

11171
NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 DHC 13

THE NORTH CAROLINA STATE BAR,
Plaintiff,

v.

DONALD E. RUMSEY, JR., Attorney,
Defendant.

CONSENT ORDER
OF
DISCIPLINE

This matter was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair; T. Richard Kane, and H. Dale Almond. Thomas F. Moffitt represented the plaintiff. Defendant represented himself *pro se*. Defendant has agreed to waive a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. The defendant also stipulates that he waives his right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based upon the consent of the parties, the Hearing Committee hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Donald E. Rumsey, Jr. ("Rumsey") was admitted to the North Carolina State Bar in 1983, 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 or part of the relevant periods referred to herein, Rumsey was engaged in the practice of law in the State of North Carolina and maintained a law office in Greensboro, Guilford County, North Carolina.

4. On April 18, 1997, Rumsey qualified to serve as the general guardian for an incompetent adult, Gregory Robertson.

5. On November 28, 1998, Rumsey filed an annual accounting with the Clerk of Court for Guilford County (the "Clerk"). The accounting showed that Rumsey received \$60,893.16 in assets for Robertson and disbursed \$20,484.33, leaving a balance of \$40,402.93. The accounting was filed late after the Clerk had sent Rumsey several notices of the legal requirement to file the accounting.

6. On September 12, 2001, the Clerk sent Rumsey a Notice to File Annual Account, and on November 30 and December 27, 2001, the Clerk sent Rumsey Orders to File Account. On March 11, 2002, the Clerk sent Rumsey an Order to Appear and Show Cause for Failure to File Account. These orders were returned unserved.

7. On September 18, 2002, the Clerk entered an Order removing Rumsey as guardian for failure to comply with the requirements of law imposed upon him as Robertson's guardian. Rumsey also was ordered to file an accounting of all his transactions as guardian and to immediately turn over to the successor guardian all of Robertson's assets in his possession. In the order, the Clerk named Wanda Bracks Daughtry, the Public Guardian for Guilford County, as successor guardian for Robertson.

8. Wanda Bracks Daughtry was appointed Robertson's Successor Guardian on October 3, 2002. Thereafter, Daughtry contacted Rumsey and made repeated requests for him to provide the accounting and turn over to her Robertson's records and assets, as the Clerk had ordered.

9. By July 24, 2003, when the Clerk sent Daughtry a Notice to File Final Account, Rumsey had not yet provided the accounting, records and assets to Daughtry. After receiving the notice, Daughtry contacted the North Carolina State Bar.

10 Rumsey turned over his Robertson guardianship records to a State Bar investigator on August 22, 2003. Examination of the records showed that the balance in Robertson's account was \$751.24, that Rumsey had not taken any of Robertson's money as a fee for his service as guardian and that there was no evidence that Rumsey had misappropriated any of Robertson's money. Rumsey has since paid Robertson's remaining assets of \$751.24 to Daughtry.

Based upon the foregoing Findings of Fact, the Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over defendant, Donald E. Rumsey, Jr., and the subject matter of this proceeding.
2. Rumsey's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28 (b)(2) in that he violated the Revised Rules of Professional Conduct as follows:

(a) By failing to timely file accountings while serving as general guardian for Gregory Robertson, as required by law and as ordered by the Clerk of Court, Rumsey failed to provide competent representation for his client and failed to act with reasonable diligence and promptness in representing his client in violation of Rules 1.1 and 1.3; and

(b) By failing to timely account for and turn over Gregory Robertson's assets to his Successor Guardian, as ordered by the Clerk of Court, Rumsey failed to promptly pay or deliver his client's entrusted property to his guardian in violation of Rule 1.15-2 (a) and (m).

Based upon the consent of the parties, the hearing committee also enters the following:

FINDINGS REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factor:
 - (a) Prior disciplinary offenses, based on client neglect, resulting in an admonition on April 17, 2002;
 - (b) Multiple offenses;
 - (c) Substantial experience in the practice of law; and
 - (d) Issuance of a Letter of Warning, based on client neglect, within three years immediately preceding the filing of the complaint.
2. The Defendant's misconduct is mitigated by the following factors:
 - (a) Absence of a dishonest or selfish motive, and
 - (b) Defendant was suffering from depression and had significant personal or emotional problems during the time period in which the violations occurred.
3. The mitigating factors outweigh the aggravating factors.

4. There is potential significant harm to the administration of justice, the legal profession and members of the public when a lawyer repeatedly fails to file the accountings and reports required by law and order of the Clerk of Court in a case in which an attorney has been appointed to serve as a general guardian of an incompetent adult. This potential harm is aggravated when the guardian does not timely turn over the ward's assets to a successor general guardian. Protection of the public does warrant suspension of the attorney's license. However, since the ward's assets were not misappropriated, disbarment is not warranted and the staying the suspension is appropriate, provided that the defendant meets the conditions of the stay.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW and the FINDINGS REGARDING DISCIPLINE and with the consent of the parties, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The license of the defendant, Donald E. Rumsey, Jr., is hereby suspended for six months from the date this Order of Discipline is served upon him. The period of suspension is stayed for three years upon the following conditions:

a. Defendant has provided documentation to the State Bar that he has been evaluated by the State Bar's Lawyer Assistance Program (LAP) and has abided by the LAP recommendation for treatment for any follow-up program for depression, physical, mental, emotional or substance abuse problem found to exist. Provided further that he shall enter into a LAP Recovery Contract, if required by LAP, comply with its terms and authorize LAP to forward semi-annual reports to the Office of Counsel of the State Bar no later than January 1st and July 1st for each year for the remainder of the suspension period or the recovery contract, whichever is shorter. The reports shall either (i) certify defendant's continued compliance with the contract or (ii) alternatively, disclose the details of his non-compliance with the contract.

b. Defendant will respond to all State Bar requests for information by the deadline stated in the communication or within thirty (30) days, whichever is earlier, as required by Rule 8.1 (b) of the Revised Rules of Professional Conduct.

c. The Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension.

d. Defendant will timely comply with all State Bar membership and Continuing Legal Education requirements.

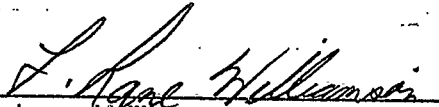
e. Defendant shall pay all costs incurred in this proceeding, as assessed by the Secretary, within 30 days of service of the notice of costs upon him.

2. If, upon a motion by the State Bar, a Hearing Committee of the DHC finds that the defendant has violated any of the conditions in Paragraph 1 (a)-(e) of this Order of Discipline, the suspension of the defendant's license shall be activated. If the suspension is activated, prior to seeking reinstatement of his license, the defendant must:

- a. Comply with all provisions of State Bar Discipline & Disability Rule 27 NCAC 1 B, § .0125 (b).
- b. Satisfy all the conditions set forth in Paragraph 1 (a)-(e) of this Order of Discipline.


Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee.

This the 19th day of May, 2004.


F. Lane Williamson
Chair, Hearing Committee

WE CONSENT:


Donald E. Rumsey, Jr., Defendant


Thomas F. Moffitt, Deputy Counsel
The North Carolina State Bar
Attorney for Plaintiff