

WAKE COUNTY
NORTH CAROLINA



1530

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
89 DHC 15

NORTH CAROLINA STATE BAR)
Plaintiff)

JUDGMENT OF CONTEMPT

v.)

REGINALD L. FRAZIER)
Defendant)

THIS MATTER came on to be heard and was heard before a duly appointed hearing committee of the North Carolina State Bar Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; Richard T. Gammon and Catharine Sefcik on Thursday, April 29, 1999. The Defendant, Reginald L. Frazier, was not present, but was represented throughout the proceeding by his appointed attorney, Eric Michaux of the 14th Judicial District Bar. The North Carolina State Bar was represented by Carolin Bakewell and A. Root Edmonson. Based upon the pleadings herein and the evidence produced at the hearing, the hearing committee makes the following:

FINDINGS OF FACT

1. On Nov. 6, 1989, the Defendant, Reginald L. Frazier, was disbarred from the practice of law in North Carolina by the Disciplinary Hearing Commission of the North Carolina State Bar in case number 89 DHC 15.
2. The Findings of Fact & Conclusions of Law and Order of Discipline disbarring Frazier in 89 DHC 15 were served upon Frazier by certified mail, return receipt requested, on Nov. 28, 1989.
3. Frazier gave notice of appeal from the Order of Discipline but failed to perfect the appeal. On June 21, 1990, Frazier's appeal was dismissed. Frazier was served with the order dismissing his appeal shortly after the order was entered.
4. Pursuant to 21 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disbarment Rules, the Order of Discipline in 89 DHC 15 became effective on Dec. 28, 1995.

5. Frazier has not been reinstated to the practice of law in the State of North Carolina.

6. On Dec. 4, 1998, the North Carolina State Bar filed a motion for order to show cause, requesting the Chair of the Disciplinary Hearing to issue an order commanding Frazier to appear and show cause why he should not be held in criminal contempt of the Commission for continuing to practice law in violation of the Commission's order of Nov. 6, 1989 disbaring Frazier.

7. On Dec. 30, 1998, the Chair of the Disciplinary Hearing Commission of the North Carolina State Bar issued an order commanding Frazier to appear and show cause why he should not be held in criminal contempt for continuing to engage in the practice of law in violation of the Commission's order of Nov. 6, 1989 disbaring Frazier as alleged in the Dec. 4, 1998 Motion for Order to Show Cause.

8. On Jan. 9, 1999, Frazier was served with the Motion for Order to Show Cause and the Dec. 30, 1998 Order to Show Cause by personal service by the Craven County Sheriff's Department.

9. On Jan. 13, 1999, the North Carolina State Bar filed an additional Motion for Order to Show Cause, requesting the Chair of the Disciplinary Hearing Commission to issue a second order commanding Frazier to appear and show cause why he should not be held in contempt of the Commission for continuing to practice law in violation of the Commission's order of Nov. 6, 1989 disbaring Frazier.

10. On Jan. 19, 1999, the Chair of the Disciplinary Hearing Commission issued an order commanding Frazier to appear and show cause respecting the matters set out in the Jan. 13, 1999 Motion for Order to Show Cause.

11. On Jan. 19, 1999, Frazier filed a motion in the cause, which requested, inter alia, that an attorney be appointed to represent him respecting the contempt charges.

12. On Jan. 20, 1999 Eric Michaux of the 14th Judicial District Bar was appointed to represent Frazier.

13. On Jan. 21, 1999, Frazier was served with the Jan. 13, 1999 Motion for Order to Show Cause and Jan. 19, 1999 Order to Show Cause by service of the motion and order upon Frazier's attorney of record.

14. On Feb. 15, 1999, pursuant to a motion filed by Michaux, the show cause hearing was continued, to permit Michaux time to prepare.

15. On March 1, 1999, the hearing regarding the Order to Show Cause was scheduled for April 29 - 30, 1999.

16. The March 1, 1999 order rescheduling the hearing also directed Frazier to appear at the April 29 – 30, 1999 hearing and advised him that if he failed to appear, the Commission would proceed to hear the matter in his absence.

17. The March 1, 1999 order was served upon Frazier by mailing a copy of the order to Michaux, who was then Frazier's attorney of record.

