

19751

WAKE COUNTY

NORTH CAROLINA



BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 02 DHC 13

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

v.)

JAMES G. HUFF JR.,)
Defendant)

CONSENT ORDER OF DISCIPLINE

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair; Carlyn G. Poole, and Betty Ann Knudsen, pursuant to Section .0114 of the Discipline and Disability Rules of the North Carolina State Bar (hereafter "Bar Rules"). Dudley Witt represented the defendant, James G. Huff Jr. Bobby D. White 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. Plaintiff, the North Carolina State Bar (hereafter "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. Defendant, James G. Huff, Jr., (hereafter "Huff"), was admitted to the North Carolina State Bar on or about June 11, 1993 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 the Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant to this complaint, Huff actively engaged in the practice of law in the State of North Carolina and maintained a law office in the city of Raleigh, Wake County, North Carolina.

4. Huff was properly served with process and a hearing in this matter was scheduled with due notice to all parties.

5. Huff waived his right to a formal hearing.

6. During calendar year 2000, Huff employed in his law office persons to whom he paid regular wages (hereafter, "employees").

7. As an employer, Huff was required by law to deduct and withhold from his employees' wages amounts sufficient to pay all or part of each employee's state and federal tax liabilities (hereafter, "withholding funds").

8. As an employer, Huff was required to file tax returns accounting for the amount withheld from his employees' wages. Huff was required to file these returns on a quarterly and annual basis with the United States Internal Revenue Service (hereafter, "IRS").

9. Huff filed with the IRS his federal quarterly and annual tax returns for employee withholding taxes for the year 2000. The returns listed the amount of tax withheld from employee wages.

10. Huff knew and withheld the amount of tax from his employees' wages that he was to hold in trust to pay the tax due for his employees.

11. Huff knowingly failed to hold the withheld funds in trust for payment to the IRS on behalf of his employees.

12. Huff knowingly failed to timely pay to the IRS the withholding funds for the 2000 tax year.

13. As of January 2001 Huff's unpaid and delinquent federal employee withholding taxes for tax year 2000 exceeded \$20,000.

14. Huff used the withheld funds for his personal benefit without the knowledge or consent of his employees when he was required to hold the funds in trust.

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

15. In 01 DHC 1, Huff was disciplined by the Disciplinary Hearing Commission of the North Carolina State Bar for, *inter alia*, misappropriating client funds, failing promptly to pay or deliver client funds to clients, and commingling personal and client funds.

16. The Disciplinary Hearing Commission in 01 DHC 1 entered an order suspending Huff's law license for five years. Four years of the five-year suspension was designated as active. Huff could apply for a stay of the final year upon compliance with certain terms and conditions enumerated in the order.

17. Huff's failure to hold and pay over withholding funds to the Internal Revenue Service as required by law occurred during the same time period as the matters considered by the Disciplinary Hearing Commission in 01 DHC 1 and stemmed from Huff's failure to properly manage and supervise the operations of his law office.

18. Huff suffered from personal or emotional problems resulting from physical or mental disability or impairment at the time of the conduct herein.

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 Huff and the subject matter of this proceeding.

2. Huff'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 willfully failing to pay over the withholding funds for payment of his employee's taxes in violation of 26 U.S.C. § 7202, Huff committed a criminal act that reflects adversely on his honesty, trustworthiness, or 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);
- b. By willfully failing to hold employee withholdings in trust, in violation of 26 U.S.C. § 7501, Huff committed a criminal act that reflects adversely on his honesty, trustworthiness, or 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);

3. Huff has waived any right to a formal hearing in this matter and consents to this Order of Discipline. Further, Huff waives any right to appeal this Consent Order or challenge the sufficiency of the Findings of Fact.

