

3691



WAKE COUNTY  
NORTH CAROLINA

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE NORTH CAROLINA STATE BAR  
98 DHC 29

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THE NORTH CAROLINA STATE BAR,	)
Plaintiff	)
	)
v.	) CONSENT ORDER
	) OF DISCIPLINE
	)
WALTER E. RICKS, ATTORNEY,	)
Defendant	)

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This matter coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission composed of Fred H. Moody, Jr. Chair; Franklin E. Martin and Catherine Sefcik, pursuant to Section .0114 of the Discipline and Disability Rules of the North Carolina State Bar (hereinafter "Bar Rules"). The plaintiff was represented by Douglas J. Brocker. Defendant Walter E. Ricks represented himself.

Both parties have agreed to waive a formal hearing in this matter and stipulate and agree to the following findings of fact and conclusions of law and to the discipline imposed. The Hearing Committee enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar (hereafter "Plaintiff"), 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. Defendant, Walter E. Ricks, (hereafter "Ricks"), was admitted to the North Carolina State Bar on August 14, 1970 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 periods referred to herein, Ricks was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Durham, Durham County, North Carolina.

4. Ricks waived his right to a formal hearing.

5. Aaron S. Pretty, Jr. (hereinafter "Pretty") was indicted in Durham County in January 1991 on one count of Incest and two counts of First Degree Statutory Sexual Offense and Taking Indecent Liberties with a minor child. The victim of these charges was Pretty's daughter, who was 13 years old at the time of alleged offenses.

6. Pretty retained Ricks to represent him by May 1991 on these pending criminal charges.

7. A Superior Court jury convicted Pretty on September 28, 1993 for Incest, First Degree Sexual Offense, and Taking Indecent Liberties with a minor child (hereafter "convictions").

8. The Honorable J.B. Allen, Jr. entered a judgment and commitment order against Pretty on September 29, 1993 sentencing him to natural life for First Degree Sexual Offense, 15 years imprisonment for Incest and 10 years imprisonment for Taking Indecent Liberties with a minor child. Pretty's sentences were to run concurrently.

9. Ricks filed a Notice of Appeal of Pretty's convictions on October 8, 1993. Ricks was appointed appellate counsel for Pretty on approximately October 11, 1993.

10. Ricks filed a motion for an extension of time to serve the proposed record on appeal with the Durham County Superior Court on February 23, 1994. The Court granted Ricks' motion and the time to serve the proposed record on appeal was extended until March 26, 1994.

11. Ricks filed a second motion for an extension of time to serve the proposed record on appeal with the North Carolina Court of Appeals on March 28, 1994. The Court of Appeals granted Ricks' second motion and the time to serve the proposed record on appeal was extended until April 18, 1994.

12. Ricks thereafter failed to file any additional motions for further extensions, and failed to otherwise perfect Pretty's appeal of his convictions.

13. As a result of Ricks' failure to perfect Pretty's appeal, Pretty has lost his right to appeal his convictions as of right.

14. After Ricks was appointed appellate counsel for Pretty, he also failed to keep Pretty reasonably informed about the status of the appeal. Specifically, Ricks did not notify Pretty that he failed to perfect Pretty's appeal.

15. The Durham County Superior Court appointed new appellate counsel on July 1, 1998 for the purpose of perfecting Pretty's appeal of his convictions.

16. On April 22, 1997, the State Bar's 14<sup>th</sup> District Grievance Committee served Ricks with a copy of the grievance filed by Pretty and instructed him to respond within 15 days of receipt of the letter.

17. Ricks failed to respond to this request within fifteen days of its receipt.

18. The local investigating attorney for the State Bar's 14<sup>th</sup> District Grievance Committee, Sherrod Banks, sent Ricks an additional request for a response in May 1997. Ricks failed to respond to this second request.

19. Ricks met in person with Banks in June 1997 about Pretty's grievance. At the meeting, Ricks tendered a tentative written response. Ricks had not finalized his plans regarding correcting the appeal. After that meeting, Ricks failed to file a final written response to Pretty's grievance. Ricks, however, did subsequently meet with Pretty and offer to assist his new appellate counsel.

20. Ricks failed to file a final written response to Pretty's grievance before the matter was considered by the Grievance Committee of the State Bar.

21. Denise V. Gaddy retained Ricks in 1997 to represent her on a speeding charge pending in Durham County.

22. Ms. Gaddy paid Ricks a \$150 fee for his representation of her on the pending speeding charge.

23. Ricks also had Ms. Gaddy sign a waiver of appearance form so that he could appear on her behalf.

24. Ricks continued Ms. Gaddy's case on a number of occasions until approximately July 22, 1997.

25. Ricks failed to appear for Ms. Gaddy at her court hearing in Durham County on approximately July 22, 1997.

26. As a result of Ricks' failure to appear, the North Carolina Department of Motor Vehicles (hereafter "DMV") suspended Ms. Gaddy's driving license.

