

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
21G0754

---

IN THE MATTER OF )  
 )  
RICHARD W. FARRELL, ) CENSURE  
ATTORNEY AT LAW )

---

On April 21, 2022, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by G. S. 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.

You were hired by G.S. to defend him and his business in a federal breach of contract lawsuit filed in the Eastern District of North Carolina. During your representation, you failed to reply to Plaintiff's Motion for a Preliminary Injunction. On May 8, 2020, the court granted Plaintiff's preliminary injunction ordering G.S. to close his business immediately. On May 9, 2020, you emailed G.S. that you were preparing a reply to Plaintiff's Motion for Preliminary Injunction to be filed "today." You further requested that G.S. review and execute an affidavit detailing his economic losses "if the business is forced to close." However, at that time you failed to inform G.S. that the court had already granted the preliminary injunction closing his business, that you would be filing a Motion for Reconsideration, and that you would be filing a Motion to Stay the Preliminary Injunction.

You did not inform G.S. that you failed to timely respond to Plaintiff's Motion for Preliminary Injunction, or that the court granted the preliminary injunction until June 4, 2020. On that date, you e-mailed G.S. to notify him that "the court has entered an order requiring that you not operate the business while the lawsuit is pending, commencing today." You also emailed G.S. copies of your Motions to Reconsider and Stay the Preliminary Injunction that you filed in May 2020 noting that they were "the docs [sic] following up on our discussion earlier today." Although you knew the preliminary injunction had been entered on May 8,

2020, you allowed G.S. to continue to operate his business in violation of the preliminary injunction without his knowledge until June 4, 2020.

In your response to the State Bar, you claimed to have informed G.S. about the May 8, 2020 order during a phone call. However, the May 9, 2020 and June 4, 2020 emails that you provided clearly establish that it was not until the court denied your Motions for Reconsideration and Stay that you informed G.S. about the true timing of the granted preliminary injunction and nature of your responsive motions.

By failing to promptly inform G.S. that you failed to timely respond to Plaintiff's Motion for Preliminary Injunction, mispresenting to G.S. how you intended to respond to that motion, allowing G.S.'s business to operate for one month in violation of the preliminary injunction without G.S.'s knowledge, and thus allowing G.S.'s continued business operation during the first month of the granted preliminary injunction to be used as a negotiating tool for settlement, you failed to promptly inform the client of any decision or circumstance with respect to which the client's informed consent was required, failed to reasonably consult with the client about the means by which the client's objectives were to be accomplished, failed to keep the client reasonably informed about the status of his lawsuit, and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding your representation, in violation of Rules 1.4(a)(1), (2), (3), and 1.4(b). By these actions you also engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on your fitness as a lawyer and engaged in conduct prejudicial to the administration of justice in violation of Rules 8.4(c) and 8.4(d).


By asserting to the State Bar that you informed G.S. about the preliminary injunction during a phone call on May 9, 2020, you knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a).

In determining that a Censure was appropriate the Committee considered the harm that was caused to the client, your failure to recognize the issues with your conduct, your failure to take remedial actions, and your assertion that you contacted G.S. by phone regarding the preliminary injunction on May 9, 2020, when that assertion was clearly disproven by your e-mail exchanges on June 4, 2020. The Committee also considered your lack of discipline for similar conduct and that this was likely an isolated incident.

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 the 31<sup>st</sup> day of May, 2022.

  
\_\_\_\_\_  
Matthew W. Smith, Chair  
Grievance Committee  
The North Carolina State Bar

MWS/lb