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

ORDER OF DISCIPLINE

1. Huff's law license is hereby suspended for two years, effective November 13, 2005. Huff may apply to the Disciplinary Hearing Commission for a stay of the balance of the suspension at the end of the first year upon written petition and a showing of compliance with the following conditions:

- a. Huff has not violated any state or federal laws;
- b. Huff has not violated any provisions of the Revised Rules of Professional Conduct or applicable rules of ethics, at any time on or after November 13, 2001;
- c. Huff has satisfied the mandatory continuing legal education requirements imposed on active member of the North Carolina State Bar for each year over the period of active suspension;
- d. Huff has obtained a mental and physical examination from a psychiatrist approved by the North Carolina State Bar and has provided the Office of Counsel with a release authorizing his psychiatrist to release information about his diagnosis, treatment, and prognosis with representatives of the Office of Counsel;
- e. Huff has provided a written certification from his psychiatrist indicating that Huff does not suffer from any mental or physical condition that significantly impairs his professional judgment, performance or competence. The psychiatrist's certification must be submitted to the North Carolina State Bar Office of Counsel at least 30 days before the filing of the petition seeking reinstatement;
- f. Huff has completed a course in trust account management provided by a sponsor approved by the North Carolina State Bar;
- g. Huff has paid all costs in all proceedings with the State Bar, all Client Security Fund assessments, and all membership fees and any other fees or assessment owed to the North Carolina State Bar;
- h. Huff has complied with the provisions of Rules .0124 and .0125 of the North Carolina State Bar Discipline & Disability Rules;

- i. Huff has paid for the services of James Pendergrass, the trustee of his law practice, or has reimbursed the North Carolina State Bar if the State Bar has paid the trustee's fees;
- j. Huff has paid all taxes, interest and penalties owed to all federal and state taxing authorities, and has timely filed all returns, including attachments and schedules;
- k. Huff has complied with the terms of all court orders and judgments entered against him respecting restitution to the victims of his misconduct;
- l. Huff has reimbursed the Client Security Fund of the North Carolina State Bar for all sums disbursed by the Fund as a result of his misconduct; and
- m. Huff has hired, at his own expense, a law office management consultant approved by the North Carolina State Bar, to monitor his handling of client matters and compliance with the Revised Rules of Professional Conduct.

2. Upon entry of an order staying the suspension of Huff's law license, the stay of the suspension shall continue in force provided that Huff complies with the following conditions:

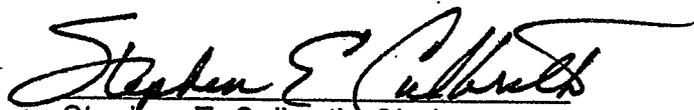
- a. Huff shall violate no state or federal law;
- b. Huff shall violate no provisions of the applicable Revised Rules of Professional conduct in effect at the time;
- c. Huff shall not handle client or fiduciary funds, except funds paid to him as fees that are fully earned;
- d. Huff shall not handle any real estate matters, including real estate closings;
- e. Huff shall pay all costs associated with the petition for a stay of the suspension of his law license;
- f. Huff shall meet with his approved law office management consultant at least monthly, beginning on the 1st day of the month immediately following the entry of the order staying the suspension of Huff's law license. Huff shall ensure that the consultant provides written reports to the North Carolina State Bar at least once each quarter throughout the following year;

- g. Huff shall comply with the treatment plans and orders of his approved psychiatrist and shall provide the North Carolina State Bar Office of Counsel with a waiver authorizing his psychiatrist to discuss Huff's treatment and compliance with representatives of the Office of Counsel; and
- h. Huff shall satisfy the mandatory continuing legal education requirements of the North Carolina State Bar.

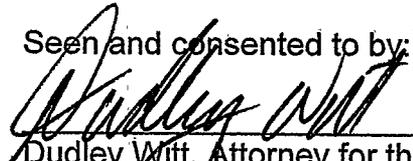
3. If the suspension of Huff's law license is not stayed or if the suspension is stayed but the stay is later lifted, Huff must comply with all the conditions set out in paragraph 1 (a) – (m) above prior to filing a petition for reinstatement of his law license.

Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 6th day of January 2007.


Stephen E. Culbreth, Chair
Disciplinary Hearing Committee

Seen and consented to by:


Dudley Witt, Attorney for the Defendant

James G. Huff, Jr.
James G. Huff, Jr., Defendant


Bobby D. White, Attorney for the North Carolina State Bar