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NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
95G0934(II)

IN THE MATTER OF

H. C. KIRKHART,  
ATTORNEY AT LAW

CENSURE

On April 11, 1996, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Yangchun Zhong.

Pursuant to section .0113(a) of the Discipline and Disability Rules 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, a reprimand, or a censure.

A censure is a written form of discipline more serious than a reprimand, issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or a member of the public, but the misconduct does not require suspension of the attorney's license.

The Grievance Committee believes that a hearing before the Disciplinary Hearing Commission is not required in this case and issues this censure to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this censure. I am certain that you will understand fully the spirit in which this duty is performed.

In November 1994, you began representing Song Cong in a domestic case against her Chinese husband, Yangchun Zhong. In January 1995, an order was entered in Wake County District Court ordering Mr. Zhong to pay \$300 a month in alimony to Ms. Cong. Subsequent to that order being entered, you began a romantic relationship with your client, Ms. Cong. As a


result of that affair, a hearing was held in July 1995 in Wake County District Court in which Mr. Zhong sought repayment of the \$1,200 he had paid in alimony to Ms. Cong due to the adulterous relationship she was having with you. The court ordered the \$1,200 to be repaid to Mr. Zhong and also ordered Ms. Cong to pay Mr. Zhong's attorney's fees in the amount of \$3,932. You allowed the interest of your client to be prejudiced by your personal interest in the relationship with Ms. Cong. Your conduct violated Rule 5.1(b).

In deciding to issue this censure, the Grievance Committee was aware that Ms. Cong consented to the relationship and that the commencement of the relationship was not a result of your being overbearing or taking advantage of any weak emotional condition caused by the divorce action. The Grievance Committee was also aware that, at the time the relationship commenced, Mr. Zhong may have had other grounds for ending the alimony payments due to a Chinese divorce he had obtained. However, the committee did not feel that these facts constituted a defense that exonerated you from a violation of the rule. A simple way for you to have avoided violating the rule would have been to withdraw after the relationship developed.

You are hereby censured by the North Carolina State Bar for your violation of the Rules of Professional Conduct. The Grievance Committee trusts that you will ponder this censure, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. This censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibility to the public, your clients, your fellow attorneys and the courts, to the end that you demean yourself as a respected member of the legal profession whose conduct may be relied upon without question.

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 censure by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this 9<sup>th</sup> day of August, 1996.



Ann Reed, Chair Grievance Committee  
The North Carolina State Bar