law and the hearing committee adopts them as its own:

CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission has subject matter jurisdiction of the cause and personal jurisdiction over the defendant.

2. The defendant has engaged in conduct constituting grounds for discipline under N. C. Gen. Stat. Section 84-28(A)(B) as violations of the Code of Professional Responsibility in that:

a) By preparing a codicil to her father's will when she had doubts or should have had doubts about his mental capacity to make and execute the codicil, the defendant has engaged in conduct that is prejudicial to the administration of justice and adversely reflects on her fitness to practice law in violation of DR1-102(A)(5) and (6).

3. Many mitigating factors exist in King's favor which reflect on her character and fitness to practice law in addition

to the fact that the codicil did not confer any financial benefit on King.

4. A public reprimand is appropriate discipline based upon defendant's conduct and the mitigating factors.

Stipulated to, this the 19th day of March, 1990.

CONSENTED TO:

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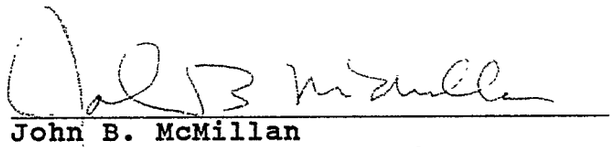
The foregoing stipulated Findings of Fact and Conclusions of Law are adopted and the hearing committee finds the facts and conclusions of law as stated. Furthermore, the committee finds misconduct.

Pursuant to Section 14(20) of the Discipline and Disbarment Procedures of the North Carolina State Bar, the hearing committee has authorized the chairman to sign on behalf of all members.

This the 17th day of March, 1990.



John B. McMillan
Chairman, Hearing Committee

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