

8248

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
04G0920

---

IN THE MATTER OF

Gustavus L. Donnelly, Sr.  
Attorney At Law

)  
)  
)  
)  
)

REPRIMAND

---

On Thursday, January 20, 2005 the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by Sarah Stevens.

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.

At some point before March 2004, you began representing Tracy Oakes, the mother in a child custody matter. At the time, the father of the minor child, Joe Simpson, had custody through a prior consent order. You filed a motion on behalf of the mother to change the custody arrangements. Mr. Simpson was represented by counsel. A hearing was held in March 2004, but

your client's motion to award her custody was denied at that time. Another hearing, on support, was scheduled for June 10, 2004, but was continued to June 30, 2004. Mr. Simpson was still represented by counsel on the matters scheduled for the June hearing.

On or about June 16, 2004, your client informed you of another change in circumstances affecting the custody of the minor child. In a series of telephone calls over the next couple of days, your client asked you to prepare a consent custody order granting her custody of the child. On Friday, June 18, 2004, you prepared such a consent custody order. Although you knew that the father was still represented by counsel, you made arrangements directly with the father to meet him at the courthouse on Monday afternoon to enter the consent order prepared at your client's direction. You also knew at the time of this conversation that opposing counsel was on vacation that week and you did not discuss the matter with her.

On Monday, June 21, 2004, you met with the opposing party, the father, at the courthouse. You presented him with the proposed consent order. He reviewed and signed it. Although you contend that he informed you that he did not want his counsel's review of the proposed order, you made no effort to communicate with opposing counsel on Monday even though you knew that she should have returned from vacation. You then left the signed consent order with the judge for entry by the court without informing opposing counsel or the court that there was opposing counsel of record in the case. After the judge entered the order, you served a copy on opposing counsel. Opposing counsel contacted you immediately upon receipt of the order and asked that you have it withdrawn. You did not and opposing counsel was forced to file a motion to set aside the order. A hearing was held and the court ordered the consent order set aside.

The Committee found that your above-described conduct violated several Revised Rules of Professional Conduct. Rule 4.2 prohibits an attorney from communicating with the opposing party when the attorney knows that that party is represented by counsel. At the time you met with the opposing party, you knew that he was represented by counsel. Even if he told you that he did not want his counsel to review the order before he signed it, you should not have met with or presented the consent order to him without opposing counsel's prior authorization. Further, opposing counsel was still counsel of record in the court proceeding. You left the signed consent order with the court for entry without any prior notice to opposing counsel. That act violated the Rule 3.5, which prohibits *ex parte* communications with the court. Finally, because you failed to take appropriate steps to rescind the consent order after opposing counsel protested its entry, you forced opposing counsel to file a motion with the court and the court to conduct a hearing on this matter. By requiring a court hearing to set aside the order for which you had inappropriately obtained the opposing party's consent, you violated Rule 8.4(d), which prohibits an attorney from engaging in conduct prejudicial to the administration of justice.

In deciding to issue a Reprimand, the Committee considered the following aggravating and mitigating factors. In aggravation, the Committee considered your substantial experience in the practice of law, that you failed to recognize the wrongful nature of your conduct, and that your act had the potential for significant harm to the public and the reputation of the profession. In mitigation, the Committee considered your lack of prior disciplinary record.

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 \$50.00 are hereby taxed to you.

Done and ordered, this the 13 day of January, 2005

  
Henry Babl, Chair  
Grievance Committee

HB/lr