

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
18G0680 & 18G0785

IN THE MATTER OF)
)
MELVYN H. BROWN, JR.,) REPRIMAND
ATTORNEY AT LAW)

On July 18, 2019 the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by T. V. and H. R. The grievances were assigned to a Subcommittee, which thoroughly reviewed the results of the State Bar staff's investigation of these matters.

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.

In April 2018, Ms. T. V. retained you to represent her in a custody dispute in Guilford County. On April 20, 2018, Ms. V. texted you and gave you her son's name, his father's name, and the attorney who represented the father in the custody dispute. She paid you \$250.00 as your attorney's fee at the end of April. On June 22, you asked Ms. V. when you could expect payment of an additional \$500.00 in attorney's fees. Ms. V. told you that she would send the money on the following Friday. Ms. V. said that you raised no issue with her about when she

could make the payment. On June 28, 2018, the father's attorney moved to compel Ms. V. to respond to discovery that was served on you on May 2.

You moved to withdraw on June 28 and the motion was granted on July 9 or 10. The motion was heard on the date that the hearing on temporary custody was scheduled for hearing. In your motion you indicated that Ms. V. had moved out of state without advising you, that you experienced difficulty getting timely responses from Ms. V. and that your current medical condition made it difficult to prepare an adequate defense.

There is no evidence that you told Ms. V. when your motion to withdraw would be heard. There is also no evidence that you told Ms. V. about the temporary custody hearing. On or about July 17, the police removed Ms. V.'s son from her custody. Ms. V. did not know that temporary custody of the child had been given to his father.

You did not keep Ms. V. informed about the discovery requests and any of the court dates, including the hearing on your motion to withdraw. Ms. V. did not have an opportunity to appear at the temporary custody hearing to present her evidence because she was unaware of the hearing date and as a result, she lost custody of her son. The Grievance Committee found that your conduct violated Rule 1.3 and Rule 1.4(a)(1)(2)(3) of the Rules of Professional Conduct.

The investigating attorney from the local grievance committee asked you to file a written response to this grievance. You told the investigating attorney that you did not receive her letter. She then emailed the grievance to you and asked that you provide a written response. You did not provide a written response to the investigating attorney. You did provide a written response to the grievance when asked to do so by State Bar deputy counsel. Your failure to respond in writing to the grievance as requested by the investigating attorney violated Rule 8.1(b) and 8.4(d).

Mr. H. R. retained you to handle a personal injury claim for him and his wife. The case was settled and on July 3, 2018, the insurance company issued a settlement check to your trust account. You do not have a trust account. You turned over the settlement funds to another attorney who disbursed the funds out of his trust account to Mr. R and his wife. Your failure to have a trust account to deposit and maintain entrusted funds violated Rule 1.15(a)(b)(c).

You wrote Mr. R. in an email dated July 12, 2018 that you had "an attorney's lien on 25% of the proceeds recovered as per our agreement." An attorney does not have an attorney's lien pursuant to North Carolina case law. Your representation that you had an attorney's lien is a false or misleading communication about your services in violation of Rule 7.1(a)(1) and your attempt to collect an attorney's lien violated Rule 1.5(a).

In issuing this reprimand, the Grievance Committee found as aggravating factors that you received an admonition in 1990 for failure to communicate and neglect in five clients' cases and that in 2002, the Disciplinary Hearing Commission imposed a one year suspension, stayed for three years for splitting fees with a non-lawyer, failure to supervise non-lawyer assistant, and solicitation of clients by a non-lawyer.

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