

5. Sometime in July 1999, Dan K. Ray (hereafter "Ray") retained Rudolph to prepare a will. Ray paid Rudolph \$500.00 in advance for these services.

6. Rudolph did not prepare the will within a reasonable time after accepting the fee.

7. Ray repeatedly attempted to communicate with Rudolph through June 2000, asking Rudolph to either prepare the will or refund his fee.

8. Rudolph did not prepare the will, refund the fee, or respond to Ray.

9. On 21 June 2000, Ray filed a Petition for Arbitration of Disputed Fee with the Fee Arbitration Committee of the North Carolina State Bar alleging Rudolph's failure to prepare his will or refund the fee paid in advance.

10. On 29 June 2000, the State Bar issued a letter of notice of Ray's Petition for Arbitration. The letter informed Rudolph of the claim and requested a response within 15 days of receipt. The letter was sent certified mail, return receipt requested.

11. The letter was returned to the State Bar by the US Postal Service as "unclaimed."

12. The State Bar re-issued the letter after contacting Rudolph by telephone.

13. Rudolph accepted delivery of the 29 June 2000 letter on 14 August 2000.

14. Rudolph did not respond within the 15 days as requested.

15. On 19 September 2000, the State Bar sent a follow-up letter to Rudolph certified mail, return receipt requested. This letter was returned to the State Bar by the US Postal Service as "unclaimed."

16. On 9 November 2000, a representative of the North Carolina State Bar contacted Rudolph and left a message on her answering machine requesting a response by 14 November 2000.

17. Rudolph failed to respond to any of the State Bar notices and failed to participate in the fee dispute resolution process.

18. On or about 20 May 1998, Cathleen Creed (hereafter "Creed") engaged Rudolph to handle the estate of Creed's husband, Gregory Paul Creed, who had died on 1 May 1998. The estate was estimated to be less than \$10,000.00. Creed paid Rudolph \$300.00 as a fee and provided Rudolph with relevant documents and information concerning the estate.

19. Shortly thereafter estate file 98E776 was opened in Buncombe County listing Creed as the fiduciary and Rudolph as attorney.

20. Thereafter, Creed received at least three notices regarding the need to file estate accountings from the Clerk of Court, one dated 29 October 1998, one dated 20 March 2000, and one dated 2 May 2000. Creed forwarded each notice to Rudolph with the expectation that Rudolph would take care of the matter.

21. On or about 5 June 2000, the sheriff attempted to serve Creed with a Show Cause order in the estate. Creed attempted to contact Rudolph. Rudolph left one message for Creed

stating that she would "call the courthouse." Creed heard nothing further from Rudolph despite leaving at least one additional message for Rudolph.

22. Before or during February 1997, Brenda Pike (hereafter "Pike") and Jamie Allen (hereafter "Allen") entered into a contract to purchase a residence at 8 Gladstone Road, and an adjacent lot on Stockbridge Place in Asheville, North Carolina, from Virginia Walls (hereafter "Walls").

23. In February 1997, Pike and Allen engaged Rudolph to handle the closing of the contract of purchase, including preparation and recording of the deed to both parcels from Walls to Pike and Allen.

24. Rudolph prepared the deed, closed the transaction, and recorded the deed.

25. The deed prepared by Rudolph did not include the adjacent lot on Stockbridge Place and the parcel was not effectively conveyed to Pike and Allen as a result.

26. On or about 4 February 2000, Pike and Allen received a letter from an attorney representing Walls enclosing a letter dated 13 December 1999 addressed to Rudolph concerning Rudolph's failure to include the Stockbridge Place lot in the deed. The attorney indicated that Walls had continued to receive the property tax notices for the lot in her name since closing.

27. Pike attempted to contact Rudolph numerous times after receipt of the letter from Wall's attorney, but was unsuccessful.

28. On 22 March 2000, Pike sent a letter to Rudolph by certified mail, return receipt requested, outlining the problem with the conveyance, a proposal from Wall's attorney to correct the matter of record, and requesting Rudolph's response and assistance. Rudolph signed the return receipt for this letter on 24 March 2000. Rudolph did not respond to Pike or Allen.

