


After closing, the title insurance company contacted you regarding the need to clear title of the 2006 deed of trust encumbrance. At this point, your office contacted PNC Bank, the holder of the RBC deed of trust, and learned that this was an old RBC line of credit that was charged off but that had a balance that would need to be paid in order for PNC Bank to release the property from the lien. At this point in time, there was a conflict of interest among you, the lender, and the Js. Your personal interests arising from your failure to have taken appropriate actions prior to and at closing to clear title of all encumbrances conflicted with the Js' interests to be fully informed of all options available to them and with the lender's interests to be fully informed about the Js' debt. Yet you continued to act as closing attorney and represent the Js and the lender in violation of Rule 1.7(a). You met with the Js and informed them regarding the 2006 deed of trust and told them they needed to pay it. The Js did not have the funds to pay it. They maxed out their new line of credit to provide \$20,000.00 and you loaned them the remainder. You drafted a promissory note that you had E.J. sign documenting the loan and its terms but failed to advise the Js in writing of the desirability of seeking the advice of independent counsel in violation of Rule 1.8(a)(2) and failed to have the Js give informed consent in writing to the essential terms of the transaction and your role in the transaction, including whether you were representing the Js in the transaction, in violation of Rule 1.8(a)(3).

Your actions caused significant harm to the Js and potential significant harm to the lender. Had you notified the Js and the lender prior to closing of the 2006 deed of trust and had you discovered and informed them prior to closing of the action required to clear this lien, they would have been able to make informed decisions regarding whether to proceed with the refinance and, if so, under what terms. After closing, the Js were counting on the new line of credit to help sustain them when the Js' income was affected as a result of the COVID-19 pandemic and related restrictions. The Js no longer had that resource when they had to max out the line of credit to pay the 2006 deed of trust after closing. This poses potential significant harm to the lender, since the Js may now lack the resources to make the expected payments on the refinance loan, the higher-than-expected payments on the new line of credit, and to pay you when your loan to them comes due.

You are hereby censured by the North Carolina State Bar for your violation of the Rules of Professional Conduct. The Grievance Committee trusts that you will ponder this censure, recognize the error that you have made, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession. This censure should serve as a strong reminder and inducement for you to weigh carefully in the future your responsibility to the public, your clients, your fellow attorneys and the courts, to the end that you demean yourself as a respected member of the legal profession whose conduct may be relied upon without question.

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 censure by the Grievance Committee, an administrative fee in the amount of \$350.00 is hereby taxed to you.

Done and ordered, this the 16th day of February, 2021.



Matthew W. Smith, Chair
Grievance Committee
The North Carolina State Bar

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