

4
FEB 1994
FILED
DHC

123 23

vs.

FINDINGS OF FACT
and
CONCLUSIONS OF LAW

FINDINGS OF FACT

4. Jacob Steinwandt, a resident of Hope Mills, NC, died intestate on October 12, 1990 survived by two daughters. One daughter, Cherlyn Kelly (hereinafter Kelly), was a resident of

80200

Chicago, IL. The other daughter, Robin Joy Carson (hereinafter Carson), was stationed with her husband in Germany at the time of her father's death.

5. Kelly came to North Carolina immediately after her father's death. She contracted with a realtor who lived across the street from her father, Marguerite Curry, to sell her father's house.

6. On or about October 13, 1990, Kelly retained Blake to administer her father's estate and to close the sale of his house. Kelly signed documents renouncing her right to administer the estate in favor of Blake. Blake advised Kelly that he would apply to the clerk of court for letters of administration.

7. On October 22, 1990, Blake wrote to Carson at an address in Ludwigsburg, Germany advising her of her father's death, advising her of her father's assets, advising her that he would handle the tax and estate matters relating to her father, advising her that his fee and the costs of administering the estate would total \$1,500.00, and further advising that the estate needed to be handled expeditiously.

8. On November 7, 1990, Blake wrote Carson another letter to an APO address which also enclosed a copy of his October 22, 1990 letter.

9. Blake took no action to open an estate in Cumberland County in the name of Jacob Steinwandt.

10. On April 17, 1991, Blake closed the sale of Jacob Steinwandt's former home in Hope Mills, NC to Deborah T. Ellis. Prior to the closing, Blake had prepared separate deeds for Kelly and Carson to execute and return to him.

11. Blake did not send a copy of the closing statement to Kelly or Carson after the closing.

12. Blake deposited the \$16,458.75 received at the closing into his "escrow account" at Southern National Bank in Hope Mills, NC, account number 041-536151 (hereinafter escrow account).

13. Blake did not promptly send the \$2,369.40 shown on the closing statement as sale proceeds to either Kelly or Carson after the closing.

14. Among the checks written from his escrow account on April 17, 1991 in making disbursements of the closing funds, Blake wrote checks to himself to pay amounts he had listed on the closing statement. Blake wrote check number 12699 in the sum of \$1,500.00 designated as being for "Estate-Steinwandt." He wrote check number 12700 in the sum of \$260.00 designated as being for "Ellis Closing / Atty Fees." Blake deposited these checks into

his office account at First Citizens Bank in Hope Mills, NC, account number 0341-006316.

15. Blake had indicated in his October 22, 1990 letter to Carson, a copy of which he also had sent to Kelly, that the \$1,500.00 charge for administering the estate included the costs of administration.

16. Blake performed no legal work for the estate which would entitle him to counsel fees pursuant to N.C.G.S. Sec. 28A-23-4. Blake never made application to the Cumberland County Clerk of Superior Court for payment of any commission or fee.

17. At the time that Blake took the \$1,500.00 which he designated on the closing statement as a fee for administering the estate, he knew he had not taken any action to open and administer an estate and knew he was not yet entitled to a fee for doing so.

18. Since Blake had not performed the services for which the \$1,500.00 payment was intended, that sum should have remained in his escrow account. Blake's having taken the \$1,500.00 in advance of performing the services was not a dishonest act since he intended to perform the services at the time he took the fee.

19. On June 10, 1991, Kelly wrote to Blake requesting, among other things, a copy of the closing statement showing Blake's closing fee and a copy of all bills and fees paid with respect to her father's estate.

20. Blake did not respond to Kelly's June 10, 1991 letter.

21. On July 8, 1991, Kelly wrote another letter to Blake seeking a response to her previous letter, a copy of which she enclosed.

22. Blake did not respond to Kelly's July 8, 1991 letter.

23. On November 14, 1991, Kelly again wrote to Blake requesting information and documents relating to the closing and the estate.

24. Blake did not respond to Kelly's November 14, 1991 letter.

25. On November 18, 1991, Blake received a Letter of Notice from the Chairman of the Grievance Committee pursuant to Rule 12(B) and (C) of Article IX of the Rules and Regulations of the North Carolina State Bar.

26. By letter dated January 12, 1992, Blake responded to the Letter of Notice. His response indicated that he did not intend to represent either Kelly or Carson and that he had relayed that information to both parties. When he made that statement he had

directed his secretary to relay that information to Kelly and thought that it had been done.

