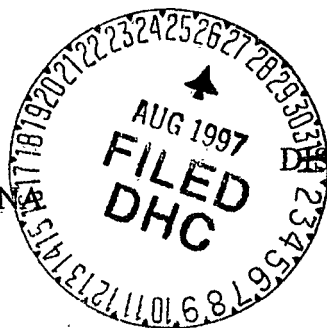


WAKE COUNTY  
NORTH CAROLINA



16951

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
97 DHC 10

THE NORTH CAROLINA STATE BAR  
Plaintiff

v.

VALERIE DAYE, ATTORNEY  
Defendant

)  
)  
) FINDINGS OF FACT AND  
) CONCLUSIONS OF LAW  
) AND ORDER TRANSFERRING  
) DEFENDANT TO DISABILITY  
) INACTIVE STATUS  
)  
)

THIS MATTER came on to heard and was heard by a duly assigned hearing committee of the Disciplinary Hearing Commission composed of Vernon Russell, Chair; Michael Bonfoey and Robert Frantz on Friday, Aug. 1, 1997. The Plaintiff was represented by Carolin Bakewell. The Defendant was represented by Johnny S. Gaskins. Based upon the pleadings and the evidence presented at the hearing, the hearing committee hereby enters the following:

#### 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 State Bar promulgated thereunder.

2. The Defendant, Valerie Daye, (hereafter, Daye) was admitted to the North Carolina State Bar in 1989, 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 Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the relevant periods referred to herein, Daye was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Raleigh, Wake County, North Carolina.

4. Daye was treated at the UNC Hospital in 1981 and 1994 and received psychiatric treatment from Dr. Jean Spaulding, a Durham psychiatrist, from 1988 through 1992.

5. Daye was involuntarily committed to Dorothea Dix Hospital in 1991, 1993 and 1994.

6. Daye has been diagnosed as suffering from diabetes and bipolar disorder.

7. In August 1989, at the time of her application for admission to the bar of this state, Daye presented a letter to the N.C. Board of Law Examiners from Dr. Spaulding. Dr. Spaulding indicated in the letter that Daye could perform the duties required of a lawyer provided that she continued taking certain medication. Dr. Spaulding further indicated in the letter that it would be necessary for Daye to continue to take the medication for an indefinite period of time.

8. There is no evidence before the committee that Daye is currently taking any medication for any condition.

9. On May 27, 1997, the Chair of the hearing committee herein entered an order requiring Daye to seek a psychiatric evaluation and to provide Plaintiff's attorney with the records and reports produced as a result of the evaluation. Daye initially consented to seek the evaluation and also agreed to provide copies of the results of the evaluation to Plaintiff's attorney.

10. After entry of the May 27, 1997 order, Daye was evaluated by a Raleigh psychiatrist, Dr. James Ballard.

11. Upon receiving Dr. Ballard's evaluation, Daye refused to produce copies of his report to Plaintiff's attorney, despite her initial agreement to do so and despite the order of Chair of the hearing committee.

12. On May 7, 1997, Plaintiff served Daye with the Plaintiff's First Request for Production of Documents.

13. On June 27, 1997, Daye filed responses to the Plaintiff's First Request for Production of Documents, in which she objected to Plaintiff's request for copies of the medical records relating to her treatments at Dorothea Dix and UNC Hospitals and her treatment by Dr. Spaulding.

14. On July 15, 1997, following a motion and a hearing, the Chair of the Disciplinary Hearing Commission entered an order commanding Daye to produce the medical records from Dr. Spaulding, Dr. Ballard, Dorothea Dix Hospital and UNC Hospital to the N.C. State Bar no later than 5 p.m. on July 22, 1997.

15. Daye failed to produce the medical records, in violation of the order of the Chair of the Disciplinary Hearing Commission.

16. On July 22, 1997, the Plaintiff filed a motion requesting the hearing committee to enter an order imposing sanctions against Daye pursuant to N.C. Civ. Pro. R. 37(b) for her failure to comply with the July 15 discovery order.

17. On July 25, 1997, following a telephone conference call in which all parties participated, the hearing committee entered an order which provided that if Daye did not produce the required medical records to Plaintiff's counsel by 5 p.m. on July 28, that the committee would strike Daye's answer and refuse to permit her to present evidence in opposition to the State Bar's complaint.

