

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
14G0641

IN THE MATTER OF)
)
NICHOLE B. GREENE,) CENSURE
ATTORNEY AT LAW)

On July 21, 2016, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the North Carolina State Bar. 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.

You had a consultation with a prospective client ("A") in September 2012 regarding a marital separation and future child custody of A's unborn child. During the consultation, you obtained confidential information from A. A paid you a \$100.00 consultation fee.

On May 6, 2013, A's husband ("K"), who was the child's father, consulted you about filing for divorce. You prepared a complaint for absolute divorce and K filed it the next day. A default judgment of divorce was entered on June 12, 2013.

On June 17, 2013, K retained you regarding child custody. On June 24, 2013, you filed a complaint for child custody and notice of hearing. On July 2, 2013, A's attorney filed pre-answer

motions which included a motion that you be excluded as counsel because of your prior consultation with A. On July 12, 2013, you filed a motion to withdraw and withdrew from representation of K.

Because attorneys cannot be expected to recall every prospective client or client, a reliable conflicts check system is vital. 2011 FEO 2 provides that an attorney "has a continuing duty to maintain a reliable, comprehensive system for identifying conflicts arising from both present and former representations." Further, an attorney "should never accept a representation knowing that it presents a prohibited conflict under Rule 1.9, and even a good faith and unintentional failure to identify a conflict of interest does not excuse it."

You should have had a conflicts system in place that would have discovered the conflict. You stated in response to the Letter of Notice that you did not pick up on the conflict because of how A's name was shown in her contacts information which staff enters based on the intake form. According to your response, after A's consultation, A's name was placed in the firm contacts with her maiden name as her last name rather than her married last name and the unborn child was listed with A's maiden name as the child's last name. However, when A filled out the intake form, she clearly wrote her married last name, which was K's last name, as her last name.

Moreover, A also completed your "Domestic Matter Information Sheet" and again identified her maiden name and her last name. She also wrote K's complete name under "Opposing Party." The paperwork A filled out gave you enough information to enable you to identify the conflict when K consulted you.

Your failure to identify the conflict was exacerbated by the fact that you were involved in another conflict situation in a domestic case in 2011. You asserted in response to the Letter of Notice regarding that matter that your conflicts check system had failed to identify the conflict in that case. You were on notice in 2011 that your contacts check system was deficient. That situation should have prompted you to assess and ensure the reliability of your system. In that case, as in this one, you represented the opposing party in the same matter about which you had consulted and obtained confidential information from the other party.

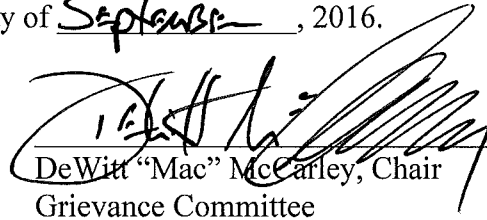
You did not indicate in your initial response to the Letter of Notice that you took any steps in 2013 to determine why this situation occurred nor that you implemented any corrective measures to prevent future conflict problems. However, in response to a follow up question inquiring what steps, if any, you had taken, you stated that when you received the Letter of Notice in 2014, you put in place a written policy for checking conflicts. You asserted that now the conflicts check is done when the appointment is made and when the prospective client comes for the first appointment prior to meeting with you. This system still does not address the problems that arose in this grievance because there is no provision for including maiden names or variations that might be used, especially in domestic cases. Comment 3 to Rule 1.7 provides that a lawyer should adopt reasonable procedures to determine the persons and issues involved. Your failure to do so violated Rule 1.7. You obtained confidential information from a prospective client and then filed two complaints against that individual in matters about which she had sought your counsel. Your conduct violated Rules 1.7(a)(2), 1.9(a), and 8.4(d).

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 14th day of September, 2016.


DeWitt "Mac" McCarley, Chair
Grievance Committee
The North Carolina State Bar

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