

21203

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
01G0874

IN THE MATTER OF)

TERENCE E. MCENALLY III,)
ATTORNEY AT LAW)

REPRIMAND

On April 17, 2002, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

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

On July 27, 2001, you appeared in Wake County District Court on behalf of Israel Galarza, who was charged with DWI. You and the Assistant District Attorney assigned to the case presented a plea bargain to the trial judge. The ADA advised the court that there were no aggravating factors for purposes of sentencing. You stated that the case was a "level 5" (meaning, that Galarza had no prior DWI convictions) and that Galarza had "a clean driving record and is an all around good guy."

The trial judge checked the courtroom computer, however, and determined that there had been a civil revocation of Galarza's license. He directed the courtroom clerk to check further and it was ultimately determined that Galarza had pled guilty to DWI on April 5, 2000. When the judge asked the Assistant D.A. if he was certain that there were no aggravating factors, you protested and said that the DMV record in your file did not indicate that Galarza had a prior conviction. You contended that the state was bound by the agreement and that the judge could not reject it. Nevertheless the court did not accept the plea and it was ultimately determined that you were counsel of record for Galarza in the April 5, 2000 case as well.

You knew or should have known as of July 27, 2001 that Galarza had a prior conviction for DWI, since you had represented him in the prior DWI case only 16 months before. At the very least, your conduct in asserting that Galarza had a "clean driving record" and was "an all around good guy" was reckless since you had apparently had not consulted with your client or checked your own office records. Your conduct in this regard violated Rule 8.4(d) of the Revised Rules of Professional Conduct.

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 4th day of July, 2002.



Calvin E. Murphy
Chair, Grievance Committee