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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
92G1245 (IV)

IN THE MATTER OF)

M. CLARK PARKER,)
ATTORNEY AT LAW)

CENSURE

On April 15, 1993, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Pursuant to section 13(A) of article IX of the Rules and Regulations of the North Carolina State Bar, the Grievance Committee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Committee found probable cause. Probable cause 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 an admonition, reprimand, or a censure.

A censure is a written form of discipline more serious than a reprimand, issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or a member of the public, but the misconduct does not require suspension of the attorney's license.

The Grievance Committee believes that a hearing before the Disciplinary Hearing Commission is not required in this case and issues this censure to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this censure. I am certain that you will understand fully the spirit in which this duty is performed.

You represented Mrs. Marilyn Ridge in several domestic matters. By contract dated February 5, 1992, you agreed to "represent Mrs. Ridge in claims against Robert Baechtold, RE: a prenuptial agreement and/or domestic matters". You charged Mrs. Ridge a retainer of \$300 and a one-third contingent fee of any settlement, verdict or recovery obtained. The prenuptial agreement entered into by Mrs. Ridge and Mr. Baechtold involved, inter alia, temporary alimony. On February 11, 1992, you filed a lawsuit on behalf of Mrs. Ridge wherein you asked that Mr. Baechtold pay alimony to Mrs. Ridge for a minimum of one year as provided by the prenuptial agreement.

The February 5, 1992 contingent fee contract violated Rule 2.6(A) of the Rules of Professional Conduct. That rule provides that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly

excessive fee. Since your contingent fee contract at a minimum sought a contingent fee based upon Mr. Baechtold's temporary alimony obligation, the contract was void and against public policy. The law in this state is clear that a contingent fee contract for representation in a divorce proceeding is prohibited. Thompson v. Thompson, 313 N.C. 313, 328 S.E.2d 288 (1985). Furthermore, the law in this state is clear that a contingent fee contract for alimony or child support is also void. Davis v. Taylor, 81 N.C App. 42, 344 S.E.2d 19 (1986).

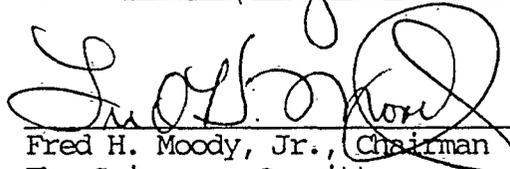
In addition, the Grievance Committee was concerned about your attempt to structure the resolution of Mrs. Ridge's domestic dispute as a settlement. The Grievance Committee believed that the dispute could have been resolved by a consent order. You have stated that you thought the settlement agreement would best protect Mrs. Ridge's interest. However, a consent order could provide the same protection of her interest and in fact a consent order was prepared by a subsequent attorney without the use of a settlement agreement.

The Grievance Committee thought that your attempt to cast the termination of the domestic dispute as a settlement was an attempt to allow you to enforce the contingent fee contract which was void as a matter of public policy. Your conduct in this respect violates Rules 2.6(A) and 1.2(D).

You are hereby censured by the North Carolina State Bar for your violation of the Rules of Professional Conduct. The Grievance Committee trusts that you will ponder this censure, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. This censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibility to the public, your clients, your fellow attorneys and the courts, to the end that you demean yourself as a respected member of the legal profession whose conduct may be relied upon without question.

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 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 24 day of May, 1993.


Fred H. Moody, Jr., Chairman
The Grievance Committee
North Carolina State Bar

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