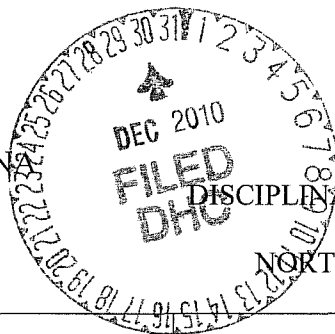


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 30

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JOHNNY S. GASKINS, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER OF DISCIPLINE

This matter came on to be heard and was heard before a hearing panel of the Disciplinary Hearing Commission composed of the Chair, Sharon B. Alexander, Harriett Smalls, and David L. Williams on November 12, 2010. The Plaintiff was represented by William N. Farrell, Deputy Counsel. Defendant was represented by R. Daniel Boyce.

The complaint in this matter was brought by the Plaintiff following Defendant's criminal convictions for violating 31 U.S.C. Section 5324. The criminal offenses of which Defendant was convicted are felonies under federal law.

The sole issue determined by the panel was the extent of discipline to be imposed. See Rule .0115(c) of the Discipline and Disability Rules of the North Carolina State Bar. Based upon the pleadings, the stipulated facts and the evidence introduced at the hearing, the hearing panel hereby finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. 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 General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Johnny S. Gaskins, (hereinafter "Defendant" or "Gaskins"), was admitted to the North Carolina State Bar on August 19, 1979, and is 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.

3. During the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. On or about 9 October 2009 in the United States District Court for the Eastern District of North Carolina, a jury rendered verdicts of guilty against Defendant on seven counts of violating 31 U.S.C. Section 5324(a)(3) and (d), and 31 C.F.R. Section 103.11 for structuring financial transactions with banks for the purpose of evading the reporting requirements of 31 U.S.C. Section 5313(a).

5. The offenses of which Defendant was convicted are criminal offenses and felonies under federal law.

6. The felonies of which Defendant was convicted are criminal offenses showing professional unfitness as defined by Rule .0103(17) of the State Bar Discipline and Disability Rules.

7. On August 2, 2010 Defendant was sentenced by the trial court for his convictions of “structuring” under 31 U.S.C. Sec. 5324.

8. Defendant’s punishment included one day of confinement, supervision by a United States probation officer for three years, and placement in a community confinement facility (half-way house) for the first nine months of supervision.

9. Defendant had served his one day of imprisonment and was undergoing confinement in the half-way house as of the date of this hearing.

10. The jury verdicts in the criminal cases are conclusive evidence of Defendant’s guilt for the purpose of the disciplinary hearing.

11. The hearing panel can not re-examine the evidence that was presented to the jury to determine whether or not Defendant committed the offenses of which he was convicted.

12. Although the panel can not look behind the jury’s verdicts as to the felony convictions, the panel notes that immediately following the jury’s verdicts on the “structuring” indictment, the trial court instructed the jury to determine whether the \$355,567.00, the total amount of cash alleged to have been structured in the indictment, was involved in or traceable to the structuring violations of which Defendant was convicted.

13. The jury answered this question “no” and further answered that zero was the amount involved in or traceable to or property involved in the structuring violation of which Defendant was convicted.

14. The panel is of the opinion that the jury’s determination on this question is inconsistent with the jury’s verdicts on the substantive felonies.

15. Defendant's explanation and evidence for what occurred leading up to his indictment and conviction can not change the fact that the panel must accept the jury's verdict, although the panel is of the opinion that the applicable federal statutes and the case law that was interpreted in applying those statutes did not provide clear guidance to the Defendant in making the decisions that he needed to make in terms of depositing the cash.

16. Defendant was not attempting to defraud the government when he deposited the cash into his bank accounts. Significantly, Defendant did not deposit the cash into any other individuals account but only into his own properly identified personal or business account.

17. The government stipulated that Defendant filed his income tax returns, including schedule C's, reporting gross receipts, gross profits, and gross income for tax years 2004, 2005, and 2006.

18. The government presented no evidence that the cash deposits were structured for the purposes of evading or avoiding income tax.

19. The government presented no evidence that Defendant did not fully pay his federal income taxes for 2004, 2005, and 2006. Defendant presented affirmative evidence that he did so.

20. The government presented no evidence that the cash received and deposited by Defendant was derived from any criminal activity.

21. The government offered no motive as to why Defendant structured his cash deposits in the manner in which he did.

22. The Defendant had no dishonest or selfish motive

23. Defendant properly accounted for and reported to the IRS for attorney fees that he received in cash, exceeding \$110,000.00, on IRS Form 8300 for the years contained in the indictment.

