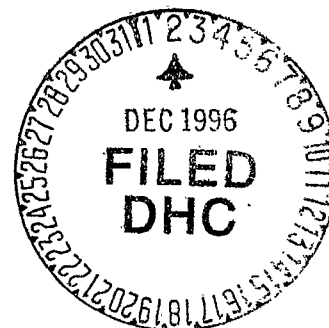


NORTH CAROLINA  
WAKE COUNTY

17211  
BEFORE THE  
DISCIPLINARY COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
96 BSR 2



IN RE: REINSTATEMENT PETITION )  
OF N. JEROME WILLINGHAM )

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
AND ORDER

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This cause was heard on November 15, 1996 before a Hearing Committee of the Disciplinary Commission composed of Richard T. Gammon, Chair; Joseph G. Maddrey; and A. James Early, III. The Petitioner N. Jerome Willingham appeared on his own behalf. The Respondent was represented by Fern E. Gunn. Based upon the pleadings herein and the evidence admitted at trial, the Hearing Committee makes the following:

**FINDINGS OF FACT**

1. The Petitioner N. Jerome Willingham (hereinafter referred to as "Petitioner") was admitted to the North Carolina State Bar on March 23, 1990, and by Order of Discipline in Case Number 94 DHC 12 was suspended from the practice of law in the State of North Carolina for three (3) years. The Order of Discipline provided that two years of the three years suspension could be stayed upon Petitioner's compliance with several conditions. These conditions included the conditions for reinstatement set forth in Article IX, Section 25(B)(3) of the Rules and Regulations of the North Carolina State Bar (now codified as Rule .0125 entitled Rules of Discipline and Disability). The Petitioner filed a Petition for Reinstatement on or about the 4th day of September, 1996 in which he verified

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that he had complied with all the conditions of his Order of Discipline including those conditions set forth in Rule .0125 of the Discipline and Disability Rules of the North Carolina State Bar.

2. The Respondent, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to respond to the Petitioner's Petition 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.

3. The Respondent filed a Response to the Petitioner's Reinstatement Petition on or about the 27th day of September, 1996 wherein it alleged that the Petitioner had not complied with all of the conditions for the stay of his remaining suspension and requested that this matter be referred to the Chair of the Disciplinary Hearing Commission so that a hearing could be scheduled to determine if Petitioner had satisfied the conditions of the Order of Discipline and all of the provisions of Rule .0125, and whether additional sanctions should be imposed.

4. Henry C. Babb, Jr., Chair of the Disciplinary Hearing Commission signed an Order Appointing Committee and Notice of Hearing was given to all parties on or about the 3rd day of October, 1996.

5. In 1984 the Petitioner was admitted to practice law in the District of Columbia and his license to practice was suspended for non-payment of Bar fees on November 30, 1995. That Petitioner

was required to notify the Bar Counsel in the District of Columbia of any Order of Discipline against him in any other jurisdiction where he had been admitted to practice law pursuant to Rule XI, Rule 11(B) of the District of Columbia Bar Rules.

6. Petitioner did not notify the District of Columbia of the Order of Discipline that was entered against him in the State of North Carolina on March 21, 1995.

7. The Petitioner was also admitted to practice law in the United States District Court located in the Eastern District of North Carolina on or about August 1, 1991.

8. The Local Rules of the Court in the Eastern District of North Carolina require, pursuant to Rule 102.01(EDNC 1996) that an individual admitted to practice in the Eastern District of North Carolina notify the Clerk of Court of any Order of Discipline that has been entered against the admittee.

9. The Petitioner did not notify the Clerk of Court for the Eastern District of North Carolina of the Order of Discipline entered against him on March 21, 1995.

10. The Petitioner failed to withdraw from all pending administration or litigation matters in that he continued to represent clients after the effective date of his suspension of May 6, 1996.

11. On April 20, 1995 Petitioner accepted a new engagement as attorney for Varnell Hopkins Warren after the entry of and before the effective date of his Suspension Order.

12. On July 28, 1995 the Honorable James C. Fox, United

States District Court Judge for the Eastern District of North Carolina, entered an Order of Discipline imposing reciprocal discipline against the Petitioner and he was served with that Order of Discipline by registered mail on August 2, 1995.

13. The Petitioner held himself out as an attorney during a visit with an inmate, Marcus Downs, in the Federal Prison in Goldsboro, North Carolina, on August 24, 1995. The Petitioner signed in on the jail log and wrote that he was an attorney and that the nature of his business was legal.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE HEARING COMMITTEE MAKES THE FOLLOWING:

#### CONCLUSION OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over the person of the Petitioner N. Jerome Willingham and the subject matter.

2. Rule .0125(a) provides that the Petitioner's burden of proof is by clear, cogent, and convincing evidence, but Rule .0125(b) does not address what the burden of proof should be in cases of reinstatement after suspension. Rule .0125(b)(7) does state "[T]he hearing will be conducted in accordance with the North Carolina Rules of Civil Procedure for non-jury trial insofar as possible and the rules of evidence applicable in Superior Court." Therefore, the Petitioner's burden of proof in this case was by the preponderance of the evidence.

3. That the Petitioner has the burden of proof to show that he has complied with all conditions of the Order of Discipline

including Rule .0125(b)(3) in order to be eligible for reinstatement to the practice of law.

4. That Rule .0125(b)(3)(A) requires compliance with Rule .0124 of the Discipline and Disability Rules of the North Carolina State Bar.

5. The Petitioner has failed to comply with the conditions set forth in Rule .0125(b)(3) in that:

a. The Petitioner did not withdraw from all pending administrative or litigation matters before the effective date of the suspension as required by Rule .0124(b).

b. The Petitioner accepted a new retainer or engaged himself as an attorney for another in a new legal matter in violation of Rule .0124(c).


c. The Petitioner failed to comply with the provisions of all other state, federal, and administrative jurisdictions to which he was admitted to practice law in that he failed to report to the District of Columbia and the Eastern District of North Carolina that he had been subject to an Order of Discipline by the Disciplinary Hearing Commission which was entered on or about March 21, 1995 in violation of Rule .0124(d).

d. The Petitioner failed to abstain from

conduct during the period of suspension constituting grounds for discipline under North Carolina General Statute 84-28(b) in that he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) of the Rules of Professional Responsibility. He misrepresented himself as an attorney and that the purpose of his visit was legal in the visitor's log on August 24, 1995, at the Federal Prison at Seymour Johnson Air Force Base, Goldsboro, North Carolina.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Committee finds that the Petitioner has failed to present competent evidence that he has complied with Rule .0125(b)(3) of the Discipline and Disability Rules and therefore the previous three (3) year suspension ordered in the Order of Discipline by the Disciplinary Hearing Commission on March 21, 1995 is not stayed and continues to be in full force and effect. The Petitioner is ordered to pay the cost of this Order including those expenses attributable to the investigation and processing of the Petition pursuant to Rule .0125(b)(8).

Signed by the undersigned Chairman with full knowledge and consent of the other members of the Hearing Committee this the 2nd day of December, 1996.

  
RICHARD T. GAMMON  
CHAIRMAN