

NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
KENYANN B. STANFORD, Attorney,)
Defendant)

ORDER OF DISCIPLINE

This matter was heard on February 18 and 19, 2009 by a Hearing Committee of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, M. H. Hood Ellis, and David L. Williams. Margaret Cloutier represented Plaintiff. Patricia P. Kerner represented Defendant. Based upon the record and the evidence introduced at the hearing, the Hearing Committee by clear, cogent and convincing evidence hereby makes 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 (Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC")).

2. Defendant Kenyann B. Stanford was admitted to the North Carolina State Bar on August 22, 1992, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

3. During the times relevant hereto, Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, County, North Carolina.

4. Defendant was a partner in the firm of Bailey & Dixon, a limited liability partnership, during the relevant period.

5. Bailey & Dixon issued Defendant a credit card for the purpose of making client- or business-related charges to the firm's credit account.

6. Defendant entered client- and business-related expenditures on a form entitled Expense Reimbursement Report which forms were submitted to the firm.

7. Defendant would list the expenditures charged to the credit card on the Expense Reimbursement Report and identify each expense either to be billed to a specific client or charged to the firm as a business expense.

8. Defendant would also list on the Expense Reimbursement Report client- and business-related expenditures made with her personal funds and identify each expense as above to be reimbursed to her by the firm.

9. Between February 4, 2007 and October 30, 2007 Defendant used her firm credit card to pay for meals at the various restaurants in the varying amounts listed below:

Date	Place of Business	Amount
02-04-2007	Amante Gourmet Pizza	\$ 58.52
02-12-2007	Amante Gourmet Pizza	\$ 39.89
03-03-2007	Amante Gourmet Pizza	\$ 53.73
05-06-2007	Torero's Mexican	\$ 57.30
05-08-2007	Torero's Mexican	\$ 49.01
05-13-2007	Amante Gourmet Pizza	\$ 32.15
08-20-2007	Milton's Pizza and Pasta	\$ 68.08
08-24-2007	Torero's Mexican	\$ 68.52
09-27-2007	Milton's Pizza and Pasta	\$ 60.27
10-07-2007	Rudino's Pizza and Grinders	\$ 29.33
10-30-2007	Amante Gourmet Pizza	\$ 38.55

10. On each of the dates listed above, Defendant had dined at the designated restaurant with her family and the meals were not related to any client of the firm.

11. Defendant prepared and submitted to the firm's bookkeeper Expense Reimbursement Reports falsely indicating that the expenditures listed above were firm expenses for marketing.

12. In January 2008 Defendant was presented with a spreadsheet listing a number of Defendant's prior firm credit card charges, including the charges listed above, and was asked to provide to the firm's managing partner an explanation of the listed charges.

13. In her response to the managing partner Defendant falsely represented that the charges listed above were for meals at which Defendant had dined with clients or were for food provided at seminars for corporate clients.

14. Defendant's purchase of family meals on the firm credit card, thereafter disguising the purpose of the meals by submitting a false Expense Reimbursement Report, and providing false information when asked about the charges evidences a fraudulent intent to deprive the partnership of the funds used to pay for the meals.

15. In the spreadsheet presented to Defendant as described above, one of the questioned items listed was a charge regarding airfare to Phoenix.

16. Defendant had planned to travel to Phoenix but did not travel to Phoenix on the date for which the ticket was purchased.

17. In her response to the managing partner regarding the questioned travel expense, Defendant falsely indicated she had traveled to Phoenix.

18. On December 10, 2007, Defendant used her firm credit card to purchase electronic games equipment and accessories at Target totaling \$468.98 and on December 11, 2007 Defendant used her firm credit card to purchase additional electronic games equipment and accessories totaling \$354.37.

19. Defendant subsequently donated the electronic games equipment and accessories to a needy family identified by her church on behalf of the firm.

20. On December 11, 2007 Defendant requested that the firm consider donating Christmas gifts to the needy family identified by her church, however, the firm declined Defendant's request a few days later, after she had made the donation.

21. Defendant prepared and submitted to the firm an Expense Reimbursement Report dated December 17, 2007 falsely representing that the \$468.98 and the \$354.37 expenditures at Target were for Christmas decorations and for expenditures related to the office Christmas party.

22. In the spreadsheet presented to Defendant as described above, the Target charges were among the questioned items listed. In her response thereto, Defendant falsely represented that she made a purchase of items totaling \$790.42 for the firm's Christmas party at Sam's Club warehouse store on the same date as the initial Target purchase, that she used her personal debit card for those purchases because Sam's Club did not accept the type of credit card used by the firm (Visa), and that she submitted to the firm for payment the

Target purchases in exchange for the firm expenses charged on her personal debit card at Sam's Club. Defendant further falsely stated that she believed she had attached a copy of the Sam's Club receipt to the reimbursement report, but that she could not now locate a copy of it.

23. Defendant did not purchase any items at Sam's Club on the day of the Target purchases, nor did she ever have a receipt for any such purchases on any other day.

24. In response to the firm's managing partner's request for a copy of her personal bank statement documenting her purchases at Sam's Club made on her personal debit card, Defendant provided to the managing partner a computer generated list of charges made in December and falsely represented to the managing partner that the document was a portion of her personal bank statement. Among the charges listed was \$790.42 from Sam's Club #6570 in Raleigh on December 10, 2007.

25. Defendant fabricated the portion of the personal bank statement listing the \$790.42 charge at Sam's Club to make it appear she had made a charge on her personal debit card when no such charge ever occurred.

