

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
09G1489

IN THE MATTER OF)
)
Stephen F. Wallace,) CENSURE
ATTORNEY AT LAW)
)

On October 28, 2010, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by C. T.

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.

You were plaintiff's counsel in *McMillan v. Swift et al*, Wake County file no 05 CVS 9881. In August 2006, the court entered summary judgment in favor of *McMillan* defendants Eric Sommer and Emma Swift. In July 2009, you filed an amended complaint containing claims against Swift and Sommer upon which they had previously been granted summary judgment. The amended complaint also included a claim for civil conspiracy. You had previously brought a claim for civil conspiracy against these individuals, and had been sanctioned by the court for doing so. The Grievance Committee did not accept your explanation that the inclusion of claims against previously-dismissed parties was mere oversight, as your amended complaint contained upwards of 20 references to dismissed parties as "defendant/s," and multiple characterizations of dismissed parties' conduct as "fraudulent." By filing this amended

complaint, you made frivolous claims in violation of Rule 3.1 and used means that had no substantial purpose other than to embarrass, delay, or burden third persons in violation of Rule 4.4.

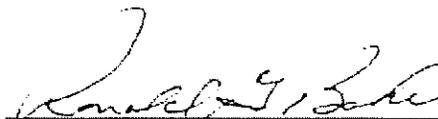
In the *McMillan* case, you also sought attorney's fees and costs incurred in connection with a motion for discovery sanctions. The court granted the sanctions motion and your request for associated fees and costs. Although you submitted an affidavit requesting \$2,340.00 in attorney's fees and \$559.97 in costs associated with the sanctions motion, the court erroneously entered an order awarding you \$18,495.00 in attorney's fees and \$719.97 in costs. Consequently, you knew or should have known that you were not entitled to the portion of the fees awarded in error. Nonetheless, you pursued an order to show cause based on the opposing party's failure to pay the amount of fees recited in the order. By failing to seek clarification from the court regarding the disparity between the amount of fees you requested and the amount of fees the court awarded, and by seeking to compel the opposing party to pay fees to which you knew or should have known you were not entitled, you engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

The Committee notes that you were previously disciplined for misconduct in the *McMillan* case but that neither court sanctions nor professional discipline has deterred your improper behavior. The Committee concludes that your relentless pursuit of the dismissed *McMillan* defendants irrespective of prior court rulings and without regard to the merit of your methods, was harmful to third parties and 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 January 24, 2008 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 \$100.00 is hereby taxed to you.

Done and ordered, this 8 day of April, 2011.



Ronald G. Baker, Sr., Chair
Grievance Committee
The North Carolina State Bar