

NORTH CAROLINA
WAKE COUNTY



22202

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
02 DHC 17

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
ALICE L. McNEER, Attorney,)
Defendant)

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER OF DISCIPLINE

This matter came on to be heard on February 21, 2003 before a hearing committee of the Disciplinary Hearing Commission composed of W. Steven Allen, Sr., Chair, Karen E. Eady and Lorraine Stephens. Jay Reeves represented the Defendant, Alice L. McNeer. A. Root Edmonson represented the North Carolina State Bar. Based upon the pleadings, the stipulations contained in the pre-trial order and the evidence presented at the hearing, the hearing committee finds the following to be supported by clear, cogent and convincing evidence:

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, Alice L. McNeer (hereinafter McNeer), was admitted to the North Carolina State Bar on August 18, 1995 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 Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. During the times relevant to this complaint, McNeer actively engaged in the practice of law in the State of North Carolina and maintained law offices in Raleigh, Cary or Garner, all in Wake County, North Carolina.
4. After being licensed as a lawyer in 1995, McNeer accepted employment as a salaried associate with the Raleigh law firm of Gailor and Associates, P.L.L.C. (hereinafter the firm). McNeer's status with the firm never changed from that of a salaried associate between the date she was hired until she was terminated from the firm on July 5, 2001.

5. Pursuant to her employment arrangement with the firm, all fees that McNeer received from clients were the property of the firm and should have been deposited into one of the firm's accounts.

6. On August 16, 1999, Carol A. Boran (hereinafter Boran) consulted with McNeer about her separation from her husband, Diarmuid F. Boran. McNeer undertook to represent Boran in negotiating a separation agreement. McNeer requested an advance fee deposit of \$2,500.00 for the representation from which fees were to be drawn when earned.

7. On August 16, 1999, Boran delivered check number 591 payable to McNeer in the sum of \$2,500.00.

8. McNeer did not turn Boran's check number 591 over to the firm for deposit into one of the firm's accounts as required by her employment arrangement.

9. On September 9, 1999, McNeer deposited Boran's check number 591 into her personal checking account at Branch Banking and Trust Company (hereinafter BB&T), account number 5114790321 (hereinafter personal account) without the firm's knowledge or consent.

10. McNeer appropriated the firm's \$2,500.00 to her own use.

11. On May 31, 2000, Boran and her husband executed the separation agreement prepared by McNeer and opposing counsel.

12. On June 7, 2000, Boran delivered another check to McNeer for \$2,287.99 for the legal work that McNeer had performed for her.

13. McNeer did not turn Boran's June 7, 2000 check over to the firm as required by her employment arrangement.

14. On June 8, 2000, McNeer negotiated Boran's June 7, 2000 check by depositing \$2,200.00 into her personal account and getting \$87.99 cash back, without the firm's knowledge or consent.

15. McNeer appropriated the firm's \$2,287.99 to her own use.

16. On June 16, 2000, Britt Shahan Carr (hereinafter Carr) delivered to McNeer a check for \$500.00 as a "retainer fee" for legal services.

17. McNeer did not deposit Carr's \$500.00 retainer fee into any of the firm's accounts as required by her employment arrangement.

18. On June 19, 2000, McNeer deposited Carr's retainer fee check into her personal account without the firm's knowledge or consent.

19. McNeer appropriated the firm's \$500.00 represented by Carr's June 16, 2000 check to her own use.

20. On June 27, 2000, Carr paid McNeer another \$500.00 as "additional retainer fee (refundable)" for the legal work that McNeer was to perform for her.

21. McNeer did not deposit Carr's June 27, 2000 fee check into any of the firm's accounts as required by her employment arrangement.

22. On July 6, 2000, McNeer deposited Carr's June 27, 2000 \$500.00 check into a personal savings account at BB&T, account number 5414413465 (hereinafter savings account) without the firm's knowledge or consent.

23. McNeer appropriated the firm's \$500.00 represented by Carr's June 27, 2000 check to her own use.

24. On November 2, 2000, Brett C. Gerboth (hereinafter Gerboth) consulted with McNeer about his separation from his wife, Jessica E. Stone. McNeer undertook to represent Gerboth in negotiating a separation agreement.

25. On December 4, 2000, Gerboth paid McNeer \$2,250.00 by his check number 666.

26. McNeer did not turn Gerboth's check number 666 over to the firm for deposit into one of the firm's accounts as required by her employment arrangement.

27. On December 5, 2000, McNeer deposited Gerboth's check number 666 into her savings account without the firm's knowledge or consent.

28. McNeer appropriated the firm's \$2,250.00 to her own use.

29. On April 9, 2001, McNeer interviewed a prospective client, Omar R. Azizi (hereinafter Azizi). McNeer charged Azizi the firm's standard consultation fee of \$350.00, which Azizi paid to McNeer on that date.

30. McNeer did not deposit Azizi's \$350.00 consultation fee into the firm's operating account.

31. McNeer appropriated the firm's \$350.00 to her own use without the firm's knowledge or consent.

32. On April 30, 2001, Azizi delivered check number 1533 to McNeer for \$1,000.00 as a fee for her services in negotiating a separation agreement.

