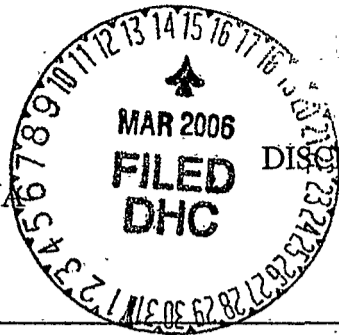


15557

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 26

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

ALLEN W. ROGERS, ATTORNEY
Defendant

)
)
) FINDINGS OF FACT
) CONCLUSIONS OF LAW
) AND ORDER OF
) DISCIPLINE
) BY CONSENT
)

THIS MATTER came on to be heard and was scheduled to be heard on Feb. 16 - 17, 2006 before a hearing committee composed of Stephen E. Culbreth, Chair; Michael Grace and Marguerite Watts. The Defendant, Allen W. Rogers, is represented by R. Jonathan Charleston and Coy Brewer. Carolin Bakewell represents the N.C. State Bar. To resolve this matter, both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Rogers hereby waives his right to a hearing and to appeal the entry of the consent order of discipline.

Based upon the consent of the parties the hearing committee 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, Allen W. Rogers, ("Rogers"), was admitted to the North Carolina State Bar in 1988, 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 or a portion of the period relevant hereto, Rogers was engaged in the practice of law in Fayetteville, Cumberland County, North Carolina.

4. Rogers was properly served with process and the hearing herein was held with due notice to all parties.

5. In 1996, Rogers undertook to represent Willie M. Strange ("Strange") respecting Strange's civil rights claims against the Fayetteville Police Department.

6. Rogers failed to take effective action to settle Strange's claim or, alternatively, file suit on Strange's behalf before the statute of limitations lapsed on Strange's claim.

7. In June 2002, after the statute of limitations had lapsed on Strange's claim, Rogers offered to pay Strange \$52,500 in "in consideration of the civil action between Willie Strange and the City of Fayetteville."

8. Rogers did not tell Strange that he had missed the statute of limitations on Strange's claim, nor did he tell Strange that he might have a malpractice action against Rogers and Rogers did not advise Strange to seek independent counsel before deciding whether to accept the \$52,500 from Rogers.

9. Between June 2002 and September 2003, Rogers paid Strange a total of \$32,500.

10. Rogers made no additional payments to Strange after October 2003.

11. On Dec. 17, 1999, Rogers was appointed to represent Anton Kevin Peterson ("Peterson") regarding criminal charges then pending against Peterson in Cumberland County.

12. Rogers failed to take effective, timely steps to prepare for Peterson's trial, which was set for July 24, 2000.

13. Rogers failed to meet with Peterson about the case prior to the July 24, 2000 and failed to keep him advised of the status of the matter.

14. On July 24, 2000, Rogers presented Peterson with a plea offer.

15. Peterson was forced to choose between going to trial with an attorney he had never met or accepting the plea offer.

16. Peterson entered a guilty plea and was sentenced.

17. Rogers was appointed to represent Peterson regarding Peterson's appeal from the sentence imposed in his case.

18. Rogers failed to perfect the appeal for Peterson.

19. On Aug. 28, 2003, the Cumberland County Superior Court found that Rogers had provided ineffective assistance to Peterson, granted Peterson's motion for appropriate relief and awarded Peterson a new trial. Peterson was convicted in the new trial.

20. Following Peterson's trial, Rogers submitted a fee application to the trial court which falsely represented that he had met with Peterson at the Cumberland County jail on six occasions between January 4, 2000 and July 21, 2000 for a total of 9.5 hours.

21. In May 1999, James E. Stephens, Jr. ("Stephens"), retained Rogers' services to file a civil action against the Town of Fairmont and its town manager, Ben Hill.

22. Rogers failed to take timely, effective action to settle Stephens' claims or, alternatively, file suit on his behalf before the statute of limitations ran on the case.

23. Rogers failed to keep Stephens apprised of the status of the case and failed to respond to his reasonable inquiries about the matter.

24. In June 2003, Rogers falsely told Stephens that the Town of Fairmont had agreed to settle the claim for \$3,000.

25. On one or more occasions prior to April 2004, Rogers knowingly possessed and engaged in the illegal use of cocaine.

26. Rogers was treated for addiction to cocaine in April 2004.

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

CONCLUSIONS OF LAW

1. The parties are properly before the hearing committee and the committee has jurisdiction over the person of the Defendant, Allen Rogers, and the subject matter herein.

2. Rogers' 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:

3. By failing to take timely, effective action regarding Strange's claims against the Fayetteville Police Department case, Rogers neglected a client matter in violation of Rules 1.3.

4. By failing to tell Strange that he believed he had missed the statute of limitations, failing to tell Strange that he might have a malpractice claim against him and by failing to advise Strange to seek independent counsel before deciding whether to accept the offer of payment, Rogers failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation in violation of Rule 1.4(b) and engaged in a conflict of interest in violation of Rule 1.8(h).

5. By failing to take timely action to prepare for Peterson's trial and by failing to perfect the appeal on his behalf, Rogers neglected a client matter in violation of Rules 1.3.

6. By failing to meet with Peterson prior to trial and by failing to communicate with him about his case, Rogers failed to communicate with a client in violation of Rule 1.4.

7. By submitting a fee application to the trial court that falsely represented that he had met with Peterson at the Cumberland County Jail on six occasions between Jan. 4 and July 21, 2000 for a total of 8.5 hours, Rogers engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

8. By failing to take timely, effective action regarding Stephens' claims Rogers neglected a client matter in violation of Rule 1.3.

