

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
86 DHC 6

THE NORTH CAROLINA STATE BAR,)
Plaintiff)

vs.)

MICHAEL R. MITWOL,)
Defendant)

CONSENT ORDER OF DISCIPLINE

This matter coming before a Hearing Committee of the Disciplinary Hearing Commission pursuant to Section 14(8) of Article IX of the Rules and Regulations of the North Carolina State Bar; and it appearing that both parties have agreed to waive a formal hearing in this matter; and it further appearing that both parties stipulate and agree to the Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee therefore 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. The Defendant, Michael R. Mitwol, was admitted to the North Carolina State Bar on August 30, 1978 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the Rules, Regulations, and Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Wilmington, New Hanover County, North Carolina.

4. In August, 1983, the Defendant accepted employment on behalf of Cheryl Dicksey relative to a dispute Dicksey was having with her former employer, Hydratron, Inc., concerning allegedly unpaid salary and commissions.

5. On or about August 25, 1983, the Defendant wrote a letter to Dale R. Gierszewski, president of Hydratron, Inc., setting forth his client's demand for \$32,000 in satisfaction of her claims.

6. Thereafter, Dicksey made the Defendant aware of the fact that she had taken with her at the time her employment was terminated copies of certain records of Hydratron, Inc. Dicksey informed the Defendant that these documents were evidence that Gierszewski and others had conspired to criminally defraud the General Electric Corporation by means of shipping orders and payment vouchers which had been falsified.

7. By letter to Gierszewski's attorney, Andrew A. Canoutas, dated November 4, 1983, the Defendant indicated that it was clear to him that Gierszewski had conspired with several others to defraud General Electric and further indicated that he perceived grounds for federal prosecutions for tax evasion and conspiracy. After outlining the criminal implications of the information he had received from his client, the Defendant suggested that Gierszewski pay Dicksey \$6,000 to settle the employment dispute. In return for \$6,000, the Defendant offered to prepare full releases to protect all concerned and further indicated that his client would surrender the documents pertaining to Hydratron, including false parts orders and other information indicating a conspiracy to defraud General Electric. By making reference to Gierszewski's possible criminal liability, the Defendant impliedly threatened to reveal the incriminating information to the authorities in order to coerce a settlement of his client's civil claim.

8. In December, 1983, Gierszewski agreed to pay Dicksey the sum of \$5,750 in settlement of the employment dispute and in return for all documents in Dicksey's possession pertaining to Hydratron.

9. The settlement agreement was formally incorporated in a release prepared by the Defendant and executed by Dicksey on December 8, 1983. The release recited that upon full payment of the agreed amount, Dicksey would turn over to Canoutas all records in her possession pertaining to Hydratron.

10. Gierszewski paid the full settlement amount in a series of installments during the first five months of 1984. Upon payment of the final installment in May, 1984, the Defendant transmitted copies of all the documents pertaining to Hydratron to Canoutas. Unbeknownst to Gierszewski or Canoutas, Dicksey had

previously made copies of all of the documents, which copies she later delivered to the office of the District Attorney for the Fifth Prosecutorial District.

Based upon the foregoing Findings of Fact, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

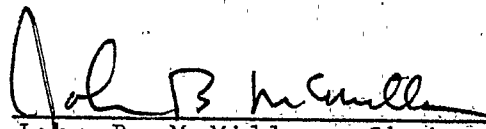
The Defendant's conduct constitutes grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b) in that, by attempting to coerce a favorable settlement of his client's claim by threatening to expose criminal conduct, the Defendant engaged in professional conduct that adversely reflects on his fitness to practice law and threatened to present criminal charges solely to obtain an advantage in a civil matter in violation of Disciplinary Rules 1-102(A)(6) and 7-105, respectively, of the North Carolina Code of Professional Responsibility.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the consent of the parties, the Hearing Committee enters the following:


ORDER OF DISCIPLINE


1. The Defendant will receive a Public Censure for his misconduct.
2. The Defendant shall pay the costs of this proceeding.

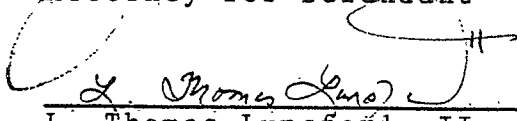
This the 10th day of October, 1986.


John B. McMillan, Chairman
(for the Committee)

Consented to by:


Michael R. Mitwol, Defendant


Joseph B. Cheshire, V
Attorney for Defendant


L. Thomas Lunsford, II
Attorney for Plaintiff

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PUBLIC CENSURE

This Public Censure is delivered to you pursuant to Section 23 of Article IX of the Rules and Regulations of the North Carolina State Bar and pursuant to a Consent Order of Discipline entered in the above-captioned action by a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar bearing the date of October 10, 1986, which Order incorporated Findings of Fact and Conclusions of Law agreed upon and consented to by the parties and approved by the Hearing Committee pursuant to Section 14(8) of the above mentioned Rules and Regulations.

