

THE NORTH CAROLINA STATE BAR

NORTH CAROLINA

BEFORE THE COUNCIL

WAKE COUNTY

NORTH CAROLINA STATE BAR

IN THE MATTER OF
THOMAS S. GARRISON, JR.

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

THIS HEARING coming on to be heard and being heard before a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar, consisting of Maureen Demarest Murray, Chairman, Fred Folger, Jr. and J. Richard Futrell, on the 28th day of September, 1990, in the office of the North Carolina State Bar, Raleigh, North Carolina, upon the Application and Petition for Reinstatement to Practice Law of Thomas S. Garrison, Jr., and the Petitioner, Thomas S. Garrison, Jr., being present at said hearing together with his counsel, Robert B. Long, Jr. and William A. Parker, and Fern E. Gunn, counsel for The North Carolina State Bar, being present and representing the North Carolina State Bar.

Members of the Hearing Committee having received the Stipulation on Pre-trial Conference, and after having heard the evidence, examined the exhibits filed on behalf of the Petitioner, Thomas S. Garrison, Jr., and on behalf of the Respondent, The North Carolina State Bar, and having heard the arguments of counsel, make the following:

FINDINGS

1. It was stipulated that all parties are properly before the Hearing Committee and the Hearing Committee has jurisdiction over the Petitioner and the subject matter.

2. That Thomas S. Garrison, Jr., the Applicant herein, is 70 years of age, and has been for many years a resident of Weaverville, North Carolina, and that his citizenship was restored after being convicted of a felony. That the Petitioner graduated from the University of North Carolina with an AB degree in 1941 and with a law degree in 1948.

3. That Thomas S. Garrison, Jr. was admitted to practice law in the State of North Carolina on April 5, 1948, and continued in the active practice of law until April 26, 1972, when he surrendered his license to H. Kenneth Lee, President of the North Carolina State Bar, with the request that the same be

forwarded to The North Carolina State Bar Council.

4. That an Order was entered on July 27, 1972, together with findings of fact, accepting the surrender of certificate of license to practice law and disbarment from the practice of law, with the right to petition for reinstatement as provided by law; a copy of the said Judgment is marked Exhibit "A" and is attached to the Petition requesting reinstatement.

5. That in September 1971, a hearing was had before the Clerk of Superior Court of Buncombe County, North Carolina, and the Issues were answered that Thomas S. Garrison, Jr. was incompetent from want of understanding to manage his own affairs due to inebriety.

6. That in June 1972, a hearing was held before the Clerk of Superior Court based upon an affidavit and oral testimony wherein the Court found based on findings of fact and conclusions of law, that Thomas S. Garrison, Jr. was "capable to conduct his own business, make contracts, sell property, and he is in all respects restored to his full rights of citizenship in the same manner as if he had never been declared incompetent"; a copy of said Judgment is marked Exhibit "B" and is attached to the Petition requesting reinstatement.

7. That on March 13, 1973, Thomas S. Garrison, Jr. pled guilty to one charge of "Violation of Title 38 U.S. Code, Section 3501 (a) Embezzlement and Misappropriation of VA Funds," occurring on or about July 12, 1971, and the following Judgment was rendered: Five (5) years imprisonment suspended, five (5) years probation, \$2,000.00 fine, \$4,889.20 restitution to Thomas E. Burrell Estate within thirty (30) days and said fine to be paid in the amount of \$50.00 per month commencing April 1, 1973"; a copy of said Order is marked Exhibit "C" and attached to the Petition requesting reinstatement.

8. That on July 23, 1976, an Order was entered in the United States District Court for the Western District of North Carolina by the Honorable Woodrow W. Jones, Judge of the District Court, discharging the Petitioner from probation and further ordering that the proceedings in the case be terminated. This Order was based on the recommendation of the Chief United States Probation Officer, William J. Seagle. That Thomas S. Garrison, Jr. complied with the rules and regulations and probationer was decreed no longer in need of probation supervision. That a copy of said Order is marked Exhibit "D" and is attached to the Petition requesting reinstatement.

9. That on or about the 10th day of November, 1976, the Petitioner filed a Petition with the North Carolina State Bar Council praying that the Secretary of the North Carolina State Bar Council refer the Petition for reinstatement to practice law

to the Chairman of the Disciplinary Hearing Commission and that Petitioner be reinstated to resume the practice of law in the State of North Carolina. That a copy of the said Petition is marked Exhibit "E" and attached to the Petition requesting reinstatement.

10. That the Petition for Reinstatement was referred to a Hearing Commission duly appointed by the Chairman of the Disciplinary Hearing Committee and a hearing was thereafter held on the 4th day of February 1977.

