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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
02G0898

IN RE: JOEL S. JENKINS,
ATTORNEY AT LAW

REPRIMAND

On 23 January 2003, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Alfred Morris.

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 and I am certain that you will understand fully the spirit in which this duty is performed.

On or about May 30, 1996, your firm closed a real estate transaction between Southwood Associates, Inc. and Alfred and Sandra Morris. Southland Associates was a standing client of your firm. However, your firm represented both parties in the closing transaction. Your firm prepared the closing documents, including the deed to Mr. and Mrs. Morris on behalf of

Southland Associates and the loan assumption and title insurance documents on behalf of the Morrises. At the time, Southwood Associates owned two adjacent parcels, one with the house that the Morris' were occupying and the other was a pasture. The deed prepared by your office and recorded at the Register of Deeds shows two parcels in the "Parcel Identifier" field and recites "2 Tracts Rockfish Township" in the "Brief Description for the Index" field. The deed references an Exhibit A for a more particular description, but no Exhibit A was recorded at the time.

On July 12, 1996, your then partner, Kenneth Barfield, recorded a correction deed to include an Exhibit A. The Exhibit A that was recorded gave the legal description for the adjacent pasture and did not include the description for the parcel with the house.

At the time of the closing, both Southland Associates and the Morrises clearly understood that the Morrisses were buying the house. However, the contract between them only referred to the property address.

At some point in 1999, a dispute developed between Southwood Associates and the Morrises over whether the original transaction should have included the pastureland. At that point, you discovered that the exhibit to the deed your office had prepared in 1996 to the Morris' described the pasture and not the house. You wrote to the Morris' and informed them that the original deed was in error. You advised them that the deed needed to be re-recorded with a new description for the tract with the house on it only. You also advised them that Southwood Associates was the record owner of the tract with the house. You did not inform them that you represented Southwood Associates in that letter or that the request was on its behalf. You also did not tell them to consult with other legal counsel. The letter, and subsequent follow-ups, all implied that you were acting solely to clarify their interests in the property and were disinterested.

The Morris' did not comply with your request. In fact, they informed you that they would not comply and that they were taking the position that Southland Associates had intended to convey both tracts to them. You then unilaterally prepared and recorded a second purported correction deed on September 15, 1999. This deed recites that it is to "correct" the original deed. The description on this deed covers the tract with the house only.

Finally, on or about December 14, 1999, your firm conducted a closing of a sale of the pastureland tract from Southland Associates to Kelvin and Tina Bramble and prepared a general warranty deed from Southland Associates to the Brambles among other documents.

The Committee found that your above-described conduct violated several Rules and Revised Rules of Professional Conduct. By unilaterally preparing and recording a purported correction deed in 1999 in furtherance of Southland Associates' position that they still owned the pasture knowing that the Morrises disputed this position left you in a position where you were representing a client (Southland Associates) whose position was materially adverse to the position of a former client (the Morrises) in a substantially related matter to the subject of the former representation (the proper closing of the sale of real property). This is a violation of Rule 1.9(b) of the Revised Rules of Professional Conduct. Further, by your firm certifying title of the disputed tract to the Brambles on the basis of you filing of the second "correction" deed in 1999,

you undertook to represent two parties in the same transaction when your responsibilities to the Brambles could foreseeably be materially limited by your responsibilities to Southland Associates or your own personal interests in defending your correction deed. This was a violation of Rule 1.7(b) of the Revised Rules of Professional Conduct. Finally, by sending the letters to the Morrises in which you failed to disclose that you were representing Southland Associates in their efforts to claim ownership of the disputed tract and stated or implied that you were merely trying to correct an error made by your office, you were giving advice to an unrepresented party whose interests were in conflict with your clients' and implied that you were disinterested. This was in violation of Rule 4.3(a) and (b) of the Revised Rules of Professional Conduct.

In deciding to issue a Reprimand, the Committee considered the following mitigating factor: no prior disciplinary record.

You are hereby Reprimanded by the North Carolina State Bar due to 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 6 day of February, 2003.

Sharon B. Alexander
Chair, Grievance Committee