

NORTH CAROLINA

WAKE COUNTY



5554

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF  
THE NORTH CAROLINA STATE BAR  
04 DHC 32

The North Carolina State Bar,  
Plaintiff

v.

Robert H. Corbett, Attorney,  
Defendant

**Consent Order of Discipline**

This matter came before a hearing committee of the Disciplinary Hearing Commission composed of Carlyn G. Poole, Chair; John M. May, and Johnny A. Freeman. Stephen M. Russell represented the defendant, Robert H. Corbett. David R. Johnson and Jennifer A. Porter represented the plaintiff. Both parties stipulate and agree to the findings of fact recited in this consent order and to the discipline imposed. Further, by entering into this consent order of discipline, each party freely, voluntarily, and with the advice of counsel consents to the order of discipline, waives a formal hearing in the above referenced matter, and waives all right to appeal this consent order or challenge in any way the sufficiency of the findings, the conclusions, or the discipline imposed. Based upon the consent of the parties the hearing committee hereby makes the following:

**Findings of Fact**

1. The Plaintiff, 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 General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, Robert H. Corbett (hereafter "Defendant"), was admitted to the North Carolina State Bar on 19 August 1973, and is, and was at all times referred to herein, an

attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all or a portion of the relevant periods referred to herein, Defendant was actively engaged in the practice of law in the town of Burgaw, Pender County, North Carolina.

4. Since at least 1990, and during all times relevant to the Defendant's conduct described herein, Defendant has been continually engaged under one or more contracts with Pender County (hereafter "County") to provide legal advice and legal services to the Tax Assessor and Tax Collector for the County and several municipalities within the County. The last such written contract was executed by the parties on or about 29 September 1997, and has continued through the present.

5. Although the contract(s) required Defendant to provide other legal services on demand for the Tax Assessor and Tax Collector, the primary service Defendant provided under the contract was to take appropriate action to collect delinquent accounts submitted to him by the Tax Collector for payment of property taxes on real property. The contract contained no provision indicating that the County wished to purchase property on which taxes were delinquent.

6. Upon submission of the delinquent accounts to him by the Tax Collector for collection, Defendant first regularly and routinely sent notices to those delinquent taxpayers demanding payment and informing them that their property would be sold at public sale if the taxes were not paid.

7. If the taxes remained unpaid after Defendant sent his notice, Defendant was authorized by the Tax Collector to file an action pursuant to N.C. Gen. Stat. § 105-374 to seek a tax foreclosure sale on the property against which the taxes were due.

8. As part of the tax foreclosure actions he filed as attorney for the Tax Collector and with knowledge of the Tax Collector and County Attorney, Defendant regularly and routinely asked to be appointed and was appointed by the court as the commissioner to seek the tax foreclosure sale. As commissioner, Defendant was entitled to a Commissioner's fee awarded

by the court to conduct such sales in addition to any attorney's fees the County paid pursuant to its contract with Defendant.

9. Defendant had an obligation to the County to bring the foreclosure action and conduct the tax foreclosure sale in accordance with his contract with the County and applicable law and Defendant had an obligation to the Court to abide by its orders and with statutory provisions governing the sale of the land through the tax foreclosure.

10. At the tax foreclosure sales Defendant conducted and in accordance with the instructions of the Tax Collector, Defendant regularly and routinely entered a protective bid on behalf of the County for the amount of taxes due and the costs of collection, including his Commissioner's fee, and no other bid for the County. The County has never instructed the Defendant to purchase property on its behalf at a foreclosure, rather only to make a minimum protective bid and no other bid.

11. At some time before December 1994, Defendant was asked by the Pender County Tax Collector to collect delinquent taxes due on property owned by John and Cathy Sarnecky identified as lot 38 (hereafter "lot 38") of section VI-B of a subdivision known as Belvedere Plantation (hereafter "Belvedere") located in the Topsail Township within Pender County. At the time, the Sarneckys resided in another state. Defendant sent his standard collection letter for collection of delinquent taxes on behalf of the County to the Sarneckys. After receipt of Defendant's collection letter, the Sarneckys, wanting to dispose of the property, contacted Defendant and offered to sell the property to him. The Defendant accepted their offer. The Sarneckys sold the property to the Defendant and his spouse in a private sale. Defendant prepared and sent a deed for the property to the Sarneckys on or about 8 December 1994. The Sarneckys executed the deed on or about 10 February 1995 and returned it to the Defendant. The Defendant recorded the deed to the property on 23 February 1995. The Defendant paid the Sarneckys \$2,000 for the property. At the time of the sale, the tax valuation of the property was \$8,143.00. Defendant did not personally inform the Tax Collector or any other representative of the County of his purchase of the Sarnecky property in advance of his purchase of the property offered to him by the Sarneckys. All taxes owed to the County on the property were paid at the time of the sale.

