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Letter

James H. Himmel

LETTER

At the suggestion of the North Dakota Law Review, James Himmel agreed to provide a few personal thoughts on his case and its later effect on his practice of law. Mr. Himmel's letter, dated July 19, 1991, is reprinted below:

To the Editors:

When I was in law school, it was my understanding that our clients came first and that any conflict was to be resolved in favor of the client. We learned that you couldn't serve two masters, you had to give your client undivided loyalty and fidelity, and this is the way I tried to practice law.

In this particular case with Tammy, at the time we entered into this agreement with her prior attorney, it was at her request and it was an attempt to correct the wrong she suffered through the act of another attorney. As was evident from the type of fee arrangement I entered into with Tammy, I was not going to receive any financial benefit until such time as she was made whole.

Being a sole practitioner, certainly the year suspension had quite an effect on my practice. I don't feel I lost any clients as a result of my action, though I did lose a lot of referral business that would have come from new clients during the year that I was not practicing law.

During my year suspension, I did real estate closings for a title company, a job normally held by nonattorneys. In that position I constantly dealt with attorneys, and I can't think of one attorney who, when he realized who I was, felt that the court's decision was correct.

My suspension was lifted in February of 1990. I have been back in the practice of law for about a year and a half. Financially, I would say my pratice is off about 10% over what it was before my suspension. I am confident that will change with time.

To this day I still think that my actions were proper, but, like anything else, they can be twisted and reinterpreted to suit someone else's wish. Many articles have been written about my case addressing the fact that had I not been a sole practitioner but been from a larger, more politically connected firm, I would have gotten by with a slap on the wrist. However, my case came out in the wake of Greylord, when the legal profession was under pressure to clean up its act. There is an old Illinois State Bar Association ethi-

cal opinion, I believe from the year 1972, with a fact situation similar to mine, where the opinion states that the attorney should not have reported the other attorney's misconduct. I guess I am just a little bitter that the court felt that in this situation, apparently the first of its kind in the country, I should be suspended for a year, even though the Disciplinary Commission's request was that I only be censured.

Hindsight, after a bad call, requires a review of what was wrong and what you would do differently. The fact that after my decision was announced, there was a large increase in the reporting of attorney's alleged misconduct by other attorneys, is evidence of the prior uncertainty of the need to report, or the fear of being severely punished for not doing so. Unfortunately, based upon my experience and the outcry from the legal profession that my case brought, I feel that if there is ever any doubt, my duty is now to report. Is is to easy for the court to find, if it wishes to, that there was no attorney-client privilege. Unfortunately, the state of the practice of law seems to be to cover yourself first and then represent your client.

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