

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
08G0217

IN THE MATTER OF)	
)	
Kathryn M. Kelling,)	REPRIMAND
Attorney At Law)	
)	

On January 22, 2009 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by D. H.

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.

The complainant, D. H., and his former fiancé, A. T., entered into an agreement whereby a home owned jointly by the parties would be conveyed solely to A. T. and D. H. would sign a quitclaim deed conveying his interest in the property solely to A. T. The agreement further provided that once D. H. had signed the deed, you would hold the deed in escrow and not record it until A. T. had either refinanced or sold the property.

D. H. executed the deed and it was delivered to you. However, you recorded the deed before A. T. refinanced the property. You stated that you thought that A. T. was required to show that she was the sole owner of the property and that part of the refinancing process required A. T. to present to the mortgage company a copy of the recorded quitclaim deed.

As of the date that D.H. filed this grievance, A. T. has neither refinanced nor sold the property. D. H. has suffered some harm because A. T. was supposed to execute a promissory note and deed of trust to D. H. for \$10,000.00, but this never happened. Therefore, when the house sells, D. H. will be out of \$10,000.00 as well.

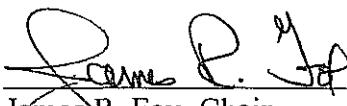
The Grievance Committee found that your failure to hold the deed in trust violated your duties as an escrow agent or a fiduciary. As a fiduciary, you had an obligation to not only A. T. but D. H. Your failure to comply with your fiduciary duties violated Rule 1.15-2(d) and Rule 8.4(d).

In addition, the Grievance Committee was concerned about your statement to another attorney, K. S., that you did not remember very much about the deed in question and that you did not remember who recorded the deed. You advised the Grievance Committee that you did not intend to be dishonest in your representation and that you should have reviewed the file prior to communicating with the attorney. The Grievance Committee urges you to carefully review a file before speaking with opposing counsel.

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 January 24, 2008 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 \$100.00 are hereby taxed to you.

Done and ordered, this the 13th day of January, 2009



James R. Fox, Chair
Grievance Committee

JRF/lr