

10750

STATE OF NORTH CAROLINA
BEFORE THE NORTH CAROLINA STATE BAR

IN THE MATTER OF:

APPLICATION AND PETITION FOR : FINDINGS, CONCLUSIONS
READMISSION OF THOMAS S. : AND RECOMMENDATIONS
GARRISON, JR. :

This hearing coming on to be heard and being heard before a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar, consisting of William Owen Cooke, Chairman, Phillip I. Ellen and Ralph C. Gingles, Jr., on 4 February 1977, in the Office of the North Carolina State Bar, Raleigh, N. C., upon the Application and Petition for Readmission of Thomas S. Garrison, Jr., and Petitioner, Thomas S. Garrison, Jr., being present at said hearing together with his counsel, Robert B. Long, Jr., and Harold D. Coley, Jr., staff counsel for the North Carolina State Bar, being present and representing the North Carolina State Bar,

And it appearing to the Hearing Committee that on 26 April 1972, following a Letter of Notice to Applicant that the Grievance Committee of the North Carolina State Bar was investigating his conduct in certain respects and following a resolution by the Council of the North Carolina State Bar adopted on 4 April 1972, to institute disciplinary action against Applicant, Applicant, on 26 April 1972, surrendered his license to practice law and, thereafter, on 27 July 1972, Applicant was disbarred by an Order of the Council of the North Carolina State Bar,

And it further appearing to this Hearing Committee that Applicant has now filed a Petition requesting the reinstatement of his license to practice law pursuant to the provisions of G.S. 84-32 and Rule 25 of the Rules and Regulations of the North Carolina State Bar governing the discipline and disbarment of attorneys; and

The members of the Hearing Committee having heard the evidence, examined the exhibits filed on behalf of the Applicant and on behalf of the North Carolina State Bar, and having heard the argument of counsel, make the following:

FINDINGS

1. Thomas S. Garrison, Jr., the Applicant herein, is 56 years of age and has been a resident of Weaverville, North Carolina since 1951. He graduated from the University of North

Carolina with an AB degree in 1941 and with a law degree in 1948. During the period between 1941 and 1948, he served in the United State Armed Forces for a period of three years, having been a radar instructor for the United States Army Air Force. The Applicant was married in 1945 to Anna Lois Patton and they have four children, three sons and a daughter, the daughter being the youngest child. All of the children are over 18 years of age and only one resides at home (Rp. 15, 16 and 17).

2. Applicant was licensed to practice law in 1948 and practiced thereafter in the City of Asheville, North Carolina, until approximately one year before he surrendered his license to practice law in April, 1972 (Rp. 18). During the time that he practiced law in Buncombe County, he served as Assistant Domestic Relations Court Judge, from approximately 1950 to 1955, as solicitor of the General County Court for approximately three years prior to 1960, as County Attorney for nine and a half years immediately prior to 1968 or 1969, and also engaged in the general practice of law, specializing in real estate law (Rp. 18 and 19).

3. Applicant prior to the time he ceased to practice law, was active in the Lions Club of his community, the Boy Scouts of America, he was a Mason and a Trustee of the Methodist Church in Weaverville. He was also active in the Young Democrats Organization in the early 1950's (Rp. 19 and 20).

4. Around 1970, Applicant developed an alcoholic problem (Rp. 20). During this period of alcoholism, he embezzled funds from several guardianships of which he was guardian (See Judgment of Disbarment dated 7 July 1972). The alcoholic problem was to some extent caused by concern about his children, one having identity problems and the other having been in a wreck and having been seriously injured (Rp. 79, 87, and 88). As a result of his alcoholism he was involuntarily committed to Broughton Hospital on two occasions, the first occasion being in the latter part of 1971, the second occasion being in the early part of 1972 (Rp. 20 and 21). While he was in Broughton Hospital, he was in September, 1971, declared incompetent as an inebriate by a jury in Buncombe County (Rp. 21 and Findings in Order Restoring Competency attached to Petition). In June of 1972, he was declared competent by the Clerk of the Superior Court of Buncombe County under the provisions of G.S. 35-41 (see Order Restoring Competency attached to Petition).

5. On 12 July 1971, five judgments were entered against Applicant in various amounts based on default and misconduct in handling funds belonging to estates of which Applicant was guardian (see Judgment of Disbarment attached to Petition).

6. In March 1973, Applicant pleaded guilty in United States District Court for the Western District of North Carolina to charges arising out of his default and misconduct in handling guardianship funds. Applicant received a five-year suspended sentence, was placed on probation for five years, and was required to pay \$4,889.00 as restitution and a fine of \$2,000.00. Applicant paid the \$4,889.00 restitution at the time of the entry of the judgment and the \$2,000.00 fine was paid at the rate of \$50.00 a month. Applicant was placed on probation for five years, but the probation was terminated after two years (Rp. 24, 25 and 26 and Order of United States District Judge dated 6/23/76 attached to Petition).

7. Applicant was assessed approximately \$18,000.00 in Federal income taxes on the monies which he misappropriated. Of this amount, he has paid approximately \$15,000.00, leaving \$3,000.00 presently unpaid (Rp. 25).

