

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
15G0881

IN THE MATTER OF)	
)	
JOSEPH STANLEY ATWELL,)	CENSURE
ATTORNEY AT LAW)	

On April 20, 2017, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by The North Carolina State Bar. The grievance was assigned to a Subcommittee, which thoroughly reviewed the results of the State Bar staff's investigation of this matter.

Pursuant to section .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, the Grievance Subcommittee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Subcommittee 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 2009, you were appointed the executor of an estate. You did not file the final account for the estate despite numerous notifications and an order to do so necessitating the clerk's office issuing a show cause order in August 2015. You failed to appear at the show cause hearing. On October 16, 2015, the clerk's office entered an order revoking the Letters Testamentary issued to you and appointing the Public Administrator (PA) to administer the estate. The order required you to immediately turn over all assets of the estate to the PA. On December 18, 2015, the PA wrote you asking you to deliver the estate funds by December 31, 2015. You did not do so. After being contacted by a State Bar Investigator, you provided the PA a check for the estate funds on January 8, 2016. Your neglect of this estate, which required the clerk's office to devote time and expense towards attempting to get you to fulfill your responsibilities, your failure

to appear at the show cause hearing, and your delay in complying with the order to turn over the estate funds violated Rule 8.4(d). Your failure to file the final account violated Rule 1.15-3(f).

On May 5, 2016, Deputy Counsel sent you a follow up letter to the letter of notice and requested a response by May 23, 2016. When you did not respond, Deputy Counsel sent you another letter on May 26, 2016 asking for a response. Again, you did not respond. Deputy Counsel called you and left a voicemail message. You did not return the call. A State Bar Investigator then contacted you and on June 26, 2016, you provided your response to the May 5 letter. On November 23, 2016, Deputy Counsel sent you another follow up letter requesting, among other things, the tax documents concerning the trust you were administering for the decedent and requested a response by December 5, 2016. When you did not respond, Deputy Counsel sent you another letter asking for a response. Again, you did not respond. The State Bar ultimately had to subpoena you and the tax documents. On February 17, 2017, in response to the subpoena, you appeared at the State Bar and met with Deputy Counsel and a State Bar Investigator. When asked why the decedent's federal tax obligations were so great, you responded that trusts are taxed at the highest tax rate. You did not disclose in response to that inquiry that you had filed the decedent's 2010 federal and state income tax returns for the trust late and had paid the Department of Treasury from the trust funds \$10,102.43 in late filing and late payment penalties and interest. Deputy Counsel sent you a follow up letter inquiring about the late filing and your misleading explanation about how much was paid and you did not reply. Your failure to respond to the State Bar on multiple occasions violated Rule 8.1(b). Your response to the State Bar about the taxes was misleading and violated Rule 8.4(c).

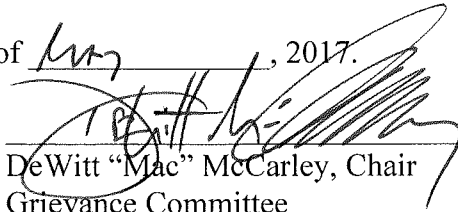
You maintained the estate funds and the funds that were held in the decedent's revocable trust for which you were the trustee in your firm's general trust account. You included the estate funds and the trust funds on the same client ledger. Rule 1.15-3(b)(5) requires that attorneys maintain "in the case of a general trust account, a ledger containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received and showing the current balance of funds held in the trust account for each such person or entity." Your inclusion of the trust and the estate funds on the same ledger was a technical violation of Rule 1.15-3(b)(5).

In issuing this Censure, the Grievance Committee considered your lack of a prior disciplinary record after practicing law for over thirty years as well as the harm caused by your neglect.

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 10th day of July, 2017.


DeWitt "Mac" McCarley, Chair
Grievance Committee
The North Carolina State Bar