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NORTH CAROLINA

WAKE COUNTY

FILED

SEP 19 1987

JAMES, SEC.  
STATE BAR

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
87 DHC 7

THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
vs. )  
RUSSELL E. TWIFORD, )  
Defendant )

ORDER

THIS MATTER was heard on the 11th day of September, 1987 before a Hearing Committee of the Disciplinary Hearing Commission composed of George Ward Hendon, Chairman, Karen P. Boyle and Emily W. Turner pursuant to Section 14 of Article IX of the Rules and Regulations of the North Carolina State Bar. The Hearing Committee, after receiving evidence, hearing testimony and arguments of Counsel, finds the following Findings of Fact and Conclusions of Law:

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. The Defendant, Russell E. Twiford, was admitted to the North Carolina State Bar on September 15, 1952 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 Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Elizabeth City, Pasquotank County, North Carolina.

4. In March 1985, Defendant was employed to incorporate Designs by Rizzo, Inc. in North Carolina upon the request of Peter K. Babalas, a Norfolk, Virginia attorney acting on behalf of David R. and Nancy Rizzo.

5. Defendant successfully completed all of the necessary tasks to incorporate Designs by Rizzo, Inc. in North Carolina by May 15, 1985. Defendant was paid for his representation by the Virginia corporation, Designs by Rizzo, Inc. check number 737 in the sum of \$500 dated June 28, 1985.

6. The North Carolina corporation, Designs by Rizzo, Inc. is active and in good standing in the State of North Carolina according to the records of the Department of the Secretary of the State of North Carolina.

7. In August 1985, Defendant was advised by his bank that check number 737 drawn on the Virginia Corporation had been returned for insufficient funds.

8. By letter dated August 26, 1985, Defendant advised the Rizzos that their check had been returned as worthless, that he had accepted it in good faith, that their worthless check had greatly fouled up his bookkeeping system, and that the Rizzos needed to forward him immediately a cashiers check or certified check in the sum of \$500 or bring \$500 in cash to his office on that date.

9. On September 20, 1985, the Virginia corporation, Designs by Rizzo, Inc. filed a petition in bankruptcy in Virginia. Defendant, was listed as a creditor and was sent a notice of the bankruptcy on October 2, 1985.

10. The Defendant was never employed by Designs by Rizzo, Inc., the Virginia Corporation, which filed a petition for bankruptcy as set forth above.

11. The North Carolina Corporation, Designs by Rizzo, Inc., which had been incorporated for David R. and Nancy Rizzo by the Defendant, did not file for bankruptcy and was at all times a corporation in good standing with the office of the Secretary of the State of North Carolina.

12. David R. Rizzo and wife, Nancy Rizzo, were not at any time in personal bankruptcy and were not individually included in the petition for bankruptcy filed by the Virginia Corporation.

13. By letter dated October 9, 1985, Defendant acknowledged receiving the bankruptcy petition of the Virginia Corporation and further advised the Rizzos that if their worthless check was not honored or paid in the Defendant's office by October 21, 1985, Defendant intended to indict the Rizzos in a criminal court for their worthless check.

14. A civil matter consisting of a debt for legal services was pending between Defendant and his clients, the Rizzos, on October 9, 1985.

15. By his letter dated October 9, 1985, the Defendant threatened to prosecute the Rizzos for giving the Defendant a worthless check.

16. Defendant's threat was communicated to the Rizzos by mailing the letter of October 9, 1985 to the Rizzo's bankruptcy attorney, Jonathan Hauser, even though the original of the letter was returned unopened and was not received by the Rizzos.

17. Defendant's primary purpose, as set forth above, in sending the October 9, 1985 letter was not primarily to obtain an advantage in a civil matter.

#### CONCLUSION OF LAW

The Defendant's conduct did not constitute a violation of Disciplinary Rule 7-105 of the North Carolina Code of Professional Responsibility.

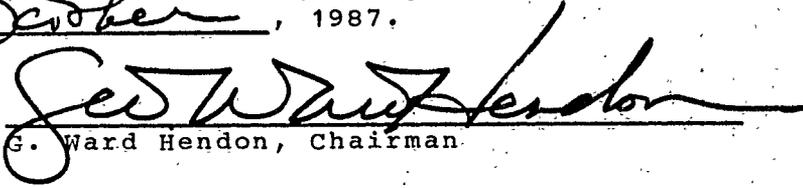
Based upon the foregoing FINDINGS OF FACT and CONCLUSION OF LAW, the Hearing Committee enters the following ORDER:

#### ORDER

1. This action against the Defendant in 87 DHC 7 is dismissed.

2. The costs of the action are taxed to the North Carolina State Bar.

Signed by the undersigned Chairman with the full knowledge and consent of the other members of the Hearing Committee this the 14 day of October, 1987.

  
G. Ward Hendon, Chairman