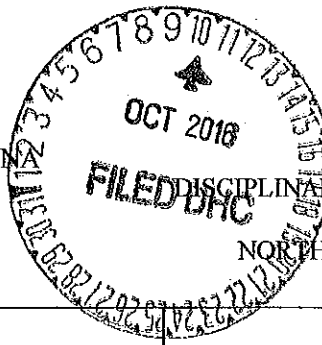


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

EDWARD D. SELTZER, Attorney,

Defendant

CONSENT
ORDER

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair, and members Richard V. Bennett and Christopher R. Bruffey, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Maria J. Brown and A. Root Edmonson. Defendant, Edward D. Seltzer ("Seltzer"), was represented by T. Richard Kane and Winfred R. Ervin. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Seltzer consents to entry of this order of discipline and freely and voluntarily waives any and all right to appeal the entry of this order.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby finds by clear, cogent, and convincing evidence 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 D. Seltzer, was admitted to the North Carolina State Bar in August 1980 and is an Attorney at Law 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. Defendant was properly served with process, and the matter came before the Hearing Panel with due notice to all parties.

4. During the relevant period referred to herein, Defendant was engaged in the practice of law in Charlotte, Mecklenburg County, North Carolina.

5. Both before and during the relevant period of time, Defendant's practice was almost exclusively in the field of State and federal criminal law.

6. On 19 April 2006, Defendant was qualified as the personal representative of the Estate of Charles Ryan Untz, Mecklenburg County file 06-E-1110 (the "Untz estate"). Defendant had never administered an estate before, but agreed to qualify as personal representative of the Untz estate because the deceased was the son of Defendant's long-time office assistant, and for the express purpose described below.

7. Because of his personal relationship to the decedent's mother, Defendant undertook the role of personal representative of the Untz estate without expectation of compensation and, in fact, received no compensation.

8. During his time as personal representative of the Untz estate, Defendant made no efforts to familiarize himself with the duties and obligations of the office of personal representative.

9. Defendant agreed to act as personal representative in the Untz estate so that Defendant's colleague Winfred Ervin could pursue a wrongful death action on behalf of the estate (the "Untz wrongful death case"). Mr. Ervin also served as counsel to Defendant in his role as personal representative of the Untz estate.

10. After the Clerk's office sent Defendant a notice to file the 90-day inventory, Defendant filed it in August 2006.

11. In January 2007, Mr. Ervin secured a default judgment against the principal defendant in the Untz wrongful death case.

12. On 20 April 2007, the Clerk sent Defendant a notice to file the final account within thirty (30) days.

13. Defendant failed to file the final account within thirty (30) days.

14. On 7 June 2007, Defendant was served with an order requiring him to file the final account within twenty (20) days. Defendant did not file the final account within the required time.

15. In July 2009, the principal wrongful death defendant prevailed on a Rule 60 motion to set aside the default Mr. Ervin had obtained in 2007, and the Untz estate was thus rendered a no asset estate.

16. On 16 September 2009, the Clerk sent Defendant an order to appear and show cause why he had failed to file the final account. Defendant received the show cause order on 21 September 2009.

17. At a show cause hearing on 28 September 2009, Mr. Ervin appeared on Defendant's behalf and assured the Clerk Defendant would bring the accountings current within a few days.

18. Defendant filed overdue annual accountings, but not the final account, on 5 November 2009.

19. In 2010, the Clerk attempted to send Defendant notices and orders to file the final account. One or more of these notices went to the wrong address.

20. The wrongful death action was resolved in July 2011. Defendant believed that Mr. Ervin had arranged for the filing of the final accounting in conjunction with resolution of the wrongful death claim.

21. No final accounting had been filed, and Defendant took no steps to verify that the estate filings were current.

22. Based on Defendant's failure to file a final account, the clerk issued another show cause order to Defendant on 25 July 2014, with hearing set for 18 September 2014.