11. That upon the conclusion of the hearing, the Hearing Committee of the Disciplinary Hearing Commission made and entered findings and conclusions, and recommended that the above described license of Thomas S. Garrison, Jr. be restored to him. That a copy of such report is marked Exhibit "F" and attached to the Petition requesting reinstatement.

12. Upon consideration and reconsideration, the Council of the North Carolina State Bar determined that the Petitioner should not be reinstated. That a copy of the Order of the Council of the North Carolina State Bar which was dated the 15th day of July, 1977 filed on the 8th day of August 1977 is marked Exhibit "G" and attached to the Petition requesting reinstatement.

13. That more than seventeen (17) years have lapsed since the above referred to Order of Disbarment was entered by the North Carolina State Bar.

14. That more than five (5) years have lapsed since the effective date of the disbarment.

15. That at the time of the previous Petition filed in regard to this matter, there were in fact two Judgments outstanding against the Petitioner. The said Judgments have been marked paid and satisfied and there is no longer any such indebtedness due and owing by the Petitioner. That the Petitioner borrowed the funds necessary to satisfy the said indebtedness and the Petitioner has repaid to the creditor those funds which were borrowed. That exemplified copies of the pertinent pages of the Judgment Book in regard to the aforesaid two Judgments are marked Exhibit "H" and attached to the Petition for reinstatement. There is no civil judgment rendered against Petitioner that has not been "satisfied".

16. That the Petitioner is a citizen of the State of North Carolina.

17. That pursuant to a decision of The North Carolina State Bar Council at its meeting on the 20th day of October 1989, it has been determined that Article IX, Section 25(A)(3)(c) of the

Rules of the North Carolina State Bar apply only prospectively to attorneys who have been disbarred after the August 28, 1984, the effective of the amendment to the said rules of The North Carolina State Bar. That Thomas S. Garrison, Jr., was disbarred prior to August 28, 1984, and, therefore, Article IX, Section 25(A)(3)(c) of the Rules of the North Carolina State Bar does not apply to Thomas S. Garrison, Jr.

18. That on or about the 3rd day of July 1990, the Petitioner filed an Affidavit To Be Used Requesting Reinstatement To Practice Law Under GS 84-32 and Section 25 of the Rules of The North Carolina State Bar with The North Carolina State Bar praying that the Secretary of The North Carolina State Bar refer the Petition for Reinstatement to Practice Law to the Chairman of the Disciplinary Commission and that Petitioner be reinstated to resume the practice of law in the State of North Carolina.

19. That as of February 1977, the Petitioner owned an interest in real property. However, the interest of the Petitioner in such real property was foreclosed upon by the Internal Revenue Service and the Petitioner now owns no real property and in fact rents the home in which the Petitioner lives.

20. That since on or about 1972 or 1974, the Petitioner has remained sober and has worked continuously and diligently to re-establish himself and pay off all obligations within his means. That since said time to date, he has abided by the Judgment entered by the North Carolina State Bar Council and the Petitioner's main source of income has been from paralegal work performed at various times for and under the supervision of attorneys, Robert S. Swain, Floyd D. Brock, Richard B. Stone, Carl Hyldburg and Keith S. Snyder.

22. That the following residents of Buncombe County, North Carolina, testified at the hearing endorsing the reinstatement of the license of the Petitioner to practice law:

- (1) Robert H. Christy, Jr., Clerk of Superior Court of Buncombe County
- (2) Peter F. Best, an attorney practicing in the firm of Shuford, Best, Rowe, Brondyke, & Wolcott
- (3) Carl W. Loftin, an attorney practicing in the firm of Roberts, Stevens and Cogburn, P.A.
- (4) Robertson Wall, the former senior partner in the firm now known Van Winkle, Buck, Wall, Starnes & Davis, P.A.
- (5) James A. White, a resident of Weaverville, North Carolina, who has known the Petitioner for many years.
- (6) Harry Howell, a resident of Weaverville,

North Carolina, who has known the Petitioner for many years.

21. That the reinstatement to practice law has been recommended by written communication from the following persons which were introduced into evidence:

- (1) Harry C. Martin, Justice, North Carolina Supreme Court
- (2) Robert D. Lewis, Senior Resident Superior Court Judge, 28th Judicial District
- (3) C. Walter Allen, Resident Superior Court Judge, 28th Judicial District
- (4) Robert H. Christy, Jr., Clerk Superior Court, Buncombe County
- (5) J. Ray Elingburg, former Clerk Superior Court, Buncombe County
- (6) Otto W. DeBruhl, Register of Deeds, Buncombe County
- (7) Robert Fisher, District Attorney, 28th Prosecutorial District
- (8) Keith S. Snyder, Associate County Attorney, Buncombe County
- (9) Robert J. Robinson, Councilor, 28th Judicial District
- (10) Richard B. Stone, Attorney
- (11) Carl W. Loftin, Attorney
- (12) Peter F. Best, Attorney
- (13) Carl A. Hyldborg, Attorney
- (14) Kenneth Youngblood, Attorney
- (15) Jones P. Byrd, Attorney
- (16) Frank H. Ison, Minister
- (17) Dr. Lawrence B. Sprinkle, Medical Doctor
- (18) William W. Shope, Neighbor
- (19) Robert Miller, Jr., businessman

