

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
12G0652

IN THE MATTER OF)

Colin P. McWhirter,)
ATTORNEY AT LAW.)

CENSURE

On January 24, 2013, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by A. O.

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.

A censure is a written form of discipline more serious than a reprimand, issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or a member of the public, but the misconduct does not require suspension of the attorney's license.

The Grievance Committee believes that a hearing before the Disciplinary Hearing Commission is not required in this case and issues this censure to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this censure.

In June 2011, A.O. retained you to represent her on a speeding charge. You informed the State Bar that the morning the case was scheduled, you realized it was set in a county in which you did not ordinarily handle cases. You also informed the State Bar that you called the District Attorney's office and requested a continuance but did not receive assurance that the case would be continued. You knew that if the case was not continued, your client's failure to appear would be reported to the Department of Motor Vehicles and her driver's license would be suspended. You were obligated to follow up with the District Attorney's office to make sure the case was continued or take other corrective action. You were also responsible for communicating with your client about your failure to appear in court on her behalf. Even if you did send your client a letter the following day informing her of the situation, which A.O. disputes, once you did not hear back from her within a reasonable time, you should have followed up

with her since you knew her driver's license was in jeopardy and you were holding her funds. Your failure to do so violated Rule 1.4(a)(2) and (3). On September 20, 2011, you were contacted about this matter by another attorney on A.O.'s behalf. You told that attorney you would rectify the situation but you failed to do so. The Grievance Committee found that your lack of diligence in handling this matter violated Rule 1.3.

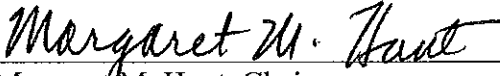
You knew on July 28, 2011 that you were not going to handle A.O.'s case. You should have sent A.O. a full refund at that time. On February 4, 2012, another attorney faxed you a letter requesting a refund on behalf of A.O. Upon receipt of that letter, you should have immediately refunded A.O.'s money. You did not refund the client's money until March 2012 after the attorney sent you another letter stating that if the client did not receive the refund by March 12, 2012, she would contact the State Bar. Failure to promptly refund the money the client paid violated Rule 1.16(d).

Once you accepted A.O.'s case, you were obligated to either provide the agreed upon representation or promptly refund the client's money. You did neither. Your neglect and failure to rectify the consequences of your conduct caused actual harm to your client, forced her to retain another attorney and pay additional court costs associated with the failure to appear.

You are hereby censured by the North Carolina State Bar for your violation of the Rules of Professional Conduct. The Grievance Committee trusts that you will ponder this censure, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. This censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibility to the public, your clients, your fellow attorneys and the courts, to the end that you demean yourself as a respected member of the legal profession whose conduct may be relied upon without question.

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 censure by the Grievance Committee, an administrative fee in the amount of \$350.00 is hereby taxed to you.

Done and ordered, this 19th day of February, 2013.


Margaret M. Hunt, Chair
Grievance Committee
The North Carolina State Bar