

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
06G1033

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IN THE MATTER OF	)	
	)	
Richard A. Horgan,	)	CENSURE
ATTORNEY AT LAW	)	
	)	

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On July 12, 2007, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by L. P.

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.

A business company by the name of the North Carolina Small Business Association, LLC (hereinafter "NCSBA") held itself out as able to provide customers with "an array of both legal and non-legal services". You assisted in the formation of NCSBA and periodically reviewed its promotional materials and website. You had an agreement with NCSBA whereby you would prepare living trusts and other estate plan legal documents for its customers. You were identified in NCSBA's promotional materials and on its website as an attorney and professional associate of NCSBA who would provide legal services to NCSBA's customers. NCSBA promoted the use of living trusts at seminars at which you spoke. NCSBA representatives would then contact attendees who indicated they would like to be contacted about living trusts. The NCSBA representative gathered financial information from individuals, advised individuals that they needed living trusts,

estate planning services that centered around the provision of a living trust you would prepare, including review of the living trust with the customer and assistance with the execution and implementation of the living trust. NCSBA provided your estate planning representation agreement to the customer and collected your fee from the customer. You prepared the living trust and other legal documents and provided those documents to NCSBA, which took them to the customer. NCSBA reviewed them with the customer and assisted with the execution of the documents and the funding of the living trust.

NCSBA was engaged in the unauthorized practice of law, both by holding itself out as able to provide legal services and by providing estate planning services through which the customer was provided with a living trust, other legal documents, legal advice, and assistance with the execution and funding of the living trust. Your arrangement with NCSBA and the services you provided assisted NCSBA in the unauthorized practice of law in violation of Rule 5.5(d) of the Revised Rules of Professional Conduct, and the receipt of fees for these services by both you and NCSBA constitutes the sharing of a legal fee with a non-attorney in violation of Rule 5.4(a).

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 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 censure by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this 6th day of August, 2007.



James R. Fox, Chair  
Grievance Committee  
The North Carolina State Bar