

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 9th day of July, 1985, the following order was made and entered, to-wit:

16786

In Re: David M. Hammond

L.E.C. 84-28

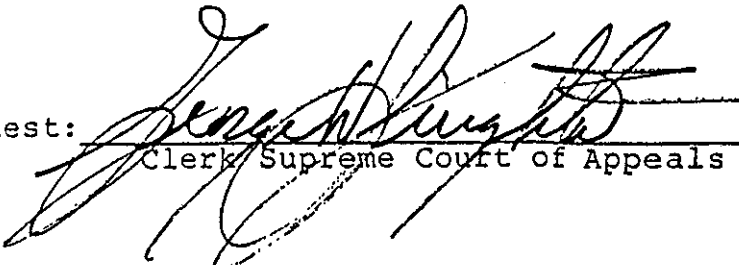
On a former day, to-wit, July 3, 1985, came Robert H. Davis, Jr., counsel for the West Virginia State Bar, Committee on Legal Ethics, and presented to the Court affidavit of David M. Hammond consenting to disbarment, with exhibits; the judgment and commitment order in U.S. v. Hammond; order of June 11, 1985 in U.S. v. Hammond; waiver of indictment, criminal information and April 11, 1985 plea agreement in U.S. v. Hammond; notice and statement of charges in L.E.C. 84-28, In Re Hammond; and order continuing hearing of April 26, 1985 in L.E.C. 84-28, pursuant to the provisions of Article VI, Part E., Section 27 of the By-Laws of the West Virginia State Bar, and moving that an order be entered disbarring the defendant by consent in accordance with the provisions of said article. Upon consideration of which, the Court is of opinion to, and doth hereby, grant said motion.

Accordingly, it is adjudged and ordered that the license of David M. Hammond, to practice law in the State of West Virginia, be, and the same is hereby, revoked and annulled.

It is further ordered that the Clerk promptly certify a copy of this order to the Director of the West Virginia State Bar and that a duly attested copy be served upon the defendant, David M. Hammond, according to law.

A True Copy

Attest:

  
Clerk Supreme Court of Appeals

**FILED**

BEFORE THE COMMITTEE ON LEGAL ETHICS  
OF THE WEST VIRGINIA STATE BAR

JUL - 3 1985

IN RE: DAVID M. HAMMOND,

Respondent

*[Signature]*  
CLERK OF THE  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

AFFIDAVIT OF CONSENT TO DISBARMENT

Comes now the Respondent, David M. Hammond, who, and after being first duly sworn, upon his oath deposes and says as follows:

1. That it is his desire to consent to disbarment pursuant to the provisions of Article VI, Section 27, of the Constitution of the West Virginia State Bar, as amended.

2. That this consent is freely and voluntarily given; that he is not being subjected to coercion or duress; and that he is fully aware of the implications of submitting this consent.

3. That he is aware that there are presently pending an investigation into, and proceedings involving, allegations that there exist grounds for his discipline, the nature of which are as follows:

a) On November 21, 1983, and thereafter he was serving as Bankruptcy Trustee by appointment of the United States Bankruptcy Court for the Northern District of West Virginia in Bankruptcy Case No. 83-156-C, Virgil Frazier Bolin, Debtor.

b) Certain real estate involved in said bankruptcy case was conveyed to the Respondent, as Trustee, for sale. The proceeds of said sale were to be used to pay the Trustee's commission; the expenses of sale; and to be applied to satisfy the claims of the creditor Forrest E. Bolin. The balance, if any, was to be paid to the debtor.

c) That on May \_\_\_\_\_, 1984, and thereafter, the Respondent was serving as Bankruptcy Trustee under appointment by the United States Bankruptcy Court for the Northern District of West Virginia in the Bankruptcy of George McClellan Barkley, dba Clarksburg Frozen Food & Long Branch Tavern, Bankruptcy Case No. 84-028-C.

d) On or about May 9, 1984, the Respondent received a check drawn on the Potomac Valley Bank, Petersburg, West Virginia, dated May 7, 1984, in the amount of \$43,000.00, representing the proceeds of the sale by the Respondent of the Debtor's home and 4.04 acres in Grant County, West Virginia, to Patrick W. Flaughter.