18. On Jan. 19, 1999, Frazier filed a petition with the U.S. District Court for the Eastern District of North Carolina, attempting to remove the State Bar contempt proceeding to federal court.

19. On Wednesday, April 28, 1999, Hon. Terrence Boyle entered an order remanding the State Bar contempt proceeding to the Disciplinary Hearing Commission.

20. On Tuesday, April 27, 1999, Hon. Abraham Penn Jones entered an ex parte order, temporarily restraining the State Bar from proceeding with the show cause hearing.

21. On Wednesday, April 28, 1999, the N.C. Court of Appeals entered an order staying Judge Jones' injunction.

22. On April 29, 1999, the N.C. Supreme Court denied Frazier's request for an order reversing the N.C. Court of Appeals order of April 28, 1999.

23. The hearing of this matter was convened as scheduled at 10 a.m. on Thursday, April 29, 1999. Frazier refused to appear but was represented by his appointed counsel, Eric Michaux.

24. At the hearing Michaux indicated that Frazier was aware of the hearing, but had directed Michaux to limit his participation in the proceeding to tendering argument in support of Frazier's motion to dismiss the proceeding on the basis of lack of subject matter jurisdiction.

25. Following argument from counsel for both parties regarding the motion to dismiss, the hearing committee unanimously denied the motion and directed both parties to proceed with the hearing. Michaux then requested that the hearing be continued, on the grounds that he was not prepared to proceed and on the grounds that his client had limited the scope of his representation.

26. The hearing committee advised Michaux that he had been appointed to represent Frazier respecting all aspects of the contempt proceeding and that no order had been entered permitting him to withdraw or limit his appearance as Frazier's attorney. The hearing committee further advised Michaux that Frazier's challenge to the Commission's subject matter jurisdiction could not be waived or prejudiced by

Michaux's participation in the trial and that Michaux's failure to participate in the hearing might waive other significant rights of his client.

27. Despite being afforded every opportunity to participate in the hearing, Michaux refused to cross examine any of the State Bar's witnesses, make objections to the State Bar's evidence or tender evidence or argument on behalf of his client.

28. At the time that Michaux moved to continue the hearing, a number of witnesses were under subpoena and present in the hearing chambers. These witnesses included two Assistant District Attorneys from the 3B Judicial District and several members of the public from New Bern and Wilson.

29. The Disciplinary Hearing Commission does not convene at regular intervals to hear cases and continuing the hearing would likely have resulted in a substantial delay in the resolution of the contempt charges, as well as inconvenience to the witnesses, attorneys for the parties and Hearing Committee members. Such a delay would also have been detrimental to the interest of the public.

30. In October 1998, Frazier approached Gwen Wright at the Craven County Sheriff's Department where she had gone shortly after the arrest of her son, Saleen Gaynor Wright on charges of damage to public property.

31. Frazier falsely told Ms. Wright that he had his law license and that he could represent Saleen Wright respecting the charges against him. He agreed to handle Saleen Wright's case for a total fee of \$750.

32. Thereafter, Ms. Wright paid Frazier \$200 of the fee which he had demanded for his legal services.

33. On Nov. 3, 1998, Frazier appeared with Ms. Wright and Saleen Wright in Craven County District Court.

34. Frazier told Ms. Wright and Saleen Wright that they could go home and they left the courtroom.

35. While in Craven County District Court on Nov. 3, 1998, Frazier filled out and signed a Motion to Continue form for Saleen Wright.

36. Frazier signed the Motion to Continue and indicated on the form that he was the attorney for Saleen Wright and that he was requesting the continuance because "counsel has not had time to prepare."

37. After filling out the form, Frazier asked Joy Strickland, an Assistant District Attorney, to sign the Motion to Continue form.

38. When he made this request, Frazier was standing in an area of the courtroom reserved for practicing lawyers. Frazier indicated to Strickland that he was acting on Wright's behalf. Frazier did not reveal that he was disbarred and was not permitted to practice law in North Carolina.

39. At the same time that he asked Strickland to agree to continue Saleen Wright's case, Frazier also asked Strickland to continue a criminal case against Lonice R. Gardner, whose case was also on the Craven County District Court docket for Nov. 3, 1998.

40. Frazier filled out a Motion to Continue form for Gardner, in which he indicated that he represented Gardner and that a continuance was needed because "counsel has not had time to prepare."

