

14386

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
03G1705

---

IN THE MATTER OF )  
 )  
DIEDRA WHITTED, ) CENSURE  
ATTORNEY AT LAW )  
 )

---

On Thursday, October 21, 2004, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by S. H.

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.

You undertook to serve as the attorney for the estate of E. G. E., who died early in the year 2000. The value of the entire estate was approximately \$42,000. During the course of your service as attorney, you paid yourself a fee of at least \$11,415.80. This fee was not approved by the Clerk of Court and, when the Clerk asked you to provide a notarized statement from each of the heirs confirming that they had agreed to this fee, you failed to respond. It also appears that you did not reveal to all of the heirs that the Clerk had questioned your fee. You also failed to provide information to the Clerk setting out the time you spent working on the estate, despite a specific request for an affidavit.

When the State Bar sent you a letter of notice about this matter, you failed to respond. As a result, the Bar was forced to subpoena you to Raleigh to provide your account of the matter.

The Grievance Committee determined that you paid yourself an illegal or excessive fee in this matter, in violation of Rule 1.5 and that you also ignored lawful orders of the Clerk of Court and thus engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d). Finally, the Committee found that you failed to timely respond to lawful inquiries of the N.C. State Bar, in violation of Rule 8.1. Your misconduct is aggravated by the fact that you have previously been disciplined by the State Bar in other matters and by your continuing failure to make restitution or otherwise comply with the Clerk's orders in this case.

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 16<sup>th</sup> day of November, 2004.

  
Henry Babby, Chair  
Grievance Committee  
The North Carolina State Bar