

2770

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
80 DHC 7

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
-v-)
)
ANN F. LOFLIN, 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 22, 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, Ann F. Loflin, was admitted to the North Carolina State Bar in September 1971, 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. That 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 Durham, Durham County, North Carolina.

4. On or about November 17, 1978, the Defendant, Ann F. Loflin, represented Cherry H. Winstead in connection with a domestic matter involving the husband of Cherry H. Winstead, whose name is Wade H. Winstead.

5. On November 17, 1978, the Defendant, Ann F. Loflin, wrote to Ben A. Rich, who represented Wade H. Winstead, and suggested certain wording for insertion in paragraph 5 of a proposed Deed of Separation, which had previously been reduced to draft form. Paragraph 5 pertained to the amount of support which Wade H. Winstead would have to pay for the support of their two minor children, Misty Ann Winstead and Wade Hampton Winstead II.

6. On December 21, 1978, Mr. Rich mailed to the Defendant, Ann F. Loflin, in her capacity as attorney for Cherry H. Winstead, a Deed of Separation, which is Plaintiff's Exhibit 1, embodying in paragraph 5 substantially the wording requested by the defendant as attorney for Cherry Winstead. This Deed of Separation had been previously signed and acknowledged by Wade H. Winstead.

7. A request was made by Mr. Rich concerning the acceptability of the Deed of Separation. No reply had been made by the Defendant to Mr. Rich concerning the acceptability of the Deed of Separation prior to December 29, 1978.

8. On December 29, 1978, Mr. Rich wrote the Defendant, Ann F. Loflin, and informed her that his client had talked to his wife, Cherry H. Winstead, and there was some question as to whether Mrs. Winstead would sign the Deed of Separation tendered.

9. Mr. Rich requested from the Defendant, Ann F. Loflin, final word from Cherry H. Winstead as to whether there would be a Deed of Separation. Mr. Rich further advised the Defendant, Ann F. Loflin, that if there was no word concerning the Deed of Separation by the 5th of January 1979, it would be necessary for Mr. Winstead to proceed in another manner to protect the interest of Mr. Winstead and the children.

10. There was no reply by the Defendant, Ann F. Loflin, to this letter.

11. Mr. Rich made phone calls to the Defendant's office and the defendant refused to return his calls, even though Mr. Rich had left his number and requested that Defendant call him concerning the status of the Deed of Separation.

12. The failure of defendant to reply to Mr. Rich's letter and telephone calls was deliberate and intentional.

13. On January 9, 1979, a warrant was taken out by Cherry H. Winstead to have her husband, Wade H. Winstead, arrested for non-support of the children. This warrant was issued in the District Division in the General Court of Justice of Durham County, North Carolina, and bore case number 79-Cr-841.

14. The Defendant, Ann F. Loflin, was aware that the warrant was issued and had been with Mrs. Winstead at the time that she appeared before the magistrate to have it issued.

15. The criminal non-support case was called for trial on February 7, 1979, and the Defendant, Ann F. Loflin, was present in court on that occasion and requested a continuance.

16. The criminal non-support case was continued until February 14, 1979, and on February 14, 1979 the Defendant, Ann F. Loflin, was present in court and objected to the dismissal of the case. The case was, nevertheless, dismissed.

17. The Defendant, Ann F. Loflin, was not employed as private prosecution in the criminal case.

18. On February 14, 1979, at the time of the hearing and dismissal of the case 79-Cr-841, a complaint and notice were served on Mr. Winstead in a case entitled, Cherry H. Winstead v. Wade H. Winstead. This case bore number 79-CvD-397 and was instituted in the District Court Division in the General Court of Justice of Durham County, North Carolina. The Defendant represented Cherry H. Winstead in this civil action as her

attorney and the Defendant had prepared the documents served upon Wade H. Winstead.

