

NORTH CAROLINA
WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
89 DHC 34

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

EDWARD DANIELS NELSON, ATTORNEY
Defendant

FINDINGS OF FACT
& CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar consisting of John Shaw, Chairman; Samuel Jerome Crow, and Frank Boushee. The Hearing Committee heard evidence on October 25 and 26 and November 6, 1990. The Defendant was represented by Joseph B. Cheshire V and Alan Schneider. The Plaintiff was represented by Carolin Bakewell. Based upon the pleadings, the prehearing stipulations and the evidence, the Committee makes the following:

FINDINGS OF FACT

1. 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. Defendant, Edward Daniels Nelson, (hereafter, 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, Code of Professional Responsibility and the Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During all of the relevant periods referred to herein, Nelson was engaged in the practice of law in the State of North Carolina and maintained a law office in the city of New Bern or the city of Raleigh, N.C.
4. In approximately June 1983, Nelson joined the New Bern law firm of Beaman, Kellum & Stallings, (hereafter, B, K & S or "the firm"), as an employee.
5. At the time Nelson was hired, Norman Kellum (hereafter, Kellum), and Joe Stallings (hereafter, Stallings), agreed to pay Nelson a salary of \$40,000 per year and to provide him the same pension and health care benefits offered other attorney-employees of the firm. There was a promise

by Kellum that there would be a review after one year to determine Nelson's status in the firm.

6. Neither Kellum nor Stallings promised to review Nelson's performance after one year to determine if he would be made an owner or partner in B, K & S.

7. B, K & S was a professional association prior to and throughout the period during which Nelson was employed there. All of the stock of the P.A. was held by Kellum and Stallings from 1980 until Stallings left the firm in June or July, 1987.

8. Stallings and Kellum each owned an equal number of shares of the professional association.

9. Kellum and Stallings did not consider their respective ownership interests in the firm in determining the amount of their draws or compensation.

10. William Hollows (hereafter, Hollows), joined B, K & S or a predecessor entity in 1979. Between 1979 and 1988, Hollows was an employee of the firm and received an annual salary.

11. In the summer of 1984, Kellum and Stallings met briefly with Hollows and Nelson. At the meeting, Hollows and Nelson indicated that they wished to become part owners of B, K & S. Hollows and Nelson also indicated that they wanted their names to be added to the firm name.

12. Kellum and Stallings agreed to consider the proposals, but indicated that further discussions would have to be held before any stock could be transferred to Hollows and Nelson. Stallings also indicated that the appropriate paperwork would have to be completed to effect the proposed changes.

13. There was no discussion at the meeting mentioned in paragraphs 10 and 11 regarding any change in the amount or mode of determining compensation to either Nelson or Hollows. At a subsequent meeting, compensation was discussed and Nelson's compensation was set at \$48,000.

14. Nelson asked Stallings once and asked Hollows several times after the summer of 1984 whether the paperwork regarding the transfer of shares had been completed. On each occasion Nelson was told that the paperwork had not been done. Stallings testified that he asked Hollows to do the paperwork, and Hollows testified that Stallings was to give him direction as to what to put in the paperwork.

15. Neither Hollows nor Nelson paid any amount to Stallings or Kellum to purchase shares in the firm prior to May 1987. No buy-sell agreements were ever drafted or signed and no stock was ever issued to Hollows or Nelson prior to May 1987.

16. Hollows did not believe that he had been made an owner or partner in B, K & S at any time prior to May, 1987.

17. Prior to his departure from the firm, Nelson never made any statements to Hollows, Stallings or Kellum which indicated that Nelson thought he had been made an owner or partner in the firm.

18. Nelson never filed an income tax return indicating partnership compensation.

19. From June 1983 until June or July 1987, the name of the firm remained Beaman, Kellum & Stallings. Kellum changed the name in the yellow pages (1984-1985) and white pages (1984-1986) to Beaman, Kellum, Stallings, Hollows & Nelson. Nelson placed an ad in the News and Observer announcing he was a partner with Beaman, Kellum & Stallings. The ad was paid for by the firm of Beaman, Kellum & Stallings.

20. At all times between June 1983 and May 1987 the stationery used at the firm bore the letterhead "Beaman, Kellum & Stallings."

21. In the summer of 1984, Stallings and Kellum agreed to raise Nelson's salary to \$48,000 per year.

22. Neither Stallings nor Kellum ever promised that Nelson's compensation was or would be based on some portion of fees brought into the firm. Neither Stallings nor Kellum ever promised that Nelson would be entitled to bonuses or any additional compensation other than his annual salary.

23. Prior to his departure from the firm, Nelson never received a bonus or any compensation over and above his usual salary and expenses.

24. Prior to his departure from the firm, Nelson never made any statements to Kellum, Hollows, Stallings or to the firm bookkeeper which indicated that Nelson thought he was entitled to any additional sums of money beyond his usual salary.

25. In the fall of 1986, Nelson began working on a rate case for the North Carolina Department of Insurance. Nelson's work on the rate case caused him to be absent from New Bern for extended periods of time. Neither Kellum nor Stallings promised or agreed to permit Nelson to keep any portion of the fee produced by Nelson's work on the rate case.

