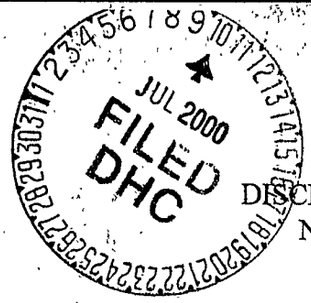

3657

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
99 DHC 21

THE NORTH CAROLINA STATE BAR,	)	
	)	
Plaintiff,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
v.	)	AND
	)	ORDER OF DISCIPLINE
J. BROOKS REITZEL, JR., Attorney,	)	
	)	
Defendant.	)	

This matter was heard on the 27th and 28th days of April 2000, before a Hearing Committee of the Disciplinary Hearing Commission composed of Fred H. Moody, Jr., Chair; Vernon A. Russell and Catharine Sefcik. The Defendant, J. Brooks Reitzel, Jr., was represented by James B. Maxwell. The plaintiff was represented by Larissa J. Erkman. Based upon the pleadings, including the Stipulations on Pretrial Conference submitted by the parties, and the evidence introduced at the hearing, the Hearing Committee hereby enters the following:

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. Defendant, J. Brooks Reitzel, Jr. (hereinafter, "Defendant"), was admitted to the North Carolina State Bar on September 13, 1971 and is, and was at all times referred to herein, an attorney at law licensed to practice law 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. During the periods referred to herein, Defendant was engaged in the practice of law in North Carolina and maintained a primary law office in the City of High Point, Guilford County, North Carolina.

4. During the course of his law practice, Defendant has handled a wide range of legal matters primarily related to corporate law, real estate, and financial issues for individual and corporate clients.

5. Defendant has handled a substantial amount of legal work in the United States Bankruptcy Court and has regularly appeared in the United States Bankruptcy Courts for all Districts of North Carolina. Defendant served as a member of the Chapter 7 Panel of Trustees for the Middle District of North Carolina through December of 1997.

6. Prior to June 1994, Defendant was a partner in the High Point law firm of Roberson, Haworth & Reece ("RH&R").

7. In October 1994, Defendant joined the High Point law firm of Wyatt Early Harris & Wheeler ("WEH&W").

8. In 1993, Richard Johnson ("Johnson") retained Defendant to represent him and his company, Richard Johnson Investments, Inc. ("RJI"), after RJI encountered financial difficulties.. Johnson and RJI were in the residential construction business.

9. Defendant represented Johnson and RJI on various legal matters, including, but not limited to, significant disputes with William F. Aldridge and his wife, Martha Aldridge (hereafter collectively "Aldridge") concerning the construction of a new residence located at 1845 Country Club Drive, High Point, North Carolina (hereafter, the "new residence").

10. Aldridge had contracted with Johnson and RJI for the construction of the new residence and had paid to RJI a sum of money for the construction of the new residence.

11. Disputes arose between Aldridge and RJI by late September or early October 1993 concerning, among other things, payment of subcontractors for labor performed and materials used in the new residence.

12. Martin's Systems, Inc. ("Martin's Systems") was a subcontractor that performed some work on the new residence.

13. Martin's Systems also performed work on Defendant's residence in March 1993 and August 1993.

14. Martin Systems was one of the subcontractors that had not been paid for its labor and materials put into the Aldridge's new residence.

15. Martin Systems sought the assistance of Defendant's law firm, RH&R, to pursue a collection action against Aldridge for labor and material costs related to work that Martin Systems performed on the new residence.

16. Defendant asked an associate attorney employed by RH&R, Thomas Kangur ("Kangur"), to handle the Martin's Systems' collection action.

17. Aldridge filed suit against Richard Johnson and RJI in Guilford County Superior Court on January 14, 1994.

18. On January 26, 1994, Defendant filed voluntary bankruptcy petitions under Chapter 7 of the U.S. Bankruptcy Code on behalf of Johnson, individually, and RJI.

19. Defendant represented Johnson and RJI in the bankruptcy proceedings.

20. In Johnson's and RJI's bankruptcy petitions, Martin's Systems was listed as a general unsecured creditor. Aldridge was listed as an unsecured creditor in RJI's bankruptcy petition.

