

WAKE COUNTY

NORTH CAROLINA



7394

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

THE NORTH CAROLINA STATE BAR,  
PLAINTIFF,

v.

FRED J. WILLIAMS, ATTORNEY  
DEFENDANT.

SUMMARY JUDGMENT  
ORDER

This matter came on and was heard on the 12<sup>th</sup> day of July 2000, before the Chairman of the Hearing Committee of the Disciplinary Hearing Commission, Kenneth M. Smith, pursuant to the parties' cross-motions for summary judgment. The Defendant, Fred J. Williams, was represented by Irving Joyner. The plaintiff was represented by Larissa J. Erkman.

After hearing the parties' arguments, the Chairman took the matter under advisement and asked the parties to submit briefs supporting their respective positions. Based upon the pleadings on file, including the Stipulations on Pretrial Conference submitted by the parties and attached documents, and further based on the parties' arguments and briefs, and after consultation with the other members of the Hearing Committee, Michael L. Bonfoey and Lorraine Stephens, the Hearing Committee hereby enters the following:

FINDINGS OF FACT

The pleadings on file, together with the Stipulations on Pretrial Conference and attached documents, establish the following undisputed material facts:

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. Defendant, Fred J. Williams ("Defendant"), was admitted to the North Carolina State Bar in 1976 and is, and was at all times referred to herein, an attorney at law licensed to practice law 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. Since 1980, Defendant actively engaged in the practice of law and maintained an office in Durham, North Carolina. From 1980 to 1984, Defendant was employed as an assistant professor of law at North Carolina Central University ("NCCU") School of Law, where he taught criminal law. From 1984 to 1987, Defendant served as a Special Superior Court Judge for the State of North Carolina. From 1987 to January 22, 1998, Defendant was actively employed as an Associate Professor of law at NCCU School of Law. During his tenure as a professor at NCCU School of Law, Defendant taught classes in criminal law, criminal procedure, criminal litigation, statutory interpretation and client counseling. He also served as faculty advisor to the criminal litigation clinic. On January 22, 1998, Defendant was placed on leave by NCCU School of Law pending resolution of the criminal charges pending against him in the State of Georgia. On January 4, 1999, Defendant returned to NCCU School of Law in an administrative capacity. Defendant is employed by NCCU School of Law, but his employment is currently suspended without pay. The suspension became effective when Defendant entered the Georgia First Offender Program pursuant to the Final Disposition entered by the Hart County Superior Court, State of Georgia, as referenced below.

4. On August 19, 1998, a Bill of Indictment was issued against Defendant by the grand jury in Superior Court, Hart County, Georgia, charging him with one (1) felony count of possession of cocaine, in violation of the Georgia Controlled Substance Act, Georgia Code Annotated § 16-13-30; one (1) misdemeanor count of carrying a concealed weapon, in violation of Georgia Code Annotated § 16-11-126; one (1) count of possession of a firearm during the commission of a felony in violation of Georgia Code Annotated § 16-11-106; and one (1) misdemeanor count of possession of marijuana, in violation of the Georgia Controlled Substance Act, Georgia Code Annotated § 16-13-30.

5. On February 21, 2000, Defendant entered a plea of guilty to Counts One and Four of the Bill of Indictment, respectively one (1) felony count of possession of cocaine and one (1) misdemeanor count of possession of marijuana, in violation of the Georgia Controlled Substance Act, Georgia Code Annotated § 16-13-30. At the same time, Defendant entered a plea of guilty to Count Two of the Bill of Indictment one (1) misdemeanor count of carrying a concealed weapon, in violation of Georgia Code Annotated § 16-11-126. By order of the Hart County Superior Court, Defendant was placed in the First Offender Program, pursuant to Georgia statutory law, on the charge to which his pleas of guilty related.

