

6640

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
79 DHC 10

THE NORTH CAROLINA STATE BAR,
Plaintiff,

-VS-

STEPHEN A. GRAVES, Attorney,
Defendant.

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

THIS CAUSE coming on to be heard and being heard before the undersigned Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on December 6, 1979, in the office of The North Carolina State Bar, 208 Fayetteville Street Mall, Raleigh, North Carolina at 1:00 o'clock p.m., and said Hearing Committee having heard the evidence and argument of counsel, make the following findings of fact:

1. The Plaintiff, The North Carolina State Bar, is a body duly organized under the laws of North Carolina, and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the general Statutes of North Carolina.

2. The Defendant, Stephen A. Graves, is a citizen and resident of Beaufort County, North Carolina and was admitted to The North Carolina State Bar in 1975, and is, and was at all times relevant to this proceeding, an attorney at law licensed to practice law in the State of North Carolina and is subject to the rules, regulations, canons of ethics and Code of Professional Responsibility of The North Carolina State Bar and the laws of the State of North Carolina.

3. During the month of September, 1978, and following, the Defendant was representing Miss Teresa Smith (hereinafter referred to as "Smith") on a criminal charge of D.U.I. of alcohol pending in Beaufort County District Court. Miss Smith was charged with said crime following a one car accident involving Miss Smith's automobile, in which she and one Melton Guthrie, (hereinafter referred to as "Guthrie") were injured. Miss Smith was arrested by Highway Patrolman R. L. Hawley at Pungo District Hospital, Belhaven, North Carolina shortly after the accident.

4. On September 28, 1978, the Defendant went to a self-service gasoline station where he met Guthrie, who, at the time was an employee of the owner of said station.

5. While engaged in conversation, the Defendant advised Guthrie that his client, Miss Smith claimed that she was not driving the car, but that Guthrie was. Guthrie told Graves that he was not driving. The Defendant advised Guthrie that it would be her word against his. The Defendant advised Guthrie that if he had not been subpoenaed to not appear in court and that if subpoenaed to testify at Miss Smith's trial, to not say anything or plead the Fifth Amendment. The Defendant also advised Guthrie that if he, Guthrie would not say anything against Miss Smith, then Miss Smith would not say anything against him. The Defendant asked Guthrie to think about it and if he had any questions to call him.

6. Guthrie reported this conversation to Highway Patrolman Hawley shortly after it took place and Mr. Hawley in turn reported it to the District Attorney, William Griffin. Mr. Griffin sought the assistance of the S.B.I.

7. Agent Lewis Young of the S.B.I. met with Guthrie, took his statement and asked him if he, (Guthrie) would grant Young permission to electronically record a telephone conversation between Guthrie and the Defendant. After permission was granted and after two or more unsuccessful attempts, the Defendant was reached by telephone on October 12, 1978 at approximately 9:30 a.m. This conversation was electronically recorded by Agent Young on equipment owned by the S.B.I. and operated by Mr. Young. In conversation which ensued, Guthrie advised Defendant that he had been subpoenaed and asked Defendant what it was that he (Defendant) wanted Guthrie to do. The Defendant advised Guthrie that "...the best thing to do is just get up there and say nothing.", "just say I take the Fifth Amendment, I don't have to answer.". Later in the conversation the Defendant said, "they can't prove that she was driving, they can't prove you were driving, if both of you keep your mouth shut.", and asked if Guthrie had an attorney, his answer was "no". After Guthrie acknowledged that statement, the Defendant stated, "Yeak, Well, ah, you see I'm not going to let her testify against you if you don't testify against her.". "Course, you've got more to lose in this than she does." The Defendant's last remark was referring to the fact that Guthrie had previously lost his privilege to drive. Defendant then advised Guthrie to think the matter over and to call an attorney, whom he (Defendant) had previously identified. With that, the conversation ended.

