

23795

NORTH CAROLINA

WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
04G1508

IN THE MATTER OF )

Carey L. Ewing, )  
ATTORNEY AT LAW )

CENSURE

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

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 2001 you were the closing attorney for a series of transfers of real property located at 1010 Southshore Parkway, Durham, NC, and 417 Mountain Lake Drive, Raleigh, NC, by which SKE Properties, LLC, ("SKE") a company of which you were part owner, ultimately acquired these properties and then sold them at a higher price to buyers.

In the course of one transfer of the Southshore property, you notarized a deed by which you certified that the individuals selling the Southshore property to another part owner of SKE appeared before you and acknowledged the execution of the deed. When asked, you gave contrary descriptions about the notarization of the deed, one to an attorney for one of the sellers admitting the sellers had not appeared before you, and one to the State Bar stating the sellers had appeared before you. This evidence shows you

executed a false jurat of the signatures of the sellers and that you misrepresented the circumstances under which the notarization occurred, conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

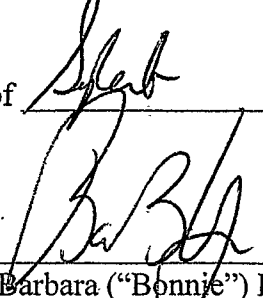
In the transfers from SKE to buyers, you undertook representation of the buyers and lenders, despite being part owner of SKE. In the course of these transfers from SKE to the buyers, you prepared HUD-1 Settlement Statements that you certified as accurate. The HUD-1 Settlement Statements did not accurately state the amount of money brought by the buyers/borrowers to the closing, however. In one transaction, you wrote a check labeled "closing costs" from SKE's account covering the amount that should have been contributed by the buyer/borrower. In the other, you reduced the proceeds SKE should have received according to the terms of the HUD-1 Settlement Statement by the amount the borrower should have brought to the closing. Knowingly preparing and certifying as true inaccurate HUD-1 Settlement Statements is conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c). Additionally, when asked by the State Bar about the source of funds the borrowers were to provide for closing in which you wrote the SKE check, you first stated the borrowers provided the funds and later stated the SKE check was for repairs, both misrepresentations in violation of Rule 8.4(c). Your representation of the buyers and lenders in real estate closings in which you had an interest in the property being transferred constituted a conflict of interest in violation of Rule 1.7. Last, by failing to ensure the HUD-1 Settlement Statements accurately reflected the funds provided by the borrowers, you failed to protect the lenders' interests in violation of Rule 1.3.

In mitigation the Grievance Committee considered that this conduct occurred five years prior to the issuance of this censure, that the State Bar has received no evidence that you engaged in similar misconduct in other real estate transactions, and that the two loans as to which you failed to ensure the lenders received accurate information about the contribution of the borrowers to the closings have not defaulted or otherwise resulted in monetary harm to the lenders.

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 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 censure by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this 25 day of Sept, 2006.

  
Barbara ("Bonnie") B. Weyher, Chair  
Grievance Committee  
The North Carolina State Bar