26. By late 1986, Kellum and Stallings had become dissatisfied with Nelson's work and the amount of time he was devoting to the Department of Insurance case at the expense of other matters. In early 1987 Kellum and Stallings expressed their dissatisfaction with Nelson's work performance.

27. Nelson's final day of work at B, K & S was April 22, 1987. Thereafter, Nelson moved to Raleigh and began the practice of law as a partner with the law firm of Parker, Sink & Powers.

28. On May 11, 1987, Nelson submitted a bill to the Department of Insurance for work he had done on the rate case between Dec. 30, 1986 and April 30, 1987. During all but eight days of the period for which he billed the Department of Insurance, Nelson was an employee of B, K & S.

29. On May 21, 1987, the Department of Insurance issued a check for \$38,646.62 to Nelson in payment of the May 11, 1987 bill.

30. Nelson did not inform anyone at B, K & S that he had billed the Department of Insurance, nor did he notify anyone at the firm when he received the \$38,646.62 check.

31. Nelson deposited the \$38,646.62 check into a personal account. By November 1987, Nelson had turned over all but approximately \$2,000 of the funds to his wife.

32. On May 27, 1987, Stallings wrote to Nelson, inquiring about the status of the Department of Insurance Company case and how the bill should be handled. Nelson did not respond directly to Stallings' inquiry.

33. In early June 1987, Kellum and Stallings contacted the Department of Insurance and learned for the first time that Nelson had already billed the Department for the work he had done and that he had received the \$38,646.62 check in payment for that work.

34. Kellum and Stallings later learned that Nelson was claiming that he had been made a partner in the firm, and that he contended that he was entitled to hold the Insurance Department check as a set off for fees which he claimed were owed him by B, K & S from other, unrelated matters.

35. Nelson did not have a reasonable, good faith belief that he was a partner in the firm or that he was entitled to additional sums of money at the time he billed the Department of Insurance and received and retained the \$38,646.62 check.

36. In late June /early July, Nelson sought the advice of legal counsel, James Mills in regards to his civil action against Beaman, Kellum, Stallings & Hollows.

On July 22, 1987, Kellum offered to arbitrate the matter which offer was later withdrawn.

In September, 1987, Nelson again sought the advice of legal counsel with regard to retaining the \$38,646.62 as a set off for fees which he claimed were owed him by Beaman, Kellum, Stallings and Hollows.

Bob Bodie advised Nelson based upon the information that Nelson gave to him that money was fungible and that as long as he had the money available when a settlement was reached, there was no problem with Nelson's holding on to the \$38,642.62 as an offset for monies that Nelson honestly believed were owed him.

37. In September, 1987, Nelson filed a civil action in Wake County Superior Court against the firm and against Kellum and Stallings individually, alleging that he was entitled to certain fees, an accounting, and the value of an undetermined number of shares in the firm.

38. Kellum filed a counterclaim, demanding the return of the Department of Insurance Company check.

39. The trial court ultimately granted summary judgment against Nelson on all of his claims. Following the trial court's decision, Nelson filed an extraordinary writ of supersedeas which was granted by the Court of Appeals. At the same time, Nelson also petitioned the Court of Appeals for stay of the trial court's action. This stay was granted. While the appeal was pending the parties settled the matter.

40. Defendant's Ex. B contains a list of legal matters pending when Nelson left B, K & S in April 1987. Defendant's Ex. G contains a list of fees which Nelson alleged he was due from B, K & S. Nelson did not deliver either exhibit or any copies thereof to Kellum or Stallings at any time prior to instituting the civil action in September 1987.

41. Plaintiff's Ex. 16 does not reflect any agreement reached between Nelson and B, K & S and/or Kellum and Stallings at any time. Kellum's name was produced on Plaintiff's Ex. 16 by the use of a signature stamp. Stallings' name was produced on Plaintiff's Ex. 16 by cutting his secretary's version of Stallings' signature from another document and pasting it onto Plaintiff's Ex. 16. Nelson signed the original version of Plaintiff's Ex. 16.

42. In October, 1984, Nelson undertook, at the request of Kellum, on behalf of the firm, to represent Margaret Slipsager (hereafter, Slipsager) respecting injuries Ms. Slipsager incurred as a result of a hysterectomy performed in a U.S. Naval hospital in May, 1984. The top of the Slipsager file showed the statute of limitations as 5/31/87 (3 years) when Nelson received the file from Kellum.

43. Nelson was aware as of 1984 that he had two years from the date of the operation in which to file notice of Ms. Slipsager's claim with the U.S. government to perfect her claim pursuant to the Federal Torts Claim Act. Nelson was also aware that Ms. Slipsager's operation had occurred in May 1984.

44. The statute of limitation on Ms. Slipsager's claim expired in May 1986, approximately one year before Nelson left B, K & S.

45. Nelson failed to file the appropriate notice of Ms. Slipsager's claim within two years after the date of Ms. Slipsager's operation.