23. Defendant filed the final account in the Untz estate on 15 September 2014.

24. On 10 August 2012, Defendant was qualified as the personal representative of the Estate of Donald Miller Seltzer, Mecklenburg County file 12-E-2367. Donald Seltzer was Defendant's father.

25. During his time as personal representative of his father's estate, Defendant made no efforts to familiarize himself with the duties and obligations of the office of personal representative.

26. Defendant sought the assistance of his former law partner, Hugo A. Pearce, III, in fulfilling his obligations as the personal representative of his father's estate.

27. Based on Mr. Pearce's offer to help, Defendant assumed Mr. Pearce would take whatever action needed to be taken. Defendant did not communicate this expectation to Mr. Pearce. Mr. Pearce believed Defendant would ask for advice when he needed it.

28. In 2012 and 2013, the Clerk attempted to send Defendant notices and orders to file an inventory and an order to appear and show cause why he had not filed an inventory. These mailings went to the wrong address.

29. Defendant was not aware of the delinquency in the filings until he was notified of a show cause hearing scheduled for 18 September 2014.

30. After Defendant became aware of the show cause hearing, he asked Mr. Pearce to assist him in taking the action necessary to close out the estate. Mr. Pearce agreed to undertake the necessary steps on Defendant's behalf.

31. Mr. Pearce prepared an inventory for Defendant's signature, and it was filed on 18 September 2014.

32. At the 18 September show cause hearing, Defendant was found not in contempt, and was given until 1 November 2014 to file an annual account and until 15 January 2015 to file the final account.

33. No annual account was filed.

34. Mr. Pearce prepared the final account for Defendant's signature, and it was filed on 13 March 2015.

35. Because of his personal relationship to the decedent, Defendant undertook the role of personal representative of the Seltzer estate without expectation of compensation and, in fact, received no compensation.

Based on the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows: By failing to ensure that accountings in the Untz estate were timely filed, by failing to comply timely with the clerk's April 2007 notice and June 2007 orders to file accountings in the Untz estate, and by failing prior to September 2014 to ensure that the inventory and accountings in the Seltzer estate were timely filed, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based on the foregoing Findings of Fact and Conclusions of Law, and with the consent of the parties, the Hearing Panel also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 35 above are reincorporated as if set forth herein.

2. Defendant has prior professional discipline, to wit: a 1992 Admonition for neglecting a client matter, failing to communicate with a client, and failing to respond timely to the Bar; a 1994 Reprimand for neglecting a client matter, failing to communicate with a client, and failing to respond timely to the Bar; a 1996 Censure for neglecting a client matter and failing to communicate with a client; a second 1996 Censure for neglecting a client matter, failing to communicate with a client, and failing to respond timely to the Bar; a 2000 Reprimand for neglecting a client and failing to communicate with a client in three separate matters; and, in 2004, a three-year suspension stayed for five years for rule violations including neglecting and failing to communicate with clients in four separate matters and failing to respond timely to the Bar in three of those matters.

3. The complaint contained a third claim for relief which alleged neglect of and failure to communicate with a criminal client in a post-conviction matter and failure to participate in good faith in the fee dispute resolution process in violation of Rules 1.3, 1.4, and 1.5. The allegations of misconduct under Rules 1.3 and 1.4 mirror misconduct for which Defendant had been disciplined on multiple prior occasions, most recently with a stayed suspension of his license in 2004.

4. The State Bar is voluntarily dismissing the third claim for relief. The State Bar is unable to prove the alleged violations of Rules 1.3 and 1.4 because Defendant's client, R.W., testified at his deposition (contrary to what he had previously communicated to the State Bar) that he felt satisfied with the way Defendant had communicated with him and pursued his case. The State Bar is unable to prove the alleged violation of Rule 1.5(f), predicated on Defendant's failure to respond timely to notice of R.W.'s fee dispute, because it became apparent during discovery that the State Bar would not be able to prove when Defendant received notice of the fee dispute and therefore the date by which he was obligated to respond. The defendant did in fact respond on September 30, 2014.

