

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
10G0894

IN THE MATTER OF)
)
John T. Orcutt,) CENSURE
ATTORNEY AT LAW)
)

On January 20, 2011, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by 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 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.

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 sent a direct mail solicitation to people whose Chapter 13 cases were dismissed by the bankruptcy court on August 6, 2010. You indicated that you can't fix every problem but you will do your best. You stated that "unlike other less experienced or lazy attorneys... we won't idly sit by and cave in every time there is a request or demand by the trustee or your creditors." You also stated in your letter the following "...[w]e do NOT make the mistakes that other less experienced attorneys make...mistakes you never even find out about...mistakes that hurt you and your family financially...mistakes that can lead to you paying too much or ending up with a Chapter 13 plan payment higher than necessary...or worse...mistakes that get your case dismissed."

The Grievance Committee found that the aforementioned statements in your letter were false and misleading since they compared your services with other lawyers' services and those comparisons could not be factually substantiated. The statements in your letter violated Rule 7.1(a)(3) of the Rules of Professional Conduct.

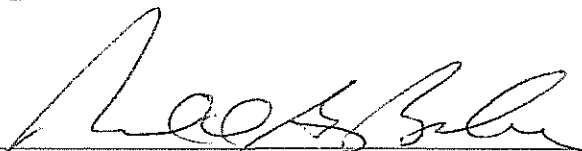
The Grievance Committee was concerned that you did not seek the State Bar ethics attorney's advice about whether the letter violated advertising ethics rules. The Grievance Committee noted that in a prior disciplinary order entered by the Disciplinary Hearing Commission, you were told to submit any proposed communications for legal services to the State Bar for review. Therefore, you were put on notice that the State Bar did review attorney advertising; yet, you failed to get this direct mail solicitation reviewed prior to disseminating it.

The Grievance Committee also found as an aggravating factor your extensive disciplinary history. Many of your prior disciplines relate to your advertising practices.

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 14 day of Feb, 2011.



Ronald G. Baker, Sr., Chair
Grievance Committee
The North Carolina State Bar