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STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
87G 0550(III)

IN THE MATTER OF)

ROBERT L. SAUNDERS,
ATTORNEY AT LAW)

PUBLIC CENSURE)

At its regular quarterly meeting on October 26, 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 North Carolina State Bar regarding the grievance filed against you by Phyllis McCall. The committee considered all of the evidence before it, including your written response to the Letter of Notice. 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 rules also provide that if, after a finding of probable cause, the Committee determines that a complaint and a hearing are not warranted, it may order a Public Censure upon the acceptance of the Censure by the attorney. That determination has been made by the Committee and 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 to you, and I am certain that you understand fully the spirit in which this duty is performed. I am sure 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 felt that your conduct was excusable or less than a serious and substantial violation of the Rules of Professional Conduct.

You were employed by Phyllis McCall to represent her interest as a shareholder in Capricorn Electronics, Inc. As a result of Ms. McCall's dispute with Capricorn Electronics, you filed a lawsuit against the company on October 14, 1985.

The attorneys for Capricorn Electronics served you with a Motion to Compel Discovery of certain documents. According to Ms. McCall, she promptly delivered the documents she had in her possession to you during May of 1986. In addition, on June 4, 1986, Capricorn Electronics served notice on you of a June 20, 1986 deposition of Ms. McCall. Ms. McCall informed you that she would be out of the country from June 13, 1986 to June 29, 1986. According to Ms. McCall, you indicated that the deposition could be rescheduled to sometime in early July.

Ms. McCall claims that after her return from her trip to Hong Kong, she spoke with you on or about July 1, 1986. At that time, you both discussed an offer received from Capricorn Electronics to settle the matter. However,

there was no discussion about the documents requested pursuant to discovery or the deposition.

From mid-July, 1986 until July 29, 1986, Ms. McCall tried to contact you to determine the status of her case. She was unable to reach you on her weekly attempts to gain information.

As you are aware, Capricorn Electronics had moved for dismissal of Ms. McCall's complaint for her failure to comply with the Order of Discovery and for her failure to appear at the deposition. That motion was the subject of the July 28, 1986 hearing. Judge Claude S. Sitton ruled that Ms. McCall should produce and copy at her expense those documents requested by Capricorn Electronics and they should be turned over to the company. You were ordered to produce those documents by August 1, 1986. Ms. McCall was also ordered to pay the attorney's fees and expenses incurred by Capricorn Electronics in bringing the motion. You gave notice of appeal of Judge Sitton's decision to the North Carolina Court of Appeals. Your motion was denied by order of the court on August 7, 1986.

According to Ms. McCall, you did not inform her of the July 28, 1986 hearing and the motions filed by the opposing party until July 29, 1986.

On August 19, 1986, the defendants filed motions to dismiss Ms. McCall's complaint for her failure to comply with Judge Sitton's order of July 28, 1986. You were given notice of that hearing which was scheduled for September 8, 1986. According to the court records, neither you nor Ms. McCall were present in court on September 8, 1986. Someone informed the court that you were not present because of a death in your family and a continuance was requested. The court granted that continuance until September 10, 1986.

Ms. McCall's matter came back for hearing before Judge Peter W. Hairston on September 10. You were not present and Judge Hairston dismissed Ms. McCall's action with prejudice. In his order of dismissal, Judge Hairston cited your neglect and dereliction of duty as the reasons for dismissal of the case.

You did not inform Ms. McCall of the defendant party's motion to dismiss her action and you did not inform Ms. McCall that her action had been dismissed by Judge Hairston on September 10, 1986. When Ms. McCall was finally able to reach you on or about September 18, 1986, you informed her that you would not have time to handle her case and she would need to get another attorney. Even at that time, you had not advised Ms. McCall of the disposition of her case. She was forced to learn that her lawsuit had been dismissed by one of the defendants in the action.

Your conduct in this matter violated Rule 6 of the Rules of Professional Conduct. Rule 6(B)(1), (2) and (3) require that a lawyer shall:

1. Keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information,
2. Explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation, and
3. Act with reasonable diligence and promptness in representing the client.

Your failure to inform Ms. McCall of the various motions filed in her case and the dismissal of her claim was inexcusable. Your lack of communication with your client goes to the very heart of the attorney-client relationship: i.e. the attorney's duty to keep the client informed.

You should have advised Ms. McCall of every facet of her case, particularly the dismissal of her action. Ms. McCall did not have an opportunity to cure the ills which resulted in the dismissal of her case because you did not tell her about the defendant's motions for dismissal or sanctions. Thus, your client's claim was prejudiced or damaged due to your inadequate communications and such conduct violated Rule 7.1(A) (3) of the Rules of Professional Conduct.

You informed the Grievance Committee that you filed with the court a motion to continue the September 8 hearing and you submitted a medical excuse from your doctor indicating that you were put on two weeks medical leave on September 8, 1986. The letter from Dr. Barr indicated only that "Mr. Robert Saunders is presently under our care and will be on medical leave until September 22, 1986 effective immediately." The Grievance Committee considered that information and noted that the court took notice of the letter from Dr. John F. Barr. The court denied your motion and you were notified by the office of the Clerk of Superior Court of the rescheduled hearing. No one was present at the hearing on September 10 to defend Ms. McCall's action against the defendant's claims. Again, your conduct prejudiced or damaged Ms. McCall's claim in violation of Rule 7.1(A) (3).

After weeks of no communication with your client, you informed her that she would need to seek an attorney because you would not have time to handle her case any longer. At the time that you informed her of this, Ms. McCall was in need of an attorney within less than 24 hours so that she could attend a corporate meeting of Capricorn Electronics. Your conduct in this regard violated Rule 2.8(A) (2) of the Rules of Professional Conduct. The rules require that a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, and delivering to the client all papers and property to which the client was entitled. Your abrupt withdrawal from Ms. McCall's case did not comply with that provision.

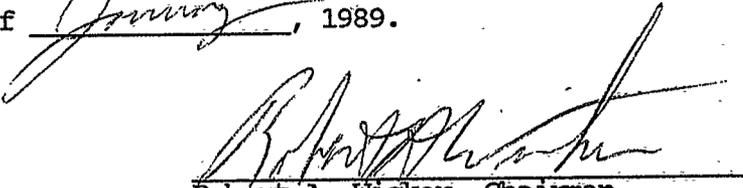
In the Matter of Britt, the Kansas Supreme Court publicly censured an attorney for neglecting a legal matter. The court noted that "neglect involves indifference and a consistent failure to carry out the obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed to the client..." It appears from your actions that you showed indifference and a consistent failure to carry out the obligations owed to Ms. McCall in her attempt to sue Capricorn Electronics.

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 ever present 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 the rules, it is ordered that a certified copy of this Public Censure be forwarded to the Superior Court of Mecklenburg 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 12 day of January, 1989.


Robert A. Wicker, Chairman
The Grievance Committee

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