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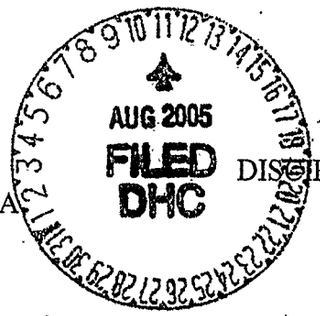
WAKE COUNTY

NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 12

THE NORTH CAROLINA STATE BAR Plaintiff v. E. DANIELS NELSON, ATTORNEY Defendant	)	CONSENT ORDER TRANSFERRING ATTORNEY TO DISABILITY INACTIVE STATUS AND IMPOSING DISCIPLINE

THIS MATTER came on to be heard and was heard by the committee assigned hereto, including Charles M. Davis, T. Richard Kane and Donald G. Willhoit. Carolin Bakewell represented the N.C. State Bar. Alan M. Schneider represented the Defendant, E. Daniels Nelson. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the conditions imposed. Defendant also stipulates that he waives his right to appeal this consent order or challenge in any way the sufficiency of the findings, conclusions of law or conditions ordered by consenting to the entry of this order.

Based on the consent of the parties, the Hearing Committee hereby finds by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, E. Daniels Nelson, ("Nelson"), was admitted to the North Carolina State Bar in 1975, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all or a portion of the period relevant hereto, Nelson was engaged in the practice of law in Beaufort, Carteret County, North Carolina.

4. Nelson waives his right to a formal hearing and to appeal from any portion of this order.

5. Nelson was personally served with the State Bar's summons and complaint in this matter.

6. Nelson has alleged that he is disabled within the meaning of 27 NCAC 1B .0103(19).

7. Nelson suffers from bipolar disorder and alcoholism, neither of which has been adequately treated.

8. Nelson's conditions cause him to avoid stressful and adversarial situations and make it difficult for him to concentrate and complete tasks in a timely manner.

Based upon the foregoing Findings of Fact, and with the consent of the parties, the hearing committee enters the following

CONCLUSIONS OF LAW REGARDING DISABILITY

1. All parties are properly before the hearing committee and the committee has jurisdiction over Nelson's person and over the subject matter of this proceeding.

2. Nelson is disabled within the meaning of 27 NCAC 1B .0103(19) by reason of his alcoholism and bipolar disorder.

3. Nelson is competent to consent to this order, understands its provisions, and is represented by experienced counsel.

Based upon the foregoing Conclusions of Law and with the consent of the parties hereto, the hearing committee enters the following:

ORDER REGARDING DISABILITY

1. The Defendant, E. Daniels Nelson, is hereby transferred to disability inactive status.

2. Nelson may file a petition seeking transfer to active status at any time after 18 months from the effective date of this order, upon proof of the following:

a) He abstained from the use of alcohol for a period of 12 months next preceding the date of his reinstatement petition.

b) He is no longer disabled within the meaning of 27 NCAC 1B .0103(19).

c) He has complied with all State Bar continuing legal education requirements and has paid all mandatory dues, late fees and costs due and owing to the State Bar and any of its departments and committees.

d) He paid the costs of this proceeding not later than 30 days prior to filing his reinstatement petition.

Based upon the consent of the parties, and the pleadings herein, the hearing committee also hereby enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. On or about Aug. 4, 2003, the N.C. State Bar issued an order to Nelson, directing him to show cause, if any, why his law license should not be suspended for failing to complete the minimum mandatory continuing legal education requirements required by the N.C. State Bar for calendar 2002.

2. Nelson was served with the show cause order by certified mail on Aug. 6, 2003.

3. Nelson failed to respond to the Bar's show cause order.

4. On Oct. 24, 2003, the Council of the N.C. State Bar entered an order suspending Nelson's law license based upon his failure to complete the minimum mandatory continuing legal education required by the N.C. State Bar for calendar 2002.

5. On Nov. 5, 2003, Dudley Humphrey, then President of the N.C. State Bar, signed an order suspending Nelson's law license.

6. On Nov. 26, 2003, Nelson was served with a copy of the suspension order by certified mail.

7. The order suspending Nelson's law license has not been amended or rescinded. Nelson does not have a valid license to practice law in the State of North Carolina.

8. Nelson knew or should have known that his law license was suspended as of late November 2003.

9. On or about March 18, 2004, after the suspension of his law license went into effect, Nelson undertook to draft wills for Janice and Stanley Marek ("the Mareks").

