

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
19G0191

IN THE MATTER OF	)	
	)	REPRIMAND
JAMES W. KIRKPATRICK,	)	
ATTORNEY AT LAW	)	

On July 18, 2019 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the State Bar. 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 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 and your firm had protocols requiring verification of wiring instructions by a telephone call to the intended recipient. Prior to a real estate closing scheduled for December of 2018, you and your paralegal were forwarded an e-mail containing what appeared to be wiring instructions for the sellers' payoff of their existing mortgage to a financial institution. Subsequently, your paralegal received an e-mail from one of the sellers attaching the real wiring instructions but the paralegal assumed that the instructions were the same. You did not personally review the wiring instructions and neither you nor your paralegal, in violation of your

firm's protocols, verified with the sellers or the financial institution the legitimacy of the wiring instructions prior to initiating the wiring of the proceeds. As a result, the proceeds were wired to the fraudster's account, resulting in the loss of a significant portion of the proceeds, claims against your insurers, and lawsuits by financial institution, the sellers, and buyers. Your and your paralegal's failures to review and verify the payoff wiring instructions violated your duty to implement reasonable security measures to prevent third parties from gaining access to client funds held in your trust account under Rule 1.15 and Rule 5.3(a). *See* 2015 FEO 6, Opinion #5. You also did not immediately report the theft to the State Bar's Trust Account Compliance Counsel in violation of Rule 1.15-2(p).

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 7th day of August, 2019.

A. Todd Brown Sr.
A. Todd Brown, Sr., Chair
Grievance Committee

ATB/lb