

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
11G0895

IN THE MATTER OF

Colin P. McWhirter,
Attorney At Law

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REPRIMAND

On April 26, 2012, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by D. 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 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.

Dwayne Porter retained you to represent his corporation, D&R Asset Holdings Corporation (D&R), in bringing a lawsuit. On 9/15/09, D&R prevailed in arbitration and was awarded \$6000. The defendant appealed. Mr. Porter paid you to represent D&R on appeal. Subsequently, in efforts to ascertain the status of the appeal, Mr. Porter made numerous calls to you and left numerous messages for you but received no response. On 3/1/11, Mr. Porter faxed a

letter to you noting the lack of communication. On 3/2/11, a default judgment in favor of D&R was entered and D&R was awarded \$6000 and interest. It was your responsibility to prepare the order. On 4/14/11 Mr. Porter sent you a certified letter requesting, among other things, confirmation that the order had been signed by the judge. In that letter, Mr. Porter reminded you that he could not pursue collection until the order was signed. Mr. Porter received no response to the letter and numerous attempts to contact you were unsuccessful.

Mr. Porter's April 14, 2011 letter was a reasonable request for information. Your conduct in failing to return repeated phone calls and failing to respond to Mr. Porter's correspondence violated Rules 1.4(a)(3) and (4).

You did not timely prepare the order and submit it for the judge's signature. The order, which was brief and would not have taken long to prepare, was not filed until November 23, 2011. You knew that your client could not pursue collection until the order was signed. Your failure to prepare the order for over eight months constituted a lack of the reasonable diligence and promptness required by Rule 1.3.

You were also dilatory in responding to the State Bar. Your response to the Letter of Notice was due August 27, 2011. You asked for an extension to file a response and bar counsel agreed to extend the deadline until September 12, 2011. On September 14, 2011, the State Bar received a fax in which you asked for another extension. Counsel agreed to an extension until September 29, 2011. You failed to respond on that date. Your response to the Letter of Notice was received on October 17, 2011. Additional questions were posed to you on October 20, 2011 with an October 28, 2011 deadline to respond. Your response was not received until November 28, 2011. On December 6, 2011, bar counsel sent you additional follow-up questions with a December 19, 2011 deadline to respond. You did not provide your response to the December 6th letter until February 1, 2012. Your conduct violated Rule 8.1.

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 19th day of May, 2012.

Margaret M. Hunt

Margaret M. Hunt, Chair
Grievance Committee