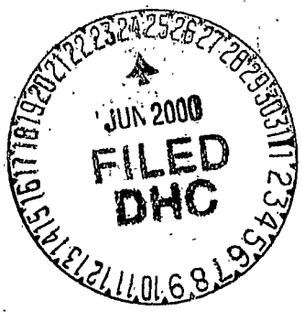

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JUN 2000
FILED
DHC

WAKE COUNTY

NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
99 DHC 25

THE NORTH CAROLINA STATE BAR, Plaintiff vs. C. LEON LEE, II, Attorney, Defendant	CONSENT FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF DISCIPLINE

This matter was heard on the consent of the parties before a hearing committee of the Disciplinary Hearing Commission composed of Franklin E. Martin, Joseph G. Maddrey, and Robert B. Frantz. The Plaintiff was represented by Clayton W. Davidson, III. The Defendant, C. Leon Lee, II, was represented by Ronnie M. Mitchell. Based upon the stipulations, pleadings, and the consent of the parties, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar (the "State Bar") is a body duly organized under the laws of the State of North Carolina and is the proper body to bring this proceeding under the authority granted to it in Chapter 84 of the General Statutes of North Carolina and the rules and regulations of the State Bar promulgated pursuant thereto (the "State Bar Rules and Regulations").

2. The Defendant, Clifford Leon Lee, II, (the "Defendant") was admitted to the State Bar in 1988, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina subject to the State Bar Rules and Regulations and the Rules of Professional Conduct of North Carolina.

3. During all or a part of the relevant periods referred to herein, Defendant was engaging in the practice of law in the State of North Carolina and maintained a law office in Cumberland County, North Carolina.

4. During all or a part of the relevant periods referred to herein, the Defendant operated under the name of the Lee Law Firm, P.A., a North Carolina Professional Corporation of which the Defendant was the sole shareholder and principle officer and director (the "Lee Law Firm").

5. The Lee Law Firm, employed various employees who worked for some period of time from 1992 through 1998 (the "Employees"), which employees included, Donna Brooks, Laretta Carter-Dunmore, Anthony Ernestine, Clifford Leon Lee, II, Nadine Macauley, Delzora McKoy, Carolina Menor, Ophelia Rittenhouse, Nilas I. Rodriquez, Karen Ross, Jacinta Somerville, Mary Turner, Geraldine O. Spates, Cheri Siler, Marshall B. Pitts, Jr., Andrea Chathman, Michelle Jones, Elva Trevino, and Jan Pritchett.

6. The Defendant, acting on behalf of the Lee Law Firm entered into contracts with the Employees for salaries to be paid, and the Defendant was responsible for computing the amounts payable to the Employees by the Lee Law Firm by subtracting from the gross salaries the required F.I.C.A. F.U.T.A, federal, and state withholdings as required by law.

7. The Defendant was responsible for maintaining and issuing appropriate employment and tax documents on behalf of the Lee Law Firm, including but not limited to Internal Revenue Form W-2, and Internal Revenue Form W-4, and was responsible for filing all Internal Revenue Forms 940 and 941, and collecting and paying over to the appropriate authority all trust fund taxes required to be withheld from the employees' salaries by applicable law.

8. For the tax periods from January 1, 1992 to December 31, 1998, the Defendant failed to pay to the Internal Revenue Service or other appropriate governmental agency all or some of the amounts withheld from the Employees gross earnings for F.I.C.A. F.U.T.A. and state and federal withholding taxes.

9. The Lee Law Firm received gross income and was required to file tax returns for the tax years 1996, 1997, and 1998, regardless of whether or not any tax was owed.

10. The Defendant was responsible for filing corporate tax returns on behalf of the Lee Law Firm, and failed to file returns for tax years, 1996, 1997, and 1998.

11. The Defendant received income and was required to file personal income tax returns for the tax years 1992 to 1998.

12. The Defendant failed to file personal income tax returns from 1992 until 1998.

Based on the foregoing findings of fact, the hearing committee enters the following:

CONCLUSIONS OF LAW

1. The Defendant has violated Rule 1.2(b) of the superseded Rules of Professional Conduct and Rule 8.4(b) of the Revised Rules of Professional Conduct by failing to timely file the requisite returns, a misdemeanor in violation of 26 U.S.C. § 7203.

2. The Defendant willfully failed to collect or truthfully account for and pay over a tax in violation of 26 U.S.C. § 7202, an act that reflects adversely on the Defendant's honesty, trustworthiness, or fitness as a lawyer in violation of Rule 1.2(b) of the superseded North Carolina Rules of Professional Conduct and Rule 8.4(b) of the Revised Rules of Professional Conduct.

3. The foregoing actions of the Defendant also constitutes a violation of superseded Rule 1.2(c) and Revised Rule 8.4(c).

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:

   a. Prior disciplinary offenses for which the Defendant was suspended from the practice of law, 97 DHC 21.

   b. A pattern of misconduct;

   c. Multiple offenses;

   d. Substantial experience in the practice of law.

2. The Defendant's misconduct is mitigated by the following factor:

   a. Remorse.

