

NORTH CAROLINA

WAKE COUNTY

72723

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
95 DHC 12

THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	
)	
vs.)	FINDINGS OF FACT
)	AND CONCLUSIONS OF LAW
PHILLIP S. BANKS III, ATTORNEY)	AND ORDER TRANSFERRING
Defendant)	ATTORNEY TO DISABILITY
)	INACTIVE STATUS

THIS MATTER was heard on Aug. 18, 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; Michael L. Bonfoey and A. James Early III, pursuant to Section .0118 of the N.C. State Bar Discipline & Disability Rules. Carolin Bakewell represented the Plaintiff, the N.C. State Bar. The Defendant, Philip S. Banks III, 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, Phillip S. Banks III (hereafter, Banks), 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 Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the pertinent periods referred to herein, Banks was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Winston-Salem, Forsyth County, North Carolina.

4. Banks was personally served with the State Bar's Summons and Complaint herein by a member of the Forsyth County Sheriff's Department on May 22, 1995.

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5. On June 12, 1995, L. Thomas Lunsford II, Secretary of the N.C. State Bar, mailed a copy of the notice scheduling the hearing in this matter for Aug. 18, 1995 to Banks at his last known address, 2651 Glen Forest Drive, Winston-Salem, N.C. 27103.

6. Prior to the hearing of this matter, Banks failed to submit himself for a physical and psychiatric evaluation, failed to respond to the N.C. State Bar's discovery requests in this matter and failed to participate in a pretrial conference, in violation of orders entered by the Chair of the Disciplinary Hearing Commission.

7. In recent months, Banks has written a number of letters and has filed numerous pleadings in the state and federal courts which contain frivolous, bizarre and unfounded interpretations of the law and the constitution.

8. Banks consistently refers to adverse or unfavorable court decisions as "illegal," "unconstitutional" or "void" and typically ignores these decisions instead of dealing with them in more appropriate or effective ways.

9. Banks has engaged in a pattern of relitigating issues which have previously been decided adverse to him.

10. In September 1994, Hon. Catherine Eagles found that Banks had violated Rule 11 by filing a show cause motion in the case of State of North Carolina ex rel Edmisten v. Schamens et al, 90 CVS 5443 (Forsyth County) which was not well grounded in fact. Judge Eagles also found that the show cause motion attempted to re-litigate issues which had previously been decided on two other occasions in the same lawsuit. Judge Eagles ordered Banks to participate in the N.C. State Bar Lawyer Management Assistance Program (IMAP).

11. Banks has refused to participate in the N.C. State Bar IMAP Program.

12. On April 6, 1995, Hon. William L. Osteen entered an order holding Banks in contempt of court, after Banks failed to appear in court in December 1994 to present oral argument respecting a motion which Banks had filed on behalf of his client in the case of Shamens v. Carlson, B-90-13419C-7W (M.D.N.C.).

13. In the show-cause proceeding before Judge Osteen, Banks contended that he had a constitutional right not to appear to argue the motion and that Judge Osteen's order commanding him to appear violated the 13th Amendment of the U.S. Constitution.

14. Judge Osteen's order found that Banks' analytical ability had become "clouded" and ordered Banks not to appear before him in federal court for a period of one year.

15. Banks has engaged in a pattern of threatening judges, court officials and opposing parties and their attorneys with criminal prosecution, impeachment, civil litigation and divine retribution when

these individuals take action with which Banks disagrees.

16. Banks was jailed for 30 days for criminal contempt in March 1995 after he refused to comply with an order of the Wake County Superior Court, commanding him to turn over records relating to his attorney trust account to the N.C. State Bar, in compliance with a State Bar random audit subpoena.

17. As of Aug. 18, 1995, Banks continued to refuse to comply with the random audit subpoena and insists that the State Bar has no authority to review his trust account records.

18. Banks has stated in at least one pleading that between December 1992 and January 1995 he has become "afraid and nervous . . . [because of an alleged conspiracy] to the point where Banks has found it difficult to concentrate and remain focused, has become paranoid about people and meetings in public settings, and has experienced a shortening of his temper and patience with people, including his client, Donald Simms . . .

19. Kip Sturgis, an Assistant Attorney General, testified that he has been involved in several cases over the past three years in which Banks was also involved as an attorney and/or a party.

20. Sturgis testified that, based upon his observations of Banks, it is his opinion that Banks suffers from a mental condition which substantially impairs his judgment, performance or competence as an attorney.

21. Prior to the hearing of this matter, Raleigh psychiatrist Dr. Nicholas E. Stratas reviewed a number of documents written by Banks.

22. Dr. Stratas testified that the author of the documents which he reviewed exhibited symptoms which are consistent with an individual who suffers from a psychotic disorder.

23. Dr. Stratas testified that, absent appropriate treatment, Banks' condition is not likely to improve and very likely will deteriorate in the future.

24. Dr. Stratas further stated, that in his opinion, Banks was not able to function competently as an attorney.

25. Banks suffers from a mental condition which substantially impairs his judgment, performance or competence as an attorney.

CONCLUSIONS OF LAW

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

2. Banks 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 competent to practice law in North Carolina.

WHEREFORE, the Hearing Committee hereby ORDERS:

1. The Defendant, Phillip S. Banks III, is hereby TRANSFERRED TO DISABILITY INACTIVE STATUS until such time as Banks submits himself for a physical and psychiatric examination by a physician and psychiatrist and demonstrates by clear, cogent and convincing evidence that he is competent to practice law in North Carolina.

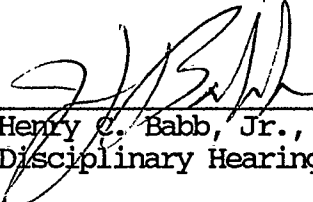
2. Banks shall have 30 days from service of this order in which to conclude any pending legal matters.

3. Banks shall comply with the wind down provisions of Section .0124 of the Discipline & Disability Rules.

4. Banks shall pay the costs of this disability proceeding, including all sums expended by the N.C. State Bar to compensate the Bar's expert witness, Dr. Nicholas E. Stratas.

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

This the 8 day of September, 1995.


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