

2429
WAKE COUNTY
NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
88 DHC 13

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

D. STEPHEN JONES, ATTORNEY,
Defendant

ORDER MODIFYING ORDER
OF DISCIPLINE

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Harold Mitchell, Chair; Robert C. Bryan and Emily Turner, on Friday, June 26, 1992 pursuant to the Defendant's motion to modify the order of discipline entered herein on May 23, 1989. The Defendant was represented by John N. Fountain and the Plaintiff was represented by Carolin Bakewell. Based upon the pleadings, evidence and argument of counsel, the Committee makes the following:

FINDINGS OF FACT

1. On May 23, 1989, a Disciplinary Hearing Committee of the North Carolina State Bar entered Findings of Fact and Conclusions of Law and an Order of Discipline in the captioned matter.

2. Pursuant to the May 23, 1989 Order of Discipline, the Hearing Committee suspended the law license of the Defendant, D. Stephen Jones (hereafter, Jones), for a period of twelve months, which suspension was stayed for three years on the condition, inter alia, that Jones make certain payments to two former clients.

3. The May 23, 1989 Order of Discipline required Jones to pay \$1,000 per month to Annie Wright Rackley no later than the 5th day of each month during the three-year stay period. The order further required Jones to pay to Ms. Rackley the remaining amount due and owing under a promissory note signed by Jones in January 1984, including principal and all interest accrued pursuant to the note by the end of the three-year stay period.

4. The May 23, 1989 Order of Discipline also required Jones to pay interest to the estate of Mildred F. Powell at the rate set out in a promissory note signed by Jones on Dec. 20, 1985 as modified by an agreement dated Feb. 12, 1988, no later than the fifth day of each month during the three-year stay period. Additionally, the order required Jones to pay all remaining principal and interest owed to the Powell estate pursuant to the

promissory note no later than the end of the three-year stay period.

5. Jones made each of the monthly payments as required by the May 23, 1989 Order of Discipline.

6. Jones has not been the subject of discipline since the entry of the May 23, 1989 Order of Discipline.

7. On June 1, 1992, prior to the date on which the final payments under the May 23, 1989 order were due, Jones filed a motion to modify the May 13, 1989 Order of Discipline.

8. As of June 4, 1992, Jones owed a total of \$100,450 to Annie Wright Rackley pursuant to the January 1984 promissory note.

9. As of June 26, 1992, Jones owed a total of \$30,024.90 to the Powell estate pursuant to the Dec. 20, 1985 promissory note as modified by the Feb. 12, 1988 agreement.

10. On March 30, 1988, Jones signed a confession of judgment in favor of Ms. Rackley in the amount of \$135,000 pursuant to a civil action filed by Ms. Rackley based in part upon the January 1984 promissory note. As of June 4, 1992, Jones owed Ms. Rackley a total of \$144,750 pursuant to the confession of judgment.

11. Jones does not have the financial resources to pay the \$100,450 due Ms. Rackley or the \$30,024.90 due the Powell estate pursuant to the May 23, 1989 Order of Discipline.

12. At the time of the entry of the 1989 Order of Discipline, Jones reasonably believed that he could repay the notes to Ms. Rackley and to the Powell estate as ordered, based upon the income from his law practice and proceeds of his interest in the Bay Tree Lake real estate development in Bladen County.

13. Following entry of the May 23, 1989 Order of Discipline, circumstances occurred which could not reasonably have been foreseen by Jones and which were beyond his control and which prevented him from realizing any significant proceeds from the Bay Tree Lake development.

14. The Resolution Trust Corporation (hereafter, RTC), has taken over the assets of the holder of the Bay Tree Lake corporate note.

15. The Resolution Trust Corporation has tentatively agreed to restructure the Bay Tree Lake note by reducing the \$2 million balance to \$1.2 million, and by financing \$1 million of the debt for six years. The assets which secure the note now held by RTC will be acquired by a newly created corporation known as Lake Creek Corporation.

16. Jones anticipates that he will have a 25% interest in

Lake Creek Corporation and anticipates further that the workout with RTC will provide clear title and permit the sale of lots at Bay Tree Lake and/or the sale of the property to another developer.

17. Jones has agreed to pay Annie Wright Rackley \$2,000 per month for each of the 36 months following the date of this order.

18. Jones has also agreed to pay Ms. Rackley the following lump sums: 1) \$25,000 within 12 months of the date of this order; 2) \$25,000 within 24 months of the date of this order and 3) \$25,000 within 36 months of this order.

19. The payments proposed by Jones to Ms. Rackley set out in paragraphs 17 and 18 would exceed the amount necessary to amortize the amount owed under the January 1984 promissory note. The payments proposed by Jones would fall short of liquidating the amount owed under the 1988 confession of judgment by \$20,069.72.

20. Jones has agreed to make monthly interest payments to the estate of Mildred F. Powell at the rate set out in the Dec. 20, 1985 promissory note, as modified in the June 23, 1992 modification agreement for each the 36 months following the date of this order.

21. Jones has agreed to pay the remaining principal owed to the Powell estate pursuant to the Dec. 20, 1985 promissory note as modified, within 36 months of the date of this order.

