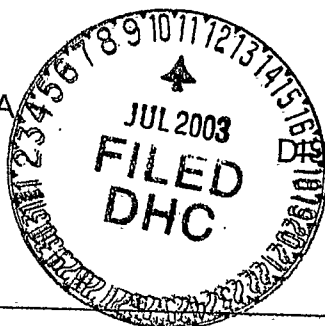


22510

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 08

THE NORTH CAROLINA STATE BAR,
Plaintiff,

v.

THOMAS P. SHELBY, Attorney,
Defendant.

CONSENT ORDER OF
DISCIPLINE

This matter was heard on the 11th day of July, 2003, before a hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair; Carlyn G. Poole and Betty Ann Knudsen. Ernest Jay Reeves, Jr. represented the defendant, Thomas P. Shelby. Thomas F. Moffitt represented the plaintiff. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Based upon the consent of the parties the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.
2. The defendant, Thomas P. Shelby, was admitted to the North Carolina State Bar on September 8, 1995 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.
3. During all times relevant hereto the defendant was actively engaged in the practice of law and maintained a law office in Goldsboro, North Carolina.
4. The defendant was properly served with process and has waived his right to a formal hearing.
5. The defendant unlawfully and willfully failed to file state withholding tax returns or pay the income tax withheld from his employees' wages from January 1-August 31, 2000, as required by N.C. Gen. Stat. § 105-163.6.

6. On October 5, 2000, the defendant was charged with six criminal counts of unlawfully and willfully failing to file state withholding tax returns or pay the income tax withheld from his employees' wages from January 1 - August 31, 2000, in violation of N.C. Gen. Stat. § 105-236 (9). (Wayne County File No. 00 CR 058932 for the period from January 1 - March 31, 2000; File No. 00 CR 058933 for April 1 - 30, 2000; File No. 00 CR 058934 for May 1 - 31, 2000; File No. 00 CR 058935 for June 1 - 30, 2000; File No. 00 CR 058936 for July 1 - 31, 2000; and File No. 00 CR 058937 for August 1 - 31, 2000).

7. On May 8, 2001, the defendant pled guilty to one count of unlawfully and willfully failing to file state withholding tax returns or pay the income tax withheld from his employees' wages as charged in File No. 00 CR 058932, and the court entered a prayer for judgment continued. The State voluntarily dismissed the five other pending charges for that offense that remained for the other respective time periods.

8. The defendant unlawfully and willfully failed to pay the annual state license tax for the privilege of practicing law that was due on July 1, 1998 and July 1, 1999.

9. On October 5, 2000, the defendant was charged with two criminal counts of unlawful and willful failure to pay the annual privilege tax due on July 1, 1998 and July 1, 1999, respectively, in violation of N.C. Gen. Stat. § 105-236 (9). (Wayne County File No. 00 CR 058938 for tax due in 1998, and File No. 00 CR 058939 for tax due in 1999).

10. On May 8, 2001, the defendant pled guilty to unlawful and willful failure to pay the privilege tax owed in 1999 as charged in File No. 00 CR 058939, and the court entered a prayer for judgment continued. The State voluntarily dismissed the other charge for privilege tax the defendant owed in 1998. (File No. 00 CR 058938).

11. The defendant unlawfully and willfully failed to pay state income tax for tax year 1992 and to file state income tax returns for tax years 1997 and 1998.

12. On October 5, 2000, the defendant was charged with one criminal count of unlawful and willful failure to pay state income tax for tax year 1992 (Wayne County File No. 00 CR 058940) and two counts of unlawful and willful failure to file state tax returns for 1997 and 1998 (File Nos. 00 CR 058941 and 00 CR 058942, respectively), in violation of N.C. Gen. Stat. § 105-236 (9).

13. On May 8, 2001, the defendant pled guilty to unlawful and willful failure to file his income tax for tax year 1998 (File No. 00 CR 058942), and the court entered a prayer for judgment continued. The State voluntarily dismissed the other two charges.

Based upon the consent of the parties and the foregoing Findings of Fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant and the subject matter of this proceeding.

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) (1) & (2) as follows:

(a) Defendant's guilty pleas to the three criminal offenses described above constitute professional misconduct and unfitness to practice law for which he may be disciplined as provided in N.C. Gen. Stat. § 84-28 (b)(1) and Rule .0115 of the Discipline & Disability Rules of the N.C. State Bar, (27 NC A.C. 1B § .0115), and establish professional misconduct for violation of the Revised Rules of Professional Conduct as provided in N.C. Gen. Stat. § 84-28 (b)(2) in that they show that he committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4 (b).

(b) By unlawfully and willfully failing to file state withholding tax returns or to pay the income tax withheld from his employees' wages between January 1 - August 31, 2000, the defendant committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4 (b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4 (c).

(c) By unlawfully and willfully failing to pay the annual state privilege license tax due on July 1, 1998 and July 1, 1999, the defendant committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4 (b) and engaged in conduct involving dishonesty in violation of Rule 8.4 (c).

(d) By unlawfully and willfully failing to pay his state income tax for tax years 1992 and failing to file state income tax returns for tax years 1997 and 1998, Shelby committed criminal acts that reflect adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4 (b) and engaged in conduct involving dishonesty in violation of Rule 8.4 (c).

