

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
87 DHC 5

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
vs.)
WILLIAM F. BANKS, JR.,)
Defendant)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by the undersigned duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, August 28, 1987. L. Thomas Lunsford, II appeared as counsel for the North Carolina State Bar. The Defendant was present and represented himself. Based upon the stipulations of the parties and the evidence at trial, the Hearing Committee makes the following Findings of Fact in regard to the Plaintiff's First Claim for Relief by clear, cogent and convincing evidence:

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, William F. Banks, Jr., was admitted to the North Carolina State Bar on September 1, 1977 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the Rules, Regulations, Code of Professional Responsibility and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Durham, Durham County, North Carolina.

4. On or about September 12, 1984, Superior Court Judge James H. Pou Bailey appointed the Defendant to represent Bruce Bagley regarding the appeal of his conviction of a first degree sexual offense for which he had received a life sentence.

5. Although the Defendant was continually aware of his obligation to perfect his client's appeal, the accused failed to take any effective action in that regard and suffered his client's appeal of right to be lost. Thomas Loflin of the Durham Bar was appointed by Judge Robert Hobgood to succeed the Defendant as counsel for Mr. Bagley concerning the appeal. The North Carolina Supreme Court has since granted a writ of certiorari.

Based upon the foregoing Findings of Fact, the Hearing Committee makes the following Conclusion of Law:

The Defendant, by failing to perfect his client's appeal, neglected a legal matter which had been entrusted to him in violation of Disciplinary Rule 6-101(A)(3) of the North Carolina Code of Professional Responsibility.

Based upon the stipulations of the parties and the evidence at trial, the Hearing Committee makes the following Findings of Fact in regard to the Plaintiff's Second Claim for Relief by clear, cogent, and convincing evidence:

1. In the early summer of 1986, the Defendant was employed by Mr. & Mrs. Kenneth Ingram to represent them relative to their purchase of a house and lot from Mr. & Mrs. James J. Lewis. It was contemplated that the Defendant would examine title to the property, provide the necessary assurances of title and close the transaction. The closing was scheduled for July 18, 1986.

2. Incident to his employment, the Defendant was provided with a copy of an "Offer to Purchase and Contract" which had been executed by the parties and which specified the terms of their agreement. The "Offer to Purchase and Contract" provided for the payment of \$9,000 as earnest money.

3. After contracting to purchase the subject property, Mr. & Mrs. Ingram applied for a loan from Chrysler First Financial Services Corporation (Chrysler). This loan was to be used to pay off a second deed of trust against the property and was to be secured by a new second deed of trust. Chrysler approved the loan based upon the Ingram's loan application form and the "Offer to Purchase and Contract".

4. On or about July 9, 1986, the Defendant examined the title to the subject property and transmitted his title opinion to Chrysler, thereby undertaking to represent the interests of the lender as well as those of the purchasers in the transaction.

5. Sometime prior to the scheduled closing, the Ingrams and the Lewises decided to substitute a note from the Ingrams in the amount of \$5,400 secured by a third deed of trust for the \$9,000 earnest money specified in the "Offer to Purchase and Contract"

and documented their agreement in a written addendum to the "Offer to Purchase and Contract".

6. Chrysler was not informed of the parties' decision to substitute owner financing for the cash down payment. The Defendant was advised of this change by Mr. Ingram on the morning of July 18, 1986, prior to closing the transaction.

7. Chrysler would not have made the subject loan had it been aware that a note and deed of trust was being substituted for the \$9,000 earnest money.

8. On or about July 18, 1986, the subject transaction was closed in the office of the Defendant by the Defendant. Present were the Ingrams and Lewises as well as Chrysler's representative, Ronald Alexander. At the closing the Defendant produced a closing statement he had prepared which credited the Ingrams with the payment of \$9,000 which had not in fact been paid. Although the Defendant knew that the closing statement was inaccurate in regard to the amount of the down payment, he provided Chrysler's representative, Mr. Alexander, with a copy of the closing statement without any explanation.

Based upon the foregoing Findings of Fact, the Hearing Committee makes the following Conclusions of Law:

The Defendant, by preparing and distributing a closing statement which he knew contained false information not accurately reflecting the transaction he was closing, engaged in conduct involving misrepresentation and knowingly made a false statement of fact in violation of Rules 1.2(C) and 7.2(A)(4), respectively, of the North Carolina Rules of Professional Conduct.

This the 6 day of November, 1987.

James E. Ferguson II
James E. Ferguson, II
Hearing Committee Chairman
(For the Committee)

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
87 DHC 5

THE NORTH CAROLINA STATE BAR,)	
Plaintiff)	
)	
vs.)	ORDER
)	
WILLIAM F. BANKS, JR.,)	
Defendant)	

This cause was heard by the undersigned duly appointed Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar on Friday, August 28, 1987. Based upon its Findings of Fact and Conclusions of Law, the Hearing Committee entered orders of discipline in regard to the Defendant's misconduct immediately following the hearing. Specifically, the Hearing Committee ordered that the Defendant be publicly censured for his neglect of an appeal in a criminal case as alleged in the Plaintiff's First Claim for Relief and that that the Defendant be privately reprimanded for his misrepresentation of certain aspects of a real property transaction he was closing as alleged in the Plaintiff's Second Claim for Relief.

Since the pronouncement of the Hearing Committee's decision, the Hearing Committee has been informed that the Defendant has died. In light of the Defendant's passing, the Hearing Committee perceives that there is no public interest to be served by the execution of its orders of discipline and therefore enters the following order:

1. The disciplinary sanctions previously ordered shall abate.
2. The Defendant's estate is relieved of any obligation to pay the costs of this proceeding.

This the 6th day of November, 1987.

James E. Ferguson II
James E. Ferguson, II
Hearing Committee Chairman
(For the Committee)