

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
15G0791

IN THE MATTER OF)	
)	CENSURE
LESLIE G. VAN DER HAVE,)	
ATTORNEY AT LAW)	

On January 17, 2019, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by A. H. 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.

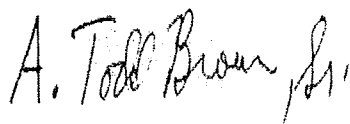
In your role as guardian of the estate of M. Watkins, you created a bank account in 2005 that you referred to as a "spending account" into which you placed certain fiduciary funds belonging to M. Watkins. You allowed the guardian of the person to access the fiduciary funds belonging to M. Watkins in this fiduciary account during the eight-year guardianship contrary to your obligations as guardian of the estate and to the order appointing the guardian of the person, in violation of Rules 1.15-2(a), 3.4(c), and 8.4(d) of the North Carolina Rules of Professional Conduct. You violated Rule 1.15-2(i) by allowing the guardian of the person to write checks to cash and checks written to be cashed from this fiduciary account and by providing the guardian of the person with a debit card to be used, and which she did use, to disburse funds from this fiduciary account. You failed to properly maintain and disburse fiduciary funds by allowing the guardian of the person to have access to the fiduciary funds in this fiduciary account, allowing the guardian of the person to withdraw cash at will from the fiduciary funds in this fiduciary account, and allowing the guardian of the person to remain

in possession of cash belonging to M. Watkins rather than those funds of M. Watkins' being properly maintained in a fiduciary account, in violation of Rule 1.15-2(a). You failed to timely file annual accounts with the Clerk in violation of Rule 1.15-3(f) and 8.4(d). You also established and allowed arrangements under which fiduciary funds were not properly maintained and disbursed, as described above, and under which fiduciary funds were disbursed in a manner that could not accurately be accounted for, in violation of Rule 1.15-2(a) and 8.4(d). In determining that a censure was appropriate rather than taking other action, the Grievance Committee found the following to be pertinent: (1) you have no prior discipline; (2) you displayed a cooperative attitude with the disciplinary process; (3) you reviewed records for the this fiduciary account during its existence, requiring receipts and reports from the guardian of the person and reviewing records online; (4) when notified by the Clerk's Office that debit cards were not approved for guardianship accounts, you had the guardian of the person cease using the debit card for this fiduciary account; (5) in 2015, you hired an accountant at your expense who traced all cash withdrawals from this fiduciary account and cash expenditures for which the guardian of the person had receipts over the eight-year guardianship period, providing the only option for accounting available in light of the fungible nature of cash and the lack of direct correlation on most occasions between the cash withdrawn from this fiduciary account and the cash expenditures for the ward, and you provided this with proposed annual accounts to the Clerk's Office in an effort to rectify the consequences of your conduct; and (6) you have stopped serving as guardian of estates.

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 19th day of March 2019.



A. Todd Brown, Sr., Chair
Grievance Committee
The North Carolina State Bar

ATB/lb