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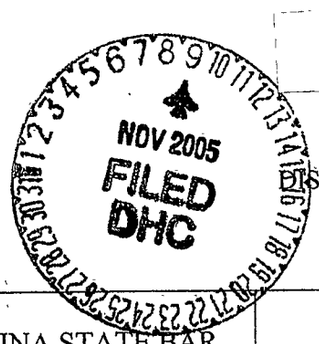


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| NORTH CAROLINA<br><br>WAKE COUNTY | BEFORE THE<br>DISCIPLINARY HEARING COMMISSION<br>OF THE<br>NORTH CAROLINA STATE BAR<br>05 DHC 33 |
| THE NORTH CAROLINA STATE BAR,<br><br>Plaintiff<br><br>v.<br><br>ROBERT S. GRIFFITH, II, Attorney,<br><br>Defendant | FINDINGS OF FACT,<br>CONCLUSIONS OF LAW,<br>AND CONSENT ORDER<br>OF DISCIPLINE |

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of T. Richard Kane, Chair, and members Michael A. Grace and Marguerite P. Watts. Katherine E. Jean represented the Plaintiff, the North Carolina State Bar. Defendant, Robert s. Griffith, II, represented himself. 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 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. The Plaintiff, 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 General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Robert E. Griffith, II ("Griffith"), was admitted to the North Carolina State Bar in 1981 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

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

4. Griffith 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. Griffith unlawfully and willfully failed to file his state individual income tax returns for some or all of the years from 1996 through 2002, inclusive, when such tax returns were due, as required by N.C. Gen. Stat. § 105-152.

6. Willful failure to file or pay a state income tax when due is a Class 1 misdemeanor under N.C. Gen. Stat. § 105-236 (9).

7. Griffith was charged in Wake County, North Carolina with willful failure to file his individual state income tax returns for the years 1996 and 2002.

8. Griffith pled guilty to willful failure to file his individual income tax returns for the years 1996-2002.

9. On January 24, 2005, Griffith was convicted of six counts of willful failure to file his individual state income tax returns, for the years 1996-2002. Griffith was ordered to file all state income tax returns for the years 1996-2002 within 60 days, to pay all past due taxes within 120 days after the returns are filed, to pay a $150 fine and court costs, and was sentenced to 45 days imprisonment, which sentence was suspended, and was placed on unsupervised probation for 24 months.

10. Griffith acknowledges and admits that his failure to file his state individual income tax returns violated the Rules of Professional Conduct and constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2).

## CONCLUSIONS OF LAW

1. All the parties are properly before the hearing committee and the committee has jurisdiction over defendant, Robert S. Griffith II, and the subject matter.

2. 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)(2) and (3) as follows:

a. By unlawfully and willfully failing to file state income tax returns, Griffith 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).

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 OF FACT REGARDING DISCIPLINE

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

   a. Pattern of misconduct;

   b. Multiple offenses;

   c. Substantial experience in the practice of law;

   d. Failure to file federal income tax returns and failure to pay federal income taxes for the years 1996-2002; and

   e Failure to pay to pay state individual income taxes for some or all of the years from 1996 through 2002, inclusive, when such payment was due, as required by N.C. Gen. Stat. § 105-157.

2. Griffith's misconduct is mitigated by the following factors:

   a. No prior discipline;

   b. Timely good faith effort to make restitution or to rectify the consequences of his actions, including having paid the North Carolina Department of Revenue his overdue state taxes;

   c. Full and free disclosure to the hearing committee and a cooperative attitude toward the proceedings;

   d. Imposition of other penalties or sanctions, to wit: probation, court costs and a fine as described above; and

   e. The violations occurred during a period of financial difficulty associated with relocation of Griffith's office and divorce;

   f. Remorse;

   g. During 1997-2002, Griffith filed requests for extension of time to file tax returns and paid a portion of the taxes owed; and

   h. All state and federal returns for the years 1996-2002 have been filed.

3. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing factors and with the consent of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of defendant, Robert S. Griffith II, is hereby suspended for two (2) years and that suspension is stayed for two (2) years upon the following terms and conditions. During the stayed suspension, Griffith shall:

a. Comply with the terms of any agreements with the North Carolina Department of Revenue in existence during the stay;

b. Make good faith efforts to enter into an agreement with the Internal Revenue Service ("IRS") to pay any and all past due taxes, penalties and interest and shall provide the State Bar with written authorization in a form satisfactory to the State Bar permitting the State Bar access to information with which the State Bar can monitor Griffith's efforts to reach such an agreement;

c. No later than fifteen days prior to expiration of the two year stay, file with the State Bar documentation from the Internal Revenue Service (IRS) showing defendant's compliance with the terms of any agreements defendant reaches with the IRS;

d. File and pay all future state and federal taxes in a timely manner;

e. Provide the State Bar with copies of all state and federal tax returns filed during the stay and proof of payment of taxes due during the stay, filed with the State Bar contemporaneously with filing with the Internal Revenue Service or the North Carolina Department of Revenue;

f. Not violate any laws of the State of North Carolina or of the United States;

g. Not violate any provision of the Revised Rules of Professional Conduct;

h. Pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days of notice of the costs being served upon him;

i. Pay all Membership dues and Client Security Fund assessments and comply with all Continuing Legal Education requirements on a timely basis; and

j. Keep his address of record with the North Carolina State Bar current, promptly accept all certified mail from the North Carolina State Bar, and respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication.

2. If during the stay of the two (2) year suspension Griffith fails to comply with any one or more of the conditions stated in Paragraph 1(a) through 1(k) 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.

3. If the stay of the suspension is lifted and the suspension is activated for any reason, Griffith 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 N.C. State Bar Discipline & Disability Rules on a timely basis;

c. Not violated any of the Revised Rules of Professional Conduct;

d. Not violated any laws of the State of North Carolina or of the United States;

e. Paid all costs of this proceeding as assessed by the Secretary;

f. Show that he is not then suffering from any disability that would impair his ability to practice law;

g. Show that he has complied with the terms of any payment agreements with the Internal Revenue Service and the North Carolina Department of Revenue in effect during the suspension period;

h. Provided the State Bar with documentation from the Internal Revenue Service and the North Carolina Department of Revenue showing compliance with the terms of any payment agreements with these entities during the suspension period;

i. Timely filed and paid any state or federal taxes coming due during the period of the suspension;

j. Provided the State Bar with copies of all tax returns filed during the suspension and proof of payment of any taxes coming due during the suspension, filed with the State Bar contemporaneously with filing with the Internal Revenue Service or the North Carolina Department of Revenue;

k. If the suspension was activated for Griffith's failure to timely file and/or pay state and/or federal individual income tax, Griffith will have rectified the deficiency by filing and/or paying as appropriate the income tax(es) at issue and all penalties and interest and will have provided proof of such to the State Bar;

l. Paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education requirements on a timely basis as if still in practice during the suspension;

m. Kept his address of record with the North Carolina State Bar current, accepted all certified mail from the North Carolina State Bar, and responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in communications to him from the State Bar.

4. The Disciplinary Hearing Commission 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 3d day of NOVEMBER, 2005.

T. Richard Kane
Chair, Disciplinary Hearing Committee

CONSENTED TO BY:

Katherine E. Jean
Deputy Counsel
Attorney for Plaintiff

Robert S. Griffith II
Defendant