12. At some time in late May or early June 1995, Defendant was asked by the Pender County Tax Collector to collect delinquent taxes due on property owned by Lester and Ethel Mattison identified as lot 20 of section VI-B in the Belvedere subdivision (hereafter "lot 20"). At the time, the Mattisons resided in another state. On or about 7 June 1995, Defendant sent his standard collection letter for collection of delinquent taxes on behalf of the County to the Mattisons. Defendant's collection letter was returned by the US Postal Service as undeliverable. On 4 December 1995, Defendant filed a Complaint against the Mattisons to collect the delinquent taxes through a tax foreclosure sale. The Complaint was served on the Mattisons on 26 December 1995. The Mattisons, wanting to dispose of the property, contacted Defendant by phone and letter and offered to sell the property to Defendant. The Defendant accepted their offer. The Mattisons sold the property to the Defendant and his brother and their respective spouses. Defendant prepared and sent a deed for the property to the Mattisons on or about 8 January 1996. The Mattisons executed the deed on or about 17 January 1996 and returned it to the Defendant. The Defendant recorded the deed to the property on 22 January 1996. The Defendant paid the Mattisons \$500 for the property. At the time of the sale, the tax valuation of the property was \$7,053.00. Defendant took a voluntary dismissal of the Complaint against the Mattisons on 22 January 1996. Defendant did not personally inform the Tax Collector or any other representative of the County of his purchase of the Mattison property in advance of the purchase of the property from the Mattisons. All taxes owed to the County on the property were paid at the time of the sale

13. On or about 3 August 1998, the Tax Collector submitted the claim for property taxes owed on property belonging to Howard Heidenberg (Heidenberg) to Defendant for collection. The Heidenberg property was a lot identified as lot 39 (hereafter "lot 39") in the Belvedere subdivision. At the time the Tax Collector submitted the claim on the Heidenberg property to Defendant for collection, Heidenberg was delinquent on property taxes owed for year 1997. The taxes for 1998 had been assessed, but were not yet delinquent.

14. The Heidenberg property for which the taxes were delinquent was adjacent to the property owned by Defendant, lot 38 of the Belvedere subdivision that he had acquired from the Sarneckys in February 1995.

15. On or about 5 August 1998, the Defendant mailed his standard collection letter to Howard Heidenberg using the mailing address provided by the Tax Collector. The collection letter was returned as undeliverable. The Defendant made efforts to locate Heidenberg by other means, such as the internet.

16. Defendant did not take any further action to collect on the Heidenberg account until July 2000, when the account was selected for foreclosure through a random selection process that had been in existence at his law office. On 20 July 2000, Defendant filed an action to conduct a tax foreclosure sale on the Heidenberg property. The action was filed in the Pender County District Court and was assigned file number 00 CVD 510. Defendant lawfully attempted service by certified mail to the same mailing address to which he sent the collection letter in August 1998. After the return of the certified mail as undeliverable, he served the Heidenbergs by publication in the *Pender Post*, a newspaper in Pender County. On 6 October 2000, Defendant moved for an entry of default judgment by the Clerk of Court and for appointment as Commissioner for the sale. The Clerk granted Defendant's motion and, on 6 October 2000, entered the judgment and order authorizing the tax foreclosure sale and appointing the Defendant as the Commissioner for the sale.

17. On 15 November 2000, Defendant, acting as Commissioner, conducted the public auction sale of the Heidenberg property. The sale was properly advertised to the public. Defendant learned from his daughter shortly before the sale, but after the foreclosure action had been filed, that the Heidenberg property was adjacent to his own property.

