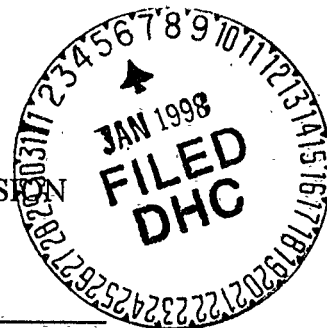


NORTH CAROLINA

WAKE COUNTY

6833

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
97 BSR 3



IN RE REINSTATEMENT PETITION) FINDINGS OF FACT, CONCLUSIONS
OF GERALD E. RUSH) OF LAW AND ORDER
)

This cause was heard on November 14, 1997 before a hearing committee of the Disciplinary Hearing Commission composed of Franklin E. Martin, chairman; Joseph G. Maddrey, and Anthony E. Foriest. The petitioner, Gerald E. Rush, was represented by Eric C. Michaux. The respondent, the North Carolina State Bar, was represented by Fern Gunn Simeon. Based upon the pleadings herein and the evidence admitted at trial, the hearing committee makes the following:

FINDINGS OF FACT

1. The petitioner, Gerald E. Rush (hereafter referred to as "petitioner") was admitted to the North Carolina State Bar on October 6, 1975.
2. Petitioner was suspended from the practice of law for three years by an order of discipline dated January 24, 1997 in the case of The North Carolina State Bar v. Gerald E. Rush, 94 DHC 1. The order of discipline provided that after six months of active suspension, petitioner could apply for a stay of the balance of the suspension upon filing a written petition and demonstrating compliance with several conditions. These conditions included the conditions for reinstatement set forth in Rule .0125(b)(3) of the Discipline and Disability Rules of the North Carolina State Bar (hereafter referred to as "State Bar Rules").
3. Petitioner was served with the order of discipline in 94 DHC 1 on January 31, 1997. The effective date of the order of discipline was March 3, 1997 and the petitioner had to wind down his practice no later than March 3, 1997.
4. Petitioner filed a petition for reinstatement on August 6, 1997 in which he verified that he had complied with all the conditions of this order of discipline, including those conditions set forth in Rule .0125(b)(3) of the State Bar Rules.
5. The respondent, the North Carolina State Bar (hereafter referred to as "respondent"), is a body duly organized under the laws of North Carolina and is the proper party to respond to the petitioner's petition under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and Rule .0125(b)(4) of the State Bar Rules.

6. Respondent filed a response to the petitioner's reinstatement petition on August 27, 1997 and the response was served upon the petitioner. Respondent's petition alleged that petitioner had not complied with all of the conditions for the stay of his remaining suspension and requested that this matter be referred to the chair of the Disciplinary Hearing Commission so that a hearing could be scheduled to determine if petitioner had satisfied the conditions of the order of discipline and all of the provisions of Rule .0125(b)(3), and whether additional sanctions should be imposed.

7. Henry C. Babb Jr., chair of the Disciplinary Hearing Commission signed an order appointing a committee and notice of hearing was given to all parties on or about September 5, 1997.

8. The order of discipline in petitioner's disciplinary case required him to submit his law license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of the order upon the petitioner.

9. Petitioner did not turn in his law license to the Secretary of the North Carolina State Bar within 30 days following service of the order of discipline upon him. As of the date of the hearing in petitioner's reinstatement case, he had not turned in his law license to the North Carolina State Bar.

10. Petitioner's former secretary, Carolyn Nance, testified that she sent petitioner's membership card to the North Carolina State Bar when she mailed petitioner's affidavit dated March 12, 1997 to the North Carolina State Bar. Dottie Miani, deputy clerk of the Disciplinary Hearing Commission, testified that she never received petitioner's law license or membership card.

11. Petitioner testified that he sent letters to his clients with pending matters notifying them of his suspension from the practice of law. Petitioner did not keep copies of the letter he sent to his clients, but kept a couple of form letters he used to notify them..

12. Petitioner began representing Edgar Ware (hereafter referred to as "Ware") in a personal injury case on August 21, 1996.

13. Petitioner continued to represent Ware in his personal injury case after the effective date of petitioner's suspension from the practice of law.

