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NORTH CAROLINA
WAKE COUNTY

BEFORE THE COUNCIL OF THE
NORTH CAROLINA STATE BAR

04 BCR 1

In re: Petition for the Reinstatement of
License of

George Wilborn Rives

Recommendation of Hearing Committee

This matter, the Petition for Reinstatement of the law license of George Wilborn Rives, was heard by a duly constituted Hearing Committee of the Disciplinary Hearing Commission comprised of Charles M. Davis, Chair; John M. May; and Johnny A. Freeman on 27 August 2004 pursuant to 27 N.C. Admin. Code, Chap. 1, Sub. B. § .0125. The Petitioner was present and represented by W. David White. The North Carolina State Bar was represented by David R. Johnson, Deputy Counsel. Based upon the stipulations of the parties at their prehearing conference, the evidence presented by the parties, and the arguments of counsel, the Hearing Committee makes the following:

Findings of Fact

1. George Wilborn Rives (hereafter "Rives") is 52 years old. He was born and raised in Surry County and has lived in Surry County most of his adult life. After graduation from North Carolina State University, he held several jobs in private business before starting law school at Wake Forest University in August 1982. Rives graduated from law school in 1985 and was licensed to practice law on 24 August 1985.
2. After receiving his law license, Rives engaged in the private practice of law in Dobson and Mount Airy. He worked in a law firm immediately after graduation until mid-1987. He was a solo practitioner from that time until mid-1989 when he formed a partnership with Hugh Mills. The partnership with Mills lasted until 1991. At that point, Rives went to work with another law firm until the fall of 1992 when he left the firm to take a position as a full-time instructor in the Paralegal Technology program at Surry Community College. Rives maintained a solo private practice on the side and eventually was employed part-time as the attorney for the towns of Mount Airy and Dobson as well. Rives held those positions from 1992 through early 1997 when surrendered his license and was disbarred by the Council.
3. In October 1995, acting as the attorney for Mount Airy, Rives received \$90,000 in funds from the town to be used to purchase property owned by Erastas Poore and his wife for the town. Rives deposited the funds into his trust account. The purchase transaction did not close until February 1996. At the time the purchase closed, the Poores had a mortgage on the property with a balance of approximately \$30,000.

4. By the time Rives closed the purchase from the Poores for the town of Mount Airy, Rives had taken funds he had received from the town in trust to pay for the purchase of the Poores' property and used them for his own personal benefit without the consent of any of the parties to the transaction. Rives took the funds in \$500 to \$1000 increments over the 5 months between receipt and closing.
5. Upon closing, Rives had insufficient funds in his trust account or otherwise to pay off the mortgage loan balance on behalf of the Poores. Rives instead made the monthly payments on the Poores' mortgage as if the Poores were still the owners of the property.
6. By July 1996, Rives had fully depleted the funds in his trust account through using funds for his own benefit without authorization or to cover the monthly mortgage payments on the Poores' mortgage to hide his embezzlement. Rives began depositing his personal funds into his trust account to continue making the mortgage payments on the Poores' mortgage.
7. At some point in 1996, Rives agreed to represent a limited liability company named Greenland Properties, LLC (hereafter "Greenland"), headed by the City Manager of Mount Airy, Ron Niland, and the Fire Chief, Wes Green. Greenland was organized to buy real property, repair it, and sell the refurbished homes to Vietnamese refugees.
8. In September 1996, Rives conducted a closing of the sale of Greenland property to buyers. At the time of the sale, Greenland had a mortgage on the property of approximately \$33,000. Rives received the sale proceeds from the buyers and was supposed to pay off the Greenland mortgage and deliver the net proceeds to Greenland. Rives did not pay off the Greenland mortgage with the sale proceeds. Instead, Rives used the proceeds to pay-off the Poores' mortgage. Rives did not disclose his failure to pay the Greenland mortgage. Greenland received a late notice and asked Rives about the payoff of the mortgage. Rives advised that he would "take care of it" and paid \$5,000 to the mortgage company on November 8, 1996 on the Greenland loan. A balance of about \$28,000 remained on the Greenland loan despite the \$5,000 payment.
9. In October 1996, Rives conducted a closing of the purchase of property belonging to Wendy Simpson and others by Greenland. At the time, Simpson had a mortgage on the property with a balance of about \$34,000. Rives received the proceeds for the purchase from Greenland, including loan proceeds on Greenland's behalf. Rives was supposed to pay off the Simpson mortgage at closing and deliver the net proceeds to Simpson. Rives did not pay off the Simpson mortgage at closing. Rives did not disclose his failure to pay to Simpson. Simpson then received a notice from the mortgage company that her monthly payment was past due. Simpson contacted Rives on Friday, November 8, 1996 to ask about the payoff of the mortgage. Rives paid \$5,000 to the mortgage company on the Simpson loan that day leaving a balance of about \$29,000.
10. On November 14, 1996, Simpson notified the Bar of her concern that her mortgage had not been paid as required at the closing. On November 16, 1996, Simpson sent a letter to the Bar outlining the events and her concern.

