8777

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
04G0532

IN THE MATTER OF	)	
	)	
Christopher B. Godwin	)	REPRIMAND
Attorney At Law	)	
	)	

On Thursday, January 20, 2005 the Grievance Committee of the North Carolina State Bar met and considered the grievances filed against you by David Benzaquen.

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.

In July 1998, you represented a client (whose initials are DIB) in a real estate closing in which your client would acquire property in the downtown area of Fayetteville and use the property to secure a loan. The sellers of the property were two individuals who each owned partial interests in the whole property. As part of the closing transaction, you were to provide a

final opinion of title for both an owner and lender policy of title insurance. You collected the premium for the policy at closing.

One of the two owners had a quarter interest in the property. The plan was to have that owner convey to the owner of the rest of the property and have that party convey the whole interest in the property to your client. You prepared the deeds for the transfer of ownership by each of the parties according to this plan. However, instead of properly describing the property in the deeds, each of your deeds described a different property altogether. In fact, the description on the deeds you prepared conveyed a 16-acre tract outside of the city limits rather than the downtown property. You also used that description for the deed of trust executed by your client.

You conducted the closing and recorded the erroneous deeds in August 1998. After closing and recording, you did not follow-up and prepare the requisite final title opinion necessary for the issuance of the title insurance policy required by the lender and for the benefit of your client.

In April 1999, your client learned about your error in the property description and asked you to correct it. Although your error was not a minor typographical error, but the description of an entirely different property, you chose to simply re-record the original deeds with new property descriptions as correction deeds even though it was not clear under the statute that your original error could be corrected in that manner. However, you failed to record any correction deed from the owner of the one-quarter interest in the property, the first deed in the chain of title that you prepared. Additionally, even after recording the correction deeds, you did nothing more to secure the title insurance policy for your client or the lender.

In June 2003, your client discovered your failure to properly draft and record the deed to the one-quarter interest in the property and again asked you to correct the title to his property. By this time, the owner of the one-quarter interest had died leaving two heirs as owners of the property. You then attempted to have the owner's heirs execute correction deeds, but were unsuccessful. You then re-recorded the original deed with an amended property description for the correct property. At this point, August 2003, you finally submitted a final title opinion for title insurance and tendered the premium. It was now five years after the original closing. The title policy was not issued and you did not follow-up to determine why at any time. Your client finally consulted with other counsel and in October 2004, proper correction deeds were prepared and filed by other counsel.

Rule 1.3 requires an attorney to act on behalf of a client with reasonable diligence and promptness. By failing to follow-up on the original closing to prepare a proper final title opinion within a reasonable time after the closing, by failing to prepare a proper final title opinion after recording the "correction" deeds about 8 months later, by failing to review the original record to find that your error extended to the first deed of the one-quarter interest, and by failing to follow-up on the title insurance application you filed in August 2003 within a reasonable time, you neglected your client's legal matter in violation of Rule 1.3. Your lack of diligence created a cloud on the title to the property that should have been corrected no later than April 1999 and jeopardized the lender's security on its loan to your client.

Additionally, Rule 1.15-3 requires you to reconcile each client's balance of funds in your trust account on a quarterly basis and provide an annual accounting to each client who has a balance in that account for more than a year. Had you been properly reconciling your trust account, you would have discovered that the title premium had not been paid over the five-year period after the original closing. It is clear that you failed to make a proper reconciliation of your client's balance in your account over that period. The Committee is aware of your statement that you did not believe you would have discovered the outstanding balance in your account for this client because of the other client balances. That is precisely why the trust account rules require you to reconcile the client balances, not just the account as a whole.

The Committee believes that the aggravating circumstances in this matter include your substantial experience in the practice of law and your failure to take appropriate steps to rectify this matter even when given several opportunities before the grievance was filed. The Committee believes the mitigating circumstances include you cooperation and disclosure to the Committee and your lack of any selfish or dishonest motive. This began as a simple mistake that blossomed into a disciplinary matter because of your failure to take appropriate corrective action on a timely basis.

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 13 day of January, 2005

Henry Babb, Chair
Grievance Committee

HB/lr