

NORTH CAROLINA
WAKE COUNTY

DEC 92 10:52

2977

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
92 DHC 15

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

CHARLES B. MERRYMAN, JR.,
Attorney
Defendant

ORDER
OF
DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law dated November 20, 1992; and further based upon the evidence presented at the second phase of the hearing in this matter, the hearing committee of the Disciplinary Hearing Commission composed of Stephen T. Smith, Chairman, Robert C. Bryan, and Frank L. Boushee, finds the following:

FACTOR IN AGGRAVATION

Substantial experience in the practice of law.

FACTORS IN MITIGATION

1. Absence of a prior disciplinary record.
2. Absence of a selfish motive.

3. Full and free disclosure to the federal authorities investigating the criminal charges and a cooperative attitude toward these proceedings, including voluntarily ceasing the practice of law after learning that he was a target of an investigation, but prior to being indicted.

4. Imposition of other penalties and sanctions.
5. A good character and reputation in his community.

A majority of the hearing committee did not find that the evidence was clear, cogent and convincing that the Defendant knowingly assisted his client in concealing income received from illegal activity from the IRS. The hearing committee agreed that if the Defendant had known, then the appropriate discipline would have been disbarment.

The cases involving willful failure to pay income taxes cited by counsel for the Defendant in his argument had no effect on this hearing committee in its deliberations.

00001

BASED UPON all of the factors listed above, the hearing committee enters the following:

ORDER OF DISCIPLINE:

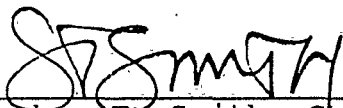
1. The Defendant, Charles B. Merryman, Jr., is suspended from the practice of law in North Carolina for the period he remains subject to supervised release pursuant to the judgment signed by U. S. District Court Judge Robert D. Potter on April 3, 1992.

2. One year of the above referenced suspension shall be active, effective from the date the Defendant voluntarily ceased the practice of law on January 31, 1992. The remaining period of the suspension is automatically stayed beginning January 31, 1993 upon the following conditions:

- a) During the period of the stay, the Defendant must not violate any of the Rules of Professional Conduct. Any violation will be grounds for lifting the stay pursuant to Section 14(X) of Article IX of the Rules and Regulations of the North Carolina State Bar.
- b) Any violation of supervised release by the Defendant shall be grounds for lifting the stay pursuant to Section 14(X) of Article IX of the Rules and Regulations of the North Carolina State Bar.

3. The Defendant is taxed with the costs of this proceeding as assessed by the Secretary.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee this the 9 day of DECEMBER, 1992.



Stephen P. Smith, Chairman
Hearing Committee

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
92 DHC 15

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

CHARLES B. MERRYMAN, JR.,
Attorney
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW.

This matter coming on to be heard and being heard on November 6, 1992 before a hearing committee composed of Stephen T. Smith, Chairman, Robert C. Bryan, and Frank L. Boushee; with A. Root Edmonson representing the N. C. State Bar and Nelson M. Casstevens, Jr. representing the Defendant; and based upon the admissions of the Defendant in his Answer to the Complaint in this matter and Stipulations on Prehearing Conference, the hearing committee finds the following to be supported by clear, cogent, and convincing evidence:

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, Charles B. Merryman, Jr., was admitted to the North Carolina State Bar on September 12, 1962, 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, 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 Charlotte, Mecklenburg County, North Carolina.
4. Defendant represented James Edward "Ned" Johnson, the operator of a lottery, from mid-1986 to April, 1990. At least by 1989, Defendant knew that Johnson had income derived from this illegal activity.

00003

5. Between September 30, 1989 and November 20, 1989, Defendant, through his employees, received \$37,000 in cash from Johnson in six related transactions to be used to establish an irrevocable trust for his son, Brandon Lee Johnson.

6. Defendant did not report the receipt of more than \$10,000 from Johnson in related transactions to the IRS on a Form 8300 as required by law.

7. By not reporting the receipt of \$10,000 or more in cash to the IRS, Defendant assisted his client, Johnson, in concealing income received from illegal activity.

8. As a result of Defendant's failing to report the receipt of the \$37,000 in cash from Johnson in related transactions, Defendant was charged in a Bill of Information in the United States District Court for the Western District of North Carolina, Charlotte Division, with felony violations of 26 U.S.C. Sec. 6050I, 26 U.S.C. Sec. 7203, and 18 U.S.C. Sec. 2.

9. On February 6, 1992, Defendant entered a plea of guilty to the one count contained in the Bill of Information.

10. On April 3, 1992 a sentencing hearing was conducted before District Judge Robert D. Potter. A judgment dated April 3, 1992 was signed by Judge Potter.

11. The offense for which Defendant was convicted was an offense that showed professional unfitness.

12. The offense for which Defendant was convicted reflected adversely on Defendant's fitness as a lawyer.

13. The offense for which Defendant was convicted was a serious offense as defined in Sec. 3(LL) of Article IX of the Rules and Regulations of the North Carolina State Bar.

14. The allegation in the Complaint in this matter that \$37,000 was delivered to Defendant by Johnson in two "pieces" and that Defendant "structured" the receipt of the funds on his books in an effort to avoid the IRS reporting requirements was based upon the uncontested testimony of the IRS agent, who testified at Defendant's sentencing hearing, that Johnson indicated to the agent that the \$37,000 was delivered in two "pieces". After the Complaint was filed, it was discovered that Defendant's bookkeepers were prepared to testify that Johnson delivered the cash to them in Defendant's office on six occasions in the amounts and on the dates shown on Defendant's ledger rather than in two "pieces". Having only the prospective testimony of Johnson to prove the more serious allegation, the State Bar elected to abandon that claim before the commencement of this hearing.

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

CONCLUSIONS OF LAW

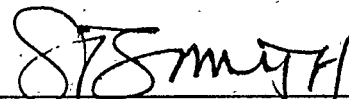
The conduct of the Defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Sec. 84-28(b)(1) and (2) as follows:

a) The offense for which Defendant was convicted was a criminal offense showing professional unfitness in violation of N. C. Gen. Stat. Sec. 84-28(b)(1).

b) Defendant's conduct violated N. C. Gen. Stat. Sec. 84-28(b)(2) in that Defendant violated the N. C. Rules of Professional Conduct as follows:

By failing to file at least one Form 8300 showing receipt of \$10,000 or more in cash from Johnson in related transactions, Defendant engaged in criminal conduct that reflects adversely on his fitness as a lawyer in violation of Rule 1.2(B).

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the hearing committee this the 20 day of November, 1992.



Stephen T. Smith, Chairman
Hearing Committee