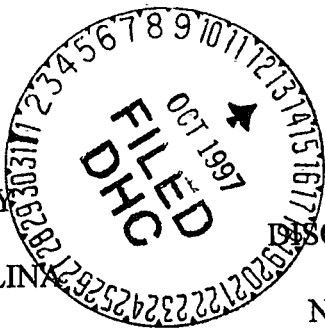


WAKE COUNTY
NORTH CAROLINA



7614

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
97 DHC 20

THE NORTH CAROLINA STATE BAR
PLAINTIFF

v.

AUBREY BLANCHARD, ATTORNEY
DEFENDANT

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

This cause came on to be heard on the 3rd day of October, 1997 before a hearing committee of the Disciplinary Hearing Commission composed of R. B. Smith, Jr., Chair; Kenneth M. Smith and A. James Early III. The defendant Aubrey G. Blanchard, Jr. appeared on his own behalf. The plaintiff was represented by Carolin Bakewell. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.

2. The defendant was admitted to the North Carolina State Bar in 1977 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.

3. During all times relevant hereto the defendant maintained a law office in Burlington, N.C.

4. The N.C. State Bar filed its complaint herein on July 14, 1997.

5. The defendant was personally served with the summons and complaint herein by the Alamance County Sheriff's Dept. on July 17, 1997.

6. On July 31, 1997, prior to filing of any responsive pleading by the defendant, the N.C. State Bar amended its complaint.

7. The defendant was personally served with the amended complaint by the Alamance County Sheriff's Dept. on Aug. 4, 1997.

8. On Aug. 12, 1997, the Clerk of the Disciplinary Hearing Commission mailed a notice to the parties, including the defendant, and the hearing committee, setting the hearing herein for Oct. 3, 1997. The Clerk mailed an additional notice regarding the Oct. 3, 1997 hearing date to the parties and the hearing committee on Aug. 25, 1997.

9. The defendant's answer was due no later than Sept. 4, 1997.

10. The defendant did not file any answer or responsive pleading herein.

11. On Sept. 9, 1997, the Secretary of the N.C. State Bar entered the defendant's default herein.

12. On Sept. 9, 1997, the N.C. State Bar filed its motion for order of discipline and notice of hearing. The notice of hearing specified that the hearing on the motion for order of discipline would be held on Oct. 3, 1997 in the State Bar building.

13. The defendant was properly served with the summons and complaint herein and was duly notified of the hearing date.

14. On Sept. 30, 1997, the Chair of the hearing committee herein, for good cause shown, entered an order changing the location of the hearing to the Alamance County Jail.

15. On Oct. 1, 1997, the defendant was personally served with the notice changing the location of the hearing to the Alamance County Jail by Edward White, the State Bar's investigator.

16. The State Bar's allegation that the defendant is disabled within the meaning of 27 N.C.A.C. Chapter 1, Subchapter B, § .0103(18) is deemed admitted owing to the defendant's failure to timely answer the complaint and the subsequent entry of the defendant's default herein.

17. On or about July 28, 1997, the State Bar served upon the defendant its First Request for Admissions. The State Bar's Request for Admission number 1 required the defendant to admit or deny that he was "currently suffering from a mental or physical condition which significantly impairs your professional judgment, performance, or competence as an attorney."

18. The defendant did not file any response to the State Bar's Requests for Admissions, including Request for Admission number 1, and they are therefore deemed admitted.

19. The defendant has been convicted of driving while under the influence of alcohol on at least two occasions since 1995. Prior to June 1997, the defendant was placed on probation as a result of the second conviction of driving while under the influence. Thereafter, the defendant was charged with failing to comply with the terms of his probation and was placed on intensive probation.

20. Pursuant to the terms of the intensive probation, the defendant was required to meet with his probation officer, Steve Kearns, at least twice a week, to receive treatment for alcoholism, avoid using alcohol and comply with other terms and conditions.

21. The defendant did not comply with the requirements of the alcohol treatment program in which he was placed as a result of his intensive probation and was expelled from the program after June 1997.

22. The defendant appeared in court in Alamance County on two occasions between June and September 1997 while under the influence of alcohol. On the second occasion, which occurred in September 1997, the defendant was held in contempt of court as a result of appearing in court while intoxicated. The defendant was still serving his jail sentence for contempt on the date of this hearing.

