

3080

5756

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 46

THE NORTH CAROLINA STATE BAR)
PLAINTIFF)

ORDER OF DISCIPLINE

v.)

MILTON E. MOORE and REGINA A.)
MOORE, Attorneys)
DEFENDANTS)

This matter was considered by a Hearing Committee of the Disciplinary Hearing Commission composed of M. Ann Reed, Chair, Stephen E. Culbreth and Rebecca Brownlee. Margaret Cloutier represented Plaintiff. Defendant Regina A. Moore attended the hearing, appearing pro se. Defendant Milton E. Moore did not attend the hearing and was not represented. Defendants were properly served with the Complaint and Summons in this matter and notified of the hearing date.

The Chair of this Committee, based on the pleadings filed herein, upon motion of Plaintiff and pursuant to Rule 12(c) of the Rules of Civil Procedure and §.0114 of the State Bar Discipline and Disability Rules, entered Judgment on the Pleadings setting forth Findings of Fact and Conclusions of Law. The Judgment was signed by the Chair on January 18, 2006 and filed with the Clerk of the DHC on January 20, 2006. The Findings of Fact and Conclusions of Law contained in that Judgment are repeated below and incorporated herein.

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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 Milton E. Moore was admitted to the North Carolina State Bar on August 14, 1970 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. Defendant Regina A. Moore was admitted to the North Carolina State Bar on August 19, 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

4. During the times relevant herein, Defendants actively engaged in the practice of law in the State of North Carolina and together maintained a law office in Williamston, Martin County, North Carolina.

5. Defendants unlawfully and willfully failed to file federal individual income tax returns and/or pay federal individual income taxes for tax years 1998, 1999, 2000 and 2001 as required by 26 U.S.C. §§6012, 6072 and 6151.

6. On April 6, 2005, before the Honorable Henry C. Morgan, Jr., U.S. District Court Judge presiding over the United States District Court for the Eastern District of North Carolina, Defendant Milton E. Moore entered a plea of guilty to, and was found guilty of, two counts of Willful Failure to File a Federal Income Tax Return, a misdemeanor under 26 U.S.C. §7203.

7. On April 6, 2005, before the Honorable Henry C. Morgan, Jr., U.S. District Court Judge presiding over the United States District Court for the Eastern District of North Carolina, Defendant Regina A. Moore entered a plea of guilty to, and was found guilty of, one count of Willful Failure to File a Federal Income Tax Return, a misdemeanor under 26 U.S.C. §7203.

8. Defendants unlawfully and willfully failed to file state individual income tax returns and/or pay state individual income taxes for tax years 1998, 1999, 2000, 2001, 2002 and 2003 as required by N.C.G.S. 105-152 and 105-157.

9. Willful failure to file a state income tax return or pay state income taxes when due is a misdemeanor under N.C.G.S. 105-236(9).

Based on the foregoing Findings of Fact, the Committee enters the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over Defendants and the subject matter of this proceeding.

2. Defendants' foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendants violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

(a) by unlawfully and willfully failing to file and/or pay federal income taxes when those taxes were due, Defendants committed criminal acts that reflect adversely on their honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and

(b) by unlawfully and willfully failing to file and/or pay state income taxes when those taxes were due, Defendants committed criminal acts that reflect adversely on their honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

3. In addition, Defendants' convictions in federal court of Willful Failure to File Federal Income Tax Returns constitute misconduct and grounds for discipline in that such convictions are criminal offenses showing professional unfitness pursuant to N.C.G.S. §84-28 (b)(1) and N.C.A.C. 1B §.0115.

Based on the foregoing Findings of Fact and Conclusions of Law, and based on the clear, cogent and convincing evidence presented at the hearing regarding discipline in this matter, the Committee makes the following

FINDINGS REGARDING DISCIPLINE – MILTON E. MOORE

1. In addition to failing to file federal income tax returns for tax years 1998 through 2001 as indicated in the Findings of Fact above, Defendant did not file federal income tax returns for the tax years 1993, 1995, 1996 and 1997, evidencing a long-standing pattern of violating federal laws.

