

16247

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
94G1523 (III)

IN THE MATTER OF)
)
NAT PENDLEY,)
ATTORNEY AT LAW)

REPRIMAND

On April 13, 1995, 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 censure to the respondent attorney.

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

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

As of late 1993, you lived in Forsyth County and practiced law in your home, which was in the 21st Judicial District. You

concluded, based upon your observations, that a Republican candidate could probably win at least one of the three races for superior court judge seats in November 1994 in the neighboring 22nd Judicial District. You ultimately decided to run and, on Feb. 18, 1994, you filed a notice of candidacy for one of the superior court vacancies in the 22nd Judicial District.

On Feb. 17, 1994, the day before you filed for election, you agreed to rent a mobile home just across the county line in Davidson County, which is in the 22nd Judicial District. Prior to filing for election, however, you never entered the mobile home, which had no water, no telephone, no power and no working toilets. Although you slept in the mobile home on the evenings of Feb. 18 and Feb. 19, 1994, you vacated the trailer thereafter and paid no rent, as the trailer was uninhabitable. Meanwhile, your wife and three children continued to live in Forsyth County and your eldest daughter attended Forsyth County public schools as a resident of Forsyth County.

Between Feb. 20, 1994 and August 22, 1994, you generally slept at the home of friends in Davidson County, but paid no rent to them. On several occasions, however, you remained overnight at your family's home in Forsyth County, to assist your wife in the care of your children. Beginning on Aug. 22, 1994, you rented an apartment in Davie County, which is also in the 22nd Judicial District, and spent some time there until the date of the election in November 1994. Your family continued to live in Forsyth County and you never obtained a residential telephone in the 22nd Judicial District prior to the election.

Although you won election to the superior court bench in November, 1994, you were never sworn in to office, as the result of a lawsuit which was filed, challenging your residency and eligibility to serve. Following a hearing on Dec. 7, 1994, a permanent injunction and consent order were entered, declaring your candidacy void ab initio, based upon your failure to establish residency in the 22nd Judicial District as required by G.S. 163-106(i).

While the consent order entered in the lawsuit did not find that you were guilty of fraud and although you have persistently maintained that you believed you had complied with the law regarding residency before the November 1994 election and conducted all of your activities openly, the Grievance Committee believes that your conduct created at least the appearance of impropriety and was prejudicial to the administration of justice, in violation of Rule 1.2(D) of the Rules of Professional Conduct.

Moreover, the Committee is very troubled by your failure to respond to the letter of notice in this matter in violation of Rule 1.1(B) of the Rules of Professional Conduct. As a result of your misconduct, the State Bar was forced to subpoena you to appear in Raleigh to provide a response. The profession cannot remain self-regulating unless lawyers take seriously their obligation to respond promptly to inquiries from the State Bar

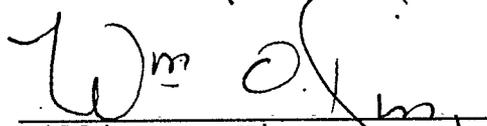
regarding disciplinary matters.

The Committee believes, however, that your conduct is mitigated by the fact that you have been the subject of substantial adverse publicity already regarding the judicial election, which has damaged you financially, by your lack of prior discipline and by the fact that you appeared genuinely remorseful about your failure to respond to the letter of notice.

You are hereby reprimanded by the North Carolina State Bar due to your professional misconduct. The Grievance Committee trusts that you will heed this reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

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 reprimand by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this 27 day of April, 1995.



William O. King
The Grievance Committee
North Carolina State Bar