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NOV 15 1997

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
File No. 97G0808(I)

IN THE MATTER OF)

Henry L. Anderson,)
ATTORNEY AT LAW)

REPRIMAND

On October 23, 1997, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

Pursuant to section .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, the Grievance Committee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Committee found probable cause. Probable cause is defined in the rules as "reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action."

The rules provide that after a finding of probable cause, the Grievance Committee may determine that the filing of a complaint and a hearing before the Disciplinary Hearing Commission are not required, and the Grievance Committee may issue various levels of discipline depending upon the misconduct, the actual or potential injury caused, and any aggravating or mitigating factors. The Grievance Committee may issue an Admonition, a Reprimand, or a Censure to the Respondent attorney.

A Reprimand is a written form of discipline more serious than an Admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a Censure.

The Grievance Committee was of the opinion that a Censure is not required in this case and issues this Reprimand to you. As Chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this Reprimand, and I am certain that you will understand fully the spirit in which this duty is performed.

Based on the evidence presented, the Committee found the following facts and reached the following conclusions: You represented the defendant in the civil matter of Pamela Call Nunnery vs. Eric Jonathan Baucom & Baucom's Nursery Company, file

7. On August 4, 1998, the Defendant was charged in the United States Court for the Middle District of North Carolina with four counts of willful failure to timely file federal income tax returns for the calendar years 1991, 1992, 1993, and 1994 in violation of 26 U.S.C. § 7203.

8. A certified copy of the Summons in a Criminal Case and the criminal information issued against the Defendant on August 5, 1998 in the United States District Court for the Middle District of North Carolina, case number 1:98CR215-1 is attached hereto and incorporated herein as Exhibit A.

9. On December 9, 1998, the Defendant pled guilty to one count of misdemeanor failure to timely file a federal income tax return for the calendar year 1991. The United States District Court for the Middle District of North Carolina entered a judgment of guilty and placed the Defendant on probation for three years subject to standard and special conditions of supervision, including the payment of criminal monetary penalties in the total amount of \$2,525.00.

10. The United States Court for the Middle District of North Carolina dismissed the remaining three counts of the information charging the Defendant with willful failure to timely file tax returns for the calendar years 1992, 1993 and 1994.

11. Defendant voluntarily reported the misconduct at issue herein to the North Carolina State Bar on August 4, 1998, prior to the issuance of a criminal summons and information.

Based upon the foregoing Findings of Fact and the stipulations contained in the Stipulations on Prehearing Conference filed by the parties, 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, W. Kelly Elder, Jr., and the subject matter.

2. The Defendant has been convicted of a criminal offense showing professional unfitness in violation of N.C. Gen. Stat. § 84-28(b)(1); and

3. By willfully failing to timely file federal individual income tax returns for the calendar years 1991 through 1994, the Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects, in violation of Rule 1.2(b) of the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the Hearing Committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

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

- Defendant's conduct involved multiple offenses

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

- Absence of any prior disciplinary record
- Timely good faith efforts to make restitution or to rectify consequences of misconduct
- Full and free disclosure to the Grievance Committee and the DHC and a cooperative attitude toward the proceedings
- Good character or reputation
- Physical or mental disability or impairment
- Interim rehabilitation
- Imposition of other penalties or sanctions
- Remorse

3. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the Hearing Committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of the defendant, W. Kelly Elder, Jr., is hereby suspended for a period of two years, and the two-year suspension is stayed for a period of three years on the following conditions:

a. The Defendant shall not violate any local, state or federal laws during the period of stayed suspension.

b. The Defendant shall not violate any provisions of the Revised Rules of Professional Conduct during the period of stayed suspension.

c. The Defendant shall comply with all standard and special conditions of his federal probation imposed in the United States District Court for the Middle District of North Carolina, case number 1:98CR215-1.

d. The Defendant shall report to the Office of the Secretary of the North Carolina State Bar any finding by a federal district court judge or magistrate judge of a violation of his probation, regardless of the punishment imposed by that judge.

e. Throughout the period of the stayed suspension, the Defendant shall timely pay the legally required estimated income taxes, if any, due and payable to the North Carolina Department of Revenue and the Internal Revenue Service on April 15, June 15, September 15 and January 15 of each tax year (or at such other intervals or times required by law) so as to remain current with his obligations to pay state and federal income taxes, and if Defendant is not legally required to pay estimated income taxes, he shall pay annual income taxes due and payable of each tax year during the period of the stayed suspension.

f. During the stayed suspension, the Defendant shall file all state and federal tax returns in a timely manner.

g. The Defendant shall provide to the Office of the Secretary of the North Carolina State Bar written verification that he has filed all required tax returns with the North Carolina

Department of Revenue and the Internal Revenue Service during the stayed suspension. This written verification shall be sent on or before April 15th each year of the stayed suspension period. If an extension for filing income tax returns is sought, then written verification shall be provided to the Office of the Secretary of the North Carolina State Bar within one week of the filing date of that return.

h. The Defendant shall pay all costs incurred in this proceeding and taxed against the Defendant within ninety (90) days of service of this order upon the Defendant.

2. If during the stay of the two-year suspension, the Defendant fails to comply with any one or more conditions stated in paragraphs 1 (a) – (h), then the stay of the suspension of his law license may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline & Disability Rules.

3. If any stay of the suspension of the Defendant's law license is lifted, as provided in the foregoing paragraph, the Disciplinary Hearing Commission may enter an order providing for such conditions as it deems necessary for obtaining a stay of the remaining period of suspension or for reinstatement of the Defendant's license at the end of the two-year suspension.

4. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0114(x) of the North Carolina State Bar Discipline & Disability Rules throughout the period of the stayed suspension.

Signed by the undersigned Hearing Committee chair with the consent of the other Hearing Committee members.

This the ~~17th day of March 2000~~ *(P.T.S.)*

This the 16th of May 2000



Richard T. Gammon, Chairman
Hearing Committee