

7580

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
99 DHC 10

THE NORTH CAROLINA STATE BAR, Plaintiff	)	
v.	)	CONSENT ORDER OF DISCIPLINE
ROBERT L. ALLEY, Defendant	)	

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of Joseph G. Maddrey, Esq., Chair; Kenneth M. Smith, and B. Stephen Huntley pursuant to Section .0114 of the Discipline and Disability Rules of the North Carolina State Bar (hereinafter "Bar Rules"). Defendant, Robert L. Alley, represented himself. Plaintiff was represented by Douglas J. Brocker. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Based upon the consent of the parties, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "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, Robert L. Alley, (hereafter "Alley"), was admitted to the North Carolina State Bar on August 21, 1977 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the North Carolina State Bar's rules, regulations, and Revised Rules of Professional Conduct, and the laws of the State of North Carolina.

3. During the times relevant to this complaint, Alley actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Southern Pines, Moore County, North Carolina.

Count I: Neglect of Phyllis Chavez Estate

4. Phyllis Chavez fell and suffered head injuries on December 6, 1996, while working at Wal-Mart.

5. On January 10, 1997, Ms. Chavez retained Alley to represent her on a worker's compensation claim for injuries she suffered as a result of her fall at Wal-Mart.

6. Ms. Chavez died on February 19, 1997, after having surgery to address injuries caused by her on-the-job accident.

7. Phyllis Chavez's son, Paul F. Chavez, and her daughter, Anna Chavez McDonald, were beneficiaries of Ms. Chavez's estate.

8. Mr. Chavez and Ms. McDonald retained Alley on approximately March 11, 1997, to pursue death benefits on behalf of Ms. Chavez. Alley subsequently obtained death benefits from Wal-Mart.

9. After Ms. Chavez's death, Alley also obtained life insurance benefits for Ms. Chavez's accidental death, at the request of Mr. Chavez and Ms. McDonald.

10. Because of his prior representation of Ms. Chavez and his continued representation of them on the worker's compensation and life insurance claims, Mr. Chavez and Ms. McDonald requested that Alley serve as personal representative of Ms. Chavez's estate. Alley qualified as personal representative on March 31, 1997.

11. After qualifying to serve as personal representative, Alley failed to take numerous actions on behalf of the estate.

12. For example, on June 18, 1997, Ms. McDonald gave Alley a check for $3,000 payable to the estate.

13. This $3,000 check was for the payment of one of Ms. Chavez's creditors, a credit card debt to First Card.

14. Alley failed to pay the creditor with these funds for over a year and had not done so prior to resigning as personal representative in July 1998.

15. Additionally, on August 14, 1997, Alley withdrew two checks from Ms. Chavez's personal bank accounts. These checks were made payable to her estate in the following amounts - $1,596.61 and $3,844.00.

16. Alley did not make a corresponding deposit of $5,440.61 into the estate account until December 24, 1997. Alley, however, did not misuse or misappropriate

00795

any of the funds. Rather, the original bank checks remained in Alley's file in his office from their withdraw until Alley deposited them directly into the estate account.

17. Alley did not make the $5,440.61 deposit into Ms. Chavez's estate account until after repeated inquiries from Paul Chavez and Anna McDonald.

18. Also, Alley failed to file 1996 and 1997 tax returns for Ms. Chavez or request an extension of time to file them.

19. Alley also failed to pay the full amount of funeral expenses from the estate funds, as Ms. Chavez had directed in her will. Ms. McDonald and Mr. Chavez were held personally responsible for the remaining funeral expenses not paid, until after Alley resigned as personal representative.

20. Alley also failed to file the annual accounting for the estate when it was due on March 31, 1998.

21. Alley did not file the annual accounting until July 15, 1998, when he withdrew as personal representative.

22. Between March 31 and July 15, 1998, the Clerk of Court ordered Alley to file the annual accounting.

23. Also, between March 31 and July 15, 1998, Mr. Chavez and Ms. McDonald repeatedly requested that Alley file the annual accounting and eventually threatened to file a motion to have Alley removed as personal representative.

24. Alley also failed to take the necessary steps to liquidate Wal-Mart stock in Ms. Chavez's name and have it distributed to the beneficiaries. Funds from the stock were not needed to pay estate bills, and during this delay, the stock rose in value.

25. Alley also repeatedly failed to return telephone calls and respond to letters from Mr. Chavez and Ms. McDonald requesting information regarding the status of the estate, and requesting an accounting for the funds set forth in paragraphs 12-17.

26. Eventually, Ms. McDonald and Mr. Chavez retained an attorney, Steven W. Blevins, to assist them with the difficulties they were having with Alley.

27. Blevins, on behalf of Ms. McDonald and Mr. Chavez, sent Alley a letter dated July 14, 1998 in which he threatened to file a petition to have Alley removed as personal representative of Ms. Chavez's estate. In the letter, Blevins offered not to file the petition if Alley filed the 1997 annual accounting and a voluntary resignation as personal representative by the following day.

28. Alley filed an accounting and his resignation as personal representative of the Chavez estate the following day, July 15, 1998.

Count II: Failure to Perfect Appeal of Criminal Conviction

29. Alley was appointed to represent Charles Davis in early 1997 on criminal charges of first degree burglary.

30. Alley represented Davis at trial in Moore County Superior Court. On October 29, 1997, a jury convicted Davis of first degree burglary.

31. That same day, the Honorable Judge Steve A. Balog sentenced Davis to a term of imprisonment of 61 to 81 months.

32. Davis entered an appeal from his conviction and sentence.

33. Alley was appointed to represent Davis on the appeal of his conviction and sentence on October 29, 1997.

34. After being appointed to represent Davis on appeal, Alley failed to serve a proposed record and otherwise failed to perfect Davis' appeal.

