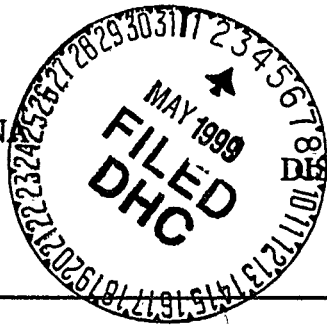


NORTH CAROLINA
WAKE COUNTY



13829

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
99 DHC 3

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
v.)
)
E. CLARKE DUMMIT, Attorney,)
)
Defendant.)

**CONSENT ORDER OF
DISCIPLINE**

This matter was heard on before a Hearing Committee of the Disciplinary Hearing Commission composed of Fred H. Moody, Jr., Chair; Robert B. Smith, and Jean G. Hauser. The Plaintiff was represented by Larissa J. Erkman. The Defendant, E. Clarke Dummit, was represented by Urs R. Gsteiger. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Based on the consent of the parties, the Hearing Committee hereby enters the following:

FINDINGS OF FACT

1. The North Carolina State Bar is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.

2. The Defendant, E. Clarke Dummit (hereafter, "Defendant"), was admitted to the North Carolina State Bar in 1986 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all times relevant hereto, Defendant was actively engaged in the practice of law in Winston-Salem, Forsyth County, North Carolina and maintained a law office there.

4. Defendant waives his right to a formal hearing. Defendant waives his right to seek assignment of a newly constituted Hearing Committee of the Disciplinary Hearing Commission in the event that this Hearing Committee declines to approve this consent order.

5. Defendant was properly served with process and the hearing was held with due notice to all parties.

6. Defendant is a 50% owner of a company called Professional Legal Press, Ltd. ("PLP"). Defendant participated in the construction and operation of an internet web site sponsored by PLP and located at "<http://www.nclawyer.com>" (hereafter, the "PLP Web Site").

7. The PLP Web Site was, in part, designed to assist the public in finding an attorney to handle driving while impaired ("DWI") cases.

8. In or around October 1997, the PLP Web Site contained multiple web pages. One PLP web page located at "<http://www.nclawyer.com/map.htm>" contained a map of North Carolina (hereafter, the "PLP Map Page"). The map displayed the approximate geographic boundaries and names of all 100 counties in North Carolina. Exhibit A, attached hereto, is a true and accurate depiction of the Map Page as it appeared on or around October 2, 1997.

9. The PLP Map Page contained a heading at the top of the page: "Find a Lawyer in Your Area." The PLP Map Page instructed visitors to "**Click on the name of the county that charged you to get to the DWI specialist home page for that area.**" The same bold emphasis on these words appeared in the text of the PLP Map Page.

10. In this manner, the PLP Web Site purported to contain interactive links to "the DWI specialist home page" for the 100 counties of North Carolina. A visitor to the PLP Map Page who "clicked" on the "Forsyth" county name would be automatically linked to a PLP Web Page purporting to be the "DWI specialist home page" for Forsyth County.

11. The PLP Web Site page linked to "Forsyth" county was located at "<http://www.nclawyer.com/forsyth.htm>" (hereafter, the "Forsyth Page"). Exhibit B, attached hereto, is a true and accurate depiction of the Forsyth Page as it appeared on or around October 2, 1997.

12. The Forsyth Page contained the heading "Forsyth County: Clarke Dummit, Dummit and Associates." It also included a picture of Defendant, and a description of Defendant's law practice. The Forsyth Page listed Defendant's telephone number as "(910)-777-8081" and included a link to his e-mail address at "Dummit@bellsouth.net."

13. The Forsyth Page did not refer or otherwise link the public and potential clients to any lawyer other than Defendant.

14. In or around October 1997, the other 99 North Carolina counties depicted on the Map Page were linked to web pages located at other internet addresses. Most of the North Carolina counties were linked to a web page located at "http://www.nclawyer.com/tryagain.htm" (hereafter, the "Try Again Page"). Exhibit C, attached hereto, is a true and accurate depiction of the Try Again as it appeared on or around October 2, 1997.

