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NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
94 DHC 15

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

GREGORY K. ELLER, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

THIS CAUSE was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of Stephen T. Smith, Chair; L. Patten Mason and Anthony E. Foriest on Wednesday, Nov. 16, 1994. The Defendant, Gregory K. Eller, did not appear and was not represented by counsel. The Plaintiff was represented by Carolin Bakewell. Based upon the pleadings and the evidence produced at trial, the Hearing Committee hereby enters 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, Gregory K. Eller, (hereafter, Eller), was admitted to the North Carolina State Bar in 1983, 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. At all times relevant hereto Eller was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Wilmington, New Hanover County, North Carolina. From 1983 until October 1993, Eller was employed as an associate with the law firm of Harry Pavilack & Associates.

4. On or about August 29, 1994 the N.C. State Bar filed its Complaint herein.

5. Eller was personally served with the Summons and Complaint herein by the Guilford County Sheriff on Sept. 8, 1994.

6. Pursuant to Art. IX, Section 14(E) of the N.C. State Bar Discipline & Disbarment Rules, Eller's Answer was due on or before Sept. 28, 1994.

7. Eller failed to file an Answer to the Complaint herein.

8. The Secretary of the N.C. State Bar entered an Order of Default in Eller's case on or about Oct. 3, 1994.

9. Pursuant to Art. IX, Section 14(F) of the Discipline & Disbarment Rules, all of the allegations in the N.C. State Bar's Complaint are deemed admitted, by reason of Eller's default.

10. Eller had proper notice of the entry of the Order of Default and of the disciplinary hearing herein.

11. Prior to April 20, 1989, Eller undertook to represent Student Loan Marketing Association (hereafter, SLMA) regarding its attempts to collect a student loan from Hugh W. Hurst (hereafter, Hurst), a chiropractor who lived in Salisbury, N.C.

12. General American Credits Corporation (hereafter, General American) served as collection agent for SLMA.

13. On or about April 17, 1991, Eller filed a formal complaint against Hurst in Rowan County Superior Court on behalf of SLMA. In the complaint, Eller alleged that Hurst owed SLMA $39,044.36 in overdue student loan obligations and interest.

14. Hurst was represented in the matter of SLMA v. Hurst by Branson Pethel (hereafter, Pethel), an attorney with offices in Salisbury.

15. On or about May 9, 1992, Eller and Pethel agreed to settle all pending claims of SLMA against Hurst for $20,000.

16. Eller settled SLMA's claims against Hurst without the knowledge or consent of SLMA or General American.

17. On or about Aug. 4, 1992, Eller drafted and signed a notice of voluntary dismissal with prejudice of the complaint in SLMA v. Hurst without the knowledge or consent of SLMA or General American.

18. On or about Aug. 4, 1992, Eller wrote to Tom Rains, a representative or employee of General American. In the Aug. 4, 1992 letter, Eller failed to reveal that he had settled SLMA's claim against Hurst for $20,000 or that he had voluntarily dismissed SLMA's complaint against Hurst.

19. In the Aug. 4, 1992 letter, Eller falsely stated that the $20,000 settlement was intended as a partial payment only and that Hurst had also agreed to confess judgment for the "amount remaining due after the $20,000 payment has been given due credit toward his account."

20. On or about Aug. 6, 1992, Eller filed the voluntary dismissal in Rowan County Superior Court.

21. On or about Feb. 22, 1993, Eller fabricated a Consent Judgment in the case of SLMA v. Hurst which falsely stated that Hurst had agreed to pay $37,970.63 to SLMA.

22. Eller or a third party acting pursuant to Eller's instructions forged Hurst's signature to the fabricated Consent Judgment without the knowledge or consent of Hurst or Pethel.

23. On or prior to Feb. 22, 1993 Eller fabricated an Order for Judgment in the case of SLMA v. Hurst, which purported to award $37,970.63 to SLMA.

24. At the time Eller fabricated the Order for Judgment in SLMA v. Hurst, no judgment or award had been entered in the case to or on behalf of SLMA and Hurst and Pethel believed that SLMA's entire claim had been settled by virtue of the $20,000 payment in 1992.

25. Eller or a third party acting pursuant to Eller's instructions placed the signature of a fictitious judge on the signature line of the fabricated Order for Judgment in SLMA v. Hurst.

26. On or about March 31, 1993, Eller sent a copy of the fabricated Order of Judgment in SLMA v. Hurst to General American along with a cover letter. Eller falsely stated in the March 31, 1993 cover letter that the Order of Judgment had been "recorded in this matter."

