

NORTH CAROLINA

WAKE COUNTY

22580

BEFORE THE
GRIEVANCE COMMITTEE
OF THE

NORTH CAROLINA STATE BAR
97G1604(IV), 98G0430(IV), 98G0478(IV),
98G0569(IV) & 98G1345(IV)

IN THE MATTER OF

ROGER W. RIZK,
ATTORNEY AT LAW

CENSURE

On January 13, 1999, the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by several clients.

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 responses to the letters 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.

A Censure is a written form of discipline more serious than a Reprimand, issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or a member of the public, but the misconduct does not require suspension of the attorney's license.

The Grievance Committee believes that a hearing before the Disciplinary Hearing Commission is not required in this case and issues this Censure to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this Censure. I am certain that you will understand fully the spirit in which this duty is performed.

File Number 97G1604(IV)

In approximately February 1997, your client, VLL, retained you to represent him to pursue a potential claim under the Americans with Disabilities Act ("ADA") against his former employer, the North Carolina State Department of Environment, Health, and Natural Resources.

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You filed a complaint on behalf of VLL in the United States District Court for the Western District of North Carolina on May 30, 1997. The Committee found that prior to filing the complaint for VLL, you failed to take the following action. First, you failed to advise VLL that he was required to pursue state administrative procedures and remedies prior to filing the suit in federal court. Second, you failed to do sufficient investigation and research on VLL's claim to determine whether or not he had causes of action against his employer. On motion by the defendants in that action, VLL's claims were dismissed because he failed to exhaust his state administrative remedies before filing suit.

The Committee found that your above-described conduct violated several Rules of Professional Conduct. First, the Committee found that you violated Rule 6(a)(2) by handling VLL's suit without preparation adequate under the circumstances. Second, the Committee found that you violated Rule 7.2(a)(1) by filing a frivolous suit on behalf of VLL.

File Number 98G0430(IV)

In approximately June of 1996, your client, SM, retained you to represent her in a potential employment discrimination claim against her former employers, Smith Turf & Irrigation Co. You subsequently filed a suit in the District Court of the United States for the Western District of North Carolina on October 11, 1996. The Committee found that prior to filing this suit, you failed to inform SM that she was required to file a charge with the Equal Employment Opportunity Commission ("EEOC") and obtain a right to sue letter before filing suit. You also failed to do sufficient investigation and research to ensure that SM had obtained such a right to sue letter. Furthermore, the Committee found that at the time that you filed the suit in Federal Court, the 180 deadline for filing an EEOC charge had not expired. As a result of your conduct, the United States District Court dismissed SM's suit in an order dated September 19, 1997, because she had not filed an EEOC charge and obtained a right to sue letter prior to filing her complaint.

The Committee found that your above-described conduct violated several Rules of Professional Conduct. First, by failing to investigate and ensure that SM had filed a charge of discrimination with the EEOC and obtained a right to sue letter, you handled SM's claim without preparation adequate under the circumstances in violation of Rule 6(a)(2). Second, you filed a frivolous lawsuit in violation of Rule 7.2(a)(1).

File Number 98G0478(IV)

On approximately February 13, 1997, your client, CSH, retained you to represent him on a potential ADA and unfair labor practice claims against his employer, US Airways, and his union, the International Aircraft Mechanics ("IAM"). You subsequently filed a complaint in North Carolina State Court on July 11, 1997 asserting claims for intentional infliction of emotional distress against US Airways and IAM. The defendants subsequently moved the case to Federal Court and asserted the following defenses to the action. "Expiration of the statute of limitations, CSH's exclusive forum for resolving disputes was under an arbitration clause of their collective bargaining agreement which he had failed to exhaust, and failure to exhaust his administrative remedies under the ADA." You subsequently moved and were allowed to withdraw from representation of CSH on February 23, 1998. Ultimately, CSH was forced to file

a stipulation of dismissal on April 15, 1998 to avoid sanctions being imposed against him for filing this suit.

The Committee found that your above-described conduct violated several Rules of Professional Conduct. By filing the suit for CSH without ensuring that he had exhausted his administrative remedies, ensuring that the statute of limitations had not expired, and determining that his claims were governed by the arbitration clause of a collective bargaining agreement, you filed the suit without preparation adequate under the circumstances in violation of Rule 6(a)(2) and filed a frivolous lawsuit in violation of Rule 7.2(a)(1).

File Number 98G0478(IV)

In approximately April 1997, your client, AK, retained you to represent him in a previously filed ADA claim against Roadway Express and Teamsters Union, his employer and union, respectively. Ultimately, AK was forced to dismiss this suit, which was filed by another attorney, because the summons was not timely served on the defendants.

You subsequently filed a second suit on behalf of AK on February 3, 1998 in the United States District Court for the Western District of North Carolina against the same defendants. This suit was for breach of contract of a collective bargaining agreement. The collective bargaining agreement contained a mandatory arbitration clause. Also, the breach of contract claim was subject to a six-months limitation period which the Committee found had run significantly before February 3, 1998.

The Committee found that you failed to do sufficient investigation and research to determine whether or not AK had a viable claim for breach of contract before filing the second suit. The Committee found that your above-described conduct violated several Rules of Professional Conduct. The Committee found that by filing AK's second suit and doing little, if any, background investigation or basic research on his claim, you violated Rules 6(a)(2) and 7.2(a)(1).

In deciding to issue you a censure for the above-mentioned misconduct, the Committee considered the following aggravating and mitigating factors. In aggravation, the Committee considered the following factors:

- (a) You were previously reprimanded by this committee in November of 1997 for filing a frivolous employment discrimination claim;
- (b) You were sanctioned on five occasions between January 1997 and March 1998 for filing frivolous employment discrimination lawsuits;
- (c) You had previously been warned by the Grievance Committee in connection with your representation of another client in an employment discrimination suit;
- (d) You engaged in pattern of similar misconduct demonstrated in this Censure, your prior Reprimand, your prior sanctions, and the Letter of Warning;

(e) You had committed multiple violations of the Rules; and


(f) You have substantial experience in the practice of law.

In mitigation, the Committee considered heavily the fact that you are already under a four-year stayed suspension and one of the conditions of the stay is that you commit no future violations of the Rules of Professional Conduct. The Committee noted that all of the allegations set forth above in the Censure occurred before the Disciplinary Hearing Commission ("DHC") trial, which resulted in your four-year stayed suspension. In other words, it appeared that you had undergone some interim rehabilitation between the times of the actions set forth in the Censure and the time of the quarterly Grievance Committee meeting. The Committee also noted that the DHC panel that imposed a stayed suspension was aware of your pattern of misconduct set forth in this Censure.

You are hereby censured by the North Carolina State Bar for your violation of the Rules of Professional Conduct. The Grievance Committee trusts that you will ponder this Censure, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. This Censure should serve as a strong reminder and inducement for you 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 respected member of the legal profession whose conduct may be relied upon without question.

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 Censure by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this 22 day of February, 1999.


James K. Dorsett, III
Chair, Grievance Committee