

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
10G0777

IN THE MATTER OF)	
)	
Kenneth D. Barfield, Jr.)	REPRIMAND
Attorney At Law)	
)	

On October 20, 2011 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 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.

You were the closing attorney for a real estate transaction in which a partnership sold property located at 159-161 Bahia Lane, Raeford, NC on or about July 23, 2010. CB is a general partner in the partnership and was the person to sign the closing paperwork for this transaction. When CB appeared at your office to sign the closing paperwork, the HUD-1 Settlement Statement was not available. CB signed the documents that were available and signed a power of

attorney authorizing her real estate agent, SR, to sign the HUD-1 Settlement Statement. Instead of contacting SR to come to the office and sign the HUD-1 Settlement Statement for CB when it was ready, however, your assistant, HW, signed CB's signature on the HUD-1 Settlement Statement without CB's knowledge or consent. HW worked alone at a satellite location of your office. Your firm had 14 closings on the date this closing occurred. Due to the volume and structure of your practice, you failed to adequately supervise this non-attorney assistant in violation of Rule 5.3(b). Your corrective action in discharging this employee was taken into consideration. Your prior discipline for failing to supervise other employees was also taken into consideration.

Additionally, you failed to adequately communicate with the buyer and lender regarding an uncanceled deed of trust in this closing. Although you may have had reason to believe the underlying debt had actually been paid, until resolved the uncanceled deed of trust was a potential cloud on the buyer's title and a challenge to the lender's first lien position. You should have communicated this information to the buyer and lender and obtained direction from them regarding whether they wanted to proceed or wait until you obtained the cancellation, and your failure to do so was in violation of Rule 1.4(b). You held the seller's proceeds for a short time while you attempted to obtain the cancellation but yet filed the deed without any agreement by the seller to record the deed without contemporaneously delivering the seller's proceeds, in violation of Rule 1.15-2(m).

The uncanceled deed of trust was listed on your preliminary opinion of title and its cancellation was a requirement on the title commitment. You failed to timely take action to obtain the cancellation in violation of Rule 1.3. Although the closing occurred in July 2010, it was not until October 12, 2010 that you followed up with the bank and requested issuance of a certificate of satisfaction, which you received within weeks after your request.

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 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 reprimand by the Grievance Committee, an administrative fee in the amount of \$350.00 is hereby taxed to you.

Done and ordered, this the 22 day of Nov, 2011.



Ronald G. Baker, Sr., Chair
Grievance Committee