

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
16G1156

IN THE MATTER OF)

RUDOLPH A. BATA, Jr.,)
ATTORNEY AT LAW)

REPRIMAND

On July 27, 2017 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by M.W. 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.

M.W., through an LLC, owned properties in a subdivision in Murphy, NC. In February 2012, M.W. contacted you seeking legal advice about whether he owed more than two homeowners association (HOA) annual fees for lots that he had combined. M.W. paid your fee and sent you an email outlining the facts and attached the HOA covenants and bylaws. You

advised M.W. by telephone and by letter dated February 9, 2012 that he “effectively” combined the lots and was liable for the annual assessments for only two lots.

On September 21, 2016, M.W. received an email from the HOA. Attached was a copy of a letter from you, as HOA attorney, to the Board of Directors of the HOA in which you opined, based on a 2001 Court of Appeals case, that lot owners were required to pay a separate assessment for each lot owned. M.W. called you and pointed out that you were taking the opposite position from what you advised him in 2012. Your representation of the HOA presented a clear conflict of interest in that you previously provided legal advice to M.W. and then represented the HOA on the same issue. Your representation of the HOA constituted a concurrent conflict of interest in violation of Rule 1.7(a)(2) and also violated Rule 1.9(a) in that your representation of the HOA was materially adverse to your former client’s interest.

In your response to the letter of notice, you said you did not recall your conversation with M.W. and that you had no file for him or the LLC. You stated that your standard conflicts check did not produce anything. You also stated, “I do not see a conflict of interest, as we performed no real legal services for [M.W], other than perhaps a legal opinion.”

The Grievance Committee was concerned that you did not recognize the attorney-client relationship created by your contact with M.W. or the clear conflict of interest. You should have known when you were contacted by M.W. in September of 2016 that you had a conflict, but you continued to communicate on behalf of the HOA with M.W.’s attorney and you maintained in communications with the State Bar that you did not see the conflict.

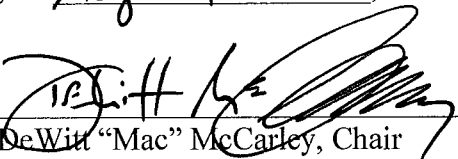
If your conflicts check did not reveal your representation of this former client, your system is deficient. 2011 FEO 2 states that an attorney “has a continuing duty to maintain a reliable, comprehensive system for conflicts arising from both present and former representations” and that “even a good faith and unintentional failure to identify a conflict of interest does not excuse it.” You accepted a legal fee and gave legal advice to M.W. – you should have had a record of that representation. The Grievance Committee urges you to have in place a conflicts check system which is adequate to protect against conflicts in the future.

You indicated in your response to follow up questions that you told M.W. [when he called in 2016] that if you told him in 2012 that it was okay to combine lots, that advice was incorrect because the law had changed in 2001. You stated that when you sent M.W. the letter in 2012, you based your opinion “on the common practice that prevailed (at least in our community), that combination of lots, if done properly, was allowable.” You further stated that at that time, you were not aware of the 2001 case. The Grievance Committee found that your approach to providing legal advice in this situation reflected a lack of diligence in violation of Rule 1.3.

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 15th day of August, 2017.


DeWitt "Mac" McCarley, Chair
Grievance Committee

DM/bc