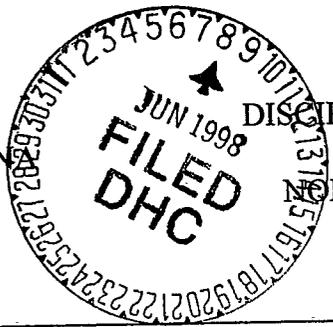


6666

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
98 DHC 11

THE NORTH CAROLINA STATE BAR)	
PLAINTIFF)	
v.)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
LANNY LEE HIDAY, ATTORNEY)	AND ORDER OF DISCIPLINE
DEFENDANT)	

This matter was heard on the 21st day of May, 1998 before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; Michael L. Bonfoey and A. James Early III. The Defendant, Lanny L. Hiday, did not appear nor was he represented by counsel. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters 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, Lanny Lee Hiday (hereafter, Hiday), was admitted to the North Carolina State Bar in 1975 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 relevant periods referred to herein, Hiday was engaged in the practice of law in Orange County, N.C.
4. Hiday was personally served with the State Bar's summons and complaint herein by the Orange County Sheriff's Department on March 2, 1998.
5. Hiday did not file an answer or other responsive pleading.

6. On March 25, 1998, the Secretary of the N.C. State Bar entered Hiday's default.

7. A hearing was scheduled for May 29, 1998 for the purpose of determining the appropriate discipline to be imposed based upon the violations of the Rules of Professional Conduct set out in the State Bar's complaint, all of which were deemed admitted by virtue of Hiday's default.

8. On May 4, 1998, the hearing on the issue of discipline was rescheduled for May 21, 1998. Notice of the new hearing date and location were mailed by the Clerk of the DHC and by counsel of the State Bar to Hiday's home address, where he had previously been served in person with the State Bar's complaint.

9. By order dated May 5, 1998, the location of the hearing was changed to the Raleigh Plaza Hotel. A copy of this order was served upon Hiday in person by the Orange County Sheriff on May 14, 1998.

10. Prior to January 1997, Hiday represented a number of individuals and corporate entities respecting their legal matters. As Hiday concluded the legal matters for these clients, the clients' files were closed and stored.

11. The closed client files which Hiday placed in storage contained confidences and secrets of his clients.

12. Hiday failed to pay the rent due on the facility where the closed client files were stored and in late 1996, a number of the closed client files were seized by Hiday's landlord and were sold at auction.

13. The clients files were ultimately turned over to the N.C. State Bar, which incurred some costs in contacting Hiday's clients and requesting them to pick up the files.

14. Hiday failed to take adequate steps to protect the confidences of his clients by allowing closed client files to be seized when Hiday failed to pay his office rent in a timely fashion.

15. On June 18, 1997, the Chair of the Grievance Committee of the N.C. State Bar issued a Letter of Notice and Substance of Grievance to Hiday in State Bar Grievance File No. 97G 00064. The Substance of Grievance alleged that Hiday had ceased practicing law, was abusing alcohol and had failed to pay the rent on the office where Hiday's closed client files were kept, with the result that the files were seized by Hiday's landlord, compromising the confidentiality of the client confidences contained in the files.

16. Hiday was served with the Letter of Notice and Substance of Grievance in File No. 97G 0064 by the Orange County Sheriff's Dept. on June 18, 1997.

17. On July 25, 1997, Counsel for the State Bar wrote a follow up letter to Hiday, reminding him that he had not responded to the previous Letter of Notice and Substance of Grievance.

18. Hiday did not respond to the original Letter of Notice and Substance of Grievance in File No. 97G 0064 or to Counsel's follow up letter of July 25, 1997.

19. Hiday failed to respond to the State Bar's discovery requests in this matter, although ordered to do so by no later than May 1, 1998.

20. Throughout the period from 1970 through 1996, Hiday has been observed to consume large amounts of alcohol. In the late 1980s, Hiday began to exhibit some personality changes, experienced serious marital difficulties which ultimately led to a divorce from his wife and had a heart attack. For at least a part of 1989, Hiday received psychiatric treatment for depression.

21. As of the date of this hearing, Hiday is not actively engaged in the practice of law and does not maintain a law office.