19. The above referenced case sought civil child support and attorneys fees, it being alleged that the Defendant failed to provide child support for his children, Misty Ann Winstead and Wade Hampton Winstead, II, both of whom were minor children born of the marriage between Mr. and Mrs. Winstead.

20. On February 21, 1979, the hearing was held pursuant to the notice for child support. The Defendant was present in Court at said hearing representing the plaintiff therein, Cherry H. Winstead. The court entered a verbal order allowing child support in the total sum of three hundred dollars (\$300.00) a month for both children.

21. At that time the custom of the Bar in Durham County was for the attorney for the party in whose favor judgment was rendered to reduce the judgment to writing, present it to opposing counsel for approval or disapproval and ultimately to present it to the Court.

22. No judgment in this case was ever reduced to writing and signed by Judge Pearson, although the Defendant, Ann F. Loflin, did submit a proposed draft of the judgment to Mr. Rich, which Mr. Rich objected to. This was done on March 5, 1979. Mr. Rich's objection was registered on March 9, 1979, but no other action was taken with regard to a written judgment.

23. The judgment verbally entered by the Court which was to be reduced to writing gave different relief in some respects with regard to the support of the minor children of Mr. and Mrs. Winstead than that which was provided for in the Deed of Separation. The support provisions of the verbal order of the Court, were less favorable than the support provisions contained in the Deed of Separation which Mr. Rich had forwarded to the Defendant on December 21, 1978.

24. The Defendant, Ann F. Loflin, after the civil action was heard pursuant to notice on the 21st day of February 1979, permitted Cherry H. Winstead to sign the Deed of Separation, bearing the date of March 2, 1979, and had Mrs. Winstead's signature acknowledged before her secretary in the office of the Defendant on the 2nd day of March, 1979. The secretary in the office of the Defendant was then a Notary Public.

25. The Defendant personally recorded the Deed of Separation in the Office of the Register of Deeds of Durham County, North Carolina.

26. The Defendant, Ann F. Loflin, permitted Cherry H. Winstead to sign the Deed of Separation and recorded the Deed of Separation in the Office of the Register of Deeds of Durham County, North Carolina, without in any manner contacting Mr. Rich, or otherwise notifying him of her intentions to do so.

27. The Defendant never presented any written judgment to Judge Pearson with regard to 79-CvD-397, nor did the Defendant ever notify Mr. Rich that she did not intend to do so.

BASED UPON THE FOREGOING FINDINGS OF FACT, THE HEARING COMMITTEE CONCLUDES that the conduct of the Defendant as set forth above constitutes a violation of North Carolina General Statutes 84-28(a)(b)(2), in that:

a) The Defendant failed to comply with known local customs of courtesy or practice of the Bar or a particular tribunal without giving to opposing counsel timely notice of her intent not to comply when she failed to present the order to Judge Pearson for his signature in violation of Disciplinary Rule 7-106(C)(5) of the Code of Professional Responsibility.

b) The Defendant engaged in professional conduct that was prejudicial to the administration of justice in violation of Disciplinary Rule 1-102(A)(5).

This is the 24th day of October 1980.

W. Owen Cooke

W. Owen Cooke, Chairman
Disciplinary Hearing Committee

E. James Moore

James E. Moore

Fred Byerly

Fred Byerly

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
80 DHC 7

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
v.)
)
ANN F. LOFLIN, Attorney,)
)
Defendant.)

ORDER

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 22, 1980; and

The Plaintiff having been represented by its counsel, Albert Root Edmondson and the Defendant, by Thomas F. Loflin, III, 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, this Hearing Committee of the Disciplinary Hearing Commission hereby orders that, under the provisions of G.S. 84-28(c)(3), a Public Censure be issued to the defendant, Ann F. Loflin, a copy of the Public Censure to be issued being hereto attached.

This the 24th day of October, 1980.

