

NORTH CAROLINA

9759

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
06G0228

IN THE MATTER OF )

J.W. COVINGTON, )  
ATTORNEY AT LAW )

CENSURE

On January 18, 2007, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the 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.

You represented the Investors and the Brokers involved in a mobile billboard investment that was later determined to be an illegal Ponzi scheme. Based on the legal allegations, the Brokers may have had some culpability in the Ponzi scheme and thus may have been liable to the Investors. You failed to address the issue with your clients or consider whether the possible conflict could be waived. You therefore had a conflict of interest pursuant to Rule 1.7(a)(b), Conflict of Interest: Current Clients.

In representing the Investors, you had an ethical duty to make a full disclosure to the Investors, including providing notice that a temporary order to cease and desist was issued against the Brokers,

thereby giving the Investors sufficient information to make informed decisions. You therefore violated Rule 1.4(a), Communication.

You also accepted payment of your legal fees from Rainey, a third party payor, which would require you to keep information confidential and not allow the third party payor to interfere with your professional judgment. You allowed Rainey to make all the decisions, including the decision to not pursue the matter further after the court dismissed the action, which in no way affected Rainey, but absolutely affected the Investors. You therefore violated Rule 1.8(f). In addition, you never informed the Investors about an appeal process or whether the action could be re-filed in the appropriate jurisdiction, which is a violation of Rule 1.4, Communication and Rule 8.4(d), Misconduct prejudicial to the administration of justice.

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 22nd day of February, 2007.

  
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James R. Fox, Chair  
Grievance Committee  
The North Carolina State Bar