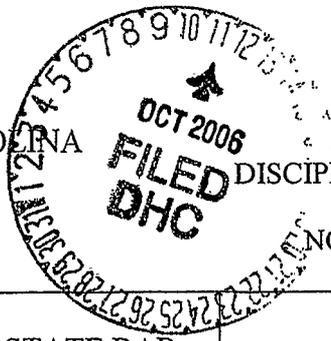


23770

STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 06 DHC 24

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

RICHARD BROADNAX, Attorney,

Defendant

Findings of Fact, Conclusions of Law and Order of Discipline

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair, and members John M. May and Rebecca Brownlee. Katherine E. Jean represented plaintiff, the North Carolina State Bar. The defendant Richard Broadnax was not represented by counsel and did not appear. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following

FINDINGS OF FACT

1. 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. Defendant, Richard Broadnax ("Broadnax"), was admitted to the North Carolina State Bar on March 22, 1997, and is, and was at all times referred to herein subject to the rules, regulations and Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. Broadnax personally signed the certified mail receipt reflecting that Broadnax personally received the summons and complaint in this action and had actual knowledge of the pendency of this proceeding. Broadnax was served with notice of this hearing by United States Mail.
4. Broadnax did not file an answer to the complaint in this matter, did not participate in a pretrial conference and did not appear at the hearing in this matter.
5. During a portion of the times pertinent to the subject matter of the complaint in this action, Broadnax was engaged in the practice of law in Reidsville, Rockingham County, North Carolina.

6. During calendar years 1997, 1998, 1999, 2000, 2001 and 2002, Broadnax received sufficient income to require Broadnax to file federal and state individual income tax returns.

7. For each of the tax years 1997, 1998, 1999, 2000, 2001 and 2002, Broadnax knew the deadlines for the filing of his federal and state income tax returns and for payment of any tax liability.

8. Broadnax failed to file his federal individual income tax returns for tax years 1997, 1998, 1999, 2000, 2001 and 2002 within the times required by law.

9. Broadnax failed to pay his federal individual income tax liability due for tax years 1997, 1998, 1999, 2000, 2001 and 2002 within the times required by law.

10. Broadnax failed to file his state individual income tax returns for tax years 1997, 1998, 1999, 2000, 2001 and 2002 within the times required by law.

11. Broadnax failed to pay any state individual income tax liability due for tax years 1997, 1998, 1999, 2000, 2001 and 2002 within the times required by law.

12. Broadnax's failure to file the required federal and state income tax returns and pay any final tax liabilities due on a timely basis for each tax year 1997, 1998, 1999, 2000, 2001 and 2002 was willful.

13. As a result of Broadnax's failure to file tax returns and to pay taxes, the State Bar opened grievance file # 04G0915.

14. Broadnax pled guilty in Wake County District Court on September 28, 2004, to two counts of failure to file or pay North Carolina taxes for the years 1997 and 1998. Broadnax was sentenced to 90 days in jail. The period of incarceration was suspended and Broadnax was placed on 36 months probation. Broadnax was ordered to pay \$19,553 in costs, fines and restitution.

15. On February 9, 2004, Broadnax's trust account was reviewed by the State Bar's Staff Auditor in the North Carolina State Bar's random audit program. At the conclusion of the random audit, grievance file # 04G1102 was opened.

16. Broadnax failed to reconcile his trust account, failed to identify the source of deposits, failed to deposit in his trust account amounts which included both trust and non-trust funds, failed to maintain a ledger of client funds, failed to maintain a ledger of Broadnax's funds improperly deposited and maintained in the trust account, failed to provide an Amended Directive to the banking institution which held his trust account instructing the banking institution to provide the State Bar with notice when Broadnax wrote a trust account check against insufficient funds, failed to indicate on checks from which client balance the funds were drawn, and failed to provide the North Carolina State Bar with assurance that the trust account had been reconciled.

17. Broadnax was served with a Letter of Notice in file number 04G1102 on March 17, 2005, requiring him to explain the circumstances set forth in paragraph 16 above.

18. Broadnax did not respond to the Letter of Notice sent to him in 04G1102.

19. Broadnax was sent a follow-up letter on April 8, 2005 and asked to provide the requested information on or before April 14, 2005.

20. Broadnax did not respond to the State Bar's follow-up letter.

21. In grievance files #s 04G0915 and 04G1102, Broadnax was properly served with a subpoena to appear on July 19, 2005 and produce to the State Bar Grievance Committee specified tax returns and trust account reconciliations.

22. Broadnax appeared in response to the subpoena but did not provide the documents he was required to produce pursuant to the subpoena.

