NORTH CAROLINA 17101

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
06G0831

IN THE MATTER OF	)	
	)	
MICHAEL W. STRICKLAND,	)	REPRIMAND
Attorney at Law	)	
	)	
	)	

On January 18, 2007 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Owen B. Moore, Jr.

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.

Formal Ethics Opinion 99 FEO 4 states: "'[I]n accepting employment in regard to an estate, an attorney undertakes to represent the personal representative in his or her official capacity and the estate as an entity.' After undertaking to represent all of the co-executors, a lawyer may not take action to have one co-executor removed." Your conduct in this case was in

direct contravention of the conflict-of-interest principle articulated in 99 FEO 4, and therefore violated Rule 1.7 (Conflict of Interest – Current Clients).

The trial court expressly found that the removal of Mr. Moore as co-executor was "not warranted under the facts or under the law," which indicates that you violated Rule 3.1's prohibition on bringing an action "unless there is a basis in law and fact for doing so that is not frivolous." The court also noted that your excessive delay in scheduling the hearing at which you challenged Mr. Moore's guardianship fees was "unreasonable," and "worked to the disadvantage, injury and prejudice" of Mr. Moore. Accordingly, your unjustified delay also violated Rule 4.4(a)'s prohibition on "using means that have no substantial purpose other than to embarrass, delay, or burden a third person."

In a follow-up letter regarding this grievance, the State Bar asked who paid your fees after you "ceased doing any work for the estate." You indicated that Mr. Rodwell paid your fees in the action to have Mr. Moore removed as co-executor, but made no mention of the separate action to set aside a prior order awarding guardianship fees to Mr. Moore. The trial court expressly found that your fees for representing Mr. Rodwell in the action to recover guardianship fees were paid out of the estate. Your partial response to this follow-up question was therefore misleading in violation of Rule 8.1(a) (Bar Admission and Disciplinary Matters).

Finally, by failing to respond to the letter of notice regarding this grievance by the deadline specified therein, and failing to respond to a follow-up letter from the State Bar by the deadline specified therein, you failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1(b) (Bar Admission and Disciplinary Matters).

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 22nd day of February, 2007

James R. Fox, Chair
Grievance Committee

JRF/lr