

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
05G1128

IN THE MATTER OF

Joseph L. Carlton,  
Attorney At Law

REPRIMAND

On July 20, 2006 the Grievance Committee of the North Carolina State Bar met and considered the grievances 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 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.

Earl Dukes and his wife purchased a lot to build a modular home on it. You were the closing attorney in this transaction. Mr. and Mr. Dukes signed a closing statement on May 26, 2005. However, you were not present at the closing on the first phase of the construction loan for Mr. and Mrs. Dukes. Instead, you sent a non-lawyer to oversee the execution of the closing documents. The Dukes contended that they did not know what they were signing at the closing. The Dukes were also concerned that they did not receive a copy of a title insurance policy for which they were charged at the closing.

The Grievance Committee was concerned that you were not present at the closing to answer questions for the Dukes in violation of Rule 1.4(a)(2). The Grievance Committee was also

concerned about the extent to which you actually supervised the non-lawyers who were involved in the closing of this construction loan, a loan which is not the typical residential real estate closing. The ethics opinions indicate that a lawyer may delegate the direction of the execution of documents and disbursement of closing proceeds to a non-lawyer who is supervised by the lawyer provided that the non-lawyer does not give legal advice to the parties. However, the State Bar Ethics Committee has opined that "as is the case with any task that a lawyer delegates to a non-lawyer, competent practice requires that the lawyer determine that delegation is appropriate after having evaluated the complexity of the transaction, the degree of difficulty of the particular task, the training and ability of the non-lawyer, the client's sophistication and expectations, and the course of dealings with the client." (See 02FEO 9) Under the circumstances in this closing, where there was a construction loan, and the Dukes were unsophisticated clients, the Grievance Committee found that you should have provided more competent representation and better supervision of non-lawyers assistants. Your failure to do so was in violation of Rule 1.1, Rule 5.3, and Rule 5.5 of the Revised Rules of Professional Conduct. In issuing this reprimand, the Grievance Committee took into consideration your intention to be "fully involved by doing the work myself, supervising any paralegals that assist me and attending all closings."

The Grievance Committee was also concerned that your HUD-1 statement may have been misleading as non-lawyers were listed as receiving legal fees for their services with respect to the closing. Although you indicate that the non-lawyer's fee was paid out of your closing fee, it appears from the HUD-1 that a non-lawyer is rendering legal services and being paid for them. Again, the Grievance Committee found that listing non-lawyers as receiving settlement proceeds for legal services is misleading to the client, in violation of Rule 7.1(a)(1). In imposing this reprimand, the Grievance Committee took into consideration that you now believe that the "better practice is to place all attorney-related fees on the HUD-1 payable to me [respondent], which I will do in the future."

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 October 15, 1981 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a reprimand by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this the 28 day of Sept, 2006

  
Barbara ("Bonnie") B. Weyher, Chair  
Grievance Committee

BBW/lr