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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
94G0393

IN THE MATTER OF )

BAIBA BOURBEAU, )  
Attorney at Law )

REPRIMAND

On July 21, 1994, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Mr. Ervin L. Ball, Jr.

Pursuant to section 13(A) of article IX of the Rules and Regulations 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, reprimand, or 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 and I am certain that you will understand fully the spirit in which this duty is performed.

Roberta and Sammie Burnett had a right of way dispute with their neighbors, Elizabeth and William McDonald. The dispute was litigated in Buncombe County District Court in file number 91 CVD 355. A consent judgment was entered in the case on January 30, 1991. Between that date and February, 1993, when you began to represent the Burnetts, five orders were entered in the case. In three of the orders, Ms. Burnett was held in contempt for violating the consent order. In two other orders, the McDonalds were found not to be in contempt of the consent order, as had been alleged by the Burnetts. None of these orders entered in 91 CVD 355 were appealed by the Burnetts. In addition, Ms. Burnett was found guilty of assaulting Ms. McDonald on four occasions. On February 16, 1993, you filed a complaint in Buncombe County Superior Court, file number 93 CVS 650, on behalf of the Burnetts against the McDonalds alleging the McDonalds' obstruction of the right of way. You filed this lawsuit knowing that the right of way dispute had been litigated in district court. You filed the case in superior court without first attempting to file a motion in the cause in district court to have that court determine if there were issues that could still be litigated in 91 CVD 355. On February 19, 1993, you filed a lawsuit on behalf of the Burnett's son, Jason Apo, against William McDonald alleging that Mr. McDonald had called Chief Petty Officer Miller to tell him that Apo had threatened and cursed Ms. McDonald and that McDonald would ruin Apo's military career if Apo's conduct did not cease. You filed the complaint on behalf of Apo after CPO Miller had told you that McDonald had not called him and made the statements alleged in the complaint. In addition, you filed two additional complaints in Buncombe County Superior Court, one against each of the McDonalds, in March, 1993 alleging malicious prosecution of Ms. Burnett. In December, 1993, you took a voluntary dismissal of these two cases, with prejudice. You filed these lawsuits against the McDonalds to harass them and cause them to expend sums to defend themselves in violation of Rule 7.2(A)(1). You also filed the complaints knowing they were not warranted under existing law in violation of Rule 7.2(A)(2).

In arguments before the Hon. Robert D. Lewis on June 3, 1993 in 93 CVS 650, you made inappropriate comments about your client not having had a fair and impartial hearing of their claims in district court file 91 CVD 355. In the malicious prosecution lawsuits you filed on behalf of Ms. McDonald, you alleged that the conduct of each of the McDonalds had been aided and abetted by a magistrate. In the claim against Ms. McDonald, you also alleged that her conduct had been aided and abetted by an assistant district attorney. You made these allegations in the malicious prosecution lawsuits without any evidence that these officials had done anything improper. In a January 9, 1994 letter to the counsel for the McDonalds, Ervin L. Ball, Jr., you insinuated that Judge Roda had been paid off to destroy tapes of a July 9, 1993 hearing. In a January 15, 1994 letter to Ball, you stated that Judge Brown was biased and prejudiced against your client, had made inappropriate remarks, and had inexcusably disregarded the evidence. In a March 9, 1994 letter to Ball, you

indicated that Judge Lewis was subjective and chose to ignore pleadings. You called his decision subjective and biased and without the trappings of truthfulness, honesty and fairness. Your statements about these judicial officials were without any basis in fact other than your subjective opinion. Your statements violated Rule 8.2(B).

The Grievance Committee considered the monetary sanctions already imposed against you pursuant to Rule 11 in several of these matters as a mitigating factor. That is why the discipline in this matter was not more severe.

You are hereby reprimanded by the North Carolina State Bar due to 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 19th day of October, 1994.

W. Erwin Spainhour  
W. Erwin Spainhour, Chairman  
The Grievance Committee  
North Carolina State Bar