

NORTH CAROLINA

WAKE COUNTY

BEFORE THE COUNCIL
OF THE
NORTH CAROLINA STATE BAR
80 G 385
81 G 16
81 G 32

IN THE MATTER OF:

E. CLAYTON SELVEY, Jr., Attorney,

ORDER OF THE COUNCIL

This matter was heard on July 17, 1981, by the Council of the North Carolina State Bar upon the Report and recommendations of a duly appointed Special Committee to review the facts and circumstances regarding the tender of the license of E. Clayton Selvey, Jr. to practice law in the State of North Carolina. The Special Committee held a hearing at the law offices of Golding, Crews, Meekins, Gordan, and Gray in Charlotte, North Carolina, on Friday, June 19, 1981. Attending the hearing were John Rendleman, Chairman of the Committee, and David Gray. David R. Johnson represented the Office of Counsel of the North Carolina State Bar. Neither Mr. Selvey nor anyone representing Mr. Selvey appeared. The Special Committee took the testimony of two witnesses, Michael Flaherty and Grover Dyson, and received other evidence. Based upon the evidence presented at that hearing the Special Committee made the following FINDINGS OF FACT by strong, clear, cogent, and convincing evidence and the Council hereby adopts these FINDINGS OF FACT:

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, and the Rules and Regulations of The North Carolina State Bar promulgated thereunder.

2. E. Clayton Selvey, Jr., was admitted to the North Carolina State Bar on September 15, 1958, and is and was at all times referred to herein, an Attorney at Law, licensed to practice law in the State of North Carolina, subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of The North Carolina State Bar and of the laws of the State of North Carolina.

3. At and during all of the times hereinafter referred to, E. Clayton Selvey, Jr., was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Charlotte, Mecklenburg County, North Carolina.

4. On or about March 27, 1979, E. Clayton Selvey, Jr., was employed by Sandra C. Miller to represent Mrs. Miller as the executrix of the state of Dwight B. Miller, who died on March 12, 1979.

5. Mrs. Miller did not qualify as the executrix of the estate until June 20, 1979, in estate file 79-E-1202, Mecklenburg County.

6. From the date of qualification of the executrix to the present, E. Clayton Selvey, Jr. has failed to perform the necessary legal services on behalf of the executrix to close the estate including failing to publish the executors notice, failing to file a claim for the one-year allowance to the surviving spouse, failing to respond to claims against the estate, and failing to prepare accountings.

7. Mrs. Miller contacted E. Clayton Selvey on many occasions but was assured by E. Clayton Selvey that the matters were being handled.

8. An order was issued by the Clerk of Superior Court on October 31, 1980, to Mrs. Miller, ordering the filing of an accounting in the estate. Mr. Selvey failed to take any action on behalf of Mrs. Miller in response to that order.

9. Mrs. Miller had to employ attorney Kenneth R. Downs to represent her as executrix in early 1981, to accomplish those legal services E. Clayton Selvey, Jr. was employed to perform.

10. In March, 1979, Mrs. Louise Dyson employed E. Clayton Selvey, Jr. to represent Mrs. Dyson and her husband in adoption proceedings of Mrs. Dyson's granddaughter, Tammy Stanley.

11. On April 4, 1979, Mrs. Dyson paid to Mr. Selvey \$530.00 in cash as the fee for representation. Mrs. Dyson did not receive a receipt for the fee until April 5, 1979.

12. From the date of employment until August 5, 1980, E. Clayton Selvey, Jr. failed to perform any legal service to the Dyson's regarding the adoption other than obtaining the consent of the child's father in February, 1980. During this period the Dyson's were assured by E. Clayton Selvey on numerous occasions that the matter was being handled, including being advised by Selvey that the matter was set for hearing before the court, which was in fact untrue.

13. On August 5, 1980, the Dyson's filed a complaint with the Mecklenburg County Bar Grievance Committee. The Mecklenburg County Bar wrote to E. Clayton Selvey, Jr. on August 22, 1980, asking for an explanation to which the Bar received no response. On August 28, 1980, the Dyson's supplemented their first letter with additional information. On October 10 and 22, 1980, the Bar again requested E. Clayton Selvey, Jr. to respond to the Dyson's complaint. Selvey responded by letter dated November 6, 1980, enclosing another letter bearing the date of October 13, 1980. Selvey's response states, in essence, that he was having difficulty locating the mother to obtain personal service.