35. The deadline for serving the proposed record or perfecting Davis' appeal has passed.

36. As a result of Alley's failure to perfect his appeal, Davis has lost his right to a direct appeal of his criminal conviction and sentence.

37. Alley also failed to communicate with Davis and failed to keep him reasonably informed about the status of his appeal after February 1998.

Mitigating Factors

38. Alley has been a sole practitioner in Southern Pines for over 20 years.

39. Alley has experienced a number of personal difficulties in the past few years that have caused him to neglect several clients matters, including the Chavez estate, the Davis appeal, and one other matter for which he was Censured by the Grievance Committee in October 1997.

40. Alley's personal difficulties began in 1994 when he separated from his wife. Alley was involved in extended and expensive domestic litigation until October 1997.

41. He subsequently remarried and had two children in 1996 and 1997.

00797

42. The domestic litigation, the corresponding alimony and property settlement, and his attempt to support a new family caused Alley severe financial difficulties.

43. Because of his financial difficulties and in an attempt to generate fees, Alley took on more legal matters than he could handle adequately in his office.

44. Also, Alley did not have sufficient administrative assistance in his office after November 1997 because his new wife, who had been acting as his office manager, was unable to assist him after the birth of their second child.

45. Alley has requested that the Moore County Chief Resident Superior Court Judge appoint substitute counsel to represent Davis on appeal.

CONCLUSIONS OF LAW

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

2. Alley's conduct, as set out in the Findings of Fact 4-28 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Alley committed the following violations of the Revised Rules of Professional Conduct (hereafter "Revised Rules"):

(a) By failing to pay $3,000 to the creditor of Ms. Chavez's estate for over a year after receiving it from Ms. McDonald, Alley violated Revised Rule 1.15-2(h).

(b) By failing for over four months to deposit the two checks from Ms. Chavez's personal bank accounts into the estate account, Alley violated Revised Rule 1.15-1(d).

(c) By failing to file the 1996 and 1997 tax returns, pay all the funeral expenses, file the annual accounting, liquidate the Wal-Mart stock, and respond to letters and phone calls from Mr. Chavez and Ms. McDonald, Alley failed to act with reasonable diligence and promptness and engaged in conduct that was prejudicial to the administration of justice in violation of Revised Rule 8.4(d).

3. Alley's conduct, as set out in the Findings of Fact 29-37 above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Alley committed the following violations of the Revised Rules of Professional Conduct (hereafter "Revised Rules"):

(a) By failing to serve the proposed record and otherwise failing to perfect Davis' appeal, Alley failed to act with reasonable diligence and promptness in representing his client in violation of Revised Rule 1.3.

(b) By failing to communicate with Davis and failing to keep him reasonably informed about the status of his appeal after February 1998, Alley violated Revised Rule 1.4(a).

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

FINDINGS OF FACT REGARDING DISCIPLINE

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

   (a) prior disciplinary offenses;
   (b) a pattern of misconduct;
   (c) multiple offenses; and
   (d) substantial experience in the practice of law.

2. Alley's misconduct is mitigated by the following factors:

   (a) absence of a dishonest or selfish motive;
   (b) personal problems; and
   (c) full and free disclosure to the hearing committee, candid admission of violations, and cooperative attitude toward proceedings.

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. Robert L. Alley is hereby suspended from the practice of law for one year, effective 30 days from service of this order upon him. The period of suspension is stayed for two years upon the following conditions:

   (a) Alley attend and complete a Law Management Practice Program approved by the State Bar. Alley must schedule an initial appointment within 60 days of the filing of this Order of Discipline and must complete the program within the period of the stayed suspension. Alley shall be responsible for paying all costs associated with attending and completing the program as a condition of the stayed suspension. Alley shall send

00799

the State Bar quarterly progress reports from the program administrator no later than January 1, April 1, July 1, and October 1, for both years of the stayed suspension, until he satisfactorily completes the program. Alley also shall send the State Bar documentation that the program has been satisfactorily completed no later than 60 days before the expiration of the stayed suspension.

(b) During each of two years of the stayed suspension, Alley must take the required 12 hours of CLE each year, plus an additional three-hour ethics block of CLE each year, for a total of 15 CLE hours for each of the two years of the stayed suspension.

(c) Alley shall not violate any Revised Rule of Professional Conduct or any state or federal criminal laws during the stayed suspension.

(d) Alley shall pay the costs of this proceeding as assessed by the Secretary within 60 days from the entry of this order.

2. If, upon a motion by the State Bar, a Hearing Committee of the DHC finds that Alley has violated any of the conditions in Section 1(a)-(d) of this Order, the suspension of Alley's license shall be activated. If the suspension is activated, prior to seeking reinstatement of his license, Alley 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;

(b) send the State Bar documentation that he has satisfactorily completed a Law Management Practice Program approved by the State Bar; and

(c) take the normal 12 hours of CLE each year, plus an additional three-hour ethics block of CLE each year, for a total of 15 CLE hours for each of the two years preceding his reinstatement.

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

This the 12th day of June 1999

Joseph G. Maddrey
Chair Hearing Committee

WE CONSENT:

Douglas J. Brocker
Counsel for Plaintiff

Robert L. Alley
Defendant

STATE OF NORTH CAROLINA
COUNTY OF MOORE

On the 8th day of June, 1999, personally appeared before me the said named ROBERT L. ALLEY, to me known and known to me to be the person described in and who executed the foregoing CONSENT ORDER, and he acknowledged that he executed the same and being duly sworn by me, made oath that the statements in the foregoing are true.

Notary Public

My Commission expires: 3-27-2001

00801