

STATE OF NORTH CAROLINA

BEFORE THE COUNCIL
OF THE
NORTH CAROLINA STATE BAR
82 BCR 2

COUNTY OF _____

1982 JUL 10 11 11 AM

IN THE MATTER OF REINSTATEMENT)	
)	
OF)	ORDER OF REINSTATEMENT
)	
JAMES LAWRENCE SWISHER)	

This cause coming on to be heard and being heard by the Council of the North Carolina State Bar on July 16, 1982, pursuant to Rule 25(A) of Article IX of the Rules and Regulations of the North Carolina State Bar upon the Petition for Reinstatement to Practice Law filed by James Lawrence Swisher; and

It appearing that this matter was referred to a hearing committee of the Disciplinary Hearing Commission pursuant to Rule 25(A) (3) which held a hearing on May 14, 1982 where evidence was presented and arguments heard with L. Thomas Lunsford, II representing the North Carolina State Bar and Robert S. Cahoon representing the Petitioner; and

It further appearing that said hearing committee made Findings and a Recommendation which the Council of the North Carolina State Bar hereby adopts as follows:

FINDINGS

1. On August 30, 1962, James Lawrence Swisher (hereinafter "petitioner") was duly licensed and admitted to practice as an attorney at law in the State of North Carolina.
2. From August 30, 1962, until January, 1979, the petitioner was actively engaged in the practice of law in Guilford County and in the courts of Judicial Districts 18, 19, 19A, 19B, 20, 21 and 22. During this period he enjoyed a reputation among his clients, fellow attorneys, and court personnel as a person of exemplary moral character and as an attorney of outstanding competency and learning in the law.
3. On July 15, 1977, the petitioner was convicted in the United States District Court for the Middle District of North Carolina of the offense of obstructing justice by requesting certain persons not to furnish criminal investigators for the Internal Revenue Service information bearing upon the petitioner's income.
4. The judgment and sentence of the United States District Court was that the petitioner be committed to the custody of the United States Attorney General for imprisonment for three (3) years.

5. From the judgment and sentence of the District Court, the petitioner appealed to the United States Circuit Court for the Fourth Circuit, which affirmed the judgment of the District Court, and further avenues of appellate review were exhausted.

6. On February 5, 1979, the petitioner filed an affidavit of resignation and tendered his license to practice law to the Council of The North Carolina State Bar.

7. On April 24, 1979, The North Carolina State Bar entered its lawful order accepting the surrender of the petitioner's license and disbarred him from the practice of law in North Carolina, effective February 5, 1979.

8. On February 7, 1979, the petitioner began service of his prison sentence at Maxwell Federal Prison in Montgomery, Alabama, where he remained until December 30, 1979, when he was released on parole to the custody and supervision of the United States Probation Office in Greensboro, North Carolina. Upon successful completion of all the terms and conditions of the judgment and sentence of the United States District Court, the petitioner was discharged from the supervision of the United States Probation Department on February 6, 1982.

9. On February 15, 1982, the Clerk of Superior Court of Guilford County entered a certificate of restoration of citizenship of James Lawrence Swisher, pursuant to the provisions of N.C.G.S. 13.1(4) and N.C.G.S. 13.2.

10. On February 24, 1982, the date of the filing of the petition for reinstatement, more than three (3) years had expired since the effective date of petitioner's disbarment.

11. At the hearing on May 14, 1982, the petitioner testified in his own behalf and presented testimony from nine (9) other witnesses relating to the petitioner's moral qualifications, competency and learning in law, abstention from activities relating to the practice of law since January, 1979, and the probable impact of his reinstatement upon the integrity and standing of the bar, the administration of justice and the public interest. These witnesses included the Senior Resident Judge of the Superior Court for the Eighteenth Judicial District and six (6) licensed attorneys from Guilford County. Numerous additional prospective witnesses for the petitioner were present at the hearing for the purpose of testifying to his high moral qualifications and competency and learning in the law; however, upon representations by counsel for petitioner that

the testimony of these witnesses would be corroborative and cumulative, they were tendered for examination by the Committee and counsel for the North Carolina State Bar. In addition, petitioner offered evidence, which was received without objection, in the form of fifty-nine (59) letters from members of the North Carolina judiciary, court officials, public officers, practicing attorneys, and lay acquaintances of the petitioner attesting to his high moral character, reputation, and competency and learning in law. The writers included eleven (11) active or retired Judges of the Superior Court from the 18th, 19th, 19th(A), 19th(B), 20th, 21st, and 22nd Judicial Districts, all six (6) of the present District Court Judges for the 18th Judicial District, five (5) former District Court Judges, prominent members of the bar, and lay persons associated with the petitioner professionally.

