

WAKE COUNTY
NORTH CAROLINA

11146
BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
97 DHC 19

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

THOMAS WAYNE WHITE, Attorney,
Defendant

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter was calendared for trial and heard on the 17th day of October, 1997 before a duly appointed committee of the Disciplinary Hearing Commission consisting of Henry C. Babb, Jr., Chair, Franklin E. Martin, and B. Stephen Huntley. The Plaintiff was represented by Clayton W. Davidson III, Deputy Counsel. The Defendant appeared *pro se*.

BASED on the evidence presented at the trial of this matter, and the pleadings and pre-trial stipulations of record, the committee makes the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").

2. The Defendant, Thomas Wayne White, (the "Defendant") was admitted to the State Bar in July, 1983 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.

3. During all or a part of the relevant periods referred to herein, Defendant was engaging in the practice of law in the State of North Carolina and maintained a law office in Bladenboro, North Carolina (the "Law Office").

4. From 1987 to the present, the Defendant has had employees who worked for him in his Law Office and to whom he paid wages or salary, including but not limited to Delores Deaver Kelly, Terri Lynn Martin, Connie Hilburn, Barbara S. Henry, William C. Fields, Jo Dean Bryan, and Andrea B. White (the "Employees").

5. The Defendant computed the amounts payable to the Employees by taking their gross earnings and subtracting out F.I.C.A. tax, federal withholding tax, and state withholding tax.

6. During the period from 1990 through 1996 the Defendant never prepared the required tax returns or other documents, including but not limited to 940 and 941 returns, and failed to pay to the Internal Revenue Service or other appropriate governmental agency all or some of the amounts withheld from the Employees gross earnings for F.I.C.A. tax and federal withholding tax.

7. In June 1993, a Notice of Federal Tax Lien Under Internal Revenue Laws was filed with the Clerk of Superior Court of Bladen County, North Carolina. The Defendant received actual notice in 1993 that the lien had been filed. The lien provided that taxes were owed for 940 and 941 taxes beginning in 1987.

8. After receiving actual notice of the requirement for filing 940 and 941 returns in 1993, the Defendant failed to prepare and file 940 and 941 returns through 1996, and failed to pay all amounts withheld from employee salaries as F.I.C.A. tax and federal withholding tax.

9. The Defendant has received income from the operation of his law practice during some or all of the years from 1991 to 1996.

10. The Defendant owed personal income tax for some or all of the years from 1991 to 1996.

11. Without regard to whether or not the Defendant owed any income tax, the Defendant was required to prepare and file with the Internal Revenue Service personal tax returns or other tax returns for the years 1991 to 1996.

12. The Defendant has not filed with the Internal Revenue Service, personal income tax returns or other tax returns, including but not limited to Form 1040 for the tax years 1991 to 1996, and has failed to pay any personal income tax for those years.

13. The Defendant willfully failed to collect or pay over a tax in violation of 26 U.S.C. § 7202, and willfully failed to file returns, supply information, or pay tax in violation of 26 U.S.C. § 7203.

14. The Defendant's actions as described herein in violation of 26 U.S.C. § 7202 and 26 U.S.C. § 7203 reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects.

15. The conduct of the Defendant described herein involves dishonesty, fraud, deceit or misrepresentation.

16. The conduct of the Defendant described herein is prejudicial to the administration of justice.

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

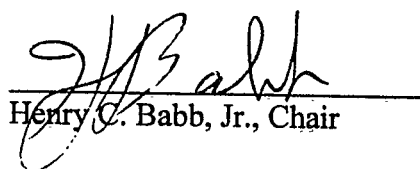
CONCLUSIONS OF LAW

1. By willfully failing to collect or pay over a tax in violation of 26 U.S.C. § 7202, and willfully failing to file returns, supply information, or pay tax in violation of 26 U.S.C. § 7203, the Defendant has committed criminal acts which reflect adversely on the Defendant's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(b) of the North Carolina Rules of Professional Conduct.

2. By willfully failing to collect or pay over a tax in violation of 26 U.S.C. § 7202, and willfully failing to file returns, supply information, or pay tax in violation of 26 U.S.C. § 7203, the Defendant has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(c) of the North Carolina Rules of Professional Conduct.

