

16985

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
94G0835 (II)

IN THE MATTER OF)

W. DAVID SMITH, JR.,)
ATTORNEY AT LAW)

CENSURE

On January 12, 1995, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Emma Purcell.

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.

In 1991, you undertook to handle a workers' compensation claim for Emma Purcell. On Feb. 25, 1993, Ms. Purcell filed a

grievance against you with the 12th Judicial District Grievance. She contended that you had neglected her workers' compensation claim.

You were contacted by the 12th Judicial District Grievance Committee and asked to respond to Ms. Purcell's grievance by April 15, 1993. You did not respond to the Committee until Dec. 2, 1993, when you sent an answer to Richard T. Craven, the investigating member, by facsimile transmission. The letter which you sent to Mr. Craven was dated May 5, 1993, thereby falsely suggesting that you had responded earlier when you had not.

On July 28, 1994, counsel for the N.C. State Bar requested you to send a copy of Ms. Purcell's entire file. You did not respond to the July 28, 1994 letter or to counsel's follow up letter of Sept. 6, 1994 which again requested a copy of Ms. Purcell's file. On Sept. 16, 1994, the State Bar issued a subpoena to you, commanding you to appear and produce Ms. Purcell's file on Oct. 10, 1994.

Prior to Oct. 10, you telephoned bar counsel and represented that you had already mailed the file. This statement was false. Bar counsel agreed to release you from the subpoena, at your request, and upon your specific promise to send copies of the file again by overnight mail. You did not send the file, however, nor did you appear in response to the subpoena.

On Oct. 14, 1994 bar counsel again wrote to you, indicating that the Purcell file had not been received and that a new subpoena would be issued to you. You did not respond to the Oct. 14 letter and did not send the Purcell file. Consequently, a second subpoena was issued on Oct. 24, 1994, commanding you to appear in Raleigh with Ms. Purcell's file on Nov. 21, 1994. You did not comply with the subpoena nor did you obtain any order releasing you from its requirements. You did ultimately produce the file on Nov. 23, 1994.

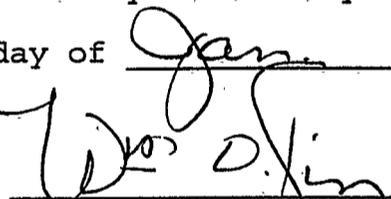
By failing to respond promptly to the local grievance committee and bar counsel's letters of July 28 and Sept. 6, 1994 and by failing to produce the Purcell file as you promised in exchange for a release from the Oct. 10 subpoena, you failed to respond to a lawful demand for information from a disciplinary authority in violation of Rule 1.1(B). By failing to comply with the subpoena commanding you to appear before the State Bar on Nov. 21, 1994 you engaged in conduct which constituted contempt of the N.C. State Bar in violation of G.S. 84-28(b)(3) and also failed to respond to a lawful demand for information of a disciplinary authority in violation of Rule 1.1(A). By falsely representing that you had responded to the local committee regarding Ms. Purcell's grievance in May 1993 and by falsely representing that you mailed Ms. Purcell's file to the State Bar on Sept. 16, 1994 you engaged in dishonest conduct in violation of Rule 1.2(C) of the Rules of Professional Conduct and knowingly

made a material misrepresentation of fact to a disciplinary authority in violation of Rule 1.1(A).

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 30th day of Jan, 1995.



William O. King, Chairman
The Grievance Committee
North Carolina State Bar