

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
09G0175

IN THE MATTER OF

Matthew G. Nestor,
Attorney At Law

)
)
)
)
)

REPRIMAND

On January 14, 2010 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by R. J.

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 hired by the Executive Board (“the Board”) of Carolina Place Homeowner’s Association (CPHOA) in December 2007. In February 2008, you issued an “opinion letter” to homeowner-members of CPHOA, stating that a \$20,000.00 loan obtained by the Board (without member consent) was proper under the CPHOA bylaws. Therein, you quoted a specific section of the bylaws authorizing the Board to borrow money on behalf of the HOA, but omitted from the quote a provision which required consent of the members to borrow an amount greater than

15% the annual assessment. The \$20,000.00 the Board had borrowed exceeded 15% of the annual assessment. By substituting ellipses for the portion of the bylaws that required consent of the members for loans greater than 15% of the annual assessment, you made a misleading statement in violation of Rule 8.4(c). Your February 2008 letter implied that you had been asked by the Board to issue an independent advisory opinion. It did not explain to the homeowners that you represented the interests of the CPHOA acting through the Board, and not the individual homeowners. Your letter implied to unrepresented persons that you were disinterested in violation of Rule 4.3(b), and failed to explain the identity of your client when you knew that the organization's interests were adverse to the homeowners with whom you were dealing in violation of Rule 1.13(f).

On 10 April 2008, every member of the Board resigned, leaving CPHOA without a governing body. Although the homeowners met on 19 April 2008 and elected new Board members, you believed that irregularities in the meeting rendered the election invalid and therefore did not accept that the putative Board members had authority to act on behalf of CPHOA. On 2 May 2008, you received \$2,037.41 of CPHOA's funds in trust. You disbursed the entire \$2,037.41 to yourself without authorization on 2 July 2008. At that time, you had reason to believe that any asserted entitlement to funds you received on behalf of CPHOA was likely to be disputed. By disbursing these funds to yourself without authorization, you obtained personal benefit from entrusted funds in violation of Rule 1.15-2(j) and failed to maintain disputed funds in your trust account in violation of Rule 1.15-2(g). Because CPHOA owed you fees for significant work you had already performed on its behalf, this unauthorized distribution (while improper) did not constitute theft of entrusted funds.

In determining that the public would be adequately protected by the issuance of a reprimand to you, the Committee took into account your relative inexperience in the practice of law and the fact that your misconduct was confined to a single matter.

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 11th day of May, 2010



Ronald G. Baker, Sr., Chair
Grievance Committee

RGB/lr