

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
12G0794

IN THE MATTER OF)
)
WILLIAM E. WEST, JR.) CENSURE
ATTORNEY AT LAW)

On January 21, 2016, the Grievance Committee of the North Carolina State Bar met and considered the above-captioned grievance. 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.

In 2007, you undertook to represent Paul Moore ("Moore") in a federal investigation involving a fraud scheme in South Carolina. You were introduced to Moore by Jonathan Moses ("Moses"), who would later become Moore's codefendant. The Grievance Committee found that your relationship with Moses, as explained below, created a situation in which you could not ethically represent Moore.

After Moore and Moses were indicted, the United States Department of Justice ("USDOJ") filed a motion alleging that you had a conflict of interest in representing Moore. The alleged conflict was based in part on the allegation that Moses owed you \$100,000.00. In response to the Letter of Notice in this grievance matter, you admitted that Moses still owed you \$100,000.00. The Grievance Committee found that you obviously had an interest in Moses repaying you the \$100,000.00. It follows that you had a personal interest in ensuring that Moses did not go to prison so that he would be in a better position to repay

you. The Grievance Committee found that you had a conflict of interest in representing Moore. Rule 1.7(a)(2) provides: "Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer. The Grievance Committee concluded that a concurrent conflict of interest existed in that your representation of Moore might be materially limited by your personal interest in having Moses repay the loan. Rule 1.7(b) provides that when a concurrent conflict of interest exists, an attorney can only represent a client if each client affected by a concurrent conflict of interest gives written consent. Although you contend that you advised Moore of your prior business relationship with Moses and his indebtedness to you, and that Moore wanted to go forward with the representation, you acknowledge that Moore did not sign a written waiver of the conflict. Accordingly, your conduct violated Rule 1.7(a)(2).

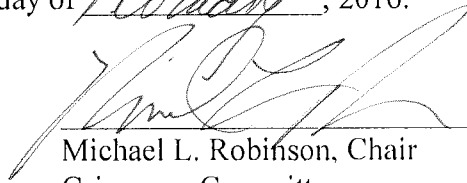
The Grievance Committee also found that you accepted payment from Moses for at least part of the legal fee you charged for representing Moore. In your January 11, 2013 response to the State Bar's follow up questions, you provided an *amended* IRS form 8300 reporting the receipt of cash in excess of \$10,000.00. On that form, which was dated 1/17/10 (after USDOJ raised the conflict of interest issue), you stated in the Comments section: "Although originally reported as a transaction involving funds received from Moses to me on behalf of Moore, the transaction is now somewhat confusing in that it is unclear whether Moses was paying to me part of a loan indebtedness owed or loaning funds to Moore to pay Moore's legal fees to me. In any event, the sum of \$28,000 was received, and both parties have been notified." Therefore, the Grievance Committee concluded that the information you say you provided on the *original* Form 8300 shows that Moses paid Moore's initial attorney fee. Even if Moore consented, which you state he did, your independent judgment was in question because of Moses's indebtedness to you. Therefore, the Grievance Committee concluded that by accepting compensation from Moses for your representation of Moore, you violated Rule 1.8(f) which prohibits an attorney from accepting compensation from one other than the client unless the client gives informed consent and there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship.

Finally, during the State Bar's grievance investigation, you asserted that you were unable to provide certain documents because your office was broken into. You stated: "[d]espite my firm being well-appointed with furniture, expensive computers, and electronics, nothing was missing from our offices except a number of files with names beginning with the letter 'M.'" Therefore, according to you, "files concerning 'Moore' or 'Moses' would have been taken." Throughout the grievance process, you repeatedly failed to provide documents (such as the original Form 8300) because they were purportedly in the stolen file(s). You attached to your response to the Letter of Notice the top part of a police report to support your claim that your office had been broken into. The State Bar obtained a copy of the bottom part of the report which listed the property you reported stolen: two computer monitors, a fire extinguisher, and a camera. There is no mention on the police report of any files being stolen. The Grievance Committee found that you knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a).

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 15th day of February, 2016.



Michael L. Robinson, Chair
Grievance Committee
The North Carolina State Bar

MLR/bc