27. Prior to March 20, 1989, Eller undertook to represent SLMA regarding its attempts to collect a student loan from Steven R. Shields (hereafter, Shields), a physician who lived in Durham.

28. At all times relevant hereto, General American served as collection agent for SLMA regarding the Shields claim.

29. On or about March 20, 1989, Eller filed a complaint against Shields on behalf of SLMA in Durham County District Court.

30. On or about June 1, 1989, a hearing was held before an arbitrator regarding the case of SLMA v. Shields. Eller failed to appear on behalf of SLMA at the hearing. Following the hearing, the arbitrator entered an order in favor of Shields.

31. Eller failed to file a motion to set aside the arbitration judgment in Durham County District Court and failed to enter any notice of appeal from the June 1, 1989 order.

32. On or about Feb. 26, 1992, Eller wrote to General American and falsely represented that the June 1, 1989 arbitration order had been set aside.

33. On or about March 19, 1992, Eller fabricated an order which purported to set aside the June 1, 1989 arbitration judgment.

34. At the time Eller fabricated the order referred to in paragraph 33, no order had been entered setting aside the June 1, 1989 arbitration judgment.

35. Eller or a third party acting pursuant to Eller's instructions, placed the signature of a fictitious judge on the signature line of the fabricated order of March 19, 1992.

36. On or about July 15, 1992, Eller wrote to General American and falsely represented that a hearing had been scheduled for Sept. 28, 1992 regarding the case of SLMA v. Shields.

37. Eller failed to take adequate steps to prosecute the complaint in SLMA v. Shields or otherwise collect the debt owed by Shields to SLMA.

38. Prior to Sept. 8, 1992, Eller undertook to represent Kirk Newell (hereafter, Newell) regarding a civil action against Douglas Kingsman (hereafter, Kingsman).

39. On or about Sept. 8, 1992, Eller filed a complaint on behalf of Newell against Kingsman in New Hanover County District Court.

40. On or about July 22, 1993, Eller fabricated an Order for Judgment in the case of Newell v. Kingsman, which purported to award $1,320 plus interest to Newell.

41. At the time Eller fabricated the Order for Judgment in Newell v. Kingsman, no judgment or award had been entered to or on behalf of Newell.

42. Eller or a third party acting pursuant to Eller's instructions placed the signature of a fictitious judge on the signature line of the fabricated Order for Judgment.

43. On or after July 22, 1993, Eller falsely represented to Newell that judgment had been entered in his behalf and forwarded a copy of the fabricated Order for Judgment to Newell.

44. Eller failed to take adequate steps to prosecute the complaint in Newell v. Kingsman or otherwise collect the debt owed by Kingsman to Newell.

45. Prior to October 31, 1992, Eller undertook to represent Selective Insurance Company of Southeast (hereafter, Selective Insurance) in a civil action against Bill's Backhoe Service, Inc. (hereafter, Bill's Backhoe).

46. On or about Oct. 31, 1992, Eller filed a complaint on behalf of Selective Insurance in Richmond County Superior Court

against Bill's Backhoe.

47. On or about Jan. 20, 1993, Eller filed a notice of voluntary dismissal without prejudice of the complaint in Selective Insurance Company of Southeast v. Bill's Backhoe Service, Inc. without the knowledge or consent of his client.

48. In a letter to his client dated May 6, 1993, Eller falsely stated that trial in the case of Selective Insurance Company of Southeast v. Bill's Backhoe Service, Inc. had been scheduled for the week of Aug. 30, 1993.

49. On or about Sept. 27, 1993, Eller fabricated an Order for Judgment in the case of Selective Insurance Company of Southeast v. Bill's Backhoe Service, Inc., which purported to award $26,575.00 plus interest to Selective Insurance.

50. At the time Eller fabricated the Order for Judgment in Selective Insurance Company of Southeast v. Bill's Backhoe Service, Inc., no judgment or award had been entered to or on behalf of Selective Insurance.

51. Eller or a third party acting pursuant to Eller's instructions placed the signature of a fictitious judge on the signature line of the bottom of the fabricated Order for Judgment.

52. On or after Sept. 27, 1993, Eller falsely represented to Selective Insurance that judgment had been entered in its behalf and forwarded a copy of the fabricated Order for Judgment to Selective Insurance.

53. Eller failed to take adequate steps to prosecute the complaint in Selective Insurance Company of Southeast v. Bill's Backhoe Service, Inc., or otherwise collect the debt owed by Bill's Backhoe to Selective Insurance.