3. By willfully failing to collect or pay over a tax in violation of 26 U.S.C. § 7202, and willfully failing to file returns, supply information, or pay tax in violation of 26 U.S.C. § 7203, the Defendant engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(d) of the North Carolina Rules of Professional Conduct.

Signed by the undersigned chair with the full knowledge and consent of all other members of the hearing committee this 31 day of December, 1997.


Henry C. Babb, Jr., Chair

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ORDER OF DISCIPLINE

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Based upon the Findings of Fact and Conclusions of Law entered by the hearing committee at the first phase of the hearing 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 CONCERNING DISCIPLINE

1. The Defendant's conduct is aggravated by the following factors:
 - a. A dishonest or selfish motive,
 - b. A pattern of misconduct,
 - c. Multiple offenses,
 - d. Substantial experience in the practice of law,
 - e. Indifference to making restitution.
2. The Defendant's conduct is mitigated by the following factors:
 - a. Absence of a prior disciplinary record,
 - b. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings,
 - c. Remorse.
3. The mitigating factors do not outweigh the aggravating factors.

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

ORDER OF DISCIPLINE

1. The Defendant, Thomas Wayne White, is hereby suspended from the practice of law for a period of five years.

2. The last two years of the suspension may be stayed for the balance of the term of the suspension upon the following conditions:

a. Prior to the filing of any petition for any stay of suspension or reinstatement, the Defendant shall meet all tax obligations for which he is currently in default, including but not limited to the filing of all past due federal and state tax returns, and the payment to the appropriate taxing authority of all taxes, withholdings, penalties, and interest due and owing on all state and federal tax returns.

b. Both prior to the filing of any petition for any stay of suspension or reinstatement, and during the period of any stay of suspension, following the date of the hearing of this matter, the Defendant shall timely file all tax returns or other tax related filings which he is required to make by state or federal law, and shall timely pay all taxes or payments that are due and owing pursuant to those filings or by law.

c. The Defendant shall provide to the North Carolina State Bar sufficient evidence that he has fulfilled the requirements of subparagraphs a and b above, and shall execute any authorizations or releases requested by the North Carolina State Bar to enable the Bar to verify with any appropriate taxing authority that Defendant has fulfilled the provisions of subparagraphs a and b above. During the period of any stay of suspension, the Defendant shall forward copies of all filings and evidence of all payments required by subparagraph b above to the North Carolina State Bar simultaneously with the filing of such documents.

d. Prior to the filing of any petition for any stay of suspension or reinstatement, the Defendant shall pay any and all costs assessed against the Defendant in this matter.

e. The Defendant shall comply with the Revised Rules of Professional Conduct, and all provisions of the Rules and Regulations of The North Carolina State Bar, including but not limited to the provisions of 27 Admin. Code Chapter 1 Subchapter B § .0124. Any violation of the Rules following the date of this order shall be grounds for denial of or lifting of the stay.

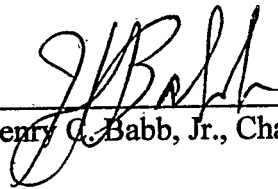
f. The Defendant shall not violate the laws of the State of North Carolina, the United States, or the various States that make up the United States.

3. During the period of any stay of the suspension, as continuing conditions of the stay of the suspension, the Defendant shall comply with all provisions of subparagraphs b, c, e, and f of paragraph 2 above.

4. In the event that the Defendant fails to petition for or meet the requirements for any stay of the suspension, or in the event that any stay of the suspension is lifted, and the suspension is re-activated, as a condition of reinstatement following the suspension, the Defendant must meet the requirements of subparagraphs a, b, c, and d of paragraph 2 above. This requirement is in addition to, and shall not be deemed to limit the provisions of 27 N.C. Admin. Code Chapter 1 Subchapter B § .0125.

5. The Defendant shall pay the costs of this proceeding within thirty days of service of notice of the amount of costs as assessed by the Secretary.

Signed by the undersigned chair with the full knowledge and consent of all other members of the hearing committee this 31 day of December, 1997.


Henry C. Babb, Jr., Chair