2. Defendant Milton E. Moore received an attorney's fee in the amount of \$300,000.00 on November 4, 1998 in connection with a personal injury settlement he negotiated for a client. Defendant Milton E. Moore did not claim or report the \$300,000.00 as income to the Internal Revenue Service as required, but instead undertook a series of actions designed to evade his tax obligations, conceal his income, and avoid detection of the income by the appropriate taxing authorities. In addition, because Defendant Milton E. Moore deposited large

sums into the accounts of his children who would have incurred tax obligations of their own on the funds, Defendant involved innocent parties in his attempts to evade his tax obligations.

3. Plaintiff twice attempted to take the deposition of Defendant Milton E. Moore. However, after proper notice of each deposition was given to him, Defendant Milton E. Moore failed to appear. The expenses incurred by Plaintiff for those attempted depositions were reasonable and necessary in the litigation of this case.

4. Defendant Milton E. Moore failed to attend a properly noticed deposition and failed to voluntarily comply with discovery requests of Plaintiff. Despite this Committee's subsequent orders to comply with Plaintiff's discovery requests and to attend the deposition, Defendant Milton E. Moore did not comply or attend. His obstruction of these disciplinary proceedings warrants more severe discipline than had he demonstrated a cooperative attitude toward these proceedings.

5. Defendant Milton E. Moore's misconduct is aggravated by the following factors:

- (a) selfish and dishonest motives;
- (b) a pattern of misconduct in that Defendant failed to file tax returns over multiple years;
- (c) multiple offenses;
- (d) bad faith obstruction of the disciplinary process by intentionally failing to comply with the rules of civil procedure and obey orders of the Disciplinary Hearing Committee;
- (e) substantial experience in the practice of law;
- (f) indifference to making restitution;
- (g) refusal to acknowledge wrongful nature of his conduct; and
- (h) prior disciplinary offenses, in that Defendant Milton E. Moore received the following discipline:
 - (i) September 3, 1980, Public Censure for failing to properly retain and maintain trust account records;
 - (ii) August 16, 1995, Admonition for failing to communicate with his client and failing to diligently pursue the client's matter;

(iii) November 19, 1999, Admonition for failing to promptly respond to a lawful inquiry of the State Bar;

(iv) September 22, 2005, four-year suspension with opportunity to apply for stay after two years for failing to returned unauthorized fees contrary to the order of an administrative law judge in two Social Security Administration matters;

(v) June 5, 2006, Admonition for failure to respond to a disciplinary inquiry of the State Bar.

6. The Committee found no mitigating factors.

7. Defendant's failure to file taxes on a timely basis and subsequent criminal conviction have the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it shows disdain for his obligations as a citizen and officer of the court to obey the law. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

8. Defendant Milton E. Moore has demonstrated, through his efforts to avoid payment of taxes on a substantial amount of income and through the conduct that resulted in his current suspension, that his misconduct is not an aberration, and it appears that he is not committed to reforming his conduct and not interested in taking whatever steps necessary to correct the situation.

9. The Hearing Committee has carefully considered all of the different forms of discipline available to it for Defendant Milton E. Moore and finds as follows:

(a) The Committee finds that any of the sanctions less than disbarment would fail to acknowledge the seriousness of the offenses committed by Defendant and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar. In addition, Defendant Milton E. Moore's complete disregard for this process could impair the State Bar's ability to be self-regulating;

(b) Defendant Milton E. Moore has been the subject of five prior orders of discipline involving lesser sanctions. Although he has been given several chances to demonstrate that he will abide by the Revised Rules of Professional Conduct, Defendant Milton E. Moore has continued to violate those Rules and has failed to demonstrate that he has taken steps to reform. Specifically, the conduct leading to the current order of suspension of his license, along with the conduct enumerated above, demonstrate that Defendant Milton E. Moore

refuses to recognize the authority of the tribunals before which he practices or to abide by the authority of state and federal governments whose laws he has sworn to uphold; and

(c) The protection of the public requires that Defendant Milton E. Moore not be permitted to resume the practice of law unless and until he demonstrates that he has reformed, that he understands his obligations as an attorney, officer of the court and as a citizen of this state and country. Disbarred attorneys must show reformation, among other things, before they may resume the practice of law, whereas no such showing of reformation is required of attorneys whose licenses are suspended for a term certain.

