

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
03G0443

IN THE MATTER OF)

MARK E. RANDOLPH,
ATTORNEY AT LAW)

CENSURE

On July 23, 2003, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by John Eric Gibson.

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 June 2001 you filed an application to obtain professional liability insurance with Lawyers Mutual Insurance Co. Question 13(b) of the application required you to disclose whether you were aware of any "grievance having been filed against" you. You answered this question in the negative.

This answer was false. In July 2000 you were notified that the State Bar had filed a grievance against you in file no. 0021GR013 concerning your handling of the estate of David Sundberg. You filed responses in July and September 2000. You were served with a subpoena for cause audit in that matter in October 2000 and hired counsel to represent you. Your attorney also filed a response in the underlying grievance on Dec. 1, 2000. Both you and your attorney met with the State Bar's auditors

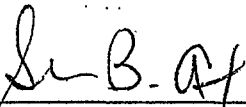
on a number of occasions and you were therefore well aware not only that a grievance existed but that it was still pending when you filled out the insurance application in June 2001.

You conduct in knowingly filing a false insurance application constituted a violation of Rule 8.4(b). Your misconduct is aggravated by the fact your falsehood caused the insurance company to deny coverage when the Sundberg estate filed suit against you, thus depriving the estate of a source of compensation.

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 5 day of August, 2003.



Sharon B. Alexander, Chair
Grievance Committee
The North Carolina State Bar