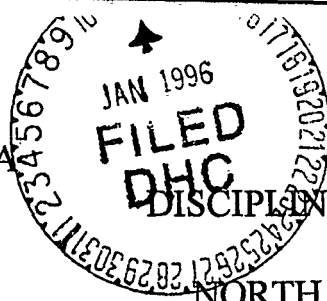


NORTH CAROLINA

WAKE COUNTY



BEFORE THE

DISCIPLINARY HEARING COMMISSION

OF THE

NORTH CAROLINA STATE BAR

94 DHC 25

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THE NORTH CAROLINA STATE BAR,)	FINDINGS OF FACT
Plaintiff)	AND CONCLUSIONS
)	OF LAW AND ORDER
vs.)	TRANSFERRING
)	ATTORNEY TO
CURTIS J. RODGERS, ATTORNEY)	DISABILITY
Defendant)	INACTIVE STATUS
)	

THIS MATTER was heard December 6, 1995 by a duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar composed of Henry C. Babb, Jr., Chair; Richard L. Doughton and B. Stephen Huntley, pursuant to Section .0118 of the North Carolina State Bar Discipline and Disability Rules. Harriet P. Tharrington represented the Plaintiff, the North Carolina State Bar. The Defendant, Curtis J. Rodgers did not appear and was not represented by counsel. Based upon the pleadings filed herein and the evidence presented at the hearing, the Hearing Committee makes 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, Curtis J. Rodgers, (hereafter, Rodgers) was admitted to the North Carolina State Bar in 1984 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

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Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all the pertinent periods referred to herein, Rodgers was actively engaged in the practice of law in the State of North Carolina and maintained a law practice in Williamston, Plymouth or Durham, North Carolina.

4. On December 19, 1994, the N. C. State Bar filed a complaint alleging that Rodgers had violated the Rules of Professional Conduct.

5. Rodgers was personally served with the summons and complaint by a member of the Washington County Sheriff's office on December 21, 1994.

6. Rodgers did not file an answer or other pleading in the disciplinary matter.

7. Pursuant to Sections .0110(4) and .0114(f) of the North Carolina State Bar Discipline and Disability Rules, L. Thomas Lunsford, Secretary of the North Carolina State Bar, entered Rodgers' default on January 24, 1995.

8. Rodgers was served with Notice of Hearing indicating that the Plaintiff's Motion for Order of Discipline would come on for hearing on March 3, 1995 at the time previously scheduled for the trial on the disciplinary matter.

9. On or about March 2, 1995, the Plaintiff received information that Rodgers was hospitalized in the Durham Veterans' Administration Medical Center (hereafter, DVAMC) for psychiatric treatment and his discharge date had not been determined.

10. On or about April 3, 1995, Maureen D. Murray, the chair of the Disciplinary Hearing Commission, entered an order staying disciplinary proceeding and initiating disability proceeding (hereafter, order).

11. On or about May 3, 1995, Plaintiff sent a copy of the order to the Durham County Sheriff to be served on Rodgers at 511-A Downing Street, Durham, NC 27705 which was Rodgers' last known address. Also enclosed for the sheriff to serve was a Notice to Show Cause regarding Rodgers' failure to pay the North Carolina State Bar membership fees for 1994.

12. On or about May 9, 1995, Deputy M. Burroughs of the Durham County Sheriff's Department served copies of the documents on Carolyn Moore, Rodgers' sister, at the Downing Street address. Both the order and the Notice to Show Cause were attached to the officer's Affidavit of Service; nevertheless, Burrough's Affidavit of Service did not specify that he had served the order. Consequently, Plaintiff continued efforts to serve Rodgers with a copy of the order initiating the disability proceeding.

13. On or about May 30, 1995, Ms. Murray signed an Amended Order Staying Disciplinary Proceeding and Initiating Disability Proceeding because the deadline for a response had passed under the original Order.

14. Rodgers was served with the order by publication because after due diligence he could not be served within the State in the manner prescribed in Rule 4(j) of the Rules of Civil Procedure.

15. Rodgers' response to the order was due no later than August 7, 1995. Rodgers did not respond to the order.

16. Henry C. Babb, Jr., who was appointed chair of the Disciplinary Hearing Commission July 1, 1995, scheduled a hearing for December 6, 1995 to determine if Rodgers is disabled within the meaning of 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0103(18) of the Discipline and Disbarment Rules of the N.C. State Bar and should therefore be transferred to disability inactive status with the North Carolina State Bar.

17. Prior to March 1993, Rodgers formed a partnership with Milton and Regina Moore of Williamston.

18. During his partnership with the Moores, Rodgers was absent from the office for increasing periods of time without notifying the Moores or his clients that he was not going to be in the office.

19. During his partnership with the Moores, Rodgers did not diligently and promptly handle his client's cases. As a consequence of Rodgers' failure to handle his clients' cases, Regina and Milton Moore dissolved their partnership with Rodgers in the fall of 1993.

20. Terry and Frank Harrison filed a grievance against Rodgers in April 1994 with the State Bar alleging that Rodgers had failed to earn the \$5,000 they had paid Rodgers and Regina Moore to represent Frank Harrison in a federal criminal case.

21. Rodgers failed to respond to the following inquiries by the State Bar concerning the Harrison grievance: (1) letter of notice served on him July 12, 1994; (2) subpoena issued August 23, 1994; (3) subpoena issued September 14, 1994; and (4) complaint served December 21, 1994.