18. Defendant's part-time employee, Doris Carlton (Carlton), was the only person other than Defendant who attended the sale. Carlton had a business of buying properties at foreclosure sales and very frequently had attended tax foreclosure sales to buy properties with the intent to resell them. Defendant and Carlton walked together to the sale from Defendant's office. On the way to the sale, Carlton spoke to the Defendant about the property and the fact that the property was adjacent to Defendant's property at lot 38 in Belvedere. Carlton suggested that Defendant bid on the property himself. Defendant said he would not do that. Defendant informed Carlton that he would like to acquire the property from her if nobody else entered a bid.

19. In accordance with his standing directions from the County, Defendant entered a protective bid of \$1,016.12 on behalf of the County for the minimum due to cover the taxes and expenses of the sale. Defendant then recognized Carlton, who bid \$1,017.00. No other bids were entered at the sale. Carlton's bid was the high bid. Defendant reported Carlton's bid as the high bid to the court on the day of the sale, 15 November 2000.

20. Carlton informed Defendant that she would convey the property to Defendant for the amount of her bid before Defendant confirmed the sale to Carlton to the Court. At the end of the upset bid period on 28 November 2000, Defendant certified to the court that Carlton was the highest bidder on the property in the amount of \$1,017.00. The Court confirmed the sale of the property to Carlton.

21. On 29 November 2000, Defendant, as Commissioner, conveyed the Heidenberg property to Carlton and her husband.

22. On 30 November 2000, the Carltons conveyed the Heidenberg property to Defendant and his spouse. In consideration for the conveyance, Defendant either paid the tax sale bid amount on behalf of the Carltons or paid the Carltons the amount of their bid.

23. On 5 December 2000, Defendant applied for and was awarded an attorney fee of \$425.00 from the Clerk of Court in the action in which he sold the Heidenberg property. Defendant was also awarded a Commissioner's fee of \$50.85. Defendant did not disclose to the court at the time that he had acquired title to the property from the Carltons for the amount of their bid.

24. At the time of the sale, the appraised value of the property for tax purposes was \$8,057.00.

25. The Defendant undertook no conduct to hide or obstruct knowledge about his acquisitions, but did not take any affirmative action to inform either the County or the Court. The acquisitions were a matter of public record.

Based upon the foregoing **Findings of Fact**, the hearing committee makes 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. 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)(2) as follows:

(a) By privately purchasing property for his own benefit from delinquent taxpayers at a time when he was seeking payment for delinquent taxes as attorney for the Tax Collector without disclosing the transaction to the County beforehand, Defendant engaged in conduct at that time in which the interests of his client may have been materially limited by his personal interests in violation of Rule 5.1(b) of the Superseded Rules of Professional Conduct;

(b) By acquiring the Heidenberg property for his own benefit from his employee after his employee purchased the property at a foreclosure sale at which he was the commissioner, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

(c) By failing to disclose to his client that he had acquired the Heidenberg property from the highest bidder, Defendant engaged in conduct in which the interests of his client may have been materially limited by his own personal interests in violation of Rule 1.7(b); and

(d) By failing to disclose to the court that he had acquired the Heidenberg property from the highest bidder, his employee, whom he had also certified to the court as Commissioner as the high bidder at the tax foreclosure sale, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

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

**Findings Of Fact Regarding Discipline**

1. Both the Sarneckys and the Mattisons conveyed their properties to the Defendant freely and voluntarily. There is no evidence that either party was misled about the value of their properties by Defendant or that Defendant coerced them into selling their properties to him.

2. At some time no later than the early 1990's, Defendant investigated whether he or an employee in his office could purchase property subject to tax foreclosure. He conducted research, spoke with other local attorneys, and spoke with his State Bar Councilor. He also made an informal telephone inquiry to a representative of the North Carolina State Bar about whether there was any ethical problem with either his employee or him submitting a bid at a tax foreclosure sale that he was conducting. Based solely on his understanding of his conversation with the representative of the State Bar as well as his other efforts, Defendant believed in good faith that both he and his employees could submit bids at a tax foreclosure sale without violating the ethics rules that existed at the time. Defendant did not attempt to obtain any confirmation of his understanding of the opinion in writing from the State Bar nor did he make any new inquiry after the adoption of the Revised Rules of Professional Conduct in 1997. He did inform the local State Bar Councilor, other counsel, and the County Attorney about his conversation with the representative of the State Bar and the opinion that he had received.

