

STATE OF NORTH CAROLINA
COUNTY OF WAKE

10547
BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
92G0880 (II)

IN THE MATTER OF)

GERALD M. SWARTZBERG,)
ATTORNEY AT LAW)

REPRIMAND

On July 8, 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.

In May 1991, you experienced marital and emotional difficulties. As a result, you began taking prescription drugs and became dependent upon Xanax and Fiorinal 3. You obtained prescriptions for these drugs at various times from three physicians between May 1991 and March 1992. None of the physicians was aware that you were also obtaining prescriptions from other doctors.

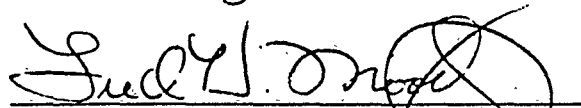
In August 1992 you entered a guilty plea to two misdemeanor counts of obtaining a controlled substance by fraud, in violation of G.S. 90-108(a)(13). You were sentenced to two years in jail, which sentence was suspended for three years on certain conditions.

Your conduct in obtaining controlled substances by fraud violated Rule 1.2(B) and Rule 1.2(C) of the Rules of Professional Conduct. However, the committee was cognizant of the fact that the addiction which caused your misconduct occurred from prescription medication, rather than from experimentation with illegal drugs. The committee also recognized that you experienced substantial emotional difficulties which contributed to your condition and was impressed that you are continuing to seek treatment and counseling. In light of these mitigating factors, the committee elected to issue you a reprimand, rather than issue a censure or send the matter to the Disciplinary Hearing Commission for trial.

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 10th day of August, 1993.


Fred H. Moody, Jr., Chairman
The Grievance Committee
North Carolina State Bar

/sd-321

00130