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over defendant, Richard Broadnax, and over the subject matter.
2. Broadnax was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.
3. Willful failure to file or pay a federal tax when due is a misdemeanor under 26 USC § 7203.
4. Willful failure to file or pay a state income tax when due is a Class 1 misdemeanor under N.C. Gen. Stat. § 105-236(9).
5. Broadnax'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) and (3) as follows:
 - a. By failing timely to file the required federal and state individual income tax returns and failing timely to make required federal and state income tax payments when due, Broadnax committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct; and

b. By failing to reconcile his trust account, failing to identify the source of deposits into his trust account, not depositing in his trust account amounts which contained a mix of trust and non-trust funds, failing to maintain a ledger of client funds deposited in the trust account, failing to maintain a ledger of his own funds deposited into the trust account, failing to provide an Amended Directive to the banking institution at which he maintained his trust account, failing to indicate on checks from which client balance the funds were drawn, and not providing the North Carolina State Bar with assurance that the trust account had been reconciled, Broadnax violated Rules 1.15-1, 1.15-2 and 1.15-3 of the Revised Rules of Professional Conduct;

c. By failing to respond to the Grievance Committee's Letter of Notice and follow-up letter and failing to comply with the subpoena requiring him to produce documents and records, Broadnax failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1 of the Revised Rules of Professional Conduct.

Based upon the pleadings, admissions and evidence of record, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Broadnax was the defendant in a 2004 proceeding before the Disciplinary Hearing Commission, 04 DHC 20. Broadnax failed to appear at the DHC hearing in 04 DHC 20.

2. In 04 DHC 20, the DHC imposed a three year suspension of Broadnax's license for, among other misconduct, failure to respond to a letter of notice sent to him by the Grievance Committee in violation of Rule 8.1(b) and failure to respond to notice of fee dispute petition sent to him by the Client Assistance Program of the North Carolina State Bar in violation of Rule 1.5(f).

3. In 03G0638, the Grievance Committee of the State Bar imposed a reprimand against Broadnax for failing to respond to a letter of notice and failing to respond to follow up communications sent to him by the Grievance Committee in violation of Rule 8.1(b).

4. In 03G1055 and 03G1217, the Grievance Committee of the State Bar imposed an admonition against Broadnax for, among other misconduct, failing to respond to two notices of fee dispute petitions sent to him by the Client Assistance Program of the State Bar in violation of Rule 1.5(f).

5. Broadnax's misconduct is aggravated by the following factors:

a. Prior disciplinary offenses;

b. Pattern of misconduct;

c. Multiple offenses;

d. Bad faith obstruction of disciplinary proceedings by intentionally failing to comply with rules or orders of a disciplinary agency.

6. The hearing committee finds no mitigating factors.

7. Broadnax's misconduct interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.

8. Broadnax's misconduct in failing properly to maintain his trust account and failing properly to maintain records regarding entrusted funds created a substantial risk of harm to Broadnax's clients.

9. The hearing committee has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the potential harm caused by Broadnax's misconduct, because Broadnax has had substantial prior discipline, and because Broadnax has demonstrated an inability or an unwillingness to recognize the authority of the State Bar to regulate attorney conduct in North Carolina and the authority of the Disciplinary Hearing Commission.

10. The hearing committee finds that Broadnax's conduct caused significant potential harm to the public and significant actual and potential harm to the profession, and that a discipline more severe than public censure or reprimand is necessary to protect the public and the profession.

11. Entry of an order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses committed by Broadnax, would be inconsistent with orders of discipline entered by this body in similar cases and would send the wrong message to attorneys and to the public regarding the obligation of all attorneys to obey the Revised Rules of Professional Conduct.

12. For those reasons, the hearing committee believes and so finds that an Order imposing discipline short of a suspension of Broadnax's law license would not be appropriate.

Based upon the foregoing factors, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of defendant, Richard Broadnax is hereby suspended for five (5) years. This five year suspension shall begin immediately upon the earlier of (1) the effective date of any stay which may be granted of any portion of the three year suspension imposed by the Disciplinary Hearing Commission in 04 DHC 20 or (2) the expiration of the three year suspension imposed by the Disciplinary Hearing Commission in 04 DHC 20.

2. If he has not already done so, Broadnax shall submit his license and membership card to the Secretary of the North Carolina State Bar immediately.

3. If he has not already done so, Broadnax shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124(b) of the North Carolina State Bar Discipline & Disability Rules. Broadnax shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this Order, certifying he has complied with the wind down rule.

4. Within 15 days of the effective date of this Order, Broadnax shall provide the State Bar with an address at which clients seeking return of files can obtain such files and shall promptly return all files to his clients upon request.

5. After he has served three (3) years of this five year suspension, Broadnax may apply stay of the final two (2) years of this five year suspension. To be eligible for a stay of the final two years of this five year suspension, Broadnax must show by clear, cogent, and convincing evidence all of the following:

- a. That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules.
- b. That he paid the costs of this proceeding within thirty (30) days of service of the statement of costs upon him.
- c. That he has responded to any Letter of Notice or request for information from the North Carolina State Bar by the deadline for compliance set forth in each such letter of notice or request for information.
- d. That he has advised the State Bar in writing by of any address changes within ten (10) days of any change.

