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NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
95G0012(IV)

IN THE MATTER OF )

C. GARY TRIGGS, )  
ATTORNEY AT LAW )

CENSURE

On October 19, 1995, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the State Bar.

Pursuant to section .0113(a) of the Discipline and Disability Rules 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.

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You represented C. Morgan Shepherd, a client and long-time friend, in the sale of Mr. Shepherd's business, Telcom. From the sales proceeds, you were to pay certain debts of Mr. Shepherd, including an equity loan in the amount of \$15,627.27. Fifteen thousand dollars of the proceeds from the sale was maintained in your trust account. You asked to borrow the \$15,000.00 from Mr. Shepherd. Mr. Shepherd agreed to the loan and you delivered a note to him.

You did not repay the loan in a timely manner as agreed upon by you and Mr. Shepherd. However, the note with interest, has been repaid.

You represented Larry McCall in the sale of one of his businesses. Proceeds from the sale were placed in your trust account. You asked to borrow some of Mr. McCall's money which was in your trust account. Mr. McCall agreed to the loan and you provided a note with interest for the loan to McCall. However, you did not give him a secured note for the loan.

You represented Richard Pons in a personal injury case. You deposited the proceeds of the settlement of that case into your trust account. At a later time, you borrowed some of the proceeds Mr. Pons obtained from the personal injury action. You never gave Mr. Pons a promissory note to secure the loan.

The Grievance Committee acknowledges that neither Mr. Shepherd nor Mr. McCall complained about their loan transactions with you. Nevertheless, your conduct with respect to borrowing money from your clients violates Rule 5.4(a) of the Rules of Professional Conduct. The loans were business transactions. Your interests as borrower and your clients' interests as lenders were inherently adverse. Your clients expected that you as their lawyer would exercise your professional judgment for their protection with regard to the loans. Your clients consented to the loans, but there was no full disclosure given before you obtained their consent. That is, you did not explain to the clients the risks or disadvantages associated with lending money to you. You did not advise them to consult independent counsel so that they could determine if the terms and conditions of the loans were favorable to them.

Rule 5.4(a) also prohibits a lawyer from entering into a business transaction with a client under any circumstances unless it is fair to the client. These loan transactions were not fair to your clients. With respect to Richard Pons and Larry McCall, you did not provide promissory notes or any security for their loans. In the case of C. Morgan Shepherd, your unsteady financial condition jeopardized his loan with the bank. The Grievance Committee was concerned about the potential financial harm which could have resulted in these loans from your clients.

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 6<sup>th</sup> day of March, 1996.



Ann Reed  
Chair, Grievance Committee  
The North Carolina State Bar