

NORTH CAROLINA  
WAKE COUNTY

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
14G1110

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IN THE MATTER OF	)	
	)	REPRIMAND
KIMBERLY L. MOORE,	)	
ATTORNEY AT LAW	)	

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On October 27, 2016 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by K.R. and L.L. 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 and follow up responses 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.

In 2009, you were retained by H.L. to examine the titles on properties that D.P. offered as Deeds of Trust to H.L. to secure notes on loans made by H.L. to D.P. and his entities. You subsequently recorded 11 of the Deeds of Trust for H.L., but did not inform H.L. at the time that four of the Deeds of Trust were not in a first security lien position. The State Bar's Letter of Notice summary to you alleged that you did not reveal this fact to H.L. while he was alive or to H.L.'s beneficiaries after his death in October 2012. Your initial response did not specifically address whether you informed H.L. that he was not in a first security lien position on the four Deeds of Trust. In the State Bar's follow up letter, you again were asked to respond to this allegation with as much detail as possible, and include any supporting documentation. You again evaded answering. You

only answered, "I did search the properties and discussed the results with [H.L.]." You provided no documentation. In response to the follow up of whether you ever informed H.L.'s beneficiaries, after his death, about the four Deeds of Trust in which he was not in a first security position, you insisted that you informed your Co-Executor and Co-Trustee from the outset about the Deeds of Trust which were subject to foreclosure action. Again, you were evasive in answering whether you ever informed your Co-Executor and Co-Trustee about the four Deeds of Trust you had filed in which H.L. was not in a first security lien position. You stated that you thought that you "had explained everything about the deeds of trust to [the Co-Executor and Co-Trustee] via email and via telephone." In an e-mail from the Co-Executor and Co-Trustee to you on Tuesday, August 20, 2013, 2:31 p.m., he asked whether you were aware of any other properties on which H.L. had Deeds of Trust (other than the eight known properties with principals worth \$764,000, leaving about \$836,000 unaccounted of the approximately \$1,600,000 loaned by Mr. Loughlin to Mr. Propst). On Tuesday, August 20, 2013, 3:32 p.m., you responded falsely, "There are no other properties which have a deed of trust on them." As H.L.'s attorney who had been retained and paid to research the list of properties which D.P. purported to provide to H.L. as security for his Notes, you failed to exercise reasonable diligence in violation of Rule 1.3 in not discovering that the four properties were already encumbered with liens, and violated Rule 1.4(b) in failing to explain the four properties' secondary lien positions to H.L. in order to permit H.L. to make informed decisions about filing the Deeds of Trust on the properties. As the self-appointed attorney for H.L.'s estate who received compensation for your legal services, and also as a fiduciary to the beneficiaries of the estate, you failed to exercise reasonable diligence in violation of Rule 1.3 and engaged in a conflict of interest in violation of Rule 1.7(a)(2) in failing to disclose to your Co-Executor and Co-Trustee and the beneficiaries your role in failing to discover and inform H.L. of the secondary lien position of the four properties prior to filing the Deeds of Trust for the properties on behalf of H.L. Your representation of the estate was materially limited by your personal interest in preventing disclosure of your negligence or legal malpractice. Your deceits of H.L., your Co-Executor and Co-Trustee, and H.L.'s beneficiaries about the four properties implicate Rule 8.4(c) in that you engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. In addition, your evasiveness and deliberate failures to specifically address the Letter of Notice and follow up letter allegations show that you knowingly failed to respond to a lawful demand for information from the State Bar in violation of Rule 8.1(b).

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 11<sup>th</sup> day of NOVEMBER, 2016.

  
DeWitt "Mac" McCarley, Chair  
Grievance Committee