

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
17G0168

IN THE MATTER OF)	
)	CENSURE
DAVID M. O'BRYAN,)	
ATTORNEY AT LAW)	

On July 26, 2018, 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.

You were court-appointed to represent C.R. in Cabarrus County. In January 2017, you failed to appear on behalf of C.R. at her scheduled court date and failed to notify the court of your absence. You asked another attorney to fill in for you, telling him that C.R.'s case was on the calendar for entry of a guilty plea. However, when your colleague reviewed the court file he realized the case was not on for a plea: The file contained neither a waiver of appearance of the chemical analyst nor a stipulated guilty plea. Further, C.R. told him she had no intention of pleading guilty. C.R. also asked the Court to appoint another lawyer, stating you would not return her calls.

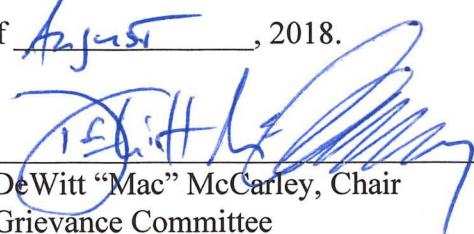
The Court issued a Show Cause Order in connection with your absence from court, which was heard in February 2017. When questioned by the Court about your absence from C.R.'s January 2017

court date, you provided inconsistent responses. You were convicted of contempt of court, which is criminal conduct reflecting adversely on your fitness as a lawyer in violation of Rule 8.4(b). The findings in the contempt order establish that you made misrepresentations to the court in violation of Rule 3.3(a)(1) and Rule 8.4(c), knowingly disobeyed an obligation under the rules of the tribunal in violation of Rule 3.4(c), did not exercise reasonable diligence in representing C.R. in violation of Rule 1.3, and failed to adequately communicate with a client in violation of Rule 1.4.

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 22nd day of August, 2018.



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

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