22. Raymond E. Wilkins, Sr., who paid Rodgers \$500.00 to represent his son in a criminal matter, filed a grievance in July 1994 alleging that Rodgers had failed to attend his son's probable cause hearing scheduled for April 26, 1994, had failed to communicate with his son, and had acted improperly by charging him \$300.00 for a trip to Edenton after being notified that he was discharged from representing Wilkin's son.

23. Rodgers failed to respond to the State Bar's letter of notice concerning Wilkins' grievance, a subpoena served October 7, 1994, and the State Bar's complaint served December 21, 1994.

24. Rodgers was hospitalized at the DVAMC for depression from September 13, 1994 until September 18, 1994.

25. Rodgers insisted on being discharged from DVAMC after just a few days. His treating physician discharged him on September 18, 1995 with a seven day supply of Paxil, an anti-depressant drug, and recommended that Rodgers consult with a private psychiatrist for treatment of depression.

26. Rodgers did not seek private psychiatric care as recommended by his psychiatrist at the DVAMC and he stopped taking the anti-depressant at or soon after his discharge from the DVAMC in September 1994.

27. Rodgers was readmitted to the DVAMC on February 25, 1995 for a major depressive episode. He had recently attempted suicide.

28. In February 1995, Dr. Lawrence A. Dunn, Rodgers' treating physician at the DVAMC diagnosed Rodgers with a substance abuse problem including alcohol dependence.

29. Between October 18, 1994 and February 25, 1995, Rodgers abused a variety of substances including cocaine, alcohol and amphetamines.

30. Dr. Dunn discharged Rodgers on or about March 29, 1995 with the recommendation that Rodgers continue outpatient treatment.

31. Dr. Dunn recommended that Rodgers participate in outpatient psychotherapy and medication management for at least six months after Rodgers' symptoms of depression disappear.

32. Rodgers initially followed Dr. Dunn's recommendations for outpatient treatment and medication management; however, after late May 1995, Rodgers ceased keeping scheduled appointments for follow up treatment.

33. In Dr. Dunn's expert opinion, Rodgers is incapable of practicing law because he has failed to follow Dunn's recommended treatment for depression.

34. Rodgers worked as an associate for C. C. "Buddy" Malone in Durham, NC after he was discharged from the DVAMC in March, 1995.

35. On or about May 8, 1995, law enforcement officers arrested Rodgers pursuant to Judge William L. Osteen's order holding Rodgers in contempt for Rodgers' failure to appear at a Show Cause Hearing inquiring

why Rodgers had not filed a certificate of service after being requested to do so by the clerk. Rodgers spent about thirty-six (36) hours in jail.

36. On or about May 10, 1995, Judge Osteen held a hearing on the matter.

37. Rodgers testified that he was suffering from depression and had been unable to attend to even the simplest task.

38. As a result of the May 10, 1995 hearing, Judge Osteen removed Rodgers' name from the list of lawyers who may practice in North Carolina's Middle District of the United States District Court.

39. Shortly after the May 10, 1995 hearing, Rodgers failed to report to Malone's office for work on a Monday morning. He did not come into the office all week nor he did call Malone to tell him that he was not coming into work. On Friday of that week, Rodgers came to Malone's office to get his check for the week. Malone refused and Rodgers has not worked for Malone since that time.

40. Sometime in June 1995, Rodgers moved out of the Durham apartment where he was living with his brother and sister.

41. Rodgers left Durham in June 1995 and went to Tennessee. He has had little or no contact with family and friends in North Carolina.

42. After being served with a Notice to Show Cause in Re Membership Fees on May 9, 1995, Rodgers' license to practice law in North Carolina was suspended on July 21, 1995 for his failure to pay his mandatory membership fees and the annual client security fund assessment for 1994.

43. Rodgers suffers from episodic depression which substantially impairs his performance or competence as an attorney.

44. Rodgers' sister and his former law partner, Regina Moore, testified that based on their experience Rodgers is currently incapable of practicing law.

CONCLUSIONS OF LAW

1. Rodgers is disabled within the meaning of 27 N.C. Admin. Code Chapter 1, Subchapter B, Rule .0103(18) of the Discipline and Disbarment Rules of the N.C. State Bar in that Rodgers suffers from a mental or physical condition which substantially impairs Rodgers' professional judgment, performance or competence.

2. Rodgers should be transferred to disability inactive status until such time as he submits himself for a physical and psychiatric examination by a physician or physicians and demonstrates that he is no longer disabled.

WHEREFORE, the Hearing Committee hereby ORDERS:

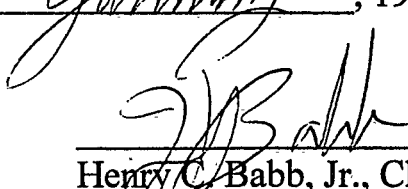
1. The defendant, Curtis J. Rodgers, is hereby TRANSFERRED TO DISABILITY INACTIVE STATUS until such time as Rodgers submits himself for a physical and psychiatric examination by a physician or psychiatrist and demonstrates by clear, cogent and convincing evidence that the is no longer disabled.

2. Rodgers shall comply with the wind down provisions of Section .0124 of the Discipline and Disability Rules.

3. Rodgers shall pay the costs of this disability proceeding.

Signed by the chairman with the consent of the other Hearing Committee members.

This the 5th day of January, 1996.


Henry C. Babb, Jr., Chairman
Disciplinary Hearing Commission