15. The Try Again Page contained the heading "Professional Legal Press" and the following message: "You have selected a county that is not yet supported by NClawyer.com. Please call (910)-777-8081 for a personal referral."

16. At that time, the telephone number "(910)-777-8081" was assigned to Defendant or his law practice, Dummit and Associates.

17. The remaining North Carolina counties shown on the Map Page were linked to web pages located at other internet addresses. For instance, "Guilford" county was linked to a web page located at "http://www.nclawyer.com/guilford.htm." As shown in Exhibit D, attached hereto, this web page stated that it was "Reserved for future use."

18. A separate link entitled "About the Book" took PLP Web Site visitors to another web page. The About the Book link contained information about a book authored by Defendant, entitled *Friends Don't Let Friends Plead Guilty*. The About the Book link described Defendant's book, stating that the book instructed the public on "the danger of letting just any lawyer handle your DWI case." The same bold emphasis appears in the text of the linked web page.

19. In constructing and operating the PLP Web Site, Defendant's intention and plan was to create a series of affiliations or relationships with attorneys in other North Carolina counties and to create an Internet-based referral service in accordance with the North Carolina Rules of Professional Responsibility.

20. In or around October 1997, the overall impression given to the public and potential clients was that the PLP Web Site could be used by web site visitors as an objective and reliable source not only to locate attorneys throughout the state of North Carolina to handle DWI cases, but also to identify attorneys who were qualified and experienced in litigating DWI cases.

21. The overall impression of the PLP Web Site was false or misleading in that:

- (a) Defendant was the only attorney linked to or listed in the PLP Web Site, and Defendant was the only lawyer participating in the PLP Web Site;

- (b) the PLP Web Site purported to link web site visitors to "the DWI specialist home page" for a particular area. The words "DWI specialist" connote to the public a particular expertise recognized by a certifying organization, such as the North Carolina State Bar. As of October 1997, neither the North Carolina State Bar, nor any organization approved or endorsed by the North Carolina State Bar, granted certification for a "DWI specialist."
- (c) a web site visitor who "clicked" on the "Forsyth" county name "to get to the DWI specialist home page for that area" would be automatically linked to the Forsyth Page containing the heading "Forsyth County: Clarke Dummit, Dummit and Associates." As of October 1997, Defendant was not, and never had been, certified by the North Carolina State Bar, or any organization approved by the North Carolina State Bar, as a "DWI specialist."
- (d) the Try Again Page automatically linked to most of the North Carolina counties directed web site visitors to call Defendant's telephone number, without reference to Defendant's name or his law firm, "for a personal referral."

25. Defendant was responsible for the construction and operation of the PLP Web Site.

26. Upon receiving notice from the North Carolina State Bar of alleged violations of the Revised Rules of Professional Conduct related to the PLP Web Site, Defendant has changed the PLP website to remove all references to "DWI specialist". Any revisions made by Defendant to the content of the PLP Web Page since October 1997 are not the subject of review by this panel, except to the extent noted in this paragraph.

27. There is no evidence of any harm to the public resulting from Defendant's operation and construction of the PLP Web Page as it appeared in October 1997.

28. In or around April 1996, Jeffrey D. Lumpkin (hereafter, "Lumpkin") and James E. Wroten (hereafter, "Wroten") approached Defendant in his law office to assist them in incorporating Net Unlimited as a sub-chapter S corporation. Lumpkin and Wroten told Defendant that they had counsel in Louisiana who might be reviewing documents and contracts for them.

29. During this meeting, the parties discussed the availability of office space in Defendant's law office building. Defendant indicated that his company Rational Developments, Inc. (hereafter "RDI") had space available to lease. RDI is a company owned by Defendant and his wife.

30. Lumpkin and Wroten subsequently returned to Defendant's office and negotiated lease terms. A lease was ultimately agreed to by the parties and signed on or about April 23, 1996.

31. In April 1996, Defendant prepared articles of incorporation for Net Unlimited, Inc. on behalf of its shareholders and principals, Lumpkin and Wroten. Defendant also prepared a draft shareholders agreement for Lumpkin and Wroten prior to preparing the articles of incorporation.