24. Defendant presented extensive and overwhelming evidence of good character and reputation as a person and an attorney.

25. Defendant has made positive contributions to the practice of law including representing many clients without compensation, establishing a scholarship at Campbell University School of Law for law students, representing many court appointed clients, representing more than twenty (20) clients in court appointed death penalty cases, and devoting his time in helping younger lawyers to learn how to practice law.

26. Defendant voluntarily closed his office on June 1, 2008 when he learned that the government intended to indict him and refunded attorney fees to clients that had retained him.

27. Defendant's felony convictions have caused him great personal and processional embarrassment.

28. Defendant suffered financial problems as a result of his indictment and convictions.

29. Defendant exhibited a cooperative attitude towards the State Bar proceedings.

30. Defendant has substantial experience in the practice of law.

31. Defendant was reprimanded by the Grievance Committee of the North Carolina State Bar in case number 08G0692 on May 17, 2010 for making extrajudicial statements to the media about a former client that he knew or reasonably should have known would be disseminated by means of public communication and would have substantial likelihood of materially prejudicing the case thereby violating Rule 3.6(a) and Rule 8.4(d) which prohibits engaging in conduct prejudicial to the administration of justice.

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. The panel deems it of some importance that the trial court did not determine to disbar Defendant as part of its criminal judgment.

2. The panel had no concern that any discipline was needed to protect the public.

3. Defendant's indictment and convictions are matters of public record and were reported in the media.

4. Defendant's felony convictions harm the reputation of the legal profession and bring the legal profession into disrepute and disgrace.

5. When a lawyer commits a felony it causes significant harm to the public's trust of the legal profession.

6. Defendant's action caused a negative impact of the public's perception of the legal profession and endangers public confidence in the legal profession.

Based upon the foregoing Findings of Fact and upon consideration of the factors set forth in 27 N.C.A.C. Chapter 1, Subchapter B, Section .0114(w), the hearing panel hereby enters the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the different forms of discipline available to it. In addition, the hearing panel has considered all of the factors enumerated in 27 N.C.A.C. Chapter 1, Subchapter B, Section .0114(w) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

a. From Rule .0114(w)(1):

Subsection (e): negative impact of Defendant's actions on public's perception of the profession

b. From Rule .0114(w)(2):

Subsection (d): commission of felonies

c. From Rule .0114(w)(3):

Subsection (a): prior disciplinary offenses

Subsection (c): absence of a selfish motive

Subsection (f): a pattern of misconduct

Subsection (g): multiple offenses

Subsection (k): cooperative attitude toward the proceeding

Subsection (q): character or reputation

Subsection (s): degree of experience in the practice of law

Subsection (u): imposition of other sanctions or penalties

Subsection (v): other factors found to be pertinent to the consideration of the discipline to be imposed:

1. Defendant voluntarily closed his office when he learned the government intended to indict him.
2. Defendant had an excellent character and reputation prior to these convictions.

3. Defendant has made positive contributions to the practice of law during his career.
4. The applicable Federal statutes and the case law that was interpreted in applying these statutes did not, in the opinion of the panel, provide clear guidance to Defendant in making the decision that he needed to make in terms of depositing the cash.
5. The trial court judge did not determine to disbar the Defendant as part of the Federal criminal proceedings.
6. The panel considered the jury's general guilty verdict on the seven felonies and the jury's verdict on the special verdict, relating to the asset forfeitures, to be conflicting in the opinion of the panel.

2. Defendant's felony convictions caused significant harm to the reputation of the legal profession due to the public nature of his criminal indictment and convictions.

3. The hearing panel has carefully considered all forms of discipline including admonition, reprimand, censure, suspension and disbarment in considering the appropriate discipline in this case.

4. The hearing panel finds that admonition, reprimand and censure would not be sufficient discipline because of the gravity of harm to the legal profession in the present case.

5. The hearing panel concludes that discipline short of an active suspension would not adequately protect the legal profession and its reputation for the reasons stated above and for the following reasons:

- a. Defendant repeatedly engaged in felonious criminal acts over a period of 2 ½ years. Felonies are by description offenses which show professional unfitness and reflect adversely on an attorney's dishonesty. Any felony offense is among the most serious misconduct that an attorney can commit.
- b. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of defendant's misconduct and would send the wrong message to attorneys and the public regarding conduct expected of members of the Bar of this State.
- c. The protection of the legal profession requires that Defendant be suspended from the practice of law.

