

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
14G0754

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IN THE MATTER OF	)	
	)	CENSURE
TIMOTHY D. SMITH,	)	
ATTORNEY AT LAW	)	

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On October 22, 2015, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by B.A. 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.

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.

B.A. retained you for representation on his domestic matters. After your office prepared the Motion to Modify Custody, B.A. requested changes to the Motion and tried to ask you questions. When B.A. declined to sign the verification form due to his concerns about missing and incorrect items, you failed to communicate with B.A. to answer his questions or explain the terms he was worried about. Instead of answering B.A., you texted him a curt statement stating that your assistant "asked [him] to sign Verification yesterday but [he] refused and left. Pls call her and do what she asks..." Your failure to promptly comply with reasonable requests for information and your failure to explain the matter to the extent necessary for B.A. to make informed decisions were violations of Rule 1.4(a)(4) and 1.4(b).

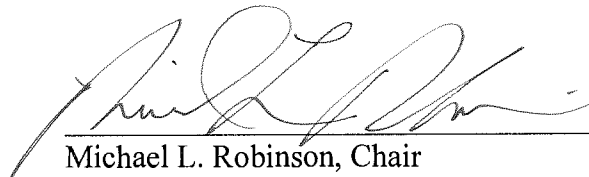
Additionally, you included in your invoice charges related to withdrawing from the representation. Although you did not pursue those fees from B.A., you indicated in your grievance response that those were monies that B.A. still owed you. 2007 FEO 8 explains that when the act of withdrawing is a professional obligation for the benefit of the lawyer, the cost of withdrawing cannot be shifted to the client. Your assertion that B.A. owed you money for withdrawing was a misrepresentation and thus a violation of Rule 8.1(a).

Given your history of receiving two communication-related reprimands in the past three years, the Grievance Committee determined that a censure was necessary in this case.

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 6<sup>th</sup> day of December, 2015.

A handwritten signature in dark ink, appearing to read "Michael L. Robinson", is written over a horizontal line.

Michael L. Robinson, Chair  
Grievance Committee  
The North Carolina State Bar

MLR/hp