18. Daye did not produce the medical records as ordered by the chair of the hearing committee. Accordingly, Daye's answer was stricken and she was not permitted to introduce evidence at the hearing herein.

19. Prior to January 1997, Daye rented office space from Lamm Realty Co. in Twin Forks Office Park in Raleigh, N.C.

20. During a conversation in May 1996, Daye told Cindy Thornton, the property manager for Lamm Realty Co., that Daye's office had been entered by unknown individuals who had tampered with her mail and client files. Daye also claimed that someone had used her telephone to call in a bomb threat to the Wake County Courthouse. Daye further suggested that a relative had been injured by a bomb and that the perpetrators must have obtained the relative's address by intercepting Daye's mail. Daye stated that these incidents had been reported to the SBI and the FBI. During the encounter, Daye appeared very angry and agitated.

21. On a number of occasions between October and December 1996, Thornton observed Daye sitting alone in her automobile outside her office at Twin Forks Office Park, talking to herself or sitting with her eyes closed for long periods of time.

22. In September 1996, Lamm Realty notified Daye that it would not renew Daye's office lease when it expired at the end of December 1996.

23. Daye did not vacate her office at the end of the lease term, however.

24. In January 1997, an encounter occurred between Daye, Thornton and Phillip Lamm of Lamm Realty. Daye stated during this meeting that she had been so depressed that she could not move out of her office. Daye also accused Thornton of watching her and of entering her office for inappropriate purposes. Throughout the meeting, Daye appeared very angry and agitated.

25. When Daye did not vacate her office at the end of the lease period, Lamm Realty instituted a summary ejectment action against Daye in Wake County small claims court.

26. A hearing was held in January 1997 at which Michael Harrell, an attorney with Manning, Fulton & Skinner, appeared on behalf of Lamm Realty in the summary ejectment case. Daye also appeared at the hearing but was not represented by counsel.

27. Prior to the hearing of the case, Harrell observed Daye talking to herself in the courtroom. She appeared to be mouthing words to herself with her head down and her eyes closed. Periodically, she would jerk erect and open her eyes for a moment before resuming talking to herself. This behavior continued for 30 minutes or more.

28. Harrell's presentation of his case lasted about 5 minutes. Daye did not ask his witness any questions on cross examination.

29. Daye, after being duly sworn, addressed the court for 15 to 20 minutes during the defense phase of the summary ejectment action. In her presentation, she claimed that employees of Lamm Realty had invaded her office, tampered with client files and had used her telephone to make threatening and harassing telephone calls to others. She also claimed that employees of Lamm Realty were responsible for the murder of a relative. Daye presented no evidence other than her own statements to support these allegations. Her defense included no evidence or argument dealing with the summary ejectment action itself, nor did Daye explain how the alleged misconduct of Lamm Realty's employees was relevant to the summary ejectment proceeding.

30. Daye appeared very agitated during her presentation to the court. Following the hearing, she gave oral notice of appeal and left the courtroom in an angry manner. She refused to speak with Harrell, who approached her for that purpose after the magistrate had ruled.

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

#### CONCLUSIONS OF LAW

1. The Defendant, Valerie J. Daye, suffers from a mental or physical condition which substantially impairs her judgment, performance, or competence as an attorney.

WHEREFORE, the hearing committee enters the following ORDER

1. The Defendant, Valerie J. Daye, is hereby transferred to disability inactive status.

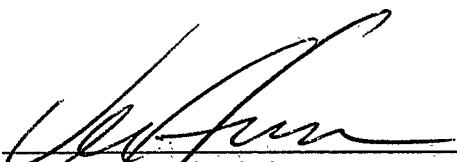
2. The Defendant shall pay the costs of this proceeding.

3. Prior to filing a petition for reinstatement of her license to practice law in this state, Daye shall produce to the N.C. State Bar copies of all medical records relating to her treatment by Dr. Jean Spaulding, her treatment and commitments at Dorothea Dix Hospital in 1991, 1993 and 1994, records relating to her treatment at the UNC Hospital in 1981 and 1994 and records relating to her 1997 evaluation by Dr. James Ballard.

4. This order shall take effect 30 days from service of the written order upon the Defendant, Valerie J. Daye.

This the 26<sup>th</sup> day of August, 1997.

Signed by the hearing committee chair with the knowledge and consent of the other hearing committee members.

  
Vernon Russell, Chair  
Disciplinary Hearing Committee