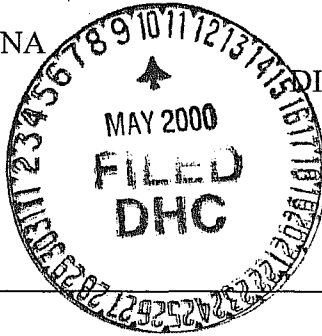


NORTH CAROLINA

WAKE COUNTY



16
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
THE NORTH CAROLINA STATE BAR
00 DHC 1

THE NORTH CAROLINA STATE BAR,	)	
Plaintiff	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW, AND ORDER OF
v.	)	DISCIPLINE
	)	
ROBERT W. ADAMS,	)	
Defendant	)	

This matter was heard on April 14, 2000, before a hearing committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair; Kenneth M. Smith, and Jean G. Hauser. The plaintiff, the North Carolina State Bar, was represented by Fern Gunn Simeon. The defendant, Robert W. Adams, was represented by Forrest A. Ferrell. Based upon the pleadings, the stipulated facts 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, 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. The Defendant, Robert W. Adams (hereafter Defendant), was admitted to the North Carolina State Bar in 1972 and is, and was at all times referred to herein, an attorney at law licensed to practice law in North Carolina, subject to the rules, regulations, Rules of Professional Conduct and Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of North Carolina.
3. During all times relevant hereto the Defendant was actively engaged in the practice of law and maintained a law office in Hickory, North Carolina.
4. The Defendant was properly served with process and the hearing was held with due notice to all parties.

5. The Defendant did not timely file his North Carolina individual income tax returns for the years 1994, 1995, and 1996.

6. The North Carolina Department of Revenue charged the Defendant with three counts of failure to file North Carolina individual income tax returns for 1994, 1995, and 1996 in violation of N.C. Gen. Stat. Section 105-236(9).

7. On October 14, 1998 in Wake County District Court, the Defendant was found guilty of all three counts of failure to file North Carolina individual income tax returns. The Defendant was ordered, among other things, to perform 100 hours of community service, file his 1997 state individual income tax returns by October 15, 1998 and file his 1998 and future tax returns promptly.

8. The Defendant appealed the district court's decision to superior court.

9. On August 23, 1999, the Defendant withdrew his appeal in superior court and his case was remanded to district court for immediate execution of the district court's judgment entered on October 14, 1998.

10. On or about January 1, 1996, the Defendant and W. Thomas Portwood Jr. (hereafter Mr. Portwood) signed an agreement designated as, "Agreement To Form Professional Partnership: Law Practice".

11. Mr. Portwood testified that he and the Defendant did not operate their law practices as a law partnership in 1996, 1997, and 1998. Mr. Portwood and the Defendant had separate offices, paid their separate office expenses, maintained separate operating and trust accounts, and had separate telephone lines in 1996, 1997, and 1998.

12. Mr. Portwood testified that his accountant told him that based upon the way he and the Defendant were running their law practices, they were not operating their law practices as a partnership and they should not file law partnership returns with the state or federal governments.

13. Mr. Portwood told the Defendant on or about October 15, 1997 that his accountant advised that Mr. Portwood and the Defendant were not operating their practices as a partnership.

14. Mr. Portwood filed federal and state individual income tax returns for tax years 1996, 1997, and 1998.

15. The Defendant filed individual income tax returns with the federal and state governments for tax years 1996, 1997, and 1998.

16. Neither the Defendant nor Mr. Portwood filed partnership tax returns with the federal and state governments for tax years 1996, 1997, and 1998.

17. The Defendant was not an employee of Mr. Portwood in 1996, 1997, and 1998.

18. In 1996, 1997, and 1998, the Internal Revenue Service (IRS) levied against the Defendant's income because he did not pay his federal individual income taxes.

