

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
07G0151, 07G0626, 07G1050, 07G1143 & 07G1156

IN THE MATTER OF	)	
	)	
C. Gary Triggs,	)	CENSURE
ATTORNEY AT LAW	)	
	)	

On January 22, 2009, the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by J. S., S. B., S. D, Y. P and the North Carolina State Bar.

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 letters 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.

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 represented J.S. in a domestic matter. In September 2006, after the representation had terminated, J.S. filed a petition for resolution of disputed fee ("fee dispute") with the State Bar. You submitted an initial written response to the fee dispute, but the fee dispute mediator requested additional information. Nearly two months later, the fee dispute mediator sent you an additional letter stating that the requested information had not been received, and instructing you to provide the additional information within two weeks. You did not respond to the mediator's letter or provide the requested information by that deadline. Your failure to timely respond to the fee dispute mediator's repeated requests for information was in violation of Rule 1.5(f) which requires good faith participation in the fee dispute mediation process.

You represented S.B. at trial and filed a notice of appeal from the court's order. S.B. then discharged you, and on 8 June 2007, you sent S.B. a letter stating you would be filing a motion to withdraw from her case. You did not withdraw from S.B.'s case until late August 2007. You then billed S.B. for the time spent withdrawing from her case. By failing to withdraw from S.B.'s case for more than two months, you failed to take steps to the extent reasonably practicable to protect your client's interests upon termination of the representation in violation of Rule 1.16(d). It is also impermissible pursuant to Rule 1.16(c) and 1.5(a) to charge a client for the time spent drafting and filing a motion to withdraw, which is a professional obligation under the rules of the tribunal, not a service performed for the benefit of the client.

You represented D.B. and two of his companies in various matters. In the fall of 2006, after the attorney-client relationship had terminated, D.B. asked you for all records in your possession pertaining to D.B. and D.B.'s companies. You did not provide the records as requested. In a 21 February 2007 letter, D.B. again requested your entire client files pertaining to D.B. and/or the two companies. You did not respond or provide the requested files. In a 30 October 2007 letter, D.B. again requested the files. Your obligation to provide a copy of the client file to D.B. continued even if D.B. had previously received all of the documents in his file. Your refusal to even respond to repeated requests for D.B.'s file was therefore a violation of Rule 1.16(d).

In November 2004, Y.P. retained you to pursue a civil action against the county DSS. Your fee agreement with Y.P. provided, among other things, that the minimum fee for every phone call made by you—including those which merely involved leaving a message—would be \$50.00 (during normal working hours) or \$100.00 (outside the hours of 8:00-5:00, Monday through Friday). This provision constituted an arrangement for a clearly excessive fee in violation of Rule 1.5(a). The fee agreement also stated: "It is understood that a retainer fee in the amount of \$3000 vs. (1/3 recovery at the time of settlement, or in the alternative not to proceed on an hourly basis) is to be paid at the date of the signing of this agreement." This incomprehensible language failed to adequately explain the "basis or rate" of your fee, in violation of Rule 1.5(b). The defendant in Y.P.'s case filed a motion for summary judgment, to which you did not respond. You did not notify Y.P. that the motion for summary judgment had been allowed until nearly a year later, thereby failing to adequately communicate with Y.P. in violation of Rule 1.4(a).

In August 2005, L.B. hired you to represent her in a sexual harassment case. Your fee agreement with L.B. completely failed to communicate the "basis or rate of the fee" as required by Rule 1.5(b). For example, the fee agreement provided for hourly rate billing, a minimum fee, AND a contingent fee. The language on the contingent fee is as follows: "The parties agree that the attorney shall be entitled to 1/3 of the gross recovery received by settlement or verdict in the above caption [sic] action, from that 1/3 the amount recovered from the settlement shall be deducted and the difference paid as additional attorneys fees. In the effect [sic] that the gross settlement is less than \$ N/A no additional costs will be billed." You did not file a complaint on L.B.'s behalf, and L.B. requested refund of her fees. In September 2007, after her requests for a refund were unsuccessful, L.B. filed a fee dispute with the State Bar. You were notified of L.B.'s fee dispute but failed to respond as required by the notice in violation of Rule 1.5(f) which requires good faith participation in the fee dispute mediation process.

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 January 24, 2008 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a censure by the Grievance Committee, the costs of this action in the amount of \$100.00 are hereby taxed to you.

Done and ordered, this 12 day of February, 2009.

A handwritten signature in black ink, appearing to read "James R. Fox", written over a horizontal line.

James R. Fox, Chair
Grievance Committee
The North Carolina State Bar