

DEC 1996
FILED
DHC

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
95 BCR 3

RECOMMENDATION OF HEARING COMMITTEE

Based upon the stipulation on pretrial conference, the evidence presented and the arguments of counsel and Petitioner, the Hearing Committee finds and concludes as follows:

1. All parties are properly before the Hearing Committee and the Hearing Committee has jurisdiction over the Petitioner and the subject matter of his petition.

2. The Petitioner was admitted to the practice of law in North Carolina on September 24, 1987.

3. From October of 1987 until August of 1988, Petitioner was engaged in the private practice of law in Robbinsville, N.C.

4. On or about August 28 and August 29, 1988, Petitioner was indicted by a grand jury on one felony count of extortion and one felony count of conspiracy.

5. In June of 1989, following a jury trial in Graham County Superior Court, Petitioner was found guilty of extortion and conspiracy to commit extortion. Petitioner was sentenced to four years in the North Carolina Department of Corrections, of which he served approximately seven and one-half months.

6. Petitioner appealed from the convictions, which were affirmed by the N.C. Court of Appeals on August 7, 1990.

7. Based upon the convictions, Petitioner was judicially disbarred by order entered by Judge Marlene Hyatt in Graham County on May 25, 1990. Petitioner appealed from the order of disbarment, which was vacated by the N.C. Court of Appeals on jurisdictional grounds.

8. On February 3, 1992, Petitioner was judicially disbarred by Judge C. Walter Allen, based upon the convictions. Petitioner also appealed from that order of disbarment, which was again vacated by the N.C. Court of Appeals on jurisdictional grounds. On discretionary review, the N.C. Supreme Court reversed and reinstated Judge Allen's order of disbarment, on the condition that it be deemed effective as of May 25, 1990. An amended order of disbarment was entered on September 29, 1994.

9. On May 30, 1995, Petitioner filed a petition for reinstatement of his law license as required by Rule .0125(a)(3)(A) of the Discipline & Disability Rules of the N.C. State Bar.

10. Petitioner published a notice of his intent to seek reinstatement as required by Rule .0125(a)(3)(A) of the Discipline & Disability Rules of the North Carolina State Bar.

11. Petitioner was not disbarred as a result of a disciplinary proceeding; therefore, the requirements of Rule .0125(a)(3)(B) are inapplicable.

12. Petitioner's citizenship was restored on December 29, 1990.

13. Petitioner has complied with Rule .0124, as required by Rule .0125(a)(3)(F).

14. Petitioner has complied with the applicable orders of the Disciplinary Hearing Commission, pursuant to Rule .0125(a)(3)(G).

15. Petitioner has complied with the orders and judgment of the Graham County Superior Court relating to his disbarment, pursuant to Rule .0125(a)(3)(H).

16. There was no evidence that Petitioner had engaged in the unauthorized practice of law during the period of his disbarment.

17. There was no evidence that Petitioner engaged in any conduct during the period of disbarment constituting grounds for discipline under G.S. 84-28(b).

18. Petitioner's disbarment was not the result of any misappropriation and no funds were disbursed by the Client Security Fund as a result of Petitioner's misconduct; therefore the requirements of Rules .0125(a)(3)(L) and .0125(a)(3)(M) do not apply.

19. At the time Petitioner filed his petition for reinstatement, at least five years had passed since May 25, 1990, the effective date of Petitioner's disbarment.

20. Petitioner presented the following evidence regarding Rule .0125(a)(4)(A), which requires Petitioner to prove by clear, cogent and convincing evidence that he has the competency and learning in the law required to practice law in this state:

- a. Since his disbarment, Petitioner has worked as a paralegal for several attorneys, including Jack Mraz, Frank Wade Hall, William Eubanks and John Sutton. Petitioner's duties as a paralegal included preparation of legal documents and pleadings, preparation of discovery and legal and factual research.
- b. Petitioner has read numerous legal periodicals since his disbarment, including advance sheets of cases argued in the N.C. Court of Appeals and N.C. Supreme Court.
- c. Petitioner has met or exceeded the minimum requirement for continuing legal education for licensed attorneys in each of the years since his disbarment in order to keep himself current in the law, and the courses taken include Wake Forest's General Practice Seminar, Wake Forest's 1991, 1993 and 1996 Annual Review courses, a Civil Litigation seminar, and a Legal Research seminar.
- d. Petitioner presented affidavits from three attorneys who are familiar with his present knowledge of the law certifying that he is competent to practice law.

21. Petitioner presented the following evidence regarding Rule .0125(a)(3)(K) which requires Petitioner to prove by clear, cogent and convincing evidence that he understands the current Rules of Professional Conduct:

- a. Petitioner has met or exceeded the minimum ethics requirement for continuing legal education for licensed attorneys in each of the years since his disbarment, and the courses taken on the subject of legal ethics include the North Carolina Bar Foundation's 1993 Professional Responsibility course and Wake Forest's Practical Legal Ethics course

- b. The Petitioner has read and studied the Rules of Professional Conduct during the period of his disbarment.