FINDINGS REGARDING DISCIPLINE – REGINA A. MOORE

10. In addition to failing to file federal income tax returns for tax years 1998 through 2001 as indicated in the Findings of Fact above, Defendant did not file federal income tax returns for the tax years 1993, 1995, 1996 and 1997, evidencing a long-standing pattern of violating federal laws.

11. A deposition of Defendant Regina A. Moore was taken by Plaintiff and the expenses incurred by Plaintiff for that deposition were reasonable and necessary in the litigation of this case.

12. Defendant Regina A. Moore's misconduct is aggravated by the following factors:

- (a) selfish or dishonest motive;
- (b) a pattern of misconduct in that Defendant failed to file tax returns over multiple years;
- (c) multiple offenses;
- (d) substantial experience in the practice of law; and
- (e) prior disciplinary offenses, in that Defendant Regina A. Moore received the following discipline:
 - (i) February 23, 1995, Censure for neglecting criminal appeal and failing to refund unearned fee; and
 - (ii) February 12, 2001, Admonition for failure to turn over client's file and failure to timely respond to State Bar.

13. Defendant Regina A. Moore's misconduct is mitigated by the following factors:

(a) imposition of other penalties or sanctions in that Defendant was sentenced in federal criminal court, which sentence included a three-month active term of incarceration;

(b) personal or emotional problems;

(c) timely good faith efforts to make restitution or to rectify consequences of her misconduct;

(d) free and full disclosure to the Hearing Committee or cooperative attitude toward the proceedings;

(e) interim rehabilitation; and

(f) remorse.

14. The mitigating factors outweigh the aggravating factors.

15. Defendant's failure to file taxes on a timely basis and subsequent criminal conviction have the potential to cause significant harm to the standing of the legal profession in the eyes of the public because it shows disdain for her obligations as a citizen and officer of the court to obey the law. Such erosion of public confidence in attorneys tends to sully the reputation of, and fosters disrespect for, the profession as a whole. Confidence in the legal profession is a building block for public trust in the entire legal system.

16. An Order of Interim Suspension of Defendant Regina A. Moore's license was entered on May 24, 2006. Although the Order provided that Defendant Regina A. Moore's license was suspended on an interim basis until August 18, 2006, the Hearing Committee finds that Defendant Regina A. Moore did not resume the practice of law after that date and has not practiced law since at least May 24, 2006.

17. The Hearing Committee has carefully considered all of the different forms of discipline available to it for Defendant Regina A. Moore and finds as follows:

(a) The Committee finds that any sanction less than suspension would fail to acknowledge the seriousness of the offenses, which included a crime of moral turpitude, committed by Defendant and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar;

(b) Any sanction less than suspension would not allow conditions to be imposed upon Defendant Regina A. Moore that would help ensure that on an ongoing basis she adheres to the ethical rules of the profession and the laws of the state and federal government; and

(c) Defendant Regina A. Moore's participation in this disciplinary process indicates a willingness to comply and conform her conduct to the professional standards required of her and makes disbarment unnecessary.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, all found by clear, cogent and convincing evidence, the Hearing Committee enters the following

ORDER OF DISCIPLINE AS TO MILTON E. MOORE

1. Defendant Milton E. Moore is hereby DISBARRED from the practice of law.
2. Defendant Milton E. Moore shall surrender his law license and membership card to the Secretary of the North Carolina State Bar no later than thirty days from service of this order upon him if he has not already done so in connection with his prior order of discipline.
3. Defendant Milton E. Moore need not comply with the provisions of 27 N.C.A.C. 1B §.0124 of the North Carolina State Bar Discipline and Disability Rules as he is under obligation to have complied with same pursuant to the September 22, 2005 Order suspending his license in case number 05 DHC 11.

