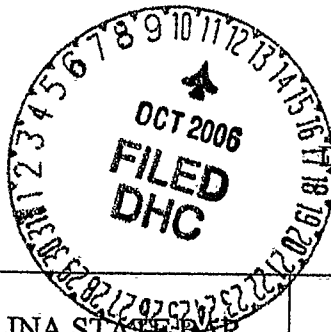


32922

NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
06 DHC 28

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JACOB E. SETZER, Attorney,

Defendant

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND CONSENT ORDER  
OF DISCIPLINE

This matter was considered by a hearing committee of the Disciplinary Hearing Commission duly appointed in this case. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Alan M. Schneider represented the Defendant, Jacob E. Setzer. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence 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. Defendant, Jacob E. Setzer ("Setzer"), was admitted to the North Carolina State Bar in 2004 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.
3. During all or part of the relevant periods referred to herein, Setzer was engaged in the practice of law in the State of North Carolina and maintained a law office in Charlotte, Mecklenburg County, North Carolina.
4. Setzer was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

5. On or about December 18, 2005, Setzer entered a Lowes' Home Improvement store, ("Lowes"), and purchased a power washer for the amount of \$388.00.

6. Setzer used his receipt to take two power washers from Lowes, one for which he had paid and one for which he had not paid.

7. On or about April 7, 2006, Setzer pled guilty and was convicted of misdemeanor larceny in case number 06 CR 216234, Mecklenburg County, North Carolina. Setzer was sentenced to 45 days in jail and ordered to pay a \$200.00 fine. The period of incarceration was suspended and Setzer was placed on supervised probation for two years.

#### CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Jacob E. Setzer, and the subject matter.

2. Misdemeanor larceny is a criminal offense showing professional unfitness as defined by 27 N.C.A.C. 1B § .0103 (17).

3. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline as follows:

a. Pursuant to N.C. Gen. Stat. § 84-28(b)(1), for conviction of misdemeanor larceny, a criminal offense showing professional unfitness; and

b. Pursuant to N.C. Gen. Stat. § 84-28(b)(2), for engaging in conduct in violation of the Revised Rules of Professional Conduct in effect at the time of his actions as follows: by unlawfully and willfully committing misdemeanor larceny, a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 8.4(b) and by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. Setzer's misconduct is aggravated by the following factors:

a. Dishonest motive.

2. The Defendant's misconduct is mitigated by the following factors:
  - a. Timely good faith effort to make restitution or to rectify the consequences;
  - b. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings;
  - c. Imposition of other penalties or sanctions, to wit: criminal sentence as described above;
  - d. Setzer suffered from personal problems at the time of the misconduct;
  - e. No prior discipline; and
  - f. Remorse.
3. The mitigating factors outweigh the aggravating factors.
4. Due to the dishonest nature of the conduct involved, the hearing committee finds that discipline of less than a suspension would fail to adequately address the conduct and protect the public.
5. As part of the plea arrangement agreed to by Setzer and pursuant to which he pled guilty, Setzer agreed to surrender his license to practice law for a period of six months, commencing on the date of his conviction, to wit: April 7, 2006. The plea arrangement further provided that Setzer could seek reinstatement at the conclusion of the six months by filing a petition with the State Bar and demonstrating by clear, cogent and convincing evidence that during his six month suspension he had complied with the following:
  - a. Had not engaged in the practice of law;
  - b. Had not violated the laws of the United States or of any state;
  - c. Had not engaged in conduct that would constitute a violation of the Rules of Professional Conduct; and
  - d. Had paid all sums owed to the North Carolina State Bar.

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

ORDER OF DISCIPLINE

1. The license of the Defendant, Jacob E. Setzer, is hereby suspended for two (2) years.
2. Setzer shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon him.
3. Setzer shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Setzer shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.
4. After serving the six month active suspension of his license imposed by the Court, which began on April 7, 2006, Setzer shall be eligible to have the remaining suspension time imposed by this Order stayed. In order to have the remaining suspension imposed by this order stayed, Setzer shall file a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:
  - a. Compliance with the conditions imposed by the Court, as recited above;
  - b. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
  - c. That he paid the costs of this proceeding within 30 days of service of the statement of costs upon him; and
  - d. That he has made arrangements to receive counseling during the course of the stay of his suspension from a qualified and licensed North Carolina psychologist or psychiatrist approved in advance by the North Carolina State Bar. Any consultations and counseling will be at Setzer's expense. Setzer shall sign a form authorizing the mental health provider to release information and records concerning Setzer's treatment to the Office of Counsel of the North Carolina State Bar and shall provide a copy of the authorization to the mental health provider and a copy to the State Bar prior to or at the time of his petition for reinstatement.

5. If any period of the suspension imposed in this case is stayed, such stay will remain in effect only while Setzer complies with the following:

- a. Setzer shall comply with all treatment recommended by the psychiatrist/psychologist from whom he has arranged to receive counseling. Setzer shall ensure that the treating psychiatrist/psychologist provides written reports to the Office of Counsel of the North Carolina State Bar concerning Setzer's compliance with the treatment plan each quarter during the stayed suspension of Setzer's law license. The reports shall be due each Jan. 1, April 1, July 1, and Oct. 1 throughout the stayed suspension. Such treatment and reports shall be at Setzer's expense.
- b. Setzer shall not revoke any authorization for release of information from his treating psychologist or psychiatrist to the Office of Counsel of the State Bar signed by him pursuant to this Order. Setzer shall comply with any requests for execution of additional authorizations upon request.
- c. Setzer will respond to all letters of notice and requests for information from the N.C. State Bar by the deadline stated in the communication.
- d. Setzer will advise the Bar in writing of all address changes within 10 days of the change.
- e. Setzer will timely comply with his State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline.
- f. Setzer will not violate the laws of any state or of the United States.
- g. Setzer will not violate any provision of the Revised Rules of Professional Conduct.

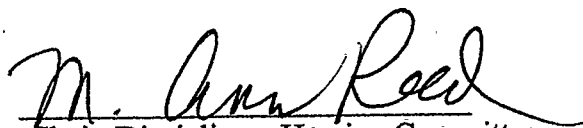
6. If during the stay of any period of the suspension ordered in this case Setzer fails to comply with any one or more of the conditions stated above, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

7. If the stay of the suspension is lifted and the suspension is activated for any reason, Setzer must show by clear, cogent, and convincing evidence that he complied with each of the following conditions before seeking reinstatement:


- a. Submitted his 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 his suspension;
- b. 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. Not violated any of the Revised Rules of Professional Conduct;
- d. Not violated any laws of the State of North Carolina or of the United States;
- e. Paid any additional costs of this proceeding as assessed by the Secretary within 30 days of receipt of the statement of costs;
- f. Kept his address of record with the North Carolina State Bar current; and
- g. Accepted all certified mail from the North Carolina State Bar.

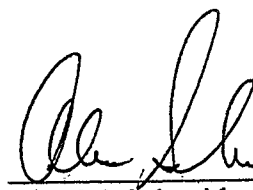
8. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension.

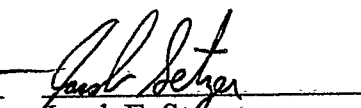
Signed by the Chair with the consent of the other hearing committee members, this the 11<sup>th</sup> day of October, 2006.

  
 Chair, Disciplinary Hearing Committee

CONSENTED TO BY:

  
 Jennifer A. Porter  
 Deputy Counsel  
 Attorney for Plaintiff

  
 Alan M. Schneider  
 Defense Counsel

  
 Jacob E. Setzer  
 Defendant