

NORTH CAROLINA

WAKE COUNTY

847
BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
03G1093

IN RE: BENJAMIN F. CLIFTON, JR.,
ATTORNEY AT LAW

)
)
)
)
REPRIMAND

On 23 October 2003, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Lea L. Chandler.

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 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 September 2002, Ms. Chandler contacted your office about representing her on a speeding ticket in Wake County District Court. You agreed to do so. The original court date was 19 September 2002. Ms. Chandler sent a check to your office for \$330.00, which she was told included both your fee and her court costs and fine. You did not deposit this check into your trust

account even though it included funds that were intended by the client to be paid to the court. Instead, you cashed the check at the Longbranch Saloon, a business establishment.

In December, Ms. Chandler learned that you had not appeared in court on her behalf as scheduled and as you had agreed through a notice by DMV. She contacted your office and left a voice mail that was not returned. She then contacted the Clerk's office, had the matter recalendared, and represented herself.

In January, Ms. Chandler called your office several times and left messages that were not returned. It was not until after the State Bar contacted you as a result of Ms. Chandler filing a grievance that you communicated with her and refunded her money.

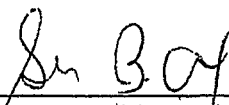
The Committee found that your above-described conduct violated several Rules and Revised Rules of Professional Conduct. First, by failing to appear in court on Ms. Chandler's behalf, you neglected a legal matter entrusted to you in violation of Rule 1.3. Second, by not returning Ms. Chandler's calls or otherwise communicating with her, you failed to keep Ms. Chandler informed about the status of her matter and respond to reasonable requests for information in violation of Rule 1.4. Third, by not promptly refunding the fee paid to you that you did not earn, you violated Rule 1.5. Finally, by not depositing Ms. Chandler's check into your trust account, you failed to preserve the identity of your client's property in violation of 1.15-2(a) and failed to deposit mixed funds intact into your trust account in violation of 1.15-2(g).

In deciding to issue a Reprimand, the Committee considered aggravating and mitigating factors. In aggravation, the Committee considered that you were reprimanded in 1995 for failing to appear at a court hearing in 1992 and that you are experienced in the practice and, therefore, should have handled this matter appropriately from the start. In mitigation, the Committee considered that you promptly rectified the problem once it was brought to your attention, that you apologized to both the Bar and Ms. Chandler, and that your prior discipline was remote in time and unrelated to the current grievance.

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 31 day of October, 2003.



Sharon B. Alexander
Chair, Grievance Committee