

168

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
95G0606 (II)

IN THE MATTER OF)

EDWARD R. BAIN,)
ATTORNEY AT LAW)

REPRIMAND

On October 19, 1995, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Mr. Edward Wade.

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.

You represented Mr. Edward Wade on behalf of the town of Erwin in an action against various town officials. You were successful in that action and Judge F. Gordon Battle ordered that the defendants in the action pay \$5,040.00 plus interest from June 28, 1993. Judge Battle further ordered that "upon the payment of this judgment, the Clerk shall disburse Five Hundred Dollars (\$500) of such funds to Edward Wade to indemnify him for his services in connection with the prosecution of this cause."

The defendants paid the money to the office of the clerk of superior court in Harnett County in satisfaction of the judgment. The clerk sent the money to you and you disbursed a check in the amount of \$5,229.26 to the town of Erwin. You kept \$500.00 in your trust account, this money being due to Mr. Wade as ordered by the court.

Mr. Wade has requested that you disburse the \$500.00 to him. However, you have not disbursed that money to Mr. Wade because you believe that Mr. Wade should pay the balance of your attorney's fee for your legal services.

The Grievance Committee finds that your failure to disburse \$500.00 to Mr. Wade as ordered by a superior court judge violates Rule 10.2(e) of the Rules of Professional Conduct. That rule requires a lawyer to promptly pay or deliver to the client or to third persons as directed by the client the funds, securities, or properties belonging to the client to which the client is entitled in the possession of the lawyer.

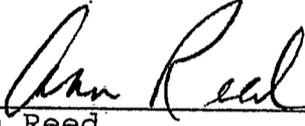
Furthermore, your conduct violates Rule 1.2(d) of the Rules of Professional Conduct. Rule 1.2(d) requires that a lawyer shall not engage in conduct prejudicial to the administration of justice. Your failure to pay the \$500.00 to Mr. Wade violates the court's order. As an officer of the court, you have an obligation to comply with orders of the court.

The Grievance Committee believes that you have other recourses to pursue with respect to receiving payment of your attorney's fee. However, you should not hold "hostage" the \$500.00 that the court has ordered you pay to Mr. Wade.

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 16th day of November, 1995.



Ann Reed
Chairman, Grievance Committee
The North Carolina State Bar

<481-197>