

NORTH CAROLINA
WAKE COUNTY



10538

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
97 BCR 1

In Re: Application for Reinstatement of) RECOMMENDATION
Law License of) OF
MICHAEL LEE STEPHENSON) HEARING COMMITTEE.

This matter came on to be heard and was heard on April 11, 1997 by a hearing committee composed of Richard L. Doughton, chair; Franklin E. Martin, and Anthony E. Foriest. The petitioner, Michael Lee Stephenson, appeared and was represented by counsel, John G. McCormick; the North Carolina State Bar was represented by Fern Gunn Simeon. Based upon the evidence presented and the arguments of counsel, the hearing committee finds as follows:

1. Michael Lee Stephenson (hereafter Stephenson) was admitted to practice law in the North Carolina on August 21, 1982.
2. Stephenson was arrested in August 1990 on charges of use of a telephone to distribute marijuana and attempting to distribute marijuana.
3. In October of 1990, Stephenson pled guilty to attempting to distribute and causing to be distributed marijuana.
4. On February 8, 1991, Stephenson was sentenced by U.S. District Court Judge Richard C. Erwin. Stephenson was placed on probation for three years and he was ordered to pay restitution and fines.
5. On January 30, 1991, Stephenson signed an affidavit tendering the surrender of his license to practice law to the North Carolina State Bar Council. Stephenson surrendered his law license, waiving his right to seek reinstatement of his law license.
6. On July 12, 1991, the State Bar Council accepted the tender of surrender of Stephenson's law license and entered an order of disbarment. The order provided that Stephenson had no right to seek reinstatement of his law license.

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7. Stephenson petitioned the State Bar Council on June 28, 1994 to modify the July 12, 1991 order to eliminate the provision in the order which waived Stephenson's right to seek reinstatement of his law license.

8. In an order dated July 29, 1994, the order of disbarment dated July 12, 1991 was amended to eliminate the provision whereby Stephenson was forever barred from seeking reinstatement of law license. Stephenson was allowed to seek reinstatement of his law license at any time after July 12, 1996 by filing a petition with the Disciplinary Hearing Commission of the North Carolina State Bar.

9. On February 4, 1994, Stephenson was unconditionally discharged from probation. On March 7, 1994, the Clerk of Superior Court of Lee County issued a certificate evidencing Stephenson's unconditional discharge from probation and specifying the restoration of his rights of citizenship.

10. Stephenson's notice of intent to seek reinstatement was published in the Fall 1996 issue of *The North Carolina State Bar Journal*, Volume 1, Number 1.

11. On February 4, 1997, Stephenson filed a petition for reinstatement of his law license.

12. Counsel for the North Carolina State Bar deposed Stephenson on March 13, 1997. Stephenson was asked to tell what illegal or controlled substances he had used. Stephenson testified under oath that he had used marijuana and hashish when he was in college and a year or two afterwards. Stephenson did not testify at the deposition that he had used cocaine.

13. Stephenson asked to read and sign his deposition.

14. Stephenson corrected his deposition testimony on an errata sheet and indicated that "I also did cocaine but I haven't done that in about 22 years."

15. Stephenson testified at the reinstatement hearing that he did not remember that he used cocaine when he testified at his deposition, but he was reminded of his cocaine use when he read about it in one of the State Bar's exhibits.

16. Stephenson was either dishonest or less than forthcoming when he failed to mention his cocaine use at his deposition.

17. Stephenson has always admitted that on June 16, 1990, he engaged in a drug deal with a former client, Tim Poole, in Stephenson's law office. In that deal, Stephenson agreed to give Poole \$1200.00 to buy marijuana and sell it. Stephenson received a \$1000.00 return on his investment.

18. Stephenson testified at his deposition and at his reinstatement hearing that he does not remember contacting Poole inside the Harnett County Courthouse on July 12, 1990 and asking Poole if he could get "anything." Stephenson testified that he did not remember asking Poole if he could get a half ounce or an ounce and that he agreed to meet with Poole at Stephenson's office on July 13, 1990.

19. Stephenson does not remember playing any active part in further drug sale transactions. But Stephenson testified at the reinstatement hearing and asserted in an affidavit presented to the Department of Insurance, that Poole aggressively pursued Stephenson to participate in more drug transactions.

20. The account of Stephenson's contact with Poole in the Harnett County Courthouse on July 13, 1990 was set out in the Presentence Report prepared by Stephen F. Conrad, a United States Probation Officer, and presented to Judge Erwin at Stephenson's sentencing hearing in federal court.

