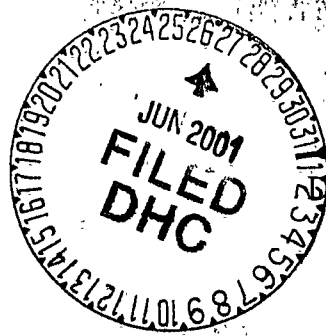


WAKE COUNTY
NORTH CAROLINA



14034

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
01 DHC 4

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
v.)
)
JIMMIE R. BARNES, ATTORNEY)
)
Defendant.)

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

This matter was heard on the 8th day of June, 2001, before a hearing committee of the Disciplinary Hearing Commission composed of James R. Fox, Chairman; Fred H. Moody Jr., and James N. Parrish. Samuel T. Currin represented defendant, Jimmie R. Barnes. Douglas J. Broucker represented plaintiff. Based upon the pleadings, stipulations, and the evidence introduced and arguments presented, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereafter "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, Jimmie R. Barnes, (hereafter "Barnes"), was admitted to the North Carolina State Bar on August 22, 1987, 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 and the United States.
3. During the times relevant to the complaint, Barnes actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Roanoke Rapids, Halifax County, North Carolina.

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Employment Withholding Tax Violations

4. During 1994 to 1999, Barnes' law office was a sole proprietorship operated by him.
5. During 1994 to 1996, Barnes employed in his law office persons to whom he paid regular wages (hereafter, "employees").
6. As an employer, Barnes was required to deduct and withhold from his employees' wages amounts sufficient to pay all or part of each employee's state and federal tax liabilities (hereafter, "withholding funds").
7. As an employer, Barnes was required to file tax returns accounting for the amounts withheld from his employees' wages. Barnes was required to file these returns on a quarterly and annual basis with the United States Internal Revenue Service (hereafter, "IRS") and the North Carolina Department of Revenue (hereafter, "NCDOR").
8. Barnes failed to file with the IRS, in the time required by law, his federal quarterly and annual tax returns for employee withholding taxes for the last quarter in 1994 and for all quarters and years in 1995 and 1996.
9. Barnes failed to file with NCDOR, in the time required by law, his state quarterly returns for employee withholding taxes for the last quarter in 1994, for all quarters in 1995, and for the first three quarters in 1996.
10. As an employer, Barnes was required to pay the withholding funds on a quarterly basis to the IRS and NCDOR.
11. Barnes failed to pay to the IRS, in the time required by law, the withholding funds for the last quarter of 1994 and for all quarters and years in 1995 and 1996.
12. Barnes failed to pay to the NCDOR, in the time required by law, the withholding funds for the last quarter of 1994, for all quarters in 1995, and for the first three quarters in 1996.
13. Barnes had filed returns and paid employment withholding taxes timely for quarters and years prior to the last quarter of 1994.
14. Barnes also filed returns or paid state and federal employment withholding taxes untimely for a few quarters during 1995 and 1996.
15. Barnes, therefore, was aware of his obligations to file returns and pay state and federal employment withholding taxes timely.
16. For tax years 1994 through 1996, Barnes provided employees with W-2 forms.

17. The W-2 forms Barnes provided to his employees included the total compensation paid, and separately listed the social security, medicare, federal income, and state income taxes withheld from his employees' wages for the year.
18. Barnes provided the W-2 forms to his employees in the year immediately following the previous tax year. For example, Barnes provided the W-2 forms for 1995 in 1996.
19. Barnes, therefore, knew or should have known the amounts he was supposed to withhold from his employees' wages and hold in trust for payment to the IRS and NCDOR on behalf of his employees.
20. Barnes willfully failed to file his state and federal employee withholding quarterly and annual tax returns and knowingly and willfully failed to pay those taxes to the IRS and NCDOR for the last quarter of 1994 and for the above-mentioned quarters and years in 1995 and 1996.
21. As of March 1, 1997, Barnes' unpaid and delinquent federal employee withholding taxes for 1994 through 1996 exceeded \$40,000.
22. As of March 1, 1997, the penalties and interest on Barnes' unpaid and delinquent federal employee withholding taxes for 1994 through 1996 exceeded \$12,000.
23. During 1994 through 1996, Barnes paid his employees' salaries and paid other expenses necessary to run his law office.
24. During 1994 through 1996, Barnes also continued to receive income from his law office.
25. Barnes withheld from his employees' paychecks amounts for payment of state and federal taxes (hereafter "withheld funds") in each pay period in the last quarter of 1994 and in each quarter in 1995 and 1996.
26. From the time he withheld the funds from his employees' wages until he eventually paid them, Barnes was required to hold the withheld funds in trust for payment to the IRS and NCDOR on behalf of his employees.
27. Barnes failed to hold the withheld funds in trust for payment to the IRS and NCDOR on behalf of his employees. From January 1995 until at least January 1997, the balance in Barnes' general account regularly was below the amount he owed the IRS and NCDOR in delinquent employment withholding taxes for 1994 through 1996.
28. The withheld funds were used for Barnes' own personal and professional benefit. There was not clear, cogent, or convincing evidence, however, that Barnes had actual, contemporaneous knowledge that the withheld funds were being used for his own personal and professional benefit.