41. Strickland agreed to the continuances, initialed the forms for Wright and Gardner and gave them to Hunt Johnson, the other Assistant District Attorney on duty in Craven County District court that day for processing.

42. Frazier never told Strickland or Johnson that he was a disbarred attorney and at all times on Nov. 3, 1998 held himself out as licensed to practice law. Neither Strickland nor Johnson would have agreed to continue the cases of Saleen Wright and Lonice Gardner if they had known that Frazier was disbarred.

43. Frazier has never refunded any portion of the \$200 fee which he received from Ms. Gwen Wright, despite her requests for a return of these funds.

44. In the summer of 1998, Frazier contacted Shirley C. Barnes, who is a distant relative of Frazier's, concerning the estate of her father, Willie Barnes, and concerning charges then pending against Ms. Barnes' son, Dominique Barnes.

45. Frazier falsely represented to Ms. Barnes that he was licensed to practice law and that he could assist her with the estate matter and her son's criminal case. As to Dominique Barnes' case, Frazier indicated that he would file some motions to "get things moving."

46. On or before Sept. 11, 1998, Frazier prepared a petition for writ of habeas corpus on behalf of Dominique Barnes, which Frazier caused to be filed in Wilson County Superior Court on Sept. 11, 1998. Frazier signed Ms. Barnes' name to the petition without her knowledge and consent.

47. Thereafter, Frazier prepared a motion to quash, motion to suppress and second motion for discovery on Dominique Barnes' behalf and caused all three documents to be filed in Barnes' case. Frazier signed the motion to quash, motion to suppress and discovery motion as Dominique Barnes' attorney and thereby held himself out as a licensed attorney.

48. On or prior to Nov. 3, 1998, Frazier drafted a complaint on Ms. Barnes' behalf, which alleged various wrongdoing by First Union National Bank and other named defendants in connection with the handling of the estate of Willie Barnes.

49. On Nov. 3, 1998, Frazier filed the complaint which he had drafted on Ms. Barnes' behalf in Craven County Superior Court, which was assigned file number 98 CVS 1695.

50. In the complaint which he filed on Ms. Barnes' behalf in Barnes v. First Union National Bank et al., 98 CVS 1695 Frazier held himself out as an attorney entitled to practice law in North Carolina.

51. On or about Nov. 3, 1998, Frazier filled out and filed or caused to be filed two summonses and a civil action cover sheet in the matter of Barnes v. First Union National Bank et al. Frazier held himself out to be an attorney on the summonses and civil action sheet.

52. In January or February 1999, Frazier dismissed the complaint which he had filed in Barnes v. First Union National Bank et al. without Ms. Barnes' knowledge and consent.

53. On or about Nov. 18, 1998, Frazier drafted and caused to be filed in Craven County Superior Court a motion in the case of State v. Jamara Washington.

54. In the motion which he filed in the Washington case, Frazier indicated that he was entering an appearance as attorney of record in the case and signed the motion as "R. L. Frazier Esq.," thereby holding himself out as an attorney at law.

55. In the motion which he filed in the Washington case, Frazier asked the court to continue further proceedings in the matter.

56. In February 1991, the North Carolina State Bar initiated a contempt proceeding in Craven County Superior Court to hold Frazier in criminal contempt of the N.C. State Bar by continuing to practice law in violation of the Nov. 6, 1989 order disbaring Frazier.

57. Following a nine-day hearing in April 1991, Hon. Edward Washington found Frazier guilty of indirect criminal contempt by continuing to practice law in violation of the Nov. 6, 1989 disbarment order. The 1991 contempt order was based upon Frazier's activities regarding clients named William Barnhill, Maude Barner and Mr. & Mrs. George Francis, none of which were involved in the contempt proceeding herein. Judge Washington sentenced Frazier to 30 days in jail, which sentence Frazier served in the summer of 1991. Frazier never perfected an appeal from his 1991 contempt conviction.

58. On Dec. 19 – 20, 1994, a hearing committee of the Disciplinary Hearing Commission found Frazier guilty of 16 counts of criminal contempt by continuing to practice law in violation of the 1989 disbarment order.

