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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
99G0709

IN THE MATTER OF

Romallus O. Murphy
Attorney At Law

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REPRIMAND

On April 13, 2000 the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by Katie L. Brown.

Pursuant to Section .0113(a) of the Discipline & 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, and I am certain that you will understand fully the spirit in which this duty is performed.

The Complainant, Katie L. Brown, retained you on or around October 27, 1993 to file a medical malpractice action. You filed the suit on her behalf on May 8, 1995. This lawsuit was filed before Rule 9(j) was adopted, requiring review of the allegations in the complaint by a healthcare provider relating to the standard of medical care. Subsequently, you could not find a

medical expert to testify at trial, so you took a voluntary dismissal of the case without prejudice. You advised the Complainant of the voluntary dismissal and the reasons for the dismissal by letter dated August 3, 1995. You again wrote the Complainant on May 6, 1996, advising her that her medical malpractice claim was still alive, but that you had been unable to obtain medical reports. You promised to refile Complainant's lawsuit by August. On August 1, 1996, you refiled the Complainant's medical malpractice action. By this time, Rule 9(j) had been adopted, requiring medical review of the malpractice pleadings. You identified medical experts who would have opined that the medical care the Complainant received did not comply with the applicable standard of care. However, you did not receive the experts' reports prior to refiling the civil complaint on August 1, 1996. You received the medical reports on August 16, 1996 and September 16, 1996. Thereafter, you filed a motion seeking to supplement the pleadings. You provided the Complainant with a copy of the motion, the supplemental pleadings and the medical reports that you filed with the supplemental pleadings. On October 23, 1996, the trial court dismissed Complainant's lawsuit for failure to comply with Rule 9(j), ruling that Rule 9(j) precluded an amendment of the pleadings pursuant to Rule 15, as a matter of law. You reviewed the relevant law and decided that there was no basis for appeal from the trial court's dismissal of Complainant's lawsuit. Therefore, you did not file an appeal. It appears that you were precluded from refiling the lawsuit after the dismissal by the trial court because you had already entered a voluntary dismissal without prejudice in August 1995. Subsequently, you filed a Rule 60 motion with the trial court based in part on cases involving Rule 9(j) which had been decided by the North Carolina Court of Appeals following the dismissal of Complainant's lawsuit. The trial court denied the Rule 60 motion. You did not appeal the trial court's decision. Although you apparently informed the Complainant of the trial court's denial of the Rule 60 motion, it is clear that you did not adequately explain the proceedings in this case to the Complainant so that she could understand the proceedings and could make an informed decision about the legal matters. Based on the foregoing facts, the Grievance Committee concluded that you violated Rule 6 of the superseded Rules of Professional Conduct by failing to keep Complainant adequately and reasonably informed of all critical issues and rulings in her case.

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 \$50.00 are hereby taxed to you.

Done and ordered, this the 22 day of May, 2000.


James K. Dorsett III Chair
Grievance Committee