

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 32

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MILDRED A. AKACHUKWU, Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISCIPLINE

THIS MATTER was heard on December 2 and 3, 2010 before a Hearing Panel of the Disciplinary Hearing Commission composed of M. H. Hood Ellis, Chair, and members Steven D. Michael and David L. Williams. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant, Mildred A. Akachukwu, was present and represented by Irving L. Joyner.

Based upon the pleadings, the stipulated facts, and the evidence introduced at the hearing, 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, Mildred A. Akachukwu ("Akachukwu" or "Defendant"), was admitted to the North Carolina State Bar in 1998, 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 Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Akachukwu was engaged in the practice of law in the State of North Carolina and maintained a law office in Durham, Durham County, North Carolina.

4. Akachukwu was properly served with process, a hearing in this matter was set, and the matter came before the hearing panel with due notice to all parties.

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5. During the course of her law practice, and from at least on or about January 1, 2001 through May 31, 2009, Akachukwu maintained a general attorney trust account at RBC Bank, formerly known as RBC Centura, account number ending with digits 3882.

6. Akachukwu disbursed \$70,016.69 from her trust account as follows:

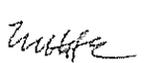
- a. \$2,500.00 on or about July 14, 2005, check number 3046 made payable to Mildred Akachukwu
- b. \$4,000.00 on or about July 12, 2006, wire to Royal Bank of Canada with reference to tuition payment for two students
- c. \$1,000.00 on or about October 4, 2006, check number 3744 made payable to Law Office of Mildred Akachukwu
- d. \$1,000.00 on or about October 4, 2006, check number 3745 made payable to Law Office of Mildred Akachukwu
- e. \$1,000.00 on or about October 30, 2006, check number 3809 made payable to Mildred Akachukwu
- f. \$2,500.00 on or about November 13, 2006, check number 3832 made payable to Mildred Akachukwu
- g. \$2,000.00 on or about December 21, 2006 to Mildred Akachukwu
- h. \$1,221.02 on or about January 5, 2007, check number 3911 made payable to Circuit City
- i. \$2,500.00 on or about January 9, 2007, check number 3912 made payable to Law Office of Mildred Akachukwu
- j. \$2,500.00 on or about January 17, 2007, check number 3913 made payable to Law Office of Mildred Akachukwu
- k. \$2,500.00 on or about January 23, 2007, check number 3926 made payable to Mildred Akachukwu
- l. \$3,000.00 on or about February 12, 2007, check number 3961 made payable to Mildred Akachukwu
- m. \$16,666.00 on or about March 12, 2007, check number 3998 made payable to Saba Zewdu
- n. \$996.67 on or about March 12, 2007, check number 3999 made payable to Redell Harris
- o. \$1,000.00 on or about July 18, 2007, check number 4101 made payable to Law Office of Mildred Akachukwu

- p. \$2,333.00 on or about August 9, 2007, by check number 4110 made payable to Law Office of Mildred Akachukwu
- q. \$800.00 on or about February 13, 2008, by check number 4227 made payable to Mildred Akachukwu
- r. \$1,800.00 on or about February 13, 2008, by check number 4228 made payable to Mildred Akachukwu
- s. \$900.00 on or about May 9, 2008, by check number 4316 made payable to Mildred Akachukwu
- t. \$1,000.00 on or about May 15, 2008, check number 4322 made payable to Mildred Akachukwu
- u. \$2,000.00 on or about June 9, 2008, unnumbered check made payable to Mildred Akachukwu
- v. \$1,600.00 on or about July 1, 2008, check number 4454 made payable to Mildred Akachukwu
- w. \$1,000.00 on or about July 1, 2008, check number 4455 made payable to Mildred Akachukwu
- x. \$1,500.00 on or about July 10, 2008, check number 4383 made payable to Mildred Akachukwu
- y. \$3,000.00 on or about August 5, 2008, check number 4396 made payable to Law Office of Mildred Akachukwu
- z. \$700.00 on or about August 28, 2008, check number 4397 made payable to Mildred Akachukwu
- aa. \$5,000.00 on or about March 12, 2009, wire to Royal Bank of Canada, with reference to a student
- bb. \$4,000.00 on or about April 2, 2009, wire to Royal Bank of Canada, with reference to a student

7. Akachukwu disbursed funds from her trust account, including those funds described in paragraph 6 herein, to herself or to third parties for her personal purposes.

