

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
93G1212 (II)

IN THE MATTER OF)

JOHN M. CONSTANTINOU,)
ATTORNEY AT LAW)

REPRIMAND

On April 14, 1994, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the 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.

You represented Dovie Bass, Lovie Trice, and Jane Nichols in a lawsuit against R. Marie Sides, an attorney in Durham, North Carolina. On January 27, 1993, you signed a subpoena duces tecum and caused it to be filed and served on the University of North Carolina Hospital. The subpoena duces tecum required that UNC Hospital produce certain medical records of Robert M. Sides, the deceased brother of Ms. Sides. According to your subpoena duces tecum, the documents were to be produced on February 15, 1993. There was no deposition or court proceeding scheduled for February 15, 1993.

On February 10, 1993, UNC Hospital sent a certified copy of Robert Sides' medical records by certified mail to the Clerk of Superior Court in Durham County. The records were under seal and marked to be open by the presiding judge.

In addition, on February 5, 1993 you had a subpoena duces tecum issued to Duke University Medical Center and requested that the hospital produce Robert Sides' medical records. There was no specific date to produce indicated on that subpoena and delivery of the records was required "by February 1993". On February 16, 1993, the medical records custodian from Duke University Medical Center certified that Mr. Sides' medical records were provided to the court.

Attorney Fred T. Moutos and Catherine Constantinou, both employees of your law firm, removed the medical records provided by UNC Hospital and Duke University Medical Center from the clerk's office and took them to your office. Mr. Moutos and Ms. Constantinou did not have authorization from the courts to remove the medical records from the clerk's office.

Mr. Sides' medical records were shown to your clients. Also, a newspaper reporter from the Durham Herald Sun newspaper visited your office and discussed your clients' cases against Ms. Sides. A portion of Ms. Sides' medical records were given to the newspaper reporter, although it is unclear who disclosed these confidential records to the reporter. Judge J. Milton Read, Jr. ordered the records returned to the court. You returned the original records to the court, but you did not return the copies that you made of the medical records until November 22, 1993 after Judge Anthony M. Brannon ordered you to do so.

Ms. Sides, through her attorney, filed a motion for sanctions pursuant to Rule 11 of the North Carolina Rules of Civil Procedure and a motion to quash subpoena. The motion for sanctions was heard by Judge Brannon on November 22 and November 23, 1993. Judge Brannon held that your signing and issuing a subpoena duces tecum to UNC Hospital to obtain the confidential, privileged, personal hospital records of Robert Sides, a non-party to the action, was done for an improper purpose and violated Rule 11 and Rule 45 of the North Carolina Rules of Civil Procedure. Judge Brannon held that the disclosure, copying and failure to return the copy of the medical records were improper.

Sanctions were imposed against you and your associate, Mr. Moutos, and you were ordered to pay Ms. Sides' attorney's fees. Furthermore, Judge Brannon ordered that your clients may not use any of the medical records of Robert Sides during their case in chief in the underlying civil action.

The Grievance Committee finds that your conduct with respect to subpoenaing the medical records of Robert Sides and the disclosure of his medical records to the press violates Rule 1.2(D) of the Rules of Professional Conduct. That rule provides that an attorney shall not engage in conduct that is prejudicial to the administration of justice. The Grievance Committee also found that your removal, opening, and copying of the sealed medical records without notice to Ms. Sides and without obtaining the court's permission were improper and in violation of Rule 1.2(D).

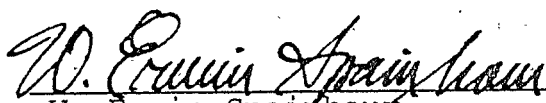
You disclosed confidential medical records of a non-party with a newspaper reporter. The newspaper reporter then wrote about this information in his article. Your conduct in this matter was improper and infringed upon the physician-patient privilege which was not waived by Mr. Sides.

The Grievance Committee took into consideration that you were sanctioned by the court. The Grievance Committee considered your statement that you were unclear about Rule 45 and its application. You are advised to seek the advice of other lawyers when you have some question in this area.

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 20th day of May, 1994.


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

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