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NC State Bar
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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
85 DHC 18

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

C. LEROY SHUPING, JR.,
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by the undersigned duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday and Saturday, November 22 and 23, 1985. The North Carolina State Bar was represented by L. Thomas Lunsford, II and the Defendant was represented by Luke W. Wright. Based upon the evidence at hearing, the pleadings and the stipulations contained in the pretrial order, the Committee finds the following facts by clear, cogent and convincing evidence.

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and was 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, C. Leroy Shuping, Jr., was admitted to the North Carolina State Bar on September 8, 1947, 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 Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Greensboro, Guilford County, North Carolina.

4. On or about March 6, 1979, the Defendant received letters testamentary as co-executor of the estate of Hubbard Harvey Longest from the Guilford County Clerk of Superior Court, Joseph E. Slate. The Defendant was the decedent's attorney at

the time of his death. The decedent's sister, Virginia L. Burroughs, a resident of the State of Virginia, also received letters testamentary.

5. Shortly after their appointment, the co-executors agreed that the Defendant would be solely responsible for preparing and filing the 90-day inventory, the annual and final accounts, and the various tax returns. The Defendant and Burroughs also agreed that the Defendant would be solely responsible for maintaining the estate's books of account and checkbook.

6. On or about August 30, 1979, the Defendant filed the estate's 90-day inventory approximately 53 days late.

7. On or about October 22, 1980, the Defendant filed the estate's first annual account approximately 196 days late. Prior to filing the account, the Defendant received notices dated May 16, 1980, and September 18, 1980, from the Clerk of Superior Court that the annual account was overdue. The estate's first annual account was not approved by the Clerk of Superior Court because no petition for or order allowing \$3750.00 in undifferentiated executor's commissions and attorney's fees which had already been disbursed by the Defendant to himself was filed in support of the account.

8. In November 1980, the Defendant was informed by the Clerk of Superior Court that all future payments of executor's commissions and attorney's fees would have to be approved by the Clerk in advance of payment.

9. The Defendant was sent notices from the Clerk of Superior Court on November 10, 1980, February 18, 1981, April 13, 1981, May 15, 1981, July 10, 1981, and August 28, 1981 soliciting the petition and order referred to in paragraph 7. The Defendant did not file a petition for allowance of his fees and commissions until January 3, 1983.

10. The Defendant was sent notices from the Clerk of Superior Court informing him that the estate's second annual account was overdue on April 13, 1981, May 15, 1981, July 10, 1981, and August 28, 1981. On or about September 17, 1981, an Assistant Clerk of Superior Court entered an order in the estate requiring the Defendant to file an account within twenty days of service. The Defendant was subsequently granted an extension to file the account until December 21, 1981.

11. On or about December 16, 1982, the Defendant filed the estate's second annual account approximately one year and nine months late. The second annual account filed by the Defendant was not approved by the Clerk of Superior Court because it reflected payments of \$8,600.00 in undifferentiated attorney's fees and executor's commissions to the Defendant which had not been previously allowed by the Clerk.

12. On or about December 16, 1982, the Defendant filed the estate's third annual account approximately nine months late. The third annual account was not approved by the Clerk of Superior Court because it reflected payments of \$12,350 in undifferentiated attorney's fees and executor's commissions to the Defendant which had not been previously allowed.

13. On or about March 7, 1983, the Defendant filed the estate's fourth annual account. This account reflected payments of \$8,250.00 in undifferentiated attorney's fees and executor's commissions to the Defendant which had not been previously allowed by the Clerk.

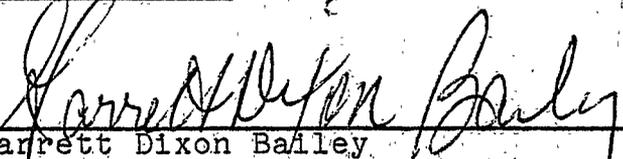
14. During his administration of the estate, the Defendant paid to himself without the prior approval of the Clerk of Superior Court sums totalling \$32,950.00 for his services as co-executor and attorney for the estate. Of that amount, the Defendant paid himself \$23,400 after he had received notice from the Clerk's office that his first annual account would not be approved unless supported by an order allowing the fees and commissions he claimed, and had been informed by the Clerk that all future compensation would have to be approved in advance of payment.

