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WAKE COUNTY BEFORE THE DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA OF THE NORTH CAROLINA STATE BAR
99 DHC 31

THE NORTH CAROLINA STATE BAR,)
 Plaintiff)
 v.) CONSENT ORDER OF DISCIPLINE
 ROBERT L. BAYNES,)
 Defendant)

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of James R. Fox, Chair; Michael L. Bonfoey and Robert B. Frantz, pursuant to Section .0114 of the Discipline and Disability Rules of the North Carolina State Bar (hereinafter "Bar Rules"). Stephen T. Smith represented defendant. Douglas J. Brocker represented plaintiff. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Based upon the consent of the parties the hearing committee hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "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. Defendant, Robert Lindsey Baynes, (hereafter "Baynes"), was admitted to the North Carolina State Bar on August 22, 1976 and was at all relevant times, an Attorney at Law licensed to practice in North Carolina, subject to the Rules and Revised Rules of Professional Conduct of the North Carolina State Bar (hereafter "Rules" and "Revised Rules" respectively) and the laws of the State of North Carolina.

3. During the times relevant to this complaint, Baynes actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Greensboro, Guilford County, North Carolina.

4. Baynes willfully failed to file North Carolina state income tax returns and failed to pay the taxes due for numerous years, including 1995, 1996, and 1997.

5. Baynes was arrested on September 24, 1998 and served with three warrants for his arrest (hereafter "arrest warrants").

6. The three arrest warrants charged Baynes with willfully failing to file a state tax return for calendar years 1995, 1996, and 1997 in violation of N.C. Gen. Stat. § 105-236(9).

7. The years charged in the arrest warrants – 1995, 1996, and 1997 – were the three full years immediately preceding the issuance of the arrest warrants and the maximum number of years for which Baynes could be charged pursuant to N.C. Gen. Stat. § 105-236(9).

8. The arrest warrants were issued out of Wake County District Court and were entitled State v. Robert Lindsey Baynes, 98 CR 91341-91343.

9. On January 6, 1999, Baynes, through his counsel Stephen T. Smith, pled guilty to the three counts of willful failure to file tax returns set forth in the arrest warrants.

10. The Honorable William A. Creech presided at the January 6, 1999 session of the Wake County District Court. After entering a plea of guilty, Mr. Smith, on behalf of Baynes, requested a prayer for judgment continued.

11. Judge Creech continued the matter until July 1999, and granted Baynes an opportunity to obtain counseling for depression and alcohol abuse, to file his delinquent tax returns, and to pay the taxes due on those delinquent returns.

12. Judge Creech heard the matter again on July 22, 1999. On that date, Judge Creech entered judgment indicating that a prayer for judgment would be entered if Baynes completed a total of 216 hours of community service by July 22, 2002.

13. Baynes was properly served with process and waived his right to a formal hearing in this disciplinary proceeding.

Based upon the consent of the parties and the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant and the subject matter of this proceeding.

2. Baynes' conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) & (2) as follows:

a. By tendering a plea of guilty to willfully failing to file state income tax returns for 1995, 1996, and 1997, Baynes committed criminal offenses showing professional unfitness in violation of NCGS Sec. 84-28(b)(1); and

(1) By willfully failing to file state income tax returns for 1995, 1996, and 1997, Baynes:

(a) committed criminal acts that reflect adversely on Baynes' honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(b) and Revised Rule 8.4(b); and

(b) engaged in conduct involving dishonesty, fraud, and deceit in violation of Rule 1.2(c) and Revised Rule 8.4(c).

Based upon the consent of the parties, the hearing committee also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:

A. A Prior Disciplinary Offense:

The State Bar Grievance Committee issued Baynes a private reprimand in August 1989 for failing to represent a client in a personal injury matter with reasonably diligence and promptness.

B. A Pattern of Misconduct

- (i) Baynes has admitted failing to file and pay state income taxes timely for a ten year period from 1987 to 1997. He currently owes significant amounts to the North Carolina Department of Revenue ("NCDOR") for taxes, penalties and interest for those years.
- (ii) Baynes also failed to file and pay federal income taxes timely for over a ten year period from 1987 to 1998. He currently owes significant amounts to the Internal Revenue Service ("IRS") for those years.

C. Multiple Offenses

D. Substantial Experience in the Practice of Law

E. Issuance of a Letter of Warning.

The State Bar Grievance Committee issued Baynes a letter of warning in August 1998 for failing to obtain title insurance for a real estate closing in a reasonably diligent manner.

2. The defendant's misconduct is mitigated by the following factors:

A. Efforts to Make Partial Restitution of Taxes Owed

B. Cooperative Attitude Toward Proceedings

C. Mental Disability or Impairment

Baynes has been diagnosed with clinical or major depression.

D. Personal Problems

Baynes is an alcoholic and began participating in the State Bar's PALS program in May 1995. Baynes contends that he has not had alcohol since that time.