e) That said certified check No. 33595 was deposited in the Respondent's general trust account, No. 01-0019463-1 with the First Federal Savings & Loan Association of Morgantown, West Virginia, along with other items, on May 9, 1984.

f) That on or about May 11, 1984, the Respondent received from Grant Street Enterprise check No. 2463 in the amount of \$2,941.62 representing proceeds from an auction or sale of frozen seafood and other items which were part of the assets of the debtor George M. Barkley, dba Clarksburg Frozen Food. On July 7, 1984, the Respondent deposited said check, along with other items, in his general trust account, above identified.

g) That Bankruptcy Rule 5008(i) requires that funds from one bankruptcy estate shall be maintained separately from those of another unless the deposit of both in the same account is specifically approved by the Court. No such approval had been obtained.

h) That he failed, on or before June 7, 1984, to maintain the funds related to the Bolin and Barkley bankruptcies in separate and distinct accounts, all in violation of said Rule.

1) That during the period May 9, 1984, through August 1, 1984, he wrote eight checks drawn on Trust Account 01-0019463-1 and payable to himself in the total amount of \$19,500.00, which said amount was deposited in the Respondent's account no. 01-00-19232 with the First Federal Savings & Loan Association of Morgantown, West Virginia, entitled David M. Hammond, Attorney at Law, Special Account, from which said account he applied the sum of \$19,464.68 to his own use, all in violation of the Rules and Cannons of Ethics pertaining to such actions.

j) That on August 21, 1984, he was removed by Court Order as Trustee in the Bolin bankruptcy (No. 83-156-C) as a result of his failure to account for the assets received by him in his and capacity as Trustee.

k) That grounds exist which could result in a finding that the actions as above-identified constitute violations of disciplinary Rules 9-102(A), 9-102(B)(3) and (4) of the Code of Professional Responsibility.

1) That grounds exist which could result in a finding that the acts above-identified constitute violations of Disciplinary Rules 1-102(A)(3), (4) and (6) of the Code of Professional Responsibility.

m) That on August 8, 1984, a Notice of Hearing was issued by the United States Court for the Northern District of West Virginia informing the Respondent that he was to appear before the Bankruptcy Court on August 15, 1984, to "render a

concise report and accounting of any and all monies received by (the Respondent) as Trustee in this (Bolin) matter."

n) That on August 15, 1984, the Respondent appeared as ordered and falsely and incorrectly reported to the Court that he had all of the money received by him as Trustee in the Bolin bankruptcy and that he could account for such monies fully by the evening of August 20, 1984.

o) That the accountings required by the Court, and subsequently confirmed by the Respondent as being in preparation, were never delivered to the Court, its Clerk, or the Judge thereof.

p) That grounds exist which could result in a finding that the above referenced acts constitute violations of Disciplinary Rules 1-102(A)(4)(5) and (6) and Disciplinary Rule 7-102(A)(3) and (5) of the Code of Professional Responsibility.

4. The Respondent acknowledges that the material facts alleged in the Statement of Charges filed herein are true.

5. That the Respondent submits his consent to disbarment because he believes that if the proceedings herein were to be prosecuted, he could not successfully defend himself.

6. That he believes there are circumstances which, while not excusing his conduct and behavior, should be brought to the Committee's attention. These matters are not offered as justification or excuse, but rather by way of explanation.

a) That at all times relevant hereto the Respondent was suffering from severe depression and for which he was receiving psychological and psychiatric treatment.

b) That except for such depression he would not have committed the acts above identified.

c) That the course of his treatment during the relevant period herein with Diane Trumbull, MD, is as stated in her report filed with the United States District Court for the Northern District of West Virginia in Case No. 85-55-E. A copy of said report is attached hereto. The original thereof may be found in said Court's file.

d) That while he is not now receiving treatment for depression from Dr. Trumbull, he is continuing in therapy at the Valley Comprehensive Community Mental Health Center, Morgantown.