19. In 1996, 1997, and 1998, the IRS filed a Notice of Levy on Wages, Salary, and Other Income with the North Carolina Administrative Office of Courts (AOC) against the attorney's fees the Defendant earned in indigent cases in 1996, 1997, and 1998. The IRS listed the Defendant's taxpayer identification number or social security number on its notice of levy.

20. The Defendant submitted fee applications to AOC for payment of attorney's fees in indigent cases where he was the court appointed attorney in 1996, 1997, and 1998. The Defendant asked that the AOC pay his attorney's fees in those cases to W. Thomas Portwood Jr. and Associates. The taxpayer identification number for W. Thomas Portwood Jr. and Associates was listed on the fee applications that the Defendant submitted to the AOC, instead of the Defendant's taxpayer identification number or social security number.

21. From 1996 through 1998, the AOC paid the Defendant a total of \$57,802.50 (1996 - \$ 9,937.50; 1997 - \$23,420.00; 1998 - \$24,445.00) as attorney's fees and these amounts were paid to W. Thomas Portwood Jr. and Associates, per the Defendant's request in his fee applications.

22. The Defendant received the attorney's fees that the AOC paid to W. Thomas Portwood Jr. and Associates either by checks drawn on Mr. Portwood's operating account and made payable to the Defendant or by cashing the checks that the AOC wrote to W. Thomas Portwood Jr. and Associates.

23. The Defendant had the AOC pay his attorney's fees to W. Thomas Portwood Jr. and Associates to avoid paying the IRS levy filed with the AOC under the Defendant's name and taxpayer identification number or social security number.

24. Ms. Kesha Howell of the AOC testified that its accounting system allowed the AOC to turn over an attorney's fees to the IRS pursuant to a levy based upon the attorney's individual taxpayer identification number or social security number. Since the taxpayer identification number for W. Thomas Portwood Jr. and Associates appeared on the Defendant's fee applications, the AOC could not flag the Defendant's fees and turn them over to the IRS pursuant to its levy.

25. Consequently, in 1996, 1997, and 1998 when the AOC paid the Defendant's attorney's fees to W. Thomas Portwood Jr. and Associates, the AOC did not turn over any of the Defendant's attorney's fees to the IRS.

26. Mr. Portwood testified that he did not know that the IRS had levied a lien on the Defendant's income at the time the AOC paid the Defendant's attorney's fees to W. Thomas Portwood Jr. and Associates.

27. Mr. Portwood learned about the IRS's lien against the Defendant in October 1998. On October 15, 1998, Mr. Portwood turned over \$119.01 to the IRS, which was all the money that the Defendant had left in the W. Thomas Portwood Jr. and Associates bank account. After Mr. Portwood learned about the IRS's lien against the Defendant, he told the Defendant that they could not continue their arrangement of the AOC paying the Defendant's fees to Mr. Portwood.

28. Both the Defendant and Don Carroll, the Director of the North Carolina State Bar's PALS program, testified that the Defendant is cooperating with the PALS program, pursuant to a prior Disciplinary Hearing Commission order of discipline, in an effort to deal with the Defendant's abuse of alcohol.

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 the Defendant, Robert W. Adams, and the subject matter.

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)(1)(2) as follows:

(a) by failing to file North Carolina individual income tax returns for 1994, 1995, and 1996 pursuant to law, the Defendant committed criminal acts which reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 1.2(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) of the Rules of Professional Conduct.

(b) the offenses of which the Defendant was convicted are criminal offenses showing professional unfitness in violation of N.C. Gen. Stat. Section 84-28(b)(1) and Section .0103(17) of the Discipline and Disability Rules of the North Carolina State Bar and reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(b) of the Rules of Professional Conduct.

