NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
10G1167

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| IN THE MATTER OF | ) | |
| | ) | |
| David L. Best, | ) | REPRIMAND |
| Attorney At Law | ) | |
| | ) | |

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On April 21, 2011, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar.

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 responses 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.

In or about 2002, you hired disbarred attorney Gerald E. Rush as a legal assistant or paralegal to perform intake for bankruptcy, workers compensation and social security cases, and to assist you in personal injury cases. You terminated Rush's employment when you learned that Rush was warned by the State Bar for handling an estate matter on his own without your

knowledge. Six months later, Rush convinced you to rehire him as a paralegal and gave you assurances that he would not engage in the unauthorized practice of law.

Rush began negotiating personal injury claims with numerous insurance companies on behalf of your law firm. In his written communications with the insurers' representatives, Rush utilized your law firm's letterhead and signed his name, "Gerald E. Rush, J.D.", without indicating his title or position. He did not identify himself as a paralegal or other non-lawyer. Rush presented demand letters and claims, and accepted and rejected offers under his own name on behalf of you and your law firm. Some insurance adjusters who dealt with Rush believed he was an attorney, and most of the insurers' records identify Rush as the attorney for the claimants.

You learned that Rush was holding himself out as an attorney in September of 2010 when you and Rush met with clients and the clients referred to Rush as "Attorney Rush." Rush made no effort to correct this misstatement or indicate to the clients that he was not an attorney. As a result, you fired Rush on September 24, 2010.

You violated Rule 5.3(b) by failing to make reasonable efforts to supervise and ensure that Rush's conduct was compatible with your professional obligations. Under Rule 5.3(c), you also were responsible for Rush's misrepresentations by your knowledge of and ratification of Rush's utilization of the "JD" designation. In both failing to make reasonable efforts at supervision and ratifying Rush's use of the "JD" designation, you assisted Rush in the unauthorized practice of law in violation of Rule 5.5(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 18 day of May, 2011.

Ronald G. Baker, Sr., Chair
Grievance Committee

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