

1989



NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
94 DHC 3

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
vs.)
J. MARSHALL HAYWOOD, Attorney,)
Defendant.)

CONSENT ORDER
OF DISCIPLINE

This cause coming before a hearing committee composed of Maureen D. Murray, Chair, Stephen T. Smith, and Stephen Huntley; with A. Root Edmonson representing the N. C. State Bar and Nelson M. Casstevens, Jr. representing the Defendant; and based upon the Defendant's admissions as evidenced by his consent to the signing of this document, the hearing committee finds the following to be supported by clear, cogent, and convincing evidence:

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, J. Marshall Haywood, was admitted to the North Carolina State Bar on October 5, 1959, 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 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 Charlotte, Mecklenburg County, North Carolina.

4. On September 2, 1992, an Indictment was returned in the Rock Hill Division of the United States District Court of South Carolina in which defendant was named in a four-count indictment.

5. Prior to the September 2, 1992 South Carolina Federal Indictment, the United States Attorney for the Western District of North Carolina made a full investigation of the facts and circumstances surrounding this matter and thereafter declined to prefer any criminal charges against Defendant.

6. On December 21, 1992, a Plea Agreement was reached between Defendant and the United States Attorney for the United States District Court of South Carolina.

7. Paragraph 7 of the Plea Agreement was as follows:

The Defendant, J. MARSHALL HAYWOOD, understanding that his guilty plea in this case no doubt will (result) in attorney-discipline proceedings by the North Carolina State Bar, agrees to immediately seek a settlement with that body resulting in his suspension from the practice of law for a period of not less than two (2) years. The Defendant further understands that this agreement is expressly contingent on his reaching such a settlement with the North Carolina State Bar and is also contingent upon his surrender of his license to practice law within sixty (60) days of the execution of this Agreement.

Defendant attempted to comply with his obligations under Paragraph 7 of the Plea Agreement, but was prohibited from doing so by Section 17 of Article IX of the Rules and Regulations of North Carolina State Bar without submitting himself to disbarment.

8. On January 4, 1993, a Superseding Bill of Information was filed in the Rock Hill Division of the United States District Court for South Carolina replacing and superseding the September 2, 1992 Indictment. The Superseding Bill of Information charged Defendant with a misdemeanor violation of 26 U.S.C. Sec. 6050I and Sec. 7203 and 18 U.S.C. Sec. 2 (failure to file a form 8300 with the Internal Revenue Service).

9. On January 4, 1993, Defendant appeared in the Rock Hill Division of the United States District Court for South Carolina and entered a plea of guilty to the Superseding Information and the misdemeanor violation of 26 U.S.C. Sec. 6050I and Sec. 7203 and 18

U.S.C. Sec. 2. Defendant's plea was accepted by the United States District Court Judge.

10. Pursuant to the Plea Agreement, the Defendant closed his Charlotte, North Carolina law office and ceased to practice law on February 20, 1993.

11. On October 2, 1993, Judgment was entered in the Rock Hill Division of the United States District Court for South Carolina sentencing the Defendant. One of the special conditions of Defendant's supervised release imposed upon Defendant by the Court required Defendant to refrain from the practice of law in any court until February 21, 1995.

12. This Order is being entered at Defendant's request and in compliance with Defendant's Plea Agreement in the South Carolina United States District Court.

13. The offense for which Defendant was convicted was a serious offense as defined by Section 3(LL) of Article IX of the Rules and Regulations of the North Carolina State Bar.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

The conduct of the Defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen Stat. Sec. 84-28(b) (1) and (2) in that:

- (a) Defendant violated N.C. Gen. Stat. Sec. 84-28(b)(2) by violating the Rules of Professional Conduct as follows:

By pleading guilty to, and being convicted of, failing to file at least one Form 8300 showing receipt of \$10,000 or more in cash, Defendant has admitted to, and been convicted of, a criminal act that reflects adversely on his fitness as a lawyer in violation of Rule 1.2(B).

- (b) Defendant has entered into a Plea Agreement in which he agreed to seek a settlement with the North Carolina State Bar resulting in his suspension from the practice of law for a period of not less than two (2) years with the Plea

Agreement expressly contingent upon Defendant being able to reach such a settlement with the North Carolina State Bar. Defendant has sought such a settlement with the North Carolina State Bar.

- (c) A Judgment was entered in the Rock Hill Division of the United States District Court of South Carolina placing Defendant on supervised release with a special condition of the supervised release being that Defendant refrain from practicing law in any court until February 21, 1995. Defendant is presently complying with the provisions of the South Carolina Judgment.

ORDER OF DISCIPLINE

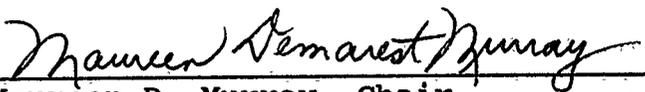
BASED UPON the findings of fact and conclusions of law and the parties consent as evidenced by the signatures below, the hearing committee enters the following ORDER OF DISCIPLINE:

1. Consistent with the December 21, 1992 South Carolina Federal District Court Plea Agreement entered into by Defendant in which Defendant agreed to seek and reach a settlement with the North Carolina State Bar resulting in the surrender of his license to practice law for not less than two (2) years and consistent with the special conditions of supervised release placed upon Defendant by the District Court of South Carolina that Defendant refrain from practicing law in any courts until February 21, 1995, the Defendant, J. Marshall Haywood, is suspended from the practice of law in North Carolina for a two year period effective from the date the Defendant ceased the practice of law on February 20, 1993. In imposing this sanction upon Defendant, the hearing committee does not concede that it is obligated to be bound by Defendant's Plea Agreement or by a Judgment of the District Court of South Carolina, however, the hearing committee is influenced by the terms of Defendant's Plea Agreement and the special conditions of Defendant's supervised release. Otherwise, the sanctions imposed against Defendant might not be so harsh or as severe.

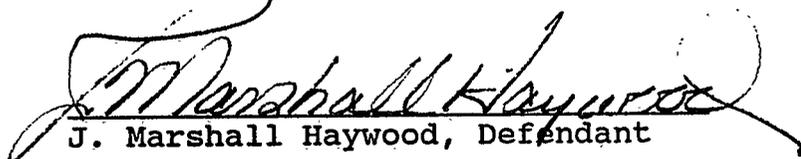
2. The Defendant shall surrender his license, certificate and membership card to the Secretary of the North Carolina State Bar.

3. The Defendant is taxed with the costs of this proceeding as assessed by the Secretary.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the hearing committee, this the 7th day of July, 1994.


Maureen D. Murray, Chair
Hearing Committee

CONSENTED TO:


J. Marshall Haywood, Defendant


Nelson M. Casstevens, Jr.
Attorney for Defendant,
J. Marshall Haywood


A. Root Edmonson
Attorney for Plaintiff,
The North Carolina State Bar