21. In Johnson's and RJI's bankruptcy petitions, Defendant and his wife, individually, were listed as general unsecured creditors.

22. On or around January 28, 1994, Kangur filed in Davidson County, North Carolina, a notice of claim of lien and claim of lien (collectively "notice of lien") by Martin's Systems.

23. The notice of lien was filed pursuant to N.C. Gen. Stat. § 44A-12 within 120 days after Martin's Systems last furnished materials and labor at the new residence. The notice of lien named Aldridge and his wife as the record owners of the property on which Martin's Systems claimed its lien and named Johnson as the person with whom Martin's Systems contracted for furnishing labor and materials.

24. The law firm of RH&R simultaneously represented Martin Systems, a first tier subcontractor, and RJI and Richard Johnson, the general contractor, in connection with claims related to the Aldridge's new residence.

25. On March 2, 1994, Aldridge's attorney, Joe Craig, sent a letter to Kangur, advising that he believed the law firm of RH&R had a conflict of interest because Defendant represented Richard Johnson and RJI while the law firm also represented Martin System's on the lien against the Aldridges and RJI, the general contractor.

26. Kangur advised Defendant of Mr. Craig's letter dated March 2, 1994.

27. On April 18, 1994, Kangur filed a complaint for money owed against Johnson, RJI and Aldridge in Davidson County, District Court. The summons and complaint filed by Martin's Systems against Johnson, RJI and Aldridge were not properly served on Aldridge, in accordance with the North Carolina Rules of Civil Procedure. Consequently, Martin's Systems' lien rights expired.

28. On June 29, 1994, Aldridge commenced an adversary proceeding against Richard Johnson, individually, and RJI in their bankruptcy cases.

29. On July 27, 1994, the bankruptcy court approved a report of the bankruptcy trustee of no distribution and closed Johnson and RJI's Chapter 7 bankruptcy cases.

30. Defendant did not disclose to Martin Systems, Inc. the nature and scope of his representation of Johnson, individually, and RJI or that his representation of Johnson and RJI was adverse to the interests of Martin Systems, Inc. Defendant did not obtain Martin Systems' consent to his simultaneous representation of Johnson & RJI.

31. In early September 1995, Lindsay Amos, Jr. ("Lin Amos"), a shareholder in Textile Industries, Inc. ("Textile"), contacted Charles Cain ("Mr. Cain"), a partner in WEHW, for advice concerning a potential sale of Textile to Royce Hosiery Mills, Inc. and regarding bankruptcy options.

32. In early September 1995, Mr. Cain, Defendant and another attorney from the law firm, James Hundley ("Mr. Hundley"), met with the Textile shareholders, Lin Amos, William D. Coble ("Coble"), and Robert T. Amos, III ("Bob Amos").

33. At or around the time of this meeting, Defendant was advised of the background of WEH&W's attorney-client relationship to Textile and its shareholders, Lin Amos, Coble, and Bob Amos.

34. Defendant learned that, prior to September 1994, WEH&W had served as attorneys for two related companies, South Centennial Investors Limited Partnership ("South Centennial") and National Hosiery Corporation ("National Hosiery").

35. South Centennial is a limited partnership formed by WEH&W at the request of Lin Amos, Coble, and Bob Amos. Lin Amos, Coble and Bob Amos were general partners in the South Centennial partnership. South Centennial was the landlord for Textile's manufacturing plant under a multi-year lease providing for substantial monthly payments.

36. National Hosiery was a corporation formed by WEH&W prior to September 1994 at the request of Lin Amos, Coble, and Bob Amos. Lin Amos, Coble, and Bob Amos were the only shareholders, officers and directors of National Hosiery. National's primary business was marketing hosiery under a license from Nautica Apparel, Inc.

37. Textile supplied most of the hosiery marketed by National. By the middle of 1995, National owed Textile at least $400,000 for hosiery.

38. At this initial meeting, Mr. Cain, Defendant and Mr. Hundley were informed that in May 1995, Dalton L. McMichael, Sr. and Dalton L. McMichael, Jr. (the "McMichaels") had invested $400,000 in Textile.

