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STATE OF NEW YORK
GRIEVANCE COMMITTEE FOR THE
TENTH JUDICIAL DISTRICT

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November 16, 1990

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Personal and Confidential

David B. Jacobs, Esq.
11 Poundridge Road
Plainview, NY 11803

Re: File No. N-995-89

Dear Mr. Jacobs:

On November 7, 1990, the Grievance Committee for the Tenth Judicial District considered the sua sponte complaint filed against you arising out of the Matter of Sellouk vs. USAA, et al.

Investigation disclosed that you engaged in an impermissible conflict of interest, as follows: in August, 1987 you commenced an action on behalf of Sellouk against Brett and Edward Cohen and "John Doe", arising out of an automobile accident and assault. It was later determined by police that "John Doe" was Louis Torres. Torres was named as a third-party defendant by the Cohens.

On May 20, 1988 you met with Torres who informed you he was to appear as a witness before the Grand Jury investigating the assault. At that time you obtained from Torres a signed, written statement concerning the events in question. On June 4, 1988 you amended the caption on your action on behalf of Sellouk to delete "John Doe" as defendant; however, Torres remained named as a third-party defendant in the action by the Cohens. A motion was ultimately made in the action to disqualify you as attorney for Sellouk. In a decision dated June 19, 1988, Justice Katz granted the motion, finding, in pertinent part, as follows:

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...a conflict of interest clearly existed as Mr. Torres was the "John Doe" named in the complaint and thus was a potential third party defendant in the action against the Cohens. The fact that Mr. Jacobs did not accompany Mr. Torres to the Grand Jury proceeding and that the Sellouks' complaint was later amended to delete the action against the "John Doe" defendant does not negate the fact that he was representing two parties whose interests were potentially adverse.

A motion by you for re-argument was denied by order dated September, 20, 1989.

Upon appeal by you, the Appellate Division affirmed, stating:

"...we find that the Court properly exercised its discretion ... to disqualify plaintiff's counsel from representing them in these actions because of a conflict of interest and the appearance of impropriety. (N.Y. L.J., 10/26/90)

Investigation further disclosed that you exhibited a lack of candor before a court, as follows: on November 14, 1988 Torres was deposed as a non-party witness and third-party defendant. At that time a dispute arose as to the existence of the signed statement of Torres in your possession. The dispute was resolved before Justice Lerner, on the record. The transcript reveals that although you actually had possession of the statement, you initially denied to the Court that you had such a statement. Only upon further questioning by the Court did you admit that the statement existed and was in fact in your possession.

It was the decision of the Committee, pursuant to Section 691.4(e)(3) of the Rules of the Appellate Division, Second Judicial Department, that you be issued a LETTER OF ADMONITION for (1) engaging in an impermissible conflict of interest in violation of DR 5-101(A) and 5-105(B) of the Code of Professional Responsibility; and (2) exhibiting a lack of candor before a Court, in violation of DR 1-102(A)(4) and (5) and DR 7-102(A)(3) of the Code of Professional Responsibility.

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In reaching its determination the Committee took into consideration your explanation of this matter, including your deposition taken on November 3, 1989.

This admonition is the most severe sanction this Committee can issue short of a recommendation for formal disciplinary proceedings before the Appellate Division.

This letter is issued in accordance with the Rules Governing the Conduct of Attorneys of the Appellate Division, Second Judicial Department, Section 691.6 to which you should refer concerning your rights.

Very truly yours,

CATHERINE T. ENGLAND
Chairwoman

CTE:RPG:emh
Certified Mail: R.R.R.