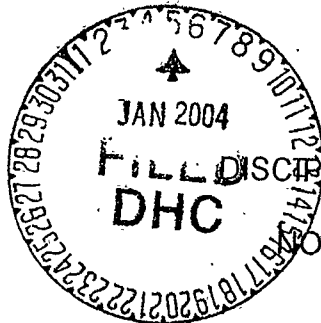


20758

NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
03 DHC 23

THE NORTH CAROLINA STATE BAR, )  
Plaintiff, )

v. )

DENIS L. VENTRIGLIA, Attorney, )  
Defendant. )

CONSENT ORDER OF  
DISCIPLINE

This matter was heard on the 29<sup>th</sup> day of December, 2003, before a hearing committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair; Karen E. Eady and Lorraine Stephens. D. Royce Powell represented the defendant, Denis L. Ventriglia. Thomas F. Moffitt represented the plaintiff. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Based upon the consent of the parties the hearing committee hereby makes the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).
2. Defendant, Denis L. Ventriglia ("Ventriglia"), was admitted to the North Carolina State Bar in 1994, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.
3. During all or part of the relevant periods referred to herein, Ventriglia was engaged in the practice of law in the State of North Carolina and maintained a law office in Wilmington, New Hanover County, North Carolina.
4. Ventriglia unlawfully and willfully failed to file state income tax returns for tax years 1997, 1998, and 1999 when those tax returns were due, as required by N.C. Gen. Stat. § 105-152. Ventriglia owed the State of North Carolina \$3,707 in

income tax for tax year 1997, \$4,671 for tax year 1998 and \$15,525 for tax year 1999. 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. Ventriglia unlawfully and willfully failed to file federal income tax returns for tax years 1997, 1998 and 1999 when those tax returns were due, as required by 26 USC § 6012. Ventriglia owed the United States \$21,137 in income tax for tax year 1997, \$26,640 for tax year 1998 and \$83,079 for tax year 1999. Willful failure to file a federal tax return when due is a misdemeanor punishable by either a fine, imprisonment or both under 26 USC § 7203.

6. After discovery of Ventriglia's failure to file state and federal income taxes for tax years 1997, 1998 and 1999, Ventriglia subsequently filed federal and state income tax returns for those tax years on or about March 27, 2002 and paid the taxes due, with penalties, late fees and interest to the United States and the State of North Carolina.

7. Social Security tax records show that Ventriglia failed to pay social security and Medicare taxes ("self employment tax") for tax years 1991 through 2000, as required by 26 USC § 1401. Willful failure to file or pay a federal tax when due is a misdemeanor punishable by either a fine, imprisonment or both under 26 USC § 7203. Ventriglia has now paid all self-employment taxes that he was obligated to pay, to wit: self-employment taxes due for tax years 1997, 1998, 1999 and 2000.

8. Ventriglia states, and the State Bar does not contest, that he failed to pay the state and federal taxes when due, in significant part, because of his financial inability to pay on the due dates for filing and payment.

9. Ventriglia stipulates to the facts and consents to this Order of Discipline freely and voluntarily with advice of counsel.

Based upon the consent of the parties and 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 unlawfully and willfully failing to file state income returns for tax years 1997, 1998 and 1999 when those tax returns were due, Ventriglia committed criminal acts that reflect adversely on his honesty,

trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4 (b).

(b) By unlawfully and willfully failing to file federal income tax returns for tax years 1997, 1998 and 1999 when those tax returns were due, Ventriglia committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4 (b).

(c) By unlawfully and willfully failing to file or pay federal social security and Medicare taxes ("self employment tax") for tax years 1997, 1998, 1999 and 2000 when those taxes were due, Ventriglia committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4 (b).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's conduct is aggravated by the following factors:

- A. Multiple offenses, and
- B. Pattern of misconduct.

2. The defendant's conduct is mitigated by the following factors:

- A. Absence of prior disciplinary record,
- B. Significant personal problems incident to marital discord and breakup of his marriage during the periods when the tax filings and payments were due,
- C. Efforts to rectify the consequences of his misconduct by filing returns and paying all of the state and federal taxes, penalties, late fees and interest he was obligated to pay,
- D. Cooperative attitude toward the proceedings, and
- E. Remorse.

3. The mitigating factors outweigh the aggravating factors.

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 license of the defendant, Denis L. Ventriglia, is hereby suspended for two years from the date this Order of Discipline is served upon him. The period of suspension is stayed for two years upon the following conditions:

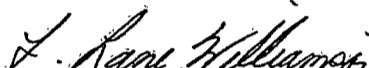
- a. The defendant shall provide documentation, within sixty (60) days of the entry of this order, to Office of Counsel of the State Bar to prove that he has filed all state and federal income returns and paid the income tax due for years 1997 through 2002.
- b. The Defendant shall provide the Office of Counsel of the North Carolina State Bar with written verification that he has filed all required tax returns with the North Carolina Department of Revenue and the Internal Revenue Service during the stayed suspension. This written verification shall be sent on or before April 15<sup>th</sup> of each year of the stayed suspension period. If an extension for filing income tax returns is sought, then the Defendant will provide a copy of the request for extension and written verification shall be provided to the Office of Counsel of the North Carolina State Bar within one week of the filing date of that return.
- c. During the period of the stay, Defendant will keep his address of record with the North Carolina State Bar current, will accept all certified mail from the North Carolina State Bar, and will respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication.
- d. The Defendant shall not violate any state or federal laws during the period of the stayed suspension.
- e. The Defendant shall not violate any provisions of the Rules of Professional Conduct during the period of his stayed suspension.
- f. The Defendant shall pay all costs incurred in this proceeding, as assessed by the Secretary, within thirty (30) days of service of the notice of costs upon him.
- g. Defendant will respond to all State Bar requests for information by the deadline stated in the communication or within thirty (30) days, whichever is earlier, as required by Rule 8.1 (b) of the Revised Rules of Professional Conduct.
- h. Defendant will timely comply with all State Bar membership and Continuing Legal Education requirements.

2. If, upon motion by the State Bar, a Hearing Committee of the DHC finds that the Defendant has violated any of the conditions in Section 1(a) - (h) of this Order of Discipline, the suspension of the defendant's license shall be activated. If the suspension is activated, prior to seeking reinstatement of his license, the Defendant must:

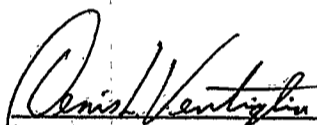
- a. Comply with all provisions of 27 NCAC 1B § .0125 (b) of the N.C. State Bar Discipline & Disability Rules; and
- b. Satisfy all the conditions set forth in Section 1 (a) - (h) of this Order of Discipline prior to seeking reinstatement.

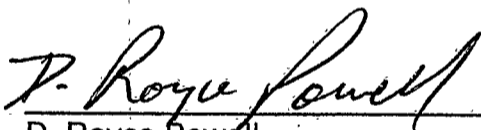
Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee.

This the 29<sup>th</sup> day of December, 2003

  
\_\_\_\_\_  
F. Lane Williamson, Chair  
Hearing Committee

Agreed to and consented by:

  
\_\_\_\_\_  
Denis L. Ventriglia  
Defendant

  
\_\_\_\_\_  
D. Royce Powell  
Attorney for the Defendant

  
\_\_\_\_\_  
Thomas F. Moffitt  
Attorney for the Plaintiff