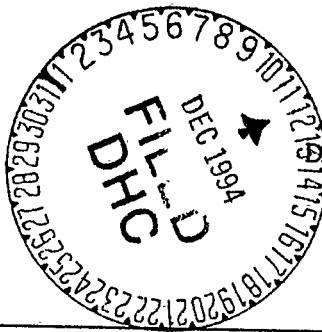


NORTH CAROLINA

WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
94 DHC 14

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

EDWARD G. BAILEY, ATTORNEY
Defendant

FINDINGS OF FACT
& CONCLUSIONS OF LAW

THIS CAUSE was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Stephen T. Smith, Chair; Richard L. Doughton and A. James Early III on November 18, 1994. The Defendant, Edward G. Bailey, was represented by John D. Warlick, Jr. The Plaintiff was represented by Carolin Bakewell. Based upon the pleadings and the prehearing stipulations, and the evidence introduced at the hearing, the Committee makes the following:

FINDINGS OF FACT

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, Edward G. Bailey, (hereafter, Bailey), was admitted to the North Carolina State Bar in 1965, 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, 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, Bailey was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Jacksonville, Onslow County, North Carolina.
4. Bailey did not file North Carolina income tax returns for the years 1985 - 1987 on a timely basis. Bailey's federal tax return for 1985 was also not filed on a timely basis.
5. Prior to the filing deadlines for the 1985 - 1987 tax years, Bailey hired William Aman, a certified public accountant, to prepare Bailey's state and federal income tax returns.

6. Aman filed requests for extensions of time in which to file Bailey's 1985 tax returns on April 11, 1986 and Aug. 15, 1986. Bailey's 1985 returns were due in October 1986.

7. Aman filed requests for extensions of time in which to file Bailey's 1986 tax returns on April 14, 1987 and on Aug. 14, 1987. Bailey's 1986 tax returns were due in October 1987.

8. Aman filed requests for extensions of time in which to file Bailey's 1987 tax returns on April 15, 1988 and Aug. 12, 1988. Bailey's 1987 tax returns were due in October 1988.

9. Bailey's 1985 - 1987 North Carolina tax returns and his 1985 federal return were filed on April 27, 1989.

10. During the period when his 1985 - 1987 tax returns were due, Bailey was experiencing serious financial pressures and was preoccupied with problems associated with the failure of several investment projects and the foreclosure of his personal residence and a number of tracts of land by a lending institution. During this same period, Bailey also was called upon to pay a \$50,000 note which he had co-signed for his brother, whose business had failed.

11. Bailey's total tax liability to the State of North Carolina for 1985 was \$395.66. His penalty and interest for that year was \$211.67.

12. Bailey's total tax liability to the State of North Carolina for 1986 was \$2,496.16. The penalty and interest owed for that year was \$1,230.80.

13. Bailey's total tax liability to the State of North Carolina for 1987 was \$4,610.83. The penalty and interest owed for that year was \$1,786.59.

14. On or about May 24, 1989, Bailey entered pleas of guilty in Wake County District Court to two misdemeanor counts of failure to file state income tax returns for the years 1986 and 1987. Bailey was not charged with failure to file for the tax year 1985.

15. Bailey was convicted of two misdemeanor counts of failure to timely file North Carolina income tax returns for the years 1986 and 1987.

16. Bailey paid all taxes, penalties and interest owed to the State of North Carolina prior to his conviction in May 1989.

17. Bailey has complied with all terms and conditions of the judgment entered in his case by, among other things, paying a \$500 fine and by performing 213 hours of community service in the form of pro bono legal services to indigent individuals, which is 13 hours more than Bailey was ordered to perform pursuant to the judgment.

Based upon the foregoing Findings of Fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. By failing to file timely state income tax returns for the years 1985 - 1987, Bailey committed criminal acts which reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects, in violation of Rule 1.2(B).

This the 5 day of December, 1994.

Signed by the Chair of the Hearing Committee with the consent of all parties and Hearing Committee members.



