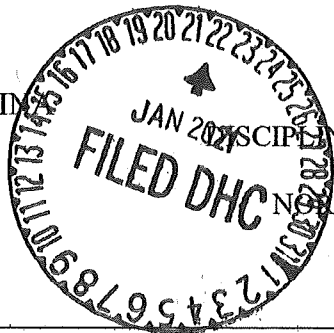


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
21 DHC 6

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

FRANK J. CHUT, JR., Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar (hereinafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina and the Discipline and Disability Rules of the North Carolina State Bar promulgated thereunder.

2. Defendant, Frank J. Chut, Jr. (hereinafter "Chut" or "Defendant"), was admitted to the North Carolina State Bar on September 20, 1990 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

Upon information and belief, the State Bar alleges:

3. During the times relevant herein, Defendant was actively engaged in the practice of law in the State of North Carolina and was employed as an Assistant U.S. Attorney in the Middle District of North Carolina.

4. Defendant was assigned to investigate allegedly fraudulent activity by an officer of GrandSouth Bank relating to a prior prosecution of Gregory Harrison, the owner of a temporary staffing company who had been convicted of payroll tax fraud perpetrated through a series of loans ("the Harrison loans") obtained from GrandSouth Bank.

5. The investigation began in 2012 and concluded in 2017. The bank officer and several other employees were indicted.

6. The investigation entailed, among other actions, presentation of evidence through witnesses subpoenaed to testify before grand juries empaneled in the federal court in the Middle District of North Carolina.

7. Shannon Drake, an account executive at GrandSouth Bank, was subpoenaed to testify before grand juries on September 25, 2012 and May 29, 2013.

8. Approximately two weeks before Drake's May 29, 2013 testimony, Defendant emailed his investigative team stating the following: "We need to decide if we want to treat Shannon Drake as a target. She is a bank officer. While I do not believe there is evidence she knew about the taxes, she was an essential cog in the Five Guys system and was well aware that these loans were a nominee arrangement. It would help to get her an attorney of her own. Give her a break in response for full testimony or make her eat a false entry on bank books charge (venue issues aside)?"

9. As expressed in his email, Defendant believed that Drake was involved in the bank officer's fraudulent activity.

10. Before Drake testified before the grand juries, Defendant knew that Drake was at risk of being held criminally liable for knowingly being involved in the bank officer's fraudulent activity by making false entries on GrandSouth Bank's records.

11. Making false entries on bank records in violation of 18 U.S.C. §1005 is a criminal offense.

12. Before Drake testified before the grand juries, Defendant advised Drake of her Constitutional rights to legal representation and against self-incrimination.

13. Before Drake testified before the grand juries, Defendant told Drake that she was not a subject or target of the investigation and that she was merely being called to testify as a factual witness.

14. At the time Defendant made the assertions set forth in paragraph 13 above, the government had not decided whether Drake would be designated a subject or target of its investigation.

15. Defendant's assertions to Drake that she was not a subject or target of the investigation and that she was merely a factual witness were misleading and deceptive, in that Defendant's statements implied that Drake was not at risk of being held criminally liable based upon her testimony, that he believed she was not involved in the bank officer's criminal activity, and that the government had already decided that it would not designate Drake as a subject or target of the government's investigation.

16. Drake testified to the grand juries about her own work on the Harrison loans as well as that of the bank officer without the benefit of her own attorney who could advise her of the potential self-incriminatory nature of her testimony.

17. On or about June 28, 2016, as a result of evidence presented by Defendant, a subsequent grand jury returned a multi-count indictment against Drake alleging conspiracy, bank fraud, making false entries on the records of GrandSouth Bank and other criminal acts.

THEREFORE, the State Bar alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. §84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of the actions as follows: By asserting to Drake that she was not the subject or target of the investigation and that she was merely a factual witness, when Defendant knew that Drake was at risk of being held criminally liable for her conduct, believed that Drake was involved in the bank officer's fraud, and knew that the government was still considering whether to designate Drake as a subject or target of the investigation, Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d).

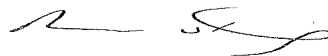
WHEREFORE, the State Bar prays that

1. Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. 84-28 as the evidence on hearing may warrant;
2. Defendant be taxed with costs and administrative fees in connection with this proceeding; and
3. For such other and further relief as is appropriate.

This the 22nd day of January, 2021.



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Signed pursuant to 27 N.C. Admin. Code 1B
§ .0113(m) and §.0105(a)(10).



Matthew W. Smith, Chair
Grievance Committee