39. Textile's shareholders instructed WEH&W to prepare necessary documents to reflect the $400,000 investment by the McMichaels.

40. At the initial meeting, Mr. Cain, Defendant and Mr. Hundley were also informed that National Hosiery had assumed the $400,000 debt obligation of Textile payable to the McMichaels in consideration for cancellation of trade payables owed by National Hosiery to Textile.

41. Textile's shareholders instructed WEH&W to prepare necessary documents to reflect the assignment of the $400,000 subordinated debt to National Hosiery.

42. Mr. Cain, Defendant, and Mr. Hundley discussed the ramifications of the debt assignment between Textile and National Hosiery with Textile's shareholders and with Martin Schlaeppi of the accounting firm Dixon Odom & Company.

43. Mr. Cain, Defendant and Mr. Hundley were advised by Textile's management and Mr. Schlaeppi that the trade payable owed by National Hosiery to Textile was uncollectable because National Hosiery was insolvent.

44. After the initial meeting with Textile's shareholders, Mr. Cain prepared documents to effect the cancellation of the trade receivables owed by National Hosiery to Textile and the assignment of the $400,000 subordinated debt to National Hosiery.

45. Mr. Cain also prepared documents reflecting that National Hosiery had assumed Textile's $400,000.00 obligation to the McMichaels and had prepared a second note for $150,000 payable by National Hosiery to the McMichaels for a second equity infusion into National Hosiery.

46. Mr. Cain, Defendant and Mr. Hundley were all aware that WEH&W represented both Textile and National Hosiery in the transactions canceling Textile's trade receivables owed by National Hosiery and assigning Textile's subordinated debt to National Hosiery.

47. Later, Mr. Cain, Defendant and Mr. Hundley, met with the Textile shareholders, Lin Amos and Bob Amos, a second time to discuss issues regarding Royce Hosiery's proposed acquisition of Textile and the possible scenario and timing of a Chapter 11 bankruptcy filing for Textile Industries.

48. Defendant, Mr. Cain and Mr. Hundley specifically discussed with Textile's shareholders a number of issues raised by the bankruptcy filing, including

the effect of the prior $400,000 debt exchange transaction between Textile and National Hosiery.

49. The discussion specifically addressed the possibility that the debt exchange transaction could be attacked by the creditors of Textile as a fraudulent conveyance.

50. Defendant, Mr. Cain and Mr. Hundley were again advised by Textile's management and its accountant that the trade receivables from National Hosiery had no value to Textile. As a result, the management of Textile viewed the debt exchange as advantageous to the creditors of Textile because it removed a $400,000 liability to the McMichaels from Textile's balance sheet, making the company more attractive to Royce Hosiery, as a potential acquirer.

51. After the second meeting with Textile shareholders, Mr. Cain prepared an initial draft of an asset purchase agreement to Royce Hosiery.

52. Textile decided that it could not continue operating if it did not file a Chapter 11 bankruptcy petition. Mr. Cain, Mr. Hundley and Defendant discussed with counsel for Royce Hosiery the possibility of a Chapter 11 filing for Textile.

53. Textile retained WEH&W to prepare the bankruptcy petition and to seek the bankruptcy court's approval of the sale of Textile to Royce.

54. The legal work related to preparation of the Chapter 11 bankruptcy petition and the contemplated sale of Textile to Royce Hosiery was divided among the attorneys at WEH&W.

55. Mr. Cain was in charge of preparing the purchase agreement with Royce Hosiery and handling negotiations and details related to the sale transaction.

56. Mr. Hundley agreed to prepare the bankruptcy petition and schedules.

57. Defendant agreed to prepare and file with the bankruptcy court a motion seeking the court's approval of the proposed sale to Royce Hosiery.

58. On September 20, 1995, Textile filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Middle District of North Carolina, case no. 95-12517C-11G ("the bankruptcy proceedings").

59. Simultaneously, Textile filed an application to employ WEH&W as its bankruptcy counsel pursuant to section 327(a) of the U.S. Bankruptcy Code and Rule 2014(a) of the Rules of Bankruptcy Procedure.

