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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
00G1058

IN RE: John H. Bennett
Attorney At Law

CENSURE

On January 18, 2001, the Grievance Committee of the North Carolina State Bar met and considered the grievances 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 warranted 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 was of the opinion 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 March 1995, you represented the United States Government in the trial of William Talley. Mr. Talley was charged with conspiracy to possess with intent to distribute crack cocaine, possession with intent to distribute powder cocaine and a firearm violation. At the trial, you elicited testimony from two witnesses that Mr. Talley shot at a car and the driver was found dead of a bullet wound in the car.

In your closing argument, you argued that Mr. Talley not only shot at the car, but killed the driver. At the time you made this argument to the jury, you knew that another man had been convicted in state court of the driver's murder. You also argued on rebuttal that Mr. Talley murdered the driver of the car.

Mr. Talley had not been charged with murder. He was charged with the various drug offenses and a firearms violation. The jury convicted Mr. Talley on all charged offenses.

In May 1995, about two months after the trial, you sent a letter to a United States Probation Officer with your objections to the proposed presentence report. In your letter, you again state that Mr. Talley was "responsible for homicide", he fired into a person's vehicle and that person was subsequently found dead. Again, you knew that Mr. Talley had not been convicted of such an offense, but another man had been convicted of the murder.

Mr. Talley appealed his conviction to the Fourth Circuit Court of Appeals. The Fourth Circuit held that your "murder argument" appeared "to have been a deliberate, calculated decision to assert facts not in evidence in order to divert the jury from the real issues in the case." U.S. v. Wilson, 135 F. 3d 291, 302 (4th Cir. 1998). The court also found that your argument was inflammatory and created a "serious risk that the jury decided to convict Talley simply because it believed he was a murderer, not because it weighed the evidence for proof of drug conspiracy and possession, the crimes actually charged." Id. at 300 The court vacated Mr. Talley's convictions because of prosecutorial misconduct and remanded for a new trial.

Your jury argument was improper. You argued facts that were not in evidence. You also argued that Mr. Talley was responsible for a murder when you had information to the contrary. You compounded your misconduct by advising the court that it should consider the murder in sentencing Mr. Talley.

Your conduct in this regard violated Rule 1.2(c) and (d) of the North Carolina State Bar's Rules of Professional Conduct.

The Grievance Committee is mindful that the conduct in question occurred approximately six years ago and that your professional record is otherwise unblemished.

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 the 15th day of June, 2001.

Calvin E. Murphy, Chair
Grievance Committee

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