The question now before the Hearing Committee is whether or not the above conduct of the Defendant constitutes a violation of the Code of Professional Responsibility of The North Carolina State Bar and based upon the foregoing Findings of Fact, the Hearing Committee makes the following Conclusions of Law:

By contacting a potential State witness in a criminal case, and attempting to influence him with regard to his testimony and suggesting or requesting that he not testify, the Defendant engaged in professional conduct that was prejudicial to the administration of justice and that adversely reflected upon his fitness to practice law, in violation of Disciplinary Rules 1-102(A) (5) and (6) of the Code of Professional Responsibility of The North Carolina State Bar.

This the 16 day of December, 1979.

Winifred T. Wells
Winifred Wells, Chairman
Disciplinary Hearing Committee

Ralph C. Gingles
Ralph C. Gingles

Fred Moffit Byerly
Fred Moffit Byerly

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION

OF THE
NORTH CAROLINA STATE BAR

79 DHC 10

THE NORTH CAROLINA STATE BAR,
Plaintiff,

-vs-

STEPHEN A. GRAVES, Attorney,
Defendant.

ORDER OF PUBLIC CENSURE

THIS CAUSE coming on to be heard and being heard before the undersigned Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar on December 6, 1979, in the office of The North Carolina State Bar, 208 Fayetteville Street Mall, Raleigh, North Carolina, at 1:00 o'clock p.m., and

The Plaintiff being represented by its counsel, H. D. Coley, Jr. and the Defendant being represented by Howard Twiggs, and the Hearing Committee having heard the evidence and argument of counsel, and having made certain findings of fact and conclusions of law, all appearing of record herein;

NOW, THEREFORE, based upon such findings of fact and conclusions of law, the Hearing Committee of the Disciplinary Hearing Commission hereby issues the following Order of Public Censure to Stephen A. Graves, Attorney:

Pursuant to Section 23 of the Discipline and Disbarment Procedures of The North Carolina State Bar this Public Censure is delivered to you. You have been found to have violated the Code of Professional Responsibility of The North Carolina State bar by a Hearing Committee of the Disciplinary Hearing Commission sitting on December 6, 1979.

The fact that this Public Censure is not the most serious of possible discipline provided for in General Statutes 84-28, should not be taken by you to indicate that The North Carolina State Bar in any way feels that your conduct in this matter was excusable or was considered by the members of the Hearing Committee of the Disciplinary Hearing Commission to be any less than a very serious and substantial violation of the Code of Professional Responsibility.

In your representation of Teresa Smith, in a criminal case, you contacted one Melton Guthrie, a potential State witness, and attempted to influence him with regard to his testimony or requested or suggested that he not testify in said criminal case. By doing so you engaged in conduct that was prejudicial to the administration of justice and conduct that adversely reflects upon your fitness to practice law. This conduct is a direct violation of the Code of Professional Responsibility and in addition is a reflection upon you and the entire Bar of this State. Your conduct was unprofessional. It violated not only the letter but also the spirit of the Code of Professional Responsibility of The North Carolina State Bar. It was not such conduct as is expected of a member of the legal profession. It brings discredit upon you and tends to place the courts of this State and your fellow members of the Bar in disrepute and further damages both in the eyes of the public. You placed a privilege that you hold as a lawyer to serve the public in serious jeopardy.

The North Carolina State Bar is confident that this Public Censure will be heeded by you, that it will be remembered by you, and that it will be beneficial to you. We are confident that you will never again allow yourself to depart from strict adherence to the highest standards of the legal profession. Accordingly, we sincerely trust that this Public Censure, instead of being a burden, will actually serve as a profitable reminder to weigh carefully your responsibility to the public, your clients, your fellow attorneys, and the courts, with the result that you will be known as a respected member of our profession whose word and conduct may be relied upon without question.

Pursuant to Section 23 of the Rules of Disciplinary Procedure, it is ordered that a certified copy of this Public Censure be entered upon the Judgment Docket of the Superior Court of Beaufort County and also upon the minutes of the Supreme Court of North Carolina.

Issued this the 16 day of Jan, 1979.

Winifred T. Wells
Winifred Wells, Chairman
Disciplinary Hearing Committee

Ralph C. Gingles
Ralph C. Gingles

Fred Moffitt Byerly
Fred Moffitt Byerly