

STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13 DHC 4

THE NORTH CAROLINA STATE BAR,
Plaintiff,

v.

WILLIAM "TRIPPE" MCKENY, Attorney
Defendant.

CONSENT ORDER OF DISCIPLINE

This matter came before a hearing panel of the Disciplinary Hearing Commission composed of Sharon B. Alexander, Chair, Irvin W. Hankins, III, and Patti Head. Carmen H. Bannon represented Plaintiff, the North Carolina State Bar. Defendant, William "Trippe" McKeny, was represented by Dudley A. Witt. Defendant waives a formal hearing in this matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. By consenting to the entry of this order, Defendant knowingly, freely and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings. Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes 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, William "Trippe" McKeny, was admitted to the North Carolina State Bar in March 2003 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. During the relevant period referred to herein, McKeny was actively engaged in the practice of law in Salisbury, Rowan County, North Carolina.
4. In connection with his law practice, McKeny maintained at F&M Bank a general trust account (account number ending in -9167, hereafter "McKenys trust account") and a law firm operating account (account number ending in -8764, hereafter "McKenys operating account").
5. McKeny failed to maintain the following records for his trust account:

- (a) Documentation of the source of all deposits and the client on whose behalf the deposit was received.
 - (b) Copies of all checks drawn on the account showing the client balance against which it was drawn.
 - (c) Records of electronic withdrawals and/or transfers showing the recipient of the disbursement and the client balance against which it was drawn.
 - (d) A general ledger of receipts and disbursements identifying the client on whose behalf each receipt and disbursement was made.
 - (e) Complete, accurate individual client ledgers showing receipts, disbursements, and the current balance of funds held in trust for each client.
6. McKeny withdrew funds from the trust account for payment of his fees using items that did not indicate the client balance on which the item was drawn.
7. McKeny failed to compare the balance in the account as shown on his records to the bank statement balance on a monthly basis.
8. McKeny failed to total his individual client ledger balances and compare them to the current bank statement balance at least quarterly.
9. On several occasions McKeny wrote trust account checks payable to cash and/or withdrew funds from the trust account in the form of cash.
10. McKeny frequently deposited client payments designated for a combination of attorney fees and court costs into his operating account rather than his trust account.
11. McKeny regularly received payments from clients via credit card. The credit card payments were credited to McKeny's trust account.
12. McKeny used a company called Sterling Payment Technologies ("Sterling") to process credit card payments from his clients. Sterling collected its fees via direct debit from McKeny's trust account twice monthly.
13. The credit card processing fees charged by Sterling were a business expense incurred for McKeny's benefit and convenience, not an expense incurred for the benefit of a client.
14. McKeny only intermittently deposited personal funds into the trust account to offset the debits to Sterling. From 2009 through 2011, the Sterling fees debited from the trust account exceeded the personal funds deposited by McKeny to cover those debits by more than \$5,000.00.
15. Because there were insufficient personal funds in the trust account to cover the debits for Sterling's fees, McKeny used more than \$5,000.00 of entrusted funds to pay for

Sterling's services. The beneficial owners of the funds in McKeny's trust account did not authorize McKeny to use their entrusted funds to pay for Sterling's services.

16. McKeny deposited or transferred entrusted funds designated for clients' court costs and/or filing fees into his operating account and used them to satisfy immediate personal and/or business obligations, paying the clients' costs at a later date when he had sufficient funds in the operating account.

17. McKeny represented Sherrie Monnell in a personal injury case, which settled for \$7,000.00. McKeny deposited Monnell's settlement proceeds into his trust account on 17 December 2009.

18. McKeny disbursed Monnell's settlement funds from his trust account as follows:

(a) On 22 December 2009, McKeny transferred \$2,310.00 of Monnell's funds into his operating account for payment of his attorney fee.

(b) On 4 January 2010, McKeny issued a check to Monnell for \$2,853.52.

(c) On 22 January 2010, McKeny transferred the remaining \$1,836.48 of Monnell's settlement funds, which were supposed to be held in trust for payment of medical providers, into his operating account.

19. On 8 March 2010, McKeny used funds from his operating account to purchase a \$1,595.48 certified check payable to Forsyth Memorial Hospital on behalf of Monnell.

20. The balance in McKeny's operating account dropped below \$1,836.48 on nine occasions between 22 January 2010 and 8 March 2010, during which time McKeny should have been holding \$1,836.48 in trust for Monnell.

21. On 26 April 2012, McKeny paid \$241.00 from the operating account to satisfy Monnell's bill for ambulance services. The balance in McKeny's operating account dropped below \$241.00 on multiple occasions between 8 March 2010 and 26 April 2012, during which time McKeny should have been holding \$241.00 in trust for Monnell.

22. During the time period referenced in paragraphs 17 through 21, above, McKeny used the funds in his operating account—including the funds he should have been holding in trust for Monnell—for personal and business expenditures.

