

17856

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
04G0461 and 04G0617

IN RE: MICHAEL A. DeMAYO,  
ATTORNEY AT LAW

CENSURE

On April 14, 2005, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Martha L. Ramsay and Melanie Gordon.

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. I am certain that you will understand fully the spirit in which this duty is performed.

Ms. Ramsay worked as an associate in your firm concentrating in the area of workers' compensation until her departure on February 9, 2004. Ms. Gordon was a workers' compensation client of your firm. After Ms. Ramsay's departure, she contacted many of the firm's workers'

compensation clients to inform them that she had left the firm, that she was starting her own practice, and that the clients could choose to stay with the firm or retain her to represent them. Ms. Gordon was one of the clients whom Ms. Ramsay contacted. After you learned that Ms. Ramsay was contacting these clients, you began your own communications with those clients.

You sent at least two letters to these clients in February in which you informed the clients that they were clients of your firm and should not respond to Ms. Ramsay. You also stated in one of these letters that the clients needed to "hear the truthful facts" regarding Ms. Ramsay. While those letters raise some concerns about compliance with the Rules of Professional Conduct and the ethics opinions RPC 48 and 200, your letter of March 9, 2004 to Ms. Gordon after she had elected to retain Ms. Ramsay made material misrepresentations about your services and violated the Rules in other respects.

In your letter to Ms. Gordon, you enclosed a copy of an article from *Lawyers' Weekly* concerning a recent North Carolina Court of Appeals decision permitting a discharged law firm to sue a former client to receive a fee. You represented that this article was the court's opinion, not a news account of the opinion, and that it clearly states that you would be entitled to collect your fee directly from Ms. Gordon. You also stated that you would be "entitled" to collect 90% to 95% of the entire 25% contingency fee. You indicated that your statement was made "simply to inform you of your rights."

Your representations in this letter were misleading. First, it is not clear that you would be entitled to collect your fee directly from Ms. Gordon in a workers' compensation case. As you later noted in your letter, attorneys' fees in workers' compensation proceedings are subject to the review and approval of the Industrial Commission. The case you cited to Ms. Gordon was an unpublished opinion involving a standard personal injury claim. It is not clear from that case how the Court would treat a regulated fee case. Second, you asserted as fact that you were entitled to 90% to 95% of the fee based on the work completed on the file. That is your opinion, not a fact. Even if you believed that you were entitled to that share of the fee, presenting it to the client in the manner expressed in the letter was misleading. Further, your statements about the division of fees between you and Ms. Ramsay and questioning Ms. Ramsay's willingness to handle the matter based on the amount of fees to be paid was an inappropriate communication with someone you knew was represented by another lawyer.

The Committee found that your above-described conduct violated these Rules of Professional Conduct. By stating or implying that you were entitled to 90% to 95% of the fees in Ms. Gordon's case and could sue her for those fees, you made a misleading communication about your services in violation of Rule 7.1(a). By communicating with Ms. Gordon about her fee arrangement with Ms. Ramsay and implying that there could be an adversarial proceeding against Ms. Gordon on the division of the fees, you communicated with a person you knew was represented about the the subject matter of the representation in violation of Rule 4.2(a) and attempted to solicit representation of that client using intimidation, coercion, or threats in violation of Rule 7.3(b)(2).


In deciding to issue a Censure, the Committee considered aggravating and mitigating factors. In aggravation, the Committee considered that you have substantial experience in the practice of law and that your actions were motivated by selfishness. Further, the Committee

believed that your actions served only to put your former clients in the middle of a dispute between you and Ms. Ramsay over the terms and conditions of her departure from your firm. Your conduct was an effort on your part to retain these clients and their fees without consideration of the clients' wishes. In mitigation, the Committee considered that you had no prior discipline.

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 12 day of Nov, 2005.

  
\_\_\_\_\_  
Henry Babb  
Chair, Grievance Committee