Based on the foregoing Findings of Fact, Additional Findings and Conclusions Regarding Discipline, the hearing panel enters the following:

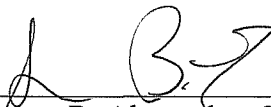
ORDER OF DISCIPLINE

1. Defendant, Johnny S. Gaskins, is hereby suspended from the practice of law for a minimum of two years from the date this order is entered or for the entire length of time that he is on supervised release pursuant to the criminal judgment, whichever is longer.

2. Defendant is taxed with the administrative fees and with actual costs permitted by law in connection with the proceeding. Defendant will pay the costs within 30 days of service upon him of the statement of costs by the Secretary of the Disciplinary Hearing Commission.

3. Because Defendant is presently suspended from the practice of law pursuant to an interim suspension, the wind down period contained in 27 N.C.A.C. Chapter 1, Subchapter B, Section .0124 is not necessary.

Signed by the Chair with the consent of the other panel members, this the 28
day of December, 2010.



Sharon B. Alexander, Chair
Disciplinary Hearing Panel

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 30

THE NORTH CAROLINA STATE BAR,

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JOHNNY S. GASKINS, Attorney,

Defendant

DISSENTING OPINION

I, David L. Williams, concur with the first two paragraphs of the introduction, the FINDINGS OF FACT contained in paragraphs 1 through 5, 7 through 9 and 11 through 29, and the ADDITIONAL FINDINGS REGARDING DISCIPLINE contained in paragraphs 1 through 3, 5 and 6. I, however, respectfully dissent from first sentence of the third paragraph of the introduction, paragraphs 6 and 10 of the FINDINGS OF FACT, paragraph 4 of the ADDITIONAL FINDINGS OF REGARDING DISCIPLINE, the CONCLUSIONS REGARDING DISCIPLINE and the ORDER OF DISCIPLINE.

The matter before the hearing panel appeared, on the surface at least, to be simple and routine. A federal district court jury had convicted the Defendant on seven counts of violation of 31 U.S.C. Section 5324(a)(3) and (d) and 31 C.F.R. Section 103.11 for structuring financial transactions with banks for the purpose of evading the reporting requirements of 31 U.S.C. Section 5313(a). The Plaintiff alleged that the criminal offenses of which the Defendant was convicted are criminal offenses showing professional unfitness as defined by Rule .0103(17) of the State Bar Discipline & Disability Rules. The Plaintiff further alleged that the Defendant committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b).

The task before the hearing panel was to determine if the Defendant had violated Rule 8.4(b) and, if so, to determine the appropriate discipline. Rule 8.4(b) MISCONDUCT reads in part: "It is professional misconduct for a lawyer to (b) COMMIT (emphasis added) a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Rule .0103 Definitions reads in part: "Subject to additional definitions contained in other provisions of this subchapter, the following words and phrases, when used in this subchapter, will have

unless the context clearly indicates otherwise, the meaning given in rule....(17) Criminal offense showing professional unfitness—the COMMISSION (emphasis added) ...of any felony.”

So then, if the Defendant COMMITTED a felony, by definition, the Defendant has shown professional unfitness in violation of Rule 8.4(b) and the panel must then determine the appropriate discipline. If, however, the panel does not find by clear, cogent and convincing evidence that the Defendant COMMITTED a felony, the panel must dismiss the case and, obviously, no discipline is appropriate. No other allegations of rules violations were before the panel.

It is a fact that the Defendant was CONVICTED of seven felony counts. The panel’s first task then was to determine if those convictions rose to the level of COMMITTED. The Rules do not define “convicted” and “committed,” but I think it is apparent that “committed” presupposes a higher burden than “convicted.” To state the matter simply and, at least for purposes of this matter, we can think of “committed” as “did” and we can think of “convicted” as “having been determined by a jury to have done.”

