

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
16G0540 and 16G0845

IN THE MATTER OF

JAPHETH MATEMU,
ATTORNEY AT LAW

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REPRIMAND

On January 26, 2017 the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by C. B. and P. A. The grievances were assigned to a Subcommittee, which thoroughly reviewed the results of the State Bar staff's investigation of these matters.

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 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.

Your fee contract in C. B. and P. A.'s cases provided that you had a lien on the client's proceeds should either you or the client terminates the representation. North Carolina law does not recognize such a "lien" for attorney fees under the circumstances set out in your fee contract. Your assertion of a lien on the client's proceeds violated Rule 1.5(a) and Rule 1.7(a)(1) of the Rules of Professional Conduct.

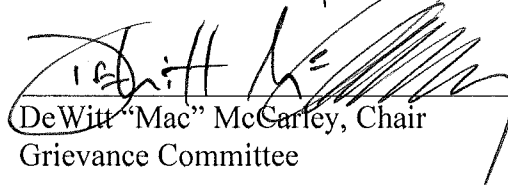
Your fee contract further provided that a client is responsible for paying you for reasonable expenses and photocopying and reproduction of the file should the client request all or part of the file. That provision violated Rule 1.16(d) as a lawyer is obligated to turn over the entire original file to the client as the file belongs to the client.

You also indicated in your fee contract that the clients, who lived in North Carolina, were subject to arbitration in New York and subject to the New York Fee Dispute Resolution Program, should there be any dispute about attorney's fees or expenses. That provision violates Rule 8.4(d) as you cannot force the client to submit to the arbitration rules of the New York.

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 10th day of FEBRUARY, 2017.


DeWitt "Mac" McCarley, Chair
Grievance Committee

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