

17164

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
98G0262(IV)

IN THE MATTER OF)

JAMES J. EXUM,)
ATTORNEY AT LAW)

REPRIMAND

On October 15, 1998, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Dora E. DuBose.

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.

You represented Dora E. DuBose in a personal injury lawsuit against Howard McAllister. In connection with that representation, you received two separate settlements. First, you received a settlement check for \$25,000 from McAlister's insurer on December 29, 1993. After making disbursements to your firm and Ms.

DuBose, you retained \$10,000 for the payment of her medical providers, pursuant to her instructions. Second, on April 11, 1994, you received another settlement check for Ms. DuBose from her under-insured motorist carrier. Of that second amount, you retained \$1,403 for the payment of her medical providers, pursuant to her instructions.

After receiving the second settlement check, you delegated the responsibility to disburse the remaining settlement proceeds to non-lawyer assistants in your office. Ms. DuBose's file was closed and no checks were disbursed through August 1995. Around that time, Ms. DuBose contacted you because she had received letters of past due amounts from her medical providers. You claimed that this was the first time you were aware that Ms. DuBose's checks had not been disbursed.

In February 1996, Ms. DuBose again contacted you because several of her medical providers continued to send her letters for delinquent bills. Several additional checks were written to five of Ms. DuBose's medical providers. Ultimately, you did not complete disbursement of proceeds of Ms. DuBose's settlement for 22 months after receiving the last settlement check. As a result of this delay in your disbursement of the settlement proceeds, at least eight of Ms. DuBose's medical providers reported her delinquent bills to her credit agency, which delinquencies appeared on her consumer credit report.

The Committee found that your above-described conduct violated several Rules of Professional Conduct. First, your failure to disburse the settlement proceeds to all of Ms. DuBose's medical providers promptly violated Rule 10.2(e). Second, the fact that you only became aware that the proceeds had not been fully disbursed more than 16 months after receiving such funds demonstrates that you were not performing or adequately supervising quarterly reconciliations of your trust account. The Committee found that your conduct violated Rule 10.2(d). Third, you delegated the task of disbursing the settlement proceeds and apparently performing quarterly reconciliations to non-lawyers in your office. The Committee found that you had not made reasonable efforts to ensure that your firm had in effect measures giving reasonable assurance that your non-lawyers' conduct, in performing these tasks for you, would be compatible with your professional obligations. The Committee found that your conduct violated Rule 3.3(a) & (b).


In deciding to issue a reprimand, the Committee considered the following aggravating and mitigating factors. In aggravation, the Committee considered the fact that your failure to pay Ms. DuBose's medical providers promptly negatively impacted her credit and that the delay extended almost two years. In mitigation, the Committee considered the fact that you made efforts to disburse the money after it was called to your attention and that you subsequently made efforts to assist Ms. DuBose in clearing up her credit problems.

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 16 day of November, 1998.


James K. Dorsett, III
Chair, Grievance Committee