9. By falsely representing to Stephens that he had in fact settled his case, Rogers engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

10. By failing to respond to Stephens' reasonable inquiries about the case and by failing to keep Stephens apprised of the status of the case, Rogers failed to communicate with a client in violation of Rule 1.4

11. By knowingly possessing and using cocaine, which is an illegal substance, between 2000 - 2004, Rogers engaged in one or more criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b).

Based upon the foregoing Findings of Fact and Conclusions of Law and based upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:
 - a. Rogers has prior discipline in that he was admonished by the Grievance Committee in April 2002.
 - b. Rogers engaged in multiple violations of the Revised Rules of Professional Conduct.
 - c. Rogers engaged in a pattern of misconduct.
 - d. Rogers had substantial experience in the practice of law.
2. The Defendant's misconduct is mitigated by the following factors:
 - a. Rogers has been active in PALS since 2004. Rogers sought treatment for his addiction in April 2004 and has abstained from alcohol and drug use since that time.
 - b. Rogers' misconduct occurred during a period of time when he was suffering from cancer and untreated bipolar disorder, which contributed to some of his misconduct.
 - c. There was no evidence that Rogers misused funds in his attorney trust account.
 - d. Rogers cooperated with the trustee and the Court during the period his practice was under a trusteeship.
 - e. Rogers has continued receiving psychiatric treatment and is complying with all recommendations of his treating physicians.
3. The aggravating factors outweigh the mitigating factors.
4. An order calling for discipline short of a suspension of Rogers' law license will not sufficiently protect the public and the standing of the legal profession for the following reasons:
 - a. Rogers' misconduct in making a false statement to the court regarding his visits to the jail in the Peterson matter created potential significant harm to the profession, the administration of justice and the public.

- b. Roger's misconduct in failing to be candid with his clients after having missed the statute of limitations and failing to properly advise them of their options as to other counsel caused substantial harm to his clients Willie Strange and James Stephens, both of whom lost the opportunity to pursue civil claims they had entrusted to Rogers.
- c. Rogers' misconduct also harmed Anton Peterson, whose right to appeal his criminal sentence was delayed for at least a year because of Rogers' failure to perfect an appeal on his behalf.
- d. Entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the offense which Rogers committed, would be inconsistent with the orders of discipline entered by the Commission in similar cases and would send the wrong message to the public and to attorneys regarding the conduct expected of members of the Bar of this state.

Based upon the foregoing factors and the consent of the parties, the hearing committee hereby enters the following:

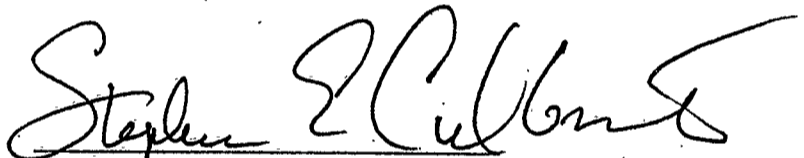
ORDER OF DISCIPLINE

1. The law license of the defendant, Allen W. Rogers, is hereby suspended for a period of three years. After serving one year of the suspension, Rogers may petition for an order staying the remaining two years of the suspension upon compliance with the following conditions:
 - a. He paid the costs of this proceeding within 90 days of service of notice of the statement of the costs.
 - b. He provided a written release to the N.C. State Bar authorizing its representatives to speak with his psychologist and psychiatrist concerning whether he is complying with all treatment plans and recommendations of his health care providers.
 - c. He shall submit to random tests for the presence of controlled substances during the entire period of his suspension, both active and stayed.
 - d. He shall abstain from all alcohol, illegal drugs and all prescription drugs other than those prescribed by his treating physician.
 - e. He has kept his address current with the N.C. State Bar, has accepted all certified mail from the State Bar and has responded to all communications from the N.C. State Bar within 30 days of the receipt of the communication or the date stated in the communication, whichever is earlier.

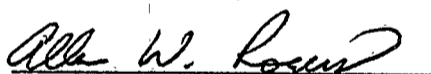
- f. He has not violated the laws of any state or the United States.
 - g. He has not violated the Rules of Professional Conduct.
 - h. He has complied with all mandatory continuing legal education requirements of the N.C. State Bar and has timely paid all dues and costs assessed by the N.C. State Bar.
 - i. He has complied with all provisions of his contract with the Lawyers Assistance Program.
 - j. He has not been held in contempt of any court or agency.
2. If Rogers successfully seeks a stay of the suspension of his law license the stay will continue in force only so long as he complies with the conditions set out in ¶ 1 (a) – (i).
 3. If Rogers does not seek a stay of the suspension of his law license or if the stay is activated at any time, Rogers must nevertheless comply with the conditions set out in ¶1 (a)-(i) before seeking reinstatement of his law license, even if such requirement means that the suspension of his license exceeds the three year stay period.

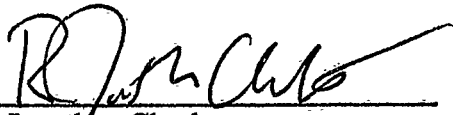
Signed by the Chair of the Hearing Committee with the consent of the other hearing committee members.

This the 14th day of March, 2006.

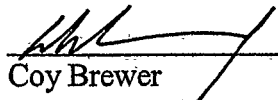

Stephen E. Culbreth, Chair
Hearing Committee

Seen and consented to:

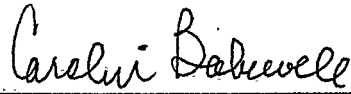

Allen W. Rogers, Defendant



Jonathan Charleston
Defendant's Attorney



Coy Brewer
Defendant's Attorney



Carolin Bakewell
Plaintiff's Attorney