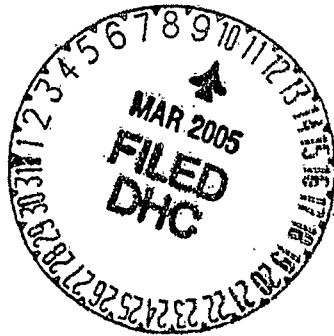


WAKE COUNTY
NORTH CAROLINA



17406

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
04 BCR 1 & 00 DHC 3

IN THE MATTER OF
THE REINSTATEMENT OF

WILLIE D. GILBERT II, Attorney

)
) ORDER DENYING REINSTATEMENT
) AND MODIFYING THE ORDER
) OF DISCIPLINE IN 00 DHC 3
)

On January 28, 2005, a hearing committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair; Charles M. Davis, and Marguerite P. Watts heard the petition for reinstatement filed by Willie D. Gilbert, II, pursuant to 27 NCAC 1B, § .0125(b) based upon the objection filed by the Office of Counsel of the North Carolina State Bar. Eric C. Michaux represented the petitioner and A. Root Edmonson represented the North Carolina State Bar.

Based upon the evidence presented and the arguments of counsel, the hearing committee enters the following:

Findings of Fact

1. The license to practice law of Willie D. Gilbert, II (hereafter "Gilbert") was suspended for five years by an order of discipline entered in case file number 00 DHC 3 on November 1, 2000. The order of discipline provided that the last three years of the suspension would be stayed upon Gilbert's compliance with certain conditions. One of the conditions precedent to Gilbert's reinstatement under the order of discipline was reimbursing the Client Security Fund for any amounts disbursed as a result of Gilbert's misconduct.
2. Gilbert gave notice of appeal of the order of discipline to the North Carolina Court of Appeals and sought a stay of the order of discipline from that Court.
3. By orders dated December 4 and 18, 2000, the Court of Appeals granted a partial stay of the order of discipline subject to two conditions: (1) that Gilbert abide by a preliminary injunction consented to by the parties concerning his handling of client funds and (2) that he not accept any new clients or engage as attorney for another in any new case or legal matter of any nature during the period of the stay.
4. The Court of Appeals affirmed the order of discipline by a split decision. Gilbert appealed the decision to the Supreme Court of North Carolina and sought a stay of the judgment of the Court of Appeals in the Supreme Court.

5. By orders dated August 22, 2002 and February 27, 2003, the Supreme Court stayed the judgment of the Court of Appeals that affirmed the order of discipline.

6. On October 2, 2003, the Supreme Court affirmed the order of discipline. Because the effective date of the order of discipline was stayed by the orders of the appellate courts, and based upon the Supreme Court's October 22, 2003 mandate, the effective date of the order of discipline was October 22, 2003.

7. Gilbert is not eligible for reinstatement from the active portion of his suspension until two years after the effective date of the order of discipline, October 21, 2005.

8. From the entry of the order of discipline until its effective date after affirmation by the Supreme Court, a period of three years, Gilbert was allowed to represent only a limited number of existing clients through the completion of their existing cases. Gilbert actively represented the last of those existing clients through at least May 13, 2003, when he filed an appellate brief on behalf of two clients for whom he had obtained a judgment at trial during the partial stay of the order of discipline. The judgment was upheld on appeal, and payment on the judgment was made in September of 2003.

9. At its meeting on January 18, 2001, the Client Security Fund ("Fund"), after notice to Gilbert and an opportunity to be heard in accordance with its rules, reimbursed Gilbert's former client Michele Munavalli ("Munavalli") \$4,627.43 for a loss caused by Gilbert.

10. The Fund then made demand on Gilbert for repayment to the Fund of the \$4,627.43 paid to Munavalli shortly thereafter.

11. On April 18, 2002, the North Carolina State Bar, on behalf of the Fund, filed suit against Gilbert in Wake County District Court, file number 02 CVD 4961 (hereafter "civil case"), seeking a judgment against Gilbert for double the amount the Fund paid to Munavalli.

12. Gilbert filed an Answer to the civil case contesting the authority and decision of the Fund's payment to Munavalli.

13. On March 11, 2004, Judge Jane P. Gray entered judgment in favor of the North Carolina State Bar in the civil case.

14. Gilbert filed notice of appeal of Judge Gray's judgment to the Court of Appeals and the appeal is currently pending.

15. As of the date of the hearing in this matter, Gilbert had not reimbursed the Fund any amount.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

Conclusions of Law

1. Pursuant to 27 NCAC 1B, § .0125(b)(3), the petitioner had the burden of proving that he had satisfied all of the elements qualifying him for reinstatement by clear, cogent and convincing evidence. Those elements include satisfaction of all conditions precedent to reinstatement set forth in the order of discipline.

