

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
File No. 97G0808(I)

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| IN THE MATTER OF |) | |
| |) | |
| Henry L. Anderson, |) | REPRIMAND |
| ATTORNEY AT LAW |) | |
| |) | |

On October 23, 1997, 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 .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.

Based on the evidence presented, the Committee found the following facts and reached the following conclusions: You represented the defendant in the civil matter of Pamela Call Nunnery vs. Eric Jonathan Baucom & Baucom's Nursery Company, file

number 94-CVS-14008, in Superior Court in Mecklenburg County. You hired Laurie Roundtree, a private investigator from Virginia, in connection with this matter.

Mrs. Roundtree made personal contact with Mrs. Nunnery and used false pretenses to investigate the Nunnery case. Initially, in an attempt to befriend Mrs. Nunnery, Mrs. Roundtree went to Mrs. Nunnery's home and told Mrs. Nunnery that Mrs. Roundtree and her husband were moving to her neighborhood. Over a several week period following this initial contact, Mrs. Roundtree, through this personal relationship with Mrs. Nunnery, engaged in numerous activities with Mrs. Nunnery that were relevant to Mrs. Nunnery's claims in the underlying civil action. Mrs. Roundtree photographed and videotaped Mrs. Nunnery engaging in such activities.

At the time of Mrs. Roundtree's contacts, Mrs. Nunnery was represented by counsel. Mrs. Roundtree's actions with Mrs. Nunnery were performed as your agent and either at your direction or with your approval. Additionally, you used Mrs. Roundtree on at least two other prior occasions to perform similar investigations and were aware of the specific types of activities that she performed. You also gave Mrs. Roundtree some specific guidelines on how to do her investigation of Mrs. Nunnery. Moreover, you subsequently used the videotapes and photographs and other evidence obtained by Mrs. Roundtree in the Nunnery case, such as by admitting it into evidence in the civil trial.

Your above-mentioned conduct violated several of the Rules of Professional Conduct. First, Mrs. Roundtree directly and personally contacted Mrs. Nunnery for the specific purpose of obtaining information and evidence relevant to her pending civil suit against your client. At the time of Mrs. Roundtree's contacts, Mrs. Nunnery was represented by counsel. Mrs. Roundtree's direct and personal contact was made either at your direction or with your approval. Also, you subsequently ratified Mrs. Roundtree's conduct by using the information and evidence gathered against Mrs. Nunnery in the pending civil suit with knowledge of how Mrs. Roundtree obtained the information.

Your conduct in this regard violated Rules 7.4(1) and 3.3(c)(1). The Committee found that you employed Mrs. Roundtree to perform acts that you could not perform under Rule 7.4(1). The Committee considered and rejected the position that your conduct did not violate Rule 7.4(1) because Mrs. Roundtree did not specifically discuss the pending civil suit with Mrs. Nunnery. Rather, the Committee found that your conduct violated 7.4(1) because the specific purpose of the investigation and communications with Mrs. Nunnery was to obtain evidence relating to the civil matter.

Second, during the course of her direct and personal contact with Mrs. Nunnery, Mrs. Roundtree made misrepresentations and engaged in dishonesty, fraud and deceit in order to obtain the information. For example, Mrs. Roundtree told Mrs. Nunnery false information and created a false identity in order to gain Mrs. Nunnery's trust and confidence and obtain information relevant to her pending civil claim. The Committee found that Mrs. Roundtree's actions in creating this false and fraudulent "pretext" was done either at your direction or with your approval. Additionally, you

subsequently ratified Mrs. Roundtree's conduct by using the information and evidence gathered against Mrs. Nunnery in the pending civil suit with knowledge of the fraudulent manner in which Mrs. Roundtree obtained it.

Your conduct violated Rule 1.2(c) and 3.3(c)(1). The Committee considered but rejected your argument that this fraudulent "pretext" was justified because you assert that you were attempting to uncover malingering or a fraud on the court by Mrs. Nunnery. The Committee ruled that this objective, even if founded on a good faith basis, did not justify or excuse engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

In deciding to impose a Reprimand, the Committee found the following aggravating or mitigating circumstances. As aggravating factors, the Committee considered that there were multiple violations of the Rules and that you have substantial experience in the practice of law. As a mitigating factor, the Committee considered the fact that you do not have any prior discipline.

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 7th day of November, 1997.



Ann Reed
Chairman, Grievance Committee
The North Carolina State Bar