29. Wall's attorney corrected the conveyance and charged Pike and Allen an attorney fee for his services. Pike and Allen also had to pay penalties and interest in addition to the delinquent property taxes since Walls had not paid the property taxes since the closing of the purchase. The total of the fees, penalties, and interest incurred by Pike and Allen was \$511.13.

30. On or about 9 June 2000, the Chairman of the Grievance Committee of the North Carolina State Bar issued a Letter of Notice to Rudolph with a Substance of Grievance based on the grievance filed by Pike and Allen. The Letter of Notice was mailed to Rudolph by certified mail, return receipt requested. The Letter of Notice required a response within 15 days of receipt.

31. On 14 June 2000, Rudolph accepted service of the Letter of Notice by signing the certified mail receipt.

32. Rudolph did not respond to the Letter of Notice by the deadline required.

33. Counsel for the North Carolina State Bar mailed a letter to Rudolph on 22 August 2000 requesting a response to the Letter of Notice by 31 August 2000. Rudolph did not respond to that letter by the deadline stated.

34. On or about 1 June 1998, Jimmie Sylvest (hereafter "Sylvest") engaged Rudolph to represent her in an action for divorce and equitable distribution against her husband, James

Michael Brittain (hereafter "Brittain"). The main issue relevant to equitable distribution was a contention by Sylvest that Brittain had incurred approximately \$31,000.00 in credit card debt using her name for which she wanted Brittain to assume responsibility. Sylvest paid a fee of \$500.00 to Rudolph in advance.

35. Over the course of representation, Rudolph wrote several letters to creditors on behalf of Sylvest seeking to absolve Sylvest from the debt. Rudolph also filed a complaint for divorce and equitable distribution on behalf of Sylvest.

36. On 11 May 1999, the court entered a judgment of absolute divorce in the Sylvest v. Brittain complaint, but deleted a provision from the order preserving the equitable distribution claim for later hearing.

37. Sylvest moved to Fort Collins, Colorado during the spring of 1999.

38. After moving to Colorado, Sylvest attempted to contact Rudolph on multiple occasions concerning the continued notices from creditors that she was receiving. Rudolph did not respond to Sylvest.

39. Sylvest engaged an attorney in Colorado to contact Rudolph seeking an explanation of the status of the claim against Brittain regarding the credit card debt. The attorney called Rudolph at least once and then wrote to Rudolph on 4 August 2000. Rudolph did not respond to either the telephone call or the letter.

40. On or about 16 January 2001, a Letter of Notice issued by the Chairman of the Grievance Committee of the North Carolina State Bar accompanied by a Substance of Grievance based on Sylvest's grievance was served on Rudolph.

41. Rudolph responded to the Letter of Notice by letter dated 23 March 2001 by informing the Chairman, among other things, that there was nothing more she could do for Sylvest. At the time, Rudolph had not informed Sylvest of that position or responded in any way to Sylvest or her attorney.

42. Rudolph, by her consent to this Order, waives any formal hearing in this proceeding and stipulates that these matters may be resolved by the Disciplinary Hearing Committee based on the stipulated facts. Further, Rudolph, by her consent to this Order, waives any right to appeal this Order or challenge the sufficiency of the Findings of Fact.

Based upon the consent of the parties and the foregoing Findings of Fact, the hearing committee enters 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. The defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

(a) By failing to prepare the will for Ray after accepting the fee in advance for the work, Rudolph failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Revised Rules of Professional Conduct.

(b) By failing to communicate with Ray for nearly a year after accepting the engagement of work, Rudolph failed to keep a client reasonably informed about the status of the matter and comply with the client's reasonable requests for information in violation of Rule 1.4(a) of the Revised Rules of Professional Conduct.