My review of the record presented to the panel indicated that in all referenced cases where a defendant was convicted of the offense the Defendant was convicted, or a similar offense, the discipline imposed by the relevant governing authority of the state issuing the license to practice law, was suspension or disbarment. However, in none of the referenced cases, to my knowledge, was there an incidence of conflicting/contradictory verdicts in the same case; accordingly, this matter is distinguishable from all the cases referenced during this hearing. A criminal felony conviction is generally viewed as conclusive evidence of the commission of a felony and the only matter before the panel is the determination of discipline. In this matter, however, because the inconsistent/contradictory verdicts constitute extenuating and mitigating circumstances, in the interest of justice, an exception to the general rule that a felony conviction automatically constitutes professional unfitness, is appropriate. I agree with the majority that the panel must not look beyond the verdicts of a jury and I did not do so in reaching my decision. I do, however, consider it not only appropriate, but in fact necessary to **consider all the verdicts** (plural) rendered by a jury in determining if a CONVICTION rises to the level of COMMITMENT of a felony, especially when the verdicts relate to the same alleged crime and the verdicts are inconsistent/contradictory. This is an extraordinary case characterized by unique facts, conflicting/contradictory verdicts and a lenient active prison sentence. Accordingly, the appropriate question to ask prior to a determination of discipline, if any, is: Did the Defendant, by clear, cogent and convincing evidence, COMMIT a felony as defined by Rule .0103(17)? After that question is answered, discipline, if any, should then and only then, be considered.

Based upon the pleadings, the stipulated facts and the evidence introduced at the hearing, I hereby find by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

A. The panel found that..."the hearing panel cannot re-examine the evidence that was presented to the jury to determine whether or not Defendant committed the offenses of which he was convicted."

B. The panel found..."the jury's determination on this question (the forfeiture verdicts) is inconsistent with the jury's verdicts on the substantive felonies."

C. The majority found..."that the panel must accept the jury's verdict."

D. In its CONCLUSIONS REGARDING DISCIPLINE, the majority found..."pertinent to the consideration of the discipline to be imposed...the jury's general guilty verdict on the seven felonies and the jury's verdict on the special verdict, relating to the asset forfeitures, to be conflicting."

E. The panel considered the special verdicts regarding discipline. Logic, then, seems to demand that the panel fully consider all the jury's verdicts (plural), especially inconsistent/contradictory verdicts because such verdicts call into question the veracity of the jury's verdicts.

F. The panel may not look behind any of the jury's verdicts, but justice demands the panel look plainly and squarely at all the jury's verdicts, especially inconsistent or contradictory verdicts.

G. This matter involved 38 cash deposits by or for the Defendant at the Defendant's bank totaling \$355,567 which the government grouped into 7 structuring counts and 1 forfeiture count for the same \$355,567 total amount as the 7 structuring counts.

H. Between January 16, 2001 and November 4, 2006 the Defendant filed with the Internal Revenue Service 24 information returns on Form 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business) thereby the Defendant self-reported cash receipts of \$481,000.

I. The Defendant's bank filed with the appropriate federal agency 4 CTRs (Currency Transaction Report) showing a total of \$101,322 in cash deposits made by the Defendant.

J. The Defendant's bank filed with the appropriate federal agency 4 SARs (Suspicious Activity Report) including one amended report showing a total of \$255,195 in cash deposits made by the Defendant.

K. Regarding the 7 structuring counts, Judge Britt instructed the jury, in part, as follows:

It is your duty to determine the facts.

Each count specifically charges that the Defendant structured bank cash deposits.

Your verdict must be unanimous.

In order to sustain its burden of proof for this offense, the government must prove the following elements beyond a reasonable doubt:

First, that the Defendant knew of the domestic financial institution's legal obligation to report currency transactions in excess of \$10,000;

Second, that the Defendant knowingly structured or assisted in structuring a transaction; and,

Third, that the Defendant did so with the purpose of evading currency reporting requirements under federal law.

...Domestic financial institutions are required to file a Currency Transaction Report for each deposit...which involves a transaction in currency of more than \$10,000 during any one business day. Multiple currency transactions are treated as a single transaction if...they are in...cash totaling more than \$10,000 during any one business day.

L. The jury was away from the courtroom for 5 hours 40 minutes.

M. The jury found the Defendant guilty on the 7 structuring counts.

N. Implicit in each verdict, in accordance with Judge Britt's instructions, was a finding of fact that the Defendant illegally structured at least \$10,001 in connection with each of the 7 guilty verdicts (a minimum total finding of fact that the Defendant illegally structured at least \$70,007 in connection with the 7 guilty verdicts). This is an essential "element" of each structuring count per Judge Britt's instructions.

O. The court then moved to the special verdict (the forfeiture count).

P. Regarding the forfeiture count, Judge Britt instructed the jury, in part, as follows:

...in view of your verdict that the Defendant is guilty of structuring a transaction to evade reporting requirements, you have one more task to perform before you are discharged. I must ask you to render a special verdict concerning the interest and property the United States has alleged are subject to forfeiture to the United States.

