6091

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
88 DHC 21

THE NORTH CAROLINA STATE BAR, Plaintiff vs. RODNEY ALAN COOK, ATTORNEY Defendant	FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was heard on March 23, 1989 before a hearing committee of the Disciplinary Hearing Commission composed of George Ward Hendon, Chairman, Sam L. Beam, and Robert C. Bryan. Fern E. Gunn represented the North Carolina State Bar and George G. Hearn and Thomas J. Farris represented the Defendant, Rodney Alan Cook. Based upon the admissions of the Defendant and the evidence presented at the hearing, the hearing committee makes the following Findings of Fact and Conclusions of Law:

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, Rodney Alan Cook, was admitted to the North Carolina State Bar on September 27, 1974, 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, Canons of Ethics, Code of Professional Responsibility, and Rules of Professional Conduct 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 Raleigh, Wake County, North Carolina.

4. The Defendant did not file tax returns or pay North Carolina individual income taxes for the years of 1983, 1984, 1985 and 1986.

5. It is a violation of N.C. Gen. Stat. Sec. 105-236(9) for any person to willfully fail to file state income tax returns or willfully fail to pay state income taxes at the time or times required by law or regulations.

6. The North Carolina Department of Revenue charged the Defendant

pursuant to N.C. Gen. Stat. Sec. 105-236(9) with two counts of willful failure to file individual state income tax returns for 1985 and 1986 and two counts of willful failure to pay state income taxes for 1985 and 1986.

7. On June 3, 1988, the Defendant pled guilty in Wake County District Court to two counts of willful failure to file individual state income tax returns for 1985 and 1986 and two counts of willful failure to pay state income taxes for 1985 and 1986.

8. Judge W. Pope Lyon found the Defendant guilty of the offenses as charged. Judge Lyon ordered a prayer for judgment continued for two years in those cases. He also ordered the Defendant pay all delinquent state income taxes, a $200 fine and court costs.

9. The Defendant's conduct, as alleged in Plaintiff's complaint, violated DR1-102(A)(4) and (6) of the Code of Professional Responsibility and Rule 1.2(B) and (C) of the Rules of Professional Conduct.

10. The Defendant owes $73,655.34 in either unpaid income taxes, estimated penalties or interest to the Internal Revenue Service for the period of 1983-1987.

11. The Defendant has paid $7,075.84 in state income taxes, including penalties and interest, for 1984-1987. The Defendant has paid $5,813.03 in federal income taxes, exclusive of penalty and interest not yet paid for the years 1984, 1985 and 1986.

12. Subsequent to the filing of Plaintiff's complaint, the Defendant filed his 1983 state income tax return. The Defendant owes $4,180.77, exclusive of an undetermined amount of penalty and interest.

Based upon the Findings of Fact and Defendant's admission of his violation of the Code of Professional Responsibility, and the Rules of Professional Conduct, the hearing committee makes the following Conclusions of Law:

The conduct of the Defendant constitutes grounds for discipline pursuant to North Carolina General Statutes Section 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

(a) By failing to file or pay state income taxes during the years 1983 through 1986, the Defendant has engaged in conduct involving dishonesty, in violation of Disciplinary Rule 1-102(A)(4) and Rule 1.2(C) and the Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of DR1-102(A)(6) and Rule 1.2(B).

Signed by the undersigned Chairman with the full accord and consent of the other members of the hearing committee, this the 5th day of May, 1989.

George W. Hendon, Chairman

#741

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
88 DHC 21

THE NORTH CAROLINA STATE BAR, Plaintiff vs. RODNEY ALAN COOK, ATTORNEY Defendant	)	ORDER OF DISCIPLINE

This matter was heard on March 23, 1989 before a hearing committee composed of George Ward Hendon, Chairman, Sam L. Beam and Robert C. Bryan. Based upon the Findings of Fact and Conclusions of Law entered by the hearing committee and based upon the evidence and arguments presented in the second phase of the hearing, the hearing committee makes the following additional Findings of Fact:

1. Several aggravating factors were present in the Defendant's case:

   (a) the Defendant received a Public Censure in a 1980 Disciplinary Hearing Commission case relative to his neglect of a client's case and his failure to respond to the State Bar's inquiries regarding his conduct in that matter;

   (b) the Defendant's failure to file and pay his North Carolina individual income taxes and his failure to file and pay his federal income taxes are acts involving a dishonest or selfish motive; and

   (c) the Defendant's failure to file tax returns and pay North Carolina individual income taxes for 1983 through 1986, as well as his failure to file and pay federal income taxes for 1983 through 1987 constituted multiple offenses.

2. The hearing committee finds that several mitigating factors were present in the Defendant's case:

   (a) the Defendant suffered from personal or emotional problems and physical disability or impairment due to alcohol abuse;

   (b) the Defendant gave a full and fair disclosure regarding these tax maters to the North Carolina State Bar's Grievance Committee and Disciplinary Hearing Commission and exhibited a cooperative attitude toward the proceedings;

(c) the Defendant's good character in the community was attested to by character witnesses and evidenced in numerous letters of character. In particular, the hearing committee was impressed by the willingness of the Defendant's friends and colleagues to stand behind the Defendant during a difficult period in his life;

(d) the Defendant showed a sincere effort to rehabilitate himself during the pendency of this action.

(e) the Defendant has exhibited remorse regarding his actions; and

(f) the remoteness (eight years) of the Defendant's prior disciplinary offense, a Public Censure, negates the previously cited aggravating factor of a prior disciplinary offense.

Based upon all the Findings of Fact and Conclusions of Law entered by this hearing committee, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant, Rodney Alan Cook, is suspended from the practice of law in North Carolina for a period of two years, with the suspension being stayed upon the following conditions:

(a) the Defendant shall timely file North Carolina and Federal Individual Income Tax Returns and he shall pay income taxes owed to both the state and federal governments or timely make arrangements acceptable with both tax authorities for payment of these amounts.

(b) the Defendant shall certify in writing to the North Carolina State Bar that he has in fact filed North Carolina and Federal Individual Income Tax Returns;

(c) the Defendant shall report in writing to the North Carolina State Bar on a quarterly basis, beginning June 1, 1989 and each 90 days thereafter, the amount of payments made to the North Carolina Department of Revenue and the Internal Revenue Services and the balances remaining thereon; and

(d) such certifications or reports as cited in paragraphs (b) and (c) above should be directed to the North Carolina State Bar's Counsel assigned to this case.

(e) the Defendant shall pay all costs of this proceeding.

Signed by the undersigned chairman with the full accord and consent of the other members of the hearing committee, this the 5th day of May, 1989.

George Ward Hendon, Chairman

#742