8. When Akachukwu disbursed funds to herself or to third parties for her personal purposes, including those funds identified in paragraph 6 herein, she was not entitled to those funds or to use those funds for personal purposes.

9. Akachukwu's misuse of the client funds identified in paragraph 6 was knowing and willful.



10. Akachukwu received \$80,800.00 for certain clients as follows:
 - a. \$1,000.00 on or about October 26, 2006, medical payment benefits of client Juan Lopez
 - b. \$1,300.00 on or about December 7, 2006, settlement proceeds of client Ivonne Eliman Martinez Banda
 - c. \$1,400.00 on or about April 4, 2007, settlement proceeds of client Benita Ortiz Banda
 - d. \$5,200.00 on or about April 2, 2008, settlement proceeds of client Carlos Solorio
 - e. \$19,100.00 on or about March 31, 2008, settlement proceeds of client Melina Reza Loeza
 - f. \$1,000.00 on or about March 31, 2008, medical payment benefits of client Melina Reza Loeza
 - g. \$4,800.00 on or about September 30, 2008, portion of settlement proceeds for payment of medical bills of client Omar Miranda
 - h. \$18,000.00 on or about September 19, 2008, settlement proceeds of client Mable McCain
 - i. \$28,000.00 on or about September 19, 2008, settlement proceeds of client Annie McCain
 - j. \$1,000.00 on or about September 19, 2008, medical payment benefits of client Annie McCain

11. Akachukwu did not deposit the funds identified in paragraph 10 herein into her attorney trust account.

12. Akachukwu used the funds identified in paragraph 10 herein for her personal purposes.

13. Akachukwu was not entitled to use the clients' funds for her personal purposes.

14. Akachukwu's misuse of these clients' funds was knowing and willful.

15. Although Akachukwu failed to deposit the client funds listed in paragraph 10 herein into her attorney trust account, she still disbursed funds for those clients from her trust account. At the time she made the below listed disbursements, she had no money in her trust account for the client unless otherwise noted below.

Juan Lopez

- a. \$75.00 on or about October 27, 2006, check number 3786 made payable to Law Office of Mildred A. Akachukwu, for client Juan Lopez
- b. \$925.00 on or about October 27, 2006, check number 3787 made payable to Juan Carlos Gonzalez Lopez, for client Juan Lopez

Ivonne Eliman Martinez Banda

- c. \$433.00 on or about December 7, 2006, check number 3880 made payable to Law Office of Mildred A. Akachukwu, for client Ivonne Eliman Martinez Banda
- d. \$400.00 on or about December 11, 2006, check number 3883 made payable to Ivonne E. Martinez Banda, for client Ivonne Eliman Martinez Banda
- e. \$279.00 on or about December 19, 2006, check number 3881 made payable to WakeMed Hospital, for client Ivonne Eliman Martinez Banda
- f. \$188.00 on or about December 19, 2006, check number 3882 made payable to Wake Emergency Physicians, for client Ivonne Eliman Martinez Banda

Benita Ortiz Banda

- g. \$466.00 on or about April 11, 2007, check number 4024 made payable to Law Office of Mildred A. Akachukwu, for client Benita Ortiz Banda
- h. \$468.00 on or about April 25, 2007, check number 4027 made payable to Benita Ortiz Banda, for client Benita Ortiz Banda
- i. \$309.00 on or about May 24, 2007, check number 4025 made payable to WakeMed Hospital, for client Benita Ortiz Banda
- j. \$157.00 on or about May 24, 2007, check number 4026 made payable to Wake Emergency Physicians, for client Benita Ortiz Banda

Carlos Solorio

- k. \$1,500.00 on or about April 4, 2008, check number 4288 made payable to Law Office of Mildred Akachukwu, for client Carlos Solorio
- l. \$1,734.00 on or about April 10, 2008, check number 4293 made payable to Carlos Solorio, for client Carlos Solorio

