

12222

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
01G0400

IN THE MATTER OF)	
)	
THEOPHILUS O. STOKES)	REPRIMAND
ATTORNEY AT LAW)	
)	

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

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.

You agreed to represent Duke Nelson in a wrongful termination claim against his former employer, Dow Corning. You filed suit against Dow Corning in December 1996 on the wrongful discharge claim. In response, you received a notice from Dow that they had filed bankruptcy in May 1995, which affected the stay of any actions against the company. In February 1997, the Superior Court issued an order closing the file on Mr. Nelson's claim because of Dow Corning's pending bankruptcy.

The Committee found that, after Mr. Nelson's action was dismissed, you failed to take any action to protect his legal rights or pursue his claim for numerous years. You did not, for example, monitor the status of the Dow Corning bankruptcy or ensure that a proper claim was filed in the bankruptcy proceeding on behalf of Mr. Nelson. You also did not pursue an appeal of the dismissal order.

Mr. Nelson eventually filed a grievance with the North Carolina State Bar. You were served with a letter of notice regarding the grievance on approximately May 21, 2001, required to respond within 15 days, but failed to do so. Additionally, you were sent a follow-up letter requesting additional information regarding the status of Mr. Nelson's claim against Dow Corning. You received this letter on August 27, 2001, were requested to respond no later than the end of September, but again failed to do so. Although you eventually responded to both of these inquiries, it was only after additional correspondence and further requests were made.

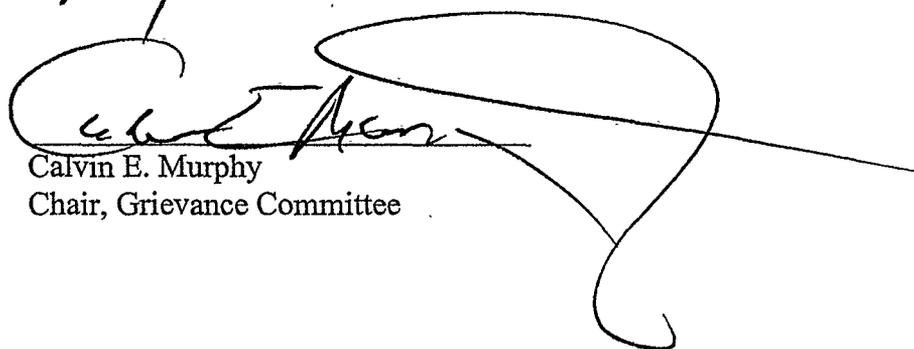
The Committee found that your conduct violated several Revised Rules of Professional Conduct. First, the Committee concluded that you failed to act with reasonable diligence and promptness in pursuing Mr. Nelson's wrongful termination claim after the dismissal order in February 1997 in violation of Revised Rule 1.3. Second, the Committee concluded that you failed to respond promptly to reasonable requests for information in a disciplinary matter in violation of Revised Rule 8.1(b).

In deciding to issue this Reprimand, the Committee considered several aggravating factors. First, you had prior disciplinary history for similar violations. Second, you recently had been warned about failing to promptly respond to a State Bar grievance matter.

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 2^d day of Aug, 2002.


Calvin E. Murphy
Chair, Grievance Committee