

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
16G1361

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IN THE MATTER OF	)	
	)	REPRIMAND
JONATHAN W. WASHBURN,	)	
ATTORNEY AT LAW	)	

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On July 27, 2017 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by J. S. 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.

Your firm issued an operating account check to pay recording fees for which you did not have sufficient funds in the operating account. You were served with a letter of notice by the North Carolina State Bar, to which you timely responded. In the course of the grievance investigation, you described prospective changes in procedures to avoid future issues with the payment of recording fees. The Grievance Committee recognizes your effort to address the issue

but cautions you to ensure that any corrective measure is consistent with the protection of your clients' interests and achievement of the goals for which your clients retain you. The Grievance Committee does not assess whether prospective measures will comply with the Rules of Professional Conduct and accordingly makes no findings regarding those measures.

The letter of notice with which you were served requested that you provide as part of your response the quarterly reconciliation of your trust account(s) for the fourth quarter of 2016 required under Rule 1.15-3(d)(1). Although you timely responded to the letter of notice on February 9, 2017, you did not provide the requested quarterly reconciliation. Instead, you provided an e-mail from you to SoftPro asking when they would complete the reconciliation work being done for your firm, with a handwritten note that you were waiting on SoftPro to provide reconciliations and would provide them upon receipt. On February 23, 2017, you provided the State Bar with an additional e-mail between you and SoftPro in which SoftPro indicated on February 9, 2017 that it had not yet begun reconciling your trust accounts due to a database retrieval error. As of May 3, 2017, you had not provided the State Bar with your fourth quarter 2016 trust account reconciliation. On May 3, 2017, the State Bar followed up on this issue and asked you to provide quarterly reconciliations for the fourth quarter of 2016 and the first quarter of 2017 by May 31, 2017. On May 30, 2017 you responded and provided reconciliation documents from SoftPro for 2016. You noted that you pressed SoftPro to complete the reconciliations and they were provided on May 30, 2017 for 2016. As of May 30, 2017, you did not have a reconciliation for the first quarter of 2017 (through March 2017).

The Grievance Committee noted in the reconciliation documents before it that there were negative balances resulting from disbursements attributed to your firm in excess of firm funds in the trust account, thereby potentially impacting entrusted client funds in the trust account, in violation of Rule 1.15-2(a), (j), and (m). The negative balances were not properly handled in either reconciliation process, in that they were included in totaling the client balances. This inclusion produced an artificially lowered client balance total. You included in your subsequent correspondence to the State Bar documentation of appropriate action to investigate and address the negative balances, one of which appeared to have possibly resulted from data entry error.

The Grievance Committee found the evidence showed you failed to timely conduct the monthly and quarterly reconciliations of your trust accounts in the form and manner required by Rule 1.15-3(d). Your failure to have timely conducted the required monthly and quarterly reconciliations of your trust accounts is in violation of Rule 1.15-3(d).

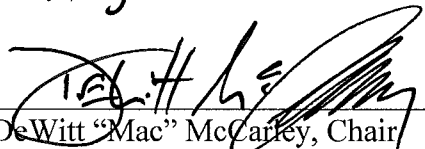
In your July 13, 2017 letter to the State Bar, you referenced internal reconciliations performed by your firm, but did not provide any such records until after the meeting of the Grievance Committee. The reports you mailed to the State Bar on July 31, 2017, for the period of April 2016 through June 2017, do not warrant any different conclusion. All reconciliation reports provided bore report print dates of late July 2017, with one exception. Additionally, the records were not timely provided to the State Bar when requested in the letter of notice. The date of production to the State Bar and the dates on the records indicate that the reconciliations were not timely completed. These records do not alter the Grievance Committee's finding that you failed to timely conduct the monthly and quarterly reconciliations of your trust accounts in the form and manner required by Rule 1.15-3(d).

In recognition of corrective actions you have taken with regard to these trust account issues, the Grievance Committee determined that issuance of a reprimand was the appropriate action to take in this case.

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 9<sup>th</sup> day of August, 2017.

  
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DeWitt "Mac" McCarley, Chair  
Grievance Committee

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