

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
10G0132

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IN THE MATTER OF

David W. Erdman,  
Attorney At Law

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REPRIMAND

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On October 28, 2010 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by C.G.

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 represented P.C. in his attempts to gain joint legal custody and visitation privileges with his child. On the morning of December 18, 2009, P.C. and C.G., the child's mother, failed to reach a resolution in mediation regarding child visitation. Your client, P.C., submitted an affidavit to the Committee stating that he received numerous communications prior to the mediation raising his concerns about the health, living arrangements and well being of the child and that these concerns were heightened by the unsuccessful mediation.

Following the unsuccessful mediation, you, accompanied by P.C., made an unscheduled and unnoticed appearance before a judge. You indicated to the judge that you were there on a "mission for Christmas mercy." You did not give C.G. prior notice that you were going to the presiding judge, which was in violation of Mecklenburg County Local Rule 11.3. The date of the mediation, December 18, was the last date the district courts were open in 2009. You asserted that it was impractical under the circumstances to provide prior notice to G.C. of this initial appearance.

You engaged in an ex parte communication with the presiding judge, on the record, regarding the merits of the case. Although you initiated an ex parte communication with the presiding judge only for the purpose of scheduling an emergency hearing on the custody and visitation issues, your comments to the judge pertained to more than the need to schedule an emergency hearing on custody and visitation. The transcript of your ex parte communication with the judge reflects that you made negative comments about C.G. and you offered your opinion about her conduct relative to your client and the child. After making those remarks, you apologized on the record for making characterizations before the Judge had heard the evidence.

Furthermore, P.C. testified about the failed mediation and why he believed he should have visitation with the child, primarily in response to questions from the presiding judge. All of these communications took place before the judge about the merits of your motion without C.G. being present and having an opportunity to respond to those statements.

Your ex parte communications with the judge regarding your client's case violated Rule 3.5(a)(3) and your conduct violated Rule 8.4(d).

After these communications, the presiding judge ordered a hearing later that afternoon and directed that C.G. be notified of the hearing. The hearing was held and C.G. attended, participated and testified at the hearing. After the hearing, the presiding judge entered a memorandum of judgment granting P.C. visitation with the child over the Christmas holiday.

There was a January 11, 2010 hearing before the same presiding judge who heard your client's case on December 18, 2009. The presiding judge entered an order, which included a prohibition of C.G. removing the child from Mecklenburg County without further order of the Court. You were ordered to prepare the order from the January 11 hearing. Your client's affidavit stated that later that day, C.G. posted a message on the internet stating: "C.G. is packing up me and the kid and heading to the airport . . . catch me if you can!" P.C.'s affidavit further indicated that he brought the internet message to your attention while you were preparing the order.

After completing the order, you presented it to the presiding judge that same day for his consideration. You did not provide C.G. with a copy of the drafted order prior to presenting it to the presiding judge for his consideration. Mecklenburg County Local Rule 19.3 provides that no order shall be presented to a judge until the opposing attorney or party has had a reasonable opportunity to review it and has been advised of the date when the proposed order will be presented for signature. Mecklenburg County Local Rule 19.4 requires that all orders submitted by attorneys for signature shall be delivered to the family court administrator.

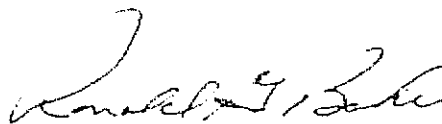
You stated in your response to the grievance that you believed C.G. was leaving the state with the child which created an emergency. You informed the Judge about C.G.'s message and told him that you had not provided C.G. a copy of the proposed order. You did not attempt to give C.G. any notice of the proposed order by e-mailing it to her prior to presenting the order to the judge, even though you had her e-mail address. The Committee found that, notwithstanding your explanations, your failure to follow the local rules regarding serving a drafted order on the opposing attorney or party violates Rule 8.4(d) of the Rules of Professional Conduct.

As part of the materials you submitted to the Committee, you presented considerable evidence from several former judges, current and previous State Bar councilors and other members of the bar that you possess good character, high ethical and moral standards and a reputation for truth, honesty and integrity in the legal community.

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 January 24, 2008 by the Council of the North Carolina State Bar regarding the taxing of administrative fees and investigative costs to any attorney issued a reprimand by the Grievance Committee, an administrative fee in the amount of \$100.00 is hereby taxed to you.

Done and ordered, this the 27<sup>th</sup> day of May, 2011

A handwritten signature in dark ink, appearing to read "Ronald G. Baker, Sr.", is written over a horizontal line.

Ronald G. Baker, Sr., Chair  
Grievance Committee

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