- m. \$200.00 on or about April 10, 2008, check number 4295 made payable to Mildred Akachukwu, for client Carlos Solorio
- n. \$177.00 on or about May 29, 2008, check number 4319 made payable to Rex Urgent Care of Cary, for client Carlos Solorio
- o. \$1,556.00 on or about June 17, 2008, check number 4320 made payable to Creech Chiropractic Center, for client Carlos Solorio

Melina Reza Loeza

- p. \$2,000.00 on or about April 7, 2008, check number 4284 made payable to Gloria Hernandez Rivera, for client Melina Reza Loeza
- q. \$4,000.00 on or about May 21, 2008, check number 4325 made payable to Elizabeth Amador-Lea, for client Melina Reza Loeza

Enrique Martinez Hernandez

- r. \$3,000.00 on or about June 12, 2008, check number 4326 made payable to WakeMed Hospital, for client Enrique Martinez Hernandez. On June 12, 2008, four checks cleared Akachukwu's trust account for this client: #4328 for \$531.00, #4329 for \$205.00, #4330 for \$1,449.00, and #4326 for \$3,000.00. At the time of these disbursements, which totaled \$5,185.00, Akachukwu only had \$4,285.00 in her trust account for this client. Accordingly, she used \$900.00 of other clients' money to fund these disbursements.

Omar Miranda

- s. \$249.00 on or about September 30, 2008, check number 4423 made payable to Wake Emergency Physicians, for client Omar Miranda
- t. \$455.25 on or about October 1, 2008, check number 4421 made payable to Lewisville Co. EMS, for client Omar Miranda

Mable McCain

- u. \$1,000.00 on or about January 16, 2009, check number 4498 made payable to Mable McCain, for client Mable McCain. At the time of this disbursement, Akachukwu had only \$800.00 available in her trust account for this client. Accordingly, she used \$200.00 of other clients' money to fund this disbursement.
- v. \$1,017.45 on or about February 6, 2009, check number 4524 made payable to Alamance Regional Hospital, for client Mable McCain

- w. \$149.00 on or about February 6, 2009, check number 4525 made payable to Burlington Radiology Associates, for client Mable McCain
- x. \$457.69 on or about February 17, 2009, check number 4556 made payable to Person memorial Hospital, for client Mable McCain
- y. \$672.77 on or about February 20, 2009, check number 4558 made payable to Mable McCain, for client Mable McCain
- z. \$348.00 on or about March 3, 2009, check number 4523 made payable to Alamance Co. EMS, for client Mable McCain

Annie McCain

- aa. \$200.27 on or about February 4, 2009, check number 4517 made payable to Triangle Neuropsychology Services, for client Annie McCain
- bb. \$1,731.85 on or about February 6, 2009, check number 4515 made payable to Alamance Regional Hospital, for client Annie McCain
- cc. \$243.00 on or about February 6, 2009, check number 4518 made payable to Burlington Radiology Associates, for client Annie McCain
- dd. \$419.73 on or about February 6, 2009, check number 4519 made payable to Person Memorial Hospital, for client Annie McCain
- ee. \$161.11 on or about February 11, 2009, check number 4516 made payable to Triangle Orthopedic Associates, for client Annie McCain
- ff. \$68.88 on or about February 12, 2009, check number 4522 made payable to Millenium [sic] Neurology, PLLC, for client Annie McCain
- gg. \$42.42 on or about February 17, 2009, check number 4521 made payable to Private Diagnostic Clinic, for client Annie McCain
- hh. \$21.39 on or about February 23, 2009, check number 4520 made payable to Person Emergency Physicians, for client Annie McCain
- ii. \$486.00 on or about February 25, 2009, check number 4557 made payable to Annie S. McCain, for client Annie McCain
- jj. \$448.00 on or about March 3, 2009, check number 4514 made payable to Alamance Co. EMS, for client Annie McCain

16. Additionally, Akachukwu disbursed \$2,667.00 on or about November 27, 2006, check number 3831 made payable to Lorena Gonzalez Santos. Akachukwu had not deposited any funds in her trust account for Ms. Santos.

Mable

17. Akachukwu did not have sufficient funds in her trust account for the clients identified in paragraphs 15 and 16 herein to make the disbursements listed in paragraphs 15 and 16 for those clients.

18. Akachukwu used \$25,805.81 in other clients' funds in her trust account to fund, in whole or in part, the disbursements described in paragraphs 15 and 16 herein.