23. Monnell did not authorize McKeny to use her entrusted funds for his personal and business expenses.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, William "Trippe" McKeny, and over the subject matter.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes 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 failing to maintain complete and accurate records documenting his receipt and disbursement of entrusted funds, McKeny failed to maintain the minimum records required for general trust accounts in violation of Rule 1.15-3(b);
- (b) By making withdrawals from the trust account for payment of his fees using items that did not indicate the client balance upon which the item was drawn, McKeny violated Rule 1.15-2(h);
- (c) By failing to compare the balance in the trust account as shown on his records to the bank statement balance on a monthly basis and by failing to total client ledger balances and compare them to the bank statement balance at least quarterly, McKeny failed to perform monthly or quarterly reconciliations of his attorney trust account in violation of Rule 1.15-3(d);
- (d) By making withdrawals from his trust account in the form of cash, McKeny violated Rule 1.15-2(i);
- (e) By depositing amounts designated for attorney fees and court costs into his operating account instead of his trust account, McKeny failed to deposit mixed funds intact in violation of Rule 1.15-2(g) and failed to deposit entrusted funds into a designated trust account in violation of Rules 1.15-2(a) & (b);
- (f) By having credit card transaction fees debited from his trust account when he had not deposited sufficient personal funds to cover those fees, McKeny used entrusted funds for personal benefit in violation of Rule 1.15-2(j); and
- (g) By using client funds to satisfy personal and/or business obligations, McKeny used entrusted funds for personal benefit in violation of Rule 1.15-2(j).

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

FINDINGS REGARDING DISCIPLINE

1. A lawyer's mismanagement of entrusted funds erodes the confidence clients place in attorneys who handle their affairs. As a result, such conduct harms the profession as a whole.

2. McKeny was grossly inattentive to his fiduciary obligation to safeguard entrusted funds, thereby creating a significant risk of foreseeable harm to the clients whose funds were entrusted to him.

3. McKeny failed to monitor his trust and operating accounts and failed to provide the employees to whom he delegated authority over the accounts with any instructions regarding compliance with the Rules of Professional Conduct.

4. During the period described herein, McKeny was suffering from undiagnosed post-traumatic stress disorder (PTSD). As a result of his untreated PTSD symptoms, McKeny was highly anxious, reactive, and depressed.

5. The symptoms of this disorder significantly impaired McKeny's professional judgment and were a major contributing factor to his mismanagement of client funds.

6. Specifically, McKeny's PTSD significantly limited his mental and emotional resources for coping with the stressors of practicing criminal and domestic law. McKeny adapted by allocating his limited energy and attention to representing his clients in court rather than managing his law practice.

7. McKeny was diagnosed with PTSD in early 2013 and has been actively participating in treatment since his diagnosis. Nonetheless, McKeny's symptoms continue to affect his professional judgment and functioning and additional therapeutic intervention is warranted.

8. McKeny is currently receiving treatment from Dr. Beth Arrigo, Ph.D.

9. McKeny has been cooperative with the State Bar's investigation, acknowledged wrongdoing, and expressed remorse.

10. McKeny has no prior disciplinary record.

11. No client suffered monetary loss or legal prejudice as a result of McKeny's misconduct, and he has taken steps to replenish the shortfall in his trust account.

12. Due to McKeny's PTSD symptoms and their significant impact on his professional judgment, particularly as it relates to properly safeguarding entrusted funds and adequately instructing his employees, there is insufficient evidence to show that he acted with intent or dishonest motive when he engaged in the misconduct described above. Thus, under the unique circumstances of this case McKeny's misuse of client funds did not constitute criminal conduct reflecting adversely on his fitness as a lawyer or conduct involving dishonesty.

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

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension and disbarment.

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

- (a) Intent of the defendant to commit acts where the potential harm was foreseeable;
- (b) Elevation of the defendant's own interest above that of the client;
- (c) Misappropriation or conversion of assets of any kind to which Defendant is not entitled;
- (d) Absence of prior disciplinary offenses;
- (e) Effect of personal or emotional problems on the conduct in question;
- (f) Effect of physical or mental disability or impairment on the conduct in question;
- (g) Timely good faith efforts to make restitution or to rectify consequences of misconduct;
- (h) A pattern of misconduct and multiple offenses;
- (i) Full and free disclosure and cooperative attitude toward the proceedings; and
- (j) Remorse.

3. A censure, reprimand, or admonition would be insufficient discipline because of the significant harm and/or potential harm to clients and the profession caused by Defendant's conduct.

4. McKeny's mishandling and misuse of client funds posed a significant threat of harm to his clients and, if repeated, poses significant potential harm to future clients and the reputation of the profession.

5. In order to protect the public, it is necessary to enter an order of discipline with a significant suspension of McKeny's law license that may be stayed only if McKeny complies with reasonable conditions.