60. Rule 2014 of the Rules of Bankruptcy Procedure requires that attorneys seeking approval to represent a debtor must disclose all facts that might be

relevant to the court's determination, under section 327(a), of whether an attorney is disinterested or holds or represents an interest adverse to the debtor's estate.

61. Rule 2014 of the Rules of Bankruptcy Procedure requires that the debtor's application for employment of attorneys be accompanied by a verified statement of the attorneys as to the facts showing the attorneys' connections, if any, with the debtor, creditors or any party in interest. The verified statement must disclose the identity of persons or entities with which the attorneys have connections and must describe the nature of the connections.

62. The disclosure requirement of Rule 2014 is a definite, affirmative duty placed on the attorneys seeking the court's approval to be employed by the debtor. The disclosure requirement of Rule 2014 continues throughout the entire bankruptcy case.

63. In accordance with Rule 2014 of the Bankruptcy Rules, WEH&W filed a verified statement setting forth its connections with the debtor, creditors or any party in interest in the bankruptcy estate (hereafter referred to as the "affidavit of disinterestedness").

64. The affidavit of disinterestedness was prepared, executed and delivered by Mr. Hundley, as part of the bankruptcy petition.

65. The application to employ WEH&W listed Defendant, Mr. Hundley, and Mr. Cain as attorneys employed by WEH&W who were likely to expend time on Textile's bankruptcy matter.

66. The affidavit of disinterestedness attested that WEH&W had: "no connection with the Debtor [Textile], the creditors, or any other party in interest, or their respective attorneys, and that [Hundley] and the Firm represents [sic] no interest adverse to the Debtor [Textile], or the estate in the matters upon which he and the Firm are to be engaged."

67. The affidavit of disinterestedness did not disclose to the bankruptcy court WEH&W's pre-petition connections with the debtor, Textile; its shareholders, Lin Amos, Coble, and Bob Amos; or its connections with National Hosiery and South Centennial.

68. The United States Bankruptcy Court entered an order on September 28, 1995 authorizing Textile to employ the law firm of WEH&W as its attorneys in the bankruptcy proceedings.

69. On November 13, 1995, the Bankruptcy Court entered an order approving the sale of Textile's assets to Royce Hosiery.

70. Mr. Hundley's active participation in the bankruptcy proceedings as an attorney for Textile was limited after October 11, 1995 when the bankruptcy petition

and schedules were filed and the creditors meeting was held. His participation in the bankruptcy proceedings ceased altogether after January 10, 1996.

71. After December 31, 1995, Defendant was the primary attorney at WEH&W who represented Textile in the bankruptcy proceedings. However, Mr. Cain assisted Defendant in answering inquiries from the unsecured creditor's committee.

72. After Textile filed bankruptcy, WEH&W continued to simultaneously represent Textile, the Chapter 11 debtor-in-possession, and Lin Amos, Coble, Bob Amos, South Centennial and National Hosiery.

73. WEH&W's undisclosed post-petition connections with Textile's creditors and other parties in interest in the Textile bankruptcy estate include the following:

(a) Beginning in early 1996, WEH&W represented National Hosiery and its shareholders, Lin Amos, Coble and Bob Amos, respecting the sale of National Hosiery's assets to Great American Knitting Mills, Inc. ("Great American").

(b) As part of its legal services to National Hosiery, WEH&W reviewed an agreement entered between National Hosiery and Great American on March 5, 1996 whereby Great American acquired from National Hosiery, among other things, the Nautica license.

(c) On or around April 11, 1996, WEH&W performed legal services for National Hosiery in connection with the closing of the asset sale transaction between National Hosiery and Great American.

(d) WEH&W reviewed a list of National Hosiery's creditors to be paid from the sale proceeds of National Hosiery's asset sale and acted as escrow agent for the sale proceeds.

(e) As escrow agent, WEH&W received net sale proceeds of $433,375.50 and distributed sums to itself and its clients, Lin Amos, Bill Coble and Bob Amos, among other creditors of National Hosiery. Textile received no payment from the sale of National Hosiery's assets to Great American.

74. The legal work to consummate and close the sale of National Hosiery to Great American was substantially performed by Mr. Cain.