2. Because the orders that Gilbert secured from the appellate courts during his appeal of the order of discipline in 00 DHC 3 stayed the effective date of that order of discipline, and because Gilbert was actively representing a limited number of clients during most of the stay period, the active portion of Gilbert's suspension began on October 22, 2003.

3. The three years that Gilbert was only able to represent such a limited number of clients should, as a matter of equity, be counted as the three years that the order of discipline allowed Gilbert to practice law subject to the stay provisions of the order of discipline.

4. As a matter of equity, the Hearing Committee treats Gilberts petition for reinstatement as a motion to modify the order of discipline in 00 DHC 3 pursuant to 27 NCAC 1B, § .0114(z)(3)(A) and N. C. Civ. Pro. Rule 60(b)(5) & (6). The order of discipline entered in 00 DHC 3 should be modified by striking the portion of the order requiring Gilbert to serve three years under a stayed suspension at the conclusion of his active suspension. However, Gilbert is required to complete the two years of active suspension from the effective date of the order of discipline, October 22, 2003.

5. Subject to his complying with the procedures set out in 27 NCAC 1B § .0125(b), and the conditions set forth in this Order, Gilbert will be eligible for reinstatement to the active practice of law on or after October 21, 2005.

6. When allowed by 27 NCAC 1B, § .0125(b), Gilbert may file another petition for reinstatement from the active portion of his suspension. Because Gilbert has shown herein that he has satisfied the conditions for reinstatement, except as specifically set out below, Gilbert will only have to prove that he has not engaged in any conduct that would preclude his reinstatement between the date of the hearing herein and the date he is eligible for reinstatement pursuant to this Order.

7. Although the order of discipline entered on November 1, 2000 did not find that Gilbert engaged in dishonest conduct regarding Munavalli, the condition contained in the order of discipline that Gilbert comply with all provisions of 27 NCAC 1B § .0125(b), including reimbursing the Fund for any amounts disbursed by the Fund as a result of Gilbert's misconduct, requires that Gilbert reimburse the Fund \$4,627.43 before being eligible for reinstatement. Neither the order of discipline nor the reinstatement rule limits the reimbursement requirement to misconduct found in the order of discipline.

8. Pursuant to 27 NCAC 1B § .0125(b)(3)(F), Gilbert is not permitted to collaterally attack the decision of the Fund's Board of Trustees to reimburse Munavalli in his reinstatement proceeding.

9. Pursuant to 27 NCAC 1B, § .0114(z)(3)(A) and N. C. Civ. Pro. Rule 60(b)(5) & (6), if the final result of the civil case is a determination that Gilbert is not liable to the Fund, then Gilbert should be relieved from the obligation to repay the Fund as a condition of reinstatement.

10. If Gilbert wishes to seek reinstatement prior to a final determination of the civil case, he must deposit \$4,627.43 with the North Carolina State Bar before filing a petition for reinstatement to satisfy the condition that he reimburse the Fund prior to reinstatement. If the civil case is ultimately resolved in his favor, the North Carolina State Bar shall refund the deposit.

11. Gilbert should be taxed with the costs of this proceeding.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The order of discipline entered in 00 DHC 3 is hereby modified by striking the portion of the order requiring Gilbert to serve three years under a stayed suspension at the conclusion of his active suspension.

2. Gilbert will not be eligible for reinstatement to the active practice of law until October 21, 2005.

3. Except as set out in paragraphs 5-8 below, when Gilbert files a subsequent petition for reinstatement pursuant to 27 NCAC 1B § .0125(b), the only issues for consideration should be: (1) whether Gilbert has engaged in any conduct that would preclude his reinstatement between the date of his hearing herein and the date of his subsequent petition, (2) whether Gilbert has reimbursed the Fund as set out herein, and (3) whether Gilbert has paid the costs of this proceeding.

4. Gilbert must file his petition for reinstatement 30 days before eligibility for reinstatement in accordance with 27 NCAC 1B § .0125(b).

5. As a condition of his reinstatement on or after October 21, 2005, but subject to paragraphs 6-8 below, Gilbert must reimburse the Fund the \$4,627.43 the Fund paid to Munavalli


6. If the final result of the civil case is a determination that Gilbert is not liable to the Fund, then Gilbert is relieved of his obligation to repay the Fund as a condition of reinstatement.

7. If Gilbert wishes to seek reinstatement prior to a final determination of the civil case, he must deposit \$4,627.43 with the North Carolina State Bar prior to filing a petition in order to satisfy the condition that he reimburse the Fund prior to reinstatement.

8. If Gilbert deposits \$4,627.43 with the North Carolina State Bar as set out in paragraph 7 above and the civil case is ultimately resolved in his favor, the North Carolina State Bar must refund the deposit.

9. Gilbert is taxed with the costs of this proceeding as assessed by the Secretary, and must pay these costs prior to petitioning for reinstatement..

Signed by the Chair with the consent of the other members of the Hearing Committee this
the 8th day of March 2005.



F. Lane Williamson, Chair
Hearing Committee