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WAKE COUNTY BEFORE THE DISCIPLINARY HEARING COMMISSION  
NORTH CAROLINA OF THE NORTH CAROLINA STATE BAR  
02 DHC 21

THE NORTH CAROLINA STATE BAR,	)	FINDINGS OF FACT
Plaintiff	)	AND CONCLUSIONS OF LAW
	)	AND CONSENT ORDER OF
v.	)	DISCIPLINE
	)	
DOUGLAS FLOYD OSBORNE, JR.	)	
ATTORNEY, Defendant	)	

This matter was heard on the 7th day of February 2003, before a hearing committee of the Disciplinary Hearing Commission composed of F. Lane Williams, Chair; M. Ann Reed and H. Dale Almond. The defendant, Douglas Floyd Osborne, Jr., appeared *pro se*. The plaintiff was represented by Bobby D. White. Based upon the pleadings and the consent of the parties, 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. Douglas Floyd Osborne, Jr. (defendant) was admitted to the North Carolina State Bar on September 1, 1974 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 all times relevant hereto the defendant was actively engaged in the practice of law in Rockingham County North Carolina, and maintained a law office in Eden, 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 state income tax returns for the calendar years 1997, 1998, 1999, and 2000 on a timely basis.

6. On October 8, 2001, the defendant pled guilty to and was convicted of four counts of misdemeanor failure to file state income tax returns for the calendar years 1997, 1998, 1999, and 2000.

7. The defendant also failed to file timely federal income tax returns for the calendar years 1997-2000, inclusive, but was not criminally prosecuted for those offenses.

8. In July of 1998, the defendant represented Ricky D. Hairston (Hairston) at Hairston's criminal trial in the Rockingham County Superior Court.

9. Hairston was convicted at trial and gave notice of appeal in open court.

10. On July 28, 1998, the court appointed the Office of the Appellate Defender to perfect Hairston's appeal and the defendant was appointed as the alternative counsel.

11. On August 5, 1998, the Appellate Defender declined the appointment to perfect Hairston's appeal. Defendant was aware of the decision of the Appellate Defender on or about Aug. 5, 1998 and was also aware that, as alternative counsel, he was obliged to perfect the appeal for Hairston.

12. The defendant failed to perfect Hairston's appeal.

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 Douglas Floyd Osborne, Jr. 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. The defendant's convictions for misdemeanor failure to file state income tax returns constitute convictions of criminal offenses showing professional unfitness that reflect adversely on the Defendant's honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and (c) of the Rules of Professional Conduct.

b. By failing to perfect the appeal of Hairston, the Defendant failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Revised Rules of Professional Conduct and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Revised Rules of Professional Conduct.

## FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
  - a. Multiple offenses
  - b. Prior Disciplinary Offenses:
    1. 1991- Five-year suspension, four years stayed. Convicted on federal charge of possessing child pornography
    2. 1996 - Reprimand. Failure to perfect an appeal
    3. 2000 - Censure. Failure to perfect an appeal
  - c. Substantial experience in the practice of law
  - d. Pattern of Misconduct
2. The defendant's misconduct is mitigated by the following factors:
  - a. Cooperative attitude toward proceedings.
  - b. Imposition of other penalties or sanctions
3. The aggravating factors 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, Douglas Floyd Osborne, Jr., is hereby suspended for five years upon the following terms and conditions:
  - a. The defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from service of this order upon the defendant.
  - b. The suspension will become effective 30 days from the date of the service of this order upon the defendant and will continue for a period of not less than 36 consecutive months.
2. At any time after the 36-month active suspension period, the defendant may seek a stay of the remaining suspension period. However, before a stay may be granted, the defendant must demonstrate by clear, cogent and convincing evidence that he has complied with the following conditions:
  - a. The defendant has not violated any state or federal laws during the period of active suspension.

b. The defendant has not violated any provisions of the Revised Rules of Professional Conduct during the period of active suspension.

c. The defendant paid all costs incurred in this proceeding and taxed against him within 30 days of service upon him of notice of the statement of costs.

d. The defendant has satisfactorily completed, at his own expense, a law office management training program approved by the State Bar.

e. The defendant shall demonstrate that he is not suffering from any mental or physical condition, substance abuse problem, or addiction that impairs defendant's professional judgment or ability to engage in the practice of law in a competent manner.

f. The defendant has filed all state and federal income tax returns on a timely basis and has paid all due and owing taxes, penalties and interest.

g. The defendant has complied with the wind down provisions of 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline & Disability Rules.

3. Upon entry of an order staying this suspension and granting the reinstatement of the defendant's license to practice law, the order of stayed suspension shall continue in force for the balance of the term of suspension, provided that the defendant complies with the following conditions:

- a. The defendant shall violate no federal or state laws.
- b. The defendant shall violate no provisions of the Rules of Professional Conduct.
- c. The defendant shall pay any costs incurred in connection with his reinstatement proceeding and assessed against him within 30 days of service upon him of the statement of costs.
- d. The defendant shall sign a contract with the State Bar Positive Action for Lawyers Committee (PALS) and comply with all recommendations of the PALS Committee.

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

6. If defendant does not at any time seek a stay of his five-year suspension or if the stay is dissolved, he must comply with the conditions enumerated paragraph 2 (a) – (g) and the provisions of 27 N.C. Admin Code, Chapter 1, Subchapter B, § .0125(b) of the North Carolina State Bar Discipline & Disability Rules before seeking an order reinstating his law license.

Signed by the chair with the consent of the other hearing committee members, this the 4<sup>th</sup> day of March, 2003.

L. Lane Williams  
Hearing Committee Chair

Seen and consented to by:

Douglas Floyd Osborne, Jr.  
Douglas Floyd Osborne, Jr., *Pro Se*

2-14-03  
Date

Bobby D. White  
Bobby D. White, for the North Carolina State Bar

19 Feb 03  
Date