

5214

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
80 DHC 8

THE NORTH CAROLINA STATE BAR,
Plaintiff,

-vs-

WILLIAM ZUCKERMAN, Attorney,
Defendant.

FINDINGS OF FACT
and
CONCLUSIONS OF LAW

THIS CAUSE coming on to be heard and being heard before the undersigned Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on August 29, 1980, and the said Hearing Committee, having heard the evidence and arguments of counsel, makes the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar, is a body fully 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, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, William Zuckerman, was admitted to the North Carolina State Bar in September 1956, 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 of the laws of the State of North Carolina.

3. At and during all of the 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 Greensboro, Guilford County, North Carolina.

4. In 1976, Defendant, William Zuckerman, agreed to represent Murray Michael in a malpractice action involving two North Carolina attorneys in connection with their alleged malpractice in handling a case entitled, "Murray Michael and Hendon Enterprises, Ltd. v. John F. Register", Guilford County file Number 74 CVS 5506.

5. Defendant, William Zuckerman, subsequently informed Mr. Michael, either directly or through his Florida counsel, David Kerben, that the malpractice action was filed.

6. Defendant, William Zuckerman, informed Mr. Michael or Mr. Kerben on more than one occasion that the malpractice action was close to settlement.

7. On or about April 21, 1978, the Defendant, William Zuckerman, after representing to Mr. Michael that the suit had been settled for FORTY THOUSAND DOLLARS (\$40,000.00), forwarded FIVE THOUSAND DOLLARS (\$5,000.00) of the defendant's own money to Mr. Michael's Washington, D. C. attorneys, which they applied to their fee on an unrelated matter.

8. The Defendant, William Zuckerman, sent said money to Mr. Michael's Washington, D. C. attorneys after being told by Mr. Michael that Mr. Michael had relied on Defendant's statement that the case had been settled before making a commitment to Mr. Michael's Washington, D. C. attorneys.

9. On or about July 10, 1978, David Kerben travelled to Greensboro, North Carolina, to investigate this matter and found no malpractice action had been filed.

10. In spite of all representations, Defendant, William Zuckerman, never filed the malpractice action nor entered into negotiations for settlement of the alleged malpractice claim, nor did he receive any settlement proceeds.

11. The firm of Forman and Zuckerman informed David Kerben that they would not pursue the alleged malpractice claim prior to the claim being barred by the Statute of Limitations. The Statute of Limitations ran on November 5, 1978 and Mr. Kerben was informed that the claim would not be pursued by the firm on October 3, 1978.

12. As evidenced by the testimony of L. P. McLendon, Jr., the attorney who had represented Dr. John F. Register in 74 CVS 5506, there appears to be no merit to the alleged malpractice claim.

13. The Defendant, William Zuckerman, received no fee or other personal gain from his representation of Mr. Michael.

14. Mr. Michael is now in Federal Prison on an unrelated matter.

15. No prejudice resulted to Mr. Murray Michael from the misrepresentations of the Defendant, William Zuckerman.

16. During or prior to the time that the misrepresentations occurred, the Defendant, William Zuckerman, was serving as chairman of the Ethics and Grievance Committee of his local Bar. In that capacity, the Defendant, William Zuckerman, should have known his responsibilities and duties to his client, his client's out-of-state counsel and to the State Bar.

17. The Defendant, William Zuckerman, was slow to cooperate with the State Bar's investigation in this matter prior to it being presented to the Grievance Committee, but he did cooperate prior to employment of independent counsel to represent him in this matter.

18. When Defendant, William Zuckerman, did cooperate he made a full and frank disclosure which admitted the essential factual allegations.

19. The Defendant, William Zuckerman, has no record of prior discipline with the North Carolina State Bar.

20. The Defendant, William Zuckerman, enjoys a reputation in his community as being a man of exemplary character.

Based on the foregoing Findings of Fact, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

The conduct of the Defendant, William Zuckerman, as set forth above constitutes a violation of North Carolina General Statute 84-28(A) (B) (2), in that Defendant, William Zuckerman, engaged in conduct involving misrepresentation when he represented to Mr. Michael, either directly or through his Florida counsel, David Kerben, that the alleged malpractice claim was either filed or settled when Defendant knew that no action had been taken on the malpractice claim in violation of Disciplinary Rule 1-102(A) (4) of the Code of Professional Responsibility.

This the 7th day of October, 1980.

J. Mac Boxley
J. Mac Boxley, Chairman
Disciplinary Hearing Committee

W. Osborne Lee
W. Osborne Lee

W. Colon Byrd, Jr.
W. Colon Byrd, Jr.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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80 DHC 8

THE NORTH CAROLINA STATE BAR,
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-vs-

WILLIAM ZUCKERMAN, 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 August 29, 1980; and

The Plaintiff represented by its counsel, Aldert Root Edmonson and the Defendant by Herbert S. Falk, Jr., and the Hearing Committee having heard the evidence and arguments 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 William Zuckerman, Attorney:

Pursuant to Section 23 of the Rules of Discipline and Disbarment 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 August 29, 1980.

The fact that this Public Censure is not the most serious of possible discipline provided for in North Carolina 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 Code of Professional Responsibility.

In 1976, you agreed to represent Mr. Murray Michael in pursuing an alleged malpractice claim against Mr. Michael's former attorneys. You subsequently informed Mr. Michael, either directly or through his Florida counsel, David Kerben, that the malpractice action had been filed. On

more than one occasion, you informed Mr. Michael or Mr. Kerben that the case was close to settlement or settled.

Despite all representations to Mr. Michael and Mr. Kerben that the malpractice action was either filed, close to settlement or settled, you never filed the malpractice action nor entered into negotiations for the settlement of same.

Although no prejudice resulted to Mr. Michael as a result of your actions, you misrepresented to Mr. Michael and to his Florida counsel, Mr. Kerben, the status of Mr. Michael's case.

This conduct is a direct violation of the Code of Professional Responsibility and in addition is a reflection on 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 conduct themselves within the law and within the bounds of the Code of Professional Responsibility is the most serious complaint against our profession, and your misrepresentations to your client as to the status of his case was your error here. You placed a privilege that you hold as a lawyer to serve the public in serious jeopardy.

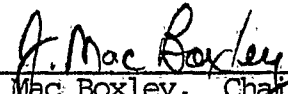
The North Carolina State Bar is confident that this Public Censure will be heeded by you, that it will be remembered by you, and that it will be beneficial to you. We are confident that you will never again allow yourself to depart from strict adherence to the highest standards of the legal profession. 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

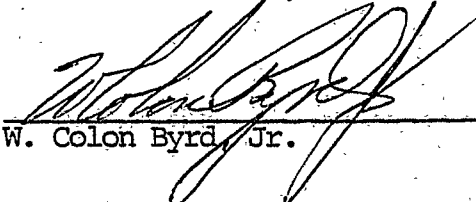
judgment docket of the Superior Court of Guilford County and also upon the minutes of the Supreme Court of North Carolina.

IT IS FURTHER ORDERED that the costs of this disciplinary action be paid by the defendant, William Zuckerman, Attorney.

This the 7th day of October, 1980.


J. Mac Boxley, Chairman
Disciplinary Hearing Committee


W. Osborne Lee


W. Colon Byrd, Jr.