75. Defendant was aware of WEH&W's post-petition representation of National Hosiery and its shareholders, Lin Amos, Bob Amos and Bill Coble in the sale transaction with Great American.

76. During the pendency of the bankruptcy proceedings, Defendant also represented Lin Amos and Bill Coble, individually, in defense of a lawsuit filed by Center Capital Corporation against Amos and Coble for payments owed by Textile on the lease of computer equipment. Amos and Coble had guaranteed payments on the lease.

77. On March 15, 1996, Defendant filed a Chapter 11 Plan of Liquidation and Disclosure Statement by Debtor Textile Industries, Inc.

78. On April 22, 1996, the Unsecured Creditors' Committee filed an Objection to the Disclosure Statement.

79. Defendant agreed with the Unsecured Creditor's Committee's attorney, Sarah Sparrow, that the debtor Textile would attempt to resolve the issues raised in the objection by providing additional information concerning Textile's history and financial condition to the Committee.

80. Mr. Cain and Defendant thereafter provided information to Ms. Sparrow and the Unsecured Creditors' Committee.

81. On behalf of the Creditors' Committee, Ms. Sparrow sought disclosure of the exact relationship between the debtor Textile, National Hosiery, South Centennial Investors and their common shareholders, officers and directors.

82. The Unsecured Creditors' Committee also sought information concerning WEH&W's attorney-client relationship with National Hosiery, South Centennial Investors, Lin Amos, Coble, or Bob Amos.

83. Despite specific inquiries addressed to Defendant, Ms. Sparrow and the Unsecured Creditors' Committee learned of the National Hosiery sale from a third-party and not from Defendant, WEH&W, or the debtor-in-possession, Textile.

84. By letter dated July 2, 1996, Ms. Sparrow asked when National Hosiery was sold to Great American Textile Company and noted that no notice was sent to Textile pursuant to the Bulk Sales Act.

85. On July 16, 1996, Defendant filed a First Amended Chapter 11 Plan of Liquidation and a First Amended Disclosure Statement by Debtor Textile Industries, Inc.

86. The Unsecured Creditors' Committee subsequently objected to the amended plan and disclosure statement, sought permission from the court to employ its own accountant and sought permission to file suit on behalf of the debtor Textile against Great American, the purchaser of National Hosiery's assets and other parties involved in the Great American transaction.

87. Despite specific inquiries addressed to Defendant, Ms. Sparrow and the Unsecured Creditors' Committee did not learn of the cancellation of the $400,000 trade receivable owed by National Hosiery to Textile from Defendant, WEH&W, or the debtor-in-possession, Textile. Rather, Ms. Sparrow and the Unsecured Creditors' Committee learned of the debt cancellation transaction only after the Committee had obtained authority to employ its own accountants and the Committee's accountants discovered the debt cancellation in reviewing Textile's books. Members of WEH&W, including Defendant, did deliver information and documents to Ms. Sparrow, the Unsecured Creditors' Committee and the accountants employed the Committee.

88. The Unsecured Creditor's Committee filed a motion with the bankruptcy court seeking appointment of a Chapter 11 trustee for Textile, the debtor-in-possession.

89. On October 7, 1996 and October 9, 1996, respectively, the bankruptcy court granted authority to file a suit on behalf of the debtor against Great American and granted the motion for appointment of a trustee. Charles M. Ivey was appointed to serve as trustee for Textile.

90. Defendant and the other attorneys of WEH&W had an on-going affirmative duty to disclose to the court WEH&W's pre-petition and post-petition connections with Textile, its shareholders, National Hosiery and other parties in interest in the bankruptcy estate.

91. No attorney at WEH&W, including Defendant, took any steps to amend the affidavit of disinterestedness or to otherwise disclose to the bankruptcy court its pre-petition and post-petition connections with Textile's creditors or other parties in interest in the bankruptcy estate.

92. WEH&W's pre-petition and post-petition connections with Textile's creditors and other parties in interest were disclosed only after inquiry by the unsecured creditor's committee and the trustee appointed by the bankruptcy court.

