

8793

NORTH CAROLINA

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
02G0139

WAKE COUNTY

---

|        |                     |   |           |
|--------|---------------------|---|-----------|
| IN RE: | JOHN HALSTEAD, JR., | ) |           |
|        | ATTORNEY AT LAW     | ) | REPRIMAND |
|        |                     | ) |           |
|        |                     | ) |           |

---

On October 16, 2002, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Mr. Ricky McPherson.

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 were appointed as counsel to represent Mr. McPherson on an appeal of his judgment in Pasquotank County file number 96 CRS 5138 on 16 October 2000. You did not file an appeal on behalf of Mr. McPherson in a timely manner. As a result, the Court of Appeals ordered an inquiry into whether you should be discharged as attorney for Mr. McPherson on his appeal on

18 February 2002, more than a year after your appointment. The Superior Court then had to conduct the inquiry at which you were discharged on 28 March 2002.

You advised the Committee and the Court that you did not believe that there were adequate grounds for an appeal and you believed any appeal would be considered frivolous. You also advised the Committee that you believed the more appropriate test of Mr. McPherson's judgment would be by a motion for appropriate relief that would challenge your representation of him originally on grounds of ineffective assistance of counsel. However, you did not ask the court to relieve you of your appointment and you allowed the case to simply linger for more than a year. While the courts have not precluded Mr. McPherson's challenge, he has remained incarcerated while you failed to act.

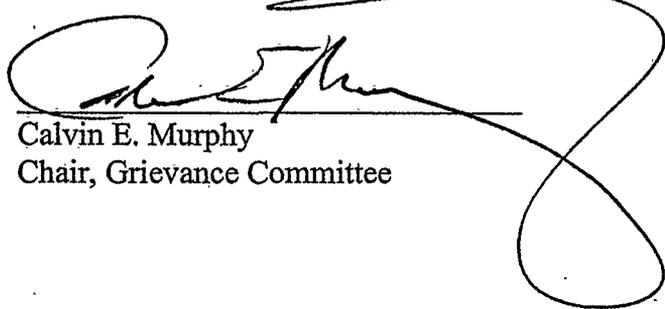
The Committee found that your above-described conduct violated several Rules and Revised Rules of Professional Conduct. By failing to file the appeal on a timely basis, you failed to diligently handle a matter entrusted to you in violation of Rule 1.3. By not informing your client of the status of the appeal or your concerns, you failed to adequately communicate with your client in violation of Rule 1.4. By failing to move to withdraw from representation of your client on a timely basis when you had doubts about continued representation, you failed to withdraw as counsel in an appropriate manner. By failing to handle the appeal in an appropriate and timely manner and requiring the intervention of the courts to determine if you should be removed as counsel, you prejudiced your clients rights during the course of representation and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d) and (g).

In deciding to issue a Reprimand, the Committee considered the following mitigating factors: the absence of any prior discipline and your cooperation with both the court and the Committee after this matter came to light.

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 27 day of Oct, 2002.

  
Calvin E. Murphy  
Chair, Grievance Committee