

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
11G0939

IN THE MATTER OF

F. Douglas Banks,
Attorney At Law

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REPRIMAND

On July 19, 2012 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by R. O.

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.

On October 3, 2009, Mr. O was injured in an on-the-job accident while testing a motorcycle owned by one of his employer's customers. A workers' compensation claim was filed on behalf of Mr. O with your client, the workers' compensation carrier. On October 15, 2009, you were asked to represent the insurance company in evaluating whether it, as the

subrogating carrier, had a claim against the truck driver who struck Mr. O as well as her employer for the workers' compensation benefits to be paid out to Mr. O.

On or about October 16, 2009, you and the insurance company's representative met with Mr. O about his claim. During the meeting, you explained to Mr. O the portion of the worker's compensation act which allowed Mr. O as well as the insurance company the right to pursue a claim against the driver of the truck and her employer. You explained that there could be a conflict of interest if the attorney representing the insurance company also represented the injured worker without first addressing the insurance company's subrogation interests. You told Mr. O that he had the right to sue the truck driver and/or her employer for the first twelve months after the date of the accident. Furthermore, you told Mr. O that the worker's comp law gave Mr. O an avenue to reduce or eliminate the insurance company's subrogation interest. Mr. O contacted you with questions about his right to sue the truck driver.

On January 19, 2010, you, Mr. O, and your client's representative met with an accident reconstructionist who you retained on behalf of the insurance company. Although you claim that you did not represent Mr. O, he was at the meeting without an attorney. On February 16, 2010, you, Mr. O and the insurance company's accident reconstructionist met with the truck driver's accident reconstructionist at the accident scene. Mr. O was questioned about the details of the accident during that meeting. Mr. O did not have his own legal counsel at the January 19 or February 16 meetings with the accident reconstructionists.

In your response to this grievance, you indicate that you did not represent Mr. O and never offered to represent him. You believed it was clear to Mr. O that you represented the worker's compensation carrier. Nevertheless, you advised Mr. O on the worker's compensation law as it relates to the insurance company's subrogation interest. You spoke with Mr. O and gave insight into the process, the law, and Mr. O's rights regarding worker's compensation. Since Mr. O was unrepresented at the time you spoke with him, you violated Rule 4.3(a) relative to a lawyer dealing with an unrepresented person.

In addition, the Grievance Committee was concerned that you had meetings with Mr. O wherein the details of the accident were discussed in front of third parties, including the accident reconstructionist for the truck driver's insurance company, when Mr. O was not represented by counsel. These discussions could have negatively impacted Mr. O's claims against the truck driver. Your allowing Mr. O to speak with these third parties when he was not protected by his own counsel violates Rule 4.3(a) of the Rules of Professional Conduct.

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 1st day of November, 2012.

Margaret M. Hunt
Margaret M. Hunt, Chair
Grievance Committee

MMH/lr