11. On November 15, 1996, Rives paid the balance of the Simpson loan.
12. On November 18, 1996, the Surry County Sheriff served a temporary restraining order on Rives prohibiting Rives from receiving or disbursing any funds received in a fiduciary capacity. On November 19, 1996, an investigator for the State Bar, Ed White, met with Rives and interviewed him and received Rives' records from the various transactions. At the time White met with Rives, Rives advised White that he still owed Greenland approximately \$5,500. Rives also told White that he had received a loan from his father of about \$16,000 to cover his shortfalls. Rives further told White that he owed \$50,000 to his trust account including the \$16,000 loan from his father. Rives admitted to White that he had misappropriated the funds from his trust account for his own use.
13. On or about November 19, 1996, Rives paid the balance of the Greenland loan and the net proceeds due Greenland.
14. On November 20, 1996, Rives consented to the entry of a preliminary injunction on the same terms as the temporary restraining order.
15. On February 27, 1997, Rives executed an affidavit tendering the surrender of his license to the Council of the North Carolina State Bar. The affidavit was filed with the North Carolina State Bar on March 3, 1997.
16. On March 8, 1997, Rives resigned as the town attorney for both Mount Airy and Dobson.
17. On April 4, 1997, the Council of the North Carolina State Bar entered an Order of Disbarment of Rives.
18. Rives has repaid all funds misappropriated from his trust account to or on behalf of the parties for whom he received those funds.
19. Rives timely published the appropriate notice in the State Bar Journal concerning his intent to petition for reinstatement. The State Bar received one written comment from Julius Banzet, III in response to the notice. Banzet opposed Rives' reinstatement based on the gravity of his misconduct.
20. Rives timely sent Wendy Simpson a notice of intent to petition for reinstatement and informed her of her opportunity to object. Simpson did not file a written objection to the Bar.
21. Rives has not been charged with or convicted of any crime that could result in the loss of citizenship either before or since his disbarment.
22. Rives has complied with Rule .0124 of the Discipline and Disbarment Rules with regard to the winding down of his practice after the Order of Disbarment.

23. Rives has complied with all applicable orders of the Disciplinary Hearing Commission and the Council of the North Carolina State Bar.
24. Rives has complied with all orders and judgments of courts relating to the matters resulting in the disbarment.
25. Rives has not engaged in the unauthorized practice of law since entry of the Order of Disbarment.
26. Rives has not engaged in any conduct during the period of disbarment constituting grounds for discipline under G.S. 84-28(b).
27. No disbursements from the Client Security Fund of the North Carolina State Bar were made as a result of Rives' misconduct.
28. Rives does not owe any fees, dues, or Client Security Fund assessments to the North Carolina State Bar.
29. After his disbarment, Rives was able to retain his position with Surry Community College as an instructor in the paralegal program. Rives was promoted by the College to Chairperson of the Division of Business Technologies overseeing instructors and courses involving business and accounting programs as well as the paralegal program in 2004. While this position involves budgeting and approving expenditures, Rives has no direct authority over receipts and disbursements at the College. Since 1998, Rives has also worked part-time at the Surry County Tax Department.
30. Rives presented evidence in the form of testimony of a number of members of the legal profession in Surry County and others, including former students, that Rives was of good moral character, that he had expressed remorse, and that he had accepted responsibility for his misconduct. However, most of Rives' witnesses did not know, at least not until just before the hearing, that Rives' misconduct had begun in 1995 and was not a one-time act. Rives admitted that his former law partner, Hugh Mills, had declined to either testify on his behalf or send a letter of support after Rives had recently explained the extent of his misconduct after Rives had solicited Mills support. The consensus of these witnesses was that Rives' disbarment was widely known in the community, but the details, were not widely or publicly known.
31. Rives presented many letters of support from lawyers, government officials, and business people in the community. However, it was not clear that the authors of these letters were fully aware of Rives' misconduct. In one of the letters, the author stated that she understood that Rives' misconduct was merely a problem with bad bookkeeping. Rives submitted that letter without going back to the author and correcting her misunderstanding. Rives admitted that he had not taken any affirmative efforts to explain his misconduct to others who had submitted letters on his behalf. Rives testified that he only explained his misconduct to those who asked.

