

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
15G0993

IN THE MATTER OF)
)
JEFFREY S. BERMAN,) 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.

During the 30 days before you were suspended from the practice of law in September 2014, you were required to comply with the provisions of 27 N.C. Admin. Code Ch. 1B, § .0124 ("Rule .0124") in winding down your practice. The letter by which you notified your clients of the suspension did not state the reasons for the suspension, as required by Rule .0124, and you did not notify all of your clients "promptly," as required by the Rule. In addition, you failed to timely withdraw from several client matters, and did not refund unearned fees to a client for whom you had not completed agreed-upon services. By failing to comply with Rule .0124 as ordered by the DHC, you knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c). Your failure to promptly notify several clients, timely withdraw from at least two cases, and refund an unearned fee were also in violation of Rule 1.16(d), which

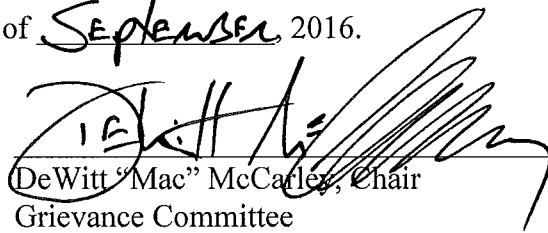
obligated you to take reasonably practicable steps to protect clients' interests upon termination of the representation.

One of the cases from which you did not timely withdraw when you were suspended was *Wheely v. Wheely*. In the *Wheely* case, the certificate of service on your motion to withdraw stated that you served the motion on 12 September 2014, but you did not actually serve the motion until after it was filed on 23 September 2014. Your false certification regarding the date of service violated Rule 11 of the Rules of Civil Procedure and therefore is an additional instance in which you violated Rule 3.4(c). In response to an inquiry from the State Bar about the *Wheely* case, you falsely stated that you were unaware that the opposing party was represented at the time you prepared the motion to withdraw, and falsely stated that you eventually told opposing counsel that you were closing your practice. These misrepresentations were in violation of Rules 8.1(b) and 8.4(c).

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" McCarter, Chair
Grievance Committee
The North Carolina State Bar

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