

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
96G0128(I)

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IN THE MATTER OF

SAMUEL S. POPKIN,
ATTORNEY AT LAW

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CENSURE

On July 26, 1996, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Mark Loncar.

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 Grievance Committee found that complainant was convicted of first-degree burglary and second-degree sexual offense and received a total of 26 years in prison; that attorney Norman Butler was appointed to represent complainant with an appeal; that complainant was not satisfied with Mr. Butler's representation and in September 1994, hired you to take over the appeal; that from September 1994 until April 1995, you did not do any work on this case; that in April 1995, you notified Mr. Butler that complainant had hired you to pursue the appeal; that by this time,

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Mr. Butler had filed the record on appeal and a brief on behalf of complainant, which is what complainant had hired you to do; that when questioned about this, you assured complainant and his family that you would immediately file an amended record and brief for the Court of Appeals to consider before making a decision; that on May 2, 1995, however, before anything was filed on behalf of complainant, the Court of Appeals held that there was no error in complainant's case; that after the decision was rendered by the Court of Appeals, you promised to file a motion for appropriate relief on behalf of complainant; and that you made numerous promises to file the motion in a timely fashion but failed to do so until July 1996. The committee also found that you failed to reasonably communicate with complainant and refused to respond to reasonable requests for information in connection with the motion for appropriate relief.

The committee concluded that this conduct violated Rules 6(b)(3) of the Rules of Professional Conduct which states: "A lawyer shall act with reasonable diligence and promptness in representing the client." As stated in paragraph 12 of the comment to Rule 6: "Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness."


The committee also concluded that the above conduct violated Rule 6(b)(1) of the Rules of Professional Conduct which states: "A lawyer shall keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

In aggravation, the committee considered your extensive prior discipline for similar misconduct. In mitigation, the committee considered evidence that you recently filed the motion for appropriate relief on behalf of complainant.

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 13th day of September, 1996.


Ann Reed
Chairman, Grievance Committee
The North Carolina State Bar