

NORTH CAROLINA

WAKE COUNTY

6230

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
94G0499 (III)

IN THE MATTER OF )

KENNETH M. JOHNSON )  
ATTORNEY AT LAW )

REPRIMAND

On October 20, 1994, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by Cristeen S. Falls.

Pursuant to section 13(A) of article IX of the Rules and Regulations 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, reprimand, or 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 were the closing attorney in a loan assumption involving Terrell Raynor, the buyer, and Cristeen Falls, the seller. You prepared a deed for the seller, Ms. Falls, and thereby represented her in a limited capacity in the loan assumption closing. You also conducted the title search and prepared the loan assumption documents.

You scheduled several closings, but Mr. Raynor never appeared at those closings and he did not execute the loan assumption documents. You then gave Mr. Raynor the deed to Ms. Falls' condominium, although the assumption papers had not been completed. You stated that you gave Mr. Raynor the deed so he would have proof of the money that he paid to Ms. Falls for the equity in her property.

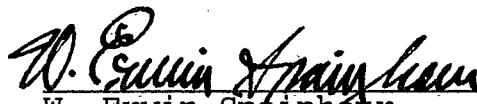
As the closing attorney in this transaction, you had a fiduciary duty to hold the deed in trust until the parties had complied with all terms and conditions of the purchase contract and the loan assumption had been closed. You breached your fiduciary duty to the seller when you released the deed to Mr. Raynor. Your conduct in this matter violated Rule 5.1(A) and (C) of the North Carolina Rules of Professional Conduct.

The Grievance Committee found that it was improper for you to deliver the deed to Mr. Raynor as proof that he had paid for the equity in the property. The Grievance Committee does take into consideration that you facilitated Mr. Raynor deeding the property back to Ms. Falls.

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 7th day of November, 1994.

  
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W. Erwin Spainhour  
Chairman, Grievance Committee  
The North Carolina State Bar

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