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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
00G0341R

IN THE MATTER OF

PHILIP W. BARTON,
ATTORNEY AT LAW

REPRIMAND

On October 18, 2000, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Marie Biedell, Judith H. Hunt, Annie McLaurin, Reginald McMillan, Angie Oxendine, John McMillan, and Audrey M. Bridges.

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.

The above mentioned seven clients retained you in July 1998 to handle employment discrimination cases against their former employer, Campbell Soup Company. You filed suit for these clients and the case was removed to the United States District Court for the Middle District of North Carolina. The employees had no direct evidence of employment discrimination.

Consequently, to prevail on their claims they needed to establish that similarly situated employees had been treated differently. Therefore, discovery in those claims was critical.

The Committee found that you failed to do any discovery after you filed lawsuits on behalf of these clients. Additionally, you and your clients were required to attend a mandatory mediation conference scheduled for June 21, 1999. You failed to notify your clients of the conference and failed to appear yourself. You were subsequently sanctioned by the federal court for failing to appear at the mediation conference.

The defendants filed a motion for summary judgment. You failed to notify your clients about the motion for summary judgment, or collect any affidavits or other evidence to contest that motion. Additionally, in your response to the motion for summary judgment, you incorporated the defendants' version of the facts. The court granted summary judgment against your clients.

You subsequently filed a notice of appeal of the order granting summary judgment on behalf of your clients. However, you did not discuss with your clients appealing the order prior to filing the notice. You subsequently met with your clients regarding pursuing an appeal and provided them with copies of the summary judgment order with the date of the order deleted. By your own admission, you deleted the date so that your clients would not be aware that you already had filed an appeal before discussing the matter with them.


The Committee concluded that your above-mentioned actions violated the following Revised Rules of Professional Conduct. First, by failing to pursue any discovery, submit evidence in response to the motion for summary judgment, or attend the mediation conference, you violated Revised Rules 1.1(b) and 1.3. Second, by failing to advise your clients of the order granting summary judgment before the appeal time expired, you violated Revised Rule 1.4(a) and (b). Third, by filing an appeal without discussing the matter with your clients, you violated Revised Rule 1.2(a). Fourth, by deleting the filing date on the order granting summary judgment that you provided to your clients, you misled your clients and misrepresented the status of the case in an attempt to cover up your failure to communicate with them promptly in violation of Revised Rule 8.4(c).

The Committee found the following aggravating and mitigating factors: In aggravation, the Committee found multiple violations and substantial experience in the practice of law. In mitigation, the Committee found that you experienced serious health problems, which significantly impacted your ability to practice law. The Committee also found as mitigating factors your absence of a prior disciplinary record, the absence of a dishonest motive, and the federal court's imposition of other sanctions for your failure to attend the mediation conference.

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 24 day of October, 2000.


James K. Dorsett, III
Chair, Grievance Committee