6. Count Three of the Bill of Indictment, possession of a firearm during the commission of a felony, was dismissed.

7. Defendant signed a Petition to Enter Plea of Guilty and tendered the same to the Superior Court of Hart County, Georgia. Because Defendant received First Offender Treatment under Georgia statutory law, as indicated on the Final Disposition

attached as Exhibit 1 to the Complaint, no adjudication of guilt has been made subsequent to entry of his pleas of guilty.

8. Question 32 of the Petition to Enter Plea of Guilty states, "Did you commit the unlawful acts set forth in the charge or charges to which you want to plead GUILTY?" In response to Question 32, Defendant checked the space marked "Yes."

9. After examination by the court, the court signed the Petition to Enter Plea of Guilty and thereby ordered that Defendant's "plea of guilty be entered on the minutes, and that this Transcript and Certificate be filed with the (Indictment) (Accusation)."

10. A Final Disposition was entered in the criminal case by the Superior Court of Hart County, Georgia. The Final Disposition recites that "no adjudication of guilt has been made subsequent to entry of the plea."

11. More specifically, the Final Disposition provides that

no adjudication of guilt has been made subsequent to entry of the plea or verdict shown above, and . . . the Court has reviewed the defendant's criminal record on file with the Georgia Crime Information Center, and . . . the defendant has not previously been convicted of a felony or used the provisions of the First Offender Act (Ga. Laws 1968, p.364). NOW, THEREFORE, the defendant consenting hereto, it is the judgment of the Court that no judgment of guilt be imposed at this time but that further proceedings are deferred and the defendant is hereby sentenced to confinement for the period of CT.1) FIVE (5) YEARS [on the felony offense of possession of cocaine]; CT.2) TWELVE (12) MONTHS [on the misdemeanor offense of carrying a concealed weapon]; CT.4) TWELVE (12) MONTHS [on the misdemeanor possession of marijuana]

12. The court allowed Defendant to receive First Offender Treatment under Georgia statutory law. "The First Offender Act allows first offenders to enter a plea of guilty or nolo contendere and to be placed on probation or incarcerated without an adjudication of guilt." *Priest v. State of Georgia*, 409 S.E.2d 657, 659 (Ga. 1991); see also Georgia Code Annotated § 42-8-60(a). The criminal sentence that the court imposed against Defendant may be served on probation, and upon Defendant's fulfillment of the terms of probation, including payment of fines and costs, Defendant shall be discharged without court adjudication of guilt. If Defendant violates the terms of probation, an adjudication of his guilt may be entered and he may be resentenced to the maximum penalty that the law allows based on his pleas of guilt to the charges.

13. Solely for purposes of this disciplinary proceeding, and although his guilt has not been adjudicated by the State of Georgia under the First Offender Program, Defendant stipulates that he committed the criminal acts to which he pled guilty in the State of Georgia.

14. Defendant tendered a plea of guilty in the State of Georgia to criminal offenses.

15. Defendant signed a Petition to Enter Plea of Guilty, and thereby admitted committing the criminal offenses to which he tendered a plea of guilty.

16. Defendant was represented by defense counsel, Tony Aham, in the criminal proceedings in Georgia, and Mr. Aham declared to the Hart County Superior Court, "I do not know of any reason why the court should not accept the plea of guilty."

17. The criminal hearing transcript from the Hart County Superior Court, which is part of the pleadings and documents before the Hearing Committee, shows that Defendant's guilty plea was tendered before the Hart County Georgia Superior Court and his plea was entered on the record in that court. The Georgia Court accepted Defendant's plea of guilty for purposes of placing Defendant in the Georgia First Offender's Program.

Based upon the foregoing Findings of Undisputed Fact, the Hearing Committee enters the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee. The Committee has jurisdiction over the Defendant, Fred J. Williams, and the subject matter of this proceeding.

2. There are no genuine issues of material fact and judgment may be entered as a matter of law, pursuant to the parties' motions for summary judgment.