3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact Regarding Discipline, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, C. Leon Lee, II, is hereby suspended from the practice of law for a period of five years. Because Respondent has been under active suspension from the practice of law pursuant to a previous order 97 DHC 21, (the Previous Suspension Order), the term of the suspension is deemed to begin on November 5, 1999, the first day that respondent would have been eligible for reinstatement pursuant to the previous suspension order, had he complied with all conditions of the order.

2. The final two years of the suspension may be stayed for the balance of the term of the suspension upon the following conditions:

a. Prior to reinstatement, the Defendant must comply with all terms of the Previous Suspension Order, including but not limited to the requirements that he make restitution to all victims. During the period that this suspension is stayed, the Defendant shall comply with all conditions required for a stay of the Previous Suspension Order, including but not limited to the requirement that his trust account be audited following the reinstatement in accordance with the schedule provided in the Previous Suspension Order.

b. Prior to reinstatement, the Defendant shall provide evidence that he has filed all past due federal and state tax returns, and paid all past due taxes, withholdings, penalties, and interest due and owing on all state and federal tax returns; provided, however, that if the Defendant enters into an installment agreement or some other agreement satisfactory to the Internal Revenue Service to pay the outstanding taxes, the execution and compliance with the terms of such an agreement will fulfill the terms of this paragraph concerning payment of taxes. During the period of the stay, the Defendant shall abide by all the terms of and make all payments due under any such agreement with the Internal Revenue Service or the North Carolina Department of Revenue. The provisions of this subparagraph shall be a continuing condition of the stay of the suspension.

c. Before the filing of any petition for any stay of suspension or reinstatement, and during the period of any stay of suspension, following the date of the order in this matter, the Defendant shall timely file all tax returns or other tax related filings which

become due pursuant to state or federal law, and shall timely pay all taxes or payments that are due and owing pursuant to those filings or by law.

d. If the Defendant is criminally prosecuted for any tax related matter arising out of the allegations at issue in this matter, the Defendant shall not be eligible for reinstatement during the active portion of any sentence imposed, and if placed on probation, shall comply with all standard and special conditions of the probation. The Defendant shall report in writing to the Office of the Secretary of the North Carolina State Bar the imposition of any criminal penalties, and any finding by a judge or magistrate judge of a violation of any probation imposed within ten days of such finding.

e. The Defendant shall provide to the North Carolina State Bar sufficient evidence that he has fulfilled the requirements of subparagraphs b, c, and d above, and shall execute any authorizations or releases requested by the North Carolina State Bar to enable the Bar to verify with any appropriate taxing authority that Defendant has fulfilled the provisions of subparagraphs b and c above. During the period of any stay of suspension, the Defendant shall forward copies of all filings and evidence of all payments required by subparagraph c above to the North Carolina State Bar simultaneously with the filing of such documents.

f. Prior to the filing of any petition for any stay of suspension or reinstatement, the Defendant shall pay all costs assessed against the Defendant in this matter, including but not limited to the costs of the taking of the deposition of C. Leon Lee, II.

g. The Defendant shall comply with the Revised Rules of Professional Conduct, and all provisions of the Rules and Regulations of the North Carolina State Bar, including but not limited to the provisions of 27 Admin. Code Chapter 1 Subchapter B § .0124.

Any violation of the Rules following the date of this order shall be grounds for denial of or lifting of the stay.

h. The Defendant shall not violate the laws of the State of North Carolina, the United States, or the various States of the United States.

3. During the period of any stay of the suspension, as continuing conditions of the stay of the suspension, the Defendant shall comply with all provisions of subparagraphs a-h paragraph 2 above. Any violation shall be grounds for the lifting of the stay.

4. If the Defendant fails to petition for or meet the requirements for any stay of the suspension, or if any stay of the suspension is lifted, and the suspension is re-activated, as a condition of reinstatement following the suspension, the Defendant must meet the requirements of subparagraphs a-h of paragraph 2 above. This requirement is in addition to, and shall not be deemed to limit the provisions of 27 N.C. Admin. Code Chapter 1 Subchapter B § .0125.

5. The Defendant shall pay the costs of this proceeding within thirty days of service of notice of the amount of costs as assessed by the Secretary.

Signed by the undersigned chair with the full knowledge and consent of all other members of the hearing committee this 22nd day of June, 2000.

Franklin E. Martin, Chair

CONSENTED TO:

Clayton W. Davidson, III,
Attorney for the Plaintiff

IN ADDITION TO ACKNOWLEDGING HIS CONSENT TO THE ENTRY OF THIS ORDER, THE DEFENDANT WAIVES ANY RIGHTS THAT HE MAY HAVE PURSUANT TO 27 N. C. ADMIN. CODE SUBCHAPTER B § .0114, OR ANY OTHER LAW OR RULE TO HAVE THIS ORDER CONSIDERED BY ANOTHER HEARING COMMITTEE AND ACKNOWLEDGES THAT IF THIS CONSENT ORDER IS REJECTED BY THE HEARING COMMITTEE, THE PARTIES WILL PROCEED TO TRIAL ON FRIDAY, JUNE 16, 2000 BEFORE THE EXISTING HEARING COMMITTEE.

Ronnie M. Mitchell,
Attorney for the Defendant

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