

5517

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
97G1582(IV)

IN THE MATTER OF )

JERRY S. BRACKETT, )  
ATTORNEY AT LAW )

REPRIMAND

On July 16, 1998, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by R.E.A.

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, and I am certain that you will understand fully the spirit in which this duty is performed.

You represented the former spouse of the complainant in this matter. You noticed the deposition of the complainant on May 19, 1997. The deposition was rescheduled for the convenience of the complainant and his attorney to Friday May 23, 1997. You were late for the deposition because of a required court appearance that morning. When you returned to the office, the complainant made several comments about the fact that you were late and demanded

that you pay his attorney's fees for the time he had to wait. As you led the complainant down the hallway in your office to take the deposition, there was a verbal exchange between you and complainant. You and the Complainant were in close physical proximity. While you and the complainant were in close physical proximity, you grabbed the Complainant by the neck. Opposing counsel intervened to end the confrontation. The deposition was rescheduled. Your conduct in grabbing the deponent at a time when he was under compulsory process to attend the deposition was conduct prejudicial to the administration of justice in violation of Rule 1.2(d) of the North Carolina Rules of Professional Conduct. See also Rule 8.4(d) of the North Carolina Revised Rules of Professional Conduct adopted July 24, 1997 containing the same provision. In deciding to issue a reprimand and not impose more serious discipline, the Committee took into account the fact that the complainant had made several provocative statements to you, and also that there had been previous justifiable verbal exchanges at the time that complainant spoke inappropriately to your client. The Committee also noted that there was evidence of a history of domestic violence and threats by complainant against your client and that complainant was subject to a domestic violence order as a result of having previously assaulted your client. Although you may have perceived yourself to have been physically threatened or adequately provoked by complainant, you should not have reacted in the manner in which you did.

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 17 day of May, 1998.

  
James K. Dorsett, III  
Chair, Grievance Committee