No evidence was presented by counsel for the North Carolina State Bar, and cross-examination of witnesses tended to establish that the petitioner, subsequent to his disbarment, had meticulously refrained from activities related to the practice of law, and that he had supported his wife and children through his involvement in his family's automobile dealership in Kernersville, North Carolina, and the management of his rental properties in Guilford County.

Counsel for the North Carolina State Bar advised the Committee that an investigation relative to the petition for reinstatement had been conducted by the Office of Counsel and that no evidence adverse to the petitioner had been received. While Counsel for the North Carolina State Bar noted that the Bar was not advocating the reinstatement of the petitioner, it was stated that, in view of the unique circumstances of the present case, the Bar was not opposed to a recommendation by the Hearing Committee that the petitioner be reinstated.

12. Following the conclusion of the hearing on May 14, 1982, Counsel for the petitioner submitted to the Hearing Committee and to Counsel for the North Carolina State Bar, and filed with the Secretary, an affidavit of James Lawrence Swisher concerning the winding up of his law practice after his disbarment. The parties stipulated that said affidavit be included as part of the record of this proceeding and considered by the Hearing Committee. The Committee finds that James Lawrence Swisher did wind up his law practice in substantial compliance with Rule 24, Article IX, of the Rules and Regulations of the North Carolina State Bar concerning the discipline and disbarment of attorneys.

13. The evidence was unequivocal and undisputed, and the Committee finds by the clear and convincing weight of the evidence, that throughout the period of his practice of law, and at the present time, the petitioner has demonstrated and possesses the moral qualifications and the degree of competency and learning in law required for admission to practice law in this State.

14. While it is not subject to question that the petitioner was convicted of the crime of which he was charged and which resulted in his disbarment, the evidence discloses that the petitioner consistently maintained his innocence and exhausted every avenue of appeal. However, once the issue had been finally resolved against him, the petitioner accepted his punishment gracefully and without bitterness or remorse, and the evidence is convincing that in his contracts with his friends, family, former colleagues, and the public his conduct has been exemplary and consistent with the highest standards of the profession. The evidence further indicates that the conduct of the petitioner which resulted in his conviction and disbarment was an isolated and uncharacteristic episode in what is otherwise an unblemished private life and professional career.

15. The evidence compels the conclusion, and the Committee finds by the clear and convincing weight thereof, that the resumption of the practice of law within the State of North Carolina by the petitioner will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.

RECOMMENDATION

Based upon the foregoing findings, the Hearing Committee unanimously recommends that the application of James Lawrence Swisher for reinstatement as a member of the North Carolina State Bar with the privilege to practice law in North Carolina be granted.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

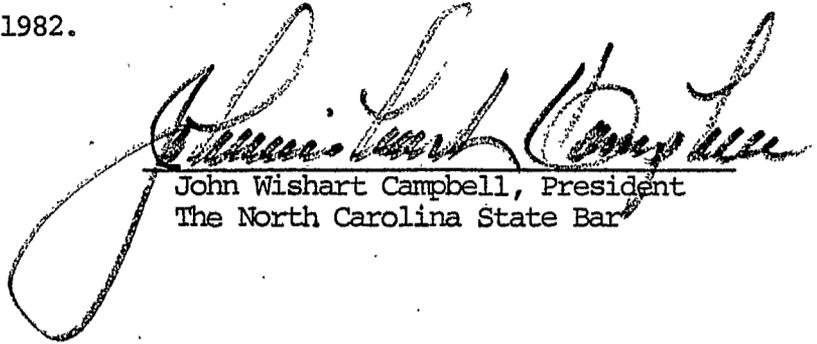
A. The license to practice law of James Lawrence Swisher be reinstated forthwith;

B. The Secretary is hereby directed to deliver to James Lawrence Swisher the Certificate of License now in possession of the Secretary; and

C. The Secretary is hereby directed to forward a copy of this Order to the Supreme Court of North Carolina, the North Carolina Court of Appeals, the Clerk of Superior Court of Guilford County and any other courts previously notified of James Lawrence Swisher's disbarment.

JAMES LAWRENCE SWISHER be taxed with the costs of this proceeding as certified by the Secretary.

By Order of this Council of the North Carolina State Bar this 16th day of July, 1982.



John Wishart Campbell, President
The North Carolina State Bar