

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 DHC 15

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JAMES T. PARKER, Attorney,

Defendant

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

This matter was considered by a hearing committee of the Disciplinary Hearing Commission duly appointed in this case. Brian P.D. Oten represented Plaintiff, the North Carolina State Bar. Douglas J. Brocker represented Defendant, James T. Parker. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant knowingly, freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, James T. Parker ("Parker" or "Defendant"), was admitted to the North Carolina State Bar in 1991 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all or part of the relevant periods referred to herein, Parker was engaged in the practice of law in the State of North Carolina and maintained a law office in Gastonia, Gaston County, North Carolina.

4. Parker was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

5. On 19 June 2007, Parker intentionally took Ibuprofen, Goody Powders, and B.C. Powder from a Harris Teeter grocery store in Gaston County without paying for the goods. The total value of the goods taken was \$23.66.

6. After being arrested by Officer G.A. Grier of the Gastonia Police Department, Parker was subsequently charged with misdemeanor larceny in the matter of *State of North Carolina v. James Parker*, file number 07 CR 059091.

7. On 17 September 2007, Parker appeared in Gaston County District Court and pled no contest to the lesser included charge of misdemeanor shoplifting/concealment of goods.

8. After hearing the factual basis for the charge, the Court found Parker guilty of misdemeanor shoplifting/concealment of goods.

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over Defendant, James T. Parker, and the subject matter.

2. Shoplifting/concealment of merchandise is a criminal offense showing professional unfitness as defined by 27 N.C.A.C. 1B § .0103(17).

3. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline as follows:

a. Pursuant to N.C. Gen. Stat. § 84-28(b)(1), for conviction of shoplifting/concealment of goods, a criminal offense showing professional unfitness; and

b. Pursuant to N.C. Gen. Stat. § 84-28(b)(2), for engaging in conduct in violation of the Revised Rules of Professional Conduct in effect at the time of his actions as follows: by intentionally taking Ibuprofen, Goody Powders, and B.C. Powder from a Harris Teeter without paying for the goods, Parker committed a criminal act which reflects adversely on his honesty, trustworthiness and fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS REGARDING DISCIPLINE

1. Parker's misconduct is aggravated by the following factors:
 - a. Dishonest or selfish motive; and
 - b. Pattern of misconduct.
2. Parker's misconduct is mitigated by the following factors:
 - a. Absence of a prior disciplinary record;
 - b. Personal or emotional problems;
 - c. Full and free disclosure to the hearing committee or cooperative attitude toward the proceedings;
 - d. Interim rehabilitation;
 - e. Imposition of other penalties or sanctions; and
 - f. Remorse.
3. The mitigating factors outweigh the aggravating factor.
4. Defendant voluntarily contacted the Lawyer's Assistance Program (LAP) in January 2008 and entered into a contract with the program in September 2008. The contract provides, among other things, that Defendant participate in psychotherapeutic counseling. As of the date of this Order, Defendant has begun treatment sessions with a licensed professional counselor.
5. Defendant ceased actively representing clients and practicing law and has not done so for over a year pending resolution of this matter. Prior to that time, defendant primarily represented indigent parents in child neglect and custody matters.
6. Defendant was also convicted of shoplifting/concealment of goods on 3 February 1999 (99 CR 003976). Defendant's 1999 conviction was not reported at that time, and therefore did not result in any disciplinary action. Although Defendant's prior conviction is not the basis for discipline in this case, it is evidence of a pattern of misconduct by Defendant.
7. Due to the dishonest nature of the conduct involved, the hearing committee finds that discipline of less than a suspension would fail to adequately address the conduct and protect the public.

