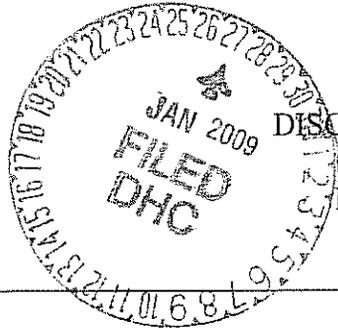


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 BCR 2

IN THE MATTER OF:)
)
) ORDER RECOMMENDING THAT
) REINSTATEMENT BE DENIED
REINSTATEMENT OF GENE H. KENDALL)

This matter came on to be heard and was heard by a hearing committee of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair, Donna R. Rascoe, and Donald G. Willhoit. Petitioner, Gene H. Kendall represented himself. A. Root Edmonson and Leonor Bailey Hodge represented the North Carolina State Bar.

FINDINGS OF FACT

1. Kendall was admitted to the North Carolina State Bar in 1968 and began practicing law in Davidson, Mecklenburg County, North Carolina.
2. In an order of discipline entered on January 16, 2001 in 00 DHC 25, a hearing committee of the Disciplinary Hearing Commission found that Kendall misappropriated funds of the Bacon Estate, failed to preserve funds received in a fiduciary capacity, failed to promptly pay settlement funds belonging to a client, failed to properly maintain a trust account, neglected the representation of the Bacon Estate, made a false statement of material fact to the tribunal, and collected a fee for services he did not render.
3. Kendall was disbarred by an order of the Commission on January 16, 2001 with an effective date of June 6, 2001 at the latest.
4. Kendall was previously disciplined in 1995 for practicing law while his license was suspended.
5. Not more than six months or less than 60 days before the filing of the Petition seeking Reinstatement on behalf of Kendall, a Notice of Intent to seek Reinstatement was published by the Petitioner in the *Journal* of the North Carolina State Bar.
6. The complainant in regard to the conduct that led to the disbarment of Kendall: to wit, the State Bar, was appropriately notified by Kendall of his intention to seek reinstatement, as were William Garrison and Dr. Mack King.
7. Kendall complied with the provisions of § .0124 in existence at the time of his disbarment in 2001.

8. Kendall complied with the Order of Discipline entered in the Disciplinary Hearing Commission.

9. Kendall did not engage in the unauthorized practice of law during his disbarment.

10. Kendall did not engage in conduct during the time of his disbarment that would be grounds for discipline under G.S. § 84-28(b).

11. Kendall understands the current Rules of Professional Conduct.

12. Kendall paid all dues and fees owed to the North Carolina State Bar.

13. There was very little, if any, evidence that Kendall has been engaged in good works since the time of his disbarment. The good works testified to by Kendall were in most instances done by him at, before or during the time he was being disbarred.

14. There was no corroborating evidence of Kendall's reformation from people in his family, local law enforcement, fellow church members, or his friends.

15. The petition was filed in this matter on October 8, 2008, more than seven (7) years after the effective date of Kendall's disbarment of June 6, 2001.

16. Kendall's failure to file his petition within the two-year window of time that would have allowed him to prove his competence without having to take the bar exam, that is, five years after disbarment but before seven years after disbarment, was not the failure of the North Carolina State Bar. Rather, Kendall's failure to file within the two-year window was due to a lack of planning on the part of Petitioner.

17. The evidence presented by Kendall regarding CLE he has taken since his disbarment falls far short of meeting the requirements of the Rules regarding proving his competency by means other than taking the bar exam.

18. The letter from Mr. Knox submitted by Kendall does not support the conclusion that Mr. Knox is familiar enough with Kendall presently so as to credibly describe Kendall's present level of competence as being adequate and sufficient.

CONCLUSIONS OF LAW

1. Kendall has failed to prove by clear, cogent and convincing evidence that he has reformed and presently possesses the moral qualifications required for admission to practice law in this state taking into account the gravity of the misconduct that resulted in his disbarment. Kendall has failed to satisfy a necessary element required by § .0125(a)(3)(C) and is ineligible to be reinstated to the practice of law.

2. Permitting Kendall to resume the practice of law would be detrimental to the integrity and standing of the bar, to the administration of justice and to the public interest taking into account the gravity of the misconduct that resulted in his order of disbarment. Kendall has failed to satisfy a necessary element required by § .0125(a)(3)(D) and is ineligible to be reinstated to the practice of law.

3. During the period of disbarment, Kendall did not engage in the unauthorized practice of law.

4. Kendall understands the current Revised Rules of Professional Conduct as required by § .0125(a)(3)(K).

5. Any reinstatement of Kendall shall be conditioned upon his attaining a passing grade on a regularly scheduled written bar examination administered by the North Carolina Board of Law Examiners in accordance with §.0125(a)(4)(D)(5).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the hearing committee enters the following Order:

1. The hearing committee recommends to the Council of the North Carolina State Bar that the law license of Gene H. Kendall not be reinstated.

2. If Kendall chooses not to ask the Council to review the decision of this hearing committee, this order will constitute the final order in this matter.

3. If the Council reviews the decision of this hearing committee and chooses to reinstate Kendall, Kendall's reinstatement must be conditioned upon his successful completion of a written bar examination administered by the North Carolina Board of Law Examiners pursuant to § .0125(a)(5).

Signed by the Chair with the consent of the other members of the hearing committee
this 26 day of January, 2009.



Tommy W. Jarrett, Chair
Hearing Committee