

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
08G0119, 08G0246 & 08G0358

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IN THE MATTER OF )

Timothy D. Smith, )  
Attorney At Law )

REPRIMAND

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On July 17, 2008 the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by A. S., D. B., and A. M.

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.

You agreed to represent C. M. on traffic offenses in 2007. You failed to appear on C. M.'s behalf at a July 30, 2007 court hearing. Consequently, C. M. was called and failed and her bond was forfeited. Your failure to appear in court on C. M.'s behalf violated Rule 1.3 and Rule 8.4(d) and (g).

The 26<sup>th</sup> Judicial District Bar Grievance Committee contacted you about this grievance in order to investigate it. You indicated that you did not receive communications about the grievance from the 26<sup>th</sup> Judicial District Bar Grievance Committee because you had moved your office. N.C. Gen. Stat. Sec. 84-18.1(b) requires you to notify the judicial district bar of your correct address. Apparently, the 26<sup>th</sup> Judicial District Bar did not have your correct address. Therefore, your explanation for not responding to the grievance is unacceptable. The Grievance Committee found that you failed to cooperate with the local grievance committee in violation of Rule 8.4(d).

You agreed to represent D. B. in June 2007 in divorce, alimony, and equitable distribution actions. Although you filed a complaint for divorce in 2007, you never proceeded to obtain a divorce judgment until after this grievance was filed. The Grievance Committee found that you neglected D. B.'s divorce matter in violation of Rule 1.3.

The Grievance Committee also found that you neglected D. B.'s case as you did not provide the appropriate proof of service regarding the service of the divorce and equitable distribution complaint on D. B.'s husband. The judge dismissed D. B.'s actions since there was no proof of service on the defendant. However, you were able to resolve the matter with the opposing counsel, despite the dismissal. The Grievance Committee found that you again neglected Complainant's case in violation of Rule 1.3.

You admitted that you were somewhat slow in responding to D. B.'s husband when he was trying to settle the case. The Grievance Committee found that your delay in moving forward with the settlement of the case was in violation of Rule 1.3 and Rule 8.4(d).

You entered into a consent order on behalf of D. B. in February 2008. The Grievance Committee was advised that you had not prepared the QDRO, although it was your responsibility to do so. The Grievance Committee found that your conduct violated Rule 1.3. The Grievance Committee reviewed some of e-mails from your former legal assistant, Ms. Iglesias. In some of Ms. Iglesias' e-mails, it appears that she is giving legal advice to D. B. The Grievance Committee found that your failure to supervise Ms. Iglesias as it relates to the advice she gave D. B. violated Rule 5.3 and Rule 5.5(d).

You agreed to represent A. M. in a divorce, alimony, and child support case. The Grievance Committee found that you did not properly serve A. M.'s husband with process in her domestic action in violation of Rule 1.3.

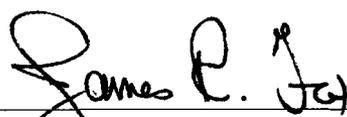
The Grievance Committee was also concerned about your failure to respond to the Fee Dispute Resolution Committee in its investigation of this grievance. You indicated that you did not receive notice of the fee dispute resolution process because it was sent to your old address. Again, you have a responsibility to keep the judicial district bar apprised of your correct address so that the judicial district bar and consequently, the grievance committee has your current address. Your failure to participate promptly in the fee dispute process delayed the resolution of A. M.'s fee dispute, which the Committee found violated Rule 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 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 reprimand by the Grievance Committee, the costs of this action in the amount of \$100.00 are hereby taxed to you.

Done and ordered, this the 10<sup>th</sup> day of August, 2008

  
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James R. Fox, Chair  
Grievance Committee

JRF/lr