

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
06G0992, 06G1335, 06G1341

IN THE MATTER OF)
)
LEE S. ROSEN,) CENSURE
ATTORNEY AT LAW)
)

On January 24, 2008, the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by Hagewood & Kightliner (06G0992), Watkins (06G1335) and Morelock (06G1341).

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.

As the owner and principal of the firm, the Committee determined that you are responsible for the firm's fee agreements and the firm's practices and policies pursuant to Rule 5.1: Responsibilities of Partners, Managers and Supervisory Lawyers. You therefore have a duty to make reasonable efforts to ensure that the Firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

With regard to all matters referenced above, the firm's fee agreements did not comply with the Rules of Professional Conduct. First, the very nature of the agreements purported to collect excessive fees

for little or no work, in violation of Rule 1.5(a): Fees. Second, the language of the agreements did not give the Rosen law Firm any incentive to perform any legal work within the prescribed timelines outlined in the agreements and was therefore misleading pursuant to Rule 7.1(a): Communications Concerning a Lawyer's Services. Third, the client's first meeting was with a lawyer of the firm, but once the firm was hired, another lawyer took over the file. Although the fee agreement indicated that the client acknowledged that he or she is employing the Firm instead of any particular individual and the best suited team of individuals would be assigned to the case, clients involved in the grievances referenced above hired the firm based on the consultation with a certain lawyer. The fee agreements and the consulting lawyers failed to make it clear that another lawyer, whom the client has never met and may be less experienced, would be handling the file. You have therefore failed to ensure that clients are provided with sufficient information to make an informed decision about hiring the firm in violation of Rule 1.4(b): Communication. The Committee noted that your Firm has revised its fee agreements to remove any prescribed time periods and to explicitly inform clients that the attorney with primary responsibility for their matter may not be the one with whom the client met during the initial consultation. The Committee also noted that the Firm did not charge or collect additional fees from these clients after the time periods in the agreements expired.

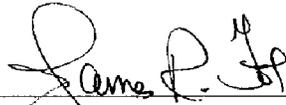
06G01335: Your firm represented Ms. Watkins in her domestic matter. Ms. Watkins was presented with and signed a non-litigation fee agreement. However, the firm accepted representation knowing that the firm would not represent Ms. Watkins in litigation as it would be filed in a county the firm does not practice. Ms. Watkins, however, was not informed of this limitation on representation prior to hiring the firm in violation of Rule 1.2(c): Scope of Representation and Allocation of Authority between Client and Lawyer and Rule 1.4(b): Communication.

06G1341: Mrs. Brittingham and Mrs. Klug each paid a consultation fee and discussed their domestic matters with your firm. Although neither hired the firm, an attorney-client relationship was formed and therefore Mrs. Brittingham and Mrs. Klug each became former clients. The firm later accepted representation of the opposing parties. The firm failed to ask for or obtain a waiver and consent from Mrs. Brittingham. However, when the conflict was discovered, counsel for Mrs. Brittingham indicated that he had no objection to the firm's continued representation at that time. The waiver signed by Mrs. Klug was insufficient and not based on informed consent. In addition, at the time of the consultations, your firm had a policy in place and advertised the same in your firm brochure that the firm could represent the adverse party despite a previous consultation, do so without the former client's consent and that the former client could not object. You have therefore violated Rule 1.9(a)(b): Duties to a Former Client. The Committee noted that your firm had conflict procedures in place at the time, including a centralized call screener and a client tracking data base, which unfortunately did not work in these two instances. The Committee also noted that, prior to any grievances being filed, the Firm withdrew its former policy noted above.

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 \$100.00 are hereby taxed to you.

Done and ordered, this 5th day of March, 2008.

A handwritten signature in black ink, appearing to read "James R. Fox". The signature is written in a cursive style with a large initial "J" and "F".

James R. Fox, Chair
Grievance Committee
The North Carolina State Bar