

NORTH CAROLINA

WAKE COUNTY

12353  
BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
01G0446

IN THE MATTER OF )

LEROY R. CASTLE,  
ATTORNEY AT LAW )

CENSURE

On October 17, 2001, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Henry M. Bailey, Jr.

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.

The Committee found the following facts. You represented Henry Marshall Bailey, Jr. in criminal trial proceedings in Durham County Superior Court. Mr. Bailey was convicted of criminal charges of breaking and entering and being a habitual felon. Mr. Bailey filed a Notice of Appeal of his conviction and sentence. On January 14, 1998, Judge David Q. LaBarre appointed you to represent Mr. Bailey on appeal.

Approximately two months later, you wrote Judge LaBarre a letter dated March 18, 1999, in which you purported to decline to accept the appointment of Mr. Bailey's appeal. Judge LaBarre never responded to your letter, and no further action was taken on your letter. You did not follow up your letter to Judge LaBarre. More significantly, you never filed a motion to withdraw or obtained an order permitting your withdrawal from the appellate representation of Mr. Bailey.

Mr. Bailey and his family called and wrote you repeatedly regarding the status of his appeal. You failed to respond to these communications, provide Mr. Bailey with the status of his appeal, or inform him that you had not pursued the appeal. Additionally, after receiving these communications, you also did not take any action to determine whether the court had appointed new appellate counsel to represent Mr. Bailey on appeal.

You failed to perfect Mr. Bailey's appeal of his conviction and sentence. Because you did not file a formal motion with the court to withdraw or obtain an order allowing your withdrawal, no other counsel was appointed to pursue Mr. Bailey's appeal. As a result, Mr. Bailey has lost his right to a direct appeal of his convictions.

Mr. Bailey eventually filed a grievance with the State Bar regarding your appellate representation. You received a letter of notice on June 2, 2001, were required to respond within 15 days, but failed to do so. You were sent a follow-up letter, were required to respond by July 6, 2001, but again failed to respond. You did not respond to Mr. Bailey's grievance until after you were served with a subpoena to appear on July 26, 2001. Additionally, after you filed your initial response, you again failed to respond to follow-up correspondence from the State Bar regarding your appellate representation of Mr. Bailey.

The Committee concluded that your above-described conduct violated several Revised Rules of Professional Conduct. First, your failure to perfect Mr. Bailey's appeal violated Rule 1.3. Second, your failure to respond to Mr. Bailey or provide him with information regarding the status of his appeal violated Rules 1.4(a) & (b). Third, your failure to respond promptly to the letter of notice and further communications from the State Bar violated Rule 8.1(b).

In deciding to issue a Censure, the Committee considered the following aggravating and mitigating factors. In aggravation, the Committee considered the following factors. First, your conduct involved numerous violations of the Rules of Professional Conduct. Second, Mr. Bailey had lost his right to a direct appeal of his conviction and sentence as a result of your violations. Third, you have prior discipline, including past violations for failure to respond to the State Bar.

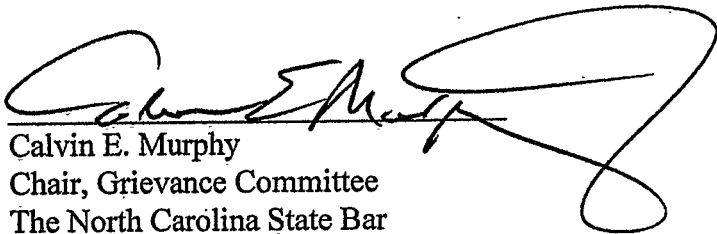
In mitigation, the Committee considered the fact that you had made an effort, although ineffective, to attempt to decline the appellate representation, and may have misunderstood the requirements for formally withdrawing from the representation. The Committee reiterates, however, that you may withdraw from appointed appellate criminal representation only by filing a formal motion and obtaining an order from the court permitting your withdrawal.

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 30 day of Oct., 2001..



Calvin E. Murphy  
Chair, Grievance Committee  
The North Carolina State Bar