15. On or about September 20, 1983, the Clerk of Superior Court, on motion of the co-executor Burroughs, revoked the letters testamentary of the Defendant pursuant to North Carolina General Statute §28A-9-1(a)(3) finding that the Defendant's failure to file timely inventories and accounts, withdrawal of fees and commissions without the approval of the Clerk of Superior Court, and failure to duly and timely respond to orders and notices from the Clerk of Superior Court constituted default or misconduct within the meaning of that statute. That order was affirmed by order of the Superior Court dated January 16, 1984. The Superior Court's decision was subsequently affirmed by the North Carolina Court of Appeals by decision filed May 7, 1985.

Based upon the foregoing FINDINGS OF FACT, the Committee makes the following CONCLUSIONS OF LAW:

By failing to timely file the inventory and accounts of the Longest estate and by repeatedly ignoring official notices concerning overdue filings, the Defendant neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility.

This the 17th day of December, 1985.


Garrett Dixon Bailey
Hearing Committee Chairman

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THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
vs.)
C. LEROY SHUPING, JR.,)
Defendant.)

ORDER OF DISCIPLINE

This cause was heard by the undersigned, duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday and Saturday, November 22 and 23, 1985. Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered in this cause and the evidence presented relative to the appropriate disciplinary sanction, including all aggravating and mitigating evidence, the Hearing Committee enters this ORDER OF DISCIPLINE:

1. The Defendant shall be Publicly Censured for his misconduct in accordance with §23(A)(2) of Article IX of the Rules and Regulations of the North Carolina State Bar bearing upon Discipline and Disbarment of Attorneys.

2. The Defendant shall pay the costs of this proceeding.

This the 17th day of December, 1985.


Garrett Dixon Bailey
Hearing Committee Chairman
(for the Committee)

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
85 DHC 18

THE NORTH CAROLINA STATE BAR,)

Plaintiff)

vs)

C. LEROY SHUPING, JR.,)

Defendant)

PUBLIC CENSURE

This Public Censure is delivered to you pursuant to Section 23 of the Rules of Discipline and Disbarment of the North Carolina State Bar and pursuant to an Order of Discipline entered in the above-captioned action by a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar bearing date of 17 December 1985, which Order was based upon Findings of Fact and Conclusions of Law resulting from a hearing in the cause on 22 and 23 November 1985.

The fact that this Public Censure is not the most serious discipline provided for in North Carolina General Statute §84-28 should not be taken by you to indicate that the North Carolina State Bar in any way feels that your conduct in this matter was excusable or was considered by the members of the Hearing Committee of the Disciplinary Hearing Commission to be less than a very serious and substantial violation of the Code of Professional Responsibility.

On or about 6 March 1979 you qualified in the Superior Court of Guilford County as Co-Executor of the Estate of Hubbard Harvey Longest. The decedent's sister, Virginia L. Burroughs, a resident of the State of Virginia, also received Letters Testamentary. You also undertook to serve as the attorney for the Estate. You accepted the responsibility for preparing and filing the 90 Day Inventory, the annual and final accounts and the various tax returns. You also accepted the responsibility for maintaining the estate's books of account and check book.

On or about 30 August 1979 you filed the 90 Day Inventory approximately 53 days late. On or about 22 October 1980 you filed the first annual account approximately 196 days late. You had received Notices dated 16 May 1980 and 18 September 1980 from the Office of the Clerk of Superior Court of Guilford County advising that the annual account was overdue. Such account was not approved because you had not filed a Petition and obtained an Order allowing \$3,750 in undifferentiated attorney's fees and executor's commissions, which you had paid to yourself.