32. On April 11, 1996, the organizational meeting of the board of directors of Net Unlimited, Inc. was held at Defendant's office. The minutes reflect that, as of April 11, 1996, Defendant was acting as attorney for Net Unlimited, Inc. The minutes further reflect that Defendant was present at the corporation's organizational meeting.

33. Net Unlimited, Inc.'s articles of incorporation were filed with the North Carolina Secretary of State on or about April 15, 1996. The articles of incorporation list Defendant as incorporator of Net Unlimited, Inc.

34. Thereafter, on April 23, 1996, Defendant drafted a lease agreement between Net Unlimited, Inc. and RDI. The lease agreement provided that Net Unlimited Inc. would rent from RDI office space in a building owned by RDI. The space subject to the lease was in the same building as and adjacent to Defendant's law offices.

35. Defendant signed the lease agreement on April 23, 1996 as Secretary of the lessor corporation, RDI.

36. Defendant and Net Unlimited, Inc. had differing interests in the lease transaction.

37. Net Unlimited, Inc. and its principals sued Defendant and his wife in Forsyth County Superior Court, alleging breach of fiduciary duty and other torts arising out of the facts stated above. At the conclusion of the plaintiffs' evidence, Superior Court Judge Thomas Ross dismissed the case and entered judgment in favor of Defendant and his wife, finding that while a fiduciary relationship existed between Defendant, Net Unlimited, Inc. and its principals, as a matter of law Defendant did not breach that fiduciary relationship and did not engaged in constructive fraud.

BASED UPON the consent of the parties and the foregoing Findings of Fact, the Hearing Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(a) and (b)(2) as follows:

a) Defendant communicated false and misleading statements or information about his services in violation of the Revised Rules of Professional Conduct, Rule 7.1(a), as more fully described in Findings of Fact ¶¶ 20 and 21 (a) -(d);

b) Defendant impermissibly communicated that he is a specialist in a field of practice not recognized by any certifying organization in violation of the Revised Rules of Professional Conduct, Rule 7.4(b), as more fully described in Findings of Fact ¶¶ 21 (b) and (c);

c) by entering into a business transaction with Net Unlimited, Inc. and its principals after commencement of Defendant's representation of Net Unlimited, Inc. and by failing to obtain the consent of Net Unlimited and its principals, after full disclosure, of Defendant's inherently conflicting roles in relation to the lease transaction, Defendant unintentionally or technically violated Rule 5.4(a) of the superseded (1985) Rules of Professional Conduct.

BASED UPON the consent of the parties, the Hearing Committee also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:

a) Prior disciplinary offense. In October 1994, the Grievance Committee issued a reprimand, finding that Defendant had violated Rule 2.1(b) of the superseded (1985) Rules of Professional Conduct by stating in letters to potential clients charged with speeding in Forsyth County that "[a] plea bargain can save you thousands of dollars in insurance premiums over the next three years," which likely created an unjustified expectation about the results Defendant could achieve.

b) Multiple offenses, and

c) Substantial experience in the practice of law.

2. Defendant's misconduct is mitigated by the following factors:

a) Timely good faith efforts to rectify consequences of misconduct, and

b) Full and free disclosure to the Hearing Committee and cooperative attitude toward the proceedings.

3. The aggravating factors outweigh the mitigating factors.

BASED UPON the foregoing Findings of Fact and Conclusions of Law and the Findings of Fact Regarding Discipline and based upon the consent of the parties, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

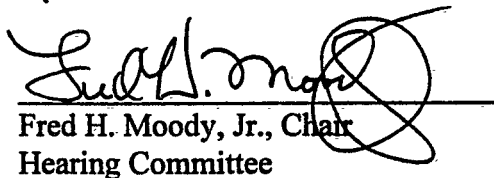
1. Defendant is hereby censured for his misconduct related to the PLP Web Site.

2. Defendant is hereby issued a Letter of Warning for his misconduct related to Net Unlimited, Inc. Defendant's conduct constituted an unintentional, minor, or technical violation of the Rules of Professional Conduct which may be the basis of discipline if continued or repeated.


3. Defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days from service on Defendant of a statement of costs.

Signed by the undersigned Hearing Committee Chair with consent of the other hearing committee members.


This the 29 day of April, 1999.



Fred H. Moody, Jr., Chair
Hearing Committee

CONSENTED AND AGREED TO, This the 14 day of April, 1999.


Larissa J. Erkman
The North Carolina State Bar
Post Office Box 25908
Raleigh, North Carolina 27611
(919) 828-4620

ATTORNEY FOR PLAINTIFF


E. Clarke Dummit
Defendant


Urs Gsteiger
Wilson & Iseman, LLP
380 Knollwood Street, Suite 530
Winston-Salem, North Carolina 27103

ATTORNEY FOR DEFENDANT

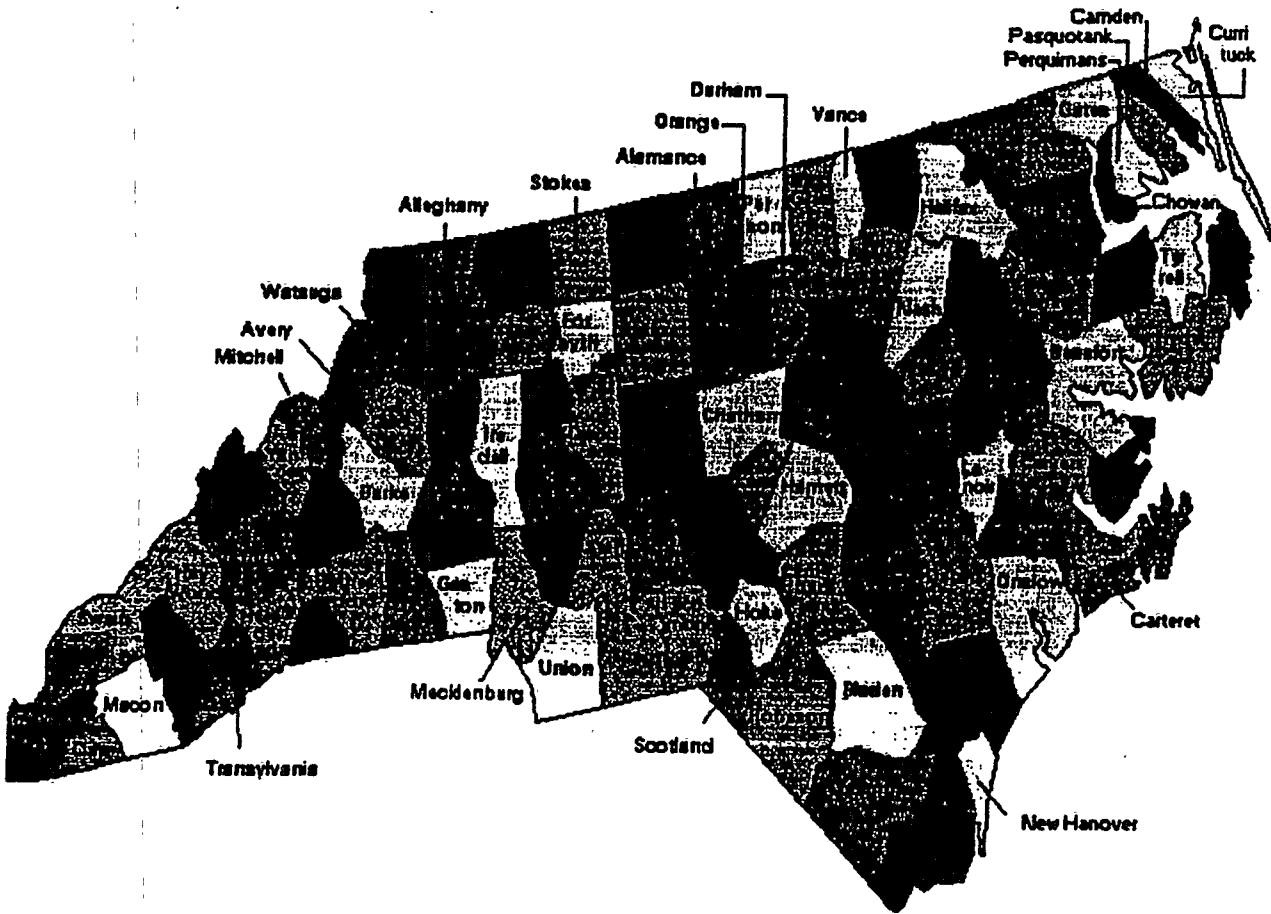


PROFESSIONAL LEGAL PRESS

EXHIBIT
A

Find a Lawyer in Your Area

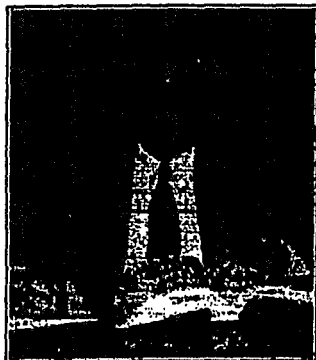
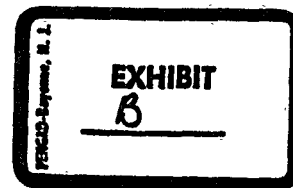
Click on the name of the county that charged you to get to the
DWI specialist's home page for that area.



[North Carolina Statistics](#) | [North Carolina DWI Laws](#)
[Top Ten Defenses](#) | [8 Surefire Ways](#) | [M.A.D.D.](#)
[Alcoholics Anonymous](#) | [Do You Drink Too Much?](#)
[Take Our Quiz](#) | [About the Book](#) | [E-Mail Us](#) | [Home Page](#)

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Forsyth County: Clarke Dummit, Dummit and Associates



Clarke Dummit is a founding partner in Dummit & Associates, a law firm in Winston-Salem, N.C., that concentrates its practice on DWI law. In the 'must read' book, "Friends Don't Let Friends Plead Guilty" written just for North Carolina readers, Dummit shares the insights that he has gained from thousands of hours of courtroom experience in defending DWI cases. Dummit was raised in Sanford, N.C., and studied philosophy and business administration at Vanderbilt University. He graduated from the Wake Forest University School of Law and is licensed to practice in North

