

NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
79 DHC 26

THE NORTH CAROLINA STATE BAR,
Plaintiff,

-vs-

JOSEPH WARREN, Attorney,
Defendant,

MARK EDWARDS, Attorney,
Defendant.

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW

IN RE: First Claim For Relief

THIS CAUSE coming on to be heard and being heard before the undersigned Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar at a regularly scheduled hearing held on Friday, May 2, 1980 in the office of The North Carolina State Bar, 208 Fayetteville Street Mall, Raleigh, North Carolina, and said Hearing Committee having considered the stipulations entered into between Counsel and the arguments and contentions of Counsel, make the following findings of fact:

1. 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.

2. The Defendants are citizens and residents of Mecklenburg County, North Carolina, and are, and were at all times relevant to this proceeding, attorneys at law licensed to practice in the State of North Carolina and are subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of The North Carolina State Bar and the laws of the State of North Carolina. The Defendant, Mark Edwards, was admitted to the North Carolina State Bar in September, 1963, and is and was at all times referred to herein, an attorney at law, licensed to practice law in the State of North Carolina.

3. A Complaint setting forth the charges against the Defendants was filed in the office of The North Carolina State Bar on October 25, 1979. Notice thereof was given to the Defendants, together with notice that the matter would be heard by a Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar, at a time and place to be determined by the Chairman of said Commission, by personal service upon the Defendants of a copy of the Complaint, Summons and Notice, on the 22nd day of January, 1980.

4. On January 29, 1980, the Chairman of the Disciplinary Hearing Commission notified the parties of the composition of the Hearing Committee and of the time and place of the Hearing.

5. An amendment to the Complaint was filed in the office of The North Carolina State Bar on January 30, 1980.

6. An Answer was filed in the office of The North Carolina State Bar on February 21, 1980.

7. From February 1, 1972, and during the periods of time pertinent to this proceeding, the Defendant Edwards was a duly licensed attorney engaged in the practice of law, and employed by the professional association chartered under the name of Edwards and Warren Professional Association, and maintained his office in the City of Charlotte, Mecklenburg County, North Carolina.

8. Edwards and Warren Professional Association performed various legal services for one Mr. Kenneth Moore Murphy in 1972, in 1973, and in 1974, on January 14, of which latter year, various aspects of a cattle feeding operation of one Wallace G. McKinney t/a McKinney Cattle Company from the Midwest, were discussed with the said Mr. Murphy and his accountant by the Defendant Mark Edwards, along with one Mr. Gresham Northcott.

9. At no time during this meeting, or thereafter, did the Defendant Edwards suggest to the said Mr. Murphy that he should invest in the McKinney Cattle Company entity, although the Defendant Edwards did state that he invested in it and felt it to be sound.

10. Following this meeting, the Defendant Edwards agreed with the said Mr. Northcott that the latter would pay Edwards and Warren Professional Association monies to be applied toward the legal fees contemplated to be incurred by the said Mr. Murphy and other clients of Edwards and Warren Professional Association upon their investment for such things as seeing to the proper treatment of the investments on tax returns, questions regarding administration of the investments, drafting of investment contracts, powers of attorney, seeing to the timely payments of the investments, etc.

11. After that January 14, 1974, meeting, the said Mr. Murphy, sometime later during that year, entered into certain investment contracts with the said McKinney entity.

12. Thereafter, pursuant to the agreement described in paragraph 7, Edwards and Warren Professional Association received \$1,400 from the said Mr. Northcott's corporation, Betex Corporation, with respect to two of

Mr. Murphy's investments, to the knowledge of the Defendant Edwards but without disclosure to the said Mr. Murphy.

13. The Defendant Edwards analogized this method of the payment of legal fees to that of a purchaser of a corporation paying legal expenses incurred by the selling corporation, which is an acceptable practice, and felt that this arrangement was beneficial to their client, the said Mr. Murphy; otherwise, the latter would have had to pay additional legal expenses.

14. Thereafter, the said Mr. Murphy lost money because of certain of his investments in the McKinney Cattle Company entity and instituted civil action against the Defendant Edwards, et al., on both attorney malpractice based on negligence and on grounds of improper ethical conduct resulting in a Superior Court verdict in favor of said Mr. Murphy, from which an appeal was filed with and heard by the North Carolina Court of Appeals (36 NC App 653), in which opinion the Court of Appeals reversed the entry of Judgment on a finding that the Superior Court committed error in denying the motion for directed verdict made at the close of the plaintiff's evidence and renewed at the close of all of the evidence, and remanded the case to the Superior Court, with the direction that the case be dismissed on a finding that when all of the evidence introduced by the plaintiff was accepted as true and considered in the light most favorable to Mr. Murphy, giving him the benefit of every reasonable inference and resolving all contradictions, conflicts and inconsistencies in the evidence in his favor, that the said Mr. Murphy's evidence did not constitute a showing that any acts or conduct, including any alleged unethical conduct, as well as negligent conduct, was a proximate cause of any loss sustained by Mr. Murphy.

