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NORTH CAROLINA

WAKE COUNTY

1980 MAR -9 AM 10:45

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
78 DHC 17

THE NORTH CAROLINA STATE BAR, )  
Plaintiff, )  
-vs- )  
HARRY DuMONT, Attorney, )  
Defendant. )

FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

THIS CAUSE coming on to be heard and being heard before the undersigned Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar at a regularly scheduled hearing commencing on Monday, March 3, 1980, in the offices of the North Carolina State Bar, 208 Fayetteville Street Mall, Raleigh, North Carolina, and said Hearing Committee having heard the evidence and arguments and contentions of Counsel, make 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.

2. The Defendant, Harry DuMont, is a citizen and resident of Buncombe County, North Carolina, and was admitted to the North Carolina State Bar in 1947 and is, and was at all times relevant to this proceeding, an attorney at law licensed to practice law in the State of North Carolina and was and is subject to the rules, regulations, canons of ethics, and Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the years 1973 through January, 1976, the Defendant was representing Grace Hospital, Incorporated, in a civil case, then pending in the Superior Court of Burke County, said case being entitled "Jerry Dean Beck, Guardian Ad Litem of Sharon Sue Beck and Jerry Dean Beck (On his own behalf) vs. John H. Giles, M.D., Margaret Annis Nygren and Grace Hospital, Incorporated, 73 CVS 861. The case involved a medical malpractice claim. It was alleged that while Sharon Sue Beck was undergoing an operation in the hospital, she incurred brain damage as a result of the negligence of the hospital and its employees in the manner in which the anesthesia was administered.

4. In late November or early December of 1974, the Defendant met with Mr. Grayson Brothers, Administrator of Grace Hospital and Michael Kaufman, the Chief Anesthetist at said hospital. At this meeting, a conversation ensued concerning a letter which was directed to Mr. Grayson Brothers from a Dr. Francis M. James, III of the Bowman-Grey School of Medicine, Winston-Salem, North Carolina under date of October 23, 1972. This letter, a copy of which was furnished to Mr. Kaufman by Mrs. Valerie Stetz, Dr. James' secretary, was prompted as a result of a meeting between Mr. Kaufman and Dr. James wherein the Sharon Beck case and the case of a Gerald E. Bizo were discussed. Both cases involved cardiac arrests while the patients were under anesthesia. The letter contained certain criticisms of the manner and methods in which the anesthesia was administered and the location of certain vital equipment and its proximity to the operating room.

5. Following this meeting, the Defendant directed a letter to Mr. Kaufman advising him that counsel for other parties to the lawsuit wished to take his deposition along with that of Mr. Brothers and other employees of the hospital on December 30, 1974. The Defendant also requested that a pre-deposition conference be held between the Defendant, Mr. Kaufman, Mr. Brothers, and others. Subsequently, a meeting was arranged for Friday, December 27, 1974 in the Boardroom of Grace Hospital. At said meeting, Mr. Kaufman brought up the subject of the letter from Dr. James. The Defendant advised him that if he were asked if he received a letter from a Dr. James that he should deny it for the reason that he did not receive the original of said letter and only a copy. The Defendant advised Mr. Kaufman that if he were asked about the knowledge of a copy of said letter, that he should answer that he does not remember such a letter. Mr. Kaufman was advised that if he was asked about a letter from a "Dennis" James that he should deny this for the reason that the letter was from Dr. "Francis" James. The Defendant inquired of Mr. Kaufman as to whether he had his copy of the letter with him at the meeting and he was advised that he did not. The Defendant asked Mr. Kaufman to go and get the letter but Mr. Kaufman refused. Mr. Kaufman was instructed to call the Defendant at his office in Asheville on Saturday morning and to read the letter to the Defendant. On Saturday morning, Mr. Kaufman called the Defendant, had a discussion with him concerning the letter and was told to read the letter and that it was being taped on a taperecorder in the Defendant's office. Mr. Kaufman was instructed that at the end of the letter that he was to hang up the phone. This Mr. Kaufman did.