6. The public will be adequately protected by suspension of Defendant's license, part of which may be stayed upon Defendant's compliance with conditions designed to ensure protection of the public and continued compliance with the Rules of Professional Conduct. Among other things, Defendant must demonstrate that his professional judgment or competence is not impaired, and that he is properly maintaining and accounting for any funds received by him in trust or in a fiduciary capacity.

7. Imposition of discipline less severe than suspension would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public about the conduct expected of members of the Bar of this State.

8. Under other circumstances, the misconduct in this case would warrant more serious discipline. The misconduct caused significant potential harm to clients and to the public's confidence in the integrity of the legal profession. However, the hearing panel finds and concludes that the unique circumstances surrounding this case justify lesser discipline than would otherwise be appropriate. The factors that particularly warrant lesser discipline include: Defendant's serious and previously-untreated mental condition, the symptoms of which were directly related to his misconduct; the absence of actual harm to clients; and Defendant's remorse, prompt remedial action, and acknowledgement of the wrongfulness of his conduct.

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

ORDER OF DISCIPLINE

1. The law license of Defendant, William "Trippe" McKeny, is hereby suspended for three years.

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

3. McKeny shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline and Disability Rules.

4. Within 10 days of the effective date of this order, Defendant shall file with the Secretary of the North Carolina State Bar an affidavit certifying he has complied with Rule .0124.

5. After serving one year of the active suspension of his license, Defendant may apply for a stay of the remaining period of suspension upon filing a verified petition with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the North Carolina State Bar Discipline & Disability Rules, McKeny has complied with the following conditions:

- (a) Defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days of notice of the costs being mailed to him at his address of record;
- (b) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during his suspension;

- (c) Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses and shall notify the Bar of any change in address within ten days of such change;
- (d) Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and shall participate in good faith in the State Bar's fee dispute resolution process for any petition pending as of the effective date of this order, or of which he receives notice after the effective date of this Order;
- (e) Defendant shall promptly accept service of all certified mail from the State Bar;
- (f) Defendant shall timely comply with all State Bar Membership and Continuing Legal Education requirements;
- (g) Within 60 days after the effective date of this order, Defendant shall distribute all client funds in his possession to the clients or to the appropriate third parties as authorized by the clients, and shall provide proof of these disbursements to the State Bar;
- (h) Defendant shall complete two hours of continuing legal education in the area of trust account management within the first year after the effective date of this order. Defendant shall provide written proof of successful completion of the CLE courses to the Office of Counsel within ten days of completing the courses;
- (i) Defendant shall continue to comply with all of Dr. Arrigo's treatment recommendations. Such treatments shall be solely at Defendant's expense;
- (j) Prior to or at the time of filing any petition for reinstatement or stay, Defendant shall provide written releases to the North Carolina State Bar Office of Counsel, authorizing all providers from whom he received any recommended treatment during the period of active suspension to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his compliance with his treatment recommendations;
- (k) Defendant shall ensure that each provider from whom he received any recommended treatment during the period of active suspension generates a written report to the State Bar regarding Defendant's participation in and compliance with treatment. The reports shall be provided to the Office of Counsel prior to or at the time Defendant files any petition for stay or reinstatement;

- (l) Within two months prior to filing any petition for reinstatement or stay, Defendant shall be evaluated, at his own expense, by a board certified psychiatrist or psychologist approved by the North Carolina State Bar for the purpose of determining whether Defendant has any mental or psychological impairment, addiction, personality disorder, or other condition or illness;
- (m) Defendant shall obtain a written report from the evaluating clinician described in paragraph 5(l) setting forth: (i) the findings of the examination; (ii) the clinician's opinion as to whether Defendant has any physical or mental impairment, addiction, personality disorder, or other condition or illness that could adversely affect his ability to practice law; and (iii) the clinician's recommendations, if any, regarding ongoing treatment;
- (n) Prior to or at the time of filing his petition, Defendant shall provide a copy of the clinician's report described in paragraph 5(m) to the State Bar, and shall execute a written release authorizing the examining clinician to provide medical records to, and communicate with, the Office of Counsel of the North Carolina State Bar regarding the evaluation and report;
- (o) Defendant shall have the burden of establishing by clear and convincing evidence that, at the time he seeks reinstatement or a stay of the suspension, he does not have any physical or mental impairment, addiction, personality disorder, or other condition or illness that significantly impairs his professional performance, judgment or competence.

