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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
96G0956(II)

IN THE MATTER OF)
)
TIMOTHY VAN DER WEERT,)
ATTORNEY AT LAW)

CENSURE

On January 23, 1997, 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 .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, a 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.

On July 31, 1996, you closed your law office and left for Europe with the intention of remaining two years. On July 28, you mailed letters to your clients, informing them of your departure. Most of the clients got the letters after you had already left the United States.

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When you departed, you left in charge of your law office a law student who had taken the bar examination but who had not been sworn in to the practice of law. This individual was not able to handle all matters associated with the winding down of your law practice. A number of clients became angry and upset over your abrupt departure. Ultimately, the N.C. State Bar was forced to petition the court to appoint a licensed attorney to assist with the wind down of your practice and to protect the clients whose matters were still pending when you left the country.

Your failure to provide adequate notice of your intent to close your law office and your failure to take adequate steps to protect your clients' interests violated Rule 2.8 of the Rules of Professional Conduct. That rule requires attorneys who withdraw from a matter to take all "reasonable steps to avoid foreseeable prejudice to the clients, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled and complying with all applicable laws and rules."

In determining to issue a censure to you rather than more serious discipline, the Grievance Committee took into account the fact that you returned within a few months after your departure from the U.S., assisted with the rest of the wind down of your practice, and paid the expenses of the trusteeship.

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 5th day of February 1997.


Ann Reed, Chair Grievance Committee
The North Carolina State Bar

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