23. That a Petition was submitted to the Council of the North Carolina State Bar signed by 158 members of the 28th Judicial District Bar by which the said attorneys represented that the Petitioner had totally redeemed himself after disbarment in July of 1972 and petitioned the Council of the North Carolina State Bar to reinstate the Petitioner to practice law without the necessity of passing the bar examination.

24. That responsible public officials of the State of North Carolina, including judges, other court officials, and lawyers have, through letters or testimony at the hearing, stated that, in their opinion, the Petitioner has the moral qualifications, competency and learning in the law required for admission to practice in this State and that the resumption of the practice of law by the Petitioner will be neither detrimental to the integrity and standing of the Bar nor to the administration of

justice nor subversive of the public interest.

25. That the Petitioner possesses the moral qualifications required for the admission to the practice of law in this State.

26. That the Petitioner resuming the practice of law within the State will be neither detrimental to the integrity and standing of the Bar, nor the administration of justice nor subversive of the public interest.

27. That the Petitioner has complied with Section 24 of the Rules of The North Carolina State Bar.

28. That the Petitioner has complied with all applicable orders of the Disciplinary Hearing Commission and the Council.

29. That the Petitioner has complied with the orders and judgments of any court relating to the matters resulting in the disbarment.

30. That the Petitioner has not engaged in the unauthorized practice of law during the period of disbarment.

31. That the Petitioner has not engaged in any conduct during the period of disbarment constituting grounds for discipline under NCGS 84-28(b).

32. That the Petitioner exhibits knowledge and understanding of the Code of Professional Responsibility and the current Rules of Professional Conduct.

33. That the Petitioner has proved that he has the competency and learning in the law required to practice law in this State.

CONCLUSION

BASED UPON THE FOREGOING FINDINGS, THIS HEARING COMMITTEE CONCLUDES:

1. That the Petitioner has sustained the burden of demonstrating by clear, cogent and convincing evidence that he possesses the moral qualifications required for admission to the practice of law in this State; that the Petitioner resuming the practice of law within this State will be neither detrimental to the integrity and standing of the Bar, nor to the administration of justice, nor subversive of the public interest; that the Petitioner is a citizen of the State of North Carolina and that his citizenship was restored after having been convicted of a felony; that the Petitioner has complied with Section 24 of the Rules of the North Carolina State Bar; that the Petitioner has complied with all applicable rules of the Disciplinary Commission

and Council; that the Petitioner has complied with the orders and judgments of any court relating to the matters resulting in the disbarment; that the Petitioner has not engaged in any unauthorized practice of law during the period of disbarment; that the Petitioner has not engaged in any conduct during the period of disbarment constituting grounds for discipline under NCGS 84-28(b); and that the Petitioner exhibits knowledge and understanding of the Code of Responsibility and the current Rules of Professional Conduct.

2. That the Hearing Committee concludes that the Petitioner has sustained the burden of proving by the greater weight of the evidence that the Petitioner has the competency and learning in the law required to practice in this State and further concludes that Article IX, Section 25(A)(3)(c) of the North Carolina State Bar does not apply to the Petitioner, Thomas S. Garrison, Jr.

BASED UPON THE FOREGOING FINDINGS AND CONCLUSIONS, THE HEARING COMMITTEE MAKES THE FOLLOWING:

RECOMMENDATION

1. The Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar recommends to the Council of the North Carolina State Bar that the license of Thomas S. Garrison, Jr. to practice law in the State of North Carolina be restored to him.

2. The Hearing Committee recommends that the Petitioner attend and participate in continuing legal education, including the ethics component of continuing legal education, as a condition of reinstatement. The Hearing Committee recommends that the Council determine the number of hours of continuing legal education and the date by which such continuing legal education should be completed. The Hearing Committee does not recommend that the continuing legal education requirement have to be completed prior to the Council meeting at which the Council will consider whether Mr. Garrison's license to practice law in the State of North Carolina should be restored, since there is insufficient time before such meeting for Mr. Garrison to participate in such continuing legal education.

gth ENTERED the 28th day of September, 1990, and signed on the day of *October*, 1990.

Maureen Demarest Murray
MAUREEN DEMAREST MURRAY, Chairman
Hearing Committee of the Disciplinary
Hearing Commission