

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
16G1248

IN THE MATTER OF)	
)	CENSURE
HARRY C. MARSH,)	
ATTORNEY AT LAW)	

On January 25, 2018, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by S. M. The grievance was assigned to a Subcommittee, which thoroughly reviewed the results of the State Bar staff's investigation of this matter.

Pursuant to section .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, the Grievance Subcommittee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Subcommittee 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.

Mr. S. M. and his wife (hereafter, the Ms) hired you in September 2015 to assist in a foreclosure proceeding on their home. The Ms agreed to pay you \$500.00 per foreclosure hearing. The Ms agreed that you would be paid up to \$2,500.00 for short sale negotiation, which would be conducted after continuances and loan modification requests were exhausted. In addition, your wife would serve as the realtor for the short sale. In January 2016, the Ms chose to pursue the short sale.

In September 2016, you initiated the short sale. You used your own company to submit the initial offer of \$280,000.00. The Ms accepted the bid. In response to this grievance, you stated that you never intended that your company would purchase the home. You stated that your company submitted the short sale bid to stall the bank's attempts at foreclosure.

First, you knowingly made a bid in the short sale for the sole purpose of staving off the bank from initiating a sale. You admitted that the "sham offer" you submitted had the "propensity to possibly 'trick' WF into thinking that a full short sale package had been submitted: as that was its intent/purpose." 18 USCA Section 1014 prohibits the conduct at issue in this grievance. The Grievance Committee found that your deceitful conduct in submitting the sham offer violated Rule 8.4(b)(c) and (d).

The Grievance Committee also believed you had a conflict of interest in allowing your company to submit an initial offer to the bank. Although you claimed that you never intended to follow through on the purchase of your client's property, you nevertheless placed yourself in a position to purchase the property and clearly your interests were in conflict with those of your clients, in violation of Rule 1.7(a)(2).

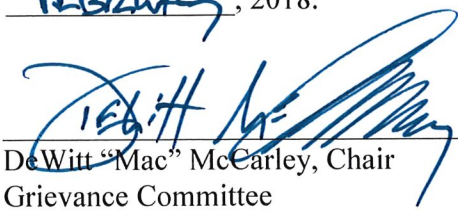
The Grievance Committee found that you had a conflict of interest when you steered business to your wife, a realtor, in the possible short sale of the Ms' property. You drafted a "Conflict of Interest Waiver for HM law, KR realtor." That waiver provided that the Ms waived any right to object or sue you or your wife for a potential conflict of interest that may result from the interaction between you as "respective agent acting on behalf" of the Ms. This waiver you drafted did not protect your client, but benefited you and your wife. The Grievance Committee found that your waiver violated Rule 1.7(a)(2).

You told the Grievance Committee in a November 10, 2017 letter to follow-up questions posed by State Bar deputy counsel that you never lied to counsel or the lender about the "sham offer." You said that "if it were exculpatory, I could contact their local counsel...or try to dig up a phone call with WF (the lender) that would have showed that I was honest about this offer to purchase. At all times relevant, their counsel and client/lender were informed that his offer was submitted purely for the purposes of opening a short sale and having a "complete package" that would allow the short sale appraisal of the Property to give us a short sale approval price." The evidence that you presented did not bear out that assertion. The counsel in this matter said that you never told him that you were making a "sham offer" to the lender. You did not present any evidence that you were transparent with the lender. In a January 18, 2018 response to deputy counsel's follow-up questions, you stated that counsel would "have no reason to have knowledge of the "sham offer" as he doesn't deal with the internal short sale documents." When deputy counsel questioned you about the contradiction of your statements in your November 10, 2017 communication with your January 18, 2018 communication, you stated in a January 24 response that the two statements seemed to be contradictory, but "they are reconciled in my mind when I think about the short sale process." The Grievance Committee found that your two statements about what you told local counsel and the bank were misleading and violated Rule 8.4(d). The Grievance Committee reminds you of your obligation to give a full and fair disclosure of all circumstances surrounding the allegations of a grievance.

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 July 23, 2010 by the Council of the North Carolina State Bar regarding the taxing of administrative fees and investigative costs to any attorney issued a censure by the Grievance Committee, an administrative fee in the amount of \$350.00 is hereby taxed to you.

Done and ordered, this 22 day of FEBRUARY, 2018.


DeWitt "Mac" McCarley, Chair
Grievance Committee
The North Carolina State Bar