Carolina, Georgia, U.S. District Court, U.S. Bankruptcy Court and the U.S. Court of Appeals.

Prior to Mr. Dummit graduating from Law School, he clerked with the United States attorney's office in the Middle District of California. He was the first law clerk, not yet being an attorney, to be allowed to handle three Federal jury trials on DWIs. At that point in his life, Mr. Dummit quickly became a recognized leader in Driving While Impaired cases. Under the Federal Incorporation Statutes, he was able to convict a person with driving while impaired and have him sentenced to the maximum sentence allowable under California Law (U.S. v. Henderson Fed 2nd). Mr. Dummit has a tradition of being a vigilant DWI attorney and one of the most aggressive prosecutors around in the 1980's.

Today he is using his vigilance, experience, and expertise to defend those accused with Drunk Driving in North Carolina.

You can contact Clarke at (910)-777-8081 or send him e-mail to:
Dummit@bellsouth.net

[Go Back To Map.](#)

[North Carolina Statistics](#) | [North Carolina DWI Laws](#)
[Top Ten Defenses](#) | [8 Surefire Ways](#) | [M.A.D.D.](#)

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PROFESSIONAL LEGAL PRESS



You have selected a county that is not yet supported by NCLawyer.com. Please call (910)-777-8081 for a personal referral.

[Go Back To Map](#)

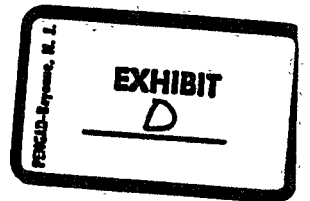
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**PROFESSIONAL
LEGAL
PRESS**

Reserved for future use.