6. On Monday, December 30, 1974, the day of the taking of the various depositions, Mr. Kaufman again inquired of the Defendant about the denial of the existence of the letter from Dr. James. The Defendant again counselled and instructed Mr. Kaufman to deny any knowledge of the existence of the letter in question. The deposition of Mr. Kaufman proceeded and when asked various questions concerning the existence of the letter in question, Mr. Kaufman answered as instructed by the Defendant and denied knowledge of said letter.

7. On January 24, 1975, Mr. Kaufman, out of concern for what had transpired in the deposition, met and sought the counsel and advise of Mr. W. Harold Mitchell, an attorney in Valdese, North Carolina. As a result, Mr. Kaufman submitted a sworn statement correcting the erroneous answers which he had given during the deposition of December 30, 1974. In addition, Mr. Kaufman prepared a statement on May 6, 1975, a copy of which he submitted to Mr. Mitchell explaining that the reason that he gave the erroneous answers to the various questions submitted to him was that the Defendant instructed him as to how to answer and insisted that the letter from Dr. Francis James not be disclosed during the deposition.

Based upon the foregoing findings of fact, the Hearing Committee hereby makes the following conclusions of law:

1. The Defendant, a duly licensed attorney in the State of North Carolina subject to the Code of Professional Responsibility and the laws of the State of North Carolina counselled and procured false perjured testimony from Michael Kaufman during the taking of the aforementioned depositions, in violation of Disciplinary Rule 7-102(A) (4) of the Code of Professional Responsibility of the North Carolina State Bar.

2. In counselling and procuring the perjured and false testimony of the aforementioned individual, the Defendant participated in the creation or preservation of evidence when he knew, or it was obvious that the evidence was false, in violation of Disciplinary Rule 7-102(A) (6).

3. In procuring the false testimony of Michael Kaufman as set forth above the Defendant counselled and assisted his client in conduct that he knew to be illegal and fraudulent in violation of Disciplinary Rule 7-102(A) (7) of the Code of Professional Responsibility of the North Carolina State Bar.

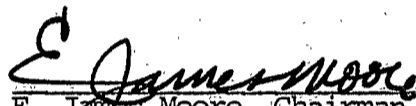
4. In counselling and procuring the false testimony of Michael Kaufman as set forth above, the Defendant knowingly engaged in illegal conduct and conduct contrary to the Disciplinary Rules of the Code of Professional Responsibility, in violation of Disciplinary Rule 7-102(A) (8) of said Code.

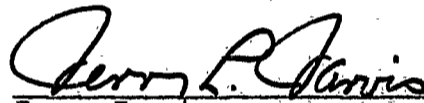
5. In counselling and procuring the false testimony of Michael Kaufman as set forth above, the Defendant engaged in illegal conduct involving moral turpitude, in violation of Disciplinary Rule 1-102(A) (3) of the Code of Professional Responsibility.

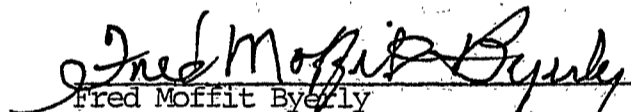
6. In counselling and procuring the false testimony of Michael Kaufman, the Defendant engaged in conduct involving dishonesty, fraud, deceit and misrepresentation, in violation of Disciplinary Rule 1-102(A) (4) of the Code of Professional Responsibility.

7. In counselling and procuring the false testimony of Michael Kaufman as set forth above, the Defendant engaged in professional conduct prejudicial to the administration of justice and conduct that adversely reflects upon his fitness to practice law, in violation of Disciplinary Rules 1-102(A) (5) and (6) of the Code of Professional Responsibility.

This the 9th day of April 1980,

  
E. James Moore, Chairman  
Disciplinary Hearing Committee

  
Jerry Jarvis

  
Fred Moffit Byerly

NORTH CAROLINA

WAKE COUNTY

1980 APR -9 11 46-5

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
78 DHC 17

THE NORTH CAROLINA STATE BAR,  
Plaintiff,

-vs-

HARRY DuMONT, Attorney,  
Defendant.