27. Ms. Gaddy received notification of DMV's suspension of her license in approximately October 1997.

28. After receiving the DMV's notice of suspension, Ms. Gaddy tried unsuccessfully on many occasions to contact Ricks, beginning in October 1997. Ricks failed to return most or all of Ms. Gaddy's telephone calls.

29. Ms. Gaddy's traffic matter eventually was re-scheduled in Durham County District Court for February 9, 1998. Ricks appeared and was able to get Ms. Gaddy's DMV suspension lifted.

30. As a result of Ricks' failure to appear at the July 22, 1997 hearing, Ms. Gaddy had to pay an additional \$75 fee to get her license restored by DMV.

31. Despite Ms. Gaddy's request, Ricks failed to reimburse her for the \$75 restoration fee resulting from his failure to appear. Ricks currently is in the process of returning the restoration fee to Ms. Gaddy.

32. Ricks failed to respond to numerous telephone calls from Ms. Gaddy attempting to get Ricks to pay the restoration fee.

33. Ricks received a letter of notice from the Grievance Committee on June 12, 1998. The letter of notice requested that he respond to the grievance Ms. Gaddy filed against him within 15 days of receipt of the letter.

34. Ricks failed to respond to this letter of notice within fifteen days of its receipt.

35. Plaintiff sent Ricks a second request for a response on July 17, 1998, which asked him to respond no later than July 27, 1998. Ricks failed to respond to this second request.

36. Plaintiff sent Ricks an additional request for a response on August 5, 1998, which asked him to respond no later than August 15, 1998. Ricks failed to respond to this third request.

37. In response to a subpoena, Ricks appeared at the State Bar on October 6, 1998 and filed a written response to Ms. Gaddy's grievance on that day.

38. Erma L. Reid retained Ricks in approximately April 1994 to represent her on a potential medical malpractice claim against Duke University Medical Center (hereafter "Duke") and others.

39. Ms. Reid's potential suit arose out of a hand operation performed on her at Duke on approximately May 31, 1993.

40. Ricks, on behalf of Ms. Reid, filed a suit in Durham County Superior Court on August 29, 1996 against Duke, among others.

41. After filing the suit in August 1996, Ricks repeatedly failed to respond to numerous telephone calls from Ms. Reid regarding the status of her case.

42. The court entered a Consent Order of Discovery on July 15, 1997. The Consent Order required Ms. Reid, through Ricks, to identify expert witnesses by September 15, 1997.

43. Ricks failed to identify to the defendants any expert witnesses by September 15, 1997. Ricks had identified an expert but was unable to list him in part because Ms. Reid did not have the financial resources to retain the expert by the deadline set forth in the court order.

44. Duke and the other defendants thereafter filed a motion for summary judgment based on Ricks' failure to identify any expert witnesses.

45. The defendants' motion for summary judgment was scheduled for a hearing before the Superior Court on approximately January 15, 1998.

46. Ricks filed a notice of voluntary dismissal on January 15, 1998 before the scheduled hearing.

47. Ricks did not discuss the notice of voluntary dismissal with Ms. Reid before filing it.

48. Ms. Reid learned for the first time in March 27, 1998 that her suit had been dismissed only after she went to the clerk's office to get copies of documents in her file.

49. Prior to Ms. Reid's discovery on March 27, 1998, Ricks had not informed her that he had dismissed her suit against Duke, in the over two months since he had dismissed it.

50. After Ms. Reid discovered that Ricks had dismissed her suit, Ms. Reid's daughter, Veronica Smith, wrote to Ricks on behalf of her mother on March 27, 1998 and requested that Ricks inform them whether the suit was dismissed with or without prejudice. Ms. Smith also requested that Ricks return Ms. Reid's file to her.

51. As of July 1998, Ricks had failed to respond to Ms. Smith's March 27, 1998 letter or return her file.

52. Ricks received a letter of notice from the Grievance Committee on September 30, 1998 regarding his representation of Ms. Reid. The letter of notice requested that he respond to this grievance within 15 days of receipt of the letter.

53. Ricks failed to respond to this letter of notice within fifteen days of its receipt.

54. Plaintiff sent Ricks an additional request for a response, which asked him to respond no later than November 9, 1998. Ricks failed to respond to this second request by November 9, 1998.

55. Ricks filed a written response to the grievance regarding his representation of Ms. Reid on November 25, 1998.

56. Ricks conduct and failure to act set forth in paragraphs 5-56 above were caused at least in part by his alcohol dependency.

