

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
90G0526 (III)
90G0235 (III)
90G0173 (III)

IN THE MATTER OF

WILLIAM L. DURHAM
ATTORNEY AT LAW

PUBLIC REPRIMAND

On April 11, 1991, the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by Carol Osen, Johnsie Gourley and the North Carolina State Bar.

Pursuant to Section 13(7) of Article IX of the Rules and Regulations of the North Carolina State Bar, the Grievance Committee, after considering the evidence, including your response to the Letter of Notice, found probable cause which 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 a Private Reprimand, a Public Reprimand, or a Public Censure to the accused attorney.

The Grievance Committee was of the opinion that a complaint and hearing are not required in this case and issues this Public Reprimand to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this Public Reprimand and I am certain that you will understand fully the spirit in which this duty is performed.

A Public Reprimand is a serious form of discipline imposed by the Grievance Committee. The Grievance Committee felt that your conduct warranted public discipline due to your violation of the Rules of Professional Conduct. The committee trusts that this misconduct will not recur.

You were the executor of the estate of Lucille G. Bullard. Ms. Bullard died on July 21, 1988, and you were qualified by the Davidson County Clerk of Superior Court as the fiduciary on August 25, 1988. As of April 5, 1990, the date of the grievance filed by Johnsie B. Gourley, you had not closed the Bullard estate. Several beneficiares of the Bullard estate had not been paid.

Your delay in handling the Bullard estate violates Rule 6(B)(3) of the Rules of Professional Conduct. A lawyer has an obligation under this rule to attend promptly to his client's affairs and not neglect them. In your May 30, 1990 response to Ms. Gourley's grievance, you indicated that the estate should have been completed in a timely fashion. You explained that a former employee misrepresented that everything had been handled in the Bullard estate. Upon your review of the estate file, you determined that the employee had not handled the affairs of the estate in a timely manner. You further explained that there was a substantial staff turnover in your office which posed

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problems in getting the work done. Finally, you indicated you experienced personal problems which took you out of your office for several days.

Although the Grievance Committee can understand the various personal and professional problems that may confront a lawyer, you must not forget your professional obligation to handle promptly your client's affairs. Although you had delegated the responsibility of handling the Bullard estate to a paralegal, Canon 3 of the Rules of Professional Conduct provides that you, as the lawyer, are responsible for your client's case -- not the paralegal.

On August 13, 1990, Carol Osen filed a grievance against you relative to your handling of the Bullard estate. Ms. Osen raised the same concerns as Ms. Gourley and further complained that you had filed a final accounting in the Bullard estate on September 26, 1990, representing that \$34,204.10 had been disbursed to several beneficiaries, including the Clemmons Presbyterian Church of which Ms. Osen is an elder. At the time that Ms. Osen filed her grievance with the State Bar, you still had not closed the estate. Also, there was a concern about the beneficiaries not receiving the money indicated on the final accounting. You explained that you asked the clerk of superior court to check and approve the final accounting and you were waiting to hear from the clerk regarding her approval prior to disbursing the checks. This series of events caused great concern to the beneficiaries of the estate and the State Bar.

The Grievance Committee was concerned about your handling of the appeal of Charles Bennett. From your response to the Grievance Committee, you indicate that Mr. Bennett did not pay the necessary cost for the trial transcript. You state that you contacted Mr. Bennett's wife and told her of their need to pay the appeal cost before you could proceed. In a letter dated November 29, 1989, you restated the need for the \$1,500 to deposit with the court reporter for the preparation of the transcript. However, at the time you sent this letter of November 29, 1989, the time for serving the proposed record on appeal had expired. You had not obtained an extension of time to prepare and serve the proposed record on appeal.

You later sought to withdraw as the attorney for Mr. Bennett on his appeal. However, Judge Joseph R. John, Sr., denied your request because there were only a few weeks remaining to perfect Mr. Bennett's appeal. Judge John indicated that to allow you to withdraw at that time would be unfair to Mr. Bennett and to any subsequent counsel appointed to represent him.

You did not attend promptly and diligently to perfecting Mr. Bennett's appeal. It appears that you should have made an earlier determination that Mr. Bennett was in need of other counsel since he could not pay your fee and the appeal costs. Your delay in making that decision jeopardized Mr. Bennett's appeal rights. Again, the Committee is aware that you experienced some personal problems during the time you were handling this appeal. However, a lawyer must not forget his professional obligation to represent his client in a competent and prompt manner. Your conduct relative to handling Mr. Bennett's appeal did not comply with Rule 6(B)(3) and Rule 7.1(A)(1), (2) and (3) of the Rules of Professional Conduct.

You are hereby publicly reprimanded by the North Carolina State Bar due to your professional misconduct. The Grievance Committee trusts that you will ponder this Public Reprimand, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. This Public Reprimand should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibility to the public, your clients, your fellow attorneys and the courts to the end that you demean yourself as a respected member of the legal profession whose conduct may be relied upon without question.

This Public Reprimand will be maintained as a permanent record in the judgment book of the North Carolina State Bar. Since a complaint was made and professional misconduct has been found, the complainant will receive a copy of

this Public Reprimand. A copy also is available to the public upon request.

Within 15 days after this Public Reprimand is served upon you, you may refuse this Public Reprimand and request that charges be filed. Such refusal and request must be addressed to the Grievance Committee and filed with the Secretary. If you do file such refusal and request, counsel shall thereafter be instructed to prepare and file a complaint against you with the Disciplinary Hearing Commission of the North Carolina State Bar. The Hearing before the Disciplinary Hearing Commission is public and all of its proceedings and its decision are public.

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 \$50.00 are hereby taxed to you.

Done and ordered, this 23 day of May, 1991.

Robert J. Robinson

Robert J. Robinson, Chairman
The Grievance Committee
North Carolina State Bar

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