

STATE OF NORTH CAROLINA
COUNTY OF WAKE

847
BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
94G0760 (II)

IN THE MATTER OF)

BENJAMIN CLIFTON, JR.)
ATTORNEY AT LAW)

REPRIMAND

On January 12, 1995, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Garland Spangler.

Pursuant to section 13(A) of article IX of the Rules and Regulations 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, reprimand, or censure to the respondent attorney.

A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure.

The Grievance Committee was of the opinion that a censure is not required in this case and issues this reprimand to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this reprimand and I am certain that you will understand fully the spirit in which this duty is performed.

In April or May 1992 you undertook to represent RS who had

been sued by a college for payment of tuition after RS was dismissed from the college because of a drug incident. RS' father, GS, contacted you about the matter and indicated that he was concerned that the campus newspaper had printed untrue statements about RS' criminal record. You told GS that RS might have a counterclaim against the college for libel or slander and agreed to handle the entire matter. Thereafter, however, you failed to appear on RS' behalf at a hearing on the college's motion for summary judgment. Because of your absence, summary judgment was entered in the college's behalf on May 11, 1992. Although you were aware of the adverse judgment entered against your client, you failed to perfect an appeal or take other steps to remedy the results of your neglect. It now appears that the adverse judgment is final and that the statute of limitation has expired on any counterclaim RS might have had. Your neglect of RS' case constituted a serious violation of Rule 6(B)(3) of the Rules of Professional Conduct, which requires all attorneys to pursue legal matters which they undertake with reasonable diligence.

The Committee was even more concerned, however, about your conduct after the damage to your client had occurred. In June 1993, GS indicated that he was considering filing a claim against your malpractice carrier. You telephoned GS on June 7, 1993 and told him that if "[you] want to sue [me] go ahead, however, it would cost [you] more than the judgment." Nevertheless, in your letter of Feb. 4, 1994 responding to the 10th Judicial District Grievance Committee, which investigated GS' grievance, you denied making the statements.

Your conduct in attempting to dissuade GS from filing a claim against you for your neglect of his son's case constitutes conduct prejudicial to the administration of justice, in violation of Rule 1.2(D). By denying these statements in your Feb. 4, 1994 letter to the 10th Judicial District Grievance Committee you made a false statement of fact to a disciplinary authority in violation of Rule 1.1(A).

You are hereby reprimanded by the North Carolina State Bar due to your professional misconduct. The Grievance Committee trusts that you will heed this reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

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 reprimand by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this 30th day of Jan., 1995.

Wm O. King

William O. King
The Grievance Committee
North Carolina State Bar