54. Prior to March 5, 1992 Eller undertook to represent Polymetric Systems, Inc. (hereafter, Polymetric) in a civil action against Gene Willetts d/b/a Southeastern Chemical Sales (hereafter, Willetts).

55. On or about March 5, 1992, Eller filed a complaint on behalf of Polymetric against Willetts in New Hanover County District Court.

56. On or about Sept. 28, 1993, Eller fabricated an Order for Judgment in the case of Polymetric Systems, Inc. v. Gene Willetts d/b/a Southeastern Chemical Sales which purported to award $2,167 plus interest to Polymetric.

57. At the time Eller fabricated the Order for Judgment in Polymetric Systems, Inc. v. Gene Willetts d/b/a Southeastern Chemical Sales, no judgment or award had been entered to or on behalf of Polymetric.

58. Eller or a third party acting pursuant to Eller's instructions placed the signature of a fictitious judge on the signature line of the fabricated Order for Judgment.

59. On or after Sept. 28, 1993, Eller falsely represented to Polymetric that judgment had been entered in its behalf and forwarded a copy of the fabricated Order for Judgment to Polymetric.

60. Eller failed to take adequate steps to prosecute the complaint in Polymetric Systems, Inc. v. Gene Willetts d/b/a Southeastern Chemical Sales, or otherwise collect the debt owed by Willetts to Polymetric.

61. Prior to January 3, 1992 Eller undertook to represent American Suzuki Motor Corporation (hereafter, Suzuki) in a civil action against Performance Inboards, Inc. (hereafter, Performance Inboards) and others.

62. At all times relevant hereto, National Commercial Recovery (hereafter National Commercial) acted as collection agent for Suzuki regarding the Performance Inboards matter.

63. On or after Jan. 3, 1992, Eller drafted a Complaint styled American Suzuki Motor Corporation v. Performance Inboards, Inc., Ricky R. Perry, Patricia L. Perry, Gregory J. Perry, W. Lawrence Bradley and Deborah L. Bradley (hereafter American Suzuki).

64. Eller falsely represented to Suzuki and/or National Commercial that he had filed the complaint referred to in paragraph 63 in Wilson County Superior Court and that the case had been assigned file number 92 CVS 2182. In fact, no complaint was ever filed by Eller on behalf of Suzuki in Wilson County.

65. On or about July 14, 1993, Eller fabricated an Order for Judgment in American Suzuki which purported to award $15,757.22 plus interest to Suzuki.

66. At the time Eller fabricated the Order for Judgment in American Suzuki no complaint had been filed and no judgment or award had been entered to or on behalf of Suzuki.

67. Eller or a third party acting pursuant to Eller's instructions placed the signature of a fictitious judge on the signature line of the fabricated Order for Judgment.

68. On or after July 14, 1993, Eller falsely represented to Suzuki and/or National Commercial that judgment had been entered on Suzuki's behalf and forwarded a copy of the fabricated Order for Judgment to the client.

69. On Aug. 24, 1993, Eller falsely represented to National Commercial that the Notice of Right to Have Exemptions Designated had been issued to the sheriff for service upon the defendants in the case of American Suzuki.

70. Eller failed to take adequate steps to prosecute the complaint in American Suzuki or otherwise collect the debt owed by the defendants in that case to Suzuki.

71. Prior to April 24, 1990 Eller undertook to represent Aristech Chemical Corporation (hereafter, Aristech) in a civil action against Robert P. Trolian (hereafter, Trolian).

72. At all times relevant hereto, Financial Adjustment Service, Inc. (hereafter Financial Adjustment) acted as collection agent for Aristech regarding the Trolian claim.

73. On or about April 24, 1990, Eller filed a complaint against Trolian on behalf of Aristech in Columbus County District Court.

74. On or about April 28, 1992, Eller fabricated an Order for Judgment in the case of Aristech Chemical Corporation v. Trolian.

75. At the time Eller fabricated the Order for Judgment in Aristech Chemical Corporation v. Trolian, no judgment or award had been entered in the case to or on behalf of Aristech and in fact, the complaint had been dismissed for failure of Eller to prosecute the case.

76. On or about April 28, 1992, Eller or a third party acting pursuant to Eller's instructions placed the signature of a fictitious judge on the signature line of the fabricated Order for Judgment.

77. On or after April 28, 1992, Eller falsely represented to Aristech and/or Financial Adjustment that judgment had been entered in its favor against Trolian.

78. In a letter dated June 28, 1992, Eller falsely represented to Financial Adjustment that a Notice of Right to Have Exemptions Designated had been issued to the sheriff for service upon the defendants in the case of Aristech Chemical Corporation v. Trolian.

