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STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
87G 0306(II)

IN THE MATTER OF

C. C. MALONE, JR.,
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 Article IX of the Rules and Regulations of the the North Carolina State Bar regarding the grievance filed against you by Thelma P. Tennin. The committee considered all of the evidence before it, including your written statement to the committee. Pursuant to Section 13(10) of the rules, the committee found probable cause. Probable cause is defined under the 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 committee determined that a complaint and a hearing were not warranted in this matter and the committee ordered a Public Censure upon your acceptance of it. Therefore, 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.

Thelma P. Tennin filed a small claims action in magistrates court against B. B. Walker for failure to service a water filter unit in her home and damages caused by the defendant's failure to service the filter. The magistrate awarded Ms. Tennin a judgment in the principal sum of \$520.00 on April 15, 1985. The defendant, B. B. Walker, appealed the magistrate's judgment on April 22, 1985. Ms. Tennin employed you on June 27, 1985 to represent her on the appeal to Durham County Civil District Court. Ms. Tennin paid you \$100.00 as a retainer. The case was set for hearing in June, 1985; August, 1985; September, 1985; December, 1985; February, 1986 and April, 1986 without it being heard. Ms. Tennin was not always notified of the hearing dates by your office. On July 7, 1986, Ms. Tennin wrote to you indicating that she had written you and telephoned you concerning the status of her case and had gotten no response. You failed to notify her of the next setting for her case on July 24, 1986 even though you received the calendar for that setting. On that date, District Court Judge Richard G. Chaney ordered that

Ms. Tennin's claim against B. B. Walker be dismissed for failure to prosecute the action.

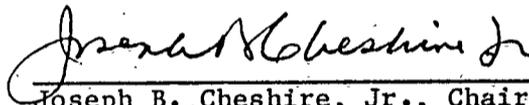
Rule 6(B)(1) states that a lawyer shall keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. Rule 7.1(A)(1) states that a lawyer shall not intentionally fail to seek the lawful objectives of his client through reasonably available means. Had Ms. Tennin been informed of her court date, she could have been available to prosecute her claim. Because of your failure to give her that opportunity, you prejudiced or damaged your client during the course of the professional relationship in violation of Rule 7.1(A)(3).

The committee weighed your claim that you had advised Ms. Tennin that you did not feel that her claim had merit and therefore would not pursue her claim. However, that claim is inconsistent with the fact that you were still the attorney of record for Ms. Tennin and did not move to withdraw. You also failed to notify Ms. Tennin of her court date as you claimed you would do. Your conduct violated the rules cited above.

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 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 Clerk of Superior Court of Durham 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

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