

9002

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
91G0880(III), 91G0998(III) &
91G0997(III)

IN THE MATTER OF

DAVID F. TAMER,
ATTORNEY AT LAW

REPRIMAND

On July 16 1992, the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by Charles Smith, Mr. & Mrs. James B. Hall, and Lawrence Rothrock.

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.

In the summer of 1989, you undertook to handle a bankruptcy proceeding for Charles L. Smith. You filed a Chapter 11 petition for Smith in early May 1990. You failed to handle Smith's case with reasonable diligence, in violation of Rule 6(B)(3) of the Rules of Professional Conduct. For instance, on a number of occasions, you failed to file monthly reports on a timely basis with the bankruptcy administrator. As a partial result of your neglect, the bankruptcy administrator filed a motion to dismiss or convert the bankruptcy proceeding in October 1990. Although you then filed the monthly reports, avoiding dismissal of the case, you continued to miss deadlines for later reports. Additionally, you failed to file a proper disclosure statement for

Smith. Even after the Court disapproved the statement in open court in March 1991, you failed to amend the statement on a timely basis. You also failed to file a bankruptcy plan for Smith promptly. Finally, on May 6, 1991, a hearing was held on Centura Bank's motion to foreclose on Smith's house. You discovered that you could not attend the hearing, but waited until 4 p.m. on Friday, May 3 to notify the clerk of the bankruptcy court of your problem, by faxing a letter to the court. Predictably, the court did not learn of your letter in time and nobody appeared to protect Smith's interests at the foreclosure hearing. You failed to represent Smith in a diligent manner by your failure to file necessary documents with the bankruptcy court and to appear at the May 6 hearing.

In an unrelated matter, you undertook to represent Mr. and Mrs. James B. Hall in a civil action against one Larry Ring. The case was set for hearing on Jan. 2, 1990. You did not appear in court and the matter was dismissed. You later apparently filed a motion to have the dismissal set aside, but never had the motion heard. Your failure to appear in court and to pursue the motion to set aside the dismissal constituted a violation of Rule 6(B)(3) of the Rules of Professional Conduct and resulted in prejudice to your clients, in violation of Rule 7.1(A)(3).

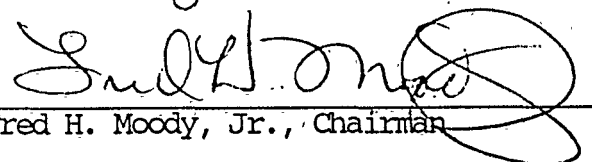
Your misconduct regarding Mr. Smith and the Halls is aggravated by your failure to respond promptly to grievances filed by the Halls and Lawrence Rothrock with the N.C. State Bar. The grievances of the Halls and Rothrock were referred to the Grievance Committee of the 21st Judicial District. Your answer to Rothrock's grievance was due on May 21, 1991. Your answer to the Halls' grievance was due on Oct. 21, 1991. Although you were given various extensions of time by the local committee, you failed to make any response. The matters were finally referred back to the State Bar, which gave you three more extensions of time, at your request. Each time you promised to respond and each time you failed to keep your word. It was not until you were subpoenaed to appear in Raleigh that you made any response whatever. Rule 1.1(B) of the Rules of Professional Conduct require attorneys to respond promptly to lawful inquiries of a disciplinary authority. You violated this rule by failing to respond promptly to the grievances of the Halls and Rothrock.

The Grievance Committee is aware that you suffered a personal illness during a portion of the time at issue in these matters and believes that your personal situation mitigates, but does not excuse your misconduct.

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 7 day of August, 1992.


Fred H. Moody, Jr., Chairman