Stephen T. Smith, Chair
Disciplinary Hearing Committee

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
94 DHC 14

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

EDWARD G. BAILEY, ATTORNEY
Defendant

ORDER OF DISCIPLINE

THIS CAUSE was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Stephen T. Smith, Chair; Richard L. Doughton and James A. Early III on November 18, 1994. In addition to the Findings of Fact previously made, the Hearing Committee hereby makes the additional findings relevant to the issue of discipline:

FINDINGS OF FACT

1. Bailey has filed all state and federal tax returns on a timely basis since 1988.

2. Bailey and his wife owed the Internal Revenue Service the total of \$108,729.54 (excluding penalty and interest) for the tax years 1983, 1985 - 1989.

3. Pursuant to an agreement with the Internal Revenue Service, Bailey and his wife paid the IRS \$2,000 per month from March 1990 through November 1992. These payments were applied to the tax obligation referred to in paragraph 2.

4. Pursuant to an agreement with the Internal Revenue Service, Bailey and his wife have paid the IRS \$2,500 per month since December 1992 toward their tax obligations for the years 1986 - 1989. All monthly payments have been made on a timely basis.

5. As of October 1994, Bailey and his wife had paid the IRS a total of \$135,278.56 toward their tax obligations referred to in paragraph 2.

6. As of Sept. 14, 1994, Bailey owed the Internal Revenue Service a total of \$146,244.26 in taxes, penalties and interest for the years 1983, 1985 - 1989.

7. As a result of the failure of several business ventures referred to in paragraph 9 of the Findings of Fact and Conclusions of Law, Bailey and his wife lost virtually everything they owned, including their residence. They now live in a rented house and maintain a very modest lifestyle. Bailey's wife works outside the home on a limited basis to help support the couple's four minor children.

8. Bailey elected not to file bankruptcy and has chosen instead to pay his creditors. Bailey's only remaining outstanding obligation is to the Internal Revenue Service.

9. Bailey has not been charged with or convicted of any criminal offenses since 1989.

10. Bailey's misconduct is mitigated by the following factors:

- a. Bailey was cooperative with the N.C. Department of Revenue during the investigation and prosecution of his criminal case. Bailey was cooperative with the N.C. State Bar during the investigation of the grievance which led to the filing of the complaint in the instant matter.
- b. Bailey enjoys an excellent reputation in Onslow County as an honest, knowledgeable, hardworking attorney.
- c. Bailey has a good character for truth and veracity.
- d. Bailey has no prior discipline and the records of the North Carolina State Bar indicate that he is an active member in good standing with the N.C. State Bar, apart from the matters at issue in the instant case.
- e. There was a substantial delay between the offense and the institution of disciplinary charges by the N.C. State Bar. In the interim, Bailey's behavior and conduct were exemplary.
- f. Bailey made a full and free disclosure of the facts relating to his failure to file timely tax returns.
- g. Bailey made timely restitution to the N.C. Department of Revenue and has made continuing, timely efforts to make restitution to the Internal Revenue Service.
- h. Bailey's conduct is mitigated by the absence of a dishonest or selfish motive.

11. Bailey's misconduct is aggravated by the fact that he

engaged in multiple violations of the Rules of Professional Conduct.

Based upon the evidence presented at trial and the arguments of counsel, the Committee enters the following:


ORDER OF DISCIPLINE

1. The Defendant, Edward G. Bailey, is hereby suspended from the practice of law for six months, which suspension is stayed for a period of one year upon the following conditions:

- a. That Defendant violate no provisions of the Rules of Professional Conduct during the one year stay period;
- b. That Defendant violate no laws of the State of North Carolina or the United States during the one year stay period;
- c. That the Defendant continue to make timely monthly payments to the Internal Revenue Service as set out in the Installment Agreement dated April 8, 1992 or as provided in any successor Agreement. Defendant is not required to pay the entire amount owed to the IRS by the end of the one-year stay period.

2. Defendant shall pay the costs of this proceeding.

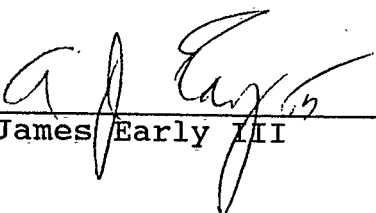
This the 5 day of DECEMBER, 1994.



Stephen T. Smith, Chair
Disciplinary Hearing Committee

Partial dissenting opinion

I dissent to the Order of Discipline solely on the grounds that I believe that the order should call for a longer period of suspension and stayed for a longer period of time, given the seriousness of the underlying violation. I concur with the majority that no active suspension of the Defendant's law license is necessary, given the facts of the case.



A. James Early III