

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
08G0035

IN THE MATTER OF)	
)	
Barbara B. DuRant,)	REPRIMAND
Attorney At Law)	
)	

On October 23, 2008 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by T. G.

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 to the respondent attorney.

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 and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure.

The Grievance Committee was of the opinion that a censure is not required in this case and issues this reprimand to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this reprimand.

You represented the mother in a custody dispute over two children for whom the court-appointed a Guardian Ad Litem ("GAL"). The GAL filed two reports to the court, and the Court entered an order which generally reflected the GAL's recommendations. You subsequently filed a Rule 60 motion and a motion to modify custody, to which you attached affidavits from each child that you drafted and notarized. You had not notified the GAL of your meeting with the

children at which these affidavits were executed, or of any other communications with the children.

Rule 4.2(a) prohibits communicating with a person the lawyer knows is represented by another lawyer in the matter without first obtaining that lawyer's consent. RPC 249 addresses the application of Rule 4.2 to a child represented by a GAL, and states that a lawyer may not communicate with a child who is represented by a GAL unless the lawyer obtains the GAL's consent. Therefore, your contact with your client's children and preparation of their affidavits while they were represented by a GAL was in violation of Rule 4.2(a).

In the course of investigating this matter, the State Bar sent a follow-up letter which, among other things, requested a copy of the Court's order denying your Rule 59 motion in this case. You did not provide the order in response to the follow up letter. The State Bar sent another letter pointing out that you had not provided the requested order and reiterating the request. In response, you provided a partial copy of the requested order. The copy of the order you provided to the State Bar omitted the page on which the court noted: "The affidavits attached to Defendant's Motion are inappropriate on their face, especially in light of the fact that, by consent of the parties, a [GAL] was appointed to represent the interests of the children." By failing to provide this order upon request, and then submitting the order with this pertinent page removed, you failed to respond to a lawful demand for information from the Bar in violation of Rule 8.1.

You are hereby reprimanded by the North Carolina State Bar for your professional misconduct. The Grievance Committee trusts that you will heed this reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

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 reprimand by the Grievance Committee, the costs of this action in the amount of \$100.00 are hereby taxed to you.

Done and ordered, this the 13th day of November, 2008


James R. Fox, Chair
Grievance Committee

JRF/lr