

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
14G0092

IN THE MATTER OF)

Charles A. Lamm,)
Attorney At Law)

REPRIMAND)
)
)

On October 23, 2014 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by C. A.

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 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.

C. A. hired you to assist her as executrix in the probate of her mother's estate. Ms. A. and her brother B. M. were the heirs of the estate. There was a dispute between Ms. A. and Mr. M. regarding Ms. A.'s attempts to sell their mother's home. Mr. M. refused to sign off on the sale due to questions regarding the sale of the home. There was one failed attempt to sell the property and the listing agent refused to relist the property without assurances that Ms. A. had

legal authority to sell the property. On April 25, 2008, you wrote the realtor and asserted that Ms. A. had legal authority to sell the property. The realtor relisted the property and it was sold in August 2009, without notice to Mr. M, for \$22,000.00 less than the sale price from the earlier failed closing.

The estate closed in November 2010 with the filing of the final account of the estate. Ms. A was paid \$29,000.00 from the estate for reimbursement of funds to maintain the mother's home.

In May 2011, Ms. A. received a demand letter from her brother's attorney for compensation for disbursement of the improper estate expenses to Ms. A. and lost proceeds from the sale of the home that failed to close. Ms. A. brought the letter to you to review. You indicated that you began drafting a response to the demand letter, but never sent it to the opposing counsel since you spoke with him by telephone. In February 2012, Mr. M. petitioned to reopen the estate of his mother. The estate was reopened and Mr. M. was appointed personal representative.

In March 2012, Mr. M. sued Ms. A. personally and in her capacity as the former executrix of the estate. Ms. A. retained you in April 2012 to defend against that lawsuit and she paid your \$2,500.00 fee. In May 2012, you filed and served an answer in response to the complaint on behalf of Ms. A. In July 2012, Mr. M.'s attorney moved to disqualify you from representing Ms. A. due to a conflict of interest relating to your duty to your former client, i.e. the estate of Ms. A.'s mother. It does not appear that you told Ms. A. about a potential conflict of interest when she sought advice from you regarding the lawsuit.

A hearing on the motion to disqualify you was held on September 25, 2012 and the court allowed the motion, disqualifying you from representing Ms. A. in the litigation. Ms. A. claims that you did not adequately communicate with her about the motion to disqualify you as her attorney, and you did not tell her about the hearing date of the motion. Ms. A. indicates that she learned you had been disqualified as her attorney when she called your office and spoke with your paralegal. The Grievance Committee believed that you did not adequately communicate with Ms. A. about a very important aspect of her case, i.e. the motion to disqualify you as her attorney and her need to find other counsel. Your lack of adequate communication in that area violates Rule 1.4(a)(1)(2)(3)(4) of the Rules of Professional Conduct.

You also failed to notify Ms. A. of the mediation scheduled for October 16, 2012 in the lawsuit filed by her brother. Ms. A. missed the mediation and was charged \$150.00 for her failure to appear at the mediation. You received a September 20, 2012 letter notifying you of the mediation prior to September 25, 2012, when you were disqualified as Ms. A.'s counsel. There is no indication that you ever informed Ms. A. of the October 16, 2012 mediation date prior to September 25, 2012. Again, your failure to advise her of this mediation date violates Rule 1.4(a)(1)(2)(3).

You represented Ms. A in her capacity as executrix of her mother's estate, thereby representing the estate. Ms. A's brother's lawsuit alleged that Ms. A. breached her fiduciary duty to the estate and that she was unjustly enriched during your representation. You had a duty to the former client, the estate, and you could not represent Ms. A. in what was essentially a dispute

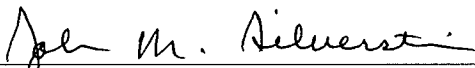
between Ms. A. and the estate without violating Rule 1.9(a). Furthermore, your representation of Ms. A in the lawsuit brought by her brother created a conflict for you personally as your advice to the estate via Ms. A as executrix was a material issue in the litigation. See Rule 1.7(a)(2). You were also prohibited from representing Ms. A. in the lawsuit brought by her brother pursuant to Rule 3.7 because of the likelihood that you would be called as a witness in that litigation. The Grievance Committee is concerned that you did not recognize the potential conflicts of interest and decline to represent Ms. A.

The local grievance committee investigator emailed you with additional questions regarding Ms. A.'s grievance. You did not respond to those additional questions. The local investigator tried to reach you by telephone and left you a voicemail, giving you an opportunity to respond to the follow-up questions. The local investigator never heard from you. When the grievance was returned to the State Bar office, a State Bar deputy counsel wrote you on August 28, 2014 to give you another opportunity to respond to the local committee investigator's questions. You did not respond to the deputy counsel's August 28 letter. Your failure to respond to the additional questions shows a lack of cooperation with the Grievance Committee investigation, in violation of Rules 8.1(b) and 8.4(d).

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 12th day of NOVEMBER, 2014.



John M. Silverstein, Chair
Grievance Committee

JMS/lb