filed DHC 5-11-93 10.10 AM

NORTH CAROLINA

WAKE COUNTY

12815 - Moreno
15800 - Causey
13401 - Fritz

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

THE NORTH CAROLINA STATE BAR, Plaintiff vs. BARBARA K. MORENO, WILLIAM G. CAUSEY, JR. FRITZ AUSTIN, ATTORNEYS, Defendants	FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on to be heard and was heard on April 23, 1993 before a hearing committee of the Disciplinary Hearing Commission composed of W. Harold Mitchell, Chairman, Frank E. Emory Jr., and Frank L. Boushee. Fern E. Gunn represented the N.C. State Bar. John Haworth appeared as counsel for Barbara K. Moreno and Fritz Austin. David Rudolf appeared as counsel for William G. Causey Jr. Based upon the pleadings, the Stipulation on Prehearing Conference, the exhibits admitted into evidence and the testimony of witnesses, the hearing committee finds the following to be supported by clear, cogent and convincing evidence:

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, Barbara K. Moreno, was admitted to the North Carolina State Bar on May 2, 1985, 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. The Defendant, William G. Causey, Jr., was admitted to the North Carolina State Bar on September 9, 1988, 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.

4. The Defendant, Fritz Austin, was admitted to the North Carolina State Bar on September 9, 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.

5. During all the periods referred to herein, Moreno, Causey, and Austin (hereinafter the "Defendants") were actively engaged in the practice of law in the State of North Carolina and maintained law offices in Greensboro, High Point and Lexington, North Carolina.

6. During all of the periods referred to herein, the Defendants practiced law together in a law firm known as "The Legal Alternative".

7. In 1991, Betty Myers Kirkman of Thomasville was charged with shoplifting.

8. On March 26, 1991, the Defendants practicing as The Legal Alternative wrote Ms. Kirkman to solicit her to engage their professional services.

9. The words "This is an advertisement for legal services" did not appear on the outside envelope and at the beginning of the body of the letter to Ms. Kirkman in print as large or larger than the Defendants' or the law firm's (The Legal Alternative) names. The words "Legal Advertisement" appeared on the outside envelope in handwriting approximately the same size as the law firm's (The Legal Alternative) name.

10. The Defendants were not related to Ms. Kirkman and Ms. Kirkman was not the Defendants' former client.

11. Defendant Moreno wrote Ms. Kirkman's name on the form targeted mail solicitation letter which did not have the disclaimer language required by Rule 2.4(C).

12. In 1991, Willie Bridges of High Point was charged with trespass.

13. On April 5, 1991, the Defendants practicing as The Legal Alternative wrote Mr. Bridges to solicit him to engage their professional services.

14. The words "This is an advertisement for legal services" did not appear on the outside envelope and at the beginning of the body of the letter to Mr. Bridges in print as large or larger than the Defendants' or the law firm's (The Legal Alternative) names. The words "Legal Advertisement" appeared in the outside envelope in handwriting approximately the same size as the law firm's (The Legal Alternative) name.

15. The Defendants were not related to Mr. Bridges and Mr. Bridges was not the Defendants' former client.

16. The letters to Ms. Kirkman and Mr. Bridges stated that "We are sure that you will find our fees for representation is [sic] considerably less than other law firms".

17. The Defendants contacted at random by telephone a number of attorneys practicing in High Point, Greensboro, Lexington, Asheboro, Thomasville and Burlington. They personally contacted many other attorneys practicing within the area where Defendants practice. The purpose of these contacts was to determine the fees being charged by the attorneys contacted. William G. Causey, Jr. knew from personal association the fees being charged by two law firms practicing in the same area.

18. The letters to Ms. Kirkman and Mr. Bridges also stated "We know that you will find THE LEGAL ALTERNATIVE to be the affordable alternative for all your legal needs".

19. At the time the letters were sent to Ms. Kirkman and Mr. Bridges, the Defendants did not know the financial condition of Ms. Kirkman and Mr. Bridges. In March of 1991, Ms. Kirkman, although unemployed and a recipient of Social Security disability benefits, was the beneficiary of a sizable estate. In April of 1991, Mr. Bridges was an unemployed alcoholic.

20. The Defendants deleted the language, "We are sure that you will find our fees for representation is considerably less than other law firms", from their solicitation letters in late summer of 1991.

21. On October 3, 1990, Defendant Moreno sent the N.C. State Bar a sample targeted mailing letter for its review. The N.C. State Bar reviewed, but gave no formal approval to, the sample targeted mailing letter which contained the language complained about by the N.C. State Bar in its disciplinary complaint filed in 1993. It appears that the N.C. State Bar did not find the sample letter objectionable at that time.

22. The Defedants sent targeted mail solicitation letters to other people in an attempt to solicit them to engage their professional services. All of the Defendants benefited from the targeted mail solicitations as they were retained by some recipients of the letters.

23. The N.C. State Bar did not prove facts by clear, cogent, and convincing evidence to support the violations alleged in paragraphs (c) and (d) of its complaint.

BASED upon the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

The conduct of the Defendants, as set forth above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b)(2) in that the Defendants violated the Rules of Professional Conduct as follows:

(a) By not including on the outside envelope and at the beginning of the body of the letter to Betty Kirkman in print as large or larger than the Defendants' or the law firm's names the following language, "This is an advertisement for legal services", the Defendants violated Rule 2.4(C) of the Rules of

Professional Conduct.

(b) By not including on the outside envelope and at the beginning of the body of the letter to Willie Bridges in print as large or larger than the Defendants' or law firm's names the following language, "This is an advertisement for legal services", the Defendants violated Rule 2.4(C) of the Rules of Professional Conduct.

Signed by the undersigned chairman with the full knowledge and consent of the other hearing committee members, this the 10th day of May, 1993.

W. Harold Mitchell
Chairman, Hearing Committee

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NORTH CAROLINA

WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR, Plaintiff	)	
vs.	)	ORDER
BARBARA K. MORENO, WILLIAM G. CAUSEY, JR. and FRITZ AUSTIN, ATTORNEYS, Defendants	)	

Based upon the Findings of Fact and Conclusions of Law entered herein, the evidence presented at the hearing on April 23, 1993 relating to the Defendants' conduct, and the arguments presented in the sanctions phase of the hearing, the members of the hearing committee, composed of W. Harold Mitchell, Chairman, Frank E. Emory Jr., and Frank L. Boushee, enter the following:

ORDER

The Defendants, Barbara K. Moreno, William G. Causey Jr., and Fritz Austin, shall each receive a letter of warning with respect to the violation of Rule 2.4(C).

Signed by the undersigned chairman with the full knowledge and consent of the other hearing committee members, this the 10th day of May, 1993.

W. Harold Mitchell
Chairman, Hearing Committee