Based upon the consent of the parties, the hearing committee also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's conduct is aggravated by the following factors:
 - A. Dishonest and selfish motive,
 - B. Multiple offenses, and
 - C. Pattern of misconduct.
2. The defendant's conduct is mitigated by the following factors:
 - A. Absence of prior disciplinary record,
 - B. Defendant has paid the taxes for which he was criminally charged.
3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing findings of fact and conclusions of law and the findings regarding discipline and based upon the consent of the parties, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. The defendant is hereby suspended from the practice of law for three years, effective thirty (30) days from service of this order upon the defendant.
2. After no less than nine months following the effective date of the order, the defendant may file a verified petition for a stay of the remaining period of the suspension in accordance with the requirements of 27 NCAC 1B. § .0125 (b) of the Discipline Rules. His remaining suspension may be stayed if he establishes by clear, cogent and convincing evidence that he has met the following conditions:
 - a. Defendant has complied with the requirements of Discipline Rules .0124 and .0125 (b).
 - b. Defendant has paid the costs assessed in connection with this proceeding within 45 days of service upon him of a notice of these costs.
 - c. Defendant has not violated any federal or state laws or any of the Revised Rules of Professional Conduct (2003).
 - d. Defendant has provided documentation to the State Bar to prove that he has paid the taxes for which he was criminally charged.

e. Defendant has provided documentation to the State Bar to prove that he has timely filed returns and paid all state and federal taxes during the period of his suspension.

f. Defendant has provided documentation to the State Bar that he has been evaluated by the State Bar's Lawyer Assistance Program (LAP) and has abided by the LAP recommendation for treatment, if any, for any follow-up program for physical, mental, emotional or substance abuse problem, if any such problem is found to exist. Provided further that he shall enter into a LAP Recovery Contract, comply with its terms and authorize LAP to forward semi-annual reports to the State Bar no later than January 1st and July 1st for each year for the remainder of the suspension period or the recovery contract, whichever is shorter. The reports shall either (i) certify Shelby's continued compliance with the contract or (ii) alternatively, disclose the details of his non-compliance with the contract.

g. Defendant shall complete 150 hours of community service within six months of the entry of this order. Provided further that the defendant shall file a report, in a form acceptable to the State Bar, showing the number of hours worked, the nature of the work performed and for whom the work was performed. The report shall be due on the first day of each month following the entry of this order until the community service requirement has been satisfied.

h. Defendant has responded to all State Bar requests for information by the deadline stated in the communication or within 30 days, whichever is earlier, as required by Rule 8.1 (b) of the Revised Rule of Professional Conduct (2003).

i. Defendant has timely complied with all State Bar membership and Continuing Legal Education requirements.

3. If no stay is sought or if a stay of suspension is obtained and subsequently is lifted and the suspension is activated for any reason, the defendant must show that he has complied with each of the following conditions precedent to reinstatement of his law license:

a. Defendant has complied with the requirements of Discipline Rules .0124 and .0125 (b).

b. Defendant has paid the costs assessed in connection with this proceeding.

c. Defendant has not violated any federal or state laws or any of the Revised Rules of Professional Conduct (2003).

d. Defendant has provided documentation to the State Bar to prove that he has paid the taxes for which he was criminally charged.

e. Defendant has provided documentation to the State Bar to prove that he has timely filed and paid all state and federal taxes during the period of his suspension.

f. Defendant has provided documentation to the State Bar that he has been evaluated by the State Bar's Lawyer Assistance Program (LAP) and has abided by the LAP recommendation for treatment, if any, for any follow-up program for physical, mental, emotional or substance abuse problem, if any such problem was found to exist. Provided further that if he was required to enter into a LAP Recovery Contract that he did so, complied with its terms, and authorized LAP to forward semi-annual reports to the State Bar no later than January 1st and July 1st for each year during the suspension period or the recovery contract, whichever was shorter, certifying his compliance with the contract.

g. Defendant has completed 150 hours of community service and documented, in a form acceptable to the State Bar, the number of hours worked, the nature of the work performed and for whom the work was performed.

h. Defendant has responded to all State Bar requests for information by the deadline stated in the communication or within 30 days, whichever is earlier, as required by Rule 8.1 (b) of the Revised Rule of Professional Conduct (2003).

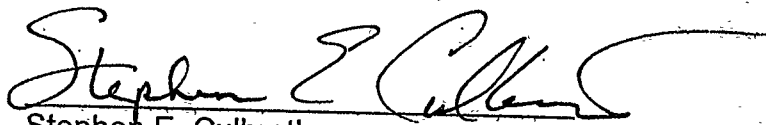
i. Defendant has timely complied with all State Bar membership and Continuing Legal Education requirements.

4. The defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from service of this order upon the defendant.

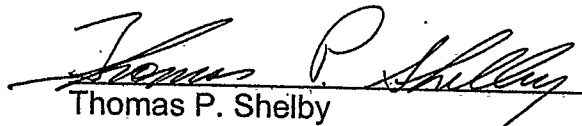
5. The defendant shall pay the costs of this proceeding as assessed by the Secretary Bar no later than 30 days from service of this order upon the defendant.

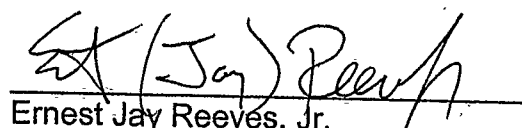
6. The defendant shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").


Signed by the undersigned chairman with the full knowledge and consent of the other hearing committee members, this the 11th day of July 2003.


Stephen E. Culbreth
Chairman, Hearing Committee

Agreed to and consented by:


Thomas P. Shelby
Defendant


Ernest Jay Reeves, Jr.
Attorney for the Defendant


Thomas F. Moffitt
Attorney for the Plaintiff

Shelby Consent Order of Discipline (7-11-03)