

22510

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
03G0937

IN THE MATTER OF)

THOMAS P. SHELBY,)
ATTORNEY AT LAW)

REPRIMAND

On April 22, 2004, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Catherine E. Livingston.

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 were hired by Catherine Livingston to file a civil action against a builder for negligent construction of her house. Livingston repeatedly tried to communicate with you about the status of her case with little success. When the case was scheduled for trial, you assured her that it would not be reached. Instead, you took a voluntary dismissal without her knowledge or consent. You failed to re-file the action within a year, and her claim now is barred by the statute of limitations. On June 27, 2003, the State Bar sent you a Letter of Notice that a grievance had been filed concerning this matter. When no timely response was received, the State Bar sent you

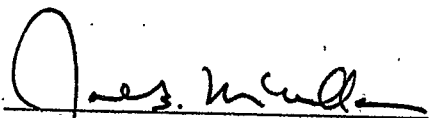
a second letter on August 1, 2003. This letter also was not answered, and you were subpoenaed to appear and answer questions concerning the grievance, pursuant to 27 NCAC 1B § .0112 (f). You failed to appear as required by the subpoena.

You hereby are reprimanded for violating several of the Revised Rules of Professional Conduct and causing potential harm to your former client, the administration of justice, and the profession of law. Your lack of diligence in the handling of the legal matter for which Catherine Livingston employed you and your failure to communicate with her about the matter violated Rules 1.3 and 1.4 of the Revised Rules of Professional Conduct. Your failure to respond to the State Bar's lawful demands for information and your failure to respond to the subpoena to appear and answer questions concerning the grievance violated Rule 8.1 (b) 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 13th day of May, 2004.



John B. McMillan
Chair, Grievance Committee