8. Of the civil judgments rendered against Applicant in the Superior Court Division of the General Court of Justice of Buncombe County, all have been paid except two. The civil judgments which have been paid were paid by compromise settlement. In the cases of the two civil judgments remaining unpaid, offers of settlement have been made, but the judgment creditor (the judgment creditor being the same in both cases - Home Indemnity Company) has given no indication that it desires to settle either case for less than the full amount of the judgment. The unpaid judgments are in the cases of Mayda B. Gill and Bertha Aiken (Rp. 27 and 28). The Mayda B. Gill judgment was not included in the findings in the disbarment Order of the Council of the North Carolina State Bar (Rp. 56) nor was the Mayda B. Gill matter ever brought before the Federal Court as one of the charges upon which Applicant was charged under Title 28 of the U. S. Code (Rp. 38-41). The Gill guardianship was not a Veterans Administration Guardianship (Rp. 38).

9. The income of Applicant and his wife in 1973 was approximately \$10,000.00. Since that year, it has increased until their combined income in 1976 was approximately \$22,000.00. During this period, Applicant has paid out in the neighborhood of \$35,000.00 as a result of the acts to which he pleaded guilty in Federal Court. In addition, it appears that \$15,000.00 of the \$18,000.00 Federal income taxes assessed against Applicant have been paid (Rp. 24 and 25).

10. Applicant owns no property of any substantial value except his home, which is held by the entirety and a vacant lot at Flat Top Mountain, also owned by the entirety. Applicant's home has a deed of trust or mortgage on it securing a

note for around \$35,000.00. His homeplace is worth in the neighborhood of \$55,000.00 to \$60,000.00. There is a limited market for the vacant lot and it has no present value (Rp. 31-33, and 54-55).

11. Following the surrender of his license in April 1972, Applicant maintained an office and a telephone in the offices of an attorney (Rp. 44 and 45). Later, Applicant obtained an office of his own (Rp. 44). In no case did Applicant indicate to the public that he was practicing law as an attorney (Rp. 29-31 and 47-51). From April 1972 until the date of the hearing, Applicant engaged in the business of preparing title abstracts for other attorneys for which he received pay (Rp. 23). He did not render legal opinions as such although he reported what he found the records showed in connection with title to real estate which he abstracted (Rp. 51). In short, Applicant has engaged in the business of being an abstracter of real estate titles for other attorneys. Applicant's gross income from this occupation in 1976 was \$18,000.00 or \$19,000.00 (Rp. 69).

12. Applicant has not had a drink of an alcoholic beverage since April 1972, and has been completely sober since that date (Rp. 22).

13. The reinstatement of Applicant's license to practice law has been recommended by written communications from the following persons which were introduced into evidence:

Harry C. Martin, Senior Resident Judge
of the Superior Court
Division of the 28th Judicial District

Robert D. Lewis, Resident Judge of the
Superior Court Division of the General
Court of Justice of the 28th Judicial
District

C. Walter Allen, Chief District Court
Judge of the District Court Division
of the 28th Judicial District

Irvin Monk, President of the 28th
Judicial District Bar Association

R. Glenn Snipes, an attorney in
Asheville, N. C.

Richard B. Stone, an attorney in
Black Mountain, N. C.

Lawrence T. Sprinkle, a medical
doctor in Weaverville, N. C.

W. K. McLean, an attorney in
Asheville, N. C.

Robert W. Fisher, an attorney in
Asheville, N. C.

Junius G. Adams, Jr., an attorney in
Asheville, N. C.

Robert J. Robinson, an attorney in
Asheville, N. C.

William E. Digges, Register of Deeds of
Buncombe County, N. C.

R. Curtis Ratcliffe, Chairman of the
Buncombe County Board of Commissioners

Thomas H. Morrissey, Sheriff of
Buncombe County, N. C.

Herbert DeWeese, Deputy Sheriff of
Buncombe County, N. C.

William C. Frue, Jr., an attorney in
Asheville, N. C.

Senator I. C. Crawford of
Buncombe County, N. C.

14. The following residents of Buncombe County, N. C., testified at the hearing endorsing the reinstatement of Applicant's license to practice law:

Robertson Wall, an attorney practising in
Asheville, N. C.

Floyd Brock, an attorney practising in
Asheville, N. C.

Malcolm Leon Williams of
Black Mountain, N. C.

William W. Shope, Jr., of
Weaverville, N. C.

15. Responsible public officials of Buncombe County, N. C., such as judges, lawyers, and other court officials have, through letters or testimony at the hearing, stated that, in their opinion, Applicant has the moral qualifications, competency, and learning in the law required for admission to practice in this State and that the resumption of the practice of law by Applicant will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subsversive of the public interest.

CONCLUSION

Based upon the foregoing Findings of Fact, this Hearing Committee concludes as follows:

1. The Hearing Committee had some questions about whether the abstraction work which Applicant performed while disbarred is within the definition of the practice of law.

G.S. 84-2.1 defines the practice of law to include "abstracting titles". However, EC 3-5 and EC 3-6 of the Code of Professional Responsibility seems to indicate that abstracting work is not the practice of law.

