

WAKE COUNTY
NORTH CAROLINA



14234

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
99 DHC 26

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

TODD E. MCCURRY, Attorney,
Defendant

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER OF DISCIPLINE

This matter was heard on the 10th day of March, 2000 before a hearing committee of the Disciplinary Hearing Commission composed of Joseph G. Maddrey, Kenneth M. Smith, and Jean G. Hauser. The Plaintiff was represented by Clayton W. Davidson, III. The Defendant, Todd E. McCurry, was represented by Alan M. Schneider. The parties stipulated that the hearing panel could simultaneously consider the issues concerning the applicable rule violations and the discipline to be imposed in one phase of the hearing and waived any requirements that the hearing be conducted in separate phases to determine the applicable rule violations and discipline. This hearing was conducted in accordance with that stipulation. Based upon the stipulations, pleadings, and the evidence introduced at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of

North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").

2. The Defendant, Todd E. McCurry, (the "Defendant") was admitted to the State Bar in 1987 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.
3. During all or a part of the relevant periods referred to herein, the Defendant was engaging in the practice of law in the State of North Carolina and maintained a law office in Durham, North Carolina (the "Law Office").
4. In 1995 and 1996, the Defendant had an employee who worked for him in his Law Office and to whom he paid wages or salary (the "Employee").
5. The Defendant was required to compute the amounts payable to the Employee by taking her gross earnings and subtracting out F.I.C.A. tax, federal withholding tax, and state withholding tax.
6. The Defendant failed to timely file required 941 tax returns for June, 1995, September, 1995, December, 1995, March, 1996, September, 1996, and December, 1996, and failed to pay to the Internal Revenue Service some of the amounts withheld from the Employee's gross earnings for F.I.C.A. tax and federal withholding tax for 1995 and 1996.
7. During 1995 and 1996, when the Defendant was not making the required payments to the Internal Revenue Service, the Defendant continued to pay salary to his employee, and continued to pay some other expenses necessary to run his law office.

8. The Defendant failed to timely file with the Internal Revenue Service, personal income tax returns for the tax years 1993 to 1996.
9. On January 12, 1999, the Defendant was charged with two misdemeanor counts of failure to file personal income tax returns for 1995 and 1996 in violation of 26 U.S.C. § 7203.
10. Pursuant to a plea agreement, the Defendant pled guilty to one misdemeanor count of failure to file a tax return in violation of 26 U.S.C. § 7203 in a criminal information filed in the United States District Court for the Middle District of North Carolina, file number 1:99CR3-1.
11. On or about May 20, 1999, the Defendant was sentenced to pay a fine of \$25.00, perform 50 hours of community service, abide by the home confinement program for a period of four months, and was placed on supervised probation for a period of one year. The Defendant has complied with the conditions of probation set forth by the Court and his probation is set to expire on May 19, 2000.

Based on the foregoing findings of fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. The Defendant has stipulated and this committee finds that that the Defendant has violated Rule 1.2(b) of the superseded Rules of Professional Conduct by failing to timely file the requisite returns, a misdemeanor in violation of 26 U.S.C. § 7203.
2. The Defendant willfully failed to collect or truthfully account for and pay over a tax in violation of 26 U.S.C. § 7202, a felony, thereby committing a criminal act that reflects adversely on the Defendant's honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(b) of the superseded North Carolina Rules of Professional Conduct.
3. The foregoing actions of the Defendant also constitutes a violation of superseded Rule 1.2(c).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments at trial concerning the appropriate discipline, the hearing committee hereby makes the additional:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:
 - a. A dishonest or selfish motive;
 - b. A pattern of misconduct;
 - c. Multiple offenses;
 - d. Substantial experience in the practice of law.
2. The Defendant's misconduct is mitigated by the following factor:
 - a. Absence of a prior disciplinary record;
 - b. Timely good faith efforts to make restitution or to rectify consequences of misconduct;
 - c. Full and free disclosure to the hearing committee or cooperative attitude toward proceedings, including the fact that the defendant reported himself to the grievance committee in this matter;
 - d. Substantial credible evidence of good character and reputation;
 - e. Evidence of interim rehabilitation in that the Defendant has timely filed all tax returns required to be filed for tax years 1997 and 1998.
 - f. Imposition of other penalties or sanctions;
 - g. Remorse.
3. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact Regarding Discipline, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Todd E. McCurry, is hereby suspended from the practice of law for a period of one year.
2. All but the first thirty days of the suspension may be stayed for the balance of the term of the suspension upon the following conditions:
 - a. Within six months of the date of the service of this order upon him, the Defendant shall provide evidence that he filed all past due federal and state tax returns, and paid all past due taxes, withholdings, penalties, and interest due and owing on all state and federal tax returns; provided however that if the Defendant enters into an installment agreement or some other agreement satisfactory to the Internal Revenue Service to pay the outstanding taxes, the execution and compliance with the terms of such an agreement will fulfill the terms of this paragraph concerning payment of taxes.
During the period of the stay, the Defendant shall abide by all the terms of and make all payments due under any such agreement with the Internal Revenue Service. The provisions of this subparagraph shall be a continuing condition of the stay of the suspension.
 - b. Before the filing of any petition for any stay of suspension or reinstatement, and during the period of any stay of suspension, following the date of the hearing of this matter, the Defendant shall timely file all tax returns or other tax related filings which become due pursuant to state or federal law, and shall timely pay all taxes or payments that are due and owing pursuant to those filings or by law.

