

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
File #97G1007(IV)

IN THE MATTER OF)

Roger W. Rizk,)
ATTORNEY AT LAW)

REPRIMAND

On October 23, 1997, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Mark S. Aspland.

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 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.

After considering all the evidence, the Committee made the following findings and reached the following conclusions: You filed a federal employment discrimination lawsuit on behalf of your client, Willie James Chambers, against Hands-On Woodworking, Inc. ("Hands-On"). Hands-On is owned by Mr. Mark S. Aspland. In the

suit, your client sued Hands-On for employment discrimination based on race under Title VII.

Before you filed suit in federal court, the EEOC had dismissed a charge filed by your client based on the same allegations as those in the subsequent federal suit you filed. The EEOC dismissed Mr. Chambers' claim because Hands-On did not have the required number of employees to qualify under Title VII.

Notwithstanding the EEOC's reasoning for the dismissal of your client's claim, you nonetheless filed the suit in federal court on behalf of your client against Hands-On. Additionally, you filed suit more than 90 days after getting the notice from the EEOC. Shortly after the suit was filed, Mr. Aspland's attorney notified you that you should dismiss the suit for two reasons: (1) Mr. Aspland was not subject to Title VII jurisdiction because Hands-On did not have requisite number of employees; and (2) suit was not filed within 90 days of the EEOC notice.

You did not dismiss the complaint. The federal district court in the Western District of North Carolina issued orders granting Mr. Aspland's subsequent motion to dismiss the complaint and imposing sanctions against you, under Rule 11 of the Federal Rules of Civil Procedure, for filing the suit.

After sanctions were imposed upon you, you requested that Mr. Aspland set up a payment schedule to pay the sanctions because you stated that your client was unable to pay them in total. The sanctions, however, had been imposed on you personally, not your client. After Mr. Aspland agreed to a payment plan for the payment of the sanctions, you did not comply with the agreement to pay the sanctions by the scheduled dates. Ultimately, however, you did pay the sanctions to Mr. Aspland.

Your above-described conduct violates Rule 7.2(a)(1) of the Rules of Professional Conduct. The Committee concluded that you filed a lawsuit on behalf of Mr. Chambers when you either knew or when it was obvious that the suit was frivolous.

In deciding to impose this Reprimand, the Committee considered the following aggravating and mitigating circumstances. In aggravation, the Committee considered that you had been informed on several occasions by several different people the reasons the suit was frivolous but proceeded to file and then refused to dismiss the suit. In mitigation, the Committee considered the fact that you had been sanctioned by the federal court for this action and ultimately paid those sanctions to Mr. Aspland.

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 6th day of November, 1997.



Ann Reed
Chairman, Grievance Committee
The North Carolina State Bar