19. Akachukwu misused other clients' funds for the benefit of herself and third parties, including but not limited to as described in paragraphs 15-18 herein.

20. Akachukwu's misuse of client funds was knowing and willful.

Based on the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Mildred A. Akachukwu, and the subject matter.

2. Knowing and willful misappropriation of money by a fiduciary constitutes the crime of embezzlement under N.C. Gen. Stat. § 14-90. Embezzlement is a felony.

3. Defendant knowingly and willfully misappropriated entrusted funds on multiple occasions over several years.

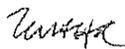
4. Defendant's conduct, as set forth in the Findings of Fact above, constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

- a. By knowingly and willfully misappropriating client funds for herself or for the benefit of third persons for her personal purposes, Akachukwu engaged in criminal conduct reflecting adversely on her honesty, trustworthiness, or fitness as a lawyer 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 disbursing funds for clients from her attorney trust account when she did not have sufficient funds in her attorney trust account for those clients to support those disbursements and thereby knowingly and willfully misappropriating and misusing other clients' funds, Akachukwu failed to protect entrusted funds in violation of Rule 1.15-2(a), failed to properly disburse client funds in violation of Rule 1.15-2(m), engaged in criminal conduct reflecting adversely on her honesty, trustworthiness, or fitness as a lawyer in violation of Rule 8.4(b) and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby finds by clear, cogent and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings in paragraphs 1 –20 above are reincorporated as if set forth herein.
2. Defendant's conduct involved misappropriation, misrepresentation and deceit over a period of years.
3. Defendant, by engaging in conduct involving misappropriation, misrepresentation and deceit over a number of years, has shown herself to be untrustworthy.
4. Defendant put her own personal interests ahead of her clients' interest.
5. Defendant misappropriated funds for her own benefit that should have been used for the benefit of her clients. Subsequently, in order to make the payments due for those clients, Defendant then misappropriated funds that should have been used for other clients.
6. Defendant wrote checks out to Saba Zewdu and Redell Harris, fraudulently signed their names to the back of those checks without their knowledge, permission, or authorization, and deposited those funds into her personal bank account. The money she put into her personal account should have been maintained and used to pay the medical expenses for Ms. Zewdu and Mr. Harris. If those funds were not needed to satisfy medical bills or related liens, then those funds should have been disbursed to Ms. Zewdu and Mr. Harris. Instead, Akachukwu transferred their money to her personal bank account at a time when her personal account had a negative balance and spent those funds over the next several months.
7. Defendants' misappropriations eventually caused her trust account balance to get so low that she received two notices of insufficient funds from the bank, one for August 2008 and another for April 2009. At the time of those insufficient funds notices, she should have been maintaining funds for clients in excess of the balance left in her trust account, including as follows:
 - a. Akachukwu received an insufficient funds notice for a check negotiated on August 26, 2008. At that time, the balance in her trust account was \$761.43. By August 28, 2008, her trust account balance had fallen to \$61.43. On August 28, 2008, Akachukwu should have had the following clients' funds in her trust account:
 - 1) \$4,334.00 for Jose Escobar
 - 2) \$588.00 for Juan Garcia
 - 3) \$520.00 for Gerardo Godinez
 - 4) \$2,000.00 for Carlos Reyes
 - 5) \$6,800.00 for Octavio Villa.



b. Akachukwu received an insufficient funds notice for a check negotiated on April 3, 2009. At that time, the balance in her trust account was \$334.25. On April 3, 2009, Akachukwu should have had the following clients' funds in her trust account:

- 1) \$12,868.81 for Froilan Gonzalez Garcia
- 2) \$8,334.00 for Francisco Juarez
- 3) \$673.00 for Frank Pettiford
- 4) \$492.00 for Omotayo Odulana

8. Defendant misappropriated funds from her clients, who were particularly susceptible to Defendant's theft because these clients entrusted their funds to Defendant and relied upon Defendant to hold their funds and disburse them for their benefit.

9. Defendant's conduct damaged her clients and can only have a negative impact on her clients' and the public's perception of the legal profession.

10. Defendant has deposited large sums of money into her trust account to reimburse the trust account for her misappropriations.

