

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
11G0897

IN THE MATTER OF

Benjamin Small,
Attorney At Law

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REPRIMAND

On July 19, 2012 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by G. L.

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 State Bar sent a letter of notice regarding this grievance to you on October 6, 2011 by certified mail. Service of this letter of notice was attempted on three dates. The letter of notice was returned to the State Bar with the notation, "Return to sender – unclaimed – unable to forward." The State Bar then sent the letter of notice by certified mail to you at another address,

43 Union Street South. The letter of notice was returned to the State Bar with the notation, "Return to sender – unclaimed – unable to forward."

The State Bar asked the sheriff to serve you with the letter of notice at your last known address at 43 Union Street South. The sheriff served you with the letter of notice at 2239 St. John's Church Road on January 25, 2012. You did not respond to the letter of notice within fifteen days of January 25, 2012. Our office wrote you at the St. John's Church Road address on March 6, 2012 and gave you an extension to respond until March 19, 2012. The State Bar did not receive a response from you on March 19.


The State Bar then asked your State Bar councilor to contact you. According to your councilor, he called you but your telephone was out of service. Your State Bar councilor then e-mailed you about this grievance. The State Bar councilor stated that you said that you were unaware of the grievance and you did not know about an extension to respond. Your State Bar councilor told you to send your correct address and telephone number to the State Bar. He also told you to call the deputy counsel assigned to the grievance. The deputy counsel did not hear from you after you spoke with your State Bar councilor in April 2012. The State Bar then subpoenaed you to appear at the State Bar office on June 20, 2012 to respond to the grievance. You responded to the grievance by facsimile on June 7, 2012.

Your failure to respond promptly to this grievance violates Rule 8.1(b) and 8.4(d).

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 22nd day of August, 2012.


Margaret M. Hunt, Chair
Grievance Committee

MMH/lr