57. Ricks represents that he has abstained from alcohol for approximately six months prior to the submission of this consent order.

58. Ricks is participating in the PALS program, is receiving treatment at an outpatient treatment program, and is attending at least four alcoholics anonymous meetings per week, for his alcohol dependency.

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

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant and the subject matter of this proceeding.

2. Ricks' conduct as set out in Findings of Fact 5-20 above, constitutes grounds for discipline pursuant to North Carolina General Statute Section 84-28(b)(2) & (3) and the Rules of Professional Conduct ("Rules"), in that Ricks:

(a) failed to act with reasonable diligence and promptness in representing Pretty, in violation of Rule 6(b)(3), by failing to perfect Pretty's appeal;

(b) failed to keep his client Pretty reasonably informed about the status of the appeal, in violation of Rule 6(b)(1); and

(c) knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of Rule 1.1(b).

3. Ricks' conduct as set forth in Findings of Fact 21-39 constitute grounds for discipline pursuant to North Carolina General Statute section 84-28(b)(2) & (3) and the Rules and Revised Rules of Professional Conduct (hereafter "Revised Rules") in that Ricks:

(a) failed to act with reasonable diligence and promptness in representing Ms. Gaddy, in violation of Rule 6(b)(3) and Revised Rule 1.3;

(b) failed to respond to reasonable requests for information from his client, Ms. Gaddy, and failed to keep her reasonably informed about the status of her case, in violation of Rule 6(b)(1) of the Rules of Professional Conduct and Rule 1.4(a) of the Revised Rules of Professional Conduct; and

(c) knowingly failed to respond to a lawful demand for information from State Bar, in violation of Revised Rule 8.1(b).

4. Ricks' conduct as set forth in Findings of Fact 40-57 constitutes grounds for discipline pursuant to North Carolina General Statute section 84-28(b)(2) & (3) and the Rules and Revised Rules in that Ricks:

(a) failed to act with reasonable diligence and promptness in representing Ms. Reid in violation of Revised Rule 1.3;

(b) failed to respond to reasonable requests for information from his client, Ms. Reid, and failed to keep her reasonably informed about the status of her case, in violation of Rule 6(b)(1) and Revised Rule 1.4(a);

(c) dismissed Ms. Reid's lawsuit without discussing the dismissal with her, getting her approval to file the dismissal, explaining the matter to her to the extent necessary for her to make an informed decision about the dismissal, in violation of Revised Rules 1.2 and 1.4(a) & (b);

(d) failed to return the contents of Ms. Reid's file after her written request, in violation of Revised Rule 1.16(d); and

(e) knowingly failed to respond to a lawful demand for information from State Bar, in violation of Revised Rule 8.1(b).

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

**FINDINGS OF FACT REGARDING DISCIPLINE**

1. The defendant's misconduct is aggravated by the following factors:
  - a. issuance of a letter of warning to Ricks for failure to act with reasonable diligence and promptness in representing a client within the three years preceding the filing of the complaint;
  - b. multiple offenses; and
  - c. substantial experience in the practice of law.
  
2. The defendant's misconduct is mitigated by the following factors:
  - a. personal or emotional problems, including alcohol addiction;
  - b. character and reputation;
  - c. remorse and cooperation with client's new appellate counsel; and
  - d. attempts at interim rehabilitation.

Based upon the foregoing findings of fact, conclusions of law, findings of fact regarding discipline, the consent of the parties, the hearing committee enters the following:

**ORDER OF DISCIPLINE**

I. Defendant, Walter E. Ricks, is hereby suspended from the practice of law in the State of North Carolina for a period of six months from the date this Consent Order of Discipline is filed. The period of suspension is stayed for two years upon the following conditions:

A) Ricks shall follow a program of rehabilitation for alcohol dependency, to be monitored by PALS, in which Ricks shall:

1. Totally refrain from the use of alcohol and all mind altering substances except as may be specifically prescribed and approved by Ricks' personal physician. Prior to the use of any such prescribed drugs Ricks will inform his physician of his participation in PALS, communicate the identity of his physician to PALS and have his physician consult with PALS. Prior to the use of prescription medications, Ricks shall provide PALS with adequate documentation from the prescribing physician indicating that the prescribing physician knows of Ricks' dependence and has concluded that the use of such drug or drugs is nevertheless required.

2. Accept such person or persons as may be designated by the PALS Committee as monitor(s) of his performance under this Order and shall make at least one personal contact per week with said monitor or more frequently as prescribed by the monitor.

3. Provide the monitor with whatever substantiating documentation that monitor may require to assure compliance with this order.

4. Ensure that monthly monitor reports are submitted to PALS no later than the 15<sup>th</sup> day of the next month following each preceding month throughout the entire two-year stay.

