

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
05G0697

IN THE MATTER OF)

SAMUEL S. POPKIN,)
Attorney At Law)

REPRIMAND)

On January 19, 2006 the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by Ms. Trina McDonald.

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.

You represented Ms. McDonald in a legal malpractice claim and filed a complaint in Onslow County on or about September 4, 2003. Service upon the defendant was never completed, however you did file several alias and pluries summons. The court placed the file on inactive status.

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Throughout the representation, however, you failed to communicate with Ms. McDonald, failed to keep her informed of the status of case and failed to return Ms. McDonald's phone calls. In addition, when Ms. McDonald called your office, your staff repeatedly told Ms. McDonald that she was not a client and that you did not handle legal malpractice claims. You also failed to comply with Ms. McDonald's request for a copy of her file. The Grievance Committee has therefore determined that you have violated Rule 1.4, Communication.

The Grievance Committee has also determined that you failed to work on Ms. McDonald's case in a diligent manner. You did make a one-time \$10,000 settlement demand on the defendant insurance company, but ignored the insurance companies attempts to communicate with you regarding settlement. Although you were not working on settling Ms. McDonald's case, you informed her that there was no need to go to court because you were close to settling the matter, which was not true. You have therefore violated Rule 1.3, Diligence.

Upon receiving a Letter of Notice from the Bar regarding the grievance filed by Ms. McDonald, you did meet with Ms. McDonald and you agreed to pay her \$10,000 to settle matter between the two of you rather than pursuing a lawsuit. Believing that the statute of limitations on the legal malpractice claim was gone, Ms. McDonald agreed to accept \$10,000 to cover the value of the legal malpractice case and to compensate her for your failure to properly handle the legal malpractice case.

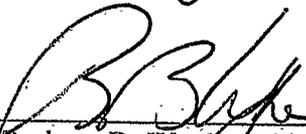
You drafted a release wherein Ms. McDonald agreed to release you from any liability for malpractice. You retained the services of another attorney to represent your interests and to administer the signing of the release and payment of the \$10,000. You, however, failed to explain to complainant that she had a right to independent counsel. Thus, at the time Ms. McDonald signed the release and accepted a check in the amount of \$10,000, she was unrepresented by counsel. The Grievance Committee therefore determined that you violated Rule 1.8(h)(1) and (2), Conflict of Interest.

Furthermore, you were slow to respond to the initial Letter of Notice and to follow up questions presented by Deputy Counsel, failed to provide a full and fair disclosure of all the relevant facts, provided inconsistent information to Deputy Counsel, and failed to provide a copy of your file and the court file pursuant to the request of Deputy Counsel. The Grievance Committee therefore determined that you violated Rule .0112(c).

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 8th day of February, 2006



Barbara B. Weyher, Chair
Grievance Committee

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