

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
19G0115

IN THE MATTER OF	)	
	)	REPRIMAND
FRANZ F. HOLSCHER,	)	
ATTORNEY AT LAW	)	

On July 18, 2019 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by K B. The grievance was assigned to a Subcommittee, which thoroughly reviewed the results of the State Bar staff's investigation of this matter.

Pursuant to Section .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, the Grievance Subcommittee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Subcommittee 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. S.B., a minor, regarding an accident in which she was injured when she exited a Beaufort County school bus in March 2013. Complainant represented the Beaufort County Board of Education. It was alleged that Ms. B. was prevented from participating in sports and continued to suffer from various medical problems as a result of the accident.

On September 21, 2016, Complainant deposed Ms. B. You represented Ms. B. at the deposition. Ms. B. testified that she had not played basketball since the accident in March 2013

and that she was unable to participate in physical activities because she had not been cleared by her doctor.

At the deposition, you asked Ms. B. if she had been able to play basketball since the accident and she responded "No." In fact, Ms. B. had played basketball since the March 2013 accident. Ms. B. played recreational basketball on January 29, 2015 in a game in which you coached her and other team members.

In your response to the grievance, you said that you asked a senior partner in your firm to take Ms. B.'s case since you had very little civil litigation experience and you were too emotionally involved to handle the case. You admitted that for 1.25 hours you "prepared for and had a conference with my senior partner, Ms. B., and her grandmother." You also stated that you spent an additional 6.75 hours reviewing discovery, preparing for and attending depositions, and having interoffice conferences. You admitted in a response to this grievance that it was "important to establish if she [Ms. B.] played basketball after the 2013 accident." The Grievance Committee found that a reasonable attorney would have asked his client during the client's preparation for the deposition if she had played basketball or engaged in any physical activity since the accident.

You admit that the questions you posed to Ms. B. "inaccurately established she had not played basketball since the accident." You stated that you didn't remember that she played basketball after the 2013 accident. You further stated: "After my review, consideration, and investigation of this matter, I know my lapse in memory at that time contributed in false evidence being presented and prevented me from realizing that the record needed to be corrected." The Grievance Committee found that you assisted Ms. B. in presenting false testimony at her deposition in violation of Rule 8.4(d).

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 July 23, 2010 by the Council of the North Carolina State Bar regarding the taxing of administrative fees and investigative costs to any attorney issued a reprimand by the Grievance Committee, an administrative fee in the amount of \$350.00 is hereby taxed to you.

Done and ordered, this the 7th day of August, 2019.

A. Todd Brown Sr.
A. Todd Brown, Sr., Chair
Grievance Committee

ATB/lb