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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
96G0109(III)

IN THE MATTER OF)
)
THOMAS F. KASTNER,)
ATTORNEY AT LAW)
)

REPRIMAND

On July 25, 1996, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Loyd E. Shearin.

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 censure to the respondent attorney.

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

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

You agreed to represent Loyd E. Shearin in a traffic case in late 1994. Mr. Shearin's case was scheduled for court, but you were unable to be there due to an illness. Another lawyer had the case continued and you believed that the new court date was April 13, 1995. You admit that you did not check with the clerk's office to confirm the date that Mr. Shearin's case was

continued. You later learned that his case had not been continued to April 13, 1995. Mr. Shearin's case was sent to the Division of Motor Vehicles as a 20-day failure.

Mr. Shearin's case was set for June 27, 1995 and you did not appear in court due to an illness. You indicated that you asked another attorney to continue the matter. However, Mr. Shearin's case was not continued.

Your conduct with regard to handling Mr. Shearin's case violates Rule 6(b)(3). As your client's attorney, you have an obligation to act with reasonable diligence and promptness in representing him. You can not abdicate your responsibility to represent your client to another attorney.

In addition, you did not respond promptly to this grievance. You were served with a letter of notice in this grievance on February 27, 1996. You failed to respond to the grievance within 15 days of receiving it. You were sent a follow up letter on March 21, 1996. You were asked to respond no later than April 1, 1996, but you did not submit a response to the grievance.

The State Bar office later sent by certified mail a subpoena to appear and produce documents. The post office gave you two notices, but you did not claim the certified letter. The State Bar office was finally forced to attempt service of the subpoena to appear and produce documents by the sheriff. You were supposed to appear at the State Bar office on May 14, 1996 pursuant to the subpoena. You did not appear at the State Bar's office, but you did respond on May 31, 1996.

Your failure to respond promptly to this grievance violates Rule 1.1(b) of the Rules of Professional Conduct. You are advised to respond promptly to any grievances that you may receive in the future.

You are hereby reprimanded by the North Carolina State Bar due to your professional misconduct. The Grievance Committee trusts that you will heed this reprimand, 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 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 reprimand by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this 9th day of August, 1996.


Ann Reed
Chair, Grievance Committee
The North Carolina State Bar