5. The State Bar is also voluntarily dismissing the violations of Rule 1.15-3(f) alleged in conjunction with the first and second claims for relief. Defendant's misconduct is, for reasons related to facts uncovered during discovery, more appropriately addressed solely under Rule 8.4(d).

6. Defendant's response to the grievance regarding the two estate matters was insufficiently thorough to allow the State Bar to make a fair assessment of Defendant's level of culpability for the delinquency of the estates.

7. Because Mr. Pearce explicitly accepted responsibility for closing out the Seltzer estate, Defendant is not culpable for the failures to file an annual account by 1 November 2014 and the final account by 15 January 2015.

8. Defendant's personal connections to the decedents in both estates caused him to avoid dealing with his obligations as personal representative.

- a. Charles Untz's mother was Defendant's secretary for many years. Her other son died under similar circumstances in 2009.
- b. Defendant had a particularly close relationship with his father and had a difficult time dealing with the loss. Defendant asked for Mr. Pearce's help with the managing his father's estate because he anticipated this difficulty.

9. Defendant has substantial experience in the practice of law but no prior experience with estate matters. Defendant's lack of experience and failure to familiarize himself at the outset with the obligations of a personal representative contributed to his inadvertent neglect of these estates.

10. Defendant has acknowledged culpability and expressed remorse for failing to ensure that the estates were managed appropriately.

11. The impact on the administration of justice resulting from Defendant's conduct was limited to efforts the Mecklenburg County Clerk of Court had to expend in order to get Defendant to comply with his obligations as personal representative. This impact was minimal. No one else suffered any loss or adverse consequences as a result of Defendant's failure to properly administer these two estates.

Based on the Findings of Fact and Conclusions of Law above, the additional Findings of Fact Regarding Discipline, and the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS WITH RESPECT TO DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes that no factors warrant consideration of suspension of Defendant's license.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) and concludes that no factors warranting disbarment are present in this case.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) and concludes the following factors are applicable in this matter:

- (A) Defendant's prior disciplinary offenses;
- (B) Remoteness of prior offenses;
- (C) Absence of selfish motive;
- (G) Multiple offenses;
- (H) Effect of any personal or emotional problems on the conduct in question;
- (K) Cooperative attitude toward the proceedings; and

(V) Material disparity between the kind of misconduct at issue in prior instances of professional discipline and the kind of misconduct at issue in this matter.

4. The Hearing Panel has considered the lack of gravity of the misconduct at issue and the insignificance of harm and potential harm Defendant's misconduct caused to the administration of justice and concludes that issuing a reprimand is sufficient discipline.

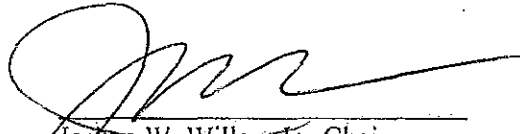
Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusions regarding discipline, and with the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE


1. Defendant, Edward D. Seltzer, is hereby reprimanded.
2. Defendant is taxed with administrative fees and costs of this action as assessed by the Secretary, including the cost of Defendant's deposition but excluding the cost of the deposition relating to the dismissed third claim for relief. Defendant shall pay the administrative fees and costs within thirty (30) days of service of the notice of costs upon Defendant.


Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

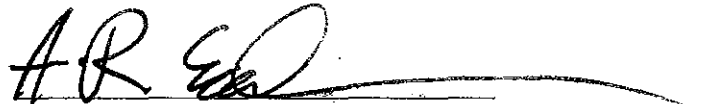
This the 16th day of October, 2016.



Joshua W. Willey, Jr., Chair
Disciplinary Hearing Panel

Agreed and consented to by:


Maria J. Brown
Attorney for Plaintiff


Edward D. Seltzer
Defendant


A. Root Edmonson
Attorney for Plaintiff


T. Richard Kane
Attorney for Defendant