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WAKE COUNTY
NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 3

THE NORTH CAROLINA STATE BAR)	
Plaintiff)	FINDINGS OF FACT
v.)	CONCLUSIONS OF LAW
)	& ORDER OF DISMISSAL
E. CLARKE DUMMIT, ATTORNEY)	
Defendant)	

THIS MATTER was heard on Tuesday, June 17, 2003 before a Hearing Committee of the Disciplinary Hearing Commission composed of T. Paul Messick, Jr.; F. Lané Williamson and Betty Ann Knudsen. The Defendant, E. Clarke Dummit, was represented by Urs R. Gsteiger. Carolin Bakewell represented the State Bar. Based upon the stipulations entered into herein and the evidence introduced at trial, the Hearing Committee hereby enters the following:

FINDINGS OF FACT

1. The Plaintiff, 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 General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. The Defendant, E. Clarke Dummit (Dummit), was admitted to the North Carolina State Bar in 1986, and is, and was at all times referred to herein, an attorney at law licensed to practice 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 of the periods relevant hereto, Dummit maintained an office for the practice of law in Winston-Salem, Forsyth County, N.C.

4. In May 2002, Dummit caused to be drafted and distributed to the public a flyer containing an article entitled "Get Legal Now." The flyer was distributed to members of the public at a Cinco de Mayo festival in Winston-Salem and to subscribers to two Spanish language newspapers.

5. The "Get Legal Now" article contained 3 statements concerning a proposed amendment to the federal immigration law:

a) "On March 12, 2002, the House of Representatives passed an extension of immigration law known as section 245(i)."

b) "With the extension, a person seeking to adjust under this provision must prove the following: [followed by a list of requirements]"

c) "To find out if you qualify for an adjustment of status under this extension, call our office and make an appointment to speak with our immigration staff."

6. On the last page of the flyer, Dummit provided a clip-out form whereby readers could provide his office with their names and address information and check a box to "pre-register . . . for a consultation regarding the 245(i) extension."

7. The State Bar produced no evidence that any consumer had complained about the "Get Legal Now" ad or that anyone had been misled by it.

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 Dummit and over the subject matter of this proceeding.

2. The "Get Legal Now" article contains an accurate description of the referendum adopted by the House of Representatives on March 12, 2002 and is therefore not false.

3. The "Get Legal Now" article is not inherently misleading because the possibility that consumers could be misled by it is not self-evident or obvious.

4. The "Get Legal Now" article is potentially misleading, because consumers unfamiliar with our system of government might conclude that action by the House of Representatives was sufficient to enact the amendment of section 245(i) into law and the article did not clearly state that the House bill was not, in fact, the law.

5. Absent extrinsic evidence, such as a consumer survey, or proof that a member of the public has been actually misled by the "Get Legal Now" article, the State Bar may not constitutionally discipline an attorney for disseminating an advertisement containing information that is only potentially misleading.

6. The State Bar has failed to carry its burden of proof of showing that the Defendant, E. Clarke Dummit, has violated any provision of the Rules of Professional Conduct.

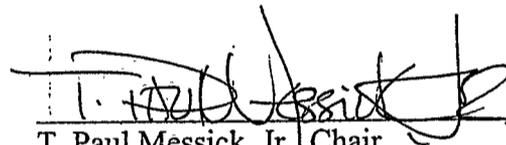
Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee hereby enters the following:

ORDER

1. The complaint filed herein is hereby DISMISSED.
2. Each party shall bear its own costs.

Signed by the Chair with the consent and knowledge of the other Committee members.

This the th25 day of June, 2003.


T. Paul Messick, Jr., Chair
Disciplinary Hearing Committee