

#13761

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
06G0672 & 06G0908

IN THE MATTER OF)

Clarke K. Wittstruck)
Attorney At Law)

REPRIMAND

On April 19, 2007 the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by H. L and W. C.

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 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.

You were retained by JL in January 2005 to assist her in changing her daughter's birth certificate. Several months passed and JL did not receive any communication from you regarding the matter. It appears documentation was prepared in about May 2005 but JL found that her daughter's birth date was incorrect and the documentation needed to be revised. It appears arrangements were made to have all required individuals come in to sign documentation

in July 2005 but that the documentation was not filed at that time. JL attempted to ascertain the status of the matter through e-mails to you in July and August 2005. Upon learning in September 2005 that the documentation had still not been filed, JL e-mailed you terminating the representation and demanding a refund of the \$500.00 she had paid you. You responded by e-mail offering to refund the legal fee but promising to finish the case notwithstanding the refund. JL accepted this arrangement. You refunded \$400.00 of the \$500.00, retaining \$100.00 for the filing fee and costs. Yet as of June 26, 2006 you had still not filed the documentation for JL. You timely responded to the letter of notice in this matter. You admitted you had neglected JL's matter but stated you were ready to finish her case if she so desired. You failed to timely respond to the supplemental inquiry of the State Bar asking you to confirm that you had resolved JL's matter or that she had terminated your representation. The evidence shows you neglected a client matter in violation of Rule 1.3, failed to keep a client informed about the status of the matter in violation of Rule 1.4(a)(3), and failed to timely respond to the State Bar in violation of Rule 8.1.

You are also being reprimanded for your continued neglect and failure to communicate in your representation of WC. The State Bar communicated with you regarding this matter previously. You responded to the letter of notice in that file in 2006, at which time you admitted you had neglected WC's matter but were ready to conclude the matter for him and were attempting to contact him. The State Bar decided to dismiss that grievance with a letter of warning in April 2006. Subsequently, however, WC notified the State Bar that you continued to fail to respond to his attempts to communicate with you and that you still had not resolved his legal matter. The State Bar opened a new grievance file and sent you a letter of notice. You failed to timely respond to the letter of notice, despite obtaining an extension of time to do so. The evidence shows you neglected a client matter in violation of Rule 1.3, failed to keep a client informed about the status of the matter in violation of Rule 1.4(a)(3), and failed to timely respond to the State Bar in violation of Rule 8.1.

The Grievance Committee considered your prior disciplinary history as an aggravating factor, to wit: an admonition in 1997 that involved client neglect and an admonition in 2003 that involved failure to respond to the State Bar. The Grievance Committee also considered as an aggravating factor the letter of warning referenced above involving client neglect.

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 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 reprimand by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this the 4th day of May, 2007

James R. Fox
James R. Fox, Chair
Grievance Committee

JRF/lr