There appears to be a conflict between this provision of the General Statutes and these provisions of the Code of Professional Responsibility. This conflict may be only apparent because Ethics Opinion No. 760, dated 20 August 1971, of the Council of the North Carolina State Bar provides:

"It is not unethical for a lawyer to employ a lay assistant for the purpose of performing the mechanical functions of title searching where the lay assistant would have no contact with the client, would render no opinion as to the validity or invalidity of the title, would prepare no legal documents of any kind, but would merely transcribe information from the public records, including the abstracting of deeds and other instruments of record, for review by the employing attorney. However, the employing attorney must pay the lay assistant for his services in the same manner as he would pay any other lay employee. That is, the lay assistant must be paid a salary at a fixed rate since Canon 34 condemns any division of fees by lawyers with laymen or lay agencies."

2. The Hearing Committee feels some concern about the fact that Applicant has not paid all of the judgments obtained against him as a result of his defalcations, the Bertha Aiken judgment (around \$8,000.00 (Rp. 56)), the Mayda Gill judgment (about

\$17,000.00 (Rp. 56)) remaining unpaid, and a portion of the Federal income tax judgment (around \$2,000.00 (Rp. 57)) all remaining unpaid. In addition, in the Mayda B. Gill case, there does not appear to have been any criminal charges brought or disposed of with regard to this defalcation.

3. The Hearing Committee feels, however, that, due to the age of Applicant, if he is ever to have his license reinstated, it should be reinstated at a time when it will be of some use to him rather than to delay reinstatement until the unpaid judgments are paid which will, without question, require a number of years. He has, through commendable effort, rehabilitated himself to a marked degree and has gained the respect of the people in his community for his exemplary conduct in difficult circumstances, even though the circumstances were the result of his own actions.

4. The Hearing Committee believes that Applicant has sustained the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency, and learning in the law required for admission to practice in this State and that the resumption of the practice of law within the State by petitioner will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.

Based on the foregoing Findings and Conclusions, the Hearing Committee makes the following:

RECOMMENDATION

The undersigned Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar recommends to the Council of the North Carolina State Bar that the license of Thomas S. Garrison, Jr., to practice law in the State of North Carolina be restored to him.

This the 23 day of MARCH, 1977.



William Owen Cooke, Chairman



Phillip I. Ellen



Ralph C. Gingles, Jr.

NORTH CAROLINA
WAKE COUNTY

FILED
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B.E. JAMES, SEC.
THE N.C. STATE BAR

BEFORE THE COUNCIL
OF THE
NORTH CAROLINA STATE BAR

IN THE MATTER OF THE
PETITION FOR APPLICATION
FOR RESTORATION OF LICENSE
OF THOMAS S. GARRISON, JR.,
Asheville, North Carolina

ORDER

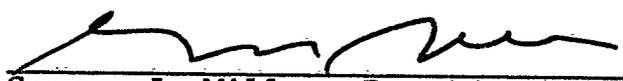
This matter came on for rehearing before the Council of The North Carolina State Bar at its July 15, 1977 meeting in Raleigh, North Carolina pursuant to Section 25 of the Rules and Regulations of The North Carolina State Bar and, it appearing that Thomas S. Garrison, Jr. applied for reinstatement and presented evidence to a Hearing Committee duly appointed by the Chairman of the Disciplinary Hearing Commission, which hearing was held on the 4th day of February, 1977, and at which, Thomas S. Garrison, Jr. was present and gave testimony and was represented by his attorney, Robert B. Long, Jr., Esquire. The North Carolina State Bar was represented by Harold D. Coley, Jr., Esquire. A transcript was made of the hearing and the findings, conclusions and recommendations of the Hearing Committee were entered on March 23, 1977, at which time the Hearing Committee recommended that the license of Thomas S. Garrison, Jr. be restored to him. This matter was set for review by the Council at its regular quarterly meeting on April 15th. Notice was directed to Mr. Garrison's attorney, Robert B. Long, Jr., Esquire, by mail on April 5, 1977. At the time of review by the Council, neither Mr. Garrison nor his attorney, Mr. Long, were present. The North Carolina State Bar was represented by Mr. Harold D. Coley, Jr.. At the rehearing before the Council of The North Carolina State Bar on July 15, 1977, Mr. Garrison was represented by his attorney, Robert B. Long, Jr., and The North Carolina State Bar was represented by Harold D. Coley, Jr.

After giving due consideration to the record of the hearing and the recommendations of the Hearing Committee and the Order of the Council of The North Carolina State Bar of May 10, 1977, upon motion duly made and seconded, it was:

RESOLVED, the Council upon review and reconsideration of the report and upon review and reconsideration of the record of the hearing, determined that Mr. Garrison should not be reinstated, and

THEREFORE, IT IS HEREBY ORDERED that the petition of application for reinstatement of Thomas S. Garrison, Jr. is denied and that Thomas S. Garrison, Jr. is taxed with the costs of this proceeding.

This 15th day of July, 1977.


George J. Miller, President
The North Carolina State Bar