22. Petitioner presented the following evidence regarding Rule .0125(a)(3)(C), which requires Petitioner to prove by clear, cogent and convincing evidence that he has reformed and presently possesses the moral qualifications to practice law in this state, taking into account the gravity of the misconduct which resulted in the order of disbarment:

- a. During the period of his disbarment, Petitioner has continued to participate in church activities, including service as a vestry member, executive council member, master of ushers, lay reader, intercessor, intinctionist, and chalice bearer. Also through the church, Petitioner was the founding president of the Men's Club and worked with the Thompson Childrens home in several capacities.
- b. During his tenure as a legal assistant, Petitioner has maintained good work habits, is conscientious, dependable and trustworthy.
- c. Petitioner made multiple contributions in 1996 to the Buncombe County Fuel Fund, a charitable fund used to provide heating fuel to those less fortunate.
- d. Petitioner presented a number of letters and affidavits from attorneys and members of the public who testified to Petitioner's good character.
- e. Petitioner presented live testimony of a number of attorneys and members of the public who testified to Petitioner's good character.
- f. One of Petitioner's witnesses testified that Petitioner had conveyed to him that he was not guilty of the crimes of which he stands convicted and which led to his disbarment.
- g. Petitioner's own testimony amounted to a denial of guilt of the crimes of which he stands convicted and which led to his disbarment.

23. Petitioner presented the following evidence regarding Rule .0125(a)(3)(D) which requires Petitioner to prove by clear, cogent and convincing evidence that permitting him to resume the practice of law in this state would not be detrimental to the integrity and standing of the bar, the administration of justice or the public interest, taking into account the gravity of the misconduct which resulted in the order of disbarment:

- a. Several attorneys testified by affidavit and in person that they believed the bar would welcome Petitioner back, if his reinstatement petition is granted.

- b. Several judges and other public officials gave statements by letter, affidavit or in person in support of Petitioner's petition for reinstatement of his law license, including, John H. Peterson, the mayor of Brevard; Congressman Charles H. Taylor; Hon. Cecil Hill; Hon. Bruce Briggs and Hon. Stephen F. Franks.
- c. Petitioner testified that he was remorseful regarding the events which led to his disbarment and testified further that, if reinstated, he would not commit any further violations of the Rules of Professional Conduct.

24. Melanie Hite Clark and Sharon B. Alexander submitted letters in opposition to Petitioner's petition for reinstatement.

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

CONCLUSIONS OF LAW

1. On May 30, 1995, Petitioner filed a petition for reinstatement of his law license as required by Rule .0125(a)(3)(A) of the Discipline & Disability Rules of the N.C. State Bar.
2. Petitioner published a notice of his intent to seek reinstatement as required by Rule .0125 (a)(3)(A) of the Discipline & Disability Rules of the North Carolina State Bar.
3. Petitioner's citizenship was restored on December 29, 1990.
4. Petitioner has complied with all applicable orders of the Disciplinary Hearing Commission.
5. Petitioner has complied with the orders and judgment of the Graham County Superior Court relating to his disbarment.
6. At the time Petitioner filed his petition for reinstatement, at least five years had passed since May 25, 1990, the effective date of Petitioner's disbarment by the Graham County Superior Court.
7. Petitioner has demonstrated by clear, cogent and convincing evidence that he understands the current Rules of Professional Conduct.
8. Petitioner has demonstrated by clear, cogent and convincing evidence that he has the competency and learning in the law required to practice law in this state.
9. Petitioner has not engaged in the unauthorized practice of law during the period of disbarment.

10. Petitioner has not engaged in any conduct during the period of disbarment which would constitute grounds for discipline pursuant to N.C. Gen. Stat. 84-28.

11. Petitioner has not demonstrated by clear, cogent and convincing evidence that he has reformed and that he possesses the moral qualifications required for admission to practice law in this state, taking into account the gravity of the misconduct that resulted in the order of disbarment and in fact Petitioner's evidence provided clear, cogent and convincing proof that he has not in fact reformed.

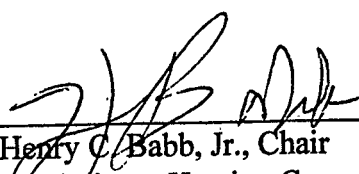
12. Petitioner has not demonstrated by clear, cogent and convincing evidence that his resumption of the practice of law within the state would not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest, taking into account the gravity of the misconduct which resulted in the order of disbarment.

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

RECOMMENDATION TO THE COUNCIL

The Hearing Committee hereby unanimously recommends to the Council of the North Carolina State Bar that Petitioner's petition for reinstatement be denied. For the purposes of Section .0125(a)(10), this recommendation shall be a final order unless Petitioner seeks to bring this recommendation before the Council of the North Carolina State Bar for their consideration. Petitioner shall pay the costs of this proceeding.

Signed by the undersigned chair with the full knowledge and consent of the other members of the Hearing Committee, this the 30th day of November, *nunc pro tunc* November 8, 1996.


Henry C. Babb, Jr., Chair
Disciplinary Hearing Committee