

In re WILLIAM N. WITHERSPOON, Respondent,  
Counsellor at Law.

DISCIPLINARY PROCEEDING ON CHARGES OF PROFESSIONAL MISCONDUCT.

Argued November 10, 1960. Decided December 16, 1960.

It is improper for a counselor at law to address a threatening letter to a clerk of court.

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.

After argument and submissions on both sides, before this Court, it was brought to our attention that Counsellor William N. Witherspoon, one of the appellants in said case, had written a letter to Mr. Allen Smith who was the clerk of the Monthly and Probate Court of the Third Judicial Circuit, Sinoe County, and who prepared and transmitted to the Supreme Court the record in said appeal before his appointment as Defense Counsel, the position he now holds in said county.

This letter contained serious threats and demands in connection with what the said counsellor and co-appellant described and alleged as tricks and chicanery employed by the said former clerk in purposely omitting from the record forwarded to the Supreme Court the actual notice of the completion of appeal, as filed at the end of said case in the circuit court, and directing him to send same up promptly, and also warned him of serious consequences if he, Mr. Smith, failed to do as demanded.

Further, in said letter, the respondent informed Mr. Smith that the Supreme Court was likely to send for him to explain away this alleged trick and chicanery.

It was also revealed to this Court that Mr. Smith, in his reply, charged Counsellor Witherspoon with misrepresentations, falsehoods and other like conduct which go

to impugn the moral character and integrity of a lawyer and gentleman. Mr. Smith denied all allegations of trick and chicanery in the handling, preparation and transmission to the Supreme Court of the record in said case, and maintained that the only notice which was filed in said case is that which appears in the record he transmitted to the Supreme Court, a copy of which was included in the completed record he furnished to the said counsellor.

This Court has not considered, nor are we passing upon the insinuating remarks and attacks upon moral conduct and integrity of the former probate clerk contained in the letter of Counsellor Witherspoon. But by way of outlining the circumstances which led to this behavior of Counsellor Witherspoon, the following is hereby noted.

In *Witherspoon v. Clarke*, 14 L.L.R. 194 (1960), the record reveals that an application for diminution of record was filed by appellants after the docketing of said case in the Supreme Court, and that, in the record claimed to have been transmitted short, is the identical notice about which he wrote this letter to former clerk Smith, even though the application was still pending before the Supreme Court for hearing.

This act of Counsellor Witherspoon cannot but be considered as a contemptuous circumvention of this Court by demanding action to be taken by a subordinate of the circuit court that could only have been done after the application of diminution of record had been favorably disposed of and a mandate sent down by this Court demanding the transmission of said notice, if found to be actually deficient in the original record now before this Court.

It might be well to mention, also, that the said Mr. Smith was not the clerk of the Monthly and Probate Court at the time when this letter was addressed to him by Counsellor Witherspoon, and therefore could not perform any of the duties of that office. What, then, could have

been the object of Counsellor Witherspoon sending said letter to him and demanding, under threats, that he do an act which he could not do?

The only explanation so far given to this Court by Counsellor Witherspoon is that his object was to have former clerk Smith purge himself of a wrong that he had done to him, so that, to use the counsellor's own words, he would not die—an inevitable event that no mortal man can escape.

It is clear, therefore, from the above-recited facts and circumstances that the conduct of Counsellor Witherspoon, co-appellant in this case, was professionally unethical and contemptuous of this Court.

For reasons which this Court elects not to mention in this ruling, a suspended sentence of six months from the practice of law directly or indirectly is hereby imposed with the understanding that if, within the six months commencing from the date of this ruling, the said counsellor behaves in any way that goes to revive this matter, the suspension of said sentence will be removed and its imposition invoked to commence as from the time he performs the act which the Court may declare as a revival of said matter. And it is so ordered.

*Respondent suspended.*