93. Neither Defendant, Mr. Cain or Mr. Hundley specifically advised any of their clients or their client's principals or shareholders about the potential or actual conflicts of interest related to WEH&W's simultaneous representation of Textile, National Hosiery or their common shareholders, Lin Amos, Bob Amos, and Bill Coble.

94. Defendant was the attorney at WEH&W who had the most experience handling bankruptcy cases, having served as a Chapter 7 trustee for numerous years, and was the attorney in charge of the Textile bankruptcy proceedings after December 1995.

95. Upon motion by the bankruptcy trustee to disgorge fees paid by Textile to WEH&W and to disqualify WEH&W from continued representation of

Textile, the bankruptcy court determined that the various interests of WEH&W's clients Lin Amos, Coble, Bob Amos, South Centennial and National Hosiery were materially and directly adverse to those of Textile's bankruptcy estate.

96. The bankruptcy court ordered WEH&W to disgorge the fees paid by Textile and removed WEH&W from further representing Textile in the bankruptcy proceedings.

97. Defendant and WEH&W continued to represent Textile's bankruptcy estate from the inception of the bankruptcy proceedings until August 1997 when the bankruptcy court entered an order removing WEH&W as Textile's attorneys and ordered WEH&W to pay fees to the trustee, Charles Ivey, and to the attorney for the Unsecured Creditors' Committee, Sarah Sparrow, in the approximate amount of $112,000.

98. In addition to ordering disgorgement of WEH&W's fees and payment of fees to the trustee and to the attorney for the Unsecured Creditors' Committee as sanctions, the bankruptcy court disallowed nearly $50,000 in fees requested by WEH&W which had accrued but had not been paid by Textile during the bankruptcy. The bankruptcy court also disallowed reimbursement of costs that had been advanced by WEH&W.

99. Defendant individually contributed to the payments ordered to be disgorged and fees to the trustee and the Unsecured Creditors' Committee, as did other partners in WEH&W. Defendant also individually contributed to the payment of sums in settlement of Textile's claim for damages against WEH&W and others.

100. In January 1998, the Bankruptcy Administrator for the United States Bankruptcy Court for the Middle District of North Carolina notified Defendant that he would not be reappointed as a member of the Chapter 7 Panel of Trustees for the Middle District of North Carolina. The Bankruptcy Administrator did request that Defendant continue to serve as trustee in two complex bankruptcy proceedings in which Defendant was already serving as Chapter 7 trustee. Defendant has recently concluded one of those proceedings and continues as trustee in the other proceeding.

Based upon the foregoing Findings of Fact and the stipulations of the Defendant, the Hearing Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee. The Committee has jurisdiction over the Defendant, J. Brooks Reitzel, Jr., and the subject matter of this proceeding.

2. The Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

(a) Defendant violated Rules 5.1(a) and 5.11(a) of the Rules of Professional Conduct by simultaneously representing Johnson, RJI and Martin's Systems in the same or substantially related matters, when their interests were materially and directly adverse.

(b) Assuming arguendo that the interests of Martin Systems were only potentially adverse to Johnson and RJI, Defendant violated Rules 5.1(a) and 5.11(a) of the Rules of Professional Conduct by simultaneously representing Johnson, RJI and Martin's Systems in the same or substantially related matters, when their interests were potentially adverse and Defendant did not fully disclose the implications, advantages and risks of the simultaneous representation to Martin's Systems and did not obtain Martin's Systems' consent to the simultaneous representation after full disclosure.

(c) Defendant violated Rules 5.1(a) and 5.11(a) of the Rules of Professional Conduct by representing, with other members of WEH&W, Textile, a Chapter 11 debtor-in-possession, in the same or a substantially related matter to that in which his law firm WEH&W simultaneously represented Lin Amos, Coble, Bob Amos, South Centennial and National Hosiery, when Textile's interests and the interests of the bankruptcy estate were materially and directly adverse to those of Lin Amos, Coble, Bob Amos, South Centennial and National Hosiery;

(d) Defendant violated Rules 2.8(b)(2), 5.1(c) and 5.11(a) of the Rules of Professional Conduct by failing to withdraw from representing, or by failing to recommend to WEH&W that it withdraw from representing, or by otherwise refusing to represent Textile and/or Lin Amos, Coble, Bob Amos, South Centennial and National Hosiery when it became apparent that WEH&W's continued representation of Textile and these related entities and persons would result in a violation of the Rules of Professional Conduct;

