

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
87G 0765(I)

IN THE MATTER OF

JOHN S. MORRISON,  
ATTORNEY AT LAW

PUBLIC CENSURE

At its regular quarterly meeting on July 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 Ernest C. Harding. The Committee considered all of the evidence before it, including your written statement to the Committee. Pursuant to Section 13(10) of the Discipline and Disbarment Rules, the Committee found probable cause. Probable cause is defined under the Discipline and Disbarment Rules 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 and I am certain that you understand fully the spirit in which this duty is performed, that you will understand the censure, and appreciate its significance. 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 Code of Professional Responsibility and the Rules of Professional Conduct.

Ernest C. Harding employed you to represent him in a personal injury action on November 8, 1983. You agreed to represent Mr. Harding on a one-third contingent fee basis. According to your response to the Grievance Committee, you had some difficulty in proving Mr. Harding's disability was caused by the car accident. A medical doctor originally diagnosed Mr. Harding's arthritis as being a result of normal degenerative changes and would have occurred whether or not he had been in a car accident.

During this time when you were receiving medical opinions from Mr. Harding's doctors, you indicated that Mr. Harding was very anxious to file a lawsuit. You believed there was a tenuous connection between Mr. Harding's

disability and the car accident and you also believed that a settlement or jury verdict would result in a very modest award. Nevertheless, you told Mr. Harding that you would file a lawsuit on his behalf in the matter.

As you admitted in your response, you did not file the lawsuit. Later, when Mr. Harding asked you when his trial would occur, you advised him that the trial date would be "sometime in the future". At the time you made that representation to Mr. Harding, you had not filed the lawsuit.

Your conduct in this matter violates the Code of Professional Responsibility (which was in effect at the time of your actions) and the Rules of Professional Conduct (presently in effect). Disciplinary Rule 1-102(A) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The very foundation of an attorney-client relationship is built upon the lawyer's loyalty to his client and the client's trust in his lawyer. A client comes to a lawyer seeking assistance in resolving a legal problem. The client relies upon the lawyer to deal with him in a truthful and honest way relative to the client's case. A client's trust in his lawyer is diminished by the lawyer's misrepresentation of the status of his case.

A lawyer also has an ethical obligation to represent his client zealously. Disciplinary Rule 7-101(A)(1) provides that a lawyer shall not intentionally fail to seek the lawful objectives of his client through reasonably available means permitted by law and the disciplinary rules. You violated this rule when you failed to file a lawsuit on behalf of your client as he sought lawful recourse for compensation of his injuries. The misrepresentation made to Mr. Harding about the filing of his lawsuit resulted in confusion and Mr. Harding's mistrust of you. In fact, the very thing you tried to achieve (easing Mr. Harding's mind) was not achieved as a consequence of your untruthfulness.

It is essential that a lawyer deal honestly and openly with his client. A lawyer must keep his client reasonably informed about the status of a matter and the lawyer must promptly comply with reasonable requests for information. The client can only make informed decisions about the representation in his case when his lawyer is honest and forthright in his dealings with his client.

You informed the Grievance Committee that in September or October of 1985 your opinion about the merits of Mr. Harding's case had changed and you believed Mr. Harding's physical problems were caused by the accident. Your opinion was bolstered by the changed opinion of the medical doctor. At that point, you had sufficient medical evidence to file the lawsuit. However, by your own admission, you did not do so because you had difficulty identifying the appropriate corporate defendant to sue and because you were involved in other litigation. Again, Disciplinary Rule 6-101(A)(3) (Rule 6(B)(3) of the Rules of Professional Conduct) requires that a lawyer not neglect a legal matter entrusted to him. After receiving additional medical evidence to file a lawsuit, you should have filed it immediately. As a lawyer, you have an ethical obligation to attend promptly to the legal matters of your client. The client expects that kind of dedication, commitment, and attention to his case.

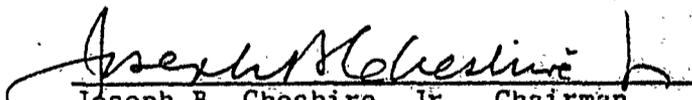
The Grievance Committee is aware that you later represented Mr. Harding in his personal injury action and achieved a reasonable settlement. However, the Grievance Committee cannot excuse your prior acts of deception and misrepresentation in advising your client that a lawsuit had been filed when one had actually not been filed.

Your conduct was unprofessional. It violated not only the letter of the Code of Professional Responsibility but also its spirit. Your conduct was not the conduct expected of a member of the legal profession and an officer of the court. It brought discredit upon you, the profession, and the courts. It damaged both your reputation and the profession's. It placed your privilege to serve the public as a lawyer in serious jeopardy.

The Committee is confident that this Public Censure will be heeded by you, that it will be remembered by you, and 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. Instead of being a burden, this Public Censure should serve as a profitable and everpresent reminder to weigh carefully your responsibilities to your clients, to the public, to your fellow attorneys, and to the courts.

Pursuant to Section 23 of the Discipline and Disbarment Rules, it is ordered that a certified copy of this Public Censure be forwarded to the Superior Court of Pasquotank 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 policy adopted by the Council of the North Carolina State Bar on the taxing of costs in cases where discipline is entered by the Grievance Committee, you are hereby taxed \$50.00 as the administrative costs in this action.

This the 10<sup>th</sup> day of August, 1988.

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