14. The Mecklenburg County Grievance Committee could find no record of any action being filed for adoption or name change on behalf of the Dyson's.

15. In December, 1980, Selvey returned the \$530.00 to the Dyson's. In addition, Selvey returned the file to the Dyson's except for the consent agreement signed by the father of the child.

16. The adoption has never been handled and the Dyson's have deferred the matter for the present.

17. In late November, 1979, E. Clayton Selvey, Jr. was employed to represent Michael Flaherty, a police officer, who was charged with three counts of involuntary manslaughter arising from an accident while Flaherty was on duty as a police officer and on call.

18. On December 5, 1979, Selvey was paid \$7,500.00 as his fee for representing Flaherty.

19. Flaherty was indicted by the Grand Jury on January 7, 1980. On January 24, 1980, Selvey entered on the court record a "Notice of Limited Appearance" stating that he was appearing at trial only and it was to be assumed that he was not representing Flaherty on appeal. The Notice has the signature of Flaherty stating that he understands the terms; however, Flaherty states that this document was never explained to him.

20. Flaherty was convicted by a jury on all three counts of involuntary manslaughter on March 28, 1980. Selvey entered notice of appeal in open court and was given 80 days to serve the record on appeal.

21. Following trial, Selvey repeatedly assured Flaherty that the appeal was being handled by him. Selvey announced at one meeting of the Fraternal Order of Police that he was handling the appeal for no additional fee.

22. Flaherty contacted Selvey about the expiration of time for appeal and was assured by Selvey that the necessary extension of time had been secured.

23. In November, 1980, Selvey told Flaherty that a Petition for Writ of Certiorari had been filed in the Court of Appeals and requested payment of \$1,500.00 for an appeal bond. Selvey was paid the \$1,500.00 on November 2, 1980.

24. At no time did E. Clayton Selvey, Jr. file or serve a proposed record on appeal, receive any extension of time on the record for serving a record, or file any petitions in the Court of Appeals.

25. At no time did E. Clayton Selvey, Jr. ever advise or inform Flaherty that he would not prosecute the appeal.

26. On January 13, 1981, Flaherty filed a motion through his new attorney, James H. Carson, Jr. to relieve Selvey of his responsibilities. This motion was granted on January 14, 1981. On January 27, 1981, the Court of Appeals granted Certiorari to review the case following a motion by Flaherty on January 20, 1981.

27. Selvey returned \$1,500.00 to Flaherty on or about January 14, 1981.

28. On February 5, 1981, Attorney Robert F. Rush, submitted Selvey's license to Mr. Bobby James, Secretary-Treasurer of the North Carolina State Bar on behalf of Selvey.

29. On March 16, 1981, Rush submitted an affidavit signed by Selvey on March 12, 1981 to comply with Rule 17 of the Discipline and Disbarment Rules of the North Carolina State Bar whereby Selvey states:

(a) That the undersigned, on February 6, 1981, duly submitted his license to practice law in the State of North Carolina to the North Carolina State Bar Association.

(b) That pursuant to Rule 17 of the North Carolina State Bar Association Rules, the undersigned further represents to the North Carolina State Bar Association that the undersigned is resigning and tendering his license to practice law.

(c) That said resignation is freely and voluntarily surrendered and is not the result of any coercion, duress or threats.

(d) That the undersigned is fully aware of the implication of submitting said resignation.

(e) That the undersigned is aware that there is presently pending an investigation or other proceedings of misconduct, to wit: a Complaint by Michael J. Flaherty for failure to file appeal within apt time, and a further Complaint by Sandra Miller for failure to file the necessary documents regarding the estate of her husband, Dwight Miller, and one further Complaint by Grover Deason.

(f) That the undersigned acknowledges that the material facts upon which the Complaint is predicated are true.

(g) That the undersigned is submitting this resignation because the member knows that if the charges predicated upon the misconduct under investigation, the undersigned could not successfully defend against them, and acknowledges them to be true.