26. Defendant's disguising the purpose of the Target purchases on the Expense Reimbursement Report after learning the firm did not authorize the charge, providing false information when asked about the charges, and submitting a falsified bank document evidences a fraudulent intent to deprive the partnership of the funds used to pay for the Target purchases.

27. On December 21, 2007, Defendant used her firm credit card to pay personal shipping charges in the amount of \$143.01 to the UPS Store for shipping a package to her sister.

28. Defendant prepared and submitted to the firm an Expense Reimbursement Report dated January 28, 2008 falsely representing that the expenditure was for the return of materials to a client.

Based on the foregoing Findings of Fact, the Committee enters the following

CONCLUSIONS OF LAW

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

2. Defendant's personal use of partnership funds by purchasing family meals and items at Target on the firm credit card without the partners' knowledge or consent with the fraudulent intent to deprive the partners of partnership funds satisfies the elements of the crime of misappropriation of partnership funds in violation of N.C.G.S. §14-97.

3. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

(a) by appropriating funds belonging to the firm for her own use (as described in Findings of Fact numbers 9 through 14 and 18 through 26), Defendant committed criminal acts that reflect adversely on her honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c); and

(b) by making false statements to the firm regarding her use of the firm's credit card and by falsifying her personal bank statement to support her false assertions, Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee also enters the following

FINDINGS REGARDING DISCIPLINE

1. By February 2008 Defendant had reimbursed the firm for the unauthorized expenditures.

2. The Hearing Committee found persuasive the testimony of several witnesses who expressed their opinion regarding Defendant's good character and reputation in the community. These witnesses included a judge before whom Defendant practiced, attorneys against whom Defendant practiced, attorneys with whom Defendant was previously a partner, and an attorney and former judge who had been a client of Defendant. All of these witnesses opined that Defendant was an excellent practitioner and that the conduct at issue in this case did not alter their opinion of her good character based on their relationships and interactions with her.

3. Defendant's misconduct is aggravated by the following factors:

(a) dishonest motive;

- (b) a pattern of misconduct;
- (c) multiple offenses; and
- (d) substantial experience in the practice of law.

4. Defendant's conduct is mitigated by the following factors:

- (a) absence of a prior disciplinary record;
- (b) timely good faith efforts to make restitution;
- (c) cooperative attitude toward proceedings;
- (d) good character and reputation;
- (e) interim rehabilitation; and
- (f) genuine expression of remorse.

5. The mitigating factors outweigh the aggravating factors.

6. Defendant's conduct caused significant harm or potential significant harm to the profession and to the public in that such conduct erodes the confidence of the public in the trustworthiness of all lawyers and tends to undermine the ability of the profession to remain self-regulating.

7. Defendant's conduct was of such a serious nature that it is necessary to impose a suspension of significant duration in order to protect the public and to ensure that members of the public and the profession have confidence in the State Bar's self-regulatory process. The Committee finds that entry of an order imposing less serious discipline would fail to acknowledge the gravity of the offenses committed by Defendant, would be inadequate to protect the public, and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

8. Defendant engaged in violations of the Rules of Professional Conduct that would result in disbarment if not for the mitigating factors unique to her circumstances. Her actions were not a result of mistake. However, based on the testimony of the witnesses who appeared on her behalf, her conduct appears to be an aberration. It therefore appears that discipline short of disbarment will adequately protect the public and the profession.

9. A deposition of Defendant was taken by Plaintiff and the expenses incurred by Plaintiff for those depositions were reasonable and necessary in the litigation of this case. The expense of the depositions should be taxed to Defendant.

10. The evidence in this case included documentation regarding clients of the firm and private financial information that warrant protection to ensure the continued privacy of the firm and their clients.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, all found by clear, cogent and convincing evidence, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. Defendant, Kenyann B. Stanford, is hereby SUSPENDED from the practice of law in this state for a period of five years, effective 30 days from the date of service of this order upon her.

2. Defendant shall surrender her law license and bar membership card within 30 days after service of this order upon her.

3. Defendant shall comply with all provisions of 27 N.C.A.C. 1B §.0124 of the North Carolina State Bar Discipline and Disability Rules as applicable.

4. Within sixty days before seeking reinstatement to active status, Defendant shall obtain, at her own expense, an evaluation by a qualified psychiatrist or psychologist approved by the Office of Counsel for the purpose of determining if Defendant has any mental, psychological or physical impairment, addiction, substance dependence, personality disorder or other condition, disorder or illness that would affect her ability to practice law, comply with the rules of Professional Conduct. or cause harm to the public if she is allowed to resume the practice of law. Defendant shall serve the North Carolina State Bar with a copy of a written report of the psychiatrist/psychologist with her petition for reinstatement and execute written waivers and releases authorizing the Office of Counsel to confer with Defendant's psychiatrist/psychologist for the purpose discussing all aspects of the psychiatrist/psychologist's evaluation, report, opinions and recommendations.

5. Defendant is taxed with the costs of this action as assessed by the Secretary, which costs shall include the cost of the deposition taken of Defendant, and shall be paid within thirty (30) days of service of the notice of costs upon Defendant.

6. Plaintiff's Exhibits 1-10, 11, 15, 17, 20-23, 25 and 26 and Defendant's Exhibits 1-12, 14-18, 20, 22, 23, 25, 27, 30-37 shall be kept under seal and not be accessible to the public unless and until ordered unsealed by the duly appointed Chair of this Committee.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 16 day of March, 2009.



SHARON B. ALEXANDER, CHAIR
HEARING COMMITTEE