Name that Sanction

The purpose of this exercise is to explore a wide variety of attorney conduct that has resulted in professional discipline. By the end of this exercise, you will be able to locate published disciplinary orders, relate specific attorney misconduct to various levels of discipline set forth by state statutory law, and identify the presence (or absence) of patterns of conduct that produce specific professional discipline.

Instructions:

Step 1: Analyze the statute on Discipline and Disbarment that begins on page 2 of this assignment. Your analysis should allow you to begin discriminating among the various levels of discipline such that you could use the statutory standards as a guide if you were asked to administer professional discipline to fellow lawyers.

Step 2: Locate between three and five disciplinary orders that you believe would be informative to your classmates in learning about professional discipline and lawyer liability. To locate disciplinary orders for our jurisdiction, visit [www.ncbar.gov](http://www.ncbar.gov). Under the “Discipline” tab, select “Disciplinary Orders.” A screen will appear that allows you to search by keyword or attorney name. Try typing the word “Nifong” in the box for “Attorney Last Name.” Next, try using the keyword search feature. A broad keyword search would be, “Misconduct.” A narrow keyword search would be, “Letterhead.” A geographically-limited keyword search would be a county name in our jurisdiction.

IMPORTANT! Because the purpose of this exercise is to explore a wide variety of attorney misconduct, the disciplinary orders that you select must each result in different professional discipline. For example, if you select the order disbarring Prosecutor Michael Nifong, then you could select a second order that suspends a lawyer and a third order that reprimands a lawyer.

**Step 3:** For each disciplinary order that you select, create a sign on a sheet of paper that summarizes the attorney’s conduct in approximately 10 words or less. Your signs can be typed or hand-written but must contain print that can be read easily from a distance. For example, on a computer, use 72 point or larger font; for hand-made signs, use a Sharpie marker. On the back of each sign, use a pencil to write the sanction imposed for the corresponding attorney conduct. Bring your signs to class.

**Step 4:** In preparation for class, answer the following questions for each disciplinary order you selected:

1. Which aspect of this order did you think would be informative to your classmates?
2. In your evaluation, what professional discipline, if any, did this attorney’s conduct merit? Why?
3. Is your evaluation consistent with the evaluation of the bar authorities? Why or why not?
4. Through legislative amendment, how could you improve the state statutory standards that define the various levels of attorney discipline? Draft your amended language in the space below.

IMPORTANT! Although public, the information contained in these disciplinary orders is sensitive and should be handled in a professional manner. You should proceed as if the attorneys named in the orders that you choose are your law school classmates’ family members. N.C. Gen. Stat. § 84‑28. Discipline and disbarment.

(a) Any attorney admitted to practice law in this State is subject to the disciplinary jurisdiction of the Council under such rules and procedures as the Council shall adopt as provided in G.S. 84‑23.

(b) The following acts or omissions by a member of the North Carolina State Bar or any attorney admitted for limited practice under G.S. 84‑4.1, individually or in concert with any other person or persons, shall constitute misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney‑client relationship or otherwise:

(1) Conviction of, or a tender and acceptance of a plea of guilty or no contest to, a criminal offense showing professional unfitness;

(2) The violation of the Rules of Professional Conduct adopted and promulgated by the Council in effect at the time of the act;

(3) Knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct; failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter; or contempt of the Council or any committee of the North Carolina State Bar.

(c) Misconduct by any attorney shall be grounds for:

(1) Disbarment;

(2) Suspension for a period up to but not exceeding five years, any portion of which may be stayed upon reasonable conditions to which the offending attorney consents;

(3) 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 members of the public, but the protection of the public does not require suspension of the attorney's license;

(4) Reprimand – A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct, but the protection of the public does not require a censure. A reprimand is generally reserved for cases in which the attorney's conduct has caused harm or potential harm to a client, the administration of justice, the profession, or members of the public; or

(5) Admonition – An admonition is a written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

Any order disbarring or suspending an attorney may impose reasonable conditions precedent to reinstatement. No attorney who has been disbarred by the Disciplinary Hearing Commission, the Council, or by order of any court of this State may seek reinstatement to the practice of law prior to five years from the effective date of the order of disbarment. Any order of the Disciplinary Hearing Commission or the Grievance Committee imposing an admonition, reprimand, censure, or stayed suspension may also require the attorney to complete a reasonable amount of continuing legal education in addition to the minimum amount required by the North Carolina Supreme Court.

(d) Any attorney admitted to practice law in this State, who is convicted of or has tendered and has had accepted, a plea of guilty or no contest to, a criminal offense showing professional unfitness, may be disciplined based upon the conviction, without awaiting the outcome of any appeals of the conviction. An order of discipline based solely upon a conviction of a criminal offense showing professional unfitness shall be vacated immediately upon receipt by the Secretary of the North Carolina State Bar of a certified copy of a judgment or order reversing the conviction. The fact that the attorney's criminal conviction has been overturned on appeal shall not prevent the North Carolina State Bar from conducting a disciplinary proceeding against the attorney based upon the same underlying facts or events that were the subject of the criminal proceeding.

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(1933, c. 210, s. 11; 1937, c. 51, s. 3; 1959, c. 1282, ss. 1, 2; 1961, c. 1075; 1969, c. 44, s. 61; 1975, c. 582, s. 5; 1979, c. 570, ss. 6, 7; 1983, c. 390, ss. 2, 3; 1985, c. 167; 1987, c. 316, s. 4; 1989, c. 172, s. 2; 1991, c. 210, s. 5; 1995, c. 431, s. 18; 2005‑237, s. 1.)