

10523

NORTH CAROLINA
WAKE COUNTY

FILED
1986 AUG 25 AT 8 21
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
86 DHC 5
J. H. HARRIS, SEC.
THE N. C. STATE BAR

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.) CONSENT ORDER OF DISCIPLINE
DANIEL E. SMITH,)
Defendant)

This matter coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to Section 14(8) of Article IX of the Rules and Regulations of the North Carolina State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter; and it further appearing that both parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee therefore 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, Daniel E. Smith, was admitted to the North Carolina State Bar on September 10, 1982 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 Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Greensboro, Guilford County, North Carolina.

4. On the evening of July 12, 1984 the Defendant shot and killed his wife in their bedroom. Since that time, the Defendant has consistently maintained that he discharged his pistol on the

night in question in a state of panic under the mistaken assumption that the person he was startled to find coming into his bedroom in the middle of the night was an intruder, not his wife. The Defendant has consistently maintained that he did not intend to shoot his wife.

5. On January 15, 1986, in the midst of his trial upon a charge of voluntary manslaughter, the Defendant pleaded guilty to the crime of involuntary manslaughter, a felony. Superior Court Judge W. Douglas Albright accepted the Defendant's plea and sentenced the Defendant to be imprisoned for a term of three years.

6. Upon the court's acceptance of the Defendant's guilty plea, the Defendant's law license was automatically suspended pursuant to the terms of Section 15(1) of Article IX of the Rules and Regulations of the North Carolina State Bar.

7. This proceeding was instituted pursuant to Section 15(3) of Article IX of the Rules and Regulations of the North Carolina State Bar and is predicated solely upon the Defendant's plea of guilty to the crime of involuntary manslaughter.

8. Since entering prison on January 15, 1986 the Defendant has attained a minimum custody status with work release privileges. He has committed no major or minor infractions of prison rules or regulations.

9. While on work release, the Defendant is employed full-time with the law firm of Cahoon and Swisher in Greensboro, North Carolina as a paralegal and states that he plans to continue working as a paralegal until such time as he is permitted to resume the practice of law in North Carolina. The Defendant was not affiliated with the firm of Cahoon and Swisher at the time he committed the criminal acts which resulted in his imprisonment.

10. The Defendant has no criminal record except minor traffic offenses.

11. The Defendant has no prior record of professional misconduct.

12. The criminal offense of which the Defendant was convicted was unrelated to the Defendant's law practice.

Based upon the foregoing Findings of Fact, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

1. The Defendant's conduct constitutes grounds for discipline pursuant to G.S. §84-28(a) and (b)(1) in that the Defendant was convicted of the felony of involuntary

manslaughter, a criminal offense showing professional unfitness.

Based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW and upon the consent of the parties, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Daniel E. Smith, is hereby suspended from the practice of law in the State of North Carolina for a period of three years from the date this Consent Order of Discipline is filed. Should the Defendant's citizenship be restored prior to the expiration of the period of suspension, any remaining portion of the suspension shall be stayed upon the following conditions:

- a. That the Defendant file a timely petition for reinstatement pursuant to Section 25 of Article IX of the Rules and Regulations of the State Bar and not resume the practice of law until a valid order of reinstatement is entered pursuant to the procedures provided therein;
- b. That the Defendant pay the costs of this proceeding; and
- c. That the Defendant not commit any further misconduct as defined in G.S. §84-28(b)

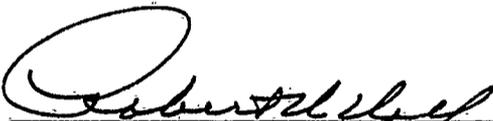
2. The Defendant shall surrender his license and membership card to the Secretary of the North Carolina State Bar.

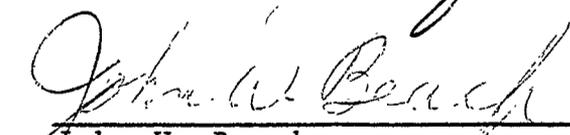
3. The Defendant shall comply with the provisions of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar relative to the winding up of practice to the extent that he has not already done so.

4. The Defendant shall pay the costs of this proceeding.

This the 15th day of August, 1986.


Garrett Dixon Bailey, Chairman


Robert W. Wolf


John W. Beach

Consented to by:

Daniel E. Smith
Daniel E. Smith, Defendant

Gerald C. Parker
Gerald C. Parker
Attorney for Defendant

Robert S. Cahoon
Robert S. Cahoon
Attorney for Defendant

L. Thomas Lunsford, II
L. Thomas Lunsford, II, Attorney
North Carolina State Bar, Plaintiff