32. Rives presented evidence in the form of testimony from several witnesses, most of whom were members of the legal community, that they believed that Rives' reinstatement would not be detrimental to the integrity and standing of the bar, the administration of justice, or the public interest. Most, if not all, of Rives' witnesses knew Rives either personally or professionally. There was no evidence that the general public outside of Rives' personal and professional friends and acquaintances, knew of Rives' petition for reinstatement or had an opportunity to express any opinion concerning this issue.
33. Rives presented no evidence of any specific acts or conduct to publicly display any change in character or reformation. Rives testified that his efforts at reformation were simply to "...[continue] the good things I had been doing all my life with my teaching, both at school and at Sunday school." Rives made no effort to discuss or acknowledge the extent of his misconduct with the public until just before this hearing. Although Rives stated that he discussed his misconduct with his students at the time of the disbarment, he admitted that he had not discussed it with more recent classes and there is no showing that he fully disclosed what he had done to any of those classes.
34. Rives currently struggles to fully appreciate the extent of his misconduct. At his deposition, he had to be prompted to acknowledge that his conduct involved not only embezzlement of client or fiduciary funds, but also the deception involved in his cover-up to avoid detection until confronted by the Bar. It was only after reading Simpson's complaint letter to the Bar from November 1996 during the deposition that he said he recognized that his conduct had resulted in more harm to Simpson than the mere prospect of economic injury. At the hearing, Rives could not identify who his victims were, continuing to contend that Simpson was the one victim because none of the other victims, including the town of Mount Airy and Greenland Properties, had been harmed financially. Rives has not apologized to any of his victims in any meaningful manner.
35. Rives has not held a position in which he has had fiduciary control over money since his disbarment. The closest such position he could identify was his collection of payments for copies of maps and documents in the Surry County Tax Department. His financial situation today is similar to that when he embezzled funds. He admits he still struggles financially today. The only evidence presented that he would not be tempted to embezzle again was his express statement that he would not do it.
36. Although Rives teaches an introductory course in the paralegal program that includes teaching professional responsibility, when asked at his deposition he could not readily identify when the last substantive change in the North Carolina Rules of Professional Conduct was made even though it was within a year of his petition for reinstatement. Rives did not attend any Bar accredited continuing legal education courses in Professional Responsibility before filing his petition for reinstatement. Rives testified that he knew that attendance at such courses could be considered as a factor in showing that he currently understood the Rules of Professional Conduct as required for reinstatement by the Bar rules.

37. In addition to his teaching assignments at the College, Rives regularly attends the annual meeting of the North Carolina Paralegal Association. Rives has not regularly attended Bar accredited CLE programs since his disbarment. Rives attended the Wake Forest University School of Law Annual Review in 2000 and a 3 hour course on defending driving under the influence cases held at the College. Rives understood that attendance at CLE could be considered as a factor in showing that he currently has the requisite knowledge of the law to be readmitted to the Bar.

Based on the foregoing Findings of Fact, the Hearing Committee makes the following:

Conclusions of Law

1. This matter is properly before the Council and the Hearing Committee, which has jurisdiction over the subject matter and the person of George Wilborn Rives.
2. Pursuant to the Discipline and Disability Rules of the North Carolina State Bar, the petitioner, George Wilborn Rives, had the burden of showing by clear, cogent, and convincing evidence that he had met each of the requirements for readmittance as a licensed attorney at law.
3. There were four contested issues before the Hearing Committee on which Rives had the burden to show that he had satisfied the requirements for reinstatement by clear, cogent, and convincing evidence. Those issues were:
 1. Has the Petitioner shown by clear, cogent, and convincing evidence that he has reformed and presently possesses the moral qualifications required for admission to practice law in North Carolina, taking into account the gravity of the misconduct that resulted in his disbarment?
 2. Has the Petitioner shown by clear, cogent, and convincing evidence that permitting him to resume the practice of law in North Carolina will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public, taking into account the gravity of the misconduct that resulted in his disbarment?
 3. Has the Petitioner shown by clear, cogent, and convincing evidence that he understands the current Rules of Professional Conduct?
 4. Has the Petitioner shown by clear, cogent, and convincing evidence that he currently has the competency and learning in the law required to practice law in North Carolina?
4. The misconduct for which Rives was disbarred was one of the most serious violations of Professional Responsibility that an attorney can commit, involving dishonesty and criminal conduct by the embezzlement of entrusted funds. Further, Rives engaged in multiple acts of misconduct over a period of a year.

5. Rives has failed to show by clear, cogent, and convincing evidence that he has reformed and presently possesses the moral qualifications required for admission to practice law in North Carolina, taking into account the gravity of the misconduct that resulted in his disbarment.
6. Rives has failed to show by clear, cogent, and convincing evidence that permitting him to resume the practice of law in North Carolina will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public, taking into account the gravity of the misconduct that resulted in his disbarment.
7. Rives has failed to show by clear, cogent, and convincing evidence that he understands the current Rules of Professional Conduct.
8. Rives has failed to show by clear, cogent, and convincing evidence that he currently has the competency and learning in the law required to practice law in North Carolina.

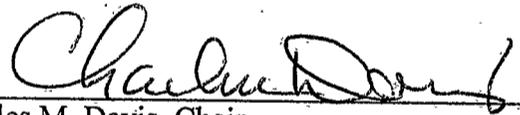
Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee makes this:

Recommendation to the Council

1. The Hearing Committee unanimously recommends that the Council of the North Carolina State Bar deny the petition for reinstatement of the law license of George Wilborn Rives.
2. Rives will pay the costs of this proceeding, including any deposition costs incurred by the North Carolina State Bar that Rives has not already paid.

Signed by the Committee Chair with the consent of all Committee members.

This the 21 day of September, 2004.



Charles M. Davis, Chair
Disciplinary Hearing Committee