E. Remorse

F. Remoteness of prior private reprimand

3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing findings of fact and conclusions of law and the findings regarding discipline and based upon the consent of the parties, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. Robert L. Baynes is hereby suspended from the practice of law for a period of three years, effective 45 days from service of this order upon him.

2. After no less than six months following the effective date of the order, Baynes may file a verified petition for a stay of the remaining period of the suspension in accordance with the requirements of N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules ("Discipline Rules"). Baynes' remaining suspension may be stayed if he establishes by clear, cogent, and convincing evidence the following conditions:

a. Baynes has complied with all the requirements of Discipline Rule .0124;

b. Baynes has complied with all the requirements of Discipline Rule .0125(b);

c. Baynes paid all costs assessed by the Secretary in connection with this proceeding within 45 days of service of these costs by the Secretary;

d. Baynes has not violated any federal or state laws;

e. Baynes has provided documentation to the State Bar that he has filed all his state and federal income taxes timely from the year 2000 through the year in which he petitions for reinstatement.

f. Baynes has provided documentation to the State Bar that he has: (i) entered into a written contract or agreement with both the North Carolina Department of Revenue and the Internal Revenue Service for payment of all past taxes, penalties and interest, and (ii) complied with the terms of the payment plans or agreements. At the time he files a petition, Baynes also shall provide a release and authorization to the State Bar, which permits it to inquire with the NCDOR and IRS about the status of his tax liabilities and payments under the agreements.

g. Baynes has not violated any provisions of the Revised Rules of Professional Conduct of the State Bar; and

h. Baynes has submitted a written certification from his treating psychiatrist that he has followed all recommendations for treatment of any diagnosed psychological or psychiatric condition(s), including depression, for the past six months. Baynes also must execute a release allowing the

State Bar to obtain his medical records and attach that release to his petition for reinstatement.

If Baynes' treating psychiatrist is not recommended by the State Bar, the State Bar shall have the right to have Baynes evaluated by a psychiatrist, selected by it, prior to reinstatement.

i. Baynes shall enter into a Recovery Contract and agree to participate in the Lawyer Assistance Program (LAP) of the North Carolina State Bar prior to filing his petition.

3. Upon the entry of an order staying the remaining term of Baynes' suspension, such order of stayed suspension may continue in effect for the balance of the term of the suspension only upon compliance with all of the following conditions:

a. Baynes shall not violate any federal or state laws.

b. Baynes provides documentary proof that he has filed all his state and federal income taxes timely throughout the period of the stayed suspension. This proof of filing shall be provided to the State Bar not later than June 1 of each year of the stayed suspension.

c. Baynes continues to comply with the terms of the payment plans or agreements with NCDOR and IRS throughout the period of the stayed suspension.

d. Baynes shall not violate any provisions of the Rules of Professional Conduct of the North Carolina State Bar.

e. Baynes shall be responsible for ensuring that his treating psychiatrist forward reports to the State Bar certifying that he has followed all recommendations for treatment of any diagnosed psychological or psychiatric condition(s), including depression. These reports shall be provided semi-annually, no later than January 1 and July 1 of each year for the remainder of the stayed suspension.

f. Baynes shall comply with the terms of the LAP Recovery Contract. Baynes shall authorize the Lawyer Assistance Program to forward semi-annual reports to the North Carolina State Bar no later than January 1 and July 1 of each year for the remainder of the stayed suspension or the recovery contract, whichever is shorter. The reports shall either: (i) certify Baynes' continued compliance with the Contract, or (ii) alternatively disclose the details of Baynes' non-compliance with the Contract.

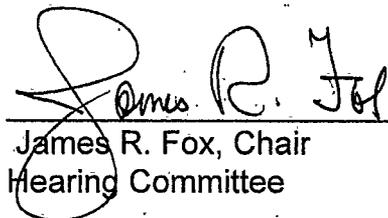
4. If no part of the suspension is stayed or if the suspension is stayed and subsequently activated, Baynes must petition the DHC at the end of the suspension and establish by clear, cogent, and convincing evidence, compliance with all of the conditions set forth in paragraph 2(a) through (i) above before his license to practice law is reinstated.

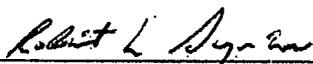
5. The Disciplinary Hearing Commission retains jurisdiction to impose any additional conditions on the practice of law by Baynes which a duly impaneled Hearing Committee believes are necessary for the protection of the public at the time Baynes petitions for reinstatement.

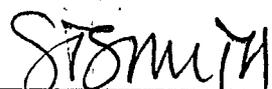
6. Baynes shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 45 days from service of this order upon the defendant.

Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 16th day of March 2000.


James R. Fox, Chair
Hearing Committee


Robert L. Baynes


Stephen T. Smith
Attorney for defendant


Douglas J. Brocker
Attorney for plaintiff