10. Nelson held himself out to the Mareks as an attorney licensed to practice law in North Carolina. He did not reveal that his law license had been suspended.

11. Between March 18 and March 31, 2004, Nelson completed drafts of the wills and mailed them to the Mareks for review.

12. On or about March 31, 2004, Nelson sent the Mareks an invoice for his legal services. On the invoice, Nelson held himself out as an attorney licensed to practice law in North Carolina.

13. The Mareks paid Nelson a total of $500 for his work.

14. The Mareks did not sign the draft wills that they received from Nelson because the drafts contained various errors.

15. The Mareks attempted to contact Nelson to request him to correct the wills, but he failed to return their calls or otherwise communicate with the Mareks about their legal matter.

16. The Mareks were ultimately forced to consult and pay another attorney to complete their wills.

17. Nelson has failed to refund the unearned portion of the $500 fee that he received from the Mareks.

18. In July 2003, Nelson undertook to represent Catherine Walley ("Ms. Walley") in a custody matter and an insurance matter.

19. Ms. Walley paid Nelson a $2,000 advance fee.

20. Nelson failed to take effective action to assist Ms. Walley in either legal matter he undertook for her and failed to respond to her requests for information about her cases.

21. Nelson failed to advise Ms. Walley when his law license was suspended in October 2003 and, as late as Dec. 16, 2003, held himself out to Ms. Walley as an attorney licensed to practice law in North Carolina.

22. In the spring of 2004, Ms. Walley discharged Nelson and demanded that he return the unearned portion of the $2,000 fee and her client file to her.

23. On May 6, 2004, when Nelson did not respond to her demands, Ms. Walley filed a petition for resolution of a disputed fee with the North Carolina State Bar against Nelson.

24. On June 3, 2004, Nelson was notified of Ms. Walley's fee dispute petition by certified mail and was directed to file a written response within 15 days.

25. Nelson failed to respond to Ms. Walley's fee dispute petition and failed to participate in the fee dispute resolution process.

26. On July 22, 2004, the N.C. State Bar established a grievance file against Nelson based upon his failure to respond to Ms. Walley's fee dispute petition.

27. On Aug. 13, 2004 Nelson was served by certified mail with a letter of notice and substance of grievance regarding the grievance opened by the N.C. State Bar and was directed to file a written response within 15 days.

28. Nelson did not respond to the letter of notice or to a follow up letter sent to him by the State Bar on Sept. 3, 2004.

29. On or about Nov. 1, 2001, Willie Stokes ("Stokes"), filed a grievance against Nelson with the North Carolina State Bar.

30. On Jan. 14, 2002, Nelson was served by certified mail with the State Bar's substance of grievance and letter of notice regarding Stokes' complaint. Nelson was directed to file a written response within 15 days.

31. Nelson did not respond to the letter of notice concerning Stokes' complaint nor did he respond to a follow up letter sent to him on Feb. 6, 2002.

32. On April 24, 2002, the State Bar issued a subpoena to Nelson, commanding him to appear at the State Bar's offices on May 23, 2002 and respond to Stokes' grievance.

33. Nelson responded to Stokes' grievance only after being served with the subpoena in person by a deputy sheriff on May 1, 2002.

Based on the consent of the parties and the findings of fact, the hearing committee hereby enters the following

CONCLUSIONS OF LAW REGARDING DISCIPLINARY ALLEGATIONS

1. All parties are properly before the hearing committee and the committee has jurisdiction over Nelson's person and over the subject matter of this proceeding.

2. By holding himself out to the Mareks and to Ms. Walley as an attorney licensed to practice law in North Carolina when he knew or should have known that his license had been suspended by the Council of the North Carolina State Bar, Nelson held himself out as admitted to practice law when this was not the case, in violation of Rule 5.5(b)(2).

3. By drafting wills for the Mareks when he knew or should have known that his law license had been suspended by the Council of the North Carolina State Bar, Nelson practiced law in North Carolina within the meaning of G.S. 84-2.1, in violation of Rule 5.5(a).

4. By failing to refund the unearned portion of the $500 fee paid to him by the Mareks and by failing to refund the unearned portion of the $2,000 fee paid to him by Ms. Walley, Nelson retained excessive fees in violation of Rule 1.5 and failed to return the unearned fees at the conclusion of the representation in violation of Rule 1.16.

5. By failing to return calls from the Mareks and Ms. Walley concerning the status of their legal matters, Nelson failed to communicate with his clients in violation of Rule 1.4.

