

STATE OF NORTH CAROLINA
COUNTY OF WAKE

13017

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
92G1199 (IV) R

IN THE MATTER OF)

STEPHEN P. LINDSAY)
ATTORNEY AT LAW)

REPRIMAND)

On January 13, 1994, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Samuel D. Ledbetter.

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 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.

The committee found that complainant was injured in a work related accident; that on March 17, 1989, complainant hired Michael T. Moore, of the firm of Moore, Lindsay & True (hereafter

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"the firm"), to represent him; that on January 5, 1990, complainant was awarded \$10,931.52 in benefits; that in February of 1990, the Industrial Commission ordered the insurance carrier to withhold \$2,186 from the funds owed complainant as approved attorney's fees; that prior to the expiration of the appeal period, the insurance company paid \$2,186 to the firm which was distributed to all the partners of the firm; that complainant appealed the amount awarded which resulted in a fee reduction of \$1,686; that the Industrial Commission ordered the firm to return the balance owed or hold it in trust in case an appeal was taken; that an appeal was taken which affirmed the Commission's decision to reduce the fee; that prior to the expiration of the appeal process, the firm dissolved and the firm of Lindsay & True, of which you were the managing partner, became responsible for this obligation; that after the reduction was affirmed on appeal, complainant contacted you on at least two occasions for payment of the amount owed which you failed and refused to do, in violation of the Industrial Commission's order.

The committee determined that by failing to comply with an order of the Industrial Commission, you violated Rule 1.2(D) ("It is professional misconduct for a lawyer to . . . [e]ngage in conduct that is prejudicial to the administration of justice") and that by failing to return the balance owed complainant, you violated Rule 10.2(E) ("A lawyer shall promptly pay . . . to the client . . . the funds . . . belonging to the client to which the client is entitled in the possession of the lawyer") of the Rules of Professional Conduct.

In mitigation, the committee found that Mr. Ledbetter was paid the amount owed, with interest, in October of 1993.

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 1st day of March, 1994.

W. Erwin Spainhour
W. Erwin Spainhour, Chairman
The Grievance Committee
North Carolina State Bar