

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
10G0347

IN THE MATTER OF	)	
	)	
Robert C. Ekstrand,	)	CENSURE
ATTORNEY AT LAW	)	
	)	

On January 20, 2011, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by K.S and J.S.

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.

You represented B.S. on three felony counts of taking indecent liberties with a minor. B.S. was charged in Stokes, Durham and Bladen Counties. Bladen County offered, and B.S. accepted, an *Alford* plea. B.S. wanted the same plea deal in Durham County. You and the Durham County ADA discussed a plea agreement. The ADA made it clear to you that she would not agree to an *Alford* plea. The ADA also refused to allow the Durham case to run concurrently with the cases in the other counties. The ADA wanted aggravating factor number 15 (defendant took advantage of a position of trust and confidence to commit the offense) included in the plea transcript. The ADA informed you of her position the day before court. The ADA also informed you that she would not be in court on January 12, 2010 to handle the plea and that a less experienced ADA would appear on behalf of the State.

When you arrived in Durham County court the next day, you presented the substitute ADA with a new plea transcript as follows: the guilty box was unchecked, guilty pursuant to *Alford* was checked, aggravating factor number 15 was unchecked, and judgment to run concurrently with any judgment, sentences and probation in Bladen and/or Stokes Counties. You informed the substitute ADA that B.S. stated he would have tremendous difficulty entering a guilty plea in the Durham County case unless permitted to plea pursuant to *Alford* and therefore you prepared the plea transcript pursuant to *Alford*. Substitute ADA reviewed the file notes and conferred with the ADA originally assigned to the file. Upon learning of your discussion with the original ADA, the substitute ADA refused to agree to your plea transcript. B.S. agreed to the terms of the plea transcript prepared by the ADA. The ADA's plea transcript was presented to, and accepted by, the court. The Stokes County case was subsequently dismissed.

The Grievance Committee concluded that you were well aware of the State's position but you nonetheless changed the terms of the plea transcript to suit your client's needs. The Committee found that you falsely communicated the terms of the plea transcript to the substitute ADA in violation of Rule 4.1. The Committee further concluded that you presented the *Alford* plea transcript to the substitute ADA in an attempt to take advantage of the ADA's inexperience. Although you were not successful, your conduct is dishonest in violation of Rule 8.4(c) and prejudicial to the administration of justice in violation of Rule 8.4(d).

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 January 24, 2008 by the Council of the North Carolina State Bar regarding the taxing of administrative fees and investigative costs to any attorney issued a censure by the Grievance Committee, an administrative fee in the amount of \$100.00 is hereby taxed to you.

Done and ordered, this 16 day of July, 2011.



Ronald G. Baker, Sr., Chair
Grievance Committee
The North Carolina State Bar