

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
13G0123

IN THE MATTER OF

Clarke K. Wittstruck,
Attorney At Law

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REPRIMAND

On July 18, 2013 the Grievance Committee of the North Carolina State Bar met and considered the grievance 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 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.

J.B. retained you in September of 2012 to prepare a child custody agreement and real estate transfer between Mr. B. and his spouse. Mr. B. paid you \$420.00 as your fee. You admit that you "got involved in other matters as [you] had a lot on [you] all at once in September 2012." You admitted that Mr. B.'s case "was not processed properly." Your failure to diligently

attend to Mr. B.'s legal matters violates Rule 1.3. Your failure to adequately communicate with Mr. B. about his case violates Rule 1.4(a)(2)(3).

Mr. B. filed a fee dispute petition with the North Carolina State Bar. You were notified of the fee dispute, and asked to respond to it. You indicated in your response that you thought you communicated with a representative of the Attorney Client Assistance Program (ACAP) regarding this fee dispute. However, ACAP has no record of you communicating with them about Mr. B.'s fee dispute petition. Your failure to participate in the fee dispute resolution process violates Rule 1.5(f). The Grievance Committee notes that you did refund the attorney's fee to Mr. B.

The Grievance Committee found as an aggravating factor your prior discipline.

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 12th day of August, 2013.


Margaret M. Hunt, Chair
Grievance Committee

MMH/lb