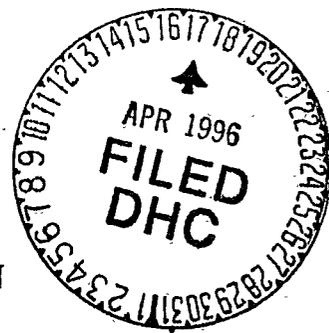


3922



BEFORE THE DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR

96 BCR 1

IN THE MATTER OF) RECOMMENDATION
PETITION FOR REINSTATEMENT OF) OF
E. CLAYTON SELVEY, JR.) HEARING COMMITTEE

This matter coming on to be heard and being heard on March 15, 1996 by a hearing committee of the Disciplinary Hearing Commission comprised of Frank E. Emory, Chair, Richard L. Doughton, and A. James Early, III; with E. Clayton Selvey, Jr. ("petitioner") appearing and being represented by Nelson M. Casstevens, Jr. and with R. David Henderson representing the North Carolina State Bar ("respondent"); and based upon the evidence presented and the arguments of counsel, the hearing committee finds and concludes as follows:

1. Petitioner was licensed to practice law in North Carolina in August 1958.
2. On or about March 27, 1979, petitioner was employed by Sandra C. Miller to represent her as executrix of the estate of Dwight B. Miller.
3. During his representation of Ms. Miller, petitioner failed to perform the necessary legal services on behalf of Ms. Miller as executrix to close the estate including failing to publish the notice to creditors, failing to file a claim for spousal allowance, failing to respond to claims filed against the estate, and failing to prepare accountings. For example, on October 31, 1980, the Clerk of Superior Court ordered Ms. Miller to file an accounting but petitioner failed to take any action on behalf of Ms. Miller in response to that order.
4. Ms. Miller contacted petitioner on several occasions and was advised that the matter was being handled. In early 1981, Ms. Miller hired another attorney to accomplish the legal services for which petitioner was employed to perform.

5. In March 1979, petitioner was employed by Ms. Louise Dyson and her husband to represent them in an adoption proceeding of Ms. Dyson's granddaughter. Petitioner was paid \$530 in cash on April 4, 1979.
6. Petitioner failed to perform any legal services in connection with the adoption other than obtaining the consent of the child's father in February, 1980.
7. From the date of employment through January 1980, the Dysons were assured by petitioner on numerous occasions that the matter was being handled, including being advised by petitioner that the matter was set for hearing before the court, which was not true. On August 5, 1980, Ms. Dyson filed a complaint with the Mecklenburg County Grievance Committee. In December, 1980, petitioner returned the \$530 fee and the Dysons deferred proceeding with the adoption.
8. In late November, 1979, petitioner was employed to represent Mr. Michael Flaherty, a Charlotte police officer, who was charged with three counts of involuntary manslaughter arising from an automobile accident while Mr. Flaherty was on duty. Mr. Flaherty paid petitioner \$7,500 as his fee.
9. In March, 1980, a jury trial was held in the Superior Court of Mecklenburg County, and Mr. Flaherty was convicted. Petitioner entered notice of appeal to the North Carolina Court of Appeals in open court and was given 80 days to serve the record on appeal.
10. Thereafter, petitioner repeatedly assured Flaherty that he was handling the appeal. Flaherty contacted petitioner about the expiration of time for appeal and was assured by petitioner that the necessary extension of time had been secured.
11. At no time did petitioner file or serve a proposed record on appeal, receive any extension of time for serving the record, or file any petitions in the Court of Appeals. On January 13, 1981, Mr. Flaherty hired a new attorney and the Court of Appeals granted certiorari to review the case.