3. At the time of his inquiry to the State Bar, and continuing through the time when asked to respond to the Grievance Committee inquiry in this matter, the Defendant was unaware of a North Carolina case, *Hinson v. Morgan*, 225 N.C. 740, 36 S.E.2d 266 (1945), stating that "a commissioner appointed in a judicial proceeding to sell land may not purchase [that land] at his own sale, even if he acts fairly." The case is not indexed as a tax sale case in the published North Carolina legal index.

4. Defendant now recognizes the legal and ethical problems with his conduct and had voluntarily agreed to stop engaging in such conduct before this action was brought. Further, the County has since adopted policies that prohibit such future conduct.

5. Defendant has agreed to offer to reconvey the Heidenberg property to the Heidenbergs for the amount he has paid in property taxes since his acquisition, not to exceed \$500.00.

6. Defendant's conduct generated adverse and negative publicity against his client, Pender County.

Based on the **Findings of Fact and Conclusions of Law** above and the additional **Findings of Fact Regarding Discipline**, the Hearing Committee makes the following:

**Conclusions With Respect To Discipline**

1. The defendant's conduct is aggravated by the following factors:
  - A. Multiple offenses;
  - B. Motivation of personal, financial gain; and
  - C. Substantial experience in the practice of law.
2. The defendant's conduct is mitigated by the following factors:
  - A. Absence of any prior disciplinary record;
  - B. Cooperative attitude toward the proceedings;
  - C. Restitution in the form of the reconveyance of the Heidenberg property;
  - D. Remorse that his acquisitions caused his client unwanted critical media scrutiny;
  - E. The alleged offenses occurring in the mid-1990's are remote; and
  - F. His client suffered no loss.
3. The mitigating factors substantially outweigh the aggravating factors.
4. Based on the mitigating factors, the Defendant's good faith belief in the propriety of his conduct, the Defendant's recognition of the ethical prohibitions to his conduct, and Defendant's commitment to refrain from such future conduct, entry of an order imposing discipline greater than a reprimand is unnecessary to protect the public from potential future transgressions by Defendant. However, entry of an order of less than a reprimand would fail to acknowledge the seriousness of the offenses committed by Defendant and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

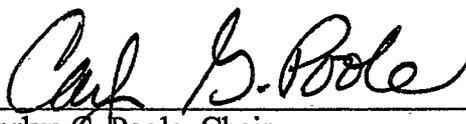
Based upon the foregoing **Findings Of Fact, Conclusions Of Law** and the **Findings Of Fact Regarding Discipline**, and with the consent of the parties, the Hearing Committee enters the following:

**Order Of Discipline**

1. The Defendant is hereby reprimanded.
2. The Defendant will pay all costs of this proceeding permitted by law, including the costs of his deposition, within thirty days of service of notice of the amount of costs as assessed by the Secretary.

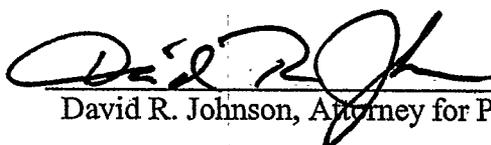
Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee.

This the 25 day of July, 2005

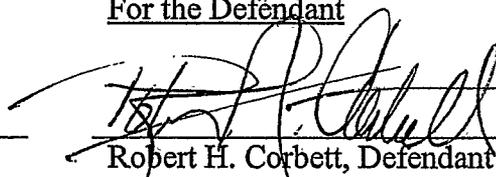
  
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Carlyn G. Poole, Chair  
Disciplinary Hearing Committee

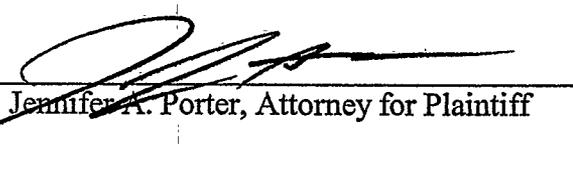
By signing below, the parties affirm their consent and agreement to the entry of the foregoing Consent Order of Discipline in 04 DHC 32:

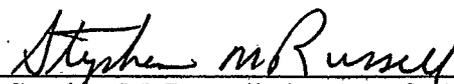
For the Plaintiff

  
\_\_\_\_\_  
David R. Johnson, Attorney for Plaintiff

For the Defendant

  
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Robert H. Corbett, Defendant

  
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Jennifer A. Porter, Attorney for Plaintiff

  
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Stephen M. Russell, Attorney for Defendant