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NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
99G1258

IN THE MATTER OF)

Jodi A. Ernest)
Attorney At Law)

REPRIMAND

On April 13, 2000 the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by Sheila Richardson.

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.

In December 1998, you agreed to represent Sheila Richardson in the defense of a divorce action filed against her by her husband, Charles Richardson, on November 9, 1998. You prepared an answer to the divorce complaint on Ms. Richardson's behalf and you filed it on December 29, 1999 in Rockingham County District Court. In the answer that you drafted, you

admitted the allegations of Mr. Richardson's complaint. You also further alleged that "[t]here remain pending issues as to child custody, child support, child visitation, and equitable distribution of the marital assets and these issues need to be left open pending further orders of the Court." Your answer contained no counterclaim for equitable distribution or spousal support.

You faxed the answer on December 29, 1998 to Mr. Richardson's attorney, Janeice Tindal. On January 5, Ms. Tindal faxed a proposed copy of the divorce judgment by summary judgment to you. The proposed divorce judgment included the statement that "[a]ny viable issues of child custody, child support, child visitation and equitable distribution remain open."

On January 7, Ms. Tindal filed a new motion, Motion for Judgment on the Pleadings. Ms. Tindal wrote you on January 7 and told you about the Motion for Judgment on the Pleadings and she told you of the new court date. Ms. Tindal indicated in her letter that "[m]y plans have changed."

The January 7 letter from Ms. Tindal was faxed to you. The January 7 letter and the Motion for Judgment on the Pleadings were also mailed to you.

Furthermore, on January 8 you instructed Heather Spain, an employee in your office, to call Ms. Tindal and tell her that the judgment faxed on January 5 was acceptable and that the new court date was acceptable to you. Ms. Tindal told Ms. Spain that the judgment would be different. Ms. Tindal asked Ms. Spain to relay that message to you. The judgment, which you approved, that was faxed to you on January 5 did not protect your client's right to equitable distribution in that "no viable" issue remained because equitable distribution had not been pled in a proper counterclaim or complaint.

After Ms. Tindal advised you that she had filed a Motion for Judgment on the Pleadings, you took no further action respecting the pleadings you filed on behalf of Ms. Richardson. You did not contact Ms. Tindal to discuss her Motion for Judgment on the Pleadings. Furthermore, you did not file a motion to amend your answer to add a counterclaim for equitable distribution. In addition, you did not file an independent action for equitable distribution to protect or preserve your client's rights.

Ms. Richardson's divorce was heard in court on February 15, 1999. You did not appear in court on Ms. Richardson's behalf. District Court Judge Fred Wilkins entered an order of divorce that found that there were no pending issues relative to equitable distribution.

As a result of your drafting the answer without a proper counterclaim for equitable distribution in Ms. Richardson's case, she lost her right to seek equitable distribution. The Grievance Committee found that your drafting of the answer for Ms. Richardson showed a lack of knowledge and competence in the domestic law area and thus you violated Rule 1.1(a) and (b) of the Revised Rules of Professional Conduct. The Grievance Committee believes that N.C.G.S. §50-11(e) requires that one specifically apply for equitable distribution prior to a judgment of absolute divorce or the statutory right to equitable distribution is destroyed. The Grievance Committee also found that a reading of the general statute and North Carolina case

law would have informed you of the pleading requirements of the equitable distribution statute and the appellate decisions which have interpreted those requirements.

In addition, the Grievance Committee found that your failure to appear in court on February 15, 1999 to represent Ms. Richardson in the divorce action violated Rule 1.3 of the Revised Rules of Professional Conduct.

The Grievance Committee was concerned about the confusion regarding who actually represented Ms. Richardson in her domestic matters. You began representing Ms. Richardson in her divorce action. In February of 1999, it appears that Attorney Angela Foster, an attorney in your old law firm, began assisting Ms. Richardson in her equitable distribution case and in a motion to vacate the divorce order. You left your old law firm and began practicing in another firm on July 15, 1999. You did not file a motion to withdraw from Ms. Richardson's case prior to leaving your old law firm or prior to Ms. Foster assuming some responsibility for portions of Ms. Richardson's case.

To add to the confusion regarding your and Ms. Foster's involvement in Ms. Richardson's case, on August 30, 1999, a Motion To Set Child Support By Guidelines was heard in district court. Ms. Richardson was passed back to you so that you would represent her in the child support hearing. The Grievance Committee found that it was not unreasonable for Ms. Richardson to be unclear about the extent of your and Ms. Foster's representation in her domestic matters in light of the aforementioned circumstances. If you no longer represented Ms. Richardson, you should have moved to withdraw from her case and had an order entered by the court allowing you to withdraw. Your failure to withdraw from Ms. Richardson's case violated Rule 1.16(c) of the Revised Rules of Professional Conduct.

You are hereby reprimanded by the North Carolina State Bar for 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 the 22 day of May, 2000.


James K. Dorsett III Chair
Grievance Committee