

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
11G1341

IN THE MATTER OF)	
)	
Van H. Johnson,)	CENSURE
ATTORNEY AT LAW)	
)	

On April 26, 2012, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by R. S.

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.

R. S. (Mr. S.) hired you in June 2008 to represent him in a divorce action. R. S.'s wife (Ms. S.) was represented by Attorney M.H. (Attorney H.) Attorney H. gave you notice about taking Mr. S.'s deposition on April 8, 2009. The deposition was to be taken on April 20, 2009. Attorney H. then filed an amended notice of deposition dated April 15, 2009, setting Mr. S.'s deposition for April 27, 2009. A second amended notice to take Mr. S.'s deposition was dated April 24, 2009 and the deposition was set for May 6, 2009.

You indicated that you were unavailable for the deposition on April 27, 2009 but would be available for the deposition on May 6, 2009. Neither you nor Mr. S. appeared at his deposition on May 6, 2009. In a May 4, 2009 e-mail from you to Attorney H., you stated the following: "This is to

confirm our request that the S's depositions not be scheduled until such time as both parties are available on the same day. If we can't confirm that Ms. S will also submit to her deposition on May 6 by 12:00 noon on May 5 we will assume that the depositions will be scheduled for some other date than May 6." In a May 5, 2009 e-mail from you to Attorney H., you stated: "This is to confirm that Mr. S. will not be available on Wednesday, May 6 because of my court conflict and because your client is not available on that date." Later on May 5, 2009, you e-mailed Attorney H. and stated: "I remain open to reaching an agreement upon date for our clients' depositions if you can notice my client for deposition, I can notice your client for deposition and we'll see what that gets us." In each of the e-mails that you sent Attorney H., you condition his deposing Mr. S. upon you deposing Ms. S. on the same day as Mr. S's deposition. The North Carolina Rules of Civil Procedure do not support your failure to cooperate with the opposing party deposing Mr. S.

You did not tell Mr. S. that his wife had noticed his deposition. As a result of Mr. S. not appearing at the depositions, Attorney H. filed a motion for sanctions. Mr. S. paid \$4,463.22 in court-ordered sanctions.

The Grievance Committee found that you violated Rule 1.3, Rule 1.4(a)(1)(2)(3) and Rule 8.4(d).

In issuing this censure, the Grievance Committee found as aggravating factors your disciplinary history (a reprimand in 2001 and a censure in 2007), refusal to acknowledge the wrongful nature of your conduct and the lack of effort to rectify the consequences of your conduct.

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 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 censure by the Grievance Committee, an administrative fee in the amount of \$350.00 is hereby taxed to you.

Done and ordered, this 8th day of June, 2012.



Margaret M. Hunt, Chair
Grievance Committee
The North Carolina State Bar