

NORTH CAROLINA

WAKE COUNTY

17164
BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
97G1415

IN THE MATTER OF)

JAMES J. EXUM,)
ATTORNEY AT LAW)

CENSURE

On October 15, 1998, the Grievance Committee of the North Carolina State Bar met and considered the grievance 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 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.

You began representing Robin Harris and her minor son Joshua shortly after an automobile accident on January 8, 1994. The statute of limitations for Ms. Harris and her son's claim was three years. You did not file the complaint for Ms. Harris and her son until January 13, 1997, more than three years after the date of the accident. The complaint you filed listed the date of the accident as January 13, 1994, not January 8, 1994.

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After the complaint was filed, opposing counsel informed you that the date was wrong, and that the complaint was not timely filed. He also requested that you voluntarily dismiss the complaint. You failed or refused to do so. Consequently, opposing counsel filed a motion for sanctions and scheduled a hearing for May 19, 1997. The Committee found, despite your assertions, that you received notice of that hearing.

After you received notice of the hearing but before it was scheduled to be heard, you voluntarily dismissed your clients' claims without prejudice on May 14, 1997. You filed this notice of dismissal without ever consulting with your clients about the dismissal of their claims or the underlying reason for the dismissals. The Committee found that you failed to consult with your clients about the dismissals because you were attempting to conceal from them that you had missed the statute of limitations.

You then failed to appear at the hearing on the motion for Rule 11 sanctions on May 19, 1997. The presiding superior court judge, Zoro J. Guice Jr., reached you by telephone. During that telephone conversation, the Committee found, contrary to your assertions, that you agreed to settle the minor son's claim for \$500 and to pay sanctions to the opposing party for filing suit.

After the Rule 11 hearing, opposing counsel sent you a check for \$500 and a release. But, you failed to return the signed release over the next several months, despite repeated requests. On October 9, 1997, you filed a notice of voluntary dismissal with prejudice of the minor son's claim. Finally, on October 13, 1997, after opposing counsel threatened to file a motion to show cause for your clients to appear, you returned the \$500 check to opposing counsel. The check had not been negotiated.

The Committee found, contrary to your assertions, that you never conveyed this \$500 settlement offer to your clients, and never consulted with you clients before filing the dismissal with prejudice or returning the check. The Committee further found that you failed to communicate this essential information to your clients in an attempt to conceal from them the fact that you had missed the statute of limitations. In other words, you intentionally prejudiced your clients legal rights in order to conceal from them your prior neglect.

The Committee found that your above-described conduct violated several Rules and Revised Rules of Professional Conduct. First, by failing to inform your clients that you had filed their suit after the statute of limitations expired and by refusing to talk to them throughout 1997, you violated Rule 6(b)(1) & (2) and Revised Rule 1.4(a) & (b). Second, by failing to convey an offer of settlement to your clients, you violated Rules 6(b)(1) & (2) and 7.1(c)(1), and Revised Rules 1.2(a)(1) and 1.4(a) & (b). Third, by dismissing the claims without your client's knowledge or consent, you again violated Rules 6(b)(1) & (2) and 7.1(c)(1), and Revised Rules 1.2(a)(1) and 1.4(a) & (b).

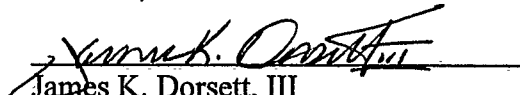
Fourth, by knowingly and intentionally filing a voluntary dismissal with prejudice of the minor's claim in October 1997 to avoid having to tell your clients about missing the statute of limitations deadline, you intentionally prejudiced your client in violation of Revised Rule 8.4(g). Fifth, by actively concealing from your clients that fact that their suit had been filed after the statute of limitations expired, you engaged in conduct involving deceit in violation of Revised Rule 8.4(c).

In deciding to issue a censure, the Committee considered the following aggravating and mitigating factors. In aggravation, the Committee considered that you engaged in a pattern of misconduct, that you committed multiple offenses, and that you had a selfish or dishonest motive in attempting to conceal from your clients the fact that you filed their lawsuit after the statute of limitations. The Committee also noted that you had made several false statements in your responses to the Committee. In mitigation, the Committee considered the fact that you had no prior disciplinary record.

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 16 day of November, 1998.


James K. Dorsett, III
Chair, Grievance Committee