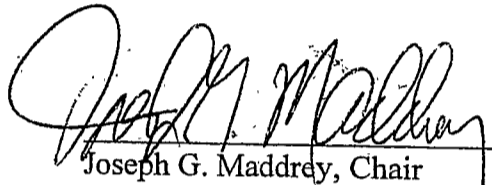
- c. The Defendant shall comply with all standard and special conditions of his federal probation. The Defendant shall report in writing to the Office of the Secretary of the North Carolina State Bar any finding by a federal district court judge or magistrate judge of a violation of his probation within ten days of such finding.
- d. The Defendant shall provide to the North Carolina State Bar sufficient evidence that he has fulfilled the requirements of subparagraphs a, b, and c above, and shall execute any authorizations or releases requested by the North Carolina State Bar to enable the Bar to verify with any appropriate taxing authority that Defendant has fulfilled the provisions of subparagraphs (a) and (b) above. During the period of any stay of suspension, the Defendant shall forward copies of all filings and evidence of all payments required by subparagraph (b) above to the North Carolina State Bar simultaneously with the filing of such documents.
- e. Prior to the filing of any petition for any stay of suspension or reinstatement, the Defendant shall pay all costs assessed against the Defendant in this matter.
- f. The Defendant shall comply with the Revised Rules of Professional Conduct, and all provisions of the Rules and Regulations of the North Carolina State Bar, including but not limited to the provisions of 27 Admin. Code Chapter 1 Subchapter B § .0124. Any violation of the Rules following the date of this order shall be grounds for denial of or lifting of the stay. Provided however, that during the period of the suspension, the Defendant, with the consent of the client, may turn ongoing matters over to another attorney in his office and may resume the handling of those matters following his reinstatement. The Defendant shall be required to notify any such client and the court in which such a matter is pending of this suspension, but shall not be required to

withdraw from any such matter. If the Defendant is not reinstated to the practice of law within 45 days following the effective date of the suspension, the Defendant shall withdraw from all pending matters, and shall fully comply with the provisions of 27 N. C. Admin. Code Subchapter B § .0124 without exception.

- g. The Defendant shall not violate the laws of the State of North Carolina, the United States, or the various States of the United States.
3. During the period of any stay of the suspension, as continuing conditions of the stay of the suspension, the Defendant shall comply with all provisions of subparagraphs a, b, c, d, f, and g of paragraph 2 above.
4. The effective date of the thirty day active suspension shall be March 27, 2000 to April 25, 2000. The Defendant shall mail certified letters to all clients in accordance with 27 N. C. Admin. Code Subchapter B § .0124 by March 17, 2000; and shall provide an affidavit to the bar stating that he has undertaken all actions necessary to wind down his practice in accordance with the terms of this order by March 27, 2000. The Defendant may petition for reinstatement on or after April 14, 2000. The provisions of paragraph 2 of 27 N. C. Admin. Code Subchapter B § .0125(b) are hereby modified to require that the State Bar shall file a response to any petition for reinstatement within ten days from the date of the filing of the petition with the secretary if the Defendant expressly references this paragraph in the petition, and expressly indicates in the petition that Office of Counsel is required to respond within ten days of the petition, and in that event, the Defendant shall be eligible for reinstatement ten days following the filing of the petition, but in no event prior to April 26, 2000.

5. If the Defendant fails to petition for or meet the requirements for any stay of the suspension, or if any stay of the suspension is lifted, and the suspension is re-activated, as a condition of reinstatement following the suspension, the Defendant must meet the requirements of subparagraphs a, b, c, d, and e of paragraph 2 above. This requirement is in addition to, and shall not be deemed to limit the provisions of 27 N.C. Admin. Code Chapter 1 Subchapter B § .0125.
6. The Defendant shall pay the costs of this proceeding 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 all other members of the hearing committee this 16th day of March, 2000.


Joseph G. Maddrey, Chair