

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
78 DHC 16

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
EARLE RUPERT PURSER, 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 November 10, 1978 at the offices of The North Carolina State Bar, Raleigh, North Carolina at 10:00 a.m.; The North Carolina State Bar being represented by M. Bays Shoaf, Jr., of the Office of Counsel of The North Carolina State Bar, and the defendant being represented by G. Eugene Boyce of the firm Boyce, Mitchell, Burns and Smith of Raleigh, North Carolina; that no objection was made by defendant or The North Carolina State Bar to the members constituting the hearing committee; the hearing committee having heard the evidence and considered argument of counsel makes the following findings of fact and conclusions of law:

1. 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 in Chapter 84 of the General Statutes of North Carolina and the Rules and Regulations of The North Carolina State Bar promulgated thereunder.

2.. The defendant, Earle Rupert Purser, was admitted to The North Carolina State Bar in September, 1950 and is and was at all times referred to herein an attorney at law licensed to practice law in the State of North Carolina 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. At and during all times hereinafter referred to, the defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Raleigh, Wake County, North Carolina.

4. Defendant was appointed by Order of the Honorable Coy E. Brewer, Judge Presiding, at the August, 1971 session of the Superior Court Division of the General Court of Justice in Wake County to perfect the appeal of one Maylon Theo Whitley to the North Carolina Court of Appeals in case number 71 CR 9721.

5. The appeal was not perfected by the Defendant within the period of 55 days allowed. Defendant did not withdraw as counsel for Whitley through any recognized procedures, and Whitley at no time gave consent to abandonment of the appeal.

6. Upon motion of the District Attorney for Wake County the appeal of Maylon Theo Whitley was dismissed by Order of a Superior Court Judge on July 29, 1977.

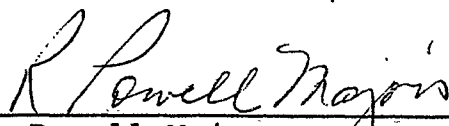
7. Although the reasonable inference from the evidence before the committee is that the Defendant assisted in some manner in the dismissal of other pending charges against said Maylon Theo Whitley and, under all the circumstances, Defendant's acts were for the best interest of his client, nevertheless he did not perform the duty for his client which he was supposed to perform.


Based upon the foregoing findings of fact, the hearing committee hereby makes the following CONCLUSIONS OF LAW:

By his conduct defendant violated G.S. 84-28 (2)(f) in that he violated Rule 43 of the Canons of Ethics which were promulgated by the Council of The North Carolina State Bar and which were in effect at all times alleged herein.

This the 29th day of November, 1978.


William Owen Cooke, Chairman


R. Powell Majors


Dudley Humphrey, Jr.

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EARLE RUPERT PURSER, 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 November 10, 1978 at the offices of The North Carolina State Bar, Raleigh, North Carolina at 10:00 a.m., and

The North Carolina State Bar being represented by M. Bays Shoaf, Jr., of the Office of Counsel of The North Carolina State Bar, and the defendant being represented by G. Eugene Boyce of the firm of Boyce, Mitchell, Burns and Smith of Raleigh, North Carolina; 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 Earle Rupert Purser, 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 Canons of Ethics of The North Carolina State Bar by a hearing committee of the Disciplinary Hearing Commission sitting on November 10, 1978.

The fact that this Public Censure is not the most serious of possible discipline provided for in General Statute 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 Canons of Ethics of The North Carolina State Bar.

You were appointed to perfect the appeal of Maylon Theo Whitley, and you did not perfect the appeal and did not withdraw as counsel for Mr. Whitley. At no time did Mr. Whitley give consent to your abandonment of the appeal.

Your conduct was prejudicial to the administration of justice. This conduct is a direct violation of the Canons of Ethics of The North Carolina State Bar 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.

Failure of attorneys to represent clients within the law and within the bounds of the Canons of Ethics and the Code of Professional Responsibility of The North Carolina State Bar is the most serious complaint against our profession, and your failure to represent Maylon Theo Whitley adequately was your error here. 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 court, 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 Wake County and also upon the minutes of the Supreme Court of North Carolina.

Issued this 29th day of November, 1978.

William Owen Cooke
William Owen Cooke, Chairman

R. Powell Majors
R. Powell Majors

Dudley Humphrey, Jr.
Dudley Humphrey, Jr.