22. Representatives of the Powell estate and of Ms. Rackley represented to the Hearing Committee that they did not object to Jones' motion to extend the stayed suspension period and make additional payments to them as set out in paragraphs 17 - 21.

23. If the suspension of Jones' law license is activated, it is unlikely that Jones would be able to continue to make payments to Ms. Rackley and to the estate of Mildred F. Powell.

CONCLUSIONS OF LAW

1. In light of the unique facts of this case, it would be in the best interest of the public and the Bar to continue the 12-month stayed suspension of Jones' law license for another 36 months, to permit Jones to complete restitution to Ms. Rackley and to the estate of Mildred F. Powell.

2. Jones has demonstrated by clear, cogent and convincing evidence that the May 23, 1989 order should be modified to suspend Jones' law license for a period of 12 months, stayed for 36 months from the date of this order on the following conditions:

a. That Jones pay \$2,000 each month to the Clerk of Sampson County Superior Court for Annie Wright Rackley, or her estate, for the 36 months following the date of

this order. Such payments shall be paid no later than the 10th day of each month.

b. That Jones pay to the Clerk of Sampson County Superior Court for Annie Wright Rackley or her estate, the following lump sum payments: 1) \$25,000 within 12 months of the date of this order; 2) \$25,000 within 24 months of the date of this order; 3) \$25,000 within 36 months of the date of this order.

c. That Jones pay the outstanding interest on the note as modified, to the estate of Mildred F. Powell each of the 36 months following the date of this order. The interest payments shall be paid by the 10th day of each month.

d. That Jones pay the principal amount of \$30,024.90 to the estate of Mildred F. Powell within 36 months of the date of this order.

e. That Jones assign his interest in Lake Creek Corporation to a trustee to be named by Jones and approved by the Secretary of the N.C. State Bar within 30 days of receiving such interest. Jones' assigned interest in Lake Creek Corporation will be held in trust for the benefit of the estate of Mildred F. Powell and Annie Wright Rackley or Ms. Rackley's estate as their interests may appear, during the term of this order.

f. If Jones realizes any dividends or proceeds from the sale of any part of his interest in Lake Creek Corporation within 36 months from the date of this order, the net proceeds after provision for income tax shall be paid to Ms. Rackley or her estate and to the estate of Mildred F. Powell in proportion to the amounts owed by Jones on the notes to Ms. Rackley and the Powell estate. The trustee is authorized to join in the sale of stock.

g. Upon payment of all amounts owed to the Powell estate and Ms. Rackley or her estate pursuant to this order or upon termination of this order, Jones' remaining interest in the Lake Creek Corporation shall be transferred to Jones by the trustee.

h. Jones shall submit written certification to the N.C. State Bar demonstrating compliance with the terms of this order once each quarter, beginning Oct. 1, 1992 and continuing throughout the three-year stay period.

i. That Jones violate no provisions of the Rules of Professional Conduct or the laws of this State during the extended 36 month stay period.

j. Jones shall pay the costs of this proceeding.

3. A hearing shall be set before the Disciplinary Hearing Commission of the N.C. State Bar to show cause why Jones' license should not be suspended, upon evidence that Jones is in default of any of the conditions set out in paragraph 1 herein for a period of 30 days or more.

4. The order herein shall not be deemed to prejudice the right of the estate of Mildred F. Powell to proceed against Jones pursuant to the promissory note as modified by the Feb. 1988 and June 23, 1992 modification agreements.

5. Modification of conditions of stayed orders of suspension are not lightly granted by the Disciplinary Hearing Commission or this Committee. In granting Jones' motion to modify the May 23, 1989 Order of Discipline, the Hearing Committee does not intend to create precedent whereby other Hearing Committees will be bound to grant similar motions except upon the merits of the case then under consideration.

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The law license of the Defendant, D. Stephen Jones, is hereby suspended for 12 months from the date of the order herein, provided that the suspension is hereby stayed for 36 months from the date of the order herein on the following conditions:

a. That Jones pay \$2,000 each month to the Clerk of Sampson County Superior Court for Annie Wright Rackley, or her estate, for the 36 months following the date of this order. Such payments shall be paid no later than the 10th day of each month.

b. That Jones pay to the Clerk of Sampson County Superior Court for Annie Wright Rackley or her estate, the following lump sum payments: 1) \$25,000 within 12 months of the date of this order; 2) \$25,000 within 24 months of the date of this order; 3) \$25,000 within 36 months of the date of this order.

c. That Jones pay the outstanding interest on the note as modified, to the estate of Mildred F. Powell each of the 36 months following the date of this order. The interest payments shall be paid by the 10th day of each month.

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interests may appear, during the term of this order.

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3. The order herein shall not be deemed to prejudice the right of the estate of Mildred F. Powell to proceed against Jones pursuant to the promissory note as modified by the Feb. 1988 and June 23, 1992 modification agreements.

This the 20th day of ~~June~~^{July}, 1992.

Signed by the Chair of the Hearing Committee with the consent of all Committee members and the parties herein.


W. Harold Mitchell, Chair
Disciplinary Hearing Committee