

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
11G0132

IN THE MATTER OF

Richard J. Tanker,
Attorney At Law

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REPRIMAND

On July 14, 2011 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by A. W.

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.

In early 2010, you represented Ms. W.'s husband, C. W., in a child custody action. In March 2010, you spoke with a judge relative to your client getting custody of the children so that they would remain in North Carolina. You gave no notice to the opposing party that you were going to approach the judge and discuss the merits of the matter. On March 5, 2010, the judge signed an ex parte order giving custody of the children to your client. The judge had second

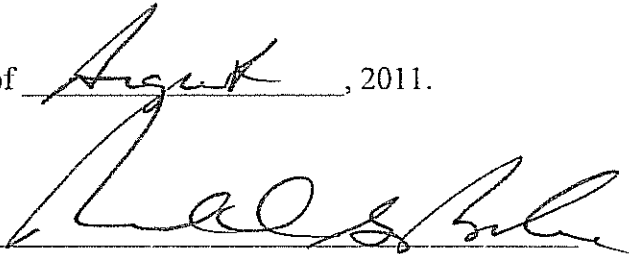
thoughts about signing the ex parte order that you had presented him. The judge told you that he would file a corrected order voiding the ex parte order that he had entered. A corrected order dated March 6, 2010 was signed by the judge. In your response to this grievance, you indicated that the judge took "sole responsibility for the order having been signed" and he recused himself from hearing any other matters between the parties.

The Grievance Committee found that you improperly sought and obtained the ex parte order, in violation of Rule 3.5(a)(3). The Grievance Committee was concerned that you seemed to place the "sole responsibility" for the ex parte order on the judge, when you approached him about signing the order. The Grievance Committee did take into consideration in issuing this reprimand that you seem to acknowledge your wrongdoing by stating that you should have contacted Ms. W.'s lawyer before seeking the ex parte custody order from the judge.

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 July 23, 2010 by the Council of the North Carolina State Bar regarding the taxing of administrative fees and investigative costs to any attorney issued a reprimand by the Grievance Committee, an administrative fee in the amount of \$350.00 is hereby taxed to you.

Done and ordered, this the 1 day of August, 2011.



Ronald G. Baker, Sr., Chair
Grievance Committee

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