29. Barnes delegated all responsibilities regarding collecting, filing returns, and paying his employment withholding taxes, as well as the maintaining the withheld funds, to his wife -- an unpaid office manager.

Personal Income Tax Violations

30. Barnes failed to file with the IRS, in the time required by law, his personal income tax returns for years 1994 through 1996.

31. Barnes failed to file with the NCDOR, in the time required by law, his state personal income taxes for years 1994 through 1996.

32. Barnes was aware of his obligation to file his personal income tax returns for years 1994 through 1996.

33. For example, on approximately April 20, 1995, Barnes filed with the IRS a request for an extension of time until August 15, 1995 to file his 1994 tax return.

34. Barnes did not thereafter file with the IRS his 1994 tax return on or before August 15, 1995.

35. On approximately April 15, 1997, Barnes filed with the IRS a request for an extension of time until August 15, 1997 to file his 1996 tax return.

36. Barnes did not thereafter file his 1996 tax return on or before August 15, 1997.

37. Barnes willfully failed to file with the IRS and NCDOR, in the time required by law, his state and federal personal income tax returns for years 1994 through 1996.

38. Barnes failed to pay, in the time required by law, his state personal income taxes for years 1994 through 1996.

39. Barnes also failed to pay to the IRS some or all of his federal personal income taxes for years 1994 through 1999.

40. Barnes was aware of his obligation to pay his state and federal personal income taxes for years 1994 through 1999.

41. For example, in April 1995, Barnes paid a portion of his federal income taxes for 1994.

42. For years 1997 through 1999, Barnes filed a personal income tax return indicating the amount of taxes owed to the IRS and NCDOR.

43. Barnes also paid a portion of his federal income taxes for some years beginning in 1998.

44. Barnes willfully failed to pay some or all of his federal personal income taxes for tax years 1994 through 1999 and to pay, in the time required by law, his state personal income taxes for years 1994 through 1996.

45. Barnes owed the IRS over \$150,000 in delinquent personal income taxes, penalties, and interest for years 1994 through 1999, at the time the disciplinary complaint was filed in this matter in March 2001.

46. On May 29, 2001, Barnes pled guilty to willfully failing to file personal income tax returns for 1994 and 1995 in the United States District Court for the Eastern District of North Carolina, file number 4:01-M-25 (hereafter, "related federal criminal case").

47. At or around the time he entered his guilty plea, Barnes paid the delinquent taxes, penalties, and interest for 1994 and 1995.

48. Barnes also paid a portion of his outstanding delinquent federal tax liability prior to the hearing in this matter.

49. As of the time of the hearing in this matter, Barnes still owed approximately \$92,000 to the IRS in delinquent taxes, plus any applicable interest and penalties.

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 Barnes and the subject matter.

2. Barnes' conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Barnes committed the following violations of the North Carolina Rules of Professional Conduct (hereafter "Rule") or Revised Rules of Professional Conduct (hereafter "Revised Rule"):

A. By willfully failing to collect or pay over federal employment withholding taxes, in violation of 26 U.S.C. § 7202, and willfully failing to file returns, supply information, or pay federal employment withholding taxes in violation of 26 U.S.C. § 7203, for the last quarter of 1994 and all quarters and years in 1995 and 1996, in the times required by law, Barnes committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(b);

