

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
10G0622

IN THE MATTER OF

Robert M. Smith,
Attorney At Law

)
)
)
)
)

REPRIMAND

On April 21, 2011 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

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.

You represented G.S. in a criminal case that was on the trial calendar for the week of 29 March 2010. On 30 March 2010, court staff contacted your firm to notify you that you and G.S. needed to report to court for trial at 9:30 a.m. on 31 March 2010.

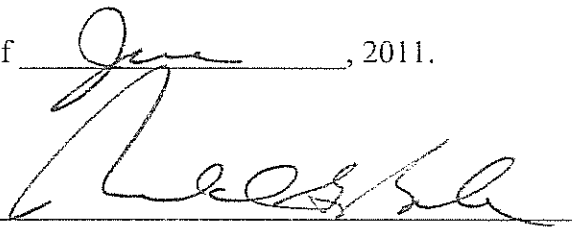
On 31 March 2010, neither you nor G.S. appeared in court for trial. You did not timely notify the court of any circumstances that made you (or your client) unable to attend court. By order dated 15 April 2010, you were found to have engaged in indirect criminal contempt of court for willful failure to appear at a duly noticed criminal trial. The court found that your willful and unjustified failure to appear caused unnecessary burden to several witnesses and "substantially delayed the business of this court." Your failure to appear in court and failure to timely notify the court that you were unable to appear was in violation of Rule 3.4(c)—knowingly disobeying an obligation under the rules of a tribunal.

In responding to the Grievance Committee regarding this grievance, you made several assertions that contradicted statements you made to the court at the hearing on contempt. You also told the Committee that on the day you missed G.S.'s court date, you had been "diagnosed with a bacterial infection of the stomach and chest wall pyelonephritis." Your medical records do not corroborate that assertion. Accordingly, the Committee found that you provided a misleading response to the letter of notice in this file and thereby violated Rule 8.1(a).

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 January 24, 2008 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 \$100.00 is hereby taxed to you.

Done and ordered, this the 2 day of June, 2011.



Ronald G. Baker, Sr., Chair
Grievance Committee

RGB/lr