

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR

IN THE MATTER OF)

BARRY NAKELL,
ATTORNEY AT LAW)

CENSURE

On October 23, 1997, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

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.

On October 1, 1996, you concealed a Triangle Dining Guide valued at \$30 and \$6 worth of deli food in your jacket at a Southern Season in Chapel Hill. You were charged with shoplifting in violation of N.C.G.S. Section 14-72.1. You admitted your responsibility for the

offense and received a prayer for judgment continued. Your shoplifting offense violated Rule 1.2(c) of the Rules of Professional Conduct.

The Grievance Committee was particularly concerned because this was your second shoplifting offense. However, the Grievance Committee weighed the severity of this second shoplifting offense against your 27 years of public service and your efforts to prevent future occurrences of this type of behavior by seeking therapy. The Committee also considered the fact that you had been discharged from your employment as a Law School professor as a penalty or sanction already imposed for your conduct. As a result of the weighing of these factors, the Committee determined that, rather than sending you to the Disciplinary Hearing Commission for a trial, this Censure was the appropriate sanction.

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 29th day of DECEMBER 1997.



T. Paul Messick, Jr., Chair Grievance Committee
The North Carolina State Bar