

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
20G0080

IN THE MATTER OF)
)
JODY P. MITCHELL,) CENSURE
ATTORNEY AT LAW)

On April 14, 2021, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by JB. 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 2016, Ms. B's husband hired you to represent him in a separation from his wife, Ms. B. Your client thought that Ms. B was having an extramarital affair. According to your response to this grievance, on February 1, 2016, you "filed a lawsuit to obtain Ms. B's cell phone records, including her text messages." The complaint you filed indicated that you were filing it pursuant to the equitable distribution statute. However, you made no allegations in the complaint to support a claim for equitable distribution. Instead, the complaint sought an ex parte order for the cell phone company to produce Ms. B's cell phone and text records. A judge did allow the issuance of the subpoena for Ms. B's cell phone and text records. You did not serve the complaint or subpoena on Ms. B at any time.

Your filing of a purported complaint for equitable distribution under these circumstances was purposefully fraudulent and pretextual. Whether Ms. B had an affair, and any texts or phone records to that effect, are irrelevant to a claim for equitable distribution. It is further noted that your “complaint” did not even facially contain a true claim for equitable distribution. Thus, presenting an unfiled, facially defective, fictitious complaint to a judge, for the purpose of wrongfully subpoenaing unnecessary records constituted an abuse of process. Your conduct violated Rules 4.1 and 8.4(c) and (d). Additionally, your failure to serve the complaint on Ms. B was a further violation of Rule 8.4(d).

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 14th day of May, 2021.



Matthew W. Smith, Chair
Grievance Committee
The North Carolina State Bar

MWS/lb