

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
86G 0615(III)

IN THE MATTER OF)	
)	
)	
GUS L. DONNELLY,)	PUBLIC CENSURE
ATTORNEY AT LAW)	
)	

At its regular quarterly meeting on April 16, 1987, the Grievance Committee of the North Carolina State Bar conducted a preliminary hearing under Section 13 of Article IX of the Rules and Regulations of the North Carolina State Bar regarding the grievance filed against you by Sherrie R. Hodges. The Committee considered all of the evidence before it, including your written statement to the Committee. Pursuant to Section 13(10) of the aforesaid Rules, the Committee found probable cause. Probable cause is defined as: "A finding by the Grievance Committee that there is reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action." The Rules also provide that if, after a finding of probable cause, the Committee determines that a complaint and a hearing are not warranted, the Committee may issue a public censure upon the acceptance of the same by the attorney. That determination has been made by the Committee and the Committee issues this Public Censure to you.

As Chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this Public Censure. I am certain that you will understand fully the spirit in which this duty is performed.

On or about January 20, 1986, Larry R. Taylor (Taylor) and Christine V. Rader (Rader) executed a promissory note in the amount of \$75,000 in favor of First Union National Bank. The note was payable on July 16, 1986. No payment was made by either of the co-makers and First Union National Bank consequently initiated a lawsuit in September, 1986, against both Taylor and Rader seeking to recover the principal and interest. Ancillary to its complaint, the plaintiff bank obtained an order for the attachment of a promissory note and deed of trust owned by Rader which evidenced and secured an obligation of Coy McGovern. Prior to November 18, 1986, the Ashe County Sheriff's Department was unable to effectuate the attachment.

In October, 1986, Taylor asked you to represent him in regard to the lawsuit. At about the same time, Rader employed Sherrie R. Hodges (Hodges) of the Ashe County Bar to represent her interest. The parties then proceeded to negotiate between themselves to effect a settlement of the litigation. It was tentatively agreed between Taylor and Rader that Taylor would pay off the obligation owed to First Union National Bank and would also pay Rader the sum of \$40,000 in return for which he would receive the McGovern note and deed of trust.

A meeting to consummate the settlement was scheduled on November 18, 1986, in Hodges' law office. Present at the meeting in addition to yourself were Hodges, Taylor, Rader and Leroy Frailey, a man to whom the McGovern note and deed of trust had purportedly been assigned by Rader. At the meeting you asked Hodges for permission to examine the McGovern note and deed of trust prior to concluding the settlement, presumably for the purpose of ascertaining authenticity of the documents and the validity of any assignment. As an apparent expression of your good faith and that of your client, you handed Hodges your client's check in the amount of \$40,000 which had been signed but which was blank as to the payee. After you handed Hodges the check, she handed you the McGovern note and deed of trust for your examination. You scrutinized the documents for a few moments and then left the office along with your client without giving any explanation to Hodges or her client. After leaving Hodges' office you met a deputy sheriff in the hall whose presence you had either arranged or foreseen and handed the McGovern note and deed of trust over to the deputy sheriff so that the documents might be attached. When Hodges asked for an explanation of your conduct and exhibited your client's check, you took the check from her and tore it into pieces. Immediately thereafter, you arranged for the deputy sheriff to serve a cross-claim upon Rader which you had previously prepared.

It was apparent to the Grievance Committee that you abused the confidence and trust of a fellow attorney in this situation by surrendering to the deputy sheriff documents which were entrusted to you for the sole purpose of permitting you to examine them on behalf of your client. Your conduct was undertaken deliberately and with full awareness of the limited scope of the courtesy and privilege extended you by opposing counsel.

Rule 1.2(C) of the Rules of Professional Conduct prohibits conduct involving dishonesty, fraud, deceit and misrepresentation. Your actions in this situation violated both the letter and the spirit of that rule.

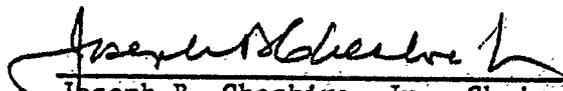
In order for the Bar to effectively serve its clients and the administration of justice it is absolutely necessary that its members be able to trust one another. Your conduct in this matter was completely inconsistent with that notion and seriously compromised your ability to deal effectively with other members of the Bar who have and will become aware of your bad faith. It is no doubt also true that your misconduct tended to cast the entire profession in disrepute and contributed in some measure to diminishing public confidence in the Bar.

In the Committee's judgment, it is no excuse that the action you took might have been in your client's best interest. While a lawyer has an obligation to serve his client's interest with zeal, he is never justified in employing means which are deceitful. Likewise, the fact that your actions in this matter may have facilitated the sheriff's work is no excuse for your conduct. A lawyer is never required to or justified in subordinating his personal integrity to any objective of the State.

The Committee 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. The Committee is confident that you will never again allow yourself to depart from strict adherence to the highest standards of the profession.

Pursuant to Section 23 of Article IX of the Rules and Regulations of the North Carolina State Bar, it is ordered that a certified copy of this Public Censure be forwarded to the Superior Court of Surry County for entry upon the judgment docket and to the Supreme Court of North Carolina for entry in its minutes. This Public Censure will also be maintained as a permanent record in the judgment book of the North Carolina State Bar. Pursuant to a policy adopted by the Council of the North Carolina State Bar on the taxing of costs in cases where discipline is ordered by the Grievance Committee, you are hereby taxed \$50.00 as the administrative costs in this action.

This the 13th day of May, 1987.



Joseph B. Cheshire, Jr., Chairman
The Grievance Committee