6. By effectively abandoning the Mareks' case without completing their wills and by failing to take effective action to resolve Ms. Walley's legal matters, Nelson neglected client matters in violation of Rule 1.3.

7. By failing to participate in good faith in the State Bar's mandatory fee dispute resolution process regarding Ms. Walley's fee petition, Nelson violated Rule 1.5(f).

8. By failing to respond to the State Bar's letters of notice concerning Stokes' grievance and the grievance filed as a result of Nelson's failure to participate in the fee dispute process with Ms. Malley, Nelson failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 8.1. By failing to respond to the State Bar's subpoena commanding him to appear in Raleigh to respond to the grievance filed by Stokes, Nelson also violated Rule 8.1 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the consent of the parties the hearing committee finds by clear, cogent and convincing evidence the following

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Nelson's conduct is aggravated by the following facts:

a) He engaged in a pattern of misconduct.

b) He engaged in multiple violations of the Rules of Professional Conduct.

c) He has substantial experience in the practice of law.

d) He has prior discipline.

2. Nelson's conduct is mitigated by the following facts:

a) Nelson has expressed remorse for his misconduct.

b) Nelson has been cooperative with the State Bar's attempts to resolve this matter following the filing of the complaint herein.

c) Nelson's misconduct was at least partially caused by his bipolar disorder and alcoholism.

d) There is no evidence that Nelson continued to engage in the unauthorized practice of law after March 2004.

e) Nelson's misconduct was not motivated by dishonesty or selfishness.

3. The mitigating factors outweigh the aggravating factors.

Based on the foregoing findings of fact and the consent of the parties, the Committee enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. It would be beneficial to Nelson's recovery efforts to impose discipline for his violations of the Revised Rules of Professional Conduct immediately, rather than holding the charges in abeyance until he is reinstated to the active practice of law. Prompt resolution of the disciplinary allegations is also in the interest of the profession and the individuals who complained against Nelson.

2. An active suspension of Nelson's law license is not necessary, as he has consented to an order transferring him to disability inactive status and has agreed to wait at least 18 months from the date of this order before seeking transfer to active status.

3. An order of stayed suspension, based on compliance with certain conditions, is sufficient to protect the public should Nelson be reinstated to active practice and resume working as an attorney.

Based upon the foregoing Findings of Fact and Conclusions of Law and with the consent of the parties hereto, the hearing committee enters the following

ORDER OF DISCIPLINE

1. Nelson's law license is hereby suspended for two years and the suspension is stayed for five years on the following conditions:

(a) Nelson shall deliver a signed release to the N.C. State Bar within 30 days of entry of this order identifying his treating physicians and counselors and permitting the N.C. State Bar Office of Counsel to consult with them respecting his compliance with the treatment program. Nelson shall not revoke the release at any time during the 5 year stayed suspension

b) Nelson shall comply with the treatment plan and recommendations of all treating physicians and counselors throughout the five year stayed suspension period.

c) Nelson shall provide written quarterly reports to the N.C. State Bar throughout the five year stay period confirming that he is complying with the treatment plan recommended by his physicians and counselors. The written reports shall be signed by his physicians and counselors and shall be due each Jan. 1, April 1, July 1 and Oct. 1 throughout the five year stay period.

d) Nelson shall be solely responsible for the cost of all evaluations, reports and treatment required by this order.

e) Nelson shall keep the N.C. State Bar advised of his current address at all times and shall reply to all communications from the State Bar by the deadline set out in the communication.

f) Nelson shall comply with all mandatory continuing legal education requirements and shall pay all State Bar and local dues on a timely basis.

g) Nelson shall not violate any laws of the state of North Carolina and of the United States.

h) Nelson shall not violate any provision of the Rules of Professional Conduct.

2. If the suspension of Nelson's law license is activated for any reason, Nelson shall comply with paragraphs 1 (b), (f) and (g) and shall demonstrate that he is not disabled within the meaning of 27 NCAC 1B .0103(19) before seeking reinstatement of his law license from the disciplinary suspension.

Signed by the undersigned Committee Chair with the full knowledge and consent of the other Hearing Committee members, this the 8 day of August 2005.

Charles M. Davis
Chair, Disciplinary Hearing Committee

Seen and agreed to:

Alan M. Schneider
Counsel for the Defendant

E. Daniels Nelson
Defendant

Carolin Bakewell
Counsel for the Plaintiff