B. By willfully failing to collect or truthfully account for and pay over state employment withholding taxes and willfully failing to pay such taxes, file such returns, or supply such information in violation of N.C. Gen. Stat. § 105-236(8) & (9) for the last quarter of 1994, all quarters in 1995, and the first three quarters in

1996, in the times required by law, Barnes committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(b);

C. By willfully failing to file with the IRS his federal personal income tax returns and otherwise supply information for tax years 1994 through 1996, and by willfully failing to pay estimated personal income taxes for years 1994 through 1999, in the times required by law, in violation of 26 U.S.C. § 7203, Barnes committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(b) and Revised Rule 8.4(b);

D. By willfully failing to file with the NCDOR his state personal income tax returns, pay the taxes due, and otherwise supply information for tax years 1994 through 1996, in the times required by law, in violation of N.C. Gen. Stat. § 105-236(9), Barnes committed criminal acts that reflected adversely on his honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(b) and Revised Rule 8.4(b); and

E. Barnes' foregoing actions, set out in sub-paragraphs A through D above, constituted conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c) and Revised Rule 8.4(c).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Barnes' misconduct is aggravated by the following factors:
 - A. Use of funds required to be held in trust for his own personal benefit, but without Barnes' actual knowledge of such use of the funds
 - B. Pattern of misconduct,
 - C. Multiple offenses over a period of numerous years,
 - D. Substantial experience in the practice of law, and
 - E. Significant outstanding delinquent taxes, interest, and penalties.
2. Barnes' misconduct is mitigated by the following factors:
 - A. Absence of a prior disciplinary record,
 - B. Personal or emotional problems,
 - C. Full and free disclosure to the hearing committee and cooperative attitude toward the proceeding,
 - D. Substantial, credible evidence of good character or reputation, including testimony or evidence from numerous previous and presiding superior and

district court judges, the district attorney, and members of the private bar from the judicial district and county where Barnes primarily practices,

- E. Remorse,
 - F. Significant service to the bar and to the client community, including being one of only two attorneys in his district to regularly accept appointments in capital murder cases, and
 - G. Some restitution of delinquent taxes
3. The mitigating factors outweigh the aggravating 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. Defendant, Jimmie R. Barnes, is hereby suspended from the practice of law for a period of five years. Barnes' license shall be actively suspended for 60 days plus the entire period for which he is imprisoned, if any, in connection with his guilty plea in the related federal criminal case.

2. The effective date of this order is the date on which Barnes reports for his period of incarceration in connection with the related federal criminal case. Alternatively, if Barnes receives no period of incarceration, the order shall be effective and the suspension shall take effect thirty (30) days after Barnes is sentenced in the related criminal case (hereafter, "effective date"). Barnes is responsible for providing the State Bar with a certified copy of the judgment in the related criminal case, within ten (10) days of its entry. Barnes shall submit his license and membership card to the Secretary of the North Carolina State Bar upon the effective date of this order, as set forth above.

3. After no less than 60 days after he is released from any period of incarceration, or alternatively, if Barnes receives no period of incarceration, 60 days after the effective date of the order, Barnes may file a verified petition for a stay of the remaining period of the suspension in accordance with the requirements of N.C. Admin. Code Chapter 1, Subchapter B § .0125(b) of the North Carolina State Bar's Discipline and Disability Rules (hereafter, "Discipline Rules"). Barnes' remaining suspension may be stayed if he establishes by clear, cogent, and convincing evidence the following conditions:

A. Within 90 days of the effective date of his suspension, Barnes shall enter into a payment plan with the IRS regarding all his outstanding tax liabilities, including penalties and interest. The payment plan shall require that Barnes pay the entire outstanding amount of delinquent taxes, interest, and penalties no less than 90 days before his five-year suspension ends. Alternatively, prior to the filing of any petition for stay of suspension or reinstatement, Barnes shall meet all his tax obligations to the IRS for which he is currently in default, including payment of all taxes, penalties, and interest. With any petition for a stay, Barnes shall provide the State Bar with a copy of this payment plan agreement with the IRS, including

the total amount due in delinquent taxes, penalties, and interest, or, alternatively, an official certification from the IRS that all such delinquent amounts have been paid in full.

B. During the suspension period, Barnes shall timely file all tax returns and other related filings which he is required to make by 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. With any petition for stay of suspension or reinstatement, Barnes shall provide to the North Carolina State Bar sufficient evidence, including the filed returns and cancelled original checks, that he has fulfilled the requirements of subparagraphs A and B above and shall execute authorizations and releases requested by the North Carolina State Bar to enable it to verify with all appropriate taxing authorities that Barnes has fulfilled the provisions of subparagraphs A and B above.

