

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
20G0216

IN THE MATTER OF)	
)	REPRIMAND
JERRY B. CLAYTON,)	
ATTORNEY AT LAW)	

On October 6, 2021 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by B. O. 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.

B.O. retained you in March 2019 for defense in his criminal cases in Durham and Wake Counties and his parents paid your \$15,000 flat fee. By June 2019, you were aware that the U.S. Attorney’s office intended to indict B.O. in federal court. Because of this pending indictment, the Durham District Attorney dismissed the charges. You knew that you would not be representing B.O. in federal court. Between March and August, you and your associate periodically asked the Assistant U.S. Attorney about the status of the indictment, submitted a two-page boilerplate discovery request to the Wake County District Attorney’s office, received the discovery packet,

and visited B.O. in jail. You did not attend B.O.'s court appearances on May 14, June 28, or August 22. When you did not appear at B.O.'s arraignment on August 22, 2019, he requested and was granted a court-appointed attorney for the Wake County charges.

B.O. filed a petition for fee dispute resolution with the State Bar in September 2019. In response, you insisted that you had a non-refundable flat fee and you were unable to explain how \$15,000 was reasonable for the amount of work you accomplished or the results obtained. You claimed that you worked for 69-78 hours on the representation without further detail or explanation of that estimate. The Grievance Committee found that you charged a clearly excessive fee in violation of Rule 1.5(a).


Your insistence that the fee was non-refundable was a misleading statement as no fee is truly nonrefundable. 2000 FEO 5 explains, "[i]f the fee is clearly excessive in light of the services actually rendered, the portion of the fee that makes the total payment clearly excessive must be returned to the client." Thus, even a flat fee is subject to refund if it is clearly excessive. Your statements insisting that the fee was nonrefundable violated Rule 7.1(a)(1).

Finally, you paid an attorney \$1,500 for her efforts to informally gather information about the charges from the Wake County Assistant District Attorney. You did not obtain B.O.'s consent to this payment. This violated Rule 1.5(e).

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 9th day of November, 2021.



Matthew W. Smith, Chair
Grievance Committee

MWS/lb