e) That at all times during his study and practice of law, and since his admission to the Bar in 1979, he has endeavored to comply with and honor the laws, rules, regulations and codes pertaining to the conduct of attorneys.

f) That he realized he was in need of treatment in May of 1984 but that his condition was so developed, and as a result of the circumstances and pressures of his life and practice, he no longer functioned in competent control of his life or practice, nor was he able to recognize the extent to which he was impaired.

g) That the Honorable Larry V. Starcher, Judge of the Circuit Court of Monongalia County, West Virginia (Seventeenth Judicial Circuit) submitted to the United States District Court for the Northern District of West Virginia a letter dated June 5, 1985, pertaining to the Respondent's practice of law prior to his disability. A copy of said letter is attached hereto and made a part hereof.

h) That L. Edward Friend, II, then an attorney practicing in Monongalia County, West Virginia, became aware of his circumstances during the month of August, 1984, and assisted obtaining additional medical assistance for the Respondent, as well as in the recovery of trust assets.

i) That the Respondent has asked said attorney to prepare a letter expressing his perception of the Respondent's circumstances at the time, and to submit the same to this Honorable Committee.

7. This affidavit is submitted to the State Bar Legal Ethics Committee for its transmittal to the West Virginia State Supreme Court of Appeals, and for such further proceedings as are prescribed by the Constitution and By-Laws of The West Virginia State Bar.

8. That the Respondent sincerely regrets and is deeply sorry for the inconvenience and damage suffered by the Court, the Bar and his clients as a result of his actions.

WHEREFORE, the Respondent asks that he be permitted to consent to disbarment, that this Affidavit, its attachments, and the letter of L. Edward Friend, II, be made a part of the file.

Respectfully submitted,

David M. Hammond  
DAVID M. HAMMOND,  
Respondent.

VERIFICATION

STATE OF WEST VIRGINIA,  
COUNTY OF MONONGALIA, TO-WIT:

DAVID M. HAMMOND, the Respondent named in the foregoing  
AFFIDAVIT OF CONSENT TO DISBARMENT, being duly sworn, says that  
the facts and allegations therein contained are true, except so  
far as they are therein stated to be on information, and that, so  
far as they are therein stated to be on information, he believes  
them to be true.

David M. Hammond  
DAVID M. HAMMOND

Taken, sworn to and subscribed before me this 21<sup>st</sup> day of  
June, 1985.

My commission expires: June 6, 1990

Darrell W. Ringer  
NOTARY PUBLIC

APPROVED AS TO FORM  
AND CONTENT:

Darrell W. Ringer  
DARRELL W. RINGER  
Counsel for Respondent

256 High Street  
Morgantown, WV 26507-0842  
(304) 292-8488



CERTIFICATE OF SERVICE

I, Darrell W. Ringer, do hereby certify that on the 21st of June, 1985, I served the foregoing AFFIDAVIT upon Robert Davis, West Virginia State Bar, Capitol Building Charleston, WV 25305, by personally hand delivering a true copy thereof to him at the West Virginia University College of Law, Morgantown, West Virginia 26506.



DARRELL W. RINGER  
Counsel for Respondent  
P.O. Box 842  
Morgantown, WV 26507



THE WEST VIRGINIA STATE BAR  
E. 400 STATE CAPITOL  
CHARLESTON, WEST VIRGINIA 25305

ROBERT H. DAVIS, JR.  
BAR COUNSEL

May 27, 1983

(304) 346-8414  
(304) 346-2456

PERSONAL AND CONFIDENTIAL

Ms. Rose Ellen Cox, Circuit Clerk  
Circuit Court of Ritchie County  
Ritchie County Courthouse  
Harrisville, West Virginia 26362

RE: Records Relating to Haught, Inc.

Dear Ms. Cox:

A periodic review of my active investigative files reveals that I have no response to my letter of May 10, 1983. Your answer is essential to a full investigation of the matter of inquiry by this office.

Please give preferred attention to a prompt reply and let us have your response no later than 10 days after the date of this letter.

Very truly yours,

Robert H. Davis, Jr.

RHDJr/pas