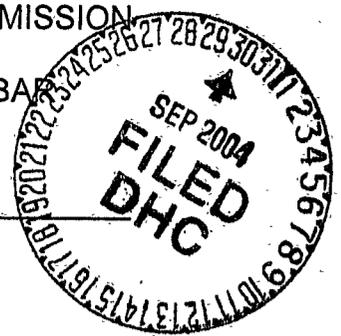


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NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
04 DHC 31



THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
v. )  
MARK T. TERRELL, Attorney, )  
Defendant )

CONSENT ORDER OF  
DISCIPLINE

This matter was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of Richard T. Gammon, Chair, Elizabeth Bunting, and Betty Ann Knudsen. Margaret Cloutier represented plaintiff. Defendant appeared pro se. Defendant has agreed to waive a formal hearing in the above referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant also stipulates that he waives his right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based on the consent of the parties, the Hearing Committee hereby enters the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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. Defendant, Mark T. Terrell (hereafter "Terrell"), was admitted to the North Carolina State Bar on August 18, 1990 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 Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

564

3. During the relevant times referred to herein, Mark T. Terrell actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Wilmington, New Hanover County, North Carolina.

4. During the relevant times referred to herein, AmeriEstate Legal Plan, Inc. (hereinafter "AmeriEstate") was a foreign corporation conducting business in North Carolina under a certificate of authority issued by the North Carolina Secretary of State. Such certificate of authority was for a general business corporation and not a professional corporation of attorneys at law.

5. On or about August 14-15, 2002 and December 3-6, 2002, AmeriEstate and/or its agents conducted seminars for the purpose of selling a specific legal service, to wit: a living trust package. Each seminar was advertised to the public as a "Living Trust Seminar." At these seminars agents of AmeriEstate described the purported benefits of revocable living trusts relative to wills as a preferable means of estate planning and promoted the sale of living trust packages offered by AmeriEstate.

6. Purchasers of living trust packages entered into contracts with AmeriEstate to become members of the AmeriEstate Legal Plan. The contracts provided for the following specific, limited legal services: preparation of a revocable living trust document, wills, powers of attorney, deeds, and other legal documents related to the revocable living trust, and phone consultation with a licensed "provider" attorney related to the specific legal services provided by AmeriEstate.

7. AmeriEstate provided the legal services purchased pursuant to such contracts described above, including but not limited to preparation of the revocable living trust and related legal documents. The provision of legal services by AmeriEstate constitutes the unauthorized practice of law under N.C.G.S. §84-2.1, 84-4, and 84-5.

8. At all relevant times referred to herein, Terrell participated in the plans sold by AmeriEstate by contracting with AmeriEstate to provide, and by providing, telephone consultations with purchasers of such plans. Terrell's participation aided AmeriEstate in the unauthorized practice of law by allowing purchasers to infer that AmeriEstate could legally offer and provide all of the legal services contemplated in the contracts.

9. Despite purporting to sell memberships in AmeriEstate Legal Plan as described in Paragraph 6 above, at no relevant time did AmeriEstate register with the North Carolina State Bar as a prepaid legal service plan as provided by N.C.G.S. §84-23.1 and N.C.A.C. §.0300.

10. At no relevant time did Terrell contact the North Carolina State Bar to determine whether AmeriEstate was qualified to operate a prepaid legal service

plan in North Carolina or had registered a plan as provided by statute, nor did Terrell notify the North Carolina State Bar in writing before participating in a purported prepaid legal services plan.

Based on the foregoing Findings of Fact, the 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. Terrell's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that he violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:
  - a. by participating in the sale of legal services by AmeriEstate, Terrell assisted another in the unauthorized practice of law in violation of Rule 5.5(d);
  - b. by failing to sufficiently investigate a purported prepaid legal plan to develop a good faith belief that the plan was being operated in compliance with the Rules of Professional Conduct, Terrell violated Rule 7.3(d)(2)(D); and
  - c. by failing to notify the State Bar in writing before participating in a purported prepaid legal plan, Terrell violated Rule 7.3(d)(2)(C).

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

#### FINDINGS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:
  - (a) substantial experience in the practice of law.
2. Defendant's misconduct is mitigated by the following factors:
  - (a) absence of a prior disciplinary record;
  - (b) absence of a dishonest motive, and
  - (c) full and free disclosure to the Hearing Committee and cooperative attitude toward proceedings.
3. The mitigating factors outweigh the aggravating factors.

