

STATE OF NORTH CAROLINA
 COUNTY OF WAKE

BEFORE THE
 GRIEVANCE COMMITTEE
 OF THE
 NORTH CAROLINA STATE BAR
 87GR 0605

IN THE MATTER OF

RICHARD M. KOCH,
 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 C. Edward Fallecker. 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 Rules of Professional Conduct.

You were retained to represent the Sears Consumer Financial Corporation (SCFC) in two foreclosure proceedings against William R. Jenkins and Sibyl B. Berg. In both cases, you led SCFC to believe you had filed foreclosure actions against Jenkins and Berg in court.

SCFC instructed you to foreclose on the mortgage of Mr. Jenkins. You claim that you prepared the necessary paperwork; however, you refrained from filing the papers because you thought Mr. Jenkins would become current on the delinquent loan. You advised SCFC that you were proceeding with the foreclosure on Mr. Jenkins's property when you knew you were not pursuing the action. You informed the Grievance Committee that the information you gave SCFC would have led them to believe that the foreclosure was imminent.

You exhibited similar conduct in handling the foreclosure of the Berg mortgage. Ms. Berg filed a Chapter 13 bankruptcy action and her past due mortgage payments were to be paid through the Chapter 13 plan. Future mortgage payments were to be paid outside of the plan.

When Ms. Berg became delinquent in her mortgage payments to SCFC, you were requested to seek relief from the automatic stay of the bankruptcy court. You prepared a motion requesting relief from the automatic stay of the bankruptcy court and you sent a copy of it to SCFC for its review and approval. You never filed the motion for relief from the automatic stay. Again, you erroneously advised your client, SCFC, that you were proceeding with the action as SCFC requested. SCFC informed Ms. Berg that you were trying to foreclose on her property and she informed her attorney. Ms. Berg's attorney then filed a motion for sanctions against SCFC for violation of the automatic stay of the bankruptcy court.

Also, your actions resulted in Ms. Berg's misconception that her attorney had misappropriated the mortgage payments that she was sending SCFC and SCFC was transmitting to you. Later, this situation was rectified and Ms. Berg learned that her attorney knew nothing about the mortgage payments and had not received them from you.

As a result of your misrepresentation to SCFC, SCFC incurred expenses for its defense at the hearing before the bankruptcy court on Ms. Berg's motion for entry of an order of sanctions and contempt against SCFC.

Your conduct relative to the handling of the foreclosure actions against Mr. Jenkins and Ms. Berg was in violation of Rule 1.2(C). This rule provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Statements that you made to SCFC regarding the Jenkins and Berg matters were intended to mislead SCFC as to the actions you were taking in the cases.

Your conduct in this matter has ruptured the very foundation of the attorney-client relationship, i.e. the trust that a client places in his attorney to receive competent, honest, and truthful representation. How can a lawyer properly represent his client when he is not telling his client the truth about the status of his case? How can the client make informed decisions regarding the representation when the lawyer fails to provide the client with accurate and truthful information about the case?

Rule 7.1(A)(1) requires that a lawyer must seek the lawful objectives of his client through reasonably available means permitted by law and the Rules of Professional Conduct. SCFC requested that you initiate foreclosure actions against Jenkins and Berg. The course of action which they asked you to take was reasonable and lawful. You made a unilateral decision not to proceed with the foreclosure actions and that decision was contrary to the request made by your client.

You decided that you would give both Mr. Jenkins and Ms. Berg an opportunity to become current on their delinquent loans. You improperly disregarded the request of your client and attempted to supplant your wishes as to the course of action that your client should take. Your conduct went

far beyond that of an attorney trying to persuade his client to take a certain course of action based upon the lawyer's knowledge of the law.

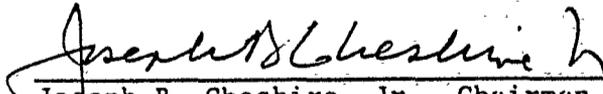
Your client had a valid and lawful position which should have been pursued by you. Your client relied upon you to represent its interest as you were advised to do. If you were unable to carry out the wishes of your client, you should have withdrawn from representation. A lawyer is his client's agent. A lawyer advocates his client's position. The course of action that your client wanted to take was a decision of your client and you could not deter from that course of action even if, in your professional judgment, you desired to achieve some settlement of the matter.

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 Mecklenburg 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 10th day of August, 1988.



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