

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
17G0476

IN THE MATTER OF)	
)	REPRIMAND
NICOLLE T. PHAIR,)	
ATTORNEY AT LAW)	

On January 25, 2018 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by S. C. 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 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 were seeking an ex parte emergency custody order on behalf of your client. The parties had a pre-existing court date on April 26, 2017 and your associate appeared in court that morning and advised the court of the ex parte motion. You proceeded to then argue for the motion while opposing counsel argued against it and the judge decided to continue the matter to another date. Despite these events, you took the motion to another judge that same day, April 26,

and again requested the emergency custody. The second judge signed your order with no knowledge of the prior judge's continuance or that the opposing party was represented by counsel.

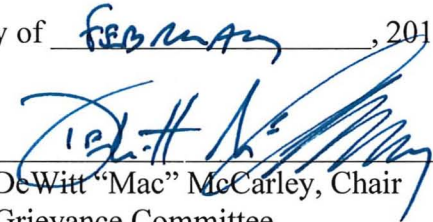
When the second judge learned from opposing counsel about the prior hearing, he vacated his emergency custody order. The judge found that your conduct violated the local rules of the judicial district, that the order was obtained by misrepresentation, fraud or other misconduct, and that the defendant was prevented from having a fair trial. The Grievance Committee agreed with these findings.

Your conduct violated Rules 3.3(a), 3.5(a)(4)(A), and 8.4(c) of the Rules of Professional Conduct.

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

Done and ordered, this the 22 day of February, 2018.


DeWitt "Mac" McCarley, Chair
Grievance Committee

DM/lb