ORDER OF DISCIPLINE

1. The license of Defendant, James T. Parker, is suspended for one year.

2. The one-year suspension is stayed for 4 years on the following terms and conditions:

- a. Defendant shall comply with all treatment recommended by a licensed mental health professional approved by the Office of Counsel of the North Carolina State Bar. The State Bar has approved his current therapist, who was recommended by the State Bar Lawyer's Assistance Program. While in treatment, Defendant shall ensure that the treating licensed mental health professional provides written reports to the Office of Counsel of the North Carolina State Bar concerning Defendant's compliance with the treatment plan each quarter during the stayed suspension of Defendant's license. The reports shall be due each January 1, April 1, July 1, and October 1 throughout the stayed suspension. Such treatment shall be obtained and reports shall be prepared and submitted at Defendant's sole expense.
- b. In the event the treating licensed mental health professional recommends that treatment is no longer necessary and therefore should be discontinued, Defendant shall ensure the treating licensed mental health professional submits a final report to the Office of Counsel of the North Carolina State Bar indicating the termination. The final report shall include, but not be limited to, a written report reflecting the final therapy session, the reasons for terminating treatment, a summary of the progress made by Defendant over the course of treatment, and any and all conclusions and/or expectations regarding Defendant's condition at the conclusion of treatment.
- c. In addition, in the event treatment is terminated at the recommendation of the licensed mental health professional, Defendant shall continue to meet with the treating licensed mental health professional for the remainder of the stay of suspension no less than semi-annually to monitor Defendant's potential need for additional treatment. Defendant shall also ensure that the treating licensed mental health professional provides written reports to the Office of Counsel of the North Carolina State Bar concerning Defendant's compliance and progress with the follow-up meetings once every six months starting from the date of the final report terminating treatment during the remainder of the stayed suspension of Defendant's license. Such treatment and reports shall be at Defendant's expense. In the event the treating licensed mental health professional recommends additional treatment or resumed treatment for Defendant, Defendant shall comply with any such recommendations in accordance with paragraph 2(a) listed above and ensure that the treating licensed mental health professional submits a written report reflecting the reasons for additional or resumed treatment, Defendant's new diagnosis, and planned course of treatment. Defendant shall also repeat, as necessary, the steps provided in paragraphs 2(b) and 2(c).

- d. Defendant shall comply with and complete the terms of his contract with the Lawyer's Assistance Program (LAP).
- e. Defendant shall provide a written release to the North Carolina State Bar Office of Counsel authorizing the counsel to speak with his treating licensed mental health professional as well as LAP personnel and obtain copies of records relating to his compliance with his treatment recommendations.
- f. Defendant shall not revoke any authorization for release of information from his treating licensed mental health professional or LAP personnel to the Office of Counsel of the State Bar signed by him pursuant to this Order. Defendant shall comply with any request for execution of additional authorization upon request.
- g. Defendant will respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication.
- h. Defendant will advise the State Bar in writing of all address changes within 10 days of the change.
- i. Defendant will timely comply with his State Bar continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline.
- j. Defendant will pay all membership dues and Client Security Fund assessments on a timely basis.
- k. Defendant will accept all certified mail from the North Carolina State Bar.
- l. Defendant will not violate the laws of any state or of the United States.
- m. Defendant will not violate any provision of the Revised Rules of Professional Conduct.

3. If during the stay of any period of the suspension ordered in this case Defendant fails to comply with any one or more of the conditions stated 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.

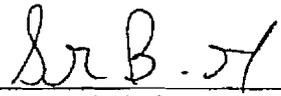
4. If the stay of the suspension is lifted and the suspension is activated for any reason, Defendant must show by clear, cogent, and convincing evidence that he complied with each of the following conditions before seeking reinstatement:

- a. 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. Complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis;
- c. Not violated any of the Revised Rules of Professional Conduct;
- d. Not violated any laws of any state or of the United States;
- e. Paid any additional costs of this proceeding as assessed by the Secretary within 30 days of receipt of the statement of costs;
- f. Kept his address of record with the North Carolina State Bar current; and
- g. Accepted all certified mail from the North Carolina State Bar.

5. The Disciplinary Hearing Committee 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.

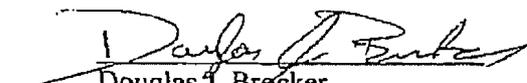
Signed by the Chair with the consent of the other hearing committee members, this the 31 day of December, 2008.



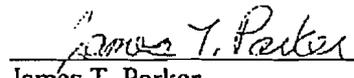
Chair, Disciplinary Hearing Committee



Brian P.D. Oten
Deputy Counsel
Attorney for Plaintiff



Douglas J. Bröcker
Attorney for Defendant



James T. Parker
Defendant