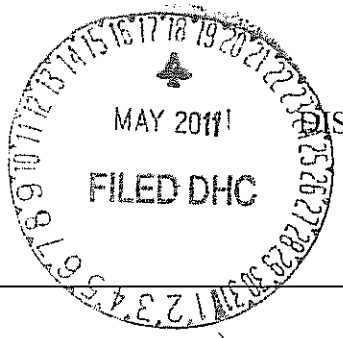
NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 BCR 1

IN THE MATTER OF:

PETITION FOR REINSTATEMENT OF

LARRY R. LINNEY

ORDER RECOMMENDING
THAT REINSTATEMENT BE DENIED

This matter came on for hearing on April 28, 2011 before a panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, Harriett Smalls, and Patti Head; with Larry R. Linney appearing *pro se* and with A. Root Edmonson appearing on behalf of the North Carolina State Bar. Based upon the evidence before the panel, the panel makes the following:

Findings of Fact

1. Petitioner was disbarred by an order of discipline entered in the Disciplinary Hearing Commission (hereinafter "DHC") on November 19, 1996 in 96 DHC 6 (hereinafter "1996 order of discipline"). The 1996 order of discipline found: (1) that petitioner, while guardian for Georgiana Alexander, misappropriated the proceeds of a $10,000 CD owned by Ms. Alexander; (2) after Ms. Alexander's death, petitioner misappropriated $900 he received as rent on the property she had owned; and (3) petitioner made false statements to the State Bar's investigator and to the Grievance Committee.

2. Petitioner accepted service of the 1996 order of discipline on December 19, 1996.

3. Petitioner filed a Motion for Rehearing in 96 DHC 6 on January 16, 1997 that was denied on February 19, 1997.

4. On April 24, 1997, petitioner filed a Petition for Judicial Review of an Administrative Action of the North Carolina State Bar in Buncombe County Superior Court. Petitioner's Petition for Judicial Review was dismissed by the Buncombe County Superior Court by order filed on December 29, 1997.

5. Petitioner did not appeal the 1996 order of discipline to the NC Court of Appeals which was the appropriate method of seeking review of the 1996 order of discipline pursuant to N.C.G.S. § 84-28(h).

6. The January 18, 1997 effective date of Petitioner's disbarment was never stayed or modified by the DHC or any court.

7. On September 18, 1997, petitioner was convicted of two counts of embezzlement and two counts of perjury in Buncombe County Superior Court relating to the same conduct that resulted in the 1996 order of discipline.

8. By opinion filed June 6, 2000, the North Carolina Court of Appeals vacated one of petitioner's 1997 embezzlement convictions and remanded the case to Buncombe County Superior Court for retrial of the other charges.

9. On February 5, 2003, petitioner was convicted of one court of embezzlement and two counts of perjury in Buncombe County Superior Court on retrial of the remanded charges.

10. By opinion filed June 7, 2005, the North Carolina Court of Appeals affirmed petitioner's 2003 convictions.

11. Petitioner filed his instant petition for reinstatement on February 27, 2011.

12. Prior to filing his petition for reinstatement, petitioner timely published a Notice of Intent to seek Reinstatement in the North Carolina State Bar *Journal*.

13. Petitioner timely notified the complainant in the disciplinary proceeding that led to his disbarment of his notice of intent to seek reinstatement.

14. Petitioner's citizenship was restored on January 1, 2004.

15. Petitioner complied with Rule .0124 by winding down his practice after his disbarment.

16. There is no evidence presented that petitioner failed to comply with all applicable orders of the North Carolina State Bar.

17. There was no evidence presented that petitioner engaged in the unauthorized practice of law after his disbarment.

18. There was no evidence presented that petitioner engaged in conduct after his disbarment that would constitute grounds for discipline.

19. The Client Security Fund did not reimburse any clients as a result of petitioner's misconduct.

20. Although petitioner contended that he was disbarred by the judge presiding during sentencing upon conviction at his second criminal trial in February 2003, he presented no evidence in support of his contention. There is no reference to such judicial disbarment in the Court of Appeals decision and this panel was shown no record or information from which it could take judicial notice of a judicial disbarment.

21. By January 26, 1998 court order, Gail Carmen Spencer, Georgiana Alexander's granddaughter, was reimbursed the amount that the DHC found was misappropriated from Georgiana Alexander from funds belonging to petitioner that had been frozen in petitioner's various bank accounts by an earlier order of the Wake County Superior Court.

22. Petitioner paid all dues and Client Security Fund assessments owed to the North Carolina State Bar.

23. Petitioner deposited $500 with the Secretary as security for the cost of his reinstatement petition.

24. Petitioner chose not to testify in support of his petition for reinstatement. In the absence of his testimony, the hearing panel had only the statements petitioner made in his petition for reinstatement as expressions of his contentions.

25. In his petition for reinstatement, petitioner professed to have accepted full responsibility for the conduct that led to his disbarment.

