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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
96G0074(II)R

IN THE MATTER OF)

ROBERT T. PERRY,)
ATTORNEY AT LAW)

REPRIMAND

On October 16, 1996, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Tonette Amos.

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, 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.

In June of 1993, Tonette Amos retained you to represent her in a personal injury claim arising out of a May 24, 1993 automobile accident. Ms. Amos hired your brother, Still Perry, to perform the vehicle repairs necessitated by the same accident. After a dispute arose between Ms. Amos and Still Perry regarding the adequacy of those repairs, Ms. Amos brought an action against Still Perry in Small Claims Court.

She also named you as a defendant, alleging that you breached an oral promise to pay for the vehicle repairs if Still Perry did not do so. The Magistrate who presided at trial found in his order awarding judgment in favor of Ms. Amos that you appeared *pro se* and as counsel for Still Perry. Both you and Still Perry appealed to District Court for a trial *de novo*. You again appeared *pro se* and initially represented Still Perry. After the presiding Judge expressed concern over this situation, another member of your law firm assumed the representation of Still Perry at the District Court level.

By representing Still Perry against Ms. Amos at the Magistrate's hearing and in the District Court proceeding, you violated Rule 5.1(d) of the Rules of Professional Conduct. That Rule prohibits a lawyer who has formerly represented a client in a matter from thereafter representing another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents. Additionally, you permitted another lawyer in your firm to represent Still Perry in the District Court trial, in violation of Rule 5.11(a). Rule 5.11(a) provides that while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by the Rules of Professional Conduct. As noted in the comment to that Rule, a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client. Ms. Amos never consented to and in fact opposed both your and your firm's representation of Still Perry.

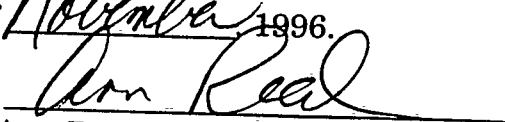
Additionally, you counterclaimed in District Court against Ms. Amos for attorney's fees. However, you failed to first advise her of the option of fee arbitration, in violation of Rule 2.6(e).

In voting to issue this reprimand, the Committee noted that you had no prior 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 15th day of November, 1996.


Ann Reed
Chairman, Grievance Committee
The North Carolina State Bar