79. In a letter dated August 3, 1993, Eller falsely represented to Financial Adjustment that execution respecting Aristech Chemical Corporation v. Trolian had been sent to the sheriff for levy.

80. Eller failed to take adequate steps to prosecute the complaint in Aristech Chemical Corporation v. Trolian or otherwise collect the debt owed by Trolian to Aristech.

81. Eller was discharged by the law firm of Harry Pavilack & Associates in October 1993, after members of the firm learned that Eller had settled the case of SLMA v. Hurst without the client's permission and that Eller had fabricated an Order of Judgment in the Hurst case.

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

CONCLUSIONS OF LAW

1. By settling the claims of SLMA against Hugh D. Hurst for $20,000 and by voluntarily dismissing SLMA's complaint against Hurst without the knowledge or consent of SLMA and/or General American Credits Corporation, Eller engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C), prejudiced a client in violation of Rule 7.1(A)(3), failed to keep his client reasonably informed about the status of a matter in violation of Rule 6(B)(1) and failed to abide by his client's decision regarding whether to accept an offer of settlement, in violation of Rule 7.1(C)(1).

2. By fabricating a Consent Judgment and by signing or causing to be signed the name of Hugh D. Hurst to the fabricated Consent Judgment in the case of SLMA v. Hurst without Hurst's knowledge or consent, Eller engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) and engaged in criminal conduct in violation of Rule 1.2(B).

3. By falsely representing to General American Credits Corporation that Hurst had agreed to pay the full sum allegedly owed SLMA as alleged in the complaint in SLMA v. Hurst, by failing to reveal that he had settled the case for $20,000 and that he had voluntarily dismissed the complaint with prejudice, Eller engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C), failed to keep his client reasonably informed about the status of a matter in violation of Rule 6(B)(1) and knowingly made false statements of fact in violation of Rule 7.2(A)(4).

4. By failing to pursue SLMA's claims against Shields, by failing to appear at the June 1, 1989 hearing in the case of SLMA v. Shields and by failing to either perfect an appeal from the June 1, 1989 arbitration order or file a motion to set aside the arbitration order, Eller neglected a legal matter entrusted to him in violation of Rule 6(B)(3) and prejudiced a client in violation of Rule 7.1(A)(3).

5. By fabricating an order which purported to set aside the June 1, 1989 arbitration order and by signing or causing to be signed the name of a fictitious judge to that order, Eller engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C) and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D).

6. By falsely representing to General American Credits Corporation that the June 1, 1989 arbitration order had been set aside in the case of SLMA v. Shields and that the underlying collection action had been set for hearing on Sept. 28, 1992,

Eller engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C), failed to keep his client reasonably informed about the status of a matter in violation of Rule 6(B)(1) and knowingly made false statements of fact in violation of Rule 7.2(A)(4).

7. By taking a voluntary dismissal of the claim of Selective Insurance against Bill's Backhoe without the knowledge and consent of his client, Eller engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C), prejudiced a client in violation of Rule 7.1(A)(3), and failed to keep his client reasonably informed about the status of a matter in violation of Rule 6(B)(1).

8. By fabricating Orders of Judgment and by signing or causing to be signed the name of fictitious judges to the Orders of Judgment in the cases of SLMA v. Hurst, Newell v. Kingsman, American Suzuki v. Performance Inboard Motors; Polymetric Systems v. Willetts; Selective Ins. Co. v. Bill's Backhoe; and Aristech v. Trolian, Eller engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C), and engaged in conduct prejudicial to the administration of justice, in violation of Rule 1.2(D) .

9. By falsely representing to his clients, SLMA, Kirk Newell, American Suzuki, Polymetric, Selective Ins. Co., and Aristech that an Order for Judgment had been entered on the client's behalf and by forwarding a copy of the fabricated Order for Judgment to the clients; by falsely representing to Selective Insurance that the case of Selective Ins. Co. v. Bill's Backhoe Service was set for hearing during the week of Aug. 30, 1993; and by falsely representing to Suzuki that a complaint had been filed on its behalf against Performance Inboards and others, Eller engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C), failed to keep his clients reasonably informed about the status of their matters in violation of Rule 6(B)(1) and knowingly made false statements of fact in violation of Rule 7.2(A)(4).

10. By failing to take effective action to pursue collection claims on behalf of Kirk Newell, Selective Insurance Co., Polymeric, American Suzuki, and Aristech, Eller neglected legal matters entrusted to him, in violation of Rule 6(B)(3) and prejudiced his clients in violation of Rule 7.1(A)(3).

