

NORTH CAROLINA :
WAKE COUNTY :

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE NORTH CAROLINA STATE BAR
88 BCR 2

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff)
)
vs.)
)
RICHARD MAURICE DAILEY, JR.,)
)
Defendant)

FINDINGS OF FACT
AND RECOMMENDATION TO
STATE BAR COUNCIL

THIS CAUSE coming on to be heard before a hearing committee of the Disciplinary Hearing Commission of the North Carolina State Bar composed of John B. McMillan, Chairman, L. P. Hornthal, Jr. and Henry H. Sherwood at a scheduled hearing held on January 27, 1989 in the Council Chambers of The North Carolina State Bar, 208 Fayetteville Street Mall, Raleigh, North Carolina with The North Carolina State Bar being represented by A. Root Edmonson and the petitioner being present and represented by his attorney James L. Swisher; and the committee having heard the evidence, makes the following findings of fact which were established to the satisfaction of the hearing committee by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. Petitioner was admitted to The North Carolina State Bar on September 7, 1965, and thereafter until July, 1977 practiced law in North Carolina.

2. On July 29, 1976, petitioner was convicted of receiving stolen property in violation of North Carolina General Statutes §14-72(B) and (C), a felony. From his conviction petitioner appealed to the North Carolina Court of Appeals which affirmed his conviction on July 6, 1977. The Supreme Court of North Carolina denied a petition for discretionary review on August 1, 1977 and

on August 8, 1977, petitioner began serving the sentence imposed by the Guilford County Superior Court.

3. Petitioner was released on parole in February, 1978, and received early discharge from parole and restoration of citizenship.

4. On February 8, 1978, petitioner was served with a copy of the complaint for disciplinary action.

5. Although the petitioner, through counsel, filed an answer to the complaint of The North Carolina State Bar, neither he nor his attorney appeared at the hearing and by order dated April 28, 1978, the petitioner was disbarred.

6. Following petitioner's admission to The North Carolina State Bar on September 7, 1965, he initially was a law clerk for Justice R. Hunt Parker for one year; he was then Assistant United States Attorney for the Middle District of North Carolina for a period of approximately three years and was thereafter an Assistant District Attorney with the Guilford County District Attorney's Office for approximately two years. From January 1, 1972 through July of 1977, petitioner was in private practice in Guilford County, North Carolina.

7. Petitioner served approximately four and one-half months of his sentence. This time was spent at a work release facility in Alamance County and petitioner was employed by Bill Price Buick.

8. Following petitioner's release from the work release center in February of 1978, he continued to work for Bill Price Buick as the assistant to the president for a period of approximately ten months. Thereafter he worked in Greensboro as a car salesman for Black Cadillac/Oldsobile for approximately thirteen months and thereafter worked as a wholesaler's representative in Burlington for approximately one year.

9. Petitioner's parents lived in New Hanover County, North Carolina and in 1981 petitioner's father died. Following the death of his father, petitioner

moved to Wilmington and lived and looked after his mother who was an invalid until her death in 1986.

10. While in Wilmington, petitioner worked with his family's commercial fishing business.

11. Petitioner was separated from his wife in approximately 1976, is now divorced and has two children, a son age twenty-one and a daughter age eighteen. Petitioner has and continues to provide support for his children, has had meaningful contact with them and in fact they have spent summers with him.

12. Petitioner has had a problem with alcohol for some time, has one driving while under the influence conviction which was the result of a guilty plea in March of 1987. Petitioner has been a member of Alcoholics Anonymous since June of 1987 and has been sober since that time.

13. Following the death of his mother, petitioner administered her estate and at the end of 1986 returned to Greensboro where he has been since that time.

14. Petitioner is currently employed in sales with a Greensboro plumbing supply company and has been so employed for the past fourteen to fifteen months.

15. Petitioner presented the live testimony of ten witnesses who were supportive of his petition for reinstatement. Those testifying included a District Court judge, four attorneys from Guilford County, three of petitioner's former neighbors and two of petitioner's employers.

16. Petitioner presented letters supportive of his petition from twenty additional members of the Guilford County Bar, two additional judges and one former neighbor who was unable to attend the hearing.

17. Among the attorneys supporting the petitioner for reinstatement were members of large Guilford County firms, smaller firms and sole practitioners. Petitioner received support from former elected officials and former officers of

the Guilford County Bar. There was considerable diversity in age among petitioner's supporters which included but was not limited to his contemporaries.

18. It was apparent from the large number of Guilford County law firms which were represented in supporting petitioner that there was wide-spread knowledge among the Guilford County Bar that petitioner was seeking reinstatement.

19. The North Carolina State Bar offered no evidence from any member of the Bar or any member of the public who opposed the petition for reinstatement.

20. From all of the evidence presented, it was apparent that the conduct for which petitioner was disbarred was an aberration and not indicative of his moral character.

21. As a prosecutor and later prosecuting attorney, petitioner had the respect of the attorneys with and against whom he litigated cases. This respect was founded upon petitioner's knowledge of the law, his diligence and his relationship with opposing attorneys.

22. From all of the evidence presented by petitioner's former colleagues, employers and neighbors, this Hearing Committee finds that petitioner possesses the moral qualifications required for admission to practice law in North Carolina.

23. The Hearing Committee further finds that petitioner's resuming the practice of law within North Carolina will be neither detrimental to the integrity and standing of the Bar, nor the administration of justice, nor subversive of the public interest.

24. Petitioner's citizenship has been restored.

25. Prior to his disbarment, petitioner had properly notified his clients of his difficulties and wound down his practice and in all respects complied

with Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar.

26. Petitioner has complied with all applicable orders of the Disciplinary Hearing Commission and the Council. Petitioner has complied with all orders and judgments of the Court relating to the matters resulting in his disbarment.

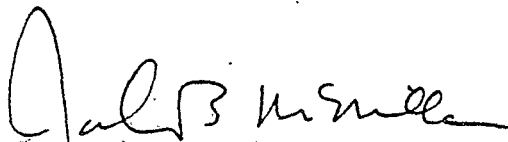
27. Petitioner did not engage in the practice of law during the period of disbarment.

28. Petitioner has not engaged in any conduct during the period of disbarment constituting grounds for discipline under North Carolina General Statutes §84-28(B). Petitioner is knowledgeable and understanding concerning the Rules of Professional Conduct which constitutes the current Code of Professional Responsibility and will be prepared to submit to an examination of this knowledge as a part of the written bar examination administered by the North Carolina Board of Law Examiners.

WHEREFORE, the Hearing Committee of the Disciplinary Hearing Commission recommends to the State Bar Council that the license of petitioner be restored upon the condition that petitioner attain a passing grade on the regularly scheduled written bar examination administered by the North Carolina Board of Law Examiners.

Signed by the undersigned Chairman with the full accord and consent of the other members of the Hearing Committee.

This the 9th day of February, 1989.



John B. McMillan, Chairman