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STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
91G0458(I)
92G0272(I)

IN THE MATTER OF)
)
MICHAEL T. MITWOL) REPRIMAND
ATTORNEY AT LAW)
)

On July 16, 1992, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar and Fred Timms.

Pursuant to section 13(A) of article IX of the Rules and Regulations 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, reprimand, or 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.

You represented Larry Wayne Klein in a Chapter 11 bankruptcy proceeding. You were ordered by the bankruptcy court to file an application for allowance of compensation and reimbursement of expenses in connection with the Klein case. You failed to comply with the court's order. By order dated January 22, 1990, you were required to file an application for fees in the Klein case. You failed to comply with that order and the bankruptcy court required you to return all compensation paid to you which was not approved by the court. Again, you failed to obey the bankruptcy court's order that you pay your attorneys fee to the bankruptcy clerk.

The court ordered in a June 21, 1990 order that you be held in civil contempt for your noncompliance of previous court orders. As a sanction, you were required to pay interest at the per annum rate established by federal law on \$3,025.50 (the fee paid to you) from March 19, 1990 until paid. You were also prohibited from practicing law in the bankruptcy court for the Eastern District of North Carolina until the fee had been paid in to the court. The court further pointed out that you failed to attend the June 20, 1990 hearing which resulted in the June 21, 1990 order.

Even after the aforementioned orders from the bankruptcy court, you continued to disregard the sanctions imposed by the court. Consequently, a hearing was scheduled for September 19, 1990 to determine what further civil contempt sanctions should be imposed against you. The court was also to consider whether to refer the matter to the U.S. District Court for consideration of whether your failure to comply with the court's orders constituted criminal contempt.

Your conduct with respect to noncompliance of court orders violates Rule 1.2(D) of the Rules of Professional Conduct. As an officer of the court, you have an obligation to adhere to the court's orders. You have indicated that you were ill and could not "competently react" to the situation regarding the bankruptcy court's orders. It does not appear that you advised the court of your illness and inability to comply with the court's orders until after several orders had been entered.

You are reminded that as an officer of the court, it is imperative that you follow the court's orders so that the court's work can proceed in an orderly fashion.

In February or March of 1991, you consulted with Fred and Pauline Timms regarding their filing for bankruptcy. You claim that you advised Mr. and Mrs. Timms that you charged a non-refundable \$120.00 for the bankruptcy consultation. Mr. and Mrs. Timms claim that you did not inform them that the \$120.00 fee was not refundable.

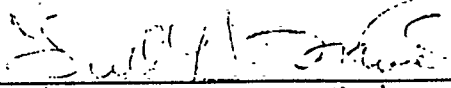
Your consultation with Mr. and Mrs. Timms occurred after the bankruptcy court ordered you to cease practicing bankruptcy law. In fact, the bankruptcy court scheduled a hearing to determine whether additional sanctions should be imposed for your failure to comply with the court's orders prohibiting you from practicing bankruptcy law as a result of your bankruptcy consultations. Your consultations constituted the practice of bankruptcy law. Our North Carolina General Statutes (Section 84-2.1) provide that the giving of advice or opinions upon the legal rights of a person is the practice of law. Thus your bankruptcy consultations to the Timms and others violated the bankruptcy court's order.

Your conduct with respect to noncompliance with the court's order violated Rule 1.2(D) of the Rules of Professional Conduct. Again, as an officer of the court you must be ever mindful of your obligation to comply with the court's orders.

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 11 day of August, 1992.



Fred H. Moody, Jr., Chairman
The Grievance Committee
North Carolina State Bar

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