5. Complete a program of outpatient treatment for alcoholism conducted by Debra Giles, or such other outpatient program as may be approved by PALS, for whatever period of time the treatment program might recommend as being in Ricks' best interest to maximize the opportunity for his long term recovery. Upon completion of this outpatient treatment program, Ricks shall continue to see an addictions therapist every other week for the next six months or until the clinician and PALS determines that such weekly sessions are no longer necessary, whichever is shorter. Ricks shall ensure that his addiction counselor forwards to PALS and to the State Bar a quarterly report certifying that Ricks is in compliance with his outpatient treatment program or addictions counseling. These reports shall be due no later than January 1, April 1, July 1, and October 1 for each year of the stayed suspension while Ricks is being treated.

6. Actively participate in a 12-step Program as follows:

(a) Attend at least four AA/ NA meetings each week. Ricks will keep a sign-up sheet signed by the leader of each meeting he attends to verify his attendance and provide this sheet to his monitor on a monthly basis. The number of meetings to be attended will be reviewed at the conclusion of the 180-day period following entry of this Order and may be decreased, maintained or increased at the sole discretion of PALS, but shall in no event be less than three meetings per week.

(b) Join a home group and attend its meetings every week. Ricks will maintain a sponsor and an active relation with his sponsor at all times. The identity of his sponsor shall be communicated to PALS and Ricks will authorize PALS to communicate with his sponsor regarding the status of his recovery. No confidential information shared with the sponsor shall be sought by PALS except information as to status of recovery.

7. Arrange for and submit to random urine drug screens. A drug screening service shall be employed by Ricks which provides a toll free number for Ricks to call each

day to determine if he is to be screened that day. The failure to call each day or the failure to report promptly for a screen shall be deemed a positive test result. The results of the drug screening or the failure to call or to report promptly for a screen shall be reported directly to PALS and the State Bar by the screening agency and Ricks shall be responsible for seeing that this is done. Ricks may use any testing service such as the National Confederation of Professional Services ("NCPS") (telephone 1-800-948-8589) or another similar service approved by PALS.

8. Ensure that monthly reports are made to his PALS monitor and that PALS makes quarterly reports to the State Bar certifying that Ricks is in compliance with each aspect of his rehabilitation program set forth above. The quarterly reports regarding PALS compliance must be sent to the State Bar no later than January 1, April 1, July 1, and October 1, for each year of the stayed suspension.

The failure of Ricks to comply with any of the foregoing aspects of the program of rehabilitation set forth in Section I(A) subsections 1-8 shall constitute a violation of the conditions of the stay and warrant activation of the suspension of Ricks' license.

B) Ricks shall submit to an examination by Phillip Hillsman, or another psychiatrist approved by the State Bar, within three months of the entry of this Order. Defendant shall comply with all the psychiatrist's recommendations for treatment and counseling, if any, throughout the course of the stayed suspension. If treatment or counseling is required, Ricks shall ensure that his psychiatrist forwards quarterly progress reports to PALS and to the State Bar throughout the course of the treatment during the stayed suspension. The psychiatrist's quarterly reports must be received by the State Bar no later than January 1, April 1, July 1, and October 1, for each year of the stayed suspension, after the examination is completed.

C) Ricks shall not violate any provisions of the Revised Rules of Professional Conduct at any time during the two-year suspension.

D) Ricks shall not violate any state or federal criminal laws at any time during the three year suspension.

E) Ricks shall pay the costs of this proceeding, as assessed by the Secretary, within 60 days of entry of this order.

F) Compliance with all the conditions of the this order shall be at Ricks' own expense. Under no circumstances shall the State Bar be responsible for payments or bills associated with Ricks' compliance with this Order.

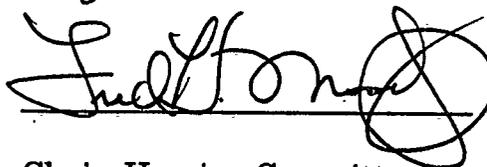
II. If, upon a motion by the State Bar, a Hearing Committee of the DHC finds that Ricks has violated any of the conditions in Section 1(A)-(E) of this Order, the suspension of Ricks' license shall be activated. If the suspension is activated, , prior to seeking reinstatement of his license, Ricks must:

A. Comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules; and

B. Demonstrate that he has totally refrained from the use of alcohol and all mind altering substances except as may be specifically prescribed and approved by Ricks' personal physician. Ricks must meet this requirement by successful participation with the drug screening procedure and program outlined in I.A)7 above.

Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 22d day of January, 1999.



Chair, Hearing Committee

We Consent:

Douglas J. Brocker  
Douglas J. Brocker  
Counsel for Plaintiff

Walter E. Ricks  
Walter E. Ricks  
Defendant