



Director's Story, Part 1: 2016-2017 Grievance Investigation

A 2016–2017 NC State Bar Grievance investigation of Attorney Phillips concluded with a Letter of Warning being issued to Attorney Phillips claiming that he:

1. Advised the complainor (person who filed a Grievance complaint against Phillips), a CA resident, about forming a non-profit corporation in CA, without the required CA law license;
2. Shared confidential attorney-client information publicly; and
3. Had website language of concern—specifically, that Phillips' website says that he works with clients, attorneys, legislators and activists nationally.

However:

1. The complainor's own email says she consulted another attorney concerning the non-profit, and the Bar offered no evidence to Phillips supporting its conclusion.
2. The parties' interactions consisted primarily of approx. 3 weeks of emails about a prospective business relationship that ultimately never materialized. Nothing was signed, no money exchanged hands, the parties went their separate ways after their email exchange and have had no further interaction since (Feb–Mar 2016). The 3 weeks of emails show no evidence of attorney-client relationship at all, no legal advice was ever requested or given.

In fact, a CA legal expert on the unauthorized practice of law in CA later stated in a formal analysis that not only was there no legal advice given during the 3 weeks of emails, but even if there had been, it would not have violated any rules, as CA law allows outside attorneys to advise CA residents about CA law temporarily in certain situations such as this one.

3. The Bar's reference to Phillips' website's language, oddly, was not accompanied by a reference to any rule violation, or a demand that any language be changed or removed. Yet, this seems to be the sole basis for a subsequent investigation. Furthermore, Phillips provided the Bar with a detailed description of everything he does in his practice, and the Bar investigator found no problem with any of that. Finally, Phillips consulted a NC legal expert on the unauthorized practice of law, and though that expert found no violations on Phillips' part, the expert made recommendations that Phillips bolster disclaimers, and Phillips immediately implemented all of the expert's recommendations.

The NC Bar appears to have invented both facts and law in its Letter of Warning.

Phillips alleges that the complaint in this 2016–2017 matter was frivolous and should not have triggered an investigation at all, or should have been quickly dismissed, as it was clearly a vindictive complaint submitted in retaliation for Phillips' decision not to participate in the complainor's fund-raising project, after she broke promises to Phillips.

Note: Phillips was not able to formally challenge the Letter of Warning, for these reasons:

- a) It cost \$1500/day (Phillips is an attorney-activist; most of his work is uncompensated/volunteer);
- b) Phillips was a full-time single parent who provided daily transportation to/from high school and college for his teenage son on an irregular schedule;
- c) Phillips lives in western NC, a 5-hour drive from downtown Raleigh; and
- d) The Letter of Warning was an isolated event that did not amount to formal discipline, so was confusing but left him an attorney in good standing with the NC Bar.

However, since Phillips didn't challenge the Letter, he is, technically, deemed to have admitted the Letter's conclusions, and the Letter remains on his record for 3 years. But this default admission does *not* mean that no misconduct occurred in the issuance of the Letter, nor does it absolve those who committed misconduct from the proper consequences of their actions should a proper investigation reveal misconduct to have occurred.

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