- e. That he promptly accepted all certified mail from the North Carolina State Bar.
- f. That he has timely complied with his State Bar continuing legal education requirements and that he has paid all fees and costs assessed by the CLE Committee within the applicable deadlines.
- g. That he has not violated the laws of the State of North Carolina, of any other state, or of the United States.
- h. That he has not violated any provision of the Revised Rules of Professional Conduct.
- i. That he has timely paid all membership dues and any other assessments made by the State Bar.
- j. That within ninety (90) days of the effective date of this Order, he has provided the State Bar Office of Counsel with the names, addresses and telephone numbers of all persons or entities for whose benefit he holds any funds in any trust account.
- k. That any trust account he maintained prior to the time his license was first suspended was properly wound up and that the funds were properly distributed all in accordance with the requirements of Revised Rules of Professional Conduct 1.15-1, 1.15-2, and 1.15-3 and in accordance with the rules applicable to winding up a practice upon a suspension.
- l. That he has paid all of his state and federal taxes, including all principal, penalties and interest, for the years 1997 through 2002.
- m. That he has paid all of his state and federal tax obligations in full for every year up to and including the year prior to the year in which he seeks a stay of any portion of the five year suspension.
- n. That he has provided to the Office of Counsel of the North Carolina State Bar releases authorizing state and federal taxing authorities to release to the Office of Counsel all records, information and documentation relating to Broadnax's filing or failure to file and payment or failure to pay any tax of any kind. The releases must be in a form satisfactory to the Office of Counsel and must recite that they are irrevocable. Broadnax must also show by clear, cogent and convincing evidence that he has not revoked any such release.

- o. At the time of or prior to his application for stay, he has filed with the State Bar documentation from the North Carolina Department of Revenue and from the Internal Revenue Service (IRS) showing his compliance with conditions k-m above.
- p. That not less than sixty (60) days before he seeks a stay of any portion of the 5 year suspension, he has been evaluated by the Lawyers Assistance Program or by a psychiatrist approved by the State Bar Office of Counsel and that he has complied with and continues to comply with any and all treatment recommendations of the LAP program or of such psychiatrist. The medical evaluation and treatment shall be obtained at the defendant's expense.
- q. That within ten (10) days of obtaining the LAP or psychiatric evaluation described in paragraph o above, he has signed and provided to the State Bar Office of Counsel releases authorizing the Office of Counsel to obtain from the LAP personnel or from the psychiatrist all information, records and documentation relating to his evaluation, treatment and compliance or lack of compliance. Such releases must recite that they are irrevocable.
- r. That he has not revoked any release provided as described in paragraph p above.
- s. That he has complied with any and all requests by the North Carolina State Bar Office of Counsel for any reports, medical records, LAP evaluations or mental health evaluations at his own expense.
- t. That he has submitted clear, cogent and convincing evidence that he is not suffering from any mental or physical condition that significantly impairs his professional judgment, performance or competence.
- u. That he has satisfactorily completed a law office management course approved by the State Bar Office of Counsel.
- v. That he has complied with all requirements of § .0125(b) of the North Carolina State Bar Discipline and Disability Rules.

6. At the end of this five year suspension, to be eligible for reinstatement to active practice Broadnax shall bear the burden of showing by clear, cogent and convincing evidence that he has complied with all of the conditions 5(a) through 5(v) above.

7. If the suspension is stayed and Broadnax is reinstated to practice during any portion of the five (5) year suspension, throughout the entire period of any such stay of the suspension Broadnax shall perform monthly reconciliations of any and all trust account(s) maintained by him and shall provide the State Bar with quarterly audits of such trust account(s) performed by a certified public accountant at Broadnax's expense.

8. If Broadnax successfully seeks a stay of any portion of this five year suspension, such stay will continue in force only as long as he continues to comply with all of conditions 5(a) through 5(v) above. If any portion of this five year suspension is stayed, and Broadnax is thus reinstated to practice during any portion of the five year suspension, and if during such stay period Broadnax fails to comply with any one or more of the conditions 5(a) through 5(v) above, then the stay of the suspension of his law license may be lifted and the suspension activated as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

9. If any stay of the suspension is lifted and the suspension is activated for any reason, Broadnax must show by clear, cogent, and convincing evidence that he complied with all of the conditions 5(a) through 5(v) above before he will be eligible to seek reinstatement to active practice.

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 and Disability Rules throughout any period of stayed suspension.

Signed by the Chair with the consent of the other hearing committee members,
this the 10th day of October, 2006.



Tommy W. Jarrett
Chair, Disciplinary Hearing Committee