26. However, in his petition for reinstatement, petitioner also made the following statements that conflicted with his professed acceptance of responsibility for his past conduct:

a. Petitioner contended that Georgiana Alexander was legally incompetent and, therefore, not able to enter into a contract. He contended that this fact contradicted any conclusion in the 1996 order of discipline that petitioner "misappropriated" his "client's" funds;

b. Petitioner contended that Georgiana Alexander died testate and, thus, did not have "heirs," but had "devisees." He contended that this fact contradicted any conclusion in the 1996 order of discipline that petitioner misappropriated $900 in rent proceeds without the approval of Ms. Alexander's "heirs;" and

c. Petitioner contended that the Buncombe County Clerk of Superior Court, rather than the DHC, had exclusive jurisdiction to determine all issues relating to Georgiana Alexander, implying that the DHC had no jurisdiction to discipline him.

27. In a February 10, 2011 letter that petitioner wrote to Georgiana Alexander's granddaughter, Gale Carmen Spencer, he denied that he had the requisite criminal intent to commit embezzlement or perjury.

28. Petitioner's statements referenced in paragraphs 26 and 27 above show that petitioner refuses to acknowledge that his taking Georgiana Alexander's CD proceeds and the rent proceeds was wrong.

29. Petitioner presented two friends as witnesses who believed that petitioner was remorseful for the conduct that led to his disbarment. However, petitioner's statements

mentioned in paragraphs 26 and 27 above conflicted with the witnesses' belief that petitioner was remorseful.

30. Petitioner presented no evidence to show that he had exhibited any remorse for his past misconduct to the people in the Buncombe County community where he lived at the time of his misconduct.

31. Petitioner failed to present evidence from any lawyer or judge from Buncombe County that the harm to the standing and integrity of the bar and the administration of justice caused by petitioner's misconduct, and the publicity resulting from petitioner's disbarment and his criminal convictions, had been eradicated.

32. In his petition for reinstatement, petitioner claimed to have knowledge of the current Rules of Professional Conduct. However, petitioner's contentions in his petition for reinstatement mentioned in paragraph 26 above show that petitioner lacks knowledge of the current Rules of Professional Conduct.

BASED UPON the foregoing Findings of Fact, the panel makes the following:

Conclusions of Law

1. The panel has jurisdiction over the petitioner and over the subject matter of the issues determined at the hearing.

2. Because Petitioner failed to properly perfect any appeal of the DHC order of discipline disbarring him, the order constitutes the law of the case and was not subject to challenge in this petition for reinstatement.

3. Pursuant to the Discipline and Disability Rules of the North Carolina State Bar, petitioner had the burden of showing by clear, cogent, and convincing evidence that he had met each of the requirements for reinstatement to the practice of law in North Carolina.

4. Petitioner satisfied his burden of proving the requirements of 27 N.C.A.C. 1B, § .0125(a)(3)(A), (B), (E), (F), (G), (H), (I), (J), (L), (M), and (N).

5. The misconduct that resulted in petitioner's disbarment constituted some of the most serious violations of professional responsibility that an attorney can commit, involving dishonesty and criminal conduct by the misappropriation of entrusted funds and making false statements to cover up his misconduct. The fact that one of his subsequent criminal convictions was later vacated by the Court of Appeals does not negate the conclusion of the DHC that petitioner engaged in criminal conduct.

6. Petitioner failed to prove by clear, cogent and convincing evidence that he has reformed and presently possesses the moral qualifications required for admission to practice law in this state taking into account the gravity of the misconduct that resulted in his disbarment as required by 27 N.C.A.C. § .0125(a)(3)(C), making him ineligible to be reinstated to the practice

of law in North Carolina.

7. Petitioner failed to prove by clear, cogent and convincing evidence that permitting him to resume the practice of law would not be detrimental to the integrity and standing of the bar, to the administration of justice and to the public interest taking into account the gravity of the misconduct that resulted in his disbarment as required by § .0125(a)(3)(D), making him ineligible to be reinstated to the practice of law in North Carolina.

8. Petitioner failed to prove by clear, cogent and convincing evidence that he understands the current Rules of Professional Conduct as required by § .0125(a)(3)(K), making him ineligible to be reinstated to the practice of law in North Carolina.

Therefore, based upon the foregoing Findings of Fact and Conclusions of Law, the panel enters the following **ORDER**:

1. It is the panel's recommendation to the Council that petitioner's Petition for Reinstatement be **denied**.

2. If petitioner fails to appeal this order to the Council pursuant to 27 N.C.A.C. 1B, § .0125(a)(8) within 30 days of service of this order, then this order will be a **final order denying petitioner's petition for reinstatement**.

3. The costs of this petition for reinstatement are taxed against the petitioner.

Signed by the Chair with the knowledge and consent of the other panel members this the 16 day of May 2011.

Fred M. Morelock, Chair