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NORTH CAROLINA

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
04G1074

WAKE COUNTY

IN RE: JAMES B. WEEKS,
ATTORNEY AT LAW

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REPRIMAND

On 14 Apr 2005, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Mark Randolph.

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 and I am certain that you will understand fully the spirit in which this duty is performed.

You regularly represented a residential contracting company. In December 2003, a materialmen's lien was perfected against your client and became a lien on property your client was developing. Sometime before August 2004, the company agreed to sell a new residence to a person with the initials SK. Mr. Randolph was the closing attorney for the transaction and the

closing was scheduled for August 13, 2004. At the time, the perfected materialmen's lien had not been released from the property to be conveyed to SK. Mr. Randolph provided you with a copy of the proposed HUD-1 for the transaction which showed no payments for the release of the lien. You also had communications with the attorney representing the supplier who held the materialmen's lien in advance of the closing in which you advised that you needed a release for the property. You informed that attorney that his client would either receive proceeds from the sale or a bond covering the lien on the property. Even though you knew that the lien existed but was not shown on Mr. Randolph's HUD-1, you did not inform Mr. Randolph of the lien or ask him how he intended to resolve it; you simply remained silent. Further, you state that you prepared a lien waiver for your client's execution, but did not advise him to sign it even though it would constitute a false declaration under oath for your client to execute a lien waiver. Even if you had not prepared the lien waiver, you knew your client would be required to execute one at closing. However, you chose to remain silent despite your knowledge.

The Committee found that your above-described conduct violated several Rules and Revised Rules of Professional Conduct. By preparing a lien waiver for your client's execution knowing that the waiver could not be executed without a false declaration of fact by your client or by failing to advise your client that such a waiver could not be executed under the circumstances, you counseled or assisted your client in fraudulent conduct in violation of Rule 1.2(d) and represented to Mr. Randolph facts that you knew were false by your silence in violation of Rule 4.1. As a result of your conduct, your client was unjustly enriched by receipt of proceeds from the sale that would have otherwise been paid to the lienholder and the title insurance company was required to rectify the matter to protect the buyer and her lender.

In deciding to issue a Reprimand, the Committee considered the following aggravating and mitigating factors. In aggravation, the Committee considered substantial experience in the practice of law. In mitigation, the Committee considered the fact that you have no prior discipline.

You are hereby Reprimanded by the North Carolina State Bar due to 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 October 15, 1981 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 \$50.00 are hereby taxed to you.

Done and ordered, this 28 day of May, 2005.


Henry Babb
Chair, Grievance Committee