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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
02G1068

IN RE: J. Dewey Edwards, Jr.,
ATTORNEY AT LAW

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REPRIMAND

On 17 April 2003, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Coley H. Rhodes.

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.

For several years before the events giving rise to this matter, you were counsel for a close, family owned corporation named Rhodes Chevrolet, Inc. which operated a car dealership. The president of this corporation was Forbson Rhodes. Mr. Rhodes also held the corporate stock in

his name. His spouse, Coley Rhodes, was the corporate secretary and treasurer. You were also the corporation's registered agent.

In November 1998, the Rhodes separated. A court order was entered in January 1999 designating the corporation as a marital asset and prohibiting Mr. Rhodes from encumbering, damaging, or disposing of it. Shortly thereafter, the stock in the corporation was purportedly transferred to Ms. Rhodes by Mr. Rhodes. Although there is some dispute over whether the transfer was valid, you became aware that Ms. Rhodes claimed ownership of the stock at some point while the domestic case was pending.

Despite the court order prohibiting such, Mr. Rhodes executed, as president of the corporation, two notes payable as debts of the corporation to one Lester "Huck" Venters, one for \$55,000 in December of 1999 and the other for \$149,800 in September 2000.

Almost two years after their separation, the Rhodes agreed on a division of the marital assets, including the corporation. Among other things, the agreement provided for the transfer of cash, notes, and land title with a lease back with respect to the dealership from Mr. Rhodes in exchange for all interest of Ms. Rhodes in the corporation. On 1 February 2001, the court entered a memorandum of judgment/order incorporating the terms of this agreement.

On or about 22 February 2001, you began representing Mr. Rhodes individually with respect to the execution of the executory terms of this order and other aspects of his domestic case.

On 14 March 2001, the court entered an order requiring your client, Mr. Rhodes, to show cause why he should not be held in contempt for his failure to comply with the February order dividing the property. A hearing on this matter was scheduled for 23 April 2001. You were served with a copy of this order, as well as the motion by Ms. Rhodes' attorney that resulted in the order, and knew or should have known the contents of the motion. The motion reiterated that Ms. Rhodes claimed ownership of 100% of the stock in the corporation.

On 19 April 2001, with knowledge of the pending contempt hearing, you prepared and permitted Mr. Rhodes to execute a confession of judgment in the name of the corporation in the amount of \$185,000 in favor of Mr. Venters based on the debts evidenced by the notes executed by Mr. Rhodes in 1999 and 2000 even though there was at the least some question of his authority to do so. There was no pending action to enforce any debt by Mr. Venters at the time. Mr. Venters was also a regular client of your firm.

On 27 April 2001, a hearing was held on the contempt motion. At your request, the matter was continued until 21 May 2001. However, the court ordered compliance by your client with certain conditions before the next hearing. One of those conditions prohibited your client from encumbering the dealership for more than \$75,000.

On 8 May 2001, Venters issued a demand letter to Mr. Rhodes on the alleged dealership debt which was the subject of the confession of judgment you prepared. Venters indicated that he was turning the matter over to "his attorneys" and instructed Mr. Rhodes to direct all correspondence on the matter to your firm. He copied you on the letter.

The next day, you wrote to Ms. Rhodes' counsel telling him about the Venters demand and that Venters would agree to release the dealership from liability under certain conditions of payment. The only person shown as copied on this letter was Venters.

The next day, 10 May 2001, you filed the confession of judgment in favor of Venters with the Clerk of Court. This created a judgment lien on the corporation and its assets. At the time, you knew or should have known that Mr. Rhodes no longer had the sole interest in the dealership, that Ms. Rhodes had either an actual or equitable interest in the corporation assets, and that the dealership assets were subject to a court order prohibiting your client from encumbering the dealership for more than \$75,000.

The Committee found that your above-described conduct violated several Rules and Revised Rules of Professional Conduct. By representing Mr. Rhodes in his individual capacity with respect to the transfer and division of the corporate assets while, as counsel for the corporation, allowing him to execute a confession of judgment on behalf of the corporation, you attempted to represent one client, Mr. Rhodes, with adverse interests to the other client, the corporation, in violation of Rule 1.7(a) of the Revised Rules of Professional Conduct. By representing Mr. Rhodes in his individual capacity when both Mr. Venters and the corporation were regular clients of yours and the parties had conflicting interests with respect to the notes executed by Mr. Rhodes in favor of Mr. Venters while under court order not to encumber the property, you represented a client under circumstances when the representation would be materially limited by your responsibilities to other clients or third parties in violation of Rule 1.7(b) of the Revised Rules of Professional Conduct. By attempting to negotiate the terms under which Mr. Venters would release the corporation's alleged debt to him with Ms. Rhodes' counsel at the same time you represented both Mr. Rhodes and the corporation, you represented a client, Mr. Venters, with adverse interests to two other clients in violation of Rule 1.7(a) of the Revised Rules of Professional Conduct. By filing the confession of judgment at a time when you knew or should have known that there was a court order prohibiting your client from encumbering the corporate assets for more than \$75,000, you engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Revised Rules of Professional Conduct.

In deciding to issue a Reprimand, the Committee considered the aggravating and mitigating factors. In aggravation, the Committee considered that there were multiple violations of the Rules and your conduct complicated the ultimate resolution of the division of the marital property between the Rhodes. In mitigation, the Committee considered that you had no prior disciplinary record.

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 6 day of August, 2003.

Sharon B. Alexander
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Chair, Grievance Committee