

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
04G1451

IN RE:	Roger W. Rizk Attorney At Law)))	CENSURE
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On October 20, 2005, the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by J. 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 warranted 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 was of the opinion 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. I am certain that you will understand fully the spirit in which this duty is performed.

The complainant retained you to represent him in a lawsuit against his former employer Phillip Morris on August 6, 2002. On October 14, 2002, you filed a complaint in the Cabarrus County Superior Court against Phillip Morris on the complainant's behalf. The complainant alleged a single claim for wrongful discharge based on racial motivation in violation of public policy under state law. Phillip Morris' attorney, Wood Lay, had the case removed from state

court to federal court. The case proceeded to mediation. Negotiations reached an impasse and Phillip Morris filed a motion for summary judgment.

On December 17, 2003, a federal court magistrate recommended that summary judgment be granted based on the fact that the complainant should have filed suit for breach of contract rather than wrongful termination, as complainant was not an "at-will" employee. The federal court magistrate decided the case on the basis that complainant failed to state a proper claim and deemed that a discussion of the merits was unnecessary. No objections were filed to the magistrate judge's recommendation and it was adopted on January 22, 2004. Phillip Morris was awarded \$2,300.05 in costs.

On October 4, 2004, you filed a complaint in Cabarrus County Superior Court alleging Phillip Morris violated the terms of the collective bargaining agreement enforced between Phillip Morris and the complainant. The complaint was based loosely on the complaint filed on October 14, 2002. Attorney Lay wrote you detailing the frivolous nature of the lawsuit given that it was barred by the doctrine of res judicata, that the state law contract claim alleged was preempted by federal law and that the statute of limitations had run under the Labor Management Relations Act.

After receiving Attorney Lay's letter, you wrote the complainant and advised him to withdraw his lawsuit or significant financial sanctions would likely be imposed. You also explained that as of November 18, 2004, your law license would be suspended for failure to timely pay and report various taxes and thus you would no longer be able to assist the complainant. You filed a motion to withdraw on November 9, 2004.

The Grievance Committee found that your conduct in representing the complainant violated several Rules of Professional Conduct. First, the Grievance Committee believes that you violated Rule 1.1 of the Revised Rules of Professional Conduct, as it related to your filing a complaint in state court, rather than federal court in 2002. The EEOC reopened complainant's charge for the second time on July 30, 2002 and issued a right to sue for 90 days. The complainant retained you on August 6, 2002. As of the date that complainant retained you, his right to sue had not yet expired, and the lawsuit should have been filed in federal court.

The Grievance Committee also found that you violated Rule 1.3 of the Revised Rules of Professional Conduct. You did not diligently file the second lawsuit in state court, and the statute of limitations ran on the action. The Grievance Committee found that you delayed filing the action in state court for 10 months after the magistrate judge's recommendation to adopt summary judgment.

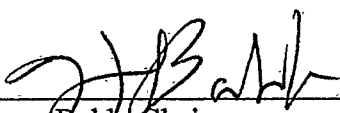
The Grievance Committee also found that you violated Rule 1.4 of the Revised Rules of Professional Conduct. The complainant indicates that you did not notify him of his right to appeal the magistrate judge's summary judgment ruling. You admit that you did not tell the complainant that he could appeal the magistrate judge's ruling. The Grievance Committee held that you should have communicated to complainant that he had a right to appeal the magistrate judge's decision, rather than summarily determining that the complainant would be better served by filing a second lawsuit.

In deciding to issue a censure, the Grievance Committee considered as an aggravating factor that you had an extensive prior discipline record.

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 October 15, 1981 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a censure by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this the 28 day of November, 2005.



Henry Babb, Chair
Grievance Committee

HB/lr