21. Neither Stephenson, nor his attorney, William L. Osteen Jr., contested or disagreed with the information related about the July 13, 1990 encounter between Stephenson and Poole, as found in the Presentence Report presented to Judge Erwin.

22. The hearing committee is concerned that Stephenson has not fully acknowledged and taken responsibility for all of his actions respecting his drug dealings with Poole.

23. Stephenson is active in St. Thomas Episcopal Church in Sanford. He is a lay reader in the church services and he is a member of the choir. He is also a member of the Men's Group at St. Thomas Episcopal.

24. Stephenson is active in the Kiwanis Club of Sanford. He attends meetings almost every week and he participates in the Kiwanis Club's activities.

25. Stephenson and many of his character witnesses testified that Stephenson was also active in his church and the Kiwanis Club before he was disbarred in 1991.

26. Stephenson has no active community involvement other than his participation in his church and the Kiwanis Club.

27. Stephenson has not spoken with the local bar association or a law school group about his wrongdoing and any reformation that he may have experienced. Such a public acknowledgment to the affected communities is necessary to help show that allowing him to resume the practice of law in this state will not be detrimental to the standing and integrity of the bar, to the administration of justice, and to the public's interest.

28. On April 10, 1997, the night before the reinstatement hearing, Stephenson testified that he spoke to his Kiwanis Club about his experiences.

29. Stephenson testified that he had taken 60 hours of continuing legal education. He has taken these courses in 1994 and 1996. He has not taken any courses in 1995.

30. Stephenson testified that he reads advance sheets and law journals and legal publications. He has also read the Rules of Professional Conduct and the ethics opinions.

31. Stephenson presented certifications from three attorneys who stated that they were familiar with Stephenson's present knowledge of the law and that in their opinion, he was competent to engage in the practice of law.

32. At the reinstatement hearing, Stephenson testified that he asked the three attorneys to talk with him about case law he had read in the advance sheets or information he learned at CLE courses. These conversations were not lengthy and it is doubtful that the attorneys had a meaningful opportunity to discern Stephenson's present knowledge of the law and competence to engage in the practice of law.

33. The North Carolina State Bar records indicate that Stephenson was not given a statement of costs of the disciplinary action which resulted in his disbarment until March 13, 1997. Stephenson has not paid the costs.

34. Stephenson testified that he sent letters to his clients notifying them of his disbarment and that he wound down his practice by the end of February 1991.

35. There is no evidence that Stephenson has not complied with Rule .0124 of the Discipline and Disability Rules, other than his failure to file an affidavit with the Secretary of the North Carolina State Bar certifying the steps he took to wind down his practice.

36. Stephenson has complied with Judge Erwin's order and the order of disbarment entered by the State Bar Council.

37. There is no evidence that Stephenson has engaged in the unauthorized practice of law during the period of disbarment.

38. There is no evidence that Stephenson has engaged in any conduct during the period of disbarment constituting grounds for discipline under N.C.G.S. section 84-28(b).

39. Stephenson has shown that he understands the Rules of Professional Conduct.

BASED UPON the foregoing findings, the hearing committee concludes as follows:

1. Stephenson has not proven by clear, cogent, and convincing evidence that he possesses the moral qualifications required for admission to the practice of law in North Carolina, as required by Rule .0125(a)(3)(C).

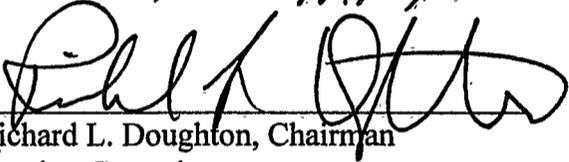
2. Stephenson has not proven by clear, cogent, and convincing evidence that his being permitted to resume the practice of law in North Carolina will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest, taking into account the gravity of the misconduct which resulted in the order of disbarment, as required by Rule .0125(a)(3)(D).

3. Stephenson has not proven by clear, cogent, and convincing evidence that he has the competency and learning in the law required to practice law in North Carolina as required by Rule .0125(a)(4)(A).

4. Stephenson has satisfactorily satisfied his burden of proof as to all other requirements of Rule .0125(a) of the Discipline and Disability Rules of the North Carolina State Bar.

WHEREFORE, the hearing committee unanimously recommends that the law license of Michael Lee Stephenson not be reinstated.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee this the 9 day of MAY, 1997.


Richard L. Doughton, Chairman
Hearing Committee