D. Barnes shall comply with all the requirements of Discipline Rule .0124.

E. Barnes shall comply with all the requirements of Discipline Rule .0125(b).

F. Barnes shall pay all the costs assessed by the Secretary in connection with this proceeding, including any deposition costs, within 30 days of service of these costs by the Secretary.

G. Barnes shall not violate any federal or state laws during the period of the suspension.

4. Upon the entry of an order staying the remaining term of Barnes' suspension, such order of stayed suspension may continue in effect for the balance of the term of suspension only upon compliance with all the following conditions:

A. Barnes shall not violate any federal or state law during the remaining period of the suspension.

B. Barnes shall not violate any provisions of the Revised Rules of Professional Conduct or subsequently enacted Rules of the North Carolina State Bar.

C. Barnes shall timely file all tax returns or other related filings which he is required to make by state or federal law, and shall timely pay all taxes or payments that are due and owing pursuant to those filings or by law. Barnes shall forward to the North Carolina State Bar copies of all filings and payments simultaneously with the filing of such documents. Barnes shall provide cancelled original checks for all such payments upon their return to him from his financial institution and provide copies of any correspondence with any taxing authority.

D. If the delinquent taxes, interest, and penalties are not paid in full at the time his suspension is stayed, Barnes shall comply with terms of the payment plan with the IRS during the entire term of his suspension. Barnes also shall provide the State bar no less than 90 days before his five-year suspension ends an official certification from the IRS that all such delinquent amounts have been paid in full.

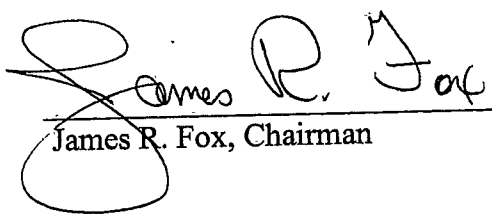
E. Barnes shall contract with an certified public accountant, acceptable to the State Bar and outside of Halifax County (hereafter, "independent auditor"), to conduct a comprehensive independent audit and prepare a written report of all Barnes' business operations, including but not limited to all business, operating, payroll, and trust accounts (hereafter, "audit"). The audit shall be conducted in accordance with generally accepted auditing standards and shall determine if Barnes' business practices and procedures for the past year were in compliance with all rules and regulations of the State Bar and all other applicable state and federal laws, including but not limited to, the filing and payment of all applicable taxes.

Barnes shall personally provide the relevant information to and personally meet with the independent auditor at the conclusion of each yearly audit to discuss the results and any problems discovered. Each yearly audit period shall run from the effective date of the stayed suspension for the next 365 days. For each year during the stayed suspension, Barnes shall be responsible for forwarding the annual audit to the State Bar no later than 90 days after the end of the yearly audit period. During the final year of the suspension, the audit shall be done for the first 6 months of that audit year and shall be provided no later than 90 days before the five-year suspension expires. Barnes is responsible for all cost associated with the audit, which he shall pay directly to the independent auditor.

5. If probation is imposed in the related criminal case and is subsequently revoked for a probation violation, the suspension of Barnes' law license shall be re-activated automatically upon the filing of a copy of the order revoking his probation, without the necessity for a hearing on the re-activation of Barnes' suspension. Barnes is responsible for providing the State Bar with a certified copy of any order or judgment revoking his probation immediately upon entry. The reactivation of Barnes' suspension shall take effect when he reports for incarceration. To stay any remaining portion of the suspension after his release from incarceration, Barnes must follow all the procedures and requirements set forth in paragraphs 3 and 4 above.

6. In the event that Barnes fails to petition for, or meet the requirements for any stay of the suspension, or in the event that any stay of the suspension is lifted, and the suspension is reactivated, as a condition of reinstatement following the suspension, Barnes must meet the requirements of all subparagraphs of paragraphs 3 and 4 above. This requirement is in addition to, and shall not deem to limit the provisions of Disciplinary Rule .0125.

Signed by the chair with the full knowledge and consent of all other members of the hearing committee, this the 25th day of June 2001.


James R. Fox, Chairman