15. Following that decision the plaintiff petitioned for Cert., which was denied by the Supreme Court.

16. The aforesaid civil Superior Court trial was completed on Friday, December 10, 1976, following which verdict, this Defendant, through his counsel, on that date, that is, on December 10, 1976, communicated with the Honorable Warren C. Stack of Charlotte, then, as this Defendant is informed a member of the Grievance Committee, and disclosed to him testimony in the course of the trial which indicated apparent violations of certain of the Canons and Disciplinary Rules of the Code, who suggested that such be disclosed to the Chairman of the Grievance Committee, the Honorable Grady B. Stott, who was, in fact, so notified by a letter from counsel for this Defendant

dated December 14, 1976, disclosing at that time to the Bar certain apparent violations of the Canons and Disciplinary Rules of the Code consistent with what this Defendant felt was his obligation, as a licensed attorney to make such disclosure so that the Bar might undertake such investigation as was determined necessary.

17. Following this communication to the Bar, this Defendant has repeatedly offered such information and assistance to the Bar as was requested and as was required of him in seeking a resolution of the disclosure made to the Bar of his conduct arising out of the matters set forth in this proceeding.

Based upon the foregoing findings of fact, the trial committee hereby makes the following conclusions of law:

1. Defendant Edwards, a duly licensed attorney in the State of North Carolina subject to the Code of Professional Responsibility and of the laws of the State of North Carolina, accepted compensation for his legal services from one other than his client without the knowledge or consent of his client in violation of Disciplinary Rule 5-107(A) (1) of the Code of Professional Responsibility of the North Carolina State Bar.

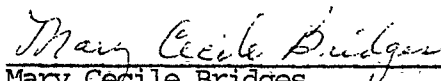
This the 23rd day of May, 1980.



E. James Moore, Chairman
Disciplinary Hearing Committee



Jerry Jarvis



Mary Cecile Bridges

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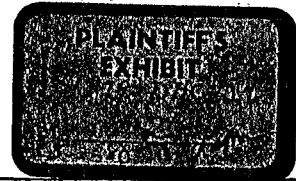
THE NORTH CAROLINA STATE BAR,
Plaintiff,

-vs-

JOSEPH WARREN, Attorney,
Defendant,

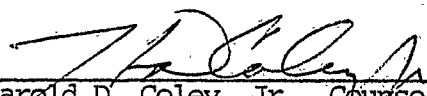
MARK EDWARDS, Attorney,
Defendant.

NOTICE OF
VOLUNTARY DISMISSAL



Pursuant to Rule 41 of the North Carolina Rules of Civil Procedure, the Plaintiff, The North Carolina State Bar, hereby takes a voluntary dismissal, with prejudice, in its Second Claim for Relief in the above-entitled cause, as against the Defendant, Mark Edwards.

This the 2nd day of May, 1980.


Harold D. Coley, Jr., Counsel
The North Carolina State Bar
Post Office Box 25850
Raleigh, North Carolina 27611
Telephone: (919) 828-4620

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ORDER
IN RE: First Claim for Relief

Based upon the Findings of Fact and Conclusions of Law entered in this case on the 23rd day of May, 1980, all of which are incorporated herein by reference and pursuant to Section 9 of Article IX, "Discipline and Disbarment of Attorneys", the undersigned Hearing Committee of the Disciplinary Hearing Commission of The North Carolina State Bar hereby issues the following Order;

IT IS HEREBY ORDERED:

1. That the Defendant Mark Edwards, be disciplined under the provisions of North Carolina General Statutes 84-28(c)(4), and that a Private Reprimand be prepared by the Chairman of the Disciplinary Hearing Commission and caused to be delivered to the Defendant by the Secretary of The North Carolina State Bar, a copy of said Reprimand to be filed with the Secretary of The North Carolina State Bar.

2. That the costs of this disciplinary action be paid by the Defendant, Mark Edwards.

This the 23rd day of May, 1980.

E. James Moore
E. James Moore, Chairman
Disciplinary Hearing Committee

Jerry L. Jarvis
Jerry Jarvis

Mary Cecile Bridges
Mary Cecile Bridges