3. North Carolina General Statute § 84-28(b)(1) and the Revised Rules of Professional Conduct do not require a finding that the Defendant has been convicted of the crimes to which he plead guilty in order for discipline to be imposed against Defendant by this Hearing Committee.

4. The "tender and acceptance of a plead of guilty . . . to a criminal offense showing professional unfitness shall constitute misconduct and serve as grounds for discipline." N.C. Gen. Stat. § 84-28(b)(1). Further, "it is professional misconduct for a lawyer to . . . commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects." Revised Rules of Professional, Rule 8.4(b).

5. Based on the stipulated facts, the Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) in that, as a matter of law, Defendant has tendered a plea

of guilty to criminal offenses showing professional unfitness, which plea was accepted by the Hart County Georgia Superior Court.

6. Based on the stipulated facts, the Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that, Defendant has violated Rule 8.4(b) of the Revised Rules of Professional Conduct by committing criminal acts that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects.

7. Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee hereby enters the following

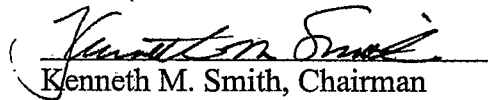
ORDER

Summary judgment is hereby GRANTED in favor of the North Carolina State Bar. Defendant is subject to discipline under N.C. Gen. Stat. § 84-28(b)(1) and Rule 8.4(b) of the Revised Rules of Professional Conduct. The only issue remaining to be decided by the Hearing Committee is what discipline ought to be imposed.

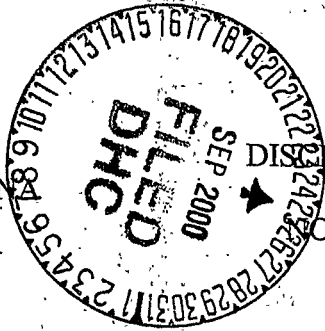
At the disciplinary hearing on July 14, 2000, Plaintiff's counsel objected and entered an exception to the Hearing Committee's grant of summary judgment in favor of the North Carolina State Bar.

Signed by the undersigned Hearing Committee chair with the consent of the other Hearing Committee members.

This the 21 day of September, 2000, nunc pro tunc, July 13, 2000.

  
Kenneth M. Smith, Chairman  
DHC Hearing Committee

WAKE COUNTY  
NORTH CAROLINA



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

THE NORTH CAROLINA STATE BAR,  
PLAINTIFF,

v.

FRED J. WILLIAMS, ATTORNEY  
DEFENDANT.

ORDER OF DISCIPLINE

This matter was heard on the 14<sup>th</sup> day of July 2000, before a Hearing Committee of the Disciplinary Hearing Commission composed of Kenneth M. Smith, Chair; Michael L. Bonfoey and Lorraine Stephens. The Defendant, Fred J. Williams, was represented by Irving Joyner. The plaintiff was represented by Larissa J. Erkman. All parties are properly before the Hearing Committee. The Committee has jurisdiction over the Defendant, Fred J. Williams, and the subject matter of this proceeding.

Summary judgment was granted for the North Carolina State Bar on the issue of whether Defendant is subject to discipline under N.C. Gen. Stat. § 84-28(b)(1) and Rule 8.4(b) of the Revised Rules of Professional Conduct. The only issue to be decided by the Hearing Committee is what discipline ought to be imposed.

Based upon the pleadings on file, including the Stipulations on Pretrial Conference submitted by the parties, upon the evidence and arguments of the parties concerning the appropriate discipline, and upon the Findings of Fact recited in the Order on Summary Judgment, the Hearing Committee hereby makes the following additional findings of fact:

FINDINGS OF FACT REGARDING DISCIPLINE

1. On May 22, 2000, an Order of Interim Suspension was entered by the Disciplinary Hearing Commission against Defendant, whereby Defendant's license to practice law was suspended until the conclusion of all disciplinary proceedings pending before the North Carolina State Bar. The Order of Interim Suspension became effective 30 days after entry of the order on June 21, 2000.
2. The Defendant's misconduct, as described in the Findings of Fact contained in the Order on Summary Judgment, is aggravated by the following factor:

Substantial experience in the practice of law, particularly as a criminal defense attorney, former Superior Court judge, and professor of law.

