

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
88 DHC 20

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

ERNEST RAY BRIGGS, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter was heard on February 17, 1989 before a Hearing Committee of the Disciplinary Hearing Commission composed of Maureen Demarest Murray, Chairman, Fred Folger, Jr., and R. Powell Majors. Fern E. Gunn represented the North Carolina State Bar and Joseph B. Cheshire, V represented the Defendant, Ernest Ray Briggs. Based upon the admissions of the Defendant contained in his answer and the evidence presented at the hearing, the hearing committee makes the following Findings of Fact and Conclusions of Law:

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 General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. The Defendant, Ernest Ray Briggs, was admitted to the North Carolina State Bar on September 18, 1961 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, Canons of Ethics, Code of Professional Responsibility, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Raleigh, Wake County, North Carolina.
4. The Defendant did not file tax returns or pay North Carolina individual income taxes for the years of 1982, 1983, 1984, 1985 and 1986.
5. It is a violation of N.C. Gen. Stat. Sec. 105-236(9) for any person to willfully fail to file state income tax returns or willfully fail to pay state income taxes at the time or times

required by law or regulations.

6. The North Carolina Department of Revenue charged the Defendant pursuant to N.C. Gen. Stat. Sec. 105-236(9) with two counts of willful failure to file individual state income tax returns for 1985 and 1986 and two counts of willful failure to pay state income taxes for 1985 and 1986.
7. On June 3, 1988, the Defendant pled guilty in Wake County District Court to two counts of willful failure to file individual state income tax returns for 1985 and 1986 and two counts of willful failure to pay state income taxes for 1985 and 1986.
8. Judge W. Pope Lyon found the Defendant guilty of the charges enumerated in paragraph 7 above. Judge Lyon ordered a prayer for judgment continued for two years in those cases. He also ordered the Defendant pay all delinquent state income taxes, a \$200 fine and court costs.
9. The Defendant filed federal income tax returns for the years of 1982, 1983, 1984, 1985 and 1986.
10. The Defendant failed to pay federal income taxes for the years of 1982, 1983, 1984, 1985 and 1986.
11. No criminal charges are pending against the Defendant in reference to his failure to pay federal income taxes for the years of 1982, 1983, 1984, 1985 and 1986.
12. The Defendant owes the Internal Revenue Service (IRS) in taxes, penalties and interest:

1982: Tax - \$12,388; Penalty & Interest - \$5,671.50
1983: Tax - \$25,240; Penalty & Interest - \$9,525.36
1984: Tax - \$27,140; Penalty & Interest - \$8,853.37
1985: Tax - \$26,400; Penalty & Interest - \$4,052.69
1986: Tax - \$23,897; Penalty & Interest - \$2,915.37
1987: Tax - \$34,664; Penalty & Interest - \$1,166.35
13. The Defendant has not paid any of the federal income taxes owed to the IRS, but negotiations are pending regarding an offer and compromise.
14. The Defendant owed the North Carolina Department of Revenue the following amounts in taxes, penalties, and interest for each of the years he did not pay taxes:
1982 - \$2,679.80
1983 - \$5,797.99
1984 - \$5,544.13
1985 - \$5,276.10
1986 - \$4,807.39
15. The Defendant has paid all delinquent taxes for the years of 1982, 1983, 1984, 1985 and 1986 to the North Carolina Department of Revenue.
16. The Defendant has received no prior discipline from the North Carolina State Bar.

Based upon the Findings of Fact and the Defendant's admission of his violation of the Code of Professional Responsibility and the Rules of Professional Conduct, the Hearing Committee makes the following CONCLUSIONS OF LAW:

1. The conduct of the Defendant constitutes grounds for discipline pursuant to North Carolina General Statute Sec. 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:
 - (a) By failing to file or pay state income taxes during the years 1982 through 1986, the Defendant has engaged in conduct involving dishonesty, in violation of Disciplinary Rule 1-102(A)(4) and Rule 1.2(C) and the Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of DR1-102(A)(6) and Rule 1.2(B).
 - (b) By pleading guilty and being found guilty by a district court judge of two counts of willful failure to file state income tax returns and two counts of willful failure to pay state income taxes, the Defendant has engaged in conduct involving dishonesty, in violation of Rule 1.2(C) and he has committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(B).

Signed by the undersigned chairman with the full accord and consent of the other members of the hearing committee, this the 9th day of March, 1989.

Maureen Demarest Murray
Maureen Demarest Murray, Chairman
Hearing Committee

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ORDER OF DISCIPLINE

This matter was heard on February 17, 1989 before a hearing committee composed of Maureen Demarest Murray, Chairman, Fred Folger, Jr., and R. Powell Majors. Based upon the Findings of Fact and Conclusions of Law entered by the hearing committee and based upon the evidence and arguments presented in the second phase of the hearing, the hearing committee makes the following additional FINDINGS OF FACT:

1. The Defendant's failure to file tax returns or pay North Carolina individual income taxes for 1982, 1983 and 1984, as well as his failure to pay federal income taxes for 1982, 1983, 1984, 1985 and 1986 constitute a pattern of misconduct and are aggravating factors in the consideration of the discipline to be imposed.
2. The hearing committee finds that several mitigating factors existed in the Defendant's case:
 - (a) The Defendant has received no prior discipline from the North Carolina State Bar;
 - (b) he gave a full and fair disclosure to the North Carolina State Bar surrounding his failure to pay taxes;
 - (c) the Defendant's upstanding character in the community as attested to by character witnesses and evidenced in numerous letters of character;
 - (d) the Defendant was subjected to criminal penalties imposed by the courts; and
 - (e) the Defendant's remorse regarding his actions.
3. The discipline imposed by the hearing committee does not suggest that the committee does not believe the Defendant's conduct was a serious breach of the lawyer's code of ethics.

Based upon all the Findings of Fact and Conclusions of Law entered by this hearing committee, the hearing committee enters the following ORDER OF

DISCIPLINE:

1. The Defendant, Ernest Ray Briggs, is suspended from the practice of law in North Carolina for a period of two years, with the suspension being stayed upon the condition that the Defendant pay the costs of this proceeding and timely file and pay his 1988 and 1989 North Carolina individual income taxes.

Signed by the undersigned chairman with the full accord and consent of the other members of the hearing committee this the 9th day of March, 1989.

Maureen Demarest Murray
Maureen Demarest Murray, Chairman
Hearing Committee

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