

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
91 DHC 23

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

NORTHROPE D. RICE, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter came on to be heard and was heard on February 27, 1992 before a hearing committee of the Disciplinary Hearing Commission composed of W. Harold Mitchell, Chairman; L. P. Hornthal, Jr., and William H. White. The North Carolina State Bar was represented by Fern E. Gunn and the Defendant was represented by Joseph B. Cheshire V, and Alan M. Schneider. Based upon the stipulations of the parties and the evidence admitted at the hearing, the committee finds the following facts by clear, cogent, and convincing evidence:

FINDINGS OF FACT

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, Northrope D. Rice, was admitted to the North Carolina State Bar on April 2, 1982, 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 Rule of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Wilmington, New Hanover County, North Carolina.
4. The Defendant did not file North Carolina individual income tax returns for calendar years 1988 and 1989.

balance was approximately \$7,400.00.

16. Defendant had an Individual Retirement Account (I.R.A.) at A. G. Edwards & Sons, Inc., a brokerage company. The balance in Defendant's I.R.A. ranged from \$1,630.00 to \$4,100.00 from April 28, 1989 to May 25, 1990.
17. On April 12, 1989, Defendant transferred \$4,000.00 from his investment account to his I.R.A. account.
18. The Defendant also did not file tax returns or pay North Carolina Individual Income Taxes for the years of 1986 and 1987.
19. The Defendant owed the North Carolina Department of Revenue the following amounts in taxes, penalties, and interest for each of the years he did not pay taxes:

1986	\$1,568.68
1987	\$1,479.73
1988	\$6,539.35
1989	\$4,708.64

20. The Defendant has paid all delinquent state income taxes, penalties and interest for the years of 1986, 1987, 1988 and 1989.
21. The Defendant failed to file federal income tax returns for the years of 1986, 1987, 1988 and 1989 when the returns were due. However, Defendant now has filed the returns.
22. The Defendant failed to pay federal income taxes for the years of 1986, 1987 and 1988. The Defendant paid estimated taxes in the amount of \$14,500.00 for 1989.
23. No criminal charges are pending against the Defendant relative to his failure to file federal income tax returns and pay federal income taxes for the years of 1986, 1987, 1988 and 1989.
24. The Defendant owes the Internal Revenue Service (IRS) in taxes, penalties and interest the following amounts:

1986 - Taxes:	\$4,030.89; Penalty and Interest:	\$4,693.98
1987 - Taxes:	\$3,795.50; Penalty and Interest:	\$3,933.50
1988 - Taxes:	\$20,005.00; Penalty and Interest:	\$14,835.31
1989 - Taxes:	\$2,232.00; Penalty and Interest:	\$1,288.74
25. The Defendant has not paid any of the delinquent federal income taxes owed to the IRS, but negotiations are pending regarding a payment

5. It is a violation of N. C. Gen. Stat. Section 105-236(9) for any person to willfully fail to file state income tax returns or willfully fail to pay state income taxes at the time or times required by law or regulations.
6. The North Carolina Department of Revenue charged the Defendant pursuant to N. C. Gen. Stat. Section 105-236(9) with two misdemeanor counts of willful failure to file individual state income tax returns for 1988 and 1989.
7. On June 10, 1991, the Defendant pled guilty to and was found guilty of two misdemeanor counts of willful failure to file individual state income tax returns for 1988 and 1989 in Wake County District Court.
8. The State of North Carolina and the Defendant, by and through Counsel, and pursuant to a plea agreement, tendered to the Court for consideration and the court accepted and ordered the following:

Upon a plea of guilty of two (2) misdemeanor counts of willfully failing to file North Carolina Individual Income Taxes for 1988 and 1989, the Court will impose a three (3) year sentence suspended on various conditions including the payment of restitution to the North Carolina Department of Revenue in the amount of \$6,543.00; the payment of a fine in the amount of \$5,000.00 and the cost of Court within three (3) years of the plea; and the performance of 100 hours of community service within two (2) years of the plea.

9. Defendant has made a full restitution to the North Carolina Department of Revenue which includes his payment of taxes, penalties and interest.
10. Defendant has additionally paid the \$5,000.00 fine and cost of court agreed upon by the State of North Carolina and the Defendant and so ordered by the Court.
11. The criminal offense of which Defendant was convicted is a serious crime as defined in Section 3 (30) of Article IX of the Rules and Regulations of the North Carolina State Bar (The Red Book).
12. For two cases, Defendant received \$71,250.00 as attorney's fees in 1988.
13. For two cases, Defendant received \$55,000.00 as attorney's fees in 1989.
14. In 1989, Defendant's investment account balances ranged from approximately \$4,700.00 to \$8,800.00.
15. At one time in 1990, Defendant's investment account


schedule.

26. During the time that the Defendant did not pay his state income taxes, he purchased an engagement ring with a value of \$3,000.00 to \$4,000.00 and he purchased a 1988 BMW automobile, paying \$16,000.00 in cash.
27. The Defendant is delinquent in his payment of student loans obtained in college in Michigan.

