

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
08G0549

IN THE MATTER OF

Donald W. Marcari,
Attorney At Law

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REPRIMAND

On July 17, 2008 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

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.

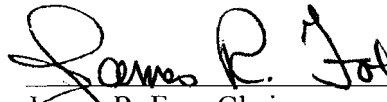
You sent a direct mail solicitation to a person who had been involved in a car accident. The advertising notice, "THIS IS AN ADVERTISEMENT FOR LEGAL SERVICES", was not on the front of the direct mail solicitation envelope. In addition, your solicitation letter to the potential client had the advertising notice in a font that was smaller than your law firm name on the letterhead.

The Grievance Committee found that the aforementioned conduct violated Rule 7.3(c)(1) of the Rules of Professional Conduct. The Grievance Committee was particularly concerned about the absence of the advertising notice on the front of the envelope. The Grievance Committee believed that the lack of advertising notice on the front of the envelope goes to the very heart of Rule 7.3 as it relates to giving the recipient of the direct mail solicitation the opportunity to discard the letter without opening it once the recipient knows that the letter contains an advertisement for legal services.

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 \$100.00 are hereby taxed to you.

Done and ordered, this the 10th day of August, 2008



James R. Fox, Chair
Grievance Committee

JRF/lr