

NORTH CAROLINA
WAKE COUNTY



5655

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
93 BCR 3

In The Matter of The Petition)	Recommendation
)	
For Reinstatement Of:)	of
)	
Leland M. Heath, Jr.)	Hearing Committee
)	

THIS MATTER came on to be heard and was heard on November 9, 1993, by the hearing committee composed of Stephen T. Smith, Robert B. Smith, and William H. White to determine the matter of the petition for reinstatement of Leland M. Heath, Jr. of his license to practice law.

The petitioner was present at the hearing and was represented by his attorney of record, William W. Gerrans, and the North Carolina State Bar was represented by A. Root Edmonson.

BASED UPON the record, the evidence presented and the following arguments of counsel, the hearing committee makes the following:

FINDINGS OF FACT

1. Leland M. Heath, Jr. was admitted to the practice of law in North Carolina in September of 1973.
2. From 1974 until 1988, Mr. Heath practiced law primarily in Lenoir County, North Carolina, having a general practice with special emphasis in criminal defense.
3. On July 15, 1988, Mr. Heath was disbarred by the Council of the North Carolina State Bar after surrendering his license with an affidavit admitting misappropriating client funds.
4. On September 25, 1989, Mr. Heath plead guilty to eleven (11) counts of embezzlement and received a four year active sentence, with that sentence being suspended. Mr. Heath was placed on supervised and intensive probation for five years. As a part of special probation Mr. Heath served an active ninety day prison term.
5. On September 1, 1993, Mr. Heath filed his petition for reinstatement.
6. More than five years but less than seven years passed from the effective date of the order of discipline to the time that petitioner filed his petition for reinstatement.

7. Petitioner published a Notice of Intent to Seek Reinstatement in the North Carolina Bar Newsletter, an official publication of the North Carolina State Bar, as required by Article IX, Section 25(A)(3)(a) of the Rules and Regulations of the North Carolina State Bar.

8. As required by said Rules and Regulations, Petitioner notified the complainants in the disciplinary proceeding which led to his disbarment of his intent to seek reinstatement.

9. There is no evidence to indicate that the Petitioner has not complied with Section 24 of the disciplinary procedures of the North Carolina State Bar.

10. The Petitioner has complied with all applicable orders of the Commission and the Council.

11. The Petitioner has complied with the Orders and Judgments of all courts relating to the matters resulting in the disbarment.

12. The Petitioner has not engaged in the unauthorized practice of law during the period of disbarment.

13. The Petitioner has not engaged in any conduct during the period of disbarment constituting grounds for discipline under G.S. 84-28(b).

14. Mr. Heath is significantly involved in church and community activities at the Hickory Grove United Methodist Church in LaGrange, North Carolina. His minister testified that "he is doing what the church needs doing and is currently a lay leader of the church".

15. Mr. Heath has talked with several young lawyers in the Eighth Judicial District about his wrongdoing and tried to convince them not to make the same errors which he made. One of Mr. Heath's witnesses, Lonnie Carraway, testified that Mr. Heath had helped "get him on the right track".

16. Mr. Heath has acknowledged wrongdoing publicly as indicated in various character letters including the letter of Chris Maroules. The committee finds that Mr. Heath has not "shrunk into a shell", but instead has been seen publicly.

17. Mr. Heath has obtained psychiatric evaluation and treatment according to his psychiatrist, Judith S. Yongue, and Mr. Heath has completed the treatment recommended by his psychiatrist. Currently there is no indication of psychological illness.

18. Mr. Heath has reconciled with his family and has a stable marriage and a good relationship with his family.

19. Mr. Heath is responsible for handling money and financial matters as a result of his position as sales manager at City Auto Sales.

20. Mr. Billy Smith, the Sheriff of Lenoir County, appeared and testified that Mr. Heath has significant ties to law enforcement and that local law enforcement is favorable to his reinstatement.

21. Mr. Claude Davis, the Clerk of Lenoir County Superior Court, appeared and testified that Mr. Heath has significant ties to courthouse personnel and that courthouse personnel are favorable to his reinstatement.

22. Numerous people have offered to testify and have written that they would trust Mr. Heath to handle legal matters on their behalf if he were reinstated. The committee finds support for Mr. Heath is such that he would probably quickly redevelop a substantial law practice.

23. Mr. Heath has made restitution to all of his former clients, but still owes approximately \$35,000.00 to his former partner, Fred W. Harrison. Mr. Harrison borrowed these funds to replace monies which Mr. Heath misappropriated. Mr. Heath has paid significant interest payments toward the indebtedness but still owes Mr. Harrison restitution.

24. One member of the committee concludes that Mr. Heath has established that he has reformed and presently possesses the moral qualifications required for the admission to practice law in the state, taking into account the gravity of the misconduct which resulted in the order of disbarment.

25. The committee unanimously finds, taking into account the gravity of the misconduct which resulted in the order of disbarment, that Mr. Heath has not proved by clear, cogent and convincing evidence that permitting Mr. Heath to resume the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest.

26. The committee unanimously finds that Mr. Heath has not proven, by clear, cogent and convincing evidence, that he has the competency and learning in the law required to practice law in this state at the present time.

Based upon the foregoing finding of fact, the committee makes the following:

CONCLUSIONS OF LAW

1. This committee has jurisdiction over the parties and subject matter of this action.

2. Petitioner published a Notice of Intent to Seek Reinstatement in the North Carolina Bar Newsletter, an official publication of the North Carolina State Bar, as required by Article IX, Section 25 (A) (3) (a) of the Rules and Regulations of the North Carolina State Bar.

3. As required by said Rules and Regulations, Petitioner notified the complainants in the disciplinary proceeding which

led to his disbarment of his intent to seek reinstatement.

4. Petitioner complied with Section 24 of the disciplinary procedures of the North Carolina State Bar.

5. Petitioner has complied with all applicable orders of the Commission and the Council.

6. Petitioner has complied with the Orders and Judgments of all courts relating to the matters resulting in the disbarment.

7. Petitioner has not engaged in the unauthorized practice of law during the period of disbarment.

8. Petitioner has not engaged in any conduct during the period of disbarment constituting grounds for discipline under G.S. 84-28(b).

9. Taking into account the gravity of the misconduct which resulted in the order of disbarment Petitioner has not proven by clear, cogent and convincing evidence that permitting the petitioner to resume the practice of law within the State of North Carolina will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest.

10. Petitioner has not proven, by clear, cogent and convincing evidence, that he has the competency and learning in the law required to practice law in this state at the present time.

11. One member of the committee concludes that the petitioner has established that he has reformed and presently possesses the moral qualifications required for the admission to practice law in the state, taking into account the gravity of the misconduct which resulted in the order of disbarment.

WHEREFORE, the hearing committee appointed to hear this matter recommends that Leland M. Heath, Jr.'s petition for reinstatement be denied.

This the 18 day of February, 1994.



Stephen T. Smith, Chair
Disciplinary Hearing Committee

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