During the month of November 1980 you were informed by the Clerk of the Superior Court of Guilford County that all future payments of executor's commissions and attorney's fees must be approved by such Clerk in advance of payment. Notices were sent to you from the Clerk of Superior Court of Guilford County on 10 November 1980, 18 February 1981, 13 April 1981, 15 May 1981, 10 July 1981, and 28 August 1981 soliciting a fee petition so that the Court could consider approval of executor's commissions and attorney's fees. You did not file any petition for allowance of your fees and commissions until 3 January 1983.

You were sent Notices from the Clerk of Superior Court of Guilford County on 13 April 1981, 15 May 1981, 10 July 1981, and 28 August 1981 advising you that the second annual account for the estate was overdue. An Order was entered by the Court 17 September 1981 requiring you to file such account within 30 days from service of such Order. You were thereafter granted an extension until 31 December 1981.

On or about 16 December 1982 you filed the second annual account approximately one year and nine months after same should have been filed. Such account was not approved because it reflected payments of \$8,600.00 to you as undifferentiated attorney's fees and executor's commissions for which no petition had been filed and for which no Order of the Court had been entered.

On or about 16 December 1982 you filed the estate's third annual account approximately nine months late. The third annual account was not approved because it reflected payments of \$12,350.00 to you as undifferentiated attorney's fees and executor's commissions for which you had filed no petition and for which no Order of the Court had been entered. On or about 7 March 1983 you filed the estate's fourth annual account which reflected payments of \$8,250.00 in undifferentiated attorney's fees and executor's commissions for which you had filed no fee petition and for which you had obtained no Order for approval.

During your administration of the estate you paid yourself, without the approval of the Court, sums totaling \$32,950 for your services as co-executor and attorney for the estate.

By failing to timely file the inventories and accounts of the Longest estate and repeatedly ignoring official notices concerning overdue filings, you neglected a legal matter entrusted to you in violation of Disciplinary Rule 6-101 (A) (3) of the Code of Professional Responsibility.

Every lawyer is required to represent the interest of his client and promptly attend to all legal matters entrusted to him. A lawyer who ignores legal matters entrusted to him and who does not comply with the clear mandates of the General Statutes of North Carolina and of the Court cannot be relied upon and does not properly serve his clients and the Court. By neglecting the legal matters entrusted to you and repeatedly ignoring the notices of the Court and the clear requirements of the General Statutes of North Carolina, you have displayed a disregard for your client and for the Court. Such an attitude is intolerable and is entirely inconsistent with the conduct expected of a lawyer.

The Hearing Committee was not insensitive of the fact that you have practiced law since 8 September 1947 without having previously been cited for a violation of the Code of Professional Liability and you have convinced the Disciplinary Hearing Commission that suspension of your law license is not necessary to protect the public's interest.

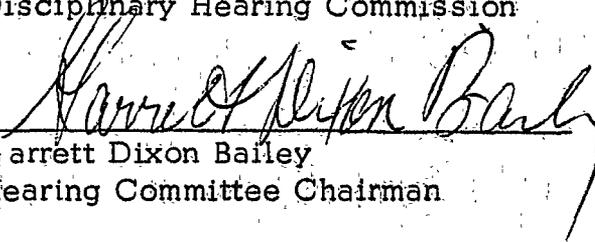
The North Carolina State Bar is confident that this Public Censure will be heeded by you and that it will be remembered by you, and that it will be beneficial to you. We are confident that you will never again depart from strict adherence to the highest standards of the legal profession.

Accordingly, we sincerely trust that this Public Censure will serve as a profitable reminder to weigh carefully your responsibility to the public, your clients, your fellow attorneys and the Court with the result that you will be known as a respected member of the profession who promptly and diligently attends to all legal matters entrusted to you.

Pursuant to Section 23 of the Rules of Disciplinary Procedure, it is ordered that a certified copy of this Public Censure be entered upon the Judgment Docket of the Superior Court of Guilford County and also upon the minutes of the Supreme Court of North Carolina.

This day of 1986.

Naomi E. Morris, Chairman
Disciplinary Hearing Commission


Garrett Dixon Bailey
Hearing Committee Chairman