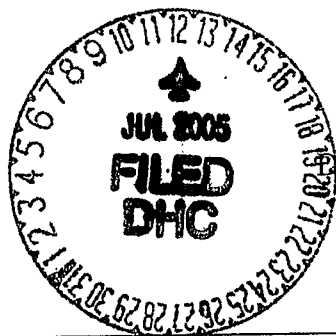


6065

NORTH CAROLINA
WAKE COUNTY



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

IN THE MATTER OF:)

ORDER RECOMMENDING
DENYING REINSTATEMENT

REINSTATEMENT OF JOE K. BYRD, JR.)

This matter came on to be heard and was heard by a hearing committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair, Elizabeth Bunting and Marguerite P. Watts; with James B. Maxwell representing the petitioner, Joe K. Byrd, Jr. (hereinafter "Byrd") and A. Root Edmonson representing the North Carolina State Bar. Based upon the stipulations of the parties, the evidence presented at the hearing and the arguments of counsel for the parties, the hearing committee makes the following:

FINDINGS OF FACT

1. Not more than six months or less than 60 days before the filing of the Petition seeking Reinstatement on behalf of Byrd, a Notice of Intent to seek Reinstatement was published by the Petitioner in the Spring, 2003 *Journal* of the North Carolina State Bar.

2. The complainant in regard to the conduct that led to the disbarment of Byrd: to wit, various law enforcement officers for Burke County, NC and Counsel for the North Carolina State Bar, were appropriately notified by Byrd of his intention to seek reinstatement.

3. Byrd's citizenship has been restored.

4. Byrd complied with the provisions of Rule .0124 in existence at the time of his disbarment in 1994.

5. Byrd complied with all applicable orders of the North Carolina State Bar.

6. Byrd complied with all orders and judgments of the United States District Court for the Western District of North Carolina with the exception of completing the payments ordered by the Hon. Lacy H. Thornburg as restitution in his July 13, 1999 judgment.

7. Byrd did not engage in the unauthorized practice of law during his disbarment.

8. Byrd did not engage in conduct during the time of his disbarment that would be grounds for discipline under G. S. §84-28(b).

9. Byrd understands the current Rules of Professional Conduct.
10. Byrd paid all dues and fees owed to the North Carolina State Bar.
11. In 1974, Byrd graduated from the School of Law at the University of North Carolina and joined his father and uncle in the practice of law in Morganton, NC at the firm of Byrd, Byrd, Ervin and Blanton.
12. Byrd remained with his family's firm until 1977 when he left to start his own practice. Although he sometimes practiced in association with one or more other attorneys, from 1983 through 1994 he was a solo practitioner in Morganton where he engaged in a general practice with special emphasis on criminal law.
13. In 1989, Byrd started a small grading contracting business with one of his brothers. This business soon became a financial drain rather than a benefit.
14. In 1990, Byrd's wife developed breast cancer that she battled until her death in 1999. Her medical insurance was canceled in 1992, which placed an increasing financial drain on Byrd's financial resources. The Byrds had three daughters who were in college during this period of time.
15. In 1993, Byrd was offered an opportunity to purchase some heavy grading equipment at a price that he knew was "too good" to be legitimate. Nonetheless, and in an effort to support the struggling business, he made the purchase. Later that year, the grading contracting business closed for good.
16. In 1994, a former client of Byrd's approached him about assisting her in selling some marijuana. This was an effort directed by local law enforcement officers who taped conversations between the two. Although Byrd refused his former client's offers on eighteen occasions, he finally agreed to assist her in distributing a quantity of marijuana. On the night that the transfer of marijuana occurred at Byrd's house, he was arrested.
17. On August 1, 1994, Byrd was indicted in the United States District Court for the Western District of North Carolina on three counts relating to possessing, attempting to possess and conspiracy to possess marijuana with the intent to distribute.
18. On September 9, 1994, Byrd entered a guilty plea to one count of conspiracy to possess marijuana with the intent to distribute.
19. On October 17, 1994, Byrd tendered the surrender of his NC law license to the Council of the North Carolina State Bar by affidavit that admitted that he was guilty of conspiracy to possess with the intent to distribute between 20 and 40 kilograms of marijuana.
20. On October 21, 1994, the Council accepted Byrd's tender of license and Byrd was

disbarred.

21. On March 14, 1995, Judge Richard L. Voorhees sentenced Byrd to a prison term of 34 months with 3 years of supervised release to follow the prison term.

22. In early 1998, Byrd was released to a halfway house in Raleigh, NC. Initially, and as part of his probation, Byrd worked for a landscaping business in Raleigh and completed 100 hours of community service with the Food Bank of North Carolina. Later that year, Byrd started working in the law office of former U.S. Senator Robert Morgan as a paralegal and continued to volunteer at the Food Bank after his required service was completed. Byrd continued to work for Robert Morgan's law firm after his release from his active prison sentence.

23. In 1999, for his continuing service to the Food Bank, Byrd received the first Golden Pallet Award from the Food Bank. This award has become an annual award for the Food Bank's most outstanding volunteer.

24. While Byrd was working for Robert Morgan, he was again indicted in the United States District Court for the Western District of North Carolina for aiding and abetting the transportation of stolen goods in interstate commerce. The conduct charged in this indictment occurred in 1993 and involved the purchase of the heavy grading equipment that he purchased that year.

25. On July 13, 1999, upon Byrd's guilty plea, Judge Lacy H. Thornburg, after finding that the government's failure to indict Byrd earlier on this charge called for a downward departure, sentenced Byrd to time served and placed Byrd on supervised release for two years. Judge Thornburg also ordered Byrd to pay \$138,189.29 in restitution. Robert Morgan was a witness for Byrd in that proceeding, and Byrd continued to work as a paralegal in his firm after this proceeding was concluded.

