

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
87G 0392(III)

IN THE MATTER OF  
MAX GARNER,  
ATTORNEY AT LAW

PUBLIC CENSURE

At its regular quarterly meeting on January 14, 1988, the Grievance Committee of the North Carolina State Bar conducted a preliminary hearing under Section 13 of the Discipline and Disbarment Rules of the North Carolina State Bar regarding the grievance filed against you by the North Carolina State Bar upon receipt of a copy of the June 11, 1987 Order signed by Superior Court Judge Russell G. Walker, Jr. 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. The fact that a Public Censure is not the most serious discipline that may be imposed by the North Carolina State Bar should not be taken by you to indicate that any member of the committee feels that your conduct was excusable or less than a serious and substantial violation of the Rules of Professional Conduct and the law of the State of North Carolina.

In April, 1987, you undertook to represent James Ledwell, Jr. on a traffic violation in which Mr. Ledwell had entered a plea in Montgomery County District Court. Ledwell was a school bus driver and faced the possibility of losing that privilege if convicted of the offense. On June 11, 1987, after Ledwell had graduated from high school and no longer drove a school bus, you were in Montgomery County Superior Court to enter a plea in the traffic offense on Ledwell's behalf after the Assistant District Attorney had agreed to accept a plea to a lesser charge. Ledwell was not present in court.

Judge Russell G. Walker, Jr. was presiding in the courtroom, and asked you if you had filed a waiver of appearance signed by your client which was necessary for the court to proceed in his absence. You advised the court that

one had not been filed but that you had one available with other papers you had outside the courtroom. After being asked by the judge to deliver the waiver to the clerk, you left the courtroom. You returned shortly and advised the court that you did not have the waiver with you and that it must be in your office. After asking the court to continue the case, you went to your office to get the waiver upon being instructed by the judge to do so when he denied your request for a continuance.

Upon returning to the courtroom, you handed the judge a waiver form purportedly signed by James Ledwell, Jr. However, the waiver had not in fact been signed by Ledwell, your having prepared and signed it in your absence from the courtroom.

Your preparation of this document and presenting it to Judge Russell G. Walker, Jr. as though it had been signed by James Ledwell, Jr. was a misrepresentation to the court. It violated Rule 1.2(C) of the Rules of Professional Conduct. In deciding not to send this matter to the Disciplinary Hearing Commission for the possible imposition of more severe discipline, the committee was cognizant of your having your client's consent to dispose of the offense in the manner proposed by you and the Assistant District Attorney, your sincere belief that you had gotten Ledwell to sign a waiver but simply couldn't find it, the fact that this was not done for any personal gain, the lack of prejudice to the administration of justice as a result of your action, and the likelihood that such conduct will not be repeated in the future.

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 Montgomery 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 Fifty (\$50.00) as the administrative costs in this action.

This the 1 day of March, 1988.

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