3. The Defendant's misconduct, as described in the Findings of Fact contained in the Order on Summary Judgment, is mitigated by the following factors:

- a) Absence of a prior disciplinary record;
- b) Absence of dishonest or selfish motive;
- c) Full and free disclosure to the Hearing Committee and cooperative attitude toward the proceedings;
- d) Excellent character and reputation in the legal community -- Defendant presented compelling evidence of his exemplary reputation as a law professor and practicing attorney in Durham, North Carolina.
- e) Imposition of other penalties or sanctions, in the form of criminal sanctions imposed by the Hart County Superior Court, including a 5-year probationary sentence and monetary penalties and fines; and
- f) A showing of sincere remorse for his misconduct.

4. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the Hearing Committee hereby enters the following

#### ORDER OF DISCIPLINE

1. The license of the Defendant, Fred J. Williams, is hereby suspended for three years. The suspension of Defendant's license shall be effective as of June 21, 2000, the effective date of the Interim Order of Suspension entered in this matter, and shall continue thereafter for a period of six (6) consecutive months, or until December 21, 2000.

2. The suspension of Defendant's license is thereafter stayed and the Defendant's license to practice law is reinstated so long as Defendant complies with the following terms and conditions prior to and during the period of the stay:

- (a) The Defendant shall not violate any state or federal laws.
- (b) The Defendant shall not violate any provisions of the North Carolina State Bar Discipline & Disability Rules or the Revised Rules of Professional Conduct.
- (c) The Defendant shall comply with all standard and special conditions of his suspended sentence in the State of Georgia under the First Offender's Program.

(d) The Defendant shall report to the Office of the Secretary of the North Carolina State Bar the name, address and telephone number of his probation officer in Durham County.

(e) The Defendant shall report to the Office of the Secretary of the North Carolina State Bar any finding by any court or probation officer that he has violated the terms of his probationary sentence under the First Offenders Program in the State of Georgia, regardless of whether punishment is imposed for said violation.

(f) Defendant shall not use, consume, or possess any controlled substances in violation of the laws of the State of North Carolina or the laws of the United States of America.

(g) Defendant shall submit to random drug testing and urinalysis within twelve hours after a telephone request by the Office of Counsel of the North Carolina State Bar. The test shall be performed at a testing facility designated by the North Carolina State Bar. A Notice of Request for a drug test shall be filed with the Disciplinary Hearing Commission in this matter giving the date and time of the request and the location where the test is to be performed. When filed, a copy of the Notice of Request shall be sent to Defendant by certified mail. The Defendant shall file with the Disciplinary Hearing Commission a Notice of Compliance, along with a certified copy of the drug test results, within ten (10) days of service upon Defendant of the Notice of Request. Random drug testing shall be performed at the expense of Defendant.

(h) Defendant shall file a Notice of Compliance with the Disciplinary Hearing Commission for each drug test that he undergoes at the request of his probation officer or any court pursuant to the terms of Defendant's suspended sentence under the Georgia First Offender Program. The Notice of Compliance shall state the date that the drug test was requested; the party requesting the drug test; the date and location where the drug test was performed; and shall attach a certified copy of the drug test results.

(i) Except by order of the Disciplinary Hearing Commission for good cause shown, the Office of Counsel shall not request that Defendant undergo a drug test within 30 days of any test performed on Defendant at the request of Defendant's probation officer or any court pursuant to the terms of Defendant's suspended sentence under the Georgia First Offender Program.

