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WAKE COUNTY  
NORTH CAROLINA

BEFORE THE DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
00 DHC 22



THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

LUKE E. HOWARD, Attorney  
Defendant

FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
AND ORDER OF DISCIPLINE

This matter was heard on the 2nd day of February, 2001, before a hearing committee of the Disciplinary Hearing Commission composed of T. Paul Messick, Jr., Chair; W. Steve Allen, Sr. and Lorraine Stephens. Fern Gunn Simeon represented the plaintiff, the North Carolina State Bar. Alan M. Schneider represented the defendant, Luke E. Howard. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.
2. The defendant was admitted to the North Carolina State Bar in August of 1985 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.
3. During most of the times relevant hereto the defendant was actively engaged in the practice of law in Durham, North Carolina, and maintained a law office in Durham, North Carolina
4. The defendant was properly served with process and the hearing was held with due notice to all parties.

5. The defendant did not file timely North Carolina individual income tax returns for tax years 1993, 1994, 1995, 1996 and 1997.

6. The defendant filed his 1993-1997 North Carolina individual income tax returns on the following dates:

1993 - April 6, 1995

1994 - July 6, 2000

1995 - February 1, 1999

1996 - February 1, 1999

1997- February 1, 1999

7. The defendant did not pay timely his North Carolina income taxes for tax years 1993, 1994, 1995, 1996 and 1997.

8. The defendant paid his 1993-1997 North Carolina income taxes, including penalties and interest, on the following dates:

1993 - July 7, 1997

1994 - October 6, 2000

1995 - June 16, 2000

1996 - June 16, 2000

1997 - September 3, 1999

9. The defendant timely filed and paid his state income taxes for 1998 and 1999.

10. The defendant did not timely file his federal individual income tax return for 1994. He filed his 1994 federal individual income tax return on June 26, 1995.

11. The defendant did not timely pay his federal individual income taxes for 1994, 1995, and 1996.

12. As of November 30, 2000, the defendant owes the following balances on his federal individual income taxes:

1994 - \$5,028.69

1995 - \$7,204.07

1996 - \$0.00

1997 - \$0.00

13. The defendant has entered into an installment payment plan with the Internal Revenue Service to pay his unpaid federal income taxes.

14. The defendant reported his failure to file state income taxes to the North Carolina State Bar.

15. Neither the Internal Revenue Service nor the State of North Carolina has filed or pursued criminal charges against the defendant.

Based upon 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, Luke E. Howard, and the subject matter.

2. The defendant's 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 failing to file promptly North Carolina individual income tax returns for 1993, 1994, 1995, 1996, and 1997, the defendant committed criminal acts, which reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(b).

b. By failing to pay promptly North Carolina income taxes for 1993, 1994, 1995, 1996, and 1997, the defendant committed criminal acts, which reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(b).

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:

a. There was a pattern of misconduct.

b. The defendant engaged in multiple offenses of failure to file timely his income tax returns and failure to pay timely his income taxes.

c. The defendant had substantial experience in the practice of law.

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

a. The defendant has no prior disciplinary record.

b. The defendant's misconduct was not motivated by dishonesty or a selfish motive.

c. During the time when the defendant failed to file income tax returns, he was undergoing personal or emotional problems, including difficulties in his marriage and suffering from depression.

d. The defendant gave a full and free disclosure to the hearing committee of the circumstances surrounding his misconduct and he exhibited a cooperative attitude toward the proceedings.

e. The enjoys a good reputation and good character.

f. The defendant suffered from physical or mental disability or impairment during the time he did not file his income tax returns.

g. The defendant has rehabilitated since the events that are the subject of this disciplinary action.

h. The defendant showed remorse regarding his misconduct.

3. The aggravating factors do not outweigh the mitigating 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, Luke E. Howard, is hereby suspended for two years and that suspension is stayed for two years upon the following terms and conditions:

a. The defendant shall pay all assessed federal tax liability pursuant to the installment plan that he has entered into with the Internal Revenue Service.

b. During the stayed suspension, the defendant shall timely file all federal

and state income tax returns on the appropriate due dates or the extended due dates, and he shall timely pay all taxes assessed based upon those returns.

c. The defendant shall continue to comply with any psychological or psychiatric treatment recommended by his current treating physician until such time as the treating physician believes that no further treatment is necessary.

d. The defendant shall not violate any federal or state laws during the two-year stayed suspension.

e. The defendant shall not violate any provision of the Revised Rules of Professional Conduct during the two-year stayed suspension.

f. The defendant shall provide the Office of Counsel of the North Carolina State Bar with 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 15<sup>th</sup> of 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 Counsel of the North Carolina State Bar within one week of the filing date of that return.

g. The defendant shall provide the Office of Counsel of the North Carolina State Bar with written verification, on a quarterly basis, of his payments through the installment plan or agreement that he has entered into with the Internal Revenue Service. The first written verification is due June 30, 2001. The other written reports are due on the last day of the last month of each quarter, thereafter.

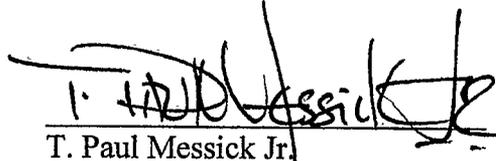
h. The defendant shall provide the Office of Counsel of the North Carolina State Bar with written verification from his psychiatrist or other mental health professional that the defendant continues to comply with the recommended course of treatment. These written reports shall be submitted to the Office of Counsel on a quarterly basis, with the first report due on June 30, 2001. The other written reports are due on the last day of the last month of each quarter, thereafter.

i. The defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days of notice of the costs being served upon him.

2. If during the stay of the two-year suspension, the defendant fails to comply with any one or more of the conditions stated in paragraph 1(a) through (i), then the stay of the suspension of his law license may be lifted as provided in Sec. .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

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

Signed by the chair with the consent of the other hearing committee members, this the 14<sup>th</sup> day of FEBRUARY, 2001.



T. Paul Messick Jr.  
Hearing Committee Chair