11. By falsely representing to Suzuki and Trolian that efforts were being made to collect on judgments obtained on behalf of the clients, Eller engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 1.2(C), failed to keep his clients reasonably informed about

the status of a matter in violation of Rule 6(B)(1) and knowingly made false statements of fact in violation of Rule 7.2(A)(4).

This the 22 day of NOVEMBER, 1994.

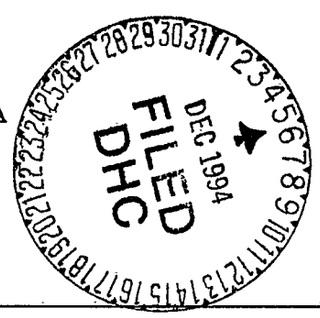
Stephen T. Smith, Chair

L. Patten Mason

Anthony E. Foriest

NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
94 DHC 15

THE NORTH CAROLINA STATE BAR, Plaintiff	
vs.	ORDER OF DISCIPLINE
GREGORY K. ELLER, ATTORNEY Defendant	

THIS CAUSE was heard by the undersigned Hearing Committee of the Disciplinary Hearing Commission on Wednesday, Nov. 16, 1994. In addition to the Findings of Fact and Conclusions of Law previously entered in this cause, the Hearing Committee enters the following additional

FINDINGS OF FACT

1. David C. Haar, an attorney licensed to practice law in North Carolina in 1993, joined the firm of Harry Pavilack & Associates in October 1993. Haar was hired to replace Eller, who was discharged earlier that month.

2. Haar spent most of his time during the first three months of his employment reviewing the firm's collection files and attempting to determine how many cases had been mishandled by Eller.

3. Haar discovered approximately 30 files other than those mentioned in the State Bar's complaint, which contained documents indicating that Eller had neglected the file and had misled the client about the status of the case.

4. In at least seven of the 30 additional collection files referred to in paragraph 3, Eller prepared fabricated Orders for Judgment which were forwarded to the client and misled the clients about the status of the case. Portions of the seven additional files are included in Plaintiff's Ex. 32 and involve the following matters:

a. Venture Communications v. Static Control Components, Inc.;
b. USAA v. Cardinal Chevrolet;
c. Citicorp v. Commercial Flocking;
d. Henry Walke Co. v. Sterling Tool & Mold, Inc.;
e. Cedalion Systems v. Little & Associates;
f. M.A. Bruder v. Thompson Paint Co.

g. Professional Positioners v. Dan Stewart

5. The law firm of Harry Pavilack & Associates has expended approximately $30,000 in compensating clients who have been damaged as a result of Eller's misconduct. The firm has also turned over claims from three other former clients to its malpractice carrier for handling. These three claims arise out of matters which Eller had handled for the firm.

6. Three collection files which were assigned to Eller are missing from the law firm of Harry Pavilack & Associates. The staff discovered that the three files were missing shortly after Eller left the firm in October 1993.

7. Haar has attempted to contact Eller on a number of occasions since October 1993 to determine the whereabouts of the missing files and to discuss the status of other collection files which Eller had handled prior to his departure from the firm. Eller has not responded to any of Haar's telephone calls or letters.

8. Eller has failed to make restitution to the firm or to any of his former clients.

9. Eller has not been subject to discipline previously in the State of North Carolina.

10. Eller has not offered any explanation of or defense to his misconduct to Haar, to any other member of the law firm of Harry Pavilack & Associates or to the North Carolina State Bar.

Based upon the Findings of Fact previously entered herein as well as the preceding findings, the Hearing Committee makes the following:

CONCLUSIONS OF LAW

1. The following mitigating factor is present: Eller has not been subject to prior discipline in North Carolina.

2. The following aggravating factors are present:

a. The misconduct was the result of a dishonest motive.

b. Eller has displayed indifference to making restitution to the victims of his misconduct.

c. The evidence demonstrates a pattern and practice of misconduct.

d. The evidence reflects multiple violations of the Rules of Professional Conduct.

Based upon the Findings of Fact and Conclusions of Law entered herein and the evidence presented relating to the

appropriate discipline, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant is hereby disbarred from the practice of law in North Carolina.

2. The Defendant shall pay the costs herein prior to seeking reinstatement of his license to practice law.

This the 22 day of ~~December,~~ NOVEMBER 1994.

Stephen T. Smith, Chair

L. Patten Mason

Anthony E. Foriest