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 additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:

a. prior disciplinary offenses which include a reprimand from the Grievance Committee in 1991 for trust account record keeping problems; an admonition from the Grievance Committee in 1994 for neglecting a client's real estate closing; a reprimand from the Grievance Committee in 1996 for failure to respond promptly to the Grievance Committee; in 1997, a two-year stayed suspension from the DHC for neglect, failure to communicate with a client, failure to respond to the State Bar, and failure to pay the costs of a reprimand issued by the Grievance Committee; and an extension of the two-year stayed suspension due to the Defendant's violation of the DHC's conditions of the stayed suspension entered in 1997;

b. dishonest or selfish motive relative to avoiding paying his attorney's fees from the AOC to the IRS pursuant to its lien;

c. a pattern of misconduct;

d. multiple offenses; and

e. substantial experience in the practice of law.

2. The Defendant's misconduct is mitigated by the following factors:

a. character and reputation;

b. interim rehabilitation;

c. imposition of other penalties or sanctions; and

d. history of alcohol abuse.

3. The aggravating factors outweigh the mitigating 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. The license of the Defendant, Robert W. Adams, is hereby suspended for three years, with all but nine months of the suspension stayed for five years upon the following terms and conditions:

a. The Defendant shall submit his law license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from service of this order upon the Defendant.

b. The suspension will become effective 30 days from service of this order upon the Defendant and will continue for a period of not less than nine consecutive months.

c. Thereafter, the Defendant may seek reinstatement of his law license upon filing 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, as well as demonstrating compliance with the following conditions:

1. The Defendant shall not have violated any federal, state or local laws during the period of active suspension.
2. The Defendant shall abide by all regulations of the North Carolina Department of Revenue and the Internal Revenue Service;
3. The Defendant shall continue participation in the PALS program and comply with all terms and conditions of his rehabilitation treatment;
4. Within 30 days of the date of the hearing in this case, the Defendant shall make an appointment with a board certified psychiatrist who is a member of the North Carolina Chapter of Addiction Medicine and is acceptable to the North Carolina State Bar for an evaluation of the Defendant's mental or emotional health. This evaluation shall include a substance abuse assessment of the defendant. Within five days of making the appointment with the psychiatrist, the Defendant shall notify the North Carolina State Bar of the name, address, and telephone number of the psychiatrist he wishes to use. The North Carolina State Bar shall advise the Defendant as quickly as possible of its approval or disapproval of the psychiatrist that the Defendant wishes to use. If the psychiatrist recommends the Defendant receive treatment for any mental or emotional problem or receive treatment for any substance abuse problem, the Defendant shall follow the prescribed course of treatment for as long as the psychiatrist recommends. The Defendant's psychiatrist shall notify the North Carolina State Bar of the date that the Defendant begins his treatment for any mental, emotional, or substance abuse problems. At the conclu-

sion of the Defendant's treatment, the psychiatrist shall file a written report with the North Carolina State Bar about the Defendant's treatment. The written report shall specifically include the psychiatrist's opinion about whether the defendant suffers from any mental, emotional, or substance abuse problems which will interfere with the Defendant performing the obligations necessary to practice law.

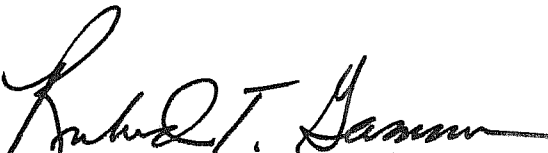
5. The Defendant shall not have violated any provisions of the Revised Rules of Professional Conduct during the period of active suspension.
6. The Defendant shall have paid all costs incurred in this proceeding, N.C. State Bar v. Adams, 00 DHC 1, and taxed against him within six months of the date of this order of discipline.

2. Upon entry of an order staying this suspension and granting the reinstatement of the Defendant's law license, the order of stayed suspension shall continue in force for the balance of the term of suspension, provided that the defendant complies with the following conditions:

- a. The Defendant shall violate no federal, state or local laws.
- b. The Defendant shall violate no provisions of the Revised Rules of Professional Conduct.
- c. The Defendant shall pay any costs assessed against him in connection with his reinstatement proceeding.

Signed by the chair with the consent of the other hearing committee members, this

8th day of May, 2000.


Richard T. Gammon,
Hearing Committee Chair