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STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
90G 0709 (II)

IN THE MATTER OF)
CINDY C. HUNTSBERRY)
ATTORNEY AT LAW)

PUBLIC CENSURE

On July 11, 1991, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

Pursuant to Section 13(7) of Article IX of the Rules and Regulations of the North Carolina State Bar, the Grievance Committee conducted a preliminary hearing. After considering the evidence, including your response to the Letter of Notice, the Grievance Committee found probable cause which is defined in the rules as "reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action."

The rules provide that after a finding of probable cause, the Grievance Committee may determine that the filing of a complaint and a hearing before the Disciplinary Hearing Commission are not required and the Grievance Committee may issue various levels of discipline depending upon the misconduct, the actual or potential injury caused, and any aggravating or mitigating factors. The Grievance Committee may issue a Private Reprimand, a Public Reprimand, or a Public Censure to the accused attorney.

The Grievance Committee was of the opinion that a complaint and hearing are not required in this case and issues this Public Censure to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this Public Censure. I am certain that you will understand fully the spirit in which this duty is performed.

A Public Censure is the most serious discipline that the Grievance Committee can impose. The Grievance Committee felt that your professional misconduct was a serious and substantial violation of the Rules of Professional Conduct and deserved the most severe form of public discipline short of actual suspension or loss of your license.

On August 23 and 24, 1989, Administrative Law Judge Burton Berkley conducted a hearing in Raleigh, North Carolina on complaints brought by the Social Security Administration (SSA) concerning your failure to comply with the rules and regulations of the SSA concerning filing fee petitions in a timely manner when representing claimants in matters before the SSA prior to charging and collecting fees from those claimants. Administrative Law Judge Berkley entered an order on December 29, 1989 finding that your failure to file fee petitions prior to being paid was a violation of the rules and regulations of the SSA and suspended you from representing claimants for three years. You appealed to the Appeals Council. In an order dated June 20, 1990, the Appeals Council upheld the suspension. The Grievance Committee subsequently issued a Reprimand to you for collecting fees prior to petitioning for approval of those fees.

On July 23, 1990, after the ruling of the Appeals Council, Administrative Law Judge Arthur C. Canady sent you a letter concerning your failure to file a fee petition in the claim of Evelyn B. Ellis which was decided on May 8, 1989. Administrative Law Judge Canady's letter advised that you had been notified by letter dated August 14, 1989 to file a fee claim within twenty days. You did not file a fee petition within the twenty days or after receipt of Administrative Law Judge Canady's July 23, 1990 letter, although you had received payment from Ms. Ellis of \$3,000. You certainly knew that you needed to file a fee petition since you had received Administrative Law Judge Berkley's order and the Appeals Council's decision by the time you got Administrative Law Judge Canady's letter. Your failure to file a fee petition in the Ellis matter violated Rule 2.6(A) of the Rules of Professional Conduct.

The North Carolina State Bar sent you a Letter of Notice in this matter which you received on December 27, 1990. You responded by letter dated January 16, 1991 that Ms. Ellis' fee was in your trust account and that a fee petition "was filed late" and had not been approved. At the time of your letter, the Ellis fee was not in your trust account and no fee petition had been filed. Only after follow-up by the North Carolina State Bar was Ms. Ellis' \$3,000 found in your desk drawer and a fee petition filed. The fee petition was not filed until February 22, 1991. The representations in your January 16, 1991 letter were untrue or were made with careless disregard of their truth where the representations were made. Such conduct violated Rule 1.2(C).

While it was clear that you truly believed that the \$3,000 of Ms. Ellis was in your trust account and subsequently found that it was not through oversight, it was not clear that you had any basis for your representation that a fee petition had been filed. As a result, the Grievance Committee felt that this conduct warranted a more serious discipline than the Reprimand previously issued to you as a result of the other cases.

You are hereby publicly censured by the North Carolina State Bar due to your professional misconduct and violation of the Rules of Professional Conduct. The Grievance Committee trusts that this Public Censure will be heeded by you, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. In order to remain a respected member of the legal profession whose conduct may be relied upon without question, you must in the future carefully weigh your responsibility to the public, your clients, your fellow attorneys and the courts. The Grievance Committee expects that no professional misconduct will occur in the future.

Pursuant to Section 23 of Article IX of the Rules and Regulations of the North Carolina State Bar, it is ordered that a certified copy of this Public Censure be forwarded to the Clerk of the Superior Court of Johnston County for entry upon the judgment docket and to the Supreme Court of North Carolina for entry in its minutes. This Public Censure will be maintained as a permanent record in the judgment book of the North Carolina State Bar and a copy shall be sent to the local newspapers in the county in which you practice. A copy also will be sent to the complainant.

If you have not accepted this Public Censure within 15 days after it is served upon you, counsel shall thereafter be instructed to prepare and file a complaint against you with the Disciplinary Hearing Commission of the North Carolina State Bar. Your acceptance must be addressed to the Grievance Committee and filed with the Secretary. The hearing before the Disciplinary Hearing Commission is public and all of its proceedings and its decision are public.

In accordance with the policy adopted October 15, 1981 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a Public Censure by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this 21st day of August, 1991.

Robert J. Robinson

Robert J. Robinson, Chairman
The Grievance Committee
North Carolina State Bar

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