NORTH CAROLI 7580

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
File No. 97G0616(III)

IN THE MATTER OF ROBERT L. ALLEY, ATTORNEY AT LAW	))))))	CENSURE

On October 23, 1997, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Thaddeus Nelson Frye.

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.

The Committee found the following facts, after reviewing all the evidence related to the above mentioned grievance: You agreed to represent Mr. and Mrs. Thaddeus Frye in a civil action brought against them relating, in part, to the construction of a structure in a stream running through their property. You agreed to represent the Fryes through trial for $5,000 and took a $2,500 "non-refundable" retainer in advance.

After taking the $2,500 fee, you neglected to take numerous actions, substantially prejudicing the Fryes' rights in this civil matter. In particular, the Committee found that you: (1) failed to forward to the Fryes and respond to the opposing party's ("Plaintiff's) two sets of interrogatories, and requests for admissions; (2) failed to inform the Fryes about Plaintiff's motion to compel, Plaintiff's motion for summary judgment, and the affidavit of Plaintiff in support of summary judgment; (3) failed to notify the Fryes of the consequent order granting partial summary judgment in favor of the Plaintiff, which order was based on the affidavit of the Plaintiff and the deemed admissions of the the Fryes; (4) failed to inform the Fryes that the order for partial summary judgment included a mandatory injunction to fill and remove a ditch constructed by the Fryes and that failure to remove it by June 1, 1996, could result in sanctions against them; (5) failed to inform the Fryes of this order and possible sanctions in a meeting or conversations with the Fryes on May 31, 1996; (6) filed a notice of appeal from the entry of partial summary judgment without consulting with the Fryes; and (7) repeatedly failed to return phone calls and messages left by the Fryes about the status of the case. You also refused to return voluntarily to the Fryes the $2,500 fee they paid you after you were terminated from employment, which they requested to assist them in hiring another attorney.

Your above-described conduct violated Rules of Professional Conduct 2.8(a)(3), 6(a)(2), 6(b) (1), 6(b)(2), 6(b)(3), 7.1(2) and 7.1(3). The Committee also found the following aggravating circumstances: prejudice to your client; exposure of clients to risk of contempt; pattern of failure and neglect in this case; prior letter of warning issued to you for neglect; and multiple violations of the Rules of Professional Conduct in this case.

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 17th day of November, 1997.

Ann Reed

Ann Reed
Chairman, Grievance Committee
The North Carolina State Bar