

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
09G0620

IN THE MATTER OF)

Richard E. Biemiller,)
Attorney At Law)

REPRIMAND)

On October 22, 2009 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by H. E.

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 a company in an action filed against Mr. E’s clients. On February 10, 2009, Judge Jerry R. Tillett heard your client’s motion for summary judgment. Judge Tillett informed the parties that he would take the motion under advisement and that the parties could submit additional materials to him if they wished. On March 6, 2009, you sent a letter and additional materials to Judge Walter H. Godwin, Jr. In your March 6 letter, you incorrectly

stated that Judge Godwin had heard the summary judgment motion in February. When Mr. E. received a copy of that letter, he reminded you via e-mail on March 13, 2009 that Judge Tillett had actually heard the motion for summary judgment. Mr. E. asked that you redirect your correspondence to Judge Tillett. At first, you indicated that you would send the letter to the proper judge.

Later on March 13, you informed Mr. E. via e-mail that Judge Godwin had entered the order for summary judgment. You also stated that you were not sure if Judge Godwin had spoken to Judge Tillett or how it came to be that Judge Godwin had entered the order. You advised Mr. E. that he could look into the matter and "let me know what your plan is, but at this juncture I don't plan to send anything to Judge Tillett. Let me know."

In your response to the Grievance Committee, you indicated that upon reviewing Judge Godwin's order, you thought that he had not only reviewed the order but had received consent from Judge Tillett to enter the order. You admitted that you thought that situation was highly unusual, but you believed that Judge Tillett and Judge Godwin were aware of the circumstances surrounding Judge Godwin's entering of a summary judgment order when he had not heard the summary judgment motion. The Grievance Committee found that you should have promptly corrected this matter by re-sending the order to Judge Tillett. Your failure to correct the error of sending the order to the wrong judge violates Rule 3.3(a)(1).

Furthermore, you admit that you had an ex parte communication with Judge Tillett when, with no prior notice to Mr. E., you called Judge Tillett to apologize for the situation and asked him whether you should withdraw from the case so as not to prejudice your client. Your ex parte communication with Judge Tillett violated Rule 3.5(a)(3).

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 January 24, 2008 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 11th day of November, 2009



James R. Fox, Chair
Grievance Committee