27. Blake's January 12, 1992 response to the Letter of Notice did not reveal that he had paid himself, out of the proceeds of the sale of the house, the \$1,500.00 he had listed as a fee for administering the estate. The fact that he had taken the fee was a necessary fact for the Grievance Committee to consider in deciding whether he had undertaken to administer the estate.

28. Blake did not intend to deceive the Grievance Committee by omitting that fact. Blake had forgotten that he had paid himself the fee when his response to the grievance was made.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

The conduct of the defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Sec. 84-28(b)(2) in that the defendant's conduct violates the N. C. Rules of Professional Conduct as follows:

- (a) By taking the \$1,500.00 from the proceeds of the sale of the Steinwandt house, which he held in a fiduciary capacity, without having performed the services for which the funds were intended, Blake failed to preserve fiduciary funds separately from his own funds in violation of Rule 10.1(A).
- (b) By neglecting to open an estate in Cumberland County in the name of Jacob Steinwandt, Blake failed to act with reasonable diligence and promptness in representing a client in violation of Rule 6(B)(3); intentionally failed to seek the lawful objectives of his client through reasonably available means in violation of Rule 7.1(A)(1); and prejudiced or damaged his client during the course of the professional relationship in violation of Rule 7.1(A)(3).
- (c) By failing to answer Kelly's requests for information about the sale of her father's house and about his estate, Blake failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of Rule 6(B)(1).
- (d) No other violations of the Rules of Professional Conduct alleged in the complaint were proven by clear, cogent and convincing evidence.

Signed by the undersigned Chair with the full knowledge and
consent of the other members of the hearing committee this the
2nd day of February, 1994.

Maureen D. Murray
Maureen D. Murray, Chair
Hearing Committee

00207

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 DHC 7

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

ALAN JAY BLAKE, Attorney,
Defendant

ORDER OF
DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law of even date herewith; and further based upon the evidence presented in the sanctions portion of this hearing; and further based upon the arguments and cases presented by counsel; the hearing committee, composed of Maureen D. Murray, Chair, Rebecca W. Blackmore, and James Lee Burney, finds the following:

FACTORS IN AGGRAVATION

1. A prior disciplinary offense;
2. A pattern of misconduct;
3. Multiple offenses;
4. The issuance of two letters of warning within three years immediately preceeding the filing of the complaint in this matter.

FACTORS IN MITIGATION

1. The hearing committee finds that the defendant probably suffers from personal or emotional problems.
2. The defendant made restitution of the fee paid to him for doing the estate work.
3. The defendant had a cooperative attitude toward the proceedings.

BASED UPON all of the factors listed above, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The defendant, Alan Jay Blake, is suspended from the practice of law in North Carolina for a period of five years.

2. As much as one year of this suspension may be stayed upon defendant filing a petition for reinstatement averring that the following conditions have been met by the defendant:

(a) Defendant has successfully completed the Law Practice Assistance assessment and training program.

(b) Defendant has completed the minimum number of hours of CLE required by the Board of Continuing Legal Education for each of the years he has been actively suspended.

3. During the period any of the suspension is stayed, the defendant shall submit to audit of his attorney trust account. It shall not be necessary for the North Carolina State Bar to show cause or apply for an order or issue any subpoena prior to conducting any such audit. In addition, the defendant shall retain a certified public accountant to provide extensive training, monitoring and reporting concerning any trust account maintained by him or his office. The CPA shall propose procedures for the proper handling of clients' funds which must be submitted to the North Carolina State Bar within the first month of his reinstatement.

4. During the period any of the suspension is stayed, the defendant shall violate no laws of the State of North Carolina and shall violate no provisions of the Rules of Professional Conduct.

5. Within a year prior to his filing any petition for reinstatement, whether that petition seeks a stay of a portion of the suspension or is filed after the suspension period has terminated, the defendant must have attended at least six sessions with a psychologist or, at the recommendation of the psychologist, a psychiatrist. The psychologist (or, at the psychologist's recommendation, the psychiatrist) must prepare a report, a copy of which must be attached to the petition, attesting to the defendant's mental and emotional fitness to resume the practice of law.

5. The defendant shall comply with all of the provisions of Sec. 24 of Article IX of the Rules and Regulations of the North Carolina State Bar.

6. The defendant is taxed with the costs of this hearing as assessed by the Secretary.

7. Since the defendant has already wound down his law practice, this order will be effective from the date of the hearing in this matter.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the hearing committee this

the 22nd day of February, 1994.

Maureen D. Murray
Maureen D. Murray
Chair