

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
14G0586

IN THE MATTER OF)	
)	REPRIMAND
JOHN J. PECK,)	
ATTORNEY AT LAW)	

On July 27, 2017 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by B. S. 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 to the respondent attorney.

A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure.

The Grievance Committee was of the opinion that a censure is not required in this case and issues this reprimand to you. As Chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this reprimand.

E.S. was an 89-year-old with profound dementia. You were hired by E.S.'s wife and step-daughter, in her capacity as the wife's POA to formulate an estate plan for the wife and "implementation of a Medicaid plan" for E.S. E.S.'s wife had some health difficulties that threatened to hinder her ability to act as E.S.'s POA. Based entirely on consultation with the wife and step-daughter, you prepared a number of documents, including a power of attorney

naming the step-daughter as E.S.'s attorney-in-fact so she could act on E.S.'s behalf if the wife's health prevented the wife from fulfilling that role, and a post-marital agreement for the couple, which the wife signed on her own behalf and on E.S.'s behalf as his attorney-in-fact. You presented the power-of-attorney to E.S. for his signature without providing any meaningful explanation of the document.

Your representation of E.S. had the potential to be materially limited by your representation of the wife, and you did not obtain written confirmation of either party's consent to the potential conflict, in violation of Rule 1.7. By representing E.S. without communicating with him, you failed to maintain "as far as reasonably possible," a normal attorney-client relationship with a client with diminished capacity, in violation of Rule 1.14(a). You also allowed the person who paid your fee to direct your professional judgment in representing E.S., in violation of Rule 5.4(c).

You are hereby reprimanded by the North Carolina State Bar for your professional misconduct. The Grievance Committee trusts that you will heed this reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

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 reprimand by the Grievance Committee, an administrative fee in the amount of \$350.00 is hereby taxed to you.

Done and ordered, this the 5th day of September, 2017.



DeWitt "Mac" McCarley, Chair
Grievance Committee

DM/lb