

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
10G0925

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IN THE MATTER OF

Mark R. McGrath,  
Attorney At Law

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REPRIMAND

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On January 26, 2012 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by T. N.

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.

R.F., M.M., and M.C. were residents of Galloway Ridge, a retirement community. M.M. and M.C. (who were roommates) employed a housekeeper with prior criminal convictions for victimizing the elderly. Although Galloway Ridge policy required residents to perform criminal background checks on their employees, M.M. and M.C. did not run a check on the housekeeper. In early December 2007, M.M. and M.C. discovered that the housekeeper was stealing from them

and asked R.F., who lived across the hall, to be present when they confronted the housekeeper about the theft. When M.M. and M.C. confronted the housekeeper, she savagely attacked all three of the elderly women, beating them with a cane. M.M. and M.C. died from their injuries. R.F. was severely wounded but survived.

You represented M.M. and M.C.'s estates ("the estates") in wrongful death actions against Galloway Ridge. You agreed to concurrently represent R.F. in seeking recovery for her injuries, despite the fact that R.F. had potential claims against the estates. This concurrent representation created a situation in which "the representation of one client [might] be materially limited by [your] obligations to another client." Jointly-represented clients can consent to this type of conflict if both give written informed consent to the conflict and its possible ramifications *before* the lawyer undertakes joint representation. You did not obtain consent to the joint representation for at least six months after you had undertaken it. Moreover, the consent you obtained was not adequately informed in that you did not explain to your clients all of the foreseeable ramifications of the joint representation, including the possibility that if the parties became adverse you would have to withdraw from representing all of them. By undertaking this representation involving a concurrent conflict of interest, you violated Rule 1.7(a).

The Committee also noted that your communications with the lawyer representing the estates (who you referred to as "an imbecile" in correspondence with his malpractice carrier) was unprofessional. The Committee cautions you that *ad hominem* attacks and specious threats of legal action against another lawyer are unprofessional and not in accord with accepted practice.

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 July 23, 2010 by the Council of the North Carolina State Bar regarding the taxing of administrative fees and investigative costs to any attorney issued a reprimand by the Grievance Committee, an administrative fee in the amount of \$350.00 is hereby taxed to you.

Done and ordered, this the 27<sup>th</sup> day of February, 2012.

  
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Margaret M. Hunt, Chair  
Grievance Committee

MMH/lr