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WAKE COUNTY
NORTH CAROLINA

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
90 DHC 13

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

WILLIAM T. BATCHELOR II, ATTORNEY
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause was heard by a Hearing Committee of the Disciplinary Hearing Commission consisting of W. Harold Mitchell, Chairman; Fred Folger, Jr. and Sam L. Beam on Friday, Nov. 2, 1990. The Defendant was represented by James Nelson; Carolin Bakewell represented the Plaintiff. Based upon the pleadings, exhibits and testimony herein, the Committee makes 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, William T. Batchelor II, was admitted to the North Carolina State Bar in 1986 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 the Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all or part of the relevant periods referred to herein, Batchelor maintained a law office in the city of Wilmington, New Hanover County, North Carolina.

4. In late June, 1989, Batchelor undertook to represent Denise Henry respecting a separation agreement/property settlement.

5. On Ms. Henry's first visit to Batchelor's law office, she was given a questionnaire by a non-lawyer staff member and instructed to fill out the questionnaire and return it to the

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office.

6. Thereafter, Ms. Henry consulted with her estranged husband and with Lori Drummond, a non-lawyer member of Batchelor's staff, and filled out the questionnaire.

7. Ms. Henry then left the questionnaire with Ms. Drummond, who prepared a draft separation agreement based upon some of the information in the questionnaire. Ms. Henry reviewed the draft separation agreement and asked Ms. Drummond to change one provision dealing with payment of child support.

8. Prior to July 12, 1989, Batchelor reviewed Ms. Henry's questionnaire and the separation agreement drafted by Ms. Drummond.

There were no other written documents in Ms. Henry's file and Batchelor did not refer to any other materials when reviewing the questionnaire and separation agreement.

9. Ms. Henry's questionnaire showed on its face that Mr. Henry had been employed at Corning Glass Co. throughout the parties' 16-year marriage.

10. Ms. Henry did not fill out the space on the questionnaire regarding division of personal property. She had indicated that the parties' household property would be divided "as agreed upon."

11. Batchelor made no inquiry to determine if Mr. Henry had accumulated pension or other benefits through his employment, whether Ms. Henry knew that she had a potential claim to such benefits, and whether such benefits had been divided to Ms. Henry's satisfaction. Further, none of Batchelor's employees made such an inquiry.

12. Prior to July 12, 1989, Ms. Henry knew that her husband had accumulated a substantial pension and stock benefits through his employment, but was not aware that such property constituted marital property to which she had a claim.

13. On July 12, 1989, Ms. Henry and her estranged husband went to Batchelor's law offices. They reviewed and signed the separation agreement.

14. The separation agreement contained provisions stating that the parties had divided their property to their satisfaction and that they waived any claim for equitable distribution.

15. Neither Batchelor nor Ms. Drummond reviewed or explained the provisions of the separation agreement to Ms. Henry before she signed the agreement. Ms. Henry read but did not understand the waiver provisions in the agreement.

16. The separation agreement omitted several provisions set out in Ms. Henry's questionnaire. Among the provisions which

were omitted were the parties' agreements respecting division of their 1989 tax refund, allocation of certain tax deductions, an agreement regarding the parties' health insurance and a statement respecting child custody should Ms. Henry move more than 100 miles from Wilmington.

17. Ms. Henry did not agree to have these provisions omitted from the final separation agreement. Neither Batchelor nor Drummond pointed out to her that they had been omitted from the agreement.

18. Batchelor never met with Ms. Henry nor did he provide her with any legal advice or guidance before she signed the separation agreement/property settlement.

19. Ms. Henry never requested an appointment or meeting with Batchelor because Ms. Drummond had answered all of Ms. Henry's questions regarding the separation agreement prior to July 12, 1989. Ms. Drummond did not suggest or insist that Ms. Henry consult with Batchelor before signing the separation agreement.

Based upon the foregoing findings of fact, the Committee makes the following:

CONCLUSIONS OF LAW

(A) By failing to ensure that Ms. Henry understood that she had a claim to her husband's pension and stock benefits, and by failing to ensure that all of the parties' agreements were included in the final separation agreement, Batchelor failed to prepare adequately to handle a matter in violation of Rule 6(A)(2).

(B) By failing to meet with or talk to Ms. Henry and by failing to advise her regarding her potential rights to her husband's pension and stock benefits and by failing to explain that she was waiving her right to equitable distribution before permitting Ms. Henry to sign the separation agreement/property settlement, Batchelor failed to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation, in violation of Rule 6(B)(2).

This the 21st day of November, 1990.

Signed by the chairman with the express consent of all Committee members.


W. Harold Mitchell, Chairman
For the Committee

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ORDER OF DISCIPLINE

Based upon the Findings of Fact and Conclusions of Law and the arguments of counsel, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The Defendant, William T. Batchelor, II, is hereby reprimanded pursuant to Section 23(A)(1), Article IX of the Discipline & Disbarment Procedures of the North Carolina State Bar.

2. The Defendant shall pay the costs of this proceeding.

This the 21st day of November, 1990.

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


W. Harold Mitchell, Chairman