

3811
STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
93G1125 (II)

IN THE MATTER OF

J. LARKIN PAHL,
ATTORNEY AT LAW

)
)
)
)
)

CENSURE

On October 20, 1994, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

Pursuant to section 13(A) of article IX of the Rules and Regulations 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 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.

Throughout 1992 and 1993 you served as trustee and attorney for the trustee regarding various debtors involved in bankruptcy proceedings in federal court. On four different occasions between Sept. 24, 1992 and July 9, 1993, you transferred approximately \$120,000 belonging to eight different bankruptcy debtors to your law firm's business account. At the time you

withdrew the funds, you apparently had a good faith, subjective belief that you were entitled to the money as reimbursement for expenses you had already incurred and as compensation for work already performed by you. At the time you withdrew the funds, however, you did not have approval of the bankruptcy court, nor was the court aware of your action.

In each case, you filed a petition for approval of the fees, commissions and expenses shortly after you transferred the debtors' funds to your firm business account. In some cases, the amounts ultimately awarded by the court exceeded the amounts which you had paid yourself and in some cases, the court awarded you an amount less than what you had withdrawn. After these matters came to the attention of the bankruptcy court, you repaid all of the fees and commissions which you had previously transferred to your firm account.

The same attorney may perform the dual functions of trustee and attorney for the trustee in bankruptcy matters. However, the law is very clear that fees and commissions for this work may not be paid, without the prior approval of the bankruptcy court. This requirement is designed to prevent the kind of self-dealing in which you engaged. By paying yourself fees and commissions without prior approval of the bankruptcy court, you paid yourself an illegal fee in violation of Rule 2.6 and engaged in serious self-dealing in violation of Rule 5.1 of the Rules of Professional Conduct. No attorney, no matter how successful, experienced or respected, is above the Rules of Professional Conduct. No amount of frustration with perceived delays or other problems with the court system or personnel can justify self dealing of the kind in which you engaged.

Your misconduct is mitigated by the fact that you are remorseful for your misconduct and that you have acknowledged your error, by the fact that you have previously received substantial adverse publicity associated with this matter, and that you have a long history of honorable service to the profession with no prior discipline.

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 11 day of November, 1994.

Wm O. King
William O. King, Chairman
The Grievance Committee
North Carolina State Bar