(c) By failing to perform the work for clients Ray and Creed or refund the advance fees paid to her, Rudolph charged a clearly excessive fee in violation of Rule 1.5(a) of the Revised Rules of Professional Conduct and failed to properly withdraw or terminate representation in violation of Rules 1.16(b) and (d) of the Revised Rules of Professional Conduct.

(d) By failing to participate in the fee dispute resolution process with respect to her client Ray after receiving notice from the State Bar that her client had requested resolution of a fee dispute, Rudolph violated Rule 1.5(f)(2) of the Revised Rules of Professional Conduct.

(e) By failing to respond to the various notices of the Clerk of Court with respect to the Creed estate and requests of her client, Catherine Creed, Rudolph failed to act with reasonable diligence with respect to a client's legal matter in violation of Rule 1.3 of the Revised Rules of Professional Conduct.

(f) By failing to take corrective action to cure the problem with the conveyance of the Stockbridge Place lot on behalf of Brenda Pike within a reasonable time after receiving notice of the problem, Rudolph failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Revised Rules of Professional Conduct.

(g) By failing to respond to the repeated attempts to contact her by her clients Dan K. Ray, Catherine Creed, Brenda Pike, and Jimmie Sylvest, Rudolph failed to keep her client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of Rule 1.4(a) of the Revised Rules of Professional Conduct.

(h) By failing to respond in a timely fashion to the Letter of Notices issued by the Chairman of the Grievance Committee regarding grievances filed by Brenda Pike and Jimmie Sylvest, Rudolph knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct.

3. The Defendant has waived any right to a formal hearing in this matter and agrees that it may be resolved by the Disciplinary Hearing Committee based upon consent. Further, Defendant waives any right to appeal this Consent Order.

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

Findings Of Fact Regarding Discipline

1. Rudolph received an Admonition from the Grievance Committee on 14 April 1997 concerning her failure to take action on behalf of a client and failing to refund the fee paid by the client. Rudolph also failed to respond to the inquiries of the Bar on this matter.

2. Even after Rudolph acknowledged that client Ray was entitled to a refund of his fee, she has taken no affirmative steps to make the refund before the commencement of this proceeding.

3. During the relevant period of the conduct outlined in the findings of fact above, Rudolph had a series of personal problems that hampered her ability to effectively deal with clients, including the illness and subsequent death of a close friend who lived outside the state, that led to her seeking professional treatment for depression and voluntarily closing her practice. Rudolph continues to be under the care of a psychiatrist and take medication for her depression.

4. No clients have filed grievances with the Bar concerning Rudolph's conduct in her current position as the Guardian Ad Litem Attorney Advocate.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the hearing committee concludes that:

1. The defendant's misconduct is aggravated by the following factors:
 - a. a prior disciplinary offense similar in nature to those involved in the instant proceeding;
 - b. a pattern of misconduct;
 - c. a failure to respond;
 - d. multiple offenses; and
 - e. indifference to making restitution.
2. The defendant's misconduct is mitigated by the following factors:
 - a. absence of a dishonest or selfish motive;
 - b. personal or emotional problems; and
 - c. coping with depression.
3. The aggravating factors outweigh the mitigating factors.