46. Nelson told Ms. Slipsager that he was having some problems getting a medical expert to testify in her case. Nelson did not tell Ms. Slipsager that this difficulty would prevent him from filing timely notice of her claim, nor did he suggest that she obtain other counsel to handle her case.

47. On several occasions, Nelson assured Ms. Slipsager that he was handling her case and that he was doing everything that needed to be done to perfect her claim.

48. In September, 1985, Ms. Slipsager gave Nelson received \$600 to have her medical records evaluated by a panel of experts in Rockville, Md.

49. Nelson never sent Ms. Slipsager's records to the panel in Rockville, Md. for evaluation.

50. Nelson falsely told Ms. Slipsager that he had sent her medical records to the panel for evaluation and that he was awaiting the opinion of the panel.

51. On numerous occasions, Nelson failed to respond to telephone calls and inquiries from Ms. Slipsager about the status of her case.

52. In July, 1985, Nelson undertook to represent Clarence Dewberry, respecting injuries Dewberry suffered in an explosion on federally owned land.

53. In December, 1985, a claim form was sent to the U.S. Department of Agriculture on Dewberry's behalf. The form was returned to Nelson in May, 1986, with a letter indicating that the claim had not been properly filed.

54. Nelson was on notice by late May 1986 that no proper notice of claim had been filed on Dewberry's behalf.

55. Nelson failed to file a proper notice of claim on Dewberry's behalf or institute any civil action prior to April 1987, when Nelson left B, K & S.

56. Nelson falsely assured Dewberry that he had filed the necessary documents to seek recovery for Dewberry's injuries and falsely assured him that he was engaged in negotiations respecting Dewberry's claims.

Based upon the foregoing Findings of Fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. By retaining the \$38,646.62 Department of Insurance Company check when he did not have a reasonable, good faith belief that he had a legitimate claim to any funds from B, K & S, Nelson engaged in conduct involving dishonesty, in violation of Rule 1.2(C).

2. By failing to file a notice of claim or lawsuit on Ms. Slipsager's behalf in a timely fashion, Nelson neglected a legal matter entrusted to him in violation of Rule 6(B)(3) and DR 6-101(A)(3) and prejudiced a client in violation of Rule 7.1(A)(3) and DR 7-101(A)(3).

3. By failing to respond to Ms. Slipsager's requests for information respecting her case, Nelson failed to communicate adequately with a client, in violation of Rule 6(B)(1).

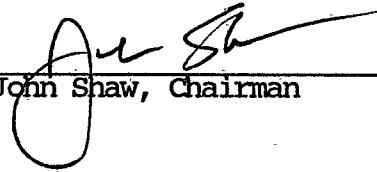
4. By failing to file a notice of claim or lawsuit on Dewberry's behalf in a timely fashion, Nelson neglected a legal matter in violation of Rule 6(B)(3) and DR 6-101(A)(3).

5. By falsely assuring Dewberry that a claim had been filed on his behalf and that negotiations were underway respecting Dewberry's claim, Nelson engaged in conduct involving dishonesty, fraud, deceit or

misrepresentation, in violation of Rule 1.2(C) and DR 1-102(A)(4) and engaged in conduct adversely reflecting on his fitness to practice, in violation of DR 1-102(A)(6).

This the 22 day of July, ¹⁹⁹¹ 1990.

Signed by the Chairman with the consent of all Committee members.



John Shaw, Chairman

NORTH CAROLINA
WAKE COUNTY

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89 DHC 34

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

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Defendant

ORDER OF DISCIPLINE

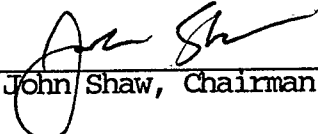
This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of John Shaw, Chairman; Samuel Jerome Crow and Frank L. Boushee beginning on Oct. 25 and 26 and concluding on Nov. 6, 1990. Based upon the Findings of Fact and Conclusions of Law, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant is hereby suspended from the practice of law for nine months from the effective date of this order;
2. The Defendant shall pay the costs of this proceeding;
3. The Defendant shall comply with the provisions of Section 24 of Article IX of the Discipline & Disbarment Rules and Regulations of the North Carolina State Bar.

This order is signed by the Chairman with the express consent of all Committee members.

This the 27 day of January, 1991.



John Shaw, Chairman

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JUDGMENT

COURT OF APPEALS OF NORTH CAROLINA

No. 9110NCSE789

NORTH CAROLINA STATE BAR

vs.

EDWARD DANIELS NELSON

No. 89DHC34

County

This cause came on to be argued upon the transcript of the record from the N. C. State Bar, Disciplinary Hearing Commission
Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said trial tribunal

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the

Honorable SIDNEY S. EAGLES, JR. Judge, be certified to the said trial tribunal

to the intent that the JUDGMENT IS AFFIRMED

And it is considered and adjudged further, that the DEFENDANT DO PAY

the costs of the appeal in this Court incurred, to wit, the sum of
***** TWO HUNDRED FORTY-SEVEN AND NO/100 ***** dollars (\$ 247.00),

and execution issue therefor. Certified to N. C. State Bar this 26th day of October 19 92
Disciplinary Hearing Commission

Francis T. Reid
Clerk of the Court of Appeals.

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