

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
14G0640

IN THE MATTER OF)
)
NICHOLE B. GREENE,) 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.

S.D. consulted you in 2011 about separation and divorce and paid a \$100.00 consultation fee. During that consultation, you obtained confidential information from S.D. including her concerns about domestic violence. You advised her of the law on filing a 50B complaint and motion for domestic violence protective order which she subsequently did *pro se*. Less than a month later, S.D.'s husband, T.D., consulted with you about a domestic violence protective order. A week later, you filed an answer and counterclaim on T.D.'s behalf. You should have recognized the conflict. In addition, your conflicts check system should have revealed the conflict. 2011 FEO 2, endnote 2, provides: "Even a prospective client consultation where no fee is paid and no further representation provided, should be entered into a law firm's conflicts checking system." You asserted in response to the letter of notice that S.D.'s name was "inadvertently" not "placed in the conflicts." 2011 FEO 2 also 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.”

On the first court date, S.D., who was not represented by counsel, told you that she had previously consulted with you. Despite the conflict, you proceeded to work out a settlement between the parties which included execution that same day of a separation agreement and property settlement and an agreement that S.D. dismiss her complaint. Although you included language about waiving the conflict in the separation agreement and property settlement you drafted, the waiver was insufficient to establish the *informed* consent that Rule 1.7 requires. The requirement that a waiver be in writing is in place in part “to impress upon clients the seriousness of the decision the client is being asked to make...” Rule 1.7, Comment 20. That the waiver was not in a separate document, was mentioned on page 11 of a 12 page agreement under the heading “Disclosure of Representation,” and that the separation agreement was executed the same day it was drafted, militate against the notion that S.D. had a reasonable amount of time to consider the full import of the waiver or to consult other counsel. In addition, the language you drafted does not mention that you obtained confidential information from S.D. nor does it clearly state who you are representing.

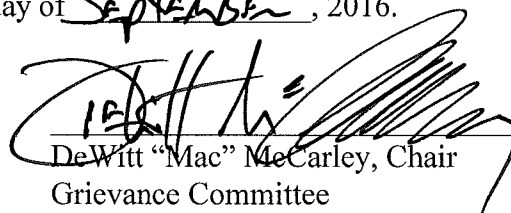
The separation agreement and property settlement makes no mention of the vehicle S.D. wanted. Although you stated in response to the Letter of Notice that you do not remember any discussion of the vehicle, S.D. wrote on her complaint that she wanted possession and use of that vehicle. In addition, in the answer you filed, you asked that S.D. be ordered to turn over the vehicle to the original owner. The separation agreement you drafted ensured that T.D. had a vehicle, but did not provide for a vehicle for S.D. Independent counsel representing S.D. would have been obligated to negotiate on her behalf.

You negotiated a separation agreement and property settlement with an unrepresented party who had recently consulted you about an abusive domestic situation and who had been issued a domestic violence protective order. Your drafting of the separation agreement and property settlement and representation of T.D. under the circumstances presented here violated Rules 1.7(a)(2), 1.9(a), 4.3(a), and 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 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 17th day of September, 2016.


DeWitt “Mac” McCarley, Chair
Grievance Committee
The North Carolina State Bar