(j) Within six months of the effective date of this Order, Defendant, at his expense, shall obtain an addiction and mental health evaluation by a qualified physician approved by the Lawyer Assistant Program of the North Carolina State Bar and the State Bar Office of Counsel. The evaluation shall comply with the addiction/mental health evaluation protocol adopted by the



Lawyer Assistance Program. The evaluating physician shall, in part, consider whether Defendant suffers from an addiction to any legal or illegal substance and/or suffers from any mental health problem, disorder or disease.

(k) A copy of the physician's report on Defendant's addiction and mental health evaluation shall be provided to the Lawyer Assistance Program and to the State Bar Office of Counsel.

(l) If upon receipt of the physician's evaluation report the Lawyer Assistance Program deems it reasonably necessary, then Defendant shall enter into a consent order and rehabilitation contract with the Lawyer Assistance Program regarding a medical treatment plan under such terms and conditions as the Lawyer Assistance Program deems appropriate. Defendant shall comply with all terms of the consent order and rehabilitation contract throughout the period of the stayed suspension and shall cooperate fully with the Lawyer Assistance Program.

(m) As part of any consent order and rehabilitation contract with the Lawyer Assistance Program, Defendant shall authorize the Lawyer Assistance Program and its representatives to release all records and information concerning his participation in the Program to the Office of Counsel and the Disciplinary Hearing Commission. Such information may include, but is not limited to, records and information concerning whether Defendant has complied with the consent order and rehabilitation contract and records or reports of medical treatments or evaluations that Defendant receives or undergoes in conjunction with his participation in the Program. Defendant shall also expressly waive any right which he may otherwise have to confidential communications with persons acting on behalf of the Lawyer Assistance Program to the extent it is necessary for such persons to communicate to the Office of Counsel and the Disciplinary Hearing Commission whether Defendant is cooperating and satisfactorily participating in the agreed upon rehabilitation program or has completed that program.

(n) Defendant has an interest in keeping confidential those records that are subject to the physician-patient privilege, which interest overrides any interest of the public in obtaining disclosure of those records. That overriding interest cannot be protected by any measure short of sealing the records so produced. Except pursuant to an order of the Disciplinary Hearing Commission, or other court of competent jurisdiction, the Office of Counsel of the North Carolina State Bar shall keep confidential all physician's reports or other medical records obtained pursuant to subparagraphs 2j-2m above, and shall not disclose those records to any person other than officers, councilors and employees of the North Carolina State Bar and members of the Disciplinary Hearing Commission. Defendant's consent to an order and rehabilitation contract with the Lawyer Assistance Program shall not be deemed to be a waiver of the physician-patient privilege for any purpose other

than for production of documents and information to the Lawyer Assistance Program and to the Office of Counsel as required by this order.

(o) Defendant shall be responsible for all costs associated with complying with this order and the above-mentioned conditions. Under no circumstances, shall the State Bar be responsible to Defendant or any third parties for the costs of Defendant's compliance with the conditions of this order.

(p) Defendant shall pay all costs incurred in this proceeding and taxed against him by the Secretary of the North Carolina State Bar within 180 days of receiving notice of such costs.

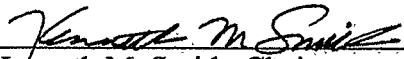
3. If during any period in which the three-year suspension is stayed the Defendant fails to comply with any one or more conditions stated in paragraph 2, then the stay of the suspension of his law license may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline & Disability Rules.

4. If the stay of the suspension of the Defendant's law license is lifted, the Disciplinary Hearing Commission may enter an order providing for such conditions as it deems necessary for reinstatement of the Defendant's license at the end of the three-year suspension period.

5. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0114(x) of the North Carolina State Bar Discipline & Disability Rules throughout the period of the stayed suspension.

Signed by the undersigned Hearing Committee chair with the consent of the other Hearing Committee members.

This the 21 day of September, 2000.

  
Kenneth M. Smith, Chairman  
DHC Hearing Committee