4. Assisting non-lawyers in wholesaling legal documents that may or may not benefit purchasers of the estate packages and failing to sufficiently investigate the entities offering such services threatens harm to the public and the integrity and standing of the legal profession by undermining the public's trust and confidence in lawyers and the legal system. However, the Hearing Committee finds and concludes that under the circumstances of this case the public will be adequately protected by admonishing defendant not to continue or repeat such conduct.

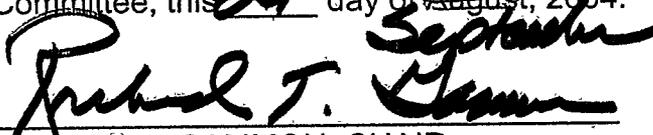
Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, and upon consent of the parties, the Hearing Committee enters the following

#### ORDER OF DISCIPLINE

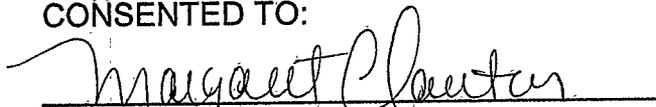
1. The discipline to be imposed in this matter is an Admonition. The Admonition, of even date herewith, accompanies this Order.

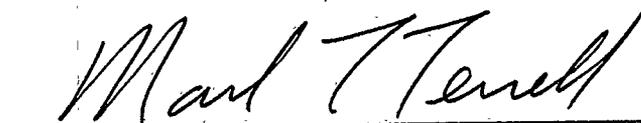
2. Terrell is taxed with the costs of this action as assessed by the Secretary and shall be paid within thirty days of service of the notice of costs upon him.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 29<sup>th</sup> day of September, 2004.

  
RICHARD T. GAMMON, CHAIR  
HEARING COMMITTEE

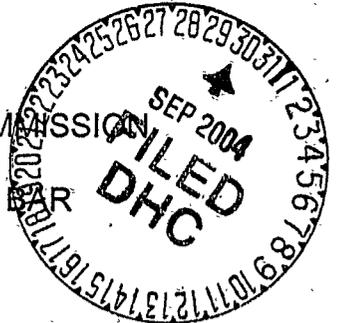
CONSENTED TO:

  
Margaret Cloutier, Deputy Counsel  
Attorney for Plaintiff

  
Mark T. Terrell, Defendant

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
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THE NORTH CAROLINA STATE BAR, )  
Plaintiff )  
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Defendant )

ADMONITION

Pursuant to §§.0109, .0114, and .0123 of the Discipline and Disability Rules of the North Carolina State Bar, the Hearing Committee of the Disciplinary Hearing Commission entered a Consent Order of Discipline of even date herewith. After considering the information available to it contained in the pleadings and within the findings of facts, conclusions of law and findings regarding discipline of the Order of Discipline, the Hearing Committee has determined that an admonition is an appropriate discipline given the circumstances of this action.

The rules provide that after a finding of misconduct, the Hearing Committee may issue various levels of discipline depending upon the misconduct, the actual or potential injury caused, and any aggravating or mitigating factors. The Hearing Committee may issue an admonition, reprimand, censure, suspension or disbarment.

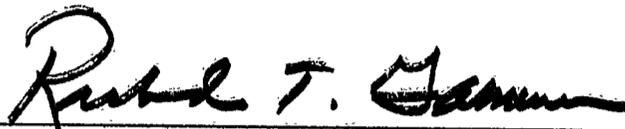
An admonition, which is the least serious form of discipline authorized, is imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

During a period of time including August 14 through December 6, 2003 an entity operating under the name AmeriEstate Legal Plan, through seminars, offered for sale to the public legal services relating to estate plans. The seminars and legal services were provided by non-lawyers. You participated in the sale and performance of legal services by non-lawyers by allowing AmeriEstate to offer to purchasers of the plans telephone contact with a "provider" attorney, thereby inferring to the public that AmeriEstate could legally offer and provide such legal services. This was in violation of Rule 5.5(d) of the Revised Rules of Professional Conduct.

Further, before participating in AmeriEstate's legal plans, you did not contact the North Carolina State Bar to determine whether AmeriEstate was qualified to operate a prepaid legal service plan, nor did you notify the State Bar in writing before participating in a purported prepaid legal services plan. This was in violation of Rule 7.3(d)(2)(D) and (C) of the Revised Rules of Professional Conduct.

You are hereby admonished by the North Carolina State Bar for your professional misconduct.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 29<sup>th</sup> day of September, 2004.



RICHARD T. GAMMON, CHAIR  
HEARING COMMITTEE