

STATE OF NORTH CAROLINA

COUNTY OF WAKE

7590
BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
93G0980 (IV)

IN THE MATTER OF

MICHAEL A. BAILEY,
ATTORNEY AT LAW

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REPRIMAND

On April 14, 1994, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

Pursuant to section 13(A) of article IX of the Rules and Regulations 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, reprimand, or 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.

As a result of a dependency on prescribed pharmaceutical medication developed over a period of years after several chronic ankle injuries and surgical procedures, you began forging prescriptions for a schedule V drug, Lomotil. In May, 1991 your family helped you recognize that you needed to confront your drug

dependency and you entered a treatment program at Willing Way Hospital in Statesboro, Georgia. After your initial detoxification, you entered a rehabilitation unit there for intensive therapy. In July, 1991 you agreed to an additional stay in the hospital's extended care facility. In July, 1992, you moved your family to Statesboro and committed to an additional year of follow-up counselling and treatment on an out patient basis. In June, 1993 you returned to Charlotte and entered into a PALS recovery action contract.

While you were in your initial treatment at Willing Way Hospital, law enforcement officers began investigating allegations that you had obtained prescriptions by fraud or forgery. You voluntarily submitted to an interview with the investigating officers on January 15, 1992. You freely admitted your responsibility for obtaining the prescriptions by fraud or forgery. When you returned to Charlotte, the District Attorney reviewed the investigative materials and talked with the Medical Director of Willing Way Hospital. He agreed to enter into a deferred prosecution agreement with you. On June 30, 1993 a warrant was issued charging you with 29 counts of obtaining controlled substances by fraud or forgery. On July 7, 1993 you signed a deferred prosecution agreement wherein you accepted responsibility for the criminal charges. Obtaining controlled substances by fraud or forgery constitutes a criminal act that reflects adversely on your honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(B). However, due to your frank acceptance of responsibility for your conduct and your laudable efforts to overcome your dependency, the Grievance Committee felt that this reprimand was sufficient discipline for otherwise serious misconduct.

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 3rd day of August, 1994.

Howard E. Manning, Sr., Vice-Chair
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The Grievance Committee
North Carolina State Bar