11. Defendant has no prior record of disciplinary offenses.

12. Defendant has failed to acknowledge that she misappropriated client funds. Defendant has provided explanations that are not consistent with the evidence received at the hearing in this matter.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the Hearing Panel enters the following

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel carefully considered all of the different forms of discipline available to it.

2. The Hearing Panel considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(1), (2) and (3) of the Rules and Regulations of the State Bar and determined that the following factors are applicable:

27 N.C.A.C. 1B § .0114(w)(1)

- a. Factor (B), Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Factor (C), Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;

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- c. Factor (D), Elevation of Defendant's own interest above those of her clients;
- d. Factor (I), Acts of dishonesty, misrepresentation, deceit or fabrication;

27 N.C.A.C. 1B § .0114(w)(2)

- e. Factor (A), Acts of dishonesty, misrepresentation, deceit or fabrication;
- f. Factor (C), Misappropriation or conversion of assets of any kind to which Defendant or recipient was not entitled, whether from a client or any other source;
- g. Factor (D), Commission of a felony;

27 N.C.A.C. 1B § .0114(w)(3)

- h. Factor (A), No prior record of disciplinary offenses;
- i. Factor (C), Dishonest or selfish motive;
- j. Factor (D), Timely good faith efforts to make restitution;
- k. Factor (F), A pattern of misconduct;
- l. Factor (G), Multiple offenses;
- m. Factor (K), Absence of full and free disclosure to the Hearing Panel;
- n. Factor (R), Vulnerability of the victims; and
- o. Factor (S), Substantial degree of experience in the practice of law.

3. Defendant caused significant harm to her clients by misappropriating their funds.

4. Defendant caused significant harm to Ms. Zewdu and Mr. Harris, by endorsing checks made payable to them without their authorization and depositing those amounts into her personal account.

5. Defendant caused significant harm to clients whose funds Akachukwu should have had in her trust account at times when checks were returned for insufficient funds from her trust account, including clients Froilan Gonzalez Garcia, Francisco Juarez, Frank Pettiford, Omotayo Odulana, Jose Escobar, Juan Garcia, Gerardo Godinez, Carlos Reyes, and Octavio Villa.

6. Defendant's repeated commission of criminal acts reflecting adversely on her honesty, trustworthiness or fitness as a lawyer caused potential significant harm to the legal profession, in that criminal conduct tends to bring the legal profession into disrepute.

7. The Hearing Panel has considered lesser alternatives and finds that suspension of Defendant's license or a public censure, reprimand, or admonition would not be sufficient discipline because of the gravity of the actual and potential harm to her clients, the public, the administration of justice, and the legal profession caused by Defendant's conduct, and the threat of potential significant harm Defendant poses to the public.

8. The Hearing Panel considered all lesser sanctions and finds that discipline short of disbarment would not adequately protect the public for the following reasons:

- a. Defendant committed misdeeds involving moral turpitude and violations of her clients' trust, including fraudulent conduct, material misrepresentations, and deceit. Misconduct involving misappropriation and dishonesty are among the most serious that an attorney can commit. Such offenses demonstrate that the offending attorney is not trustworthy. Clients are entitled to have trustworthy attorneys;
- b. Defendant repeatedly engaged in criminal acts reflecting adversely on her honesty, trustworthiness or fitness as a lawyer, and engaged in abuses of trust by misappropriating funds entrusted to her;
- c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State; and
- d. The protection of the public and the legal profession requires that Defendant not be permitted to resume the practice of law until she demonstrates the following: that she has reformed; that she understands her obligations to her clients, the public, and the legal profession; and that permitting her to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice. Disbarred lawyers are required to make such a showing before they may resume practicing law.

Based on the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following

ORDER OF DISCIPLINE

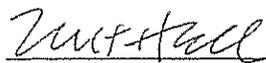
1. Defendant, Mildred A. Akachukwu, is hereby DISBARRED from the practice of law.

2. Defendant shall surrender her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this order upon Defendant.

3. Defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon her of the statement of costs by the Secretary.

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

Signed by the Chair with the consent of the other Hearing Panel members, this the 12th day of January, 2011.



M. H. Hood Ellis, Chair
Disciplinary Hearing Panel