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

ORDER OF DISCIPLINE

1. The defendant, Judy Rudolph, is hereby suspended from the practice of law for three years, effective 30 days from service of this order upon Rudolph.
2. The three-year suspension is stayed for three years as long as Rudolph complies, and continues to comply during the period of the stay, with the following conditions:
 - a. Rudolph will follow the course of treatment prescribed by her psychiatrist for as long as her psychiatrist recommends. Rudolph will continue to use a board certified psychiatrist as her psychiatric care provider during the period of the stay. Rudolph will notify the North Carolina State Bar if she proposes to change her psychiatric care provider in advance. The North Carolina State Bar will advise Rudolph as quickly as possible if the change in provider is acceptable to the North Carolina State Bar. If the change is unacceptable to the North Carolina State Bar, Rudolph will find another provider acceptable to the North Carolina State Bar.
 - b. Within 30 days of service of this disciplinary order on her, Rudolph will execute any and all necessary authorizations for the release of medical or psychiatric information relevant to her continued treatment for depression or any other condition impairing her ability to practice to the North Carolina State Bar in a form and manner sufficient to the North Carolina State Bar.
 - c. Rudolph will direct her psychiatric care provider to provide a report at least annually to the North Carolina State Bar outlining Rudolph's compliance or non-compliance with the prescribed course of treatment. Further, Rudolph will direct her psychiatric care provider to provide an immediate report to the North Carolina State Bar if, at any time during the stay period, Rudolph fails to comply with the prescribed course of treatment. Rudolph will direct her psychiatric care provider to provide a final report to the North Carolina State Bar if, at any time during the stay period, Rudolph completes the prescribed course of treatment and is released from care.
 - d. Rudolph will not resume the private practice of law during the period of the stay without her psychiatric care provider first providing a written report to the North Carolina State Bar showing that Rudolph no longer suffers from any physical, mental, or emotional problem that will interfere with her ability to perform the obligations necessary for the private practice of law.
 - e. Within 30 days after the service of this disciplinary order on her, Rudolph will provide the North Carolina State Bar with written evidence that she has made restitution to her clients as follows:
 - i. to Mr. Dan K. Ray the sum of \$500.00;
 - ii. to Catherine Creed, the sum of \$300.00;

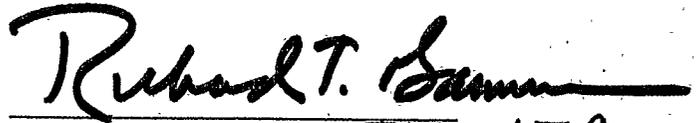
- iii. to Brenda Pike, the sum of \$511.13; and
- iv. to Jimmie Sylvest, the sum of \$500.00.
- f. Within 30 days after service of this disciplinary order on her, Rudolph will make a diligent search for the client file of Jimmie Sylvest and provide all client material in that file to Ms. Sylvest.
- g. During the period of the stay, Rudolph will pay all Membership dues and Client Security Fund assessments and will comply with all Continuing Legal Education requirements on a timely basis.
- h. During the period of the stay, Rudolph will keep her address of record with the North Carolina State Bar current; will accept all certified mail from the North Carolina State Bar, and will respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication.
- i. Rudolph will not violate any of the Revised Rules of Professional Conduct during the period of the stay.
- j. Rudolph will not violate any laws of the State of North Carolina or of the United States during the period of the stay.
- k. Rudolph will pay all costs of this proceeding as assessed by the Secretary within 30 days after service of this disciplinary order on her.
- 3. If the stay of the suspension is lifted and the suspension is activated for any reason, Rudolph will comply with each of the following conditions precedent to reinstatement.
 - a. Rudolph will have submitted her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating her suspension.
 - b. Rudolph will have complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules on a timely basis.
 - c. Rudolph will have made restitution to her clients as follows:
 - i. to Mr. Dan K. Ray the sum of \$500.00;
 - ii. to Catherine Creed, the sum of \$300.00;
 - iii. to Brenda Pike, the sum of \$511.13; and
 - iv. to Jimmie Sylvest, the sum of \$500.00.
 - d. Rudolph will have made a diligent search for the client file of Jimmie Sylvest and provided all client material in that file to Ms. Sylvest.
 - e. Rudolph must show by clear, cogent, and convincing evidence that she is no longer suffering from any physical, mental, or emotional condition that impairs her

professional judgment or ability to engage in the practice of law in a competent manner.

- f. Rudolph will not have violated any of the Revised Rules of Professional Conduct.
- g. Rudolph will not have violated any laws of the State of North Carolina or of the United States.
- h. Rudolph will have paid all costs of this proceeding as assessed by the Secretary.

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

This the 1st day of August 2002.



~~Elizabeth Bunting~~, Chair Richard T. Gammon
Disciplinary Hearing Committee

Agreed to and consented by:



Judy Rudolph, Defendant

David R. Johnson, Attorney for Plaintiff