

NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
94 DHC 1

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff,)
)
vs.)
)
GERALD E. RUSH, Attorney,)
)
Defendant.)

ORDER

THIS CAUSE coming to be heard on July 14 and 15, 1994, before a hearing committee composed of Samuel Jerome Crow, chairman, Mary Elizabeth Lee and A. James Early, III. The Plaintiff, the North Carolina State Bar (hereinafter "State Bar") was represented by Fern E. Gunn. The Defendant, Gerald E. Rush, was represented by C. C. Malone, Jr.

At the conclusion of the State Bar's evidence, the State Bar voluntarily dismissed the Complaint concerning the allegations made by Vivian Thompson. The Defendant then renewed his earlier motion to dismiss, and a majority of the hearing committee was of the opinion that the motion should be granted for insufficiency of the evidence to show that Defendant committed any criminal act with respect to Shirley Rushing and Bonnie Smith Crocker (who did not appear and who did not testify), and the insufficiency of the evidence to show that he had committed a criminal act with respect to the chief complainant, Priscilla Chambers Brown, in that he had not been convicted of the criminal charge of assault on a female.

The panel considered Defendant's written motions to dismiss before the presentation of any evidence, but denied such motions before receiving the actual evidence of the North Carolina State Bar in order to properly assess and test the sufficiency of the allegations under the "clear, cogent and convincing" burden of proof standard. Only Priscilla Chambers Brown and Shirley Rushing testified at the hearing on behalf of the State Bar concerning the substance of the allegations. Giving the evidence as to Shirley Rushing the benefit of every reasonable inference and viewing it in the light most favorable to the State Bar, the evidence as to those allegations did not meet the clear, cogent and convincing standard of proof to show the Defendant had committed a criminal act against Shirley Rushing or that his conduct violated Rule 1.2(B).

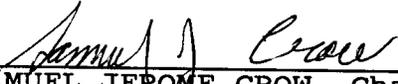
In addition to the other grounds stated in Defendant's written motions to dismiss, and specifically with respect to the evidence concerning Defendant's commission of a criminal act against the chief complainant, Priscilla Chambers Brown, the panel

majority does not believe that Rule 1.2(B) as presently written adequately defines what criminal act impacts upon the fitness of a lawyer to practice law. The principal witness in this case sought and was unable to obtain a criminal conviction for the acts complained of. The North Carolina State Bar is now requesting the hearing committee to determine whether it believes a criminal act was committed and if so, whether or not such conduct reflects on his honesty, trustworthiness and fitness as a lawyer.

The Rules of Professional Conduct leave to the broad discretion of the hearing committee what criminal acts may reflect on the fitness of a lawyer to practice law. The North Carolina Rules of Professional Conduct do not directly address the question of whether a lawyer may engage in illegal conduct involving moral turpitude, or give any guideline as to whether the conduct complained of in this case should be held to reflect upon the honesty, trustworthiness or fitness of the Defendant to practice law. Thus, the majority of the panel concludes that the Defendant should not be held professionally answerable for his alleged misconduct regarding the chief complainant in these circumstances when he has not been convicted of a crime. (See also the Comment to Rule 1.2)

IT IS THEREFORE ORDERED, that this action is dismissed. The State Bar is taxed with the costs.

Signed by the chairman and Mary Elizabeth Lee who voted for dismissal of the action, this the 21st day of July, 1994.



SAMUEL JEROME CROW, Chairman



MARY ELIZABETH LEE



NORTH CAROLINA
WAKE COUNTY

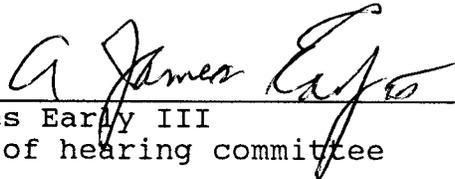
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DISSENTING OPINION

I dissent from the order dismissing this action against the defendant, Gerald E. Rush. Viewing the evidence in the light most favorable to the North Carolina State Bar, I believe that defendant's conduct with respect to Priscilla Chambers Brown constitutes a criminal act that reflects adversely on his fitness as a lawyer in violation of Rule 1.2(B) of the North Carolina Rules of Professional Conduct. Trust is the bedrock of the attorney-client relationship. Defendant's conduct as complained of by Ms. Brown demonstrates a breach of that trust. Furthermore, I do not think that defendant must be convicted of a crime to be in violation of Rule 1.2(B).

This the 28 day of August, 1994.



A. James Early III
Member of hearing committee