W. Owen Cooke
W. Owen Cooke, Chairman
Disciplinary Hearing Committee

E. James Moore
E. James Moore

Fred Byerly
Fred Byerly

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
80 DHC 7

THE NORTH CAROLINA STATE BAR,
Plaintiff;

vs.

ANN F. LOFLIN, Attorney,
Defendant.

PUBLIC CENSURE

This Public Censure is delivered to you pursuant to Section 23 of the Rules of Discipline and Disbarment of the North Carolina State Bar and pursuant to an Order of a Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar in the above entitled proceeding, bearing date of 24th October, 1980. You have been found to have violated the Code of Professional Responsibility of the North Carolina State Bar by said Hearing Committee at a hearing held on August 22, 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. Described below is the course of conduct which involved the violations to which this censure pertains.

While representing Cherry H. Winstead in a matter involving a dispute with her husband, Wade H. Winstead, concerning custody and

support of their two children as well as other matters, you wrote a letter to Ben A. Rich, as attorney for Wade H. Winstead, and suggested certain wording for insertion in Paragraph 5 of a proposed Deed of Separation, which had previously been reduced to draft form. On December 21, 1978, Mr. Rich mailed to you, as attorney for Cherry H. Winstead, a Deed of Separation embodying in Paragraph 5 substantially the wording suggested by you for said paragraph. This Deed of Separation had been signed and acknowledged by Wade H. Winstead. Mr. Rich requested you to advise him whether the Deed of Separation was acceptable. When you had not replied by 29 December 1978, Mr. Rich wrote you and requested from you final word as to whether there would be a deed of separation and advised you that if you did not reply by 5 January 1979, his client would have to proceed in another manner to protect his interests and that of his children.

You did not reply to the above mentioned letter and, thereafter, you refused to return telephone calls that Mr. Rich made about the Deed of Separation when Mr. Rich called your office, left his number and requested you to return his calls. Such action on your part was deliberate and intentional.

On January 9, 1979, a warrant was taken out by Cherry H. Winstead to have her husband, Wade H. Winstead, arrested for non-support of the children. You were with Cherry H. Winstead at the time that she appeared before the magistrate to have this warrant issued and, consequently, were aware of this action.

Although you were not employed as private prosecution for Cherry Winstead, you participated in having the case continued

once and objected to its ultimate dismissal. At the time the criminal case was dismissed, as attorney for Cherry H. Winstead, you prepared and caused to be served upon Wade H. Winstead a complaint and notice of hearing in Civil District Court seeking civil child support and attorney's fees.

At the civil support hearing on the 21st day of February, 1979, Judge Pearson entered a verbal order for child support and attorney's fees. The custom and practice of the Durham County Bar at that time was for the attorney for the party in whose favor judgment was rendered to reduce the judgment to writing. No judgment in this case was ever reduced to writing and presented to Judge Pearson for his signature, although you submitted a proposed draft to Mr. Rich for his approval. You never notified Mr. Rich that you did not intend to present a written judgment to the court.

The verbal judgment for child support entered by the court was less favorable than the support provisions of the Deed of Separation, a copy of which had been sent to you signed and acknowledged by Wade Winstead.

You permitted Cherry H. Winstead to sign the Deed of Separation and had it acknowledged by your secretary in your office on March 2, 1979. You then presented the Deed of Separation to the Office of the Register of Deeds in Durham County for recordation. You permitted the Deed of Separation to be signed and acknowledged and had it recorded without in any way contacting Ben Rich or otherwise notifying him of your intention to do so. You never presented

the written judgment to Judge Pearson in the civil support case.

Your conduct was prejudicial to the administration of justice. 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 failure to treat with consideration persons other than your client involved in the legal process to avoid the infliction of needless harm 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 Durham 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, Ann F. Loflin, attorney.

This the 24th day of October, 1980.

William Owen Cooke
William Owen Cooke, Chairman
Disciplinary Hearing Committee

E. James Moore
E. James Moore

Fred Byerly
Fred Byerly