

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
08G0838

IN THE MATTER OF)
Eric D. Levine,) CENSURE
ATTORNEY AT LAW)
)

On April 23, 2009, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by J. M.

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.

In October 2001, J. M. retained you to handle a personal injury case, alleging that he was attacked by a Mecklenburg County sheriff's deputy. You filed a complaint in state Superior Court in September 2002. The defendant, through its attorney, removed the case to Federal Court on May 28, 2003. On or about January 14, 2005, the defendants in J. M.'s case filed a motion to dismiss for failure to prosecute along with a memorandum in support of the motion. The motion and notice were sent by US mail for service and the defendants' attorney indicates that he did not recall ever receiving any mail back as undeliverable from your office. The basis of the motion to dismiss was that you had done nothing with 28 months to prosecute J. M.'s case. During the nine months that the case was in state court, you did not notice a deposition, did not send a letter requesting to do so, and never propounded

any written discovery requests. In the 19 months that followed the removal of the case, you did nothing but collect medical records.

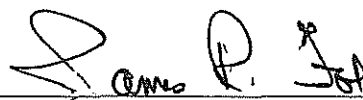
On February 1, 2006, Federal Court judge Robert Conrad entered an order dismissing J. M.'s case for failure to prosecute. In that order, Judge Conrad indicated that "[t]he damage is done and cannot be undone. Plaintiff has failed to prosecute his claims. A twenty-eight (28) month failure to prosecute is inexcusable and dismissal is the appropriate remedy." As a result of Judge Conrad's order, J. M.'s case was dismissed.

At a meeting with a member of a local grievance committee, you conceded that you were taken aback when the lawsuit was transferred to Federal Court. You admitted that mistakes were made in handling the case. You expressed some discomfort in practicing in Federal Court, and admitted that you should have contacted the clerk of court to determine the status of the case. The Grievance Committee found that your handling of J. M.'s legal matter violated Rule 1.1 of the Rules of Professional Conduct. Furthermore, you failed to act with reasonable diligence and promptness in representing J. M. in violation of Rule 1.3. Your conduct in this case was prejudicial to the administration of justice in violation of Rule 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 January 24, 2008 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a censure by the Grievance Committee, the costs of this action in the amount of \$100.00 are hereby taxed to you.

Done and ordered, this 15th day of May, 2009.



James R. Fox, Chair
Grievance Committee
The North Carolina State Bar