

22716

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
99G1271

IN THE MATTER OF

Angela C. Foster
Attorney At Law

)
)
) REPRIMAND
)
)

On April 13, 2000 the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by Sheila Richardson.

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.

In March 1999, you agreed to represent Sheila Richardson, the Complainant, in an equitable distribution case. Ms. Richardson paid \$500.00 per your fee agreement.

The order for divorce was entered by District Court Judge Fred Wilkins on February 15, 1999. Judge Wilkins' order of divorce indicated that there were no pending issues to be heard by the court. In effect, Judge Wilkins' order held that Ms. Richardson could not pursue equitable distribution.

On March 2, 1999, you wrote Ms. Richardson and advised her that her ex-husband's pension "does fall within the category of equitable distribution". You referred Ms. Richardson to paragraph 3 of the final divorce decree that had been originally proposed by Attorney Janeice Tindal, the attorney for Complainant's ex-husband, Charles Richardson. In your March 2 letter to Ms. Richardson, you quoted paragraph 3 of the proposed final divorce decree which stated that "any viable issues of child custody, child support, child visitation and equitable distribution remains [sic] open". Again, you advised Ms. Richardson that Mr. Richardson's pension would be covered in paragraph 3 of the proposed final divorce decree, without ascertaining whether any viable issue of equitable distribution had in fact been pled on Ms. Richardson's behalf. Later, you learned that the proposed final divorce decree was not actually entered by Judge Wilkins on February 15, 1999. You also learned that Ms. Richardson's claims for equitable distribution had not been preserved and could not be pursued pursuant to the February 15, 1999 divorce judgment.

The advice you gave Ms. Richardson in your letter of March 2, 1999 misled her about her equitable distribution rights and showed your lack of competence and preparation in handling her domestic matter, in violation of Rule 1.1(a) and (b) of the Revised Rules of Professional Conduct. The Grievance Committee believed that you should have known that Ms. Richardson's equitable distribution rights had not been preserved in the proposed divorce order by the mere assertion that "any viable issues" remained open. If you had reviewed the answer filed on Ms. Richardson's behalf by an attorney in your law firm, you would have ascertained that no claim for equitable distribution had been properly pled prior to the entry of the divorce decree. North Carolina General Statute § 50-11 (e) and North Carolina case law clearly provide that a claim for equitable distribution must be specifically pleaded prior to divorce, or the right to equitable distribution is lost.

On March 19, 1999, you filed a motion to vacate the divorce order (hereafter, motion to vacate) entered on February 15, 1999 in Ms. Richardson's case. The motion to vacate was calendared for hearing for May 3, 1999. You did not appear in court to argue the motion or to seek a continuance of the hearing. Although you indicated that you asked another attorney to appear on your behalf, it appears that attorney did not appear in court relative to your motion to vacate. The court denied your motion to vacate by an order dated March 5, 1999. Your failure to pursue diligently the motion to vacate filed on March 19, 1999 violated Rule 1.3 of the Revised Rules of Professional Conduct. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

The Grievance Committee was also concerned about the confusion regarding who actually represented Ms. Richardson in her domestic matters. Attorney Jodi Ernest began representing Ms. Richardson in her divorce action in December of 1998. Ms. Ernest filed an answer to the divorce complaint filed by Ms. Tindal, Mr. Richardson's attorney. You began assisting Ms. Richardson in her equitable distribution case and in a motion to vacate the divorce


order in February and March of 1999. Ms. Ernest continued to practice in the law firm with you, but she was not handling Ms. Richardson's equitable distribution case.

In August 1999, Ms. Tindal filed a motion concerning child support. You indicated that you did not represent Ms. Richardson on the child support matter, but Ms. Ernest did. By the time the child support hearing was held, Ms. Ernest had left the D'Amelio, McKinney, and Ernest law firm. The Grievance Committee understands your position is that Ms. Ernest was still the attorney of record for some portion of Ms. Richardson's case. However, Ms. Richardson was confused about who represented her in her various domestic issues. Although you believed that you only represented Ms. Richardson in the equitable distribution matter, your letter of March 31, 1999 to Ms. Richardson speaks of drafting and filing a Motion to Increase Child Support. The Grievance Committee found that it was not unreasonable for Ms. Richardson to be unclear about the extent of your and Ms. Ernest's representations in her domestic case. Your conduct in this regard was in violation of Rule 8.4(d) of the Revised Rules of Professional Conduct.

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 22 day of May, 2000.


James K. Dorsett III Chair
Grievance Committee

JKD/tec