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WAKE COUNTY  
NORTH CAROLINA



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
01 DHC 20

THE NORTH CAROLINA STATE BAR )  
Plaintiff )

v. )

DAVID C. WAGONER, ATTORNEY )  
Defendant )

CONSENT ORDER  
OF DISCIPLINE

THIS MATTER was scheduled to be heard on the 22<sup>nd</sup> day of February 2002 before a hearing committee of the Disciplinary Hearing Commission composed of Carlyn G. Poole, Stephen Culbreth and Betty Ann Knudsen. Carolin Bakewell represented the N.C. State Bar. The Defendant, David C. Wagoner, appeared on his own behalf.

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, David C. Wagoner (hereafter, Wagoner), was admitted to the North Carolina State Bar in 1991, 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. Wagoner willfully failed to file timely state and federal income tax returns for the years 1997 – 2000.

4. During the calendar years 1997 – 2000, Wagoner earned annual income higher than the minimum statutory amount requiring a taxpayer to file an individual return.

5. Wagoner did not owe state taxes for the years 1997 – 2000 and did not owe federal taxes for the year 1999.

6. Wagoner was suffering from clinical depression between 1997 – 2000, which condition contributed to his failure to file timely tax returns.

7. Wagoner's conduct amounts to an offense showing professional unfitness. However, it did not involve dishonesty or harm to any client.

8. Wagoner has not been criminally prosecuted for his failure to file state and federal income tax returns and has now filed all returns.

9. Wagoner voluntarily transferred to inactive status in North Carolina in 1996, does not practice North Carolina law and resides in Virginia.

Based upon the foregoing Findings of Fact and with the consent of the parties, the hearing committee enters the following:

#### Conclusions of Law

1. All parties are properly before the hearing committee and the committee has jurisdiction over Wagoner and the subject matter of this proceeding.

2. By willfully failing to file state and federal income tax returns for the years 1997 – 2000, Wagoner committed criminal acts that reflect adversely on his fitness as a lawyer, in violation of Rule 8.4(b) of the Revised Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the consent of the parties concerning the appropriate discipline, the Hearing Committee hereby makes the following additional:

#### Findings of Fact Regarding Discipline

1. Wagoner's misconduct is aggravated by the following factors:

a. Wagoner engaged in multiple violations of the Revised Rules of Professional Conduct.

2. Wagoner's misconduct is mitigated by the following factors:

a. Wagoner suffered from emotional difficulties at the time of the misconduct, which contributed to his violation of the Rules of Professional Conduct;

b. Cooperative attitude toward the disciplinary proceedings.

- c. Good character and reputation.
  - d. No prior discipline
  - e. Remorse
3. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing aggravating and mitigating factors and the consent of the parties, the hearing committee hereby enters the following:

#### ORDER OF DISCIPLINE

1. The license of the defendant, David C. Wagoner, is hereby suspended for a period of two years.

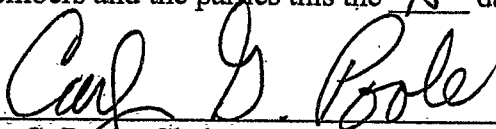
2. The two year suspension of Wagoner's license is stayed for a period of three years on the following conditions:

- a. Wagoner shall not violate any local, state or federal laws during the period of stayed suspension;
- b. Wagoner shall not violate any provisions of the Revised Rules of Professional Conduct during the period of stayed suspension;
- c. Wagoner shall timely pay all taxes, fines, penalties and estimated taxes during the stay period and shall timely file all state and federal income tax returns, and attachments and schedules thereto;
- d. Wagoner shall pay all costs incurred in this proceeding and taxed against him within 90 days of service of this order.
- e. Wagoner shall continue to receive treatment for depression and shall comply with all treatment plans of his treating physician. Prior to the end of the three-year stayed suspension period, Wagoner shall provide to the Secretary of the N.C. State Bar a written statement from his treating physician, verifying that he has complied with all treatment plans.

3. If any stay of the suspension of Wagoner's law license is lifted, the DHC may enter an order providing for the imposition of such conditions as it deems necessary for obtaining a stay of the remaining period of suspension or for reinstatement of Wagoner's law license at the end of the suspension period.

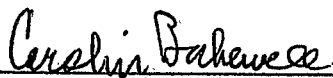
4. Prior to seeking transfer of his license to active status, Wagoner shall provide the Secretary of the State Bar with the affidavit of a licensed psychiatrist, affirming that Wagoner is not suffering from any mental or physical condition that impairs his professional judgment or ability to practice law.

Signed by the undersigned Chair with the consent of the other hearing committee members and the parties this the 15 day of February, 2002.

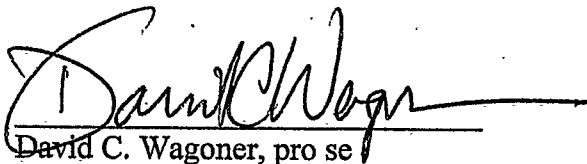


Carlyn G. Poole, Chair  
Disciplinary Hearing Committee

Seen and consented to:



Carolin Bakewell  
Attorney for the Plaintiff



David C. Wagoner, pro se  
Defendant