(e) Defendant failed to disclose to the bankruptcy court, or failed to recommend that other members of WEH&W disclose to the bankruptcy court, the nature and extent of WEH&W's pre-petition and post-petition connections with Textile and its creditors and parties in interest, despite an legal obligation to do so and despite specific requests from the Unsecured Creditors' Committee, in violation of Rule 7.2(a)(3) of the Rules of Professional Conduct; and

(f) Defendant engaged in conduct prejudicial to the administration of justice by failing to disclose to the bankruptcy court, or by failing to recommend that other members of WEH&W disclose to the bankruptcy court, the nature and extent of WEH&W's pre-petition and post-petition connections with Textile and its creditors and parties in interest in violation of the Bankruptcy Code and Rules of Bankruptcy Procedure and in violation of Rule 1.2(d) of the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the Hearing Committee hereby makes additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:

   a) Prior disciplinary offenses, including: a two-year stayed suspension in 1997 for violating Rules 10.1(a) and (c) of the Rules of Professional Conduct related to trust accounts and for violating Rules 5.1(a) and (b) related to conflicts of interest; and a Reprimand in 1998 for violating the Rule 7.1(a) of the Revised Rules of Professional Conduct by sending a misleading direct mail letter soliciting client referrals.

   b) Multiple offenses; and

   c) Substantial experience in the practice of law.

2. The Defendant's misconduct is mitigated by the following factors:

   a) Absence of dishonest or selfish motive.

   b) Full and free disclosure to the hearing committee and cooperative attitude toward proceedings.

   c) Delay in disciplinary proceedings related to the Martin Systems' matter through no fault of the defendant.

   d) Remorse; and

   e) Imposition of other significant penalties or sanctions.

3. The mitigating factors outweigh the aggravating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the Hearing Committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of the Defendant, J. Brooks Reitzel, Jr., is hereby suspended for three years. The suspension of the Defendant's license is hereby stayed for three years upon the following terms and conditions:

(a) The Defendant shall not violate any state or federal laws.

(b) The Defendant shall not violate any provisions of the North Carolina State Bar Discipline & Disability Rules or the Revised Rules of Professional Conduct.

(c) During each year of the three-year stayed suspension, the Defendant shall enroll in and attend a 3-hour block of Continuing Legal Education in ethics, which program shall have been approved by the Board of Continuing Legal Education and shall be presented by a sponsor accredited by the Board. This 3-hour ethics CLE requirement is over and above other mandatory CLE requirements that Defendant must meet in order to maintain his license to practice law in North Carolina in accordance with 27 N.C. Admin. Code, Subchapter D, Section .1600 et seq.; except that, in any year in which Defendant must satisfy the mandatory 3-hour block of CLE credit in ethics in order to maintain his license, his satisfaction of the mandatory CLE requirement shall also satisfy the Defendant's requirement to complete a 3-hour block of CLE in ethics in that year for purposes of this Order.

(d) Defendant shall provide written proof of his compliance with paragraph (c) to the North Carolina State Bar Office of Counsel no later than June 15, 2001; June 15, 2002 and June 15, 2003.

(e) The Defendant shall pay all costs incurred in this proceeding and taxed against him by the Secretary of the North Carolina State Bar within 60 days of receiving notice of such costs.

2. If during any period in which the three-year suspension is stayed the Defendant fails to comply with any one or more conditions stated in paragraph 1, then the stay of the suspension of his law license may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline & Disability Rules.

3. If the stay of the suspension of the Defendant's law license is lifted, the Disciplinary Hearing Commission may enter an order providing for such conditions as it deems necessary for reinstatement of the Defendant's license at the end of the three-year suspension period.

4. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0114(x) of the North Carolina State Bar Discipline & Disability Rules throughout the period of the stayed suspension.

Signed by the undersigned Hearing Committee chair with the consent of the other Hearing Committee members.

This the 6th day of July, 2000.

Fred H. Moody, Jr., Chairman
Hearing Committee