ORDER

Based upon the Findings of Fact and Conclusions of Law entered in this case on the 9<sup>th</sup> day of April 1980, all of which are incorporated herein by reference and pursuant to Section 9 of Article XI, Discipline and Disbarment of Attorneys, the undersigned Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar hereby issues the following ORDER:

IT IS HEREBY ORDERED, that the Defendant, Harry DuMont, be and he is hereby suspended from the practice of law in the State of North Carolina for a period of six (6) months.

IT IS FURTHER ORDERED, that the suspension does not permit Harry DuMont to be associated with any law firm as a law clerk, paralegal or employee at any time while the suspension is in effect.

IT IS FURTHER ORDERED, that the Defendant, Harry DuMont, be and he is hereby taxed with the costs of this proceeding.

This the 9<sup>th</sup> day of April 1980.

E. James Moore  
E. James Moore, Chairman  
Disciplinary Hearing Committee

Jerry L. Jarvis  
Jerry Jarvis

Fred Moffitt Byerly  
Fred Moffitt Byerly

**JUDGMENT**  
**COURT OF APPEALS OF NORTH CAROLINA**

No. 8010NGSB920

THE NORTH CAROLINA STATE BAR

vs.

HARRY DUMONT, Attorney

County \_\_\_\_\_

No. 78DHC17

This cause came on to be argued upon the transcript of the record from the North Carolina State Bar :

Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said trial tribunal

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the

Honorable HARRY C. MARTIN Judge, be certified to the said trial tribunal

to the intent that the JUDGMENT IS AFFIRMED

And it is considered and adjudged further, that the RESPONDENT DO PAY

the costs of the appeal in this Court incurred, to wit, the sum of SEVENTY-FIVE AND NO/100 dollars (\$ 75.00 ),

and execution issue therefor. Certified to N. C. State Bar this 8th day of June 19 81

A TRUE COPY

*Thomas F. Boyd*  
Clerk of the Court of Appeals.

NO. 8010NC920

NORTH CAROLINA COURT OF APPEALS

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FILED  
1982 FEB -9 AM 9:25  
IN THE OFFICE OF  
CLERK COURT OF APPEALS  
OF NORTH CAROLINA

STATE OF NORTH CAROLINA

V

HARRY DUMONT

County: Wake  
No. 78DHC17

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CERTIFICATE

On the 12th day of January, 19 82, the Supreme Court of North Carolina filed an opinion, copy of which is hereto attached, modifying and affirming the opinion of this Court filed the 19th day of May, 19 81.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the certification of the opinion of this Court heretofore made to the trial tribunal remain in full force and effect.

"IT IS FURTHER ORDERED that the Clerk of this Court certify this action to the trial tribunal.

This 2nd day of February, 1982."

Certified to the Secretary of the North Carolina State Bar under my hand and seal this the 9th day of February, 19 82.

*Loren E. Dail*  
Clerk of the Court of Appeals

JUDGMENT  
SUPREME COURT OF NORTH CAROLINA

THE NORTH CAROLINA STATE BAR

vs.

HARRY DUMONT, Attorney

Fall

TERM, 19 81

No. 80

(8010NCSB920)

Made to

County.

This cause came on to be argued upon the transcript of the record from the ~~State of North Carolina~~ Court of Appeals.

Upon consideration whereof, this Court is of opinion that there is ~~an~~ error in the record and proceedings of said ~~State of North Carolina~~ Court of Appeals.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the

Honorable J. PHIL CARLTON, Associate Justice, be certified to the said ~~State of North Carolina~~ Court of Appeals, and the same is hereby MODIFIED AND AFFIRMED AS INDICATED IN SAID OPINION

And it is considered and adjudged further, that the Defendant Do Pay

\*\*\*\*SIXTY-THREE AND 00/100\*\*\*\*

the costs of the appeal in this Court incurred, to wit, the sum of

dollars (\$ 63.00 ),

North Carolina Court of Appeals, and execution issue therefor. Certified to ~~State of North Carolina~~ this 1st day of February 1982.

A TRUE COPY

J. GREGORY WALLACE

By: Clerk of the Supreme Court.

Chief Deputy Clerk