

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
11G0683 & 11G0790

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IN THE MATTER OF	)	
	)	
David E Duke,	)	CENSURE
ATTORNEY AT LAW	)	
	)	

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On January 26, 2012, the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by A. L and E. B.

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.

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.

A. L. hired you in May 2010 to get an expunction of her criminal record. You charged her \$200.00 to perform that service. After A. L. did not get her criminal record expunged, she filed a fee dispute petition with the North Carolina State Bar in April 2011. You were notified of the fee dispute by certified mail and told to respond in writing within 15 days of receipt of the fee dispute petition. When the State Bar did not receive a response to the fee dispute petition, you were contacted and given an opportunity to submit a response by e-mail. You did not respond to the fee dispute petition by e-mail. Your failure to participate in the fee dispute resolution process violated Rule 1.5(f)(2).

A.L.'s fee dispute was turned over to the Grievance Committee for investigation after you did not respond to her fee dispute petition. You were served with a letter of notice in the grievance, but

failed to respond to it. You were subpoenaed to the Grievance Committee meeting in October 2011, and were given an opportunity to respond to the grievance in writing. Your failure to respond to A.L.'s grievance after being served with the letter of notice violated Rule 8.1(b) and Rule 8.4(d).

You told the Grievance Committee in response to this grievance that you had attempted to refund \$100.00 of the attorney's fee that A. L. paid you. You stated that you sent the \$100.00 again after you learned that A.L. had not received the refund. The State Bar's deputy counsel wrote you on November 14, 2011 and advised you that A.L. had not received the \$100.00 refund, and gave you A.L.'s address. You were advised to inform the deputy counsel when you sent the refund to A.L. As of the date that this censure is issued, A.L. has not received a refund from you. The Grievance Committee found that your failure to refund the \$100.00 to A.L. violated Rule 1.16(d).

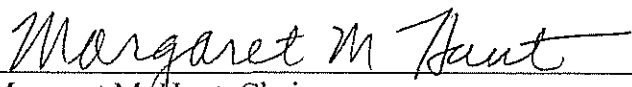
In 2009, E.B. retained you to represent her in a slip and fall case. You obtained from E.B. various records and documents relating to her case. E.B. spoke with you twice about her case. She tried to speak with you by telephone on several occasions after her second conversation with you, but she was unsuccessful. E.B. went to see you at your office, but discovered that you had moved. It appears that you took no substantive action in E.B.'s case. E.B. indicated that she wanted the records and documents returned to her, but she has not received them. The Grievance Committee found that you neglected E.B.'s case, in violation of Rule 1.3; failed to keep E.B. informed about the status of her case and failed to promptly comply with reasonable requests for information, in violation of Rule 1.4(a)(3)(4); failed to properly withdraw from representation in violation of Rule 1.16(b)(1); and failed to return E.B.'s file to her in violation of Rule 1.16(d).

E.B.'s grievance was investigated by the 10<sup>th</sup> Judicial District Bar Grievance Committee. On two occasions, you agreed to send the information in E. B.'s file to the investigator, as well as copies of the correspondence that you mailed to E. B. and other clients when you changed your practice. The investigator never received any documentation from you and she received no response from you when she called a third time to ask for the documentation. Your failure to cooperate with the local grievance committee in investigating this grievance violates Rules 8.1(b) and 8.4(d) of the Rules of Professional Conduct.

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 20<sup>th</sup> day of February, 2012.

  
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Margaret M. Hunt, Chair  
Grievance Committee  
The North Carolina State Bar