

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
90G 267 (III)

IN THE MATTER OF )  
MARK GRAY, )  
Attorney At Law )

CENSURE

On October 16, 1992 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by James T. Earle, Jr., Attorney at Law.

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 evidence, including your response to the letter of notice, the Grievance Committee found probable cause which 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, actual or potential injury caused, and any aggravating or mitigating factors. The Grievance Committee may issue an admonition, a reprimand or a censure to the accused attorney.

The Grievance Committee was of the opinion that a complaint and hearing are 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.

A censure is the most serious discipline that the Grievance Committee can impose. The Grievance Committee felt that your professional misconduct was a serious violation of the Rules of Professional Conduct and deserved the most severe form of public discipline short of a stayed suspension, actual suspension or

disbarment.

You undertook to represent Keretha Woolard and her minor child, Germaine, both of Florida, after Ms. Woolard's husband was killed in a work related accident in Florida in January, 1988. While you obtained worker's compensation benefits for Ms. Woolard, you failed to thoroughly pursue the correct calculation of benefits due her and you failed to thoroughly pursue any claim on behalf of the minor child. Your actions violated Rule 6(A)(2) of the Rules of Professional Conduct which provides that an attorney shall not handle a legal matter without adequate preparation under the circumstances.

During the period in which you represented Ms. Woolard, you received worker's compensation checks for Ms. Woolard. Some of the checks were placed in her file rather than a trust account and in fact became stale. While there was no fraud, deceit or misappropriation of client funds on your part, your conduct in this respect was in violation of Rule 10.1(C) of the North Carolina Rules of Professional Conduct, which requires attorneys to place funds of a client into a trust account.

It appears that you and Ms. Woolard agreed that some of the checks you were holding should be used to pay a funeral home bill, an autopsy bill and to reimburse you for expenses incurred in representing Ms. Woolard. Pursuant to Florida and North Carolina law, worker's compensation benefits are exempt from the claims of creditors. While you advised Ms. Woolard that she was not obligated to pay these claims, you prejudiced her in violation of Rule 7.1(A)(3) by failing to advise her that this exemption could not be waived.

Ms. Woolard discharged you in October 1989 and her new attorney, James T. Earle, Jr., the complainant, asked you for an accounting of the worker's compensation benefits that you had received in your office on Ms. Woolard's behalf. Although you may have had several telephone conferences with Mr. Earle and did in fact advise him of the checks in her file, as well as forward such checks to him on November 7, 1989, you did not respond to Mr. Earle's request for an accounting on Ms. Woolard's behalf until early April, 1990. Moreover, the accounting which you finally provided was inaccurate. For instance, the accounting mistakenly indicated that all of the worker's compensation checks listed on the accounting had been promptly relayed to Ms. Woolard when, in fact, some of the checks had been deposited in your trust account and others had become stale after being left in the file for a period of time. Rule 10.2(D) of the North Carolina Rules of Professional Conduct requires an attorney to provide accountings when requested to do so by a client. You violated this rule by failing to provide a prompt accurate response to Mr. Earle's request for an accounting on behalf of Ms. Woolard.

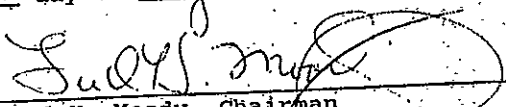
You are hereby censured by the North Carolina State Bar due to your professional misconduct and violation of the North Carolina Rules of Professional Conduct. The Grievance Committee trusts that this censure will be heeded by you, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. In order to remain a respected member of the legal profession whose conduct may be relied upon without question, you must in the future carefully weigh your responsibility to the public, your clients, your fellow attorneys, and the courts. The Grievance Committee expects that no professional misconduct will occur in the future.

Pursuant to Section 23 of Article IX of the Rules and Regulations of the North Carolina State Bar, it is ordered that a certified copy of this censure be forwarded to the Clerk of the Superior Court of Guilford County for entry upon the judgment docket and to the Supreme Court of North Carolina for entry in its minutes. This censure will be maintained as a permanent record in the judgment book of the North Carolina State Bar and a copy shall be sent to the local newspapers in the county in which you practice. A copy also will be sent to the complainant.

If you have not accepted this censure within 15 days after it is served upon you, counsel shall thereafter be instructed to prepare and file a complaint against you with the Disciplinary Hearing Commission of the North Carolina State Bar. Your acceptance must be addressed to the Grievance Committee and filed with the Secretary. The hearing before the Disciplinary Hearing Commission is public, and all of its proceedings and its decision are public.

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 27 day of May 1992.

  
Fred H. Moody, Chairman  
The Grievance Committee of the  
North Carolina State Bar