

12459

NORTH CAROLINA

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
01G0429R

WAKE COUNTY

IN RE:	GEORGE R. KORNEGAY, III, ATTORNEY AT LAW))))	CENSURE
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On 10/16/02, 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 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.

Your firm, through Mary Kay Baynard, undertook to represent Lisa Winston with respect to a number of issues related to the administration of her father's estate. Ms. Winston was co-executor of her father's estate. During the course of consultation with your firm, Ms. Winston

provided Ms. Baynard with a number of estate-related documents and other information concerning the estate and her relationship as a beneficiary.

Ms. Winston first contacted the firm in January 2000. Ms. Baynard opened a representation file on or about 15 March 2000 and provided several telephone consultations concerning estate taxes, ownership of real property, rights under an existing mortgage, and other estate issues. Ms. Winston scheduled an appointment for an in-person consultation with Ms. Baynard on 12 July 2000. In preparation for this appointment, Ms. Winston provided Ms. Baynard with a number of documents related to the estate in June of 2000. On the day before this appointment, Ms. Baynard cancelled the appointment, and informed Ms. Winston that the firm would not handle her father's estate. Ms. Baynard did not provide Ms. Winston with any explanation.

You had an initial conference with one Stephanie Evans on February 16, 2000 regarding representation of Ms. Evans in a domestic case against her husband, but you were not retained by Ms. Evans until May of 2000. Sometime between late June and early July of 2000, you learned that your client, Ms. Evans, might want to pursue a claim for alienation of affections against a certain Lisa Winston. Upon consultation with Ms. Baynard, you learned that this was the same Lisa Winston that Ms. Baynard was advising on the estate matter. On 20 July 2000, just nine days after Ms. Baynard had terminated representation of Ms. Winston without explanation, you filed a lawsuit against Ms. Winston on behalf of Ms. Evans alleging alienation of affections and criminal conversation. By filing the lawsuit against Ms. Winston, you represented a client, Ms. Evans, whose interests were directly adverse to another client, or former client of your firm, Ms. Winston. Even after the alleged conflict was raised by opposing counsel by letter and by a motion to disqualify filed with the Court, you elected to continue your representation of Ms. Evans against Ms. Winston. On May 17, 2001, Superior Court Judge Marcus Johnson denied the motion to disqualify and entered a written order on June 4, 2001. On August 8, 2001 you dismissed the alienation of affection action without prejudice and then re-filed the action the very next day. On August 24, 2001, opposing counsel filed a second motion to disqualify Superior Court Judge Timothy S. Kincaid granted the motion to disqualify you and your firm by written order dated October 10, 2001.

The Committee found that your above-described conduct violated the Revised Rules of Professional Conduct. By representing Ms. Evans in a lawsuit against another client of the firm, you violated Rule 1.7(a), (b), and (c) to the extent that Ms. Winston was a current client and Rule 1.9 to the extent that she was a former client. The conflict of Ms. Baynard was imputed to you and the rest of the firm pursuant to Rule 1.10.

In deciding to issue a Censure, the Committee considered aggravating and mitigating factors. In aggravation, the Committee considered your failure to recognize the conflict after it was brought to your attention by opposing counsel. In mitigation, the Committee considered that you have no prior disciplinary record.

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 \$50.00 are hereby taxed to you.

Done and ordered, this 29 day of May, 2003.

Sharon B. Alexander
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Chair, Grievance Committee