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STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
92G0855 (III)

IN THE MATTER OF

JOHN H. RUSH,
ATTORNEY AT LAW

REPRIMAND

On October 27, 1993, 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 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.

Prior to Sept. 17, 1992, you handled client funds on occasion, but did not maintain a trust account. Instead, you kept these client funds in an office or business account in which you also kept personal funds. Rule 10.1(C) of the Rules of Professional Conduct requires attorneys to keep client and

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fiduciary funds in a trust account and forbids attorneys to commingle client and personal funds. You violated this rule by placing client funds in an office or business account into which your personal funds had also been placed.

It also appears that, prior to September 1992, you occasionally advanced living expenses to clients for whom you were handling personal injury matters. Rule 5.3(B) of the Rules of Professional Conduct provides that an attorney may advance the costs of litigation to a client, provided that the client remains ultimately responsible for such costs. You violated Rule 5.3(B) by advancing sums to clients for items which did not constitute litigation costs, such as food, utilities and medicine.

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 17th day of November, 1993.

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

they would rather go to court; that you then told the Robertsons that if they insisted on going to trial, they would have to pay you one-third of the settlement offer (\$6,000) plus expenses incurred before he would represent them at trial; that complainant argued that the employment contract clearly stated that if no settlement was reached then there would be no fee; that you continued to insist that they either agree to the settlement or pay you \$6,000 plus expenses; that the Robertsons could not afford to pay you the \$6,000 plus expenses and were unable to hire another lawyer in such a short period of time; and that they were therefore forced to accept the settlement.

The committee determined that by threatening to withdraw from representing Mrs. Robertson on the eve of her trial unless she either accepted the settlement offer or paid you \$6,000 plus expenses, you violated Rule 7.1(A)(2) which states: "A lawyer shall not intentionally . . . [f]ail to carry out a contract of employment entered into with a client for professional services. . . ." The committee also determined that this conduct violated Rule 7.1(C)(1) which states: "A lawyer shall . . . [a]bide by a client's decision whether to accept an offer of settlement of a matter. . . ."

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Done and ordered, this 13th day of November, 1993.

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

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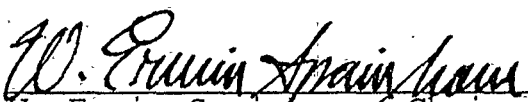
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