12. On February 5, 1981, petitioner voluntarily surrendered his law license to the North Carolina State Bar. (Findings of Fact 1 through 12 were contained in the July 27, 1981 Order disbaring petitioner.)
13. In the order disbaring petitioner, the Council determined that the foregoing conduct constituted "inexcusable neglect of his legal duties, knowingly making false statements of fact, and making misrepresentations concerning the status of the cases, which are violations of Disciplinary Rules 6-101(A)(3) ["A lawyer shall not neglect a legal matter entrusted to him"], 7-102(A)(5) ["In his representation of a client, a lawyer shall not knowingly make a false statement of law or fact"] and 1-102(A)(4) ["A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation"] of the Code of Professional Responsibility of the North Carolina State Bar."
14. In addition to the above misconduct, the Council, in deciding to disbar petitioner, considered that petitioner was suspended from the practice of law for four months beginning January 1, 1975 for failing to perfect an appeal in State v. Fred William Hobbs, 72 CR 9261 (Mecklenburg County), and was suspended from the practice of law for six months beginning April 1, 1976 for failing to perform the necessary legal services in the civil claims of three clients such that the statute of limitations barred the claims.
15. Not more than six months or less than 60 days before filing the petition for reinstatement, a notice of petitioner's intent to seek reinstatement was published in an official publication of the North Carolina State Bar in compliance with Rule .0125(a)(3)(A) of the Discipline and Disability Rules.
16. Not more than six months or less than 60 days before filing the petition for reinstatement, petitioner notified the complainants in the disciplinary proceeding which led to his disbarment of the notice of intent to seek reinstatement in accordance with Rule .0125(a)(3)(B).
17. Petitioner has never been convicted of or sentenced for the commission of a felony; therefore, it was not necessary to have his citizenship restored pursuant to Rule .0125(a)(3)(E).

18. Petitioner has submitted an affidavit verifying his compliance with Rule .0124 as required by Rule .0125(a)(3)(F).
19. Petitioner has complied with all applicable orders of the commission and the council pursuant to Rule .0125(a)(3)(G).
20. There were no orders or judgments of any court relating to the matters resulting in the disbarment; therefore the requirements of Rule .0125(a)(3)(H) do not apply.
21. There was no evidence that petitioner had engaged in the unauthorized practice of law during the period of his disbarment. See Rule .0125(a)(3)(I).
22. There was no evidence that petitioner engaged in any conduct during the period of disbarment constituting grounds for discipline under G.S. 84-28(b). See Rule .0125(a)(3)(J).
23. No funds were disbursed by the Client Security Fund as a result of petitioner's misconduct; therefore the requirements of Rule .0125(a)(3)(K) do not apply.
24. The Council, in the order of disbarment, did not find that petitioner had misappropriated funds which were not reimbursed by the Client Security Fund; therefore, the requirements of Rule .0125(a)(3)(L) do not apply.
25. Seven years or more have elapsed between the effective date of disbarment and the filing of the petition for reinstatement. Therefore, pursuant to Rule .0125(a)(5), any order reinstating petitioner to the practice of law must be conditioned upon petitioner attaining a passing grade on a regularly scheduled written bar examination administered by the North Carolina Board of Law Examiners.
26. Concerning Rule .0125(a)(3)(C) which requires the petitioner to prove by clear, cogent, and convincing evidence that he has reformed and presently possesses the moral qualifications to practice law in this state taking into account the gravity of the misconduct which resulted in the order of disbarment, the committee found:

- a. Subsequent to petitioner's disbarment, he became associated with New York Life Insurance and spent approximately six years with various insurance companies as a field underwriter. Beginning in December 1992, petitioner has been employed as a legal assistant with the law firm of Downer, Walters & Mitchener.
- b. Petitioner presented evidence that during his tenure as a field underwriter he had good work habits, was conscientious, competent and appeared to genuinely care about his policyholders. Petitioner also presented evidence that while a legal assistant, he has been dedicated, hardworking, responsible, capable of meeting deadlines, dependable and disciplined.
- c. Various witnesses testified that petitioner was honest, free of addiction, and of good moral character. An individual who has been as Assistant Clerk of the Superior Court of Mecklenburg County for 35 years testified that petitioner is organized, focused, responsible and prompt in carrying out the responsibilities assigned to him by his employer.
- d. However, petitioner failed to present evidence of reformation with respect to the problems which were central to his earlier transgressions; that is, the performance of and discharge in fiduciary relationships and the truthful communication in difficult circumstances and problems.

27. Concerning Rule .0125(a)(3)(D) which requires petitioner to prove by clear, cogent, and convincing evidence that permitting petitioner to resume the practice of law in the state will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest, taking into account the gravity of the misconduct which resulted in the order of disbarment, the committee found:

- a. Subsequent to his disbarment, petitioner was deeply involved in the promotion of youth sports in Charlotte, NC. For approximately eight years after his disbarment, petitioner devoted on the average of 20 hours per week as either baseball coach, football coach, softball coach or basketball coach. On some occasions, he coached two teams at the same time.

