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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
90G 0209(IV)

IN RE: GENE KENDALL  
ATTORNEY AT LAW

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)

REPRIMAND

On July 12, 1990, the Grievance Committee of The North Carolina State Bar met and considered the grievance filed against you by Diane Stirling.

Pursuant to Sections 13(7) and 13(11) of Article IX of the Rules and Regulations of the North Carolina State Bar, the Grievance Committee, after considering the evidence, including your response to the Letter of Notice, found probable cause which 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 warranted 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 least serious form of discipline authorized is the issuance of a reprimand to the accused attorney.

The Grievance Committee was of the opinion that a complaint and hearing are not warranted 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 fully understand the spirit in which this particular duty is performed.

You were retained by Diane Stirling to represent her interests in a domestic matter. All matters were resolved except some of the equitable distribution issues which were tried on June 6, 1988, and a resulting consent order was prepared by you covering all issues. The order you prepared was subsequently amended and signed by the opposing party and his counsel. You eventually had your client sign it, but you did not file it because your client did not have her checkbook when she signed it so she could pay the balance of your fee. When she did not send you a check, you refused to file the order. You did not file it until Ms. Stirling complained to the 26th Judicial District Bar Grievance Committee. You filed the order on November 6, 1989, seventeen months after the equitable distribution hearing. Your failure to file the order violated Rule 6(B)(3) and Rule 7.1(A)(1) of the Rules of Professional Conduct. The Committee understood that you had not been paid and that you did not want to sue your client for the fee. However, your self-help remedy of not filing her order was inappropriate.

You are hereby reprimanded by the North Carolina State Bar for your professional misconduct. The Grievance Committee trusts that this discipline will be heeded by you and cause you to rededicate yourself to the adherence to the high ethical standards of the legal profession. Accordingly, I sincerely trust that this reprimand will serve as a profitable and ever present reminder to weigh carefully in the future your responsibility to the public, your

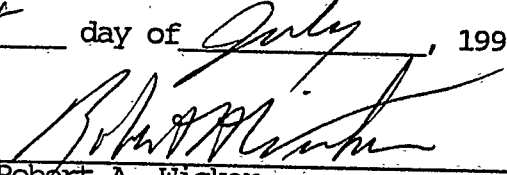
clients, your fellow attorneys, and the courts to the end that you demean yourself as a member of the legal profession whose conduct may be relied upon without question. This is a reprimand based upon professional misconduct that the Grievance Committee feels will be not repeated by you.

A record of this reprimand shall be maintained in the office of the Secretary. Since a complaint was made and professional misconduct has been found, the complainant will be notified of the issuance of the reprimand but will not be given a copy.

Within 15 days after this reprimand is served upon you, you may refuse this reprimand and request that charges be filed. Such refusal and request must be addressed to the Grievance Committee and filed with the Secretary. If you do file such refusal and request, counsel shall thereafter be instructed to prepare and file a complaint against you with the Disciplinary Hearing Commission of the North Carolina State Bar. The hearing before the Disciplinary Hearing Commission is public and all of its proceedings and its decisions are public.

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 the 28 day of July, 1990.

  
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Robert A. Wicker  
Chairman, Grievance Committee  
The North Carolina State Bar

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