[Go Back To Map.](#)

[North Carolina Statistics](#) | [North Carolina DWI Laws](#)
[Top Ten Defenses](#) | [8 Surefire Ways](#) | [M.A.D.D.](#)
[Alcoholics Anonymous](#) | [Do You Drink Too Much?](#)
[About the Book](#) | [E-Mail Us](#) | [Home Page](#)
[Take Our Quiz](#)

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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
99 DHC 3

IN THE MATTER OF)	
)	
E. CLARKE DUMMIT,)	CENSURE
ATTORNEY AT LAW)	
)	

This matter came on for consideration of a Consent Order of Discipline before a hearing committee of the Disciplinary Hearing Commission composed of Fred Moody, Chair, R.B. Smith and Jean Hauser. The Plaintiff was represented by Larissa J. Erkman. The Defendant, E. Clarke Dummit, was represented by Urs Gsteiger. Both parties stipulate and agree to the findings of fact and conclusions of law recited in the Consent Order and to the discipline imposed. The Hearing Committee approves entry of said Consent Order of Discipline and, based upon the consent of the parties, the Hearing Committee hereby issues the following Censure to the defendant, E. Clarke Dummit:

You are a 50% owner of Professional Legal Press, Ltd. ("PLP"). In 1997, you participated in an internet web site sponsored by PLP ("PLP web site"). The PLP web site, by your own admission, was designed to assist the public in finding an attorney to handle driving while impaired ("DWI") cases.

As of October 1997, the PLP web site contained the following information: First, an instruction at the top of the home page stated, "Find The Best DWI Lawyer Near You."

Second, on the home page under the web site logo was a map of North Carolina with all 100 counties named and depicted. Just above this map was the statement, "Click on the name of the county that charged you to get to the DWI specialist home page for that area."

The home page included links to each of the 100 counties. Consequently, a person accessing the home page could "click" on any county displayed on the map and purportedly be linked to a separate page listing attorneys in that county that could handle DWI cases. For Forsyth County, the only link was to your home page -- a page describing you and your law firm. For numerous other counties, there was a link to a page listing your phone number, but not your name, for a referral. Significantly, there were no links in the PLP web site to any lawyers, other than you.

Third, a separate link from the home page was to another site containing information about a book you authored, entitled "Friends Don't Let Friends Plead Guilty." The linked page describing your book contained a statement that in your book

the public would learn, "the danger of letting just any lawyer handle your DWI case."
(emphasis in original)

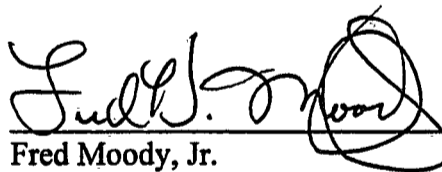
Your participation in the PLP web site violated several provisions of the Revised Rules of Professional Conduct. First, the PLP web site contains misleading statements or information, in violation of Revised Rule 7.1(a). Specifically, the overall impression given from the PLP web site is that it is an objective vehicle that can be used to locate attorneys throughout the state to handle DWI cases. You, however, were the only attorney listed in or linked to the PLP web site. Moreover, the links to numerous counties listed only your phone number without any reference to the fact that it was your number. The Committee found that the PLP web site as a whole gave the public and potential clients the misleading impression that it was an objective way of finding attorneys throughout North Carolina, but in fact, it was an advertisement for only you and your law firm's services.

Second, the statement in the home page that directed potential clients to click for the "DWI specialist's home page" and then directed them to your home page in Forsyth County violated Revised Rule 7.4(b). You are prohibited by Revised Rule 7.4(b) from communicating that you are a specialist in a field of practice unless you have been certified as a specialist by the North Carolina State Bar or an organization approved or endorsed by the State Bar. There is no certification for a "DWI specialist."

In deciding to issue a censure, the Hearing Committee considered the following aggravating and mitigating factors. In aggravation, the Hearing Committee considered your prior discipline for a violation of the Rules governing attorney advertising, the multiple violations you committed in connection with the PLP web site, and your substantial experience in the practice of law. In mitigation, the Hearing Committee considered your efforts to have the web site changed after being notified of the violations and your cooperation in these proceedings.