33. On May 3, 2001, McNeer negotiated Azizi's check number 1533 by depositing \$500.00 into her personal account and getting \$500.00 cash back without the firm's knowledge or consent.

34. McNeer appropriated the firm's \$1,000.00 to her own use.

35. After discovering that Azizi had paid \$1,000.00 to McNeer that the firm had not received, a member of the firm reported the matter to the North Carolina State Bar on July 6, 2001.

36. On January 17, 2002, subpoenas were issued to BB&T for items deposited into McNeer's personal and savings accounts. The items of deposit were to be produced on or before March 14, 2002.

37. On April 16, 2002, McNeer faxed an affidavit signed by Gerboth to the North Carolina State Bar.

38. McNeer had prepared the affidavit and asked Gerboth to sign it. McNeer sent the affidavit for the Grievance Committee to consider in her disciplinary matter.

39. The affidavit that McNeer prepared for Gerboth falsely represented that Gerboth's \$2,250.00 fee payment was not for negotiating his separation agreement, but was for handling Gerboth's traffic tickets.

40. On June 12, 2002, McNeer was advised that the North Carolina State Bar's investigation revealed that Gerboth had only one moving violation. McNeer was asked to address the credibility of Gerboth's affidavit.

41. On July 8, 2002, McNeer provided an additional response to the North Carolina State Bar for consideration by the Grievance Committee in her disciplinary matter that asserted that Gerboth had received his traffic tickets in Orange County, California.

42. Gerboth had not received any traffic tickets in Orange County, California. McNeer made materially false statements in her July 8, 2002 response.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over McNeer and the subject matter.

2. McNeer's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) as follows:

- (a) By appropriating the fees McNeer earned from her representation of Boran while an associate with the firm to her own use instead of remitting the fees to the firm, McNeer 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), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).
- (b) By appropriating the fees McNeer earned from her representation of Carr while an associate with the firm to her own use instead of remitting the fees to the firm, McNeer 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).
- (c) By appropriating the fees McNeer earned from her representation of Gerboth while an associate with the firm to her own use instead of remitting the fees to the firm, McNeer 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).
- (d) By appropriating the fees McNeer received from her representation of Azizi while an associate with the firm to her own use instead of remitting the fees to the firm, McNeer 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).
- (e) By asking Gerboth to sign a false affidavit for her benefit, McNeer counseled her client to falsify evidence in violation of Rule 3.4(b)
- (f) By presenting Gerboth's false affidavit to the Grievance Committee and by making her false July 8, 2002 response to the Grievance Committee during the investigation of her disciplinary matter, McNeer offered evidence that she knew was false in violation of Rule 3.3(a)(4); knowingly made a false statement of material fact in a disciplinary matter in violation of Rule 8.1; and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact, the Conclusions of Law, and the evidence presented at the hearing, the hearing committee hereby makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. McNeer's misconduct is aggravated by the following factors:

- (a) A dishonest or selfish motive;
- (b) a pattern of misconduct; and
- (c) multiple offenses.

2. McNeer's misconduct is mitigated by the following factors:

- (a) The absence of a prior disciplinary record;
- (b) personal or emotional problems; and
- (c) good character and reputation.

3. The aggravating factors outweigh the mitigating factors.

BASED UPON the foregoing Findings of Fact Regarding Discipline and the arguments of the parties, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Alice L. McNeer, is hereby suspended from the practice of law for three years beginning 30 days from service of this order upon her.

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

3. McNeer shall pay the costs of this proceeding, including deposition costs, as assessed by the Secretary within 30 days of service of the costs upon her.

4. McNeer shall comply with all provisions of 27 NCAC 1B §.0124.

5. Prior to reinstatement, McNeer shall comply with the requirements of 27 NCAC 1B §.0125(b). In addition, to be eligible for reinstatement, McNeer must prove that she has complied with the following conditions during her suspension:

- (a) That she has not violated any State or Federal law and has not violated any of the provisions of the Revised Rules of Professional Conduct in effect or hereinafter enacted.
- (b) That she has satisfied the same mandatory continuing legal education requirements of the North Carolina State Bar during the three-year suspension as would have been required if she were actively licensed.

- (c) That within ninety days from service of this order upon her she made restitution to the law firm of Gailor and Associates of the amounts found by this panel to have been misappropriated from the firm.
- (d) That she has obtained an assessment for alcohol, drug or psychiatric problems approved by the Lawyer Assistance Program of the North Carolina State Bar.
- (e) That she has consented for her psychiatrist or any assessing or treating agency to release information to the Office of Counsel of the North Carolina State Bar on a quarterly basis showing that she is following any treatment recommendations made by the psychiatrist and/or agency.

Signed by the chair with the consent of the other hearing committee members, this the 11~~th~~ day of March, 2003.



W. Steven Allen, Sr., Chair
Hearing Committee