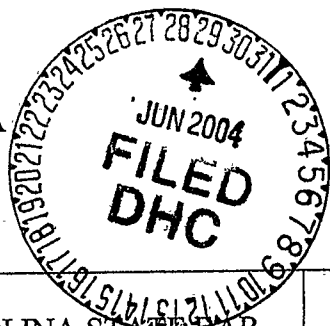


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NORTH CAROLINA

WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
04 DHC 7

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

RICKY F. SHUMATE, Attorney,

Defendant

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER OF DISCIPLINE

This matter was heard on the 18<sup>th</sup> day of June, 2004, before a hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair, M. Ann Reed, and Marguerite P. Watts. Jennifer A. Porter represented the Plaintiff, the North Carolina State Bar. Stephen E. Robertson represented the Defendant, Ricky F. Shumate. Based upon the pleadings and the evidence introduced at the hearing, the hearing committee hereby enters the following

## 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, Ricky F. Shumate, was admitted to the North Carolina State Bar on 1 September 1974, 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. During the periods relevant to this proceeding, Defendant was actively engaged in the private practice of law in Greensboro, Guilford County, North Carolina.

4. Defendant was properly served with process and the hearing was held with due notice to all parties.

5. Defendant willfully and unlawfully failed to timely file a state individual income tax return for tax year 2000 when that tax return was due, as required by N.C. Gen. Stat. §§ 105-152 and 105-157.

6. Defendant filed a state income tax return for the 2000 tax year on or about August 27, 2002.

7. Defendant willfully and unlawfully failed to timely pay state individual income taxes for 1997, 1998, 1999, and 2000.

8. The North Carolina Department of Revenue served an order garnishing Shumate's bank account to collect outstanding state individual income taxes in January 2003.

9. The North Carolina Department of Revenue agreed to release the garnishment if Shumate would pay \$1,200 and enter into a payment agreement to pay the remainder of his outstanding state individual income taxes.

10. Shumate paid \$1,200 to the North Carolina Department of Revenue in March 2003 and entered into a payment agreement to pay \$100 per month. This payment agreement was signed on July 15, 2003.

11. Shumate is currently in a payment agreement with the North Carolina Department of Revenue, the terms of which will result in payment of his outstanding state individual income taxes in approximately eighteen (18) years.

12. Willful failure to file or pay a state income tax when due is a Class 1 misdemeanor under N.C. Gen. Stat. § 105-236(9).

#### CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, Ricky F. Shumate, and the subject matter.

2. 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) as follows:

a. By unlawfully and willfully failing to timely file his 2000 state income tax return when that return was due, Shumate committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b).

b. By unlawfully and willfully failing to timely pay state income taxes when those taxes were due for 1997, 1998, 1999, and 2000, Shumate committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning appropriate discipline, the hearing committee hereby makes additional

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The Committee finds no aggravating factors.
2. The Defendant's misconduct is mitigated by the following factors:
  - a. Absence of a prior disciplinary record;
  - b. Absence of a dishonest or selfish motive;
  - c. Personal or emotional problems, including significant depression stemming from divorce and difficult financial times, contributing to his misconduct;
  - d. Timely good faith effort to make restitution or to rectify the consequences of his misconduct, including unilaterally discovering his failure to timely file his 2000 state income tax return and filing it as soon as possible after discovery, entry into an installment agreement with the North Carolina Department of Revenue, and seeking entry into an installment agreement with the Internal Revenue Service;
  - e. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings;
  - f. Good character and reputation;
  - g. Substance abuse problem in the form of untreated alcoholism during the period of time in which the misconduct occurred, contributing to the misconduct;
  - h. Interim rehabilitation, including treatment with PALS and continuing participation in PALS as a volunteer;
  - i. Remorse.

Based upon the foregoing factors and the arguments of the parties, the hearing committee hereby enters the following

#### ORDER OF DISCIPLINE

1. The license of the Defendant, Ricky F. Shumate, is hereby suspended for thirty (30) days and that suspension is stayed for one (1) year upon the following terms and conditions. During the stayed suspension, the Defendant shall:

a. Comply with the terms of all agreements with the Internal Revenue Service and the North Carolina Department of Revenue in existence during the stay;

b. Provide the State Bar with documentation from the Internal Revenue Service and the North Carolina Department of Revenue showing compliance with the terms of any agreements with these entities, documenting compliance from the date of the entry of this order through sixty (60) days prior to the expiration of the one year stay and filed with the State Bar no later than fifteen (15) days prior to expiration of the one year stay;

c. File and pay all future taxes in a timely manner;

d. Provide the State Bar with copies of all tax returns filed during the stay and proof of payment of taxes due during the stay, filed with the State Bar contemporaneously with filing with the Internal Revenue Service or the North Carolina Department of Revenue;

e. Not violate any laws of the State of North Carolina or of the United States;

f. Not violate any provision of the Revised Rules of Professional Conduct;

g. Pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days of notice of the costs being served upon him.

h. Pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis; and

i. Keep his address of record with the North Carolina State Bar current, accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication.

2. If during the stay of the thirty day suspension the Defendant fails to comply with any one or more of the conditions stated in Paragraph 1(a) through 1(e) above, 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 and Disability Rules.

3. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant will comply with each of the following conditions precedent to reinstatement:

a. Defendant will have submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order activating his suspension;

b. Defendant will not have violated any of the Revised Rules of Professional Conduct;

c. Defendant will not have violated any laws of the State of North Carolina or of the United States;

d. Defendant will have paid all costs of this proceeding as assessed by the Secretary;

e. Defendant will show that he is not then suffering from any disability that would impair his ability to practice law;

f. Defendant will have complied with the terms of any installment payment agreements with the Internal Revenue Service and the North Carolina Department of Revenue during the suspension period;

g. Defendant will have provided the State Bar with documentation from the Internal Revenue Service and the North Carolina Department of Revenue showing compliance with the terms of any payment agreements with these entities during the suspension period;

h. Defendant will have timely filed and paid any state or federal taxes coming due during the period of the suspension;

i. Defendant will have provided the State Bar with copies of all tax returns filed during the suspension and proof of payment of any taxes coming due during the suspension, filed with the State Bar contemporaneously with filing with the Internal Revenue Service or the North Carolina Department of Revenue;

j. If the suspension was activated for Defendant's failure to timely file and/or pay state and/or federal individual income tax, Defendant will have

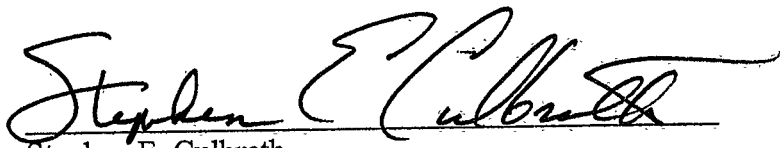
rectified the deficiency by filing and/or paying as appropriate the income tax(es) at issue and will have provided proof of such to the State Bar;

k. Defendant will have paid all Membership dues and Client Security Fund assessments and will have complied with all Continuing Legal Education requirements on a timely basis as if still in practice during the suspension; and

l. Defendant will have kept his address of record with the North Carolina State Bar current, will have accepted all certified mail from the North Carolina State Bar, and will have responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication.

4. 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 and Disability Rules throughout the period of the stayed suspension.

Signed by the Chair with the consent of the other hearing committee members, this the 28 day of June, 2004.



Stephen E. Culbreth  
Chairman, Disciplinary Hearing Committee