59. On Aug. 8, 1996, following a hearing before Hon. Russell Duke in Pitt County Superior Court, Frazier was found guilty of criminal contempt by continuing to engage in the practice of law in violation of the Nov. 6, 1989 disbarment order.

60. Frazier was present at the contempt hearing in Pitt County Superior Court in August 1996. He failed to perfect an appeal from the judgment of contempt entered in that case.

61. On numerous occasions since 1989, Frazier has filed motions and pleadings before the Disciplinary Hearing Commission, the state trial and appellate courts and the federal courts, attacking or seeking to overturn the 1989 disbarment order. None of these motions and proceedings have been successful and Frazier has never been reinstated to the practice of law in North Carolina. Frazier was served with the orders denying his motions and requests for relief at the time the orders were entered.

62. As recently as Oct. 28, 1998 Frazier acknowledged that he was aware that the 1989 disbarment order was valid and binding upon him, by filing a civil action in federal court, seeking a stay of the disbarment order in the matter of Frazier v. Law Firm of Stevens et al, file number 4:98CV156-HC. The federal court dismissed Frazier's complaint in that case and refused to grant him any of the relief requested.

63. Frazier had no good faith belief that he could legitimately practice law during the time he engaged in the acts alleged in the Motion for Order to Show Cause in that:

- a. Frazier filed numerous pleadings and petitions challenging the order of disbarment, none of which was ever granted or upheld by the Disciplinary Hearing Commission or any court.
- b. In the complaint which Frazier drafted for Shirley Barnes, he recited that he was appearing and signing her name pursuant to a power of attorney. This statement would not been necessary if he legitimately believed that he could engage in the practice of law.
- c. A number of pleadings filed by Frazier, including the complaint in the case styled Frazier v. Law Firm of Stevens et al, referred to in paragraph 35 above, show that Frazier acknowledged the validity of the 1989 disbarment order.

64. Frazier is harming the public by leading prospective clients to believe that he could represent him, by preventing or delaying those clients in seeking other, licensed

counsel to protect their rights and by taking fees from those clients for his "representation."

65. Frazier has demonstrated a persistent, willful intent to continue practicing law in violation of the Nov. 6, 1989 disbarment order.

Based upon the foregoing Findings of Fact, the hearing committee hereby enters the following:

CONCLUSIONS OF LAW

1. The Disciplinary Hearing Commission of the North Carolina State Bar has jurisdiction over the person of the Defendant, Reginald L. Frazier, and over the subject matter of this proceeding.
2. The Disciplinary Hearing Commission has authority to hold persons, firms and corporations in contempt as provided in Chapter 5A of the North Carolina General Statutes, pursuant to N.C. Gen. Stat. § 84-28.1(b1). The Commission's authority to hold persons in contempt is not limited to licensed attorneys.
3. Pursuant to N.C. Gen. Stat. § 84-28.1(b1), the Disciplinary Hearing Commission has authority to hold Frazier in indirect criminal contempt for continuing to practice law in violation of the Nov. 6, 1989 disbarment order.
4. The Nov. 6, 1989 order disbarred Frazier from the practice of law in North Carolina.
5. Frazier has never been reinstated to the practice of law in North Carolina.
6. Frazier had proper and adequate notice of the hearing in this matter and was notified that the trial would proceed if he elected not to appear.
7. Frazier knowingly and voluntarily refused to appear at the hearing herein on April 29, 1999 and knowingly and voluntarily waived his right to be present at and participate in the criminal contempt hearing.
8. Frazier voluntarily refused to appear at the hearing herein in an attempt to delay and or thwart the hearing process.
9. The interest of the public and the interest of justice required that the Hearing Committee deny Frazier's request to continue the show cause hearing and to proceed with the hearing in his absence.
10. The public interest is threatened and damaged by Frazier's persistent conduct in practicing law in violation of the Nov. 6, 1989 disbarment order.

11. Frazier did not have a good faith belief and there was no reasonable basis for a good faith belief that he could engage in the practice of law at the time of the acts which the State Bar alleged constituted criminal contempt of this Commission and of which this Commission has found him guilty beyond a reasonable doubt.

12. The right to practice law cannot be conferred upon a disbarred attorney by a power of attorney.

13. The North Carolina State Bar has proven beyond a reasonable doubt that Frazier willfully engaged in the unauthorized practice of law regarding Saleen Gaynor Wright, as alleged in the First Count of the State Bar's Motion to Show Cause dated Dec. 4, 1998.