ORDER OF DISCIPLINE AS TO REGINA A. MOORE

4. The license to practice law in the State of North Carolina of Defendant Regina A. Moore is hereby suspended for three years effective as of the date the Interim Order of Suspension was entered in this matter, which was May 24, 2006. The first six months of the suspension shall be an active suspension. Because the effective date of this suspension was May 24, 2006 the active portion of this suspension has been served. The remaining period of suspension is stayed as long as Defendant Regina A. Moore complies and continues to comply with the conditions noted below.
5. During the period of stay, Defendant Regina A. Moore shall comply with the following conditions:

(a) Within sixty days of the date of service of this Order upon her, Defendant Regina A. Moore shall file any delinquent tax returns with the Internal Revenue Service and/or North Carolina Department of Revenue, as appropriate, for the tax years preceding the 2006 tax year. Within 30 days of filing such returns, Defendant shall provide to the Office of Counsel evidence that the Internal Revenue Service or the Department of Revenue have received such returns;

(b) By January 15, 2007, Defendant Regina A. Moore shall enter into a payment agreement with the Internal Revenue Service and/or the North Carolina Department of Revenue regarding payment of all unpaid taxes, penalties and interest for the tax years preceding the 2006 tax year. Defendant shall provide to the Office of Counsel proof of such agreements by January 30, 2007. Defendant shall be excused from entering into such an agreement with the Internal Revenue Service to the extent and during the time Defendant makes restitution payments as required by the terms of probation in her federal criminal case. Defendant shall comply with such repayment plans or probationary payments and shall provide to the Office of Counsel proof of compliance therewith within ten days of each payment date;

(c) Defendant Regina A. Moore shall file state and federal tax returns for 2006 and all future tax years on a timely basis and shall timely pay all amounts owed to the taxing authorities. Defendant shall provide written proof of filing and payment to the Office of Counsel within ten days of filing each return or request for extension and within ten days of each payment;

(d) Defendant Regina A. Moore will execute any written waivers and releases necessary to authorize the Office of Counsel to confer with the Internal Revenue Service or the North Carolina Department of Revenue for the purpose of determining if Defendant has cooperated and complied with all requirements of this Order. Defendant will not revoke the waivers and releases at any time during the period of stay;

(e) Defendant Regina A. Moore shall provide to the Office of Counsel copies of all correspondence sent to or received by her from any taxing authority about her tax obligations within ten days of receipt;

(f) Defendant Regina A. Moore shall not violate any state or federal laws or any provisions of the Revised Rules of Professional Conduct during the period of the stayed suspension;

(g) Defendant Regina A. Moore shall respond to all State Bar requests for information by the earlier of the deadline stated in the

communication or within thirty days of the date of the communication, as required by Rule 8.1(b) of the Revised Rules of Professional Conduct;

(h) Defendant Regina A. Moore shall timely comply with all State Bar membership and Continuing Legal Education requirements; and

(i) Defendant Regina A. Moore shall keep the North Carolina State Bar membership department advised of her current home and business street (not P.O. Box) addresses and telephone numbers.

6. If the stay granted herein to Defendant Regina A. Moore is revoked or the suspension of Defendant Regina A. Moore's license is activated for any reason, before seeking reinstatement of her license to practice law, Defendant Regina A. Moore must show by clear, cogent and convincing evidence that she has complied with each of the following conditions:

(a) Submitted her license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order suspending her law license;

(b) Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following the order suspending her law license; and

(c) Complied with the conditions in Paragraph 5 (a) through (i) above.

7. Defendants are taxed with the costs of this action, including the costs of the deposition of Regina A. Moore taken on January 24, 2006. The costs of the depositions attempted to be taken of Milton E. Moore on July 13, 2006 and August 30, 2006 shall be assessed against Milton E. Moore only. The costs shall be paid within thirty days of service of the notice of costs upon the Defendants by the Secretary.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 4th day of January,
2006.

2007


M. ANN REED, CHAIR
DISCIPLINARY HEARING COMMITTEE