Based upon the foregoing Findings of Fact, the hearing committee makes the following Conclusions of Law:

- a) By failing to file state income tax returns for 1988 and 1989, the Defendant has engaged in conduct involving dishonesty in violation of Rule 1.2(C) and the Defendant committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B).
- b) By his conviction of two (2) counts of willful failure to file state income tax returns, the Defendant has engaged in conduct involving dishonesty in violation of Rule 1.2(C) and he has committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 1.2(B).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 16th day of March, 1992.


W. Harold Mitchell, Chairman
Hearing Committee of the
Disciplinary Hearing Commission

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
91 DHC 23

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

NORTHROPE D. RICE, ATTORNEY
Defendant

ORDER OF DISCIPLINE

This cause was heard on February 27, 1992 by a duly appointed hearing committee of the Disciplinary Hearing Commission consisting of W. Harold Mitchell, Chairman; L. P. Hornthal, Jr., and William H. White. In addition to the Findings of Fact and Conclusions of Law made following the evidentiary hearing, the hearing committee makes additional Findings of Fact relative to aggravating and mitigating factors as follows:

ADDITIONAL FINDINGS OF FACT

1. As aggravating factors, the hearing committee considered that the Defendant: (a) had a dishonest or selfish motive for his failure to pay income taxes, (b) demonstrated a pattern of misconduct in reference to the many years that he did not file or pay state and federal income taxes, and (c) had multiple offenses charged against him.
2. The hearing committee also considered the following mitigating factors: (a) the Defendant had no prior disciplinary record, (b) the Defendant gave a full and free disclosure to the hearing committee with regard to the allegations and he provided all records to the North Carolina Department of Revenue for its investigation, (c) the Defendant's good character and reputation as indicated by character witnesses who testified and submitted affidavits, (d) the Defendant has received other penalties or sanctions by the Court for his misconduct, (e) the Defendant has exhibited remorse for his conduct, and (f) the Defendant made a timely effort to make restitution to the North Carolina Department of Revenue.

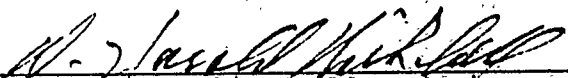
Based upon the Findings of Fact and Conclusions of Law entered in this case and the further Findings of Fact set forth above, the hearing committee enters the following ORDER OF DISCIPLINE:

1. The Defendant is suspended from the practice of law for a period of 5 years. This suspension is stayed for 5 years on the following terms and conditions:

- a) The Defendant shall perform 100 hours of community service in addition to the community service ordered by the State of North Carolina. These 100 additional hours of community service shall be completed by July 9, 1993. Within 30 days of the date of this hearing, the Defendant shall certify to the North Carolina State Bar the type of community service he intends to provide.
- b) Within 90 days of February 27, 1992, Defendant shall enter into an agreement with the Internal Revenue Service relative to payment of all delinquent taxes, penalties, and interest. Payment of the federal taxes, penalties, and interest shall be completed within the 5-year stayed suspension period.
- c) Within 90 days of February 27, 1992, Defendant shall reach an agreement with the State of Michigan relative to payment of approximately \$13,000.00 that is owed on his delinquent student loan. The Defendant shall complete payment of that loan within the 5-year stayed suspension period.
- d) Defendant shall annually certify to the North Carolina State Bar that he is satisfying his obligation to the IRS and his obligation to pay his student loan.
- e) During the 5-year stayed suspension period, the Defendant shall not violate any laws of the State or Federal government. Also during this 5-year stayed suspension period, the Defendant shall not violate any rules of ethics of the North Carolina State Bar.

2. The Defendant shall pay the cost of this proceeding.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 16 day of March, 1992.


W. Harold Mitchell, Chairman
Hearing Committee of the
Disciplinary Hearing Commission


00830

ADDENDUM TO THE ORDER OF DISCIPLINE

This Hearing Committee is concerned about the precedence this case may establish because its decision has been based in part on the decisions of North Carolina State Bar v. Ernest Ray Briggs, 88 DHC 20, and North Carolina State Bar v. Rodney Allen Cook, 88 DHC 21. The Committee questioned the impact of the "Stare Decisis doctrine" on its deliberations and concluded that the discipline in those two decisions should be followed in this case because of the similarity of facts. Were it not for the discipline ordered in the Briggs and Cook cases, the Hearing Committee would have imposed an active suspension from the practice of law in this case. This Committee believes that the failure of any attorney to file income tax returns is a "serious crime" as defined in Section 3(30) of Article IX of the Rules and Regulations of the North Carolina State Bar (The Red Book) and could or should in the appropriate case and absent mitigating circumstances subject an attorney who fails to timely file income tax returns to disbarment or active suspension of his or her law license.

Attorneys charged with failure to file income tax returns are forewarned that this Hearing Committee recommends to future Hearing Committees that they not consider themselves bound by this decision, the Briggs and Cook decisions, nor any "Stare Decisis doctrine" as it relates to discipline to be imposed for failure to file income tax returns by attorneys.

This addendum to the ORDER OF DISCIPLINE is signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee, this the 16 day of March, 1992.


W. Harold Mitchell, Chairman
Hearing Committee of the
Disciplinary Hearing Commission