

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
07G0419

IN THE MATTER OF	)	
	)	
Perry Mastromichalis,	)	CENSURE
ATTORNEY AT LAW	)	
	)	

On April 24, 2008, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by T. Z.

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.

You represented T.Z. in two legal actions. One of the actions involved an insurance case in Scotland County. In the Scotland County insurance matter, the defendant in the action served interrogatories and a request for production of documents on you. You did not provide a response to the discovery in a timely manner. The defendant's counsel asked that you provide the discovery, but you did not respond. The defendant in the insurance case then filed a motion to compel which was scheduled for hearing some three months later on December 4, 2006. Only counsel for the defendant and T.Z. were present at the December 4, 2006 hearing on the motion to compel. Just minutes before the hearing, you called counsel for the defendant and reported that you were in trial in another county. As a result, the judge continued the hearing for two months.

On December 10, 2006, T.Z. faxed you a note with a request to meet as soon as possible. Apparently, a meeting was set for January 5, 2007 to discuss the case, but no meeting was held. In a fax dated January 29, 2007, Complainant asked that you file a motion to withdraw as his lawyer. You indicate that you signed and mailed the motion to withdraw on January 22, 2007. The motion was not filed until January 30, 2007.

On February 5, 2007, the second hearing on the motion to compel was scheduled in Scotland County Superior Court. Neither you nor T.Z. was present and the court ordered him to respond to the discovery request within ten days. There was no response to the judge's order requiring delivery of the discovery within ten days, and the defendant moved to dismiss the case. At the hearing on March 26, 2007, the case was dismissed with prejudice and T.Z. was taxed with attorney's fees of \$2,281.00. You did not attend any of the three court hearings that were scheduled in the matter. Furthermore, although your motion to withdraw was filed on January 30, 2007, the clerk of court in Scotland County indicates that no hearing was ever requested on the motion and it was never calendared for hearing. Thus, until T.Z.'s case was dismissed with prejudice on March 26, 2007, you were still the attorney of record in his case.

The Grievance Committee found that your conduct with respect to the Scotland County insurance case violated Rule 1.3, Rule 1.4(a)(1)(2) and (3) and Rule 8.4(d) of the Rules of Professional Conduct.

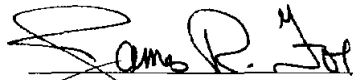
With respect to the Johnston County domestic case, the plaintiff in the action served interrogatories and request for production of documents on T.Z. by sending them to you. You did not timely file responses to the discovery request. The lawyer for the plaintiff in the action spoke with you and asked when you would send the requested discovery and that lawyer was told that you would get the responses to him. No discovery responses were forthcoming. The lawyer for the plaintiff in the action then wrote you and asked that you provide the requested discovery and still there was no response. Thereafter, the lawyer for the plaintiff filed a motion to compel and T.Z. was ordered by the court to comply by a certain date. No discovery was produced as ordered by the court, and the lawyer for the plaintiff sought a hearing on whether T.Z. should be held in contempt for failure to comply. Neither you nor T.Z. appeared at the contempt hearing, resulting in a finding that T.Z. was in contempt and the court taxed him with the plaintiff's attorney's fees and ordered a fine of \$100.00 for each day thereafter until the discovery requests were satisfied. The Grievance Committee notes that you paid the attorney's fees for the plaintiff.

Your conduct in the Johnston County domestic case violated Rule 1.3, Rule 1.4(a)(1)(2) and (3), and Rule 8.4(d) of the Rules of Professional Conduct.

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 October 15, 1981 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, 2008.

A handwritten signature in black ink, appearing to read "James R. Fox", written over a horizontal line.

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