

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
19G0210

IN THE MATTER OF)
)
JACK A. KAPLAN,) CENSURE
ATTORNEY AT LAW)

On January 23, 2020, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by R. H. The grievance was assigned to a Subcommittee, which thoroughly reviewed the results of the State Bar staff's investigation of this matter.

Pursuant to section .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, the Grievance Subcommittee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Subcommittee 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.

In 2017, you agreed to represent Mr. R. H. in his car accident case. Mr. H. had filed a small claims action regarding the car accident. You did not appear at the small claims hearing and the case was dismissed with prejudice. Your failure to appear in the small claims case on Mr. H.'s behalf violated Rule 1.3.

At the conclusion of the case, you met with Mr. H. in your office on February 15, 2019. You told Mr. H. that you had gone to the small claims hearing and that the judge said that the case was dismissed without prejudice. You misrepresented the truth to Mr. H. when you told him you had gone to the small claims hearing where the judge dismissed the case without prejudice. Your misrepresentation to Mr. H. violated Rule 8.4(c) of the Rules of Professional Conduct.

In your February 15, 2019 conversation with Mr. H., you told him that he “got cheated...” You stated that opposing counsel got the judgement changed from dismissal without prejudice to dismissal with prejudice. You told Mr. H. that although you couldn’t prove that allegation you believed that the opposing counsel engaged in fraudulent and dishonest conduct. You had no evidence or proof of that allegation, yet you communicated it to your client to defend your inaction. These misrepresentations to your client violated Rule 8.4(c) and (d) of the Rules of Professional Conduct. The Grievance Committee found that your misrepresentations to your client about your actions is a serious violation of the rules. A lawyer has an obligation to be truthful with his client or former respecting the lawyer’s representation, particularly as it relates to the lawyer’s mistakes or misconduct. In your February 15, 2019 meeting with Complainant, you stated that you own up to your mistakes. You did not acknowledge your mistakes in this instance, but sought to place blame on others.

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 July 23, 2010 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 \$350.00 is hereby taxed to you.

Done and ordered, this 18th day of February, 2020.



A. Todd Brown, Sr., Chair
Grievance Committee
The North Carolina State Bar

ATB/lb