14. The North Carolina State Bar has proven beyond a reasonable doubt that Frazier willfully engaged in the unauthorized practice of law regarding Lonice Gardner as alleged in the Second Count of the State Bar's Motion to Show Cause dated Dec. 4, 1998.

15. The North Carolina State Bar has proven beyond a reasonable doubt that Frazier willfully engaged in the unauthorized practice of law regarding Shirley Barnes, as alleged in the Third Count of the State Bar's Motion to Show Cause dated Dec. 4, 1998.

16. The North Carolina State Bar has proven beyond a reasonable doubt that Frazier willfully engaged in the unauthorized practice of law regarding Dominique Barnes as alleged in the Fourth Count of the State Bar's Motion to Show Cause dated Dec. 4, 1998.

17. The North Carolina State Bar has proven beyond a reasonable doubt that Frazier has willfully engaged in the unauthorized practice of law regarding Jamara Washington as alleged in the State Bar's Motion to Show Cause dated Jan. 13, 1999.

18. Each of Frazier's acts of continuing to practice law in violation of the Nov. 6, 1989 disbarment order constitute willful indirect criminal contempt of the Disciplinary Hearing Commission pursuant to N.C. Gen. Stat. § 5A-11(3).

19. Pursuant to N.C. Gen. Stat. §§ 5A-12 and 84-28.1(b1), Frazier is subject to imprisonment for up to 30 days and is subject to a fine of \$500 for each count of indirect criminal contempt of which he has been found guilty.

20. Eric Michaux, Esq. should be released from any further responsibility for representing Frazier regarding this matter.

Based upon the Findings of Fact and Conclusions of Law, the Disciplinary Hearing Commission enters the following:

ORDER

1. As to Count One of the State Bar's Motion to Show Cause dated Dec. 4, 1998, Frazier shall be and hereby is sentenced to 30 consecutive days in jail.

2. As to Count Two of the State Bar's Motion to Show Cause dated Dec. 4, 1998, Frazier shall be and hereby is sentenced to 30 consecutive days in jail, to begin at the expiration of the 30 day jail sentence referred to in paragraph 1 above.

3. As to Count Three of the State Bar's Motion to Show Cause dated Dec. 4, 1998, Frazier shall be and hereby is sentenced to 30 consecutive days in jail, to begin at the conclusion of the 30 day jail sentence referred to in paragraph 2 above.

4. As to Count Four of the State Bar's Motion to Show Cause dated Dec. 4, 1998, Frazier shall be and hereby is sentenced to 30 consecutive days in jail, to begin at the conclusion of the 30 day jail sentence referred to in paragraph 3 above.

5. As to the State Bar's Motion to Show Cause dated Jan. 13, 1998, Frazier shall be and hereby is sentenced to 30 consecutive dates in jail, to begin at the conclusion of the 30 day jail sentence referred to in paragraph 4 above.

6. The jail sentences for each of the five counts of criminal contempts of which the Commission finds Frazier guilty shall be served consecutively and not concurrently and shall be served day for day.

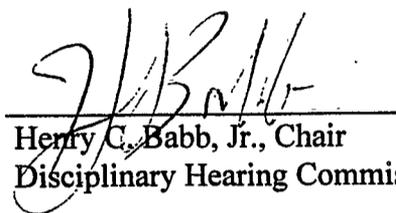
7. Frazier shall be and hereby is fined \$500 for each of the five counts of indirect criminal contempt of which he has been found guilty for a total fine of \$2,500, to be paid by Jan. 1, 2000.

8. Eric Michaux is hereby released from any further responsibility regarding Frazier in this matter as of the date of this order.

The State Bar orally notified Michaux at the conclusion of the hearing on April 29, 1999 that Frazier has the right to seek a de novo hearing in Wake County Superior Court.

Michaux gave oral notice of appeal at the conclusion of the hearing on behalf of his client. The Hearing Committee advised Michaux that written notice of appeal should be filed within the time allowed by law following entry of the written judgment of contempt.

This the 2 day of June, 1999.


Henry C. Babb, Jr., Chair
Disciplinary Hearing Commission