You are hereby censured by the North Carolina State Bar Disciplinary Hearing Commission for your violation of the Rules of Professional Conduct. The Commission 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.

Done and ordered, this 29 day of April, 1999.



Fred Moody, Jr.
Chair, Disciplinary Hearing Commission



The North Carolina State Bar

DISCIPLINARY HEARING COMMISSION

Fred Moody, Jr.
Chair

Mr. E. Clarke Dummit
Attorney at Law
213 West 6th Street
Winston-Salem, NC 27101

LETTER OF WARNING

Re: *State Bar v. E. Clarke Dummit*, 99 DHC 3

Dear Mr. Dummit:

A hearing committee of the Disciplinary Hearing Commission composed of Fred Moody, Chair; R.B. Smith and Jean Hauser considered and approved the Consent Order submitted by the parties in the above-referenced matter. Based upon said Consent Order of Discipline, the Hearing Committee determined that your conduct constituted an unintentional, minor, or technical violation of the Rules of Professional Conduct which may be the basis of discipline if continued or repeated. The Hearing Committee hereby issues this Letter of Warning to you.

In or around April 1996, Jeffrey D. Lumpkin (hereafter, "Lumpkin") and James E. Wroten (hereafter, "Wroten") approached you in your law office to assist them in incorporating Net Unlimited as a sub-chapter S corporation. Lumpkin and Wroten told you that they had counsel in Louisiana who might be reviewing documents and contracts for them. During this meeting, the you discussed with Lumpkin and Wroten the availability of office space in your law office building. You indicated that your company, Rational Developments, Inc. (hereafter "RDI") had space available to lease. RDI is a company owned by you and your wife.

Lumpkin and Wroten subsequently returned to your office and negotiated lease terms. In April 1996, you prepared articles of incorporation for Net Unlimited, Inc. and prepared a draft shareholders agreement for Lumpkin and Wroten. On April 11, 1996, the organizational meeting of the board of directors of Net Unlimited, Inc. was held at your office. You were present at the corporation's organizational meeting and acted as attorney for Net Unlimited, Inc. Net Unlimited, Inc.'s articles of incorporation were filed with the North Carolina Secretary of State on or about April 15, 1996. The articles of incorporation list you as incorporator of Net Unlimited, Inc.

Thereafter, on April 23, 1996, you drafted a lease agreement between Net Unlimited, Inc. and RDI. The lease agreement provided that Net Unlimited Inc. would rent from RDI

208 Fayetteville Street Mall/Post Office Box 25908 /Raleigh, NC 27611/(919) 828-4620/Fax (919) 821-9168

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office space in a building owned by RDI. You signed the lease agreement on April 23, 1996 as Secretary of the lessor corporation, RDI. You and Net Unlimited, Inc. had differing interests in the lease transaction.

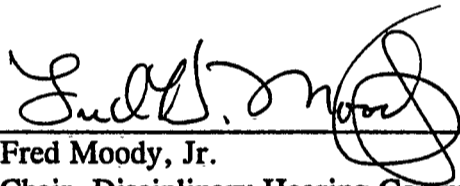
Your conduct in this matter violates Rule 5.4(a) of the North Carolina Rules of Professional Conduct. This rule states, in part, that an attorney shall not enter into a business transaction with a client if the interests of the client and attorney are different and the client expects the attorney to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

As a mitigating factor, the Hearing Committee considered that the following facts:

Net Unlimited, Inc. and its principals sued you and your wife in Forsyth County Superior Court, alleging breach of fiduciary duty and other torts arising out of the facts stated above. At the conclusion of the plaintiffs' evidence, Superior Court Judge Thomas Ross dismissed the case and entered judgment in your favor, finding that while a fiduciary relationship existed between you, Net Unlimited, Inc. and its principals, as a matter of law you did not breach that fiduciary relationship and did not engaged in constructive fraud.

A copy of this Letter of Warning will be maintained in the public records of the N.C. State Bar and shall be treated as a public decision by the Disciplinary Hearing Commission for all purposes.

This the 29 day of April, 1999.



Fred Moody, Jr.
Chair, Disciplinary Hearing Commission
The North Carolina State Bar