

13343

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
92G0931(III)

IN THE MATTER OF

FRANKLIN E. WELLS, JR.,
ATTORNEY AT LAW

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CENSURE

On April 15, 1993, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

Pursuant to section 13(A) of article IX of the Rules and Regulations of the North Carolina State Bar, the Grievance Committee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Committee found probable cause. Probable cause is defined in the rules as "reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action."

The rules provide that after a finding of probable cause, the Grievance Committee may determine that the filing of a complaint and a hearing before the Disciplinary Hearing Commission are not required and the Grievance Committee may issue various levels of discipline depending upon the misconduct, the actual or potential injury caused, and any aggravating or mitigating factors. The Grievance Committee may issue an admonition, reprimand, or a censure.

A censure is a written form of discipline more serious than a reprimand, issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or a member of the public, but the misconduct does not require suspension of the attorney's license.

The Grievance Committee believes that a hearing before the Disciplinary Hearing Commission is not required in this case and issues this censure to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this censure. I am certain that you will understand fully the spirit in which this duty is performed.

Prior to August 25, 1992, you were hired to represent Client A, who was then a 17-year-old high school student, regarding a charge of possession of alcohol by a minor. On Aug. 25, 1992, you accompanied Client A to court, at which time the court continued the hearing regarding her case. Thereafter, you asked Client A to accompany you to a small room in the courthouse, at which time you told her that she needed a spanking to remind her to keep out of trouble. You then struck Client A four or five times across her buttocks with your open hand. You instructed Client A to come to your office the following Friday for an additional spanking and cautioned her not to tell anyone about the incident.

On Friday, Aug. 28, 1992, you took Client A to a house near your law

office. You instructed Client A to remove her garments below her waist and struck her buttocks with your open hand a number of times. You then instructed Client A to stand in a corner with her back to you, with her pants remaining down.

On Sept. 4, 1992, Client A returned to your office, at your instruction. On this occasion, Client A stated that she did not wish to be spanked. You stated that you expected to be paid in some way for your services, but you did not insist on administering an additional spanking.

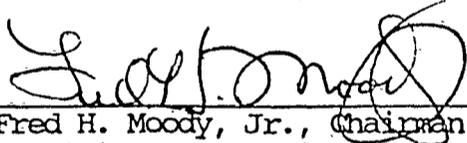
Shortly afterwards, you were charged with two counts of misdemeanor assault on a female in connection with these incidents. On Jan. 12, 1993, the court entered a prayer for judgment continued for 18 months in your case. You were ordered to continue therapy with a psychiatrist, perform 100 hours of community service, refund the fee paid by Client A's father, and refrain from representing juveniles and women under 25 years of age. As of the date of this order, it appears that you have complied with the terms of the PJC.

Your actions in this matter constituted criminal conduct which reflects adversely on your fitness or trustworthiness as an attorney, in violation of Rule 1.2(B) of the Rules of Professional Conduct. You betrayed the trust and confidence which Client A placed in you and took advantage of her youth and inexperience. The fact that the Committee did not refer this matter for hearing by the Disciplinary Hearing Commission does not mean it viewed your misconduct as anything less than very serious. Rather, the Committee took into account that you have no prior discipline, that you sought counseling immediately after your arrest and that you have suffered a substantial amount of public humiliation as a result of this matter.

You are hereby censured by the North Carolina State Bar for your violation of the Rules of Professional Conduct. The Grievance Committee trusts that you will ponder this censure, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. This censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibility to the public, your clients, your fellow attorneys and the courts, to the end that you demean yourself as a respected member of the legal profession whose conduct may be relied upon without question.

In accordance with the policy adopted October 15, 1981 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a censure by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this 28 day of April, 1993.



Fred H. Moody, Jr., Chairman
The Grievance Committee
North Carolina State Bar