- b. In addition, petitioner served as a director, vice president and president of Winterfield Booster Club, an organization of approximately 600 families in Charlotte, NC.
- c. Petitioner also served on the board of directors and was president of East Mecklenburg Girls Slow Pitch Softball League, and was a member of the board of directors of East Mecklenburg Youth Sports.
- d. In fulfilling the obligations imposed upon him by reason of his offices, petitioner was responsible, conscientious, organized and capable of meeting deadlines.
- e. However, during most of the time petitioner was involved with these leagues, either petitioner's son or daughter participated in one or more of those leagues. Furthermore, petitioner has not done any work with youth sports leagues in the past six years. Petitioner acknowledged that he is a private person and prefers to spend his free time at home with his family.
- f. Also, other than petitioner's work with the youth sports leagues, petitioner has not otherwise been involved in any other civic organization or community activity in the past 15 years.
- g. Except for his immediate family and very close friends, petitioner failed to talk with others about his earlier problems in an effort to help them learn from his mistakes. Petitioner had numerous opportunities while participating in the youth sports leagues to discuss his past transgressions with parents and the children who played on his teams, but failed to do so.
- h. Evidence was presented that petitioner had a good reputation among lawyers and court personnel, and was highly regarded by those who knew him. All witnesses called by petitioner stated that they did not believe petitioner's reinstatement would be detrimental to the standing and integrity of the bar, to the administration of justice, or to the public interest.
- i. The one witness called by respondent was Mr. Michael Flaherty. As described in paragraphs 8-11 above, petitioner represented

Mr. Flaherty with charges of involuntary manslaughter and failed to perfect his appeal. Mr. Flaherty testified that in his opinion, permitting petitioner to resume the practice of law would be detrimental to the standing and integrity of the bar, to the administration of justice, and to the public interest.

- j. Respondent notified all District and Superior Court Judges in Mecklenburg County and the District Attorney of the petition for reinstatement and invited a response. Most did not respond. Of the few that did respond, most indicated that they did not know petitioner and therefore, did not have an opinion. Three District Court Judges wrote in favor of the petition. The District Attorney indicated that he would not object to the petition.

28. Concerning Rule .0125(a)(3)(K) which requires petitioner to prove by clear, cogent, and convincing evidence that he understands the current Rules of Professional Conduct, the committee found:

- a. Petitioner and respondent stipulated that petitioner would take and obtain a passing grade on the Multistate Professional Responsibility Exam ("MPRE") which would satisfy the requirements of Rule .0125(a)(3)(K) and that petitioner's agreement to take and obtain a passing grade on the MPRE would be a condition of his reinstatement. This stipulation was necessary because when petitioner was disbarred in 1981, the Code of Professional Conduct was in effect. In 1985, North Carolina adopted the Rules of Professional Conduct which is different from the code in certain respects. Since 1985, there have been numerous changes to the Rules of Professional Conduct and numerous ethics opinions interpreting these rules.

Based upon the foregoing findings, the hearing committee concludes as follows:

1. Petitioner has proven by clear, cogent, and convincing evidence that he has satisfied the requirements of Rule .0125(a)(3)(A), (B), (E), (F), (G), (H), (I), (J), (L), and (M).
2. Petitioner has not proven by clear, cogent, and convincing evidence that he has reformed and presently possess the moral qualifications required for admission to practice law in this state taking into account

the gravity of the misconduct which resulted in the order of disbarment as required by Rule .0125(a)(3)(C).

3. Petitioner has not proven by clear, cogent, and convincing evidence that resuming the practice of law in North Carolina will be not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest, taking into account the gravity of the misconduct which resulted in the order of disbarment as required by Rule .0125(a)(3)(D).
4. Petitioner has not proven by clear, cogent, and convincing evidence that he understands the current Rules of Professional Conduct as required by Rule .0125(a)(3)(K). However, the committee believes that obtaining a passing grade on the MPRE will satisfy the requirements of Rule .0125(a)(3)(K). Therefore, the committee recommends that any order of reinstatement be conditioned upon petitioner obtaining a passing grade on the MPRE.
5. Pursuant to Rule .0125 (a)(5), any order of reinstatement must be conditioned on petitioner obtaining a passing grade on the bar examination since it has been more than seven years since his disbarment.

WHEREFORE, the hearing committee recommends that petitioner's license to practice law not be reinstated. For the purposes of Section .0125(a)(10), this recommendation shall be a final order unless petitioner seeks to bring this recommendation before the Council of the North Carolina State Bar for their consideration. Petitioner shall pay the costs of this proceeding.

Signed by the undersigned chair with the full knowledge and consent of the other members of the hearing committee this the 16th day of April, 1996.



Frank E. Emory, Jr., Chair