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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
95 DHC 10

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff)
)
v.)
)
ROLAND C. BRASWELL,)
Attorney)
)
Defendant)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause came on to be heard and was heard on July 28, 1995 before a hearing committee composed of Richard L. Doughton, chairman; Robert B. Smith, and A. James Early III. The North Carolina State Bar was represented by Fern E. Gunn. The defendant, who represented himself throughout these disciplinary proceedings, did not appear at the hearing. However, he submitted a waiver of appearance. Based upon the admissions of the defendant in his answer to the complaint, the stipulations on prehearing conference, and the evidence presented at the hearing, 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, Roland C. Braswell was admitted to the North Carolina State Bar in 1952, 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 some of the periods referred to herein, the defendant was actively engaged in the practice of law in North Carolina and maintained a law office in Goldsboro, North Carolina.

4. On or about April 7, 1993, a federal jury convicted defendant of two counts of perjury before a federal grand jury

and one count of conspiracy to defraud the federal government.

5. Defendant moved for judgment of acquittal on the two perjury and conspiracy convictions. The U.S. District Court for the Eastern District of North Carolina granted the motion as to the two perjury convictions, but denied it as to the conspiracy conviction. The United States government appealed the district court's grant of judgment of acquittal on the two perjury convictions and defendant appealed the district court's failure to dismiss the indictment and on other grounds.

6. On February 8, 1995, the U.S. Court of Appeals for the Fourth Circuit ruled in this matter. The Court reversed the district court's grant of judgment of acquittal on the two counts of perjury and affirmed the district court's denial of judgment of acquittal on the conspiracy charge.

7. Defendant petitioned the U.S. Court of Appeals for the Fourth Circuit for rehearing and suggestion for rehearing in banc. The Court denied respondent's petition on March 7, 1995.

8. Defendant filed a motion requesting stay of mandate. The Court denied the respondent's motion for stay of mandate on March 14, 1995.

9. Defendant has filed an appeal with the U.S. Court of Appeals for the Fourth Circuit and a petition for writ of certiorari with the U.S. Supreme Court. These matters are pending.

10. Defendant's criminal convictions are final for purposes of section .0115 of the Discipline and Disbarment Rules of the North Carolina State Bar.

11. Defendant's criminal convictions involve serious crimes as defined in section .0103(40) of the Discipline and Disability Rules of the North Carolina State Bar.

12. Defendant received a 27-month prison sentence and was fined \$6,000.00.

13. Defendant is currently serving his 27-month prison sentence in the Federal Prison Camp in Petersburg, Virginia.

14. Pursuant to section .0115(d) of the Discipline and Disbarment Rules of the North Carolina State Bar, defendant was suspended from the practice of law pending the disposition of this disciplinary proceeding by order of the Disciplinary Hearing Commission on April 21, 1995.

15. Defendant was given notice of the disciplinary hearing held on July 28, 1995 at 10:00 a.m. in the Council Chambers of the North Carolina State Bar building. Defendant informed the hearing committee by letter dated July 2, 1995 to deputy bar counsel Fern E. Gunn that he had requested permission to attend the hearing, but his request was denied by prison officials. The

hearing committee read defendant's letter of July 2, 1995 and the chairman of the hearing committee ordered that defendant's letter of July 2, 1995 be filed in the action.

16. Defendant knowingly and voluntarily waived his appearance at the disciplinary hearing held on July 28, 1995. In his notarized waiver of appearance dated July 21, 1995, defendant stated that he did not object to the Disciplinary Hearing Commission proceeding with the hearing on July 28, 1995 and rendering a decision in the action in his absence based upon his answer to the State Bar's complaint and the stipulations on prehearing conference as agreed to by defendant and counsel for the State Bar. The hearing committee read defendant's waiver of hearing prior to receiving evidence in the case and the chairman of the hearing committee ordered that defendant's waiver be filed in this action.

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

CONCLUSIONS OF LAW:

- (a) The offenses for which the defendant was convicted are criminal offenses showing professional unfitness in violation of N.C. Gen. Stat. Section 84-28(b)(1) and reflect adversely on his honesty, trustworthiness, and fitness as a lawyer in other respects in violation of Rule 1.2(b).
- (b) By engaging in a conspiracy to defraud the United States Department of Treasury, Internal Revenue Service, and by committing perjury before a federal grand jury, the defendant has engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c), has committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(b), and has engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d).

Signed by the undersigned chairman with the full knowledge and consent of all of the other members of the hearing committee, this the 21 day of August, 1995.


Richard L. Doughton
Chairman

NORTH CAROLINA
WAKE COUNTY



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Defendant)

ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law entered in this matter, and further based upon arguments of counsel for the State Bar, the hearing committee composed of Richard L. Doughton, chairman; Robert B. Smith, and A. James Early III, makes the following additional findings regarding the existence of aggravating and mitigating factors in this case.

AGGRAVATING FACTORS:

1. prior disciplinary offenses (private reprimand in 1997, 90-day suspension in 1982, admonition in 1992, and 5-year suspension, with all but one year stayed, in 1994);
2. dishonest motive;
3. multiple offenses;
4. refusal to acknowledge wrongful nature of conduct; and
5. substantial experience in the practice of law.

MITIGATING FACTOR:

cooperative attitude toward these disciplinary proceedings.

BASED UPON all the Findings of Fact, the Conclusions of Law, and the aggravating and mitigating factors, the hearing committee

enters the following:

ORDER OF DISCIPLINE

1. Defendant, Roland C. Braswell, is hereby DISBARRED from the practice of law in North Carolina.
2. Defendant shall immediately submit his law license and membership card to the Secretary of the North Carolina State Bar.
3. Defendant shall violate no provisions of the Rules of Professional Conduct of the North Carolina State Bar during his disbarment.
4. Defendant shall violate no state or federal laws during his disbarment.
5. Defendant shall fully comply with the provisions of section .0124 of the Discipline and Disbarment Rules of the North Carolina State Bar.
6. Defendant shall pay the costs of this proceeding.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 21 day of August, 1995


Richard L. Doughton
Chairman