

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
12G1034

IN THE MATTER OF

James E. Vaughan,
Attorney At Law

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REPRIMAND

On April 18, 2013 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by S. C.

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 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.

The Law Offices of Michael Ira Asen, P.C. (hereinafter "Asen"), of Greenvale, New York, attempts to collect civil penalties pursuant to N.C. Gen. Stat. § 1-538.2 from North Carolina residents alleged to have shoplifted from North Carolina WalMart stores. Neither Asen nor any member of his firm in New York is licensed in North Carolina. In response to a letter by the Authorized Practice Committee demanding that Asen cease and desist in the practice of law in North Carolina, on or about December 9, 2010 Asen registered as an Interstate Law Firm

pursuant to 27 N.C.A.C. 1E, Section .200. Asen then added a North Carolina attorney's name to the letterhead used for the Asen demand letters. Effective as of March 30, 2011, that North Carolina attorney ceased his association with Asen and Asen began using your name and address as the North Carolina licensed attorney for the Asen firm in North Carolina. On May 6, 2011, the Authorized Practice Committee again demanded that Asen cease and desist in the practice of law in North Carolina, noting that, even though a North Carolina attorney was identified on the letterhead, there was no evidence that the North Carolina attorney had any active role in reviewing the Asen demand letters or the facts to determine if the letters had validity. Thereafter, Asen sent the demand letters in North Carolina using your name, law firm address, and signature. You acknowledged that you had no active role in the generation of the demand letters on behalf of Asen or, other than random screening, in reviewing the demand letters to determine if the letters are valid. From March 30, 2011 until you resigned effective December 31, 2012, you lent your name and signature to the demand letters so that Asen and Asen's firm could generate and send the civil demand letters to North Carolina addressees. By your own admissions, your only active participation was the fielding of telephone calls, if any, about the demand letters. The sending of such demand letters constituted the practice of law. By lending your name to the demand letters without active participation in the representation, you assisted Asen in the unauthorized practice of law in North Carolina in violation of Rule 5.5(a) and 8.4(a). Your name and signature on the demand letters also made it appear that you had been actively involved in the process of reviewing the specific matters and generating the demand letters when, in fact, you admit you had no active participation in this automated process. Thus, the demand letters made a false or misleading communication about you or your services in violation of Rule 7.1(a).

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 28th day of May, 2013.

Margaret M. Hunt
Margaret M. Hunt, Chair
Grievance Committee

MMH/lr