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NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
97G0206(II)

IN THE MATTER OF

CABELL J. REGAN,  
ATTORNEY AT LAW

REPRIMAND

On January 15, 1998, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Ms. Paula R. Bass.

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 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 1995, you agreed to represent Paula R. Bass on a federal employment discrimination claim against her former employer, Core Industries, Inc. By your own admission, you did not practice often in federal court. Nonetheless, you filed suit on

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behalf of Ms. Bass in federal court and intended to become familiar enough with federal rules and procedure to properly prosecute Ms. Bass' claim.

During the course of the suit, you were served with discovery by counsel for Core Industries. You failed to respond to that discovery and the opposing attorney filed a motion for sanctions. You stated that the reason you did not respond was that you were pre-occupied with other matters, including the defense of 5 first degree murder cases.

Contemporaneous with that motion, the opposing party made an offer of judgment on September 3, 1996. There was a hearing on the motion for sanctions on September 9, 1996. Ms. Bass accompanied you to that hearing. The Committee found that you did not communicate the settlement offer to Ms. Bass before, during, or after the hearing.

At the hearing, the federal judge sanctioned you for failing to answer discovery. The court also gave you an opportunity to withdraw from or continue representation of Ms. Bass within a week of the hearing. Despite the heavy competing caseload you claimed as the reason for your failure to respond, you confirmed your representation of Ms. Bass on September 16, 1996.

After representing to the federal court that you would continue to represent Ms. Bass, the opposing attorney again contacted you about a possible settlement of the case on October 16, 1996. You did not respond to the opposing attorney's request for settlement discussions. Rather, without consulting with your client, you dismissed her federal suit on or about October 28, 1996. In the letter you sent Ms. Bass dated October 30, 1995 informing her that you had dismissed her case, you stated that she had twelve months to re-file the lawsuit. At that time, you also withdrew from representing her - approximately 45 days after representing to the federal court that you could continue to represent Ms. Bass.

Although North Carolina Rules of Civil Procedure allow a suit to be re-filed within twelve months of filing a voluntary dismissal, the Federal Rule of Civil Procedure 41 does not contain such a tolling provision. The Committee concluded that, contrary to your representations to Ms. Bass, you did not adequately familiarize yourself with the law necessary to properly prosecute her claim. As a result, the statute of limitations appears to have run on Ms. Bass' claim, shortly after you dismissed her suit.

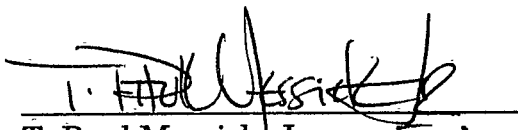
Your above-mentioned conduct violated several Rules of Professional Conduct. First, your failure to communicate the settlement offer to Ms. Bass, and your failure to discuss the dismissal of the suit prior to taking such action violated Rule 6(b)(1) and (2). Second, your failure to respond to discovery, resulting in sanctions, violated Rule 6(b)(3). Third, your dismissal of the suit without doing adequate preparation to determine the applicable rules governing her federal suit violated Rule 6(a). Finally, your withdrawal from representing Ms. Bass shortly before the statute of limitations apparently ran on her claim violated Rule 2.8(a)(2).

In deciding to issue the Reprimand, the Committee considered several mitigating and aggravating factors. In mitigation, the Committee considered the fact that you had already been sanctioned by the court for failing to respond to discovery and that you were defending several first degree murder cases at the relevant time. In aggravation, the Committee considered the fact that you committed multiple rule violations, that you had prior discipline and that your above-mentioned conduct caused prejudice to your client.

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<sup>th</sup> day of FEBRUARY, 1998.

  
T. Paul Messick, Jr.  
Chairman, Grievance Committee  
The North Carolina State Bar