

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
08G0910

IN THE MATTER OF

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Stephen F. Wallace,
Attorney At Law

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REPRIMAND

On January 22, 2009 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Mr. Sommer.

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 the plaintiff in *McMillan v. Swift et al*, Wake County file no. 05 CVS 9881 (*McMillan I*) and in *McMillan v. Swift et al*, Wake County file no. 06 CVS 6276 (*McMillan II*). In December 2006 the court sanctioned you for filing the *McMillan II* action citing that adding several of the same defendants in *McMillan I* to *McMillan II* was "not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law

because it clearly violated the doctrines of *res judicata* and *collateral estoppel*.” The court also found that you filed the Amended complaint in *McMillan II* for the improper purpose of circumventing the court’s prior order granting summary judgment in *McMillan I*.

Despite the fact that your client’s suit had been dismissed, including a dismissal by the North Carolina Court of Appeals, you sought to settle with defendant Mr. Sommer the original claims outlined in the two complaints you filed. Although Mr. Sommer filed a counterclaim in his Answer to the complaint, Mr. Sommer did not pursue such counterclaim and understood that since the court previously granted summary judgment dismissing him from both *McMillan I* and *McMillan II*, he was no longer a party to any lawsuit. Knowing that Mr. Sommer did not understand that he had no legal obligation to your client, you continued to pursue Mr. Sommer in an effort to obtain a settlement based on the original claims for relief included in *McMillan I* and *McMillan II*. You took advantage of Mr. Sommer’s *pro se* status and have therefore violated Rule 4.4(a)’s prohibition against using means that have not other substantial purpose other than to ... burden a third person... Your conduct was also prejudicial to the administration of justice in violation of Rule 8.4(d): Misconduct.

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 January 24, 2008 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 \$100.00 are hereby taxed to you.

Done and ordered, this the 12 day of February, 2009



James R. Fox, Chair
Grievance Committee

JRF/lr