23. Edward Kosmos, a former client of the defendant's, observed the defendant to be under the influence of alcohol on one occasion in July 1997 when Kosmos went to the defendant's home to request the defendant to return a fee to Kosmos.

24. During the summer of 1997, Kosmos attempted to contact the defendant at his law office on a number of occasions. The defendant never answered his telephone on these occasions and on each occasion when Kosmos visited the office, the door was locked and the office appeared to be vacant.

25. During the hearing of this matter, the defendant stated that he did not oppose entry of an order transferring him to disability inactive status and indicated that he had agreed to the entry of such an order as long ago as May 1997.

26. The defendant has not paid his 1997 mandatory State Bar dues and has a deficit of 20.25 hours of continuing legal education. He also owes penalties and late compliance fees of \$225 to the board of continuing legal education and has failed to file his 1996 annual continuing legal education report form.

27. The defendant suffers from a mental or physical condition which interferes with his professional judgment and competence.

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

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant and the subject matter.
2. The defendant has admitted that he is disabled within the meaning of 21 N.C. Admin. Code Chapter 1, Subchapter B § .0103(18) of the N.C. State Bar Discipline & Disability Rules by virtue of his failure to deny the State Bar's Request for Admissions and by virtue of the entry of his default by the Secretary of the N.C. State Bar following the defendant's failure to file a timely answer to the State Bar's complaint.
3. The defendant is disabled within the meaning of 21 N.C. Admin. Code Chapter 1, Subchapter B, § .0103(18) of the N.C. State Bar Discipline & Disability Rules and is not competent to practice law in North Carolina.

Based upon the findings of fact and conclusions of law, the hearing committee hereby enters the following:

ORDER TRANSFERRING ATTORNEY TO INACTIVE STATUS

1. The defendant is hereby transferred to inactive status on the ground of disability until he is reinstated pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0125(c) of the N.C. State Bar Discipline & Disability Rules.
2. As a condition precedent to reinstatement, the defendant shall demonstrate by clear, cogent and convincing evidence that he
 - a. has worked a twelve-step program of recovery within AA and has satisfactorily worked through each of the twelve steps since his last sobriety date.
 - b. has attended an average of at least three AA or NA meetings a week and no less than eight meetings in any one month for a period of at least one year immediately preceding his petition or, if he petitions for reinstatement in less than one year from the effective date of this order, throughout such lesser period of time prior to his petition for reinstatement.

c. has paid all past due and current mandatory membership dues, late fees, Client Security Fund assessments and reinstatement costs owed to the N.C. State Bar.

d. has complied with all requirements of the Continuing Legal Education Department of the N.C. State Bar and has paid all fines, costs and penalties owed to the CLE Department.

3. In addition to the conditions set out in paragraph 2, it is strongly suggested that prior to seeking reinstatement the defendant demonstrate that:

a. during the two year period immediately preceding the filing of his reinstatement petition, he has not consumed any alcohol and/or illegal substances and/or mind altering prescription medication except where the prescribing physician is aware of defendant's chemical dependency and finds such prescription medically necessary.

b. during the two year period preceding the filing of his reinstatement petition that he has submitted to monthly random drug screens for alcohol at his expense and has not had a positive screen.

c. during the two year period preceding the filing of his reinstatement petition that he has obtained counseling and/or treatment as has been prescribed or recommended by his treating physicians, clinicians and counselors to ensure his recovery and freedom from active chemical addiction.

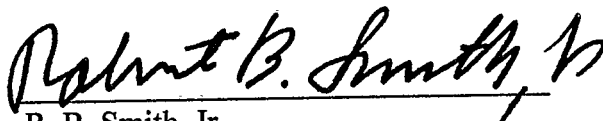
4. Satisfaction of the conditions precedent in paragraph 2 will not automatically entitle defendant to reinstatement. Defendant must also demonstrate by clear, cogent and convincing evidence that he is no longer disabled and that he has met all other requirements for reinstatement to the practice of law.

5. The defendant shall pay the costs of this proceeding as assessed by the Secretary by Oct. 10, 1998.

6. Hearing and resolution of the disciplinary allegations set out in the State Bar's complaint herein is hereby ABATED until such time, if ever, that the defendant is reinstated to active status in this state.

This the 9 day of October, 1997.

Signed by the hearing committee chair with the consent of all committee members.



R. B. Smith, Jr.
Chair, Hearing Committee