22. Hiday has failed to comply with the mandatory continuing legal education requirements of the North Carolina State Bar. As of April 18, 1996, Hiday had a deficit of 25 hours of mandatory CLE. Hiday only completed 6 hours of mandatory CLE in 1997 and therefore had an additional deficit of 6 hours of CLE for that year.

23. The State Bar Continuing Legal Education Department has commenced show cause proceedings against Hiday but, to date, has been unable to locate him to serve him with the show cause notice.

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

CONCLUSIONS OF LAW

1. By failing to pay his storage facility rent on time and allowing files which contained client confidences and secrets to be seized by his landlord without the knowledge and consent of his clients, Hiday violated Rule 4 of the Rules of Professional Conduct and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d) of the Rules of Professional Conduct.

2. By failing to respond to the State Bar's Letter of Notice and Substance of Grievance in File No. 97G 0064, Hiday failed to respond to a formal inquiry of a disciplinary authority in violation of Rule 1.1 of the Rules of Professional Conduct.

3. Although the disciplinary offenses which Hiday has committed are relatively minor, the evidence in this case indicates that Hiday has abused alcohol in the past and may suffer from some other disability. Consequently, protection of the public requires that the Committee enter an order which provides for a long period of suspension of license, which may be stayed if Hiday demonstrates that he is able to practice law competently and is no longer suffering from any disability.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and argument of the parties concerning the appropriate discipline, the hearing committee hereby makes the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
 - a) Substantial experience in the practice of law.
 - b) Multiple violations of the Rules of Professional Conduct.
2. The defendant's misconduct is mitigated by the following factors:
 - a) Absence of a dishonest or selfish motive.
 - b) Absence of prior discipline.

Based upon the foregoing aggravating and mitigating factors and the arguments of counsel for the Plaintiff, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The Defendant, Lanny L. Hiday, is hereby suspended from the practice of law for a period of five years, beginning 30 days from service of this order upon the Defendant.
2. At any time after the effective date of this order, the Defendant may apply for an order staying the remainder of the five year suspension of license provided that, prior to seeking a stay, the Defendant demonstrates by clear, cogent and convincing evidence that the Defendant:
 - a) is not suffering from any mental or physical condition or addiction which impairs his professional judgment or ability to engage in the practice of law in a competent manner.
 - b) has complied with all orders of the Continuing Legal Education Department of the N.C. State Bar.

c) has paid the costs of this proceeding.

d) has provided complete responses to the N.C. State Bar's discovery requests filed herein.

e) has reimbursed the North Carolina State Bar for the costs it incurred in returning closed files to Hiday's former clients, in an amount assessed by the Secretary of the N. C. State Bar.

3. Any stay of the five-year active suspension of the Defendant's license to practice law will be conditioned upon the following terms:

a) that the Defendant not violate any laws of the State of North Carolina, or any other state or of the United States.

b) that the Defendant comply with all orders and requirements of the CLE Department of the N.C. State Bar in a timely fashion.

c) that the Defendant pay his mandatory N.C. State Bar dues in a timely fashion.

d) that the Defendant not violate any provisions of the Revised Rules of Professional Conduct.

e) that the Defendant respond to any letters of notice or other inquiries of the North Carolina State Bar in a timely fashion.

4. If the Defendant does not seek a stay of the suspension of his law license, or if the Defendant seeks such a stay and the stay is thereafter lifted for any reason, as a condition to reinstatement of his license to practice law in this state, the Defendant must demonstrate by clear, cogent and convincing evidence that the Defendant:

a) is not suffering from any mental or physical condition or addiction which impairs his professional judgment or ability to engage in the practice of law in a competent manner.

b) has complied with all orders of the Continuing Legal Education Department of the N.C. State Bar.

c) has paid the costs of this proceeding.

d) has provided complete responses to the N.C. State Bar's discovery requests filed herein.

e) has complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b).

f) has reimbursed the North Carolina State Bar for the costs it incurred in returning closed files to Hiday's former clients, in an amount assessed by the Secretary of the N. C. State Bar

This the 3 day of ^{June} May, 1998.


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