

NORTH CAROLINA

WAKE COUNTY



9906

BEFORE THE GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
93G1265(II)

THE NORTH CAROLINA STATE BAR,
Petitioner

MARK CLAYTON KIRBY, Attorney,
Respondent

ORDER OF RECIPROCAL
DISCIPLINE

Pursuant to the authority vested in me as Chairperson of the Grievance Committee of the North Carolina State Bar by 27 N.C. Admin. Code, Chapter 1, Subchapter B, § .0105(a)(12) and .0116(c)(4) of the Discipline and Disability Rules of the North Carolina State Bar; and based upon the record in this matter, the undersigned finds as follows:

1. On or about January 13, 1995, Mark Clayton Kirby (hereinafter referred to as Kirby) entered a plea of guilty in the United States District Court for the Eastern District of North Carolina to a violation of 18 U.S.C. §1032(2), a class D felony, for impeding the function of the Resolution Trust Corporation.

2. On or about April 3, 1995, United States District Court Judge W. Earl Britt entered a Judgment in a Criminal Case sentencing Kirby to fifteen months imprisonment and ordering him to remain on supervised release for 36 months following his period of incarceration. As an interim measure, Britt also ordered Kirby not to practice law in North Carolina during the same period of time covered by the imprisonment and supervised release. By separate order, Judge Britt ordered a disciplinary proceeding to be held to determine the final discipline to be imposed as a result of Kirby's criminal conviction.

3. On July 12, 1996, a disciplinary proceeding was held before Judge Britt in the United States District Court for the Eastern District of North Carolina with Kirby, his counsel, Thomas Courtland Manning, and counsel for the North Carolina State Bar present and participating.

4. On December 12, 1996, Judge Britt ordered that Kirby was to be DISBARRED from the practice of law in his court effective upon the termination of Kirby's term of supervised release previously ordered.

5. On or about December 19, 1996, a Notice of Reciprocal Discipline Proceeding was mailed to Kirby by certified mail, return receipt requested notifying him that the North Carolina State Bar intended to impose reciprocal discipline of Judge Britt's December 12, 1996 order.

6. On December 26, 1996, Kirby was served with the Notice of Reciprocal Discipline Proceeding, as evidenced by his signature on the return receipt.

7. Kirby failed to file a response to the Notice of Reciprocal Discipline Proceeding.

BASED UPON THE FOREGOING FINDINGS, the Chairperson of the Grievance Committee makes the following CONCLUSIONS OF LAW:

1. The North Carolina State Bar has jurisdiction over the subject matter of this proceeding and over the person of Kirby.

2. The procedure for imposition of reciprocal discipline pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0116(c) of the Discipline and Disability Rules of the North Carolina State Bar has been complied with.

3. The December 12, 1996 Order of Judge Britt found that Kirby was convicted of a class D felony which constitutes conduct in violation of Rules 1.2(b) & (c) of the North Carolina Rules of Professional Conduct which justifies the imposition of reciprocal discipline in this state.

4. The disbarment ordered by Judge Britt should be imposed upon Kirby's right to practice law in the State of North Carolina.

THEREFORE IT IS HEREBY ORDERED THAT:

1. Mark Clayton Kirby is DISBARRED from the practice of law in the State of North Carolina effective at the end of Kirby's period of supervised release imposed by the April 3, 1995 Judgment in a Criminal Case in the U. S. District Court for the Eastern District of North Carolina.

2. Mark Clayton Kirby is hereby taxed with the costs of this proceeding as assessed by the Secretary.

This the 18th day of February, 1997.



Ann Reed
Chairperson, Grievance Committee