

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
13G0122

IN THE MATTER OF

Clarke K. Wittstruck,
ATTORNEY AT LAW

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CENSURE

On July 18, 2013, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by O. W.

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.

In June 2012, you agreed to represent O. W. in a divorce. Mr. W. paid you \$350.00 as your attorney's fee. The divorce complaint was filed in court and you sent a certified letter containing the divorce complaint to Mr. W.'s spouse. On July 18, 2012, the certified letter was returned as "non deliverable as addressed." In September 2012, you told Mr. W. that you did not have a good address for his spouse and that he would need to provide a new address and an additional \$60.00 to "process the divorce." Mr. W. paid the additional \$60.00.

You indicated in your response that your staff processed the divorce in the way that you handled most uncontested divorces. Your staff did not recognize that Mr. W.'s spouse lived in Jamaica and you would not be able to obtain service by certified mail. You admit that you did not catch the error

regarding service and further admit that you should not have charged Mr. W. an additional \$60.00 to serve his spouse in Jamaica. Your failure to diligently attend to Mr. W.'s divorce violates Rule 1.3. Your failure to communicate with Mr. W. about serving the divorce complaint on his spouse violates Rule 1.4(a)(2)(3).


Mr. W. filed a fee dispute petition with the North Carolina State Bar. You did not participate in the fee dispute process and as a result, this grievance was opened. Your failure to participate in the fee dispute process violates Rule 1.5(f). Finally, you did not respond promptly to this grievance in violation of Rule 8.1(b).

The Grievance Committee found as an aggravating factor that you have prior discipline relative to Rule 1.3, Rule 1.4(a)(3), and Rule 8.1(b) violations.

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 12 day of Sept., 2013.



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