...any person who is found guilty of structuring a transaction...is required to forfeit to the United States all property...involved in the offense.

It is your duty to determine what property, if any, should be forfeited. The government must prove its case for forfeiture by a preponderance of the evidence.

To establish a fact by a preponderance of the evidence means to prove that something is more likely true than not true.

In this case, the United States Government has alleged that...a sum of...\$355,567...was involved in the structuring of the transaction.

...in your deliberations on the forfeiture issue, you will not revisit the issue of guilt or innocence. Those decisions have been made...

A special verdict form has been prepared for your use. You will determine the total amount which you find...was involved in the structuring offenses for which you have found the Defendant guilty, and you will record that amount on the special verdict form.

Your verdict, of course, must be unanimous. The verdict form reads: With respect to the below property, please answer the following question. Money judgment. One, does \$355,567...constitute property involved in... the structuring violations of which the Defendant was convicted? There's a yes and no blank. You check it on one or the other.

If you have answered "no" to the preceding question, what is the amount which constitutes property involved in...the structuring violations of which the Defendant was convicted? And there's a blank space for the entry of a dollar amount.

Q. The jury was away from the courtroom for 5 minutes.

The verdict was handed to the clerk. Judge Britt asked the clerk to answer the following questions?

One, does \$355,567...constitute property involved in... the structuring violations of which the Defendant was convicted? You have answered that no.

Two, if you have answered no to the preceding question, what is the amount which constitutes property involved in...the structuring violations of which the Defendant was convicted? You have answered that zero.

R. Judge Britt let stand the inconsistent/contradictory substantive and forfeiture verdicts.

S. The jury was excused and a sentencing date was set.

T. The Honorable Senior Judge Britt, an experienced judge not renowned for being soft on crime, gave the Defendant an active prison sentence of 1 day (0.008% of the maximum 35 year active sentence he could have imposed).

CONCLUSIONS OF LAW

1. Rule 8.4(b) MISCONDUCT reads in part: "It is professional misconduct for a lawyer to (b) COMMIT (emphasis added) a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Rule .0103 Definitions reads in part: "Subject to additional definitions contained in other provisions of this subchapter, the following words and phrases, when used in this subchapter, will have, unless the context clearly indicates otherwise, the meaning given in rule....(17) Criminal offense showing professional unfitness—the COMMISSION (emphasis added) ...of any felony."

2. If the Defendant COMMITTED a felony, by definition, the Defendant has violated Rule 8.4(b) and the panel must determine the appropriate discipline. If, however, the panel does not find by clear, cogent and convincing evidence that the Defendant COMMITTED a felony, the panel must dismiss the case and, obviously, no discipline is appropriate. No other allegations of rules violations were before the panel.

3. The 7 structuring verdicts, standing alone, are clear, cogent and convincing evidence that the Defendant COMMITTED a felony in violation of Rule 8.4(b).

4. The special verdicts finding as fact that zero dollars were structured, standing alone, are clear, cogent and convincing evidence that the Defendant did not COMMIT a felony or any other crime in violation of Rule 8.4(b).

5. The special verdict finding as fact that zero dollars were structured effectively eviscerated an essential "element," per Judge Britt's instructions, from the structuring convictions thereby calling into question the veracity of the 7 structuring verdicts.

6. The jury, when it rendered its special verdicts, wittingly or unwittingly, in contravention of Judge Britt's explicit instruction, effectively revisited the issue of guilt or innocence.

7. The structuring verdicts and the forfeiture verdicts, taken together, are neither clear, nor cogent nor convincing evidence that the Defendant COMMITTED a felony.

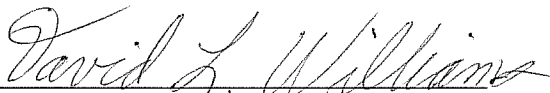
Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW the complaint in this action should be DISMISSED.

CLOSING STATEMENT

As the public member of the panel, I have no formal legal training and no experience in legal writing. Accordingly, my dissent may contain errors of a legal nature that are obvious to trained legal professionals, but errors of which I am oblivious.

When on a panel I try to be reasonable, fair, respectful and mindful that the purpose of professional discipline is to protect the public, the courts and the legal profession. In my opinion, the public, the courts and the legal professional have no need of protection from Mr. Johnny S. Gaskins, the defendant in this matter. I would impose no discipline in this matter.

Signed by the dissenting panelist this the 21st day of December, 2010.


David L. Williams, Dissenting Panelist
Disciplinary Hearing Panel