In August, 1983, you accepted employment on behalf of Cheryl Dicksey relative to a dispute Dicksey was having with her former employer, Hydratron, Inc., concerning allegedly unpaid salary and commissions.

On or about August 25, 1983, you wrote a letter to Dale R. Gierszewski, president of Hydratron, Inc., setting forth your client's demand for Thirty-Two Thousand (\$32,000.00) Dollars in satisfaction of her claims.

Thereafter, Dicksey made you aware of the fact that at the time her employment was terminated she had taken with her copies of certain records of Hydratron, Inc. Dicksey informed you that these documents were evidence that Gierszewski and others had conspired to criminally defraud the General Electric Corporation by means of shipping orders and payment vouchers which had been falsified.

By letter to Gierszewski's attorney, Andrew A. Canoutas, dated November 4, 1983, you indicated that it was clear to you that Gierszewski had conspired with several others to defraud General Electric and further indicated that you perceived grounds for federal prosecutions for tax evasion and conspiracy. After outlining the criminal implications of the information you had received from you client, you suggested that Gierszewski pay Dicksey Six Thousand (\$6,000.00) Dollars to settle the employment dispute. In return for Six Thousand (\$6,000.00) Dollars, you offered to prepare full releases to protect all concerned and further indicated that your client would surrender the documents pertaining to Hydratron, including false parts orders and other information indicating a conspiracy to defraud General Electric. By making

reference to Gierszewski's possible criminal liability, you impliedly threatened to reveal the incriminating information to the authorities in order to coerce a settlement of your client's civil claim.

By attempting to coerce a favorable settlement of your client's claim by threatening to expose criminal conduct, you engaged in professional conduct that adversely reflects upon your fitness to practice law and you threatened to present criminal charges solely to obtain an advantage in a civil matter in violation of Disciplinary Rules 1-202(A)(6) and 7-105, respectively, of the North Carolina Code of Professional Responsibility.

Your conduct in doing so was most unprofessional. It violated not only the letter, but also the spirit of the Code of Professional Responsibility. It brought discredit upon you and tended to place the Courts and the Bar in disrepute.

The criminal courts are intended for the use of the State in trying persons accused of violating society's penal laws. They are not intended to be used as levers for the adjustment of civil disputes. A lawyer should never institute or threaten to institute criminal proceedings to gain a tactical advantage in a civil matter. If lawyers were permitted to use the criminal law in such an oppressive manner, just claims or defenses in civil litigation might be discouraged. By the same token, if such threats were tolerated and were effectual, serious crimes which ought to be reported for the good of society would not be brought to the attention of the authorities because the threatening party would pay with silence for the advantage sought through the threat. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

Although it appears that your intent in this matter was not criminal, your conduct evidenced a disturbing insensitivity to the ethical principles involved. In order to avoid professional misconduct, lawyers must constantly be conscious of the Rules of Professional Conduct and carefully measure contemplated actions against those rigorous standards. Ultimately, it is no excuse for you or any other lawyer to plead ignorance or mistake.

Because your conduct in this matter seemed to partake more of carelessness than corruption, the Hearing Committee has agreed to impose a relatively mild form of discipline, public censure. By agreeing to impose public censure, you should be aware that the Hearing Committee does not in any sense condone the misconduct you have committed. Rather, it is the Committee's opinion that this Public Censure should be sufficient to inhibit any further misconduct and to cure an apparent deficit in your understanding of the principle of professional ethics.

The Disciplinary Hearing Commission is confident that this Public Censure will be heeded by you, will be remembered by you, and will be ultimately beneficial to you. We trust that you will never again allow yourself to depart from strict adherence to the highest standards of the legal profession. Accordingly, we sincerely hope that this Public Censure, instead of being a burden, will actually serve as a profitable and continuing reminder that you should weigh carefully your responsibility to the public, your clients, your fellow attorneys, and the Court to the end that you will be known as a respected

member of our profession whose word and conduct may be relied upon without question.

Pursuant to Section 23 of the above-mentioned Rules and Regulations, it is ordered that a certified copy of this Public Censure be entered upon the judgment docket of the Superior Court of New Hanover County and also upon the minutes of the Supreme Court of North Carolina.

This the 10th day of October, 1986.

John B. McMillan

John B. McMillan

Chairman of the Hearing Panel