30. On March 24, 1981, Rush submitted an Addendum to Affidavit signed by Selvey on April 6, 1981 whereby Selvey states:

That amending paragraph five of the previous Affidavit of March 12, 1981, the undersigned deponent is fully aware of a complaint registered by Mr. and Mrs. Grover Dyson in which the undersigned failed to complete and represent the said Dysons properly in carrying out his task of completing an adoption of a child after having been paid the sum of \$530.00.

That the undersigned responded to the Mecklenburg County Grievance Committee regarding this matter and is fully aware of this grievance.

31. At the Council meeting of April 17, 1981, a Special Committee composed of John Rendleman, Chairman; David Gray and Gary Trawick was appointed to investigate the circumstances surrounding the tender of the license of Mr. Selvey and to report to the Council its recommendation as to whether to accept Mr. Selvey's tender of license, under what conditions, and whether the term should be disbarment or suspension.

32. On May 12, 1981, the Chairman advised Robert F. Rush of his intention to hold a hearing on June 19, 1981, in Charlotte on the stated issues.

33. On May 29, 1981, the Chairman issued a Notice of Hearing to Robert F. Rush and E. Clayton Selvey, Jr. giving Mr. Selvey the opportunity to be heard on the stated issues at a hearing set for June 19, 1981 in Charlotte at the law offices of Golding, Crews, Meekins, Gordan, and Gray. Additionally, all other known aggrieved and interested parties were sent the Notice of Hearing.

34. On May 29, 1981, Robert F. Rush advised the Chairman by letter that Mr. Selvey did not wish to appear at any hearing on this matter.

35. E. Clayton Selvey, Jr. was suspended from the practice of law for a period of four (4) months beginning January 1, 1975, for failing to perfect an appeal in a criminal case, State v. Fred William Hobbs, Mecklenburg County File No. 72-CR-9261.

36. E. Clayton Selvey, Jr. was suspended from the practice of law for a period of six (6) 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.

37. Three interested persons have expressed their opinion as to the disposition of this matter: The Honorable Frank W. Snapp, Senior Resident Superior Court Judge, Mecklenburg County; Grover Dyson; and Michael Flaherty. All were of the opinion that disbarment was the only appropriate disposition of this matter.

Based upon the foregoing FINDINGS OF FACT, the Special Committee made the following CONCLUSIONS OF LAW and the Council hereby adopts these CONCLUSIONS OF LAW:

1. The license of E. Clayton Selvey, Jr., has been properly tendered to the Council of the North Carolina State Bar and that the tender was made freely and voluntarily.

2. E. Clayton Selvey, Jr. admits to engaging in misconduct with regard to the conduct of the cases of Sandra Miller, Mr. and Mrs. Grover Dyson, and Michael Flaherty.

3. The conduct of E. Clayton Selvey, Jr. constitutes unexcusable 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), 7-102(A)(5), and 1-102(A)(4) of the Code of Professional Responsibility of the North Carolina State Bar.

4. The conduct of E. Clayton Selvey, Jr. constitutes grounds for disbarment pursuant to the authority granted the Council by North Carolina General Statute Section 84-28 and 32, and by Discipline and Disbarment Rule 17 of the North Carolina State Bar.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Council of the North Carolina State Bar hereby ORDERS, ADJUDGES, and DECREES that:

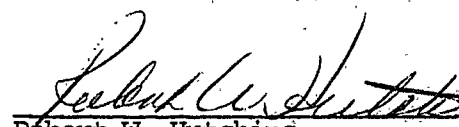
1. The Council accepts the tender of the license of E. Clayton Selvey, Jr. pursuant to Rule 17 of the Discipline and Disbarment Rules.

2. E. Clayton Selvey, Jr. is hereby DISBARRED from the practice of law in the State of North Carolina.

3. The Council imposes the special condition of disbarment pursuant to Rule 17 of the Discipline and Disbarment Rules that E. Clayton Selvey, Jr. return to Mr. and Mrs. Grover Dyson the consent for adoption signed by the father that Mr. Selvey obtained on behalf of the Dysons.

4. The costs of this action are hereby taxed to E. Clayton Selvey, Jr.

Done and ordered, this the 27th day of July, 1981.


Robert W. Hutchins
President of the North Carolina State Bar