

26173

WAKE COUNTY

GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
01G0657

IN THE MATTER OF)

KIRK E. ELEY,
ATTORNEY AT LAW)

REPRIMAND

On October 17, 2001, 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, and I am certain that you will understand fully the spirit in which this duty is performed.

After October 2000 when the State Bar Council adopted 2000 Formal Ethics Opinion 6, you aired a television advertisement referred to as the "screen door" or "stonewall" ad.

The action in the ad takes place at the front door of a home of a person who has a claim against an insurance company. Two insurance adjusters are addressing the claimant, who is standing just inside the front door, but who is not visible. The adjusters, who are doing all of the talking, make various excuses regarding why the insurance company will not pay most of the damages suffered by the claimant. At that point, the claimant's arm is seen, extending a business card to the adjusters. They take the card and examine it.

Immediately, the senior adjuster, who has been doing most of the talking, declares: "Oh! You got a lawyer - K. Edward Eley." A gong goes off when your name is announced and the adjusters make faces indicating fear and distaste. The senior adjuster then declares "No one said we couldn't settle this one."

The stonewall or screen door ad suffers from the same defects as the strategy session ad which was the subject of 2000 FEO 6. The ad plainly implies that the insurance adjusters will switch from a strategy of delay and denial, to a strategy of settlement, merely upon hearing the name of the advertising lawyer.

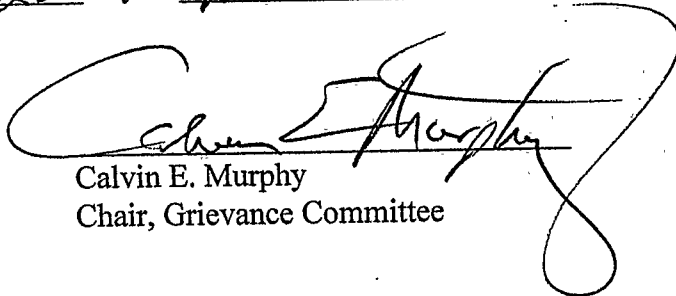
The message is thus misleading, as insurance cases are resolved based upon the facts, such as the nature and amount of damages and existence of defenses and aggravating and mitigating factors. The identity or reputation of the claimant's lawyer is at best a minor consideration and is never the sole or a major factor in determining how a claim is resolved.

Your conduct in promulgating an advertisement which is inherently misleading violated Rule 7.1 of the Revised Rules of Professional Conduct.

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 23 day of Nov, 2001.



Calvin E. Murphy
Chair, Grievance Committee