

10080

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
96G1048(I)

IN THE MATTER OF)

GARY UNDERHILL, JR.)
ATTORNEY AT LAW)

REPRIMAND

On January 23, 1997, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Michael P. Hogan.

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, reprimand, or 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 and I am certain that you will understand fully the spirit in which this duty is performed.

Michael P. Hogan retained you in August of 1995 to handle a speeding ticket that he received while traveling in North Carolina. Mr. Hogan hired you as a result of receiving your direct mail solicitation letter dated July 12, 1995. For almost a year, you took no substantive action in handling Mr. Hogan's speeding ticket. Mr. Hogan and his California attorney wrote you on several occasions and asked that you resolve Mr. Hogan's case. By the time you made serious efforts to resolve the matter, Mr. Hogan had hired another attorney who subsequently disposed of the case.

In your response to Mr. Hogan's grievance, you admitted that you had no "justifiable excuse" for the untimely manner in which you handled his case. You further stated that Mr. Hogan's case "just simply got away from me." Your failure to attend diligently and promptly to Mr. Hogan's case violated Rule 6(b)(3) of the Rules of Professional Conduct. In addition, your failure to communicate with Mr. Hogan about his case violated Rule 6(b)(1) and (2) of the Rules of Professional Conduct. Finally, your inattention to Mr. Hogan's traffic case is also in violation of Rule 1.2(d) of the Rules of Professional Conduct.

Your direct mail solicitation letter violated Rule 2.4(c) of the Rules of Professional Conduct since the disclaimer language, "This is an advertisement for legal services," was not in print as large or larger than your name on your letterhead. In addition, the State Bar Grievance Committee was concerned about the language that you included in your direct mail solicitation letter which seemed to indicate that the State Bar had given its imprimatur to your letter to Mr. Hogan. It is correct that direct mail solicitation letters are allowed by the United States Supreme Court and by the Rules of Professional Conduct of the North Carolina State Bar. However, the Grievance Committee was concerned that your letter may mislead the public to think that the State Bar approves of your method of solicitation.

You received a letter of notice regarding Mr. Hogan's grievance on September 11, 1996. You failed to respond promptly to this grievance according to the State Bar's rules. You were given an extension until October 14, 1996 to respond to this grievance. You did not respond by that deadline and you asked for an extension until November 1, 1996. You finally responded to this grievance by letter dated November 5, 1996.

Your failure to respond promptly to this grievance violated Rule 1.1(b) and Rule 1.2(d) of the Rules of Professional Conduct. You are advised that you should respond promptly to all State Bar grievance investigations.

You are hereby reprimanded by the North Carolina State Bar due to 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 \$50.00 are hereby taxed to you.

Done and ordered, this 5th day of February, 1997.


Ann Reed
Chair, Grievance Committee
The North Carolina State Bar