26. In late 1999, Byrd determined that he needed to return to the county where he had been reared, where he had practiced law successfully for many years, and where the events and publicity that led to his disbarment had occurred. Byrd moved back home to Drexel, NC where he has remained to the present time.

27. When he returned to Burke County, Byrd initially worked as a paralegal in the law office of C. Gary Triggs.

28. In 2000, Byrd was offered higher pay and began to work as a paralegal in the law office of Lewis E. Waddell. Byrd remained with Waddell until 2001 when Waddell developed liver problems that required him to close his law office.

29. At that time, Byrd returned to Gary Triggs' office where he remained until 2004

30. Beginning in 2004, and continuing up to the time of the hearing herein, Byrd has been self-employed as a contractor/carpenter in the Burke County community.

31. Upon his return to Burke County, Byrd became very active in his home church, Drexel First Baptist Church. He has been active in the choir and served on and chaired a number of committees. However, his biggest commitment of time at Drexel Baptist was in formation of AWANA. This is a church related activity that reaches out to teenagers in the community who are considered "at risk." It has grown to where there are as many as 30-40 young people engaged in this program at any given time. Byrd has recently been elected a Deacon of Drexel First Baptist Church.

32. In addition to his work in the church, Byrd has been active in the community, particularly in helping the elderly with repairs to their homes, taking them shopping or simply in visiting with them.

33. On many occasions since his return to Burke County, Byrd has shared the story of his "downfall" to community citizens with whom he visits or talks with in day-to-day living. However, his most frequent "testimonials" have occurred in connection with his work with the youth in the AWANA program where he hopes they can benefit from his lesson that temptation is constant and the opportunity to fall is always present.

34. The hearing committee heard testimony from Sen. Morgan, former Superior Court Judge Forrest Ferrell, Burke County District Court Judges John R. Mull and Charles T. Edwards, Burke County lawyers Daniel Kuehnert and M. Alan LaCroy, and Mr. Charles E. Taylor, a long time citizen and resident of Burke County, in which they expressed their opinions that Byrd's reinstatement would not be detrimental to the integrity and standing of the bar or to the administration of justice.

35. In addition, the hearing committee considered letters recommending Byrd's reinstatement from the present Clerk of Superior Court of Burke County, the present Register of Deeds of Burke County, the Sheriff of Burke County, the Chief of Police of Drexel and the former Chief of Police of Drexel (some of whom were involved in the investigation and prosecution of Byrd.) The same recommendation was expressed by 55 other elected officials, lawyers, and citizens of Burke County.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. Byrd published adequate notice of his intent to seek reinstatement in compliance with Rule .0125(a)(3)(A).
2. Byrd notified the complainants that led to his disciplinary proceeding of his intent to seek reinstatement in compliance with Rule .0125(a)(3)(B).
3. Due to the severity of Byrd's crimes, Byrd has not proven by clear and convincing

evidence that he has reformed and presently possesses the moral character required for admission to practice law in this state taking into account the gravity of the misconduct which resulted in the Order of Disbarment. Byrd has not satisfied his burden pursuant to Rule .0125(a)(3)(C),

4. Byrd's reinstatement to the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice. However, due to the severity of Byrd's crimes, Byrd has not satisfied his burden of proving that his reinstatement will not be detrimental to the public's interest. Byrd has not satisfied his burden pursuant to Rule .0125(a)(3)(D).

5. Byrd's citizenship has been restored in compliance with Rule .0125(a)(3)(E).

6. Byrd, through a trustee approved by the Court, wound down his law practice after his arrest in compliance with Rule .0125(a)(3)(F).

7. Byrd complied with all applicable orders of the North Carolina State Bar in compliance with Rule .0125(a)(3)(G).

8. Because Judge Thornburg's 1999 order of restitution was not entered in a matter that resulted in Byrd's disbarment, and because Byrd complied with all other orders of the courts related to the offense for which he was disbarred, Byrd is in compliance with Rule .0125(a)(3)(H).

9. Byrd did not engage in the unauthorized practice of law during his disbarment in compliance with Rule .0125(a)(3)(I).

10. Byrd did not engage in conduct during the time of his disbarment that would be grounds for discipline under G. S. §84-28(b) in compliance with Rule .0125(a)(3)(J).

11. Byrd understands the current Rules of Professional Conduct in compliance with Rule .0125(a)(3)(K).

12. The provisions of Rule .0125(a)(3)(L) and (M) did not apply to Byrd's reinstatement petition.

13. Byrd paid all dues and fees owed to the North Carolina State Bar in compliance with Rule .0125(a)(3)(N).

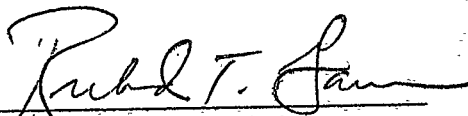
BASED UPON the foregoing Findings of Fact and Conclusions of Law, the hearing committee enters the following Order:

1. The hearing committee considered all of the evidence offered at Byrd's reinstatement hearing and recommends to the Council that Byrd's petition for reinstatement to the practice of law in North Carolina be denied.

2. If Byrd chooses not to ask the Council to review the decision of this hearing

committee, this order will constitute the final order in this matter.

Signed by the Chair of the hearing committee with the full knowledge and consent of the other members of the hearing committee this the 11th day of July 2005.



Richard T. Gammon, Chair
Hearing Committee