14. After March 3, 1997, petitioner telephoned Sandra Slade, the insurance adjuster handling Ware's case. On several occasions after March 3, 1997, petitioner left messages for Sandra Slade (hereafter referred to as "Slade") on her voice mail and he inquired about the status of Ware's personal injury claim.

15. On April 11, 1997, petitioner delivered Ware's medical bills and records to Slade at the Allstate Insurance Company in Charlotte, North Carolina.

16. On April 30, 1997, petitioner left a message on Slade's voice mail at Allstate and asked about the status of Ware's claim. Petitioner said that his client's family was eager to settle Ware's case.

17. On May 5, 1997, Slade made an offer to petitioner to settle Ware's claim. Petitioner told Slade that the offer was too low and petitioner did not accept the offer.

18. Petitioner testified that he had authorization from Attorney Vernon Russell (hereafter referred to as "Russell"), to whom Ware's case had been referred, to handle Ware's case during the period of petitioner's suspension.

19. Russell testified that he did not give petitioner authority to deal with the Ware case in any way, after petitioner's law license was suspended.

20. On May 5, 1997, Slade was informed of the status of petitioner's law license by talking to a co-worker, Carolyn Lomax. This was the first time that Slade had heard that petitioner's law license was suspended. Slade confirmed that petitioner was suspended from the practice of law by contacting the North Carolina State Bar.

21. During the period of petitioner's suspension, petitioner never told Slade that his law license was suspended.

BASED UPON THE FOREGOING FINDINGS OF FACT, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the person of the petitioner, Gerald E. Rush, and the subject matter.

2. The petitioner has the burden of proof to show that he has complied with all conditions of the order of discipline, including Rule .0125(b)(3) in order to be eligible for reinstatement to the practice of law.

3. Rule .0125(b)(3)(A) requires compliance with Rule .0124 of the State Bar Rules.

4. The petitioner has failed to comply with the conditions set forth in Rule .0125(b)(3) in that:

a. Petitioner did not withdraw from the Edgar Ware case before the effective date of the suspension as required by Rule .0124(b).

b. Petitioner did not keep and maintain records of the various steps taken under Rule .0124 so that, upon any subsequent proceeding, proof of compliance with this section and with the suspension order would be available as required by Rule .0124(e).

c. Petitioner did not comply with all applicable orders of the Disciplinary Hearing Commission in that he did not submit his law license to the Secretary of the North Carolina State Bar in a timely manner as required by Rule .0125(b)(3)(B).

d. Petitioner failed to abstain from the unauthorized practice of law during the period of suspension in that he continued to represent Ware by trying to settle his personal injury claim with the insurance adjuster and this conduct violated Rule .0125(b)(3)(C).

e. Petitioner failed to abstain from conduct during the period of suspension constituting grounds for discipline under N.C.G.S. 84-24(b) in that he engaged in conduct involving dishonesty in violation of Rule 1.2(c) of the Rules of Professional Conduct when he did not tell the insurance adjuster that he was suspended from the practice of law and could not represent Ware in his personal injury claim after March 3, 1997.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, the hearing committee enters the following:

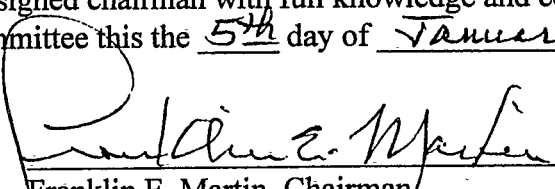
ORDER

1. The petitioner's law license is not reinstated. The three-year suspension as ordered by the Disciplinary Hearing Commission in the order of discipline dated January 24, 1997 is not stayed and continues to be in full force and effect, subject to the conditions as stated in that order of discipline.

2. After July 1, 1998, petitioner will be eligible to apply for a stay of the balance of the suspension of his law license upon filing a written petition and demonstrating compliance with the conditions set out in the order of discipline dated January 24, 1997 and the provisions of this order.

3. Petitioner is ordered to pay the costs associated with this proceeding, including those expenses attributable to the investigation and processing of the petition pursuant to Rule .0125(b)(8), the costs of his deposition taken by the respondent and all travel expenses of the respondent's witnesses.

Signed by the undersigned chairman with full knowledge and consent of the other members of the hearing committee this the 5th day of January, 1998.


Franklin E. Martin, Chairman
Hearing Committee