19658

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
03G1738

IN RE:	Joseph M. Kosko, ATTORNEY AT LAW	REPRIMAND

On 14 Jul 2004, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the State Bar.

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.

On or about 23 October 2003, you were asked to close a real estate purchase transaction in which M. Ray Johnson was to buy property belonging to Ruth Brown that evening for $28,500. You agreed to conduct that closing. As part of the transaction, you were asked to

prepare a lease with option to purchase between Johnson and a third party, Barbara Campbell. You agreed to prepare that as well.

Ms. Brown met with you in your office on 23 October 2003 and executed a deed to Johnson and a HUD-1 form. She also signed a statement prepared by you authorizing you to disburse her proceeds of sale to Campbell. Ms Brown is an elderly woman with limited education. The evidence tends to show that she did not fully understand the transaction or what she was signing. Mr. Johnson did not attend this meeting. In fact, you did not receive the funds to complete the sale from Johnson until 26 October 2003 at which time Mr. Johnson gave you $28,500 in cash. There were a number of problems with your handling of this transaction.

- You prepared a HUD-1 indicating that the settlement funds were received and disbursed on 23 October 2003 when in fact you did not receive the funds until three days later. Accordingly, the HUD-1 you prepared and delivered to the parties contained false information. The law requires a HUD-1 form to present a true and accurate statement of the receipts and disbursements in a real estate closing transaction;

- You received more than $10,000 in cash, but did not file a report with the IRS as required by law;

- While you deposited the $28,500 in cash in your trust account, you did not identify the source of the funds on the deposit ticket; and

- You directed the notary to execute a false jurat on the lease with option to purchase showing that the parties had executed the document on 23 October 2003 when Johnson did not execute it before 26 October 2003.

The Committee concluded that your conduct violated these Rules of Professional Conduct. By preparing the false HUD-1 form and directing the notary to execute a false jurat, you engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c). By preparing the document for Ms. Brown to authorize the disbursement of the sale proceeds to Campbell and otherwise not fully explaining your role as attorney for Johnson to Brown, you failed to make reasonable efforts to assure that Ms. Brown did not misunderstand your role in violation of Rule 4.3. By failing to identify the source of the funds on the deposit ticket when you deposited the cash from Mr. Johnson into your trust account, you violated Rule 1.15-3(a).

In deciding to issue a Reprimand, the Committee considered the following aggravating and mitigating factors. In aggravation, the Committee considered that you had previously received an admonition in another matter. In mitigation, the Committee found that you cooperated with the Bar's investigators by voluntarily producing documents and answering questions.

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 10th day of August, 2004.

John B. McMillan
Chair, Grievance Committee

4/12