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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
96G0862(III)

IN THE MATTER OF)

FRED A. BIGGERS,)
ATTORNEY AT LAW)

CENSURE

On October 16, 1996, 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 .0113(a) of the Discipline and Disability Rules 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, a 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 July 1996, you sent a direct mail advertisement to at least one member of the public which contained several false or misleading statements. First, your letter stated that "[t]he result of you being found guilty as charged of DWI will mean that your driving priviledges [sic] will be revoked for at least a year. That means you will not be able to drive, period." This statement is

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misleading, as a first offender is routinely given a limited driving privilege. Therefore, it is not true that everyone convicted of DWI loses his or her license for a year. Second, your letter stated that "I may be able to get the charge against you dismissed by the Judge." This statement is false, as judges do not have the authority to dismiss DWI charges, although the District Attorney or Assistant may of course do so in an appropriate case. Third, your letter stated that "[i]n addition, you will have to pay much higher insurance premiums and possibly go to jail!" This statement is misleading as a first offender is offered three choices upon conviction: 1) 1 day in jail, 2) 1 month without a driver's license or 3) 24 hours of community service. Therefore, although jail is a possibility for a first offender, the offender himself or herself can avoid jail simply by electing to perform community service or giving up driving for 1 month.

By sending a direct mail solicitation letter which contained false or deceptive statements, you violated Rule 2.1 of the Rules of Professional Conduct, which forbids attorneys to make false, deceptive or misleading communications with the public.

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 24th day of October, 1996.


Ann Reed, Chair Grievance Committee
The North Carolina State Bar