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NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
03G1070

IN THE MATTER OF )

TOLLY ALBERT KENNON III,  
ATTORNEY AT LAW )

REPRIMAND

On April 17, 2003, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by F.D.S.

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 October 2001, you undertook to represent F.D.S. regarding a child support dispute in which he was involved with his ex-wife, Jackie S. On Oct. 10, 2001, you wrote a letter to Ms. S., advising her of your representation and suggesting a resolution of the parties' dispute. During your representation of F.D.S. you obtained information about his finances and other confidential information.

In February 2002, after the child support case was concluded, F.D.S. married Tammy B. F.D.S. and B. separated in July 2002.

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In August 2002, you undertook to represent B. in a domestic action against F.D.S. In a complaint filed on Sept. 11, 2002, you sought a divorce from bed and board, custody and child support and alimony on B.'s behalf. F.D.S. did not consent to your representation of B.

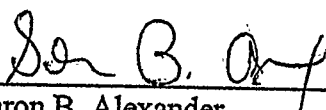
Your conduct in this regard constituted a conflict of interest in violation of Rule 1.9 of the Revised Rules of Professional Conduct. Specifically, B.'s interests in the domestic case were adverse to those of your former client, F.D.S., and you obtained confidential information about F.D.S. during the 2001 domestic case. Finally, the domestic case action which you undertook in August 2002 for B. against F.D.S. was substantially related to the domestic case which you handled for F.D.S. in October 2001 against his first wife as both cases involved questions relating to F.D.S.'s support obligations.

The Grievance Committee was particularly disturbed that, in your response to F.D.S.'s complaint, you denied having represented F.D.S. in the October 2001 support case. Your response was directly contradicted by your own Oct. 10, 2001 letter to Jackie S., in which you expressly advised her that you were acting as F.D.S.'s attorney in the parties' custody dispute. You also wrote a letter to F.D.S. on the same day, in which you also confirmed that you had undertaken the case. The Committee wishes to remind you that the Rules of Professional Conduct require attorneys to provide full, fair and accurate responses to complaints filed with the State Bar. Should you ever receive any letters of notice from the State Bar in the future, the Committee expects you to provide a candid response and warns you that any deviation from the strict standard of truthfulness may well result in the imposition of much more substantial discipline.

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 29 day of April, 2003.

  
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Sharon B. Alexander  
Chair, Grievance Committee