6. If Defendant successfully petitions for a stay, the suspension of Defendant's law license shall be stayed as long as Defendant complies and continues to comply with the following conditions:

- (a) Defendant shall comply with all treatment recommendations set forth in the report of the evaluating clinician described in paragraph 5(m), above. Such treatments shall be solely at Defendant's expense.
- (b) Defendant shall provide a written release to the North Carolina State Bar Office of Counsel, authorizing all providers from whom he is receiving any recommended treatment to communicate with the Office of Counsel and to release to the Office of Counsel records relating to his compliance with his treatment recommendations. Defendant shall not revoke these releases.
- (c) Defendant shall ensure that all providers from whom he is receiving any recommended treatment send a quarterly written report to the State Bar confirming that he is complying with all treatment recommendations and is not suffering from any physical or mental condition that significantly impairs his professional judgment. The reports shall be due each January 30, April 30, July 30, and October 30 during the stayed suspension of Defendant's law license.

- (d) Defendant shall arrange for an active member in good standing of the North Carolina State Bar who has been approved by the Office of Counsel and practices in the county of Defendant's practice to serve as Defendant's practice monitor. Before Defendant resumes practicing law, he must supply the Office of Counsel with a letter from the approved monitoring attorney confirming his or her agreement to: (a) meet with McKeny monthly to review McKeny's cases; (b) provide supervision to ensure that McKeny timely and completely handles client matters; and (c) provide written quarterly reports of this supervision to the Office of Counsel on the following dates as they occur during the duration of the stay of the suspension: January 30, April 30, July 30, and October 30. McKeny will be responsible for the cost, if any, charged by the monitor for this supervision.
- (e) If at any time during the period of the stay Defendant resumes any form of legal practice that involves handling entrusted funds:
- i. Defendant shall open a new trust account and have a CPA audit the new trust account on a quarterly basis to ensure Defendant's compliance with the Rules of Professional Conduct.
 - ii. The CPA must report quarterly to the Office of Counsel concerning the compliance of Defendant's trust account with the Rules of Professional Conduct, including but not limited to any accounting irregularities and any deviance from the requirements of the Rules of Professional Conduct, with a copy of the report sent simultaneously to Defendant. The CPA's reports are due no later than 30 days after the end of each quarter (first quarter's report due April 30, second quarter's report due July 30, third quarter's report due October 30, and fourth quarter's report due January 30). It is Defendant's sole responsibility to ensure the CPA completes and submits the reports as required herein;
 - iii. If any of the CPA reports referenced in paragraph (e)(ii) above note any irregularities or deficiencies, Defendant shall take all remedial action necessary to bring the trust account into compliance with the Rules of Professional Conduct and shall provide proof of the remedial action and compliance to the Office of Counsel of the State Bar and to the CPA within 30 days of the date of the CPA's report;
 - iv. If any of the CPA reports referenced in paragraph (e)(ii) above note any irregularities or deficiencies in Defendant's handling of entrusted funds, the CPA shall prepare and submit to the Office of Counsel a subsequent report regarding whether Defendant's remedial actions were sufficient and whether Defendant's account(s) has been brought into compliance with the Rules of Professional Conduct. The CPA shall provide this report regarding remedial measures to the Office of Counsel within 30 days of Defendant's provision of proof of remedial action. It is Defendant's sole responsibility to ensure the CPA completes and submits the reports as required herein.

- (f) All CPA evaluations, reports, and services referred to herein will be completed and submitted at Defendant's sole expense;
- (g) Failure of the CPA to submit any report required by this Order shall be grounds to lift the stay and activate the suspension;
- (h) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during the stayed suspension;
- (i) Defendant shall keep the North Carolina State Bar Membership Department advised of his current business and home addresses and shall notify the Bar of any change in address within ten days of such change;
- (j) Defendant shall respond to all communications from the North Carolina State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner, and shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which she receives notice after the effective date of this Order;
- (k) Defendant shall promptly accept service of all certified mail from the State Bar; and
- (l) Defendant shall timely comply with all State Bar Membership and Continuing Legal Education requirements.

7. If Defendant fails to comply with any of the conditions of the stayed suspension provided in paragraph 6(a) – (l) above, the stay of the suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

8. If Defendant does not seek a stay of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraphs 5(a) – (o) above and the provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125 before seeking reinstatement of his license to practice law, and must provide in his petition for reinstatement clear, cogent, and convincing evidence showing his compliance therewith.

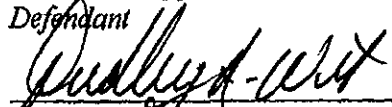
9. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout the period of the stayed suspension and until all conditions set forth in paragraph 5 above are satisfied.

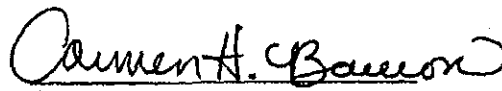
10. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which Defendant shall pay within thirty days of service of the notice of costs upon Defendant.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this is the 21st day of November, 2013.


Sharon B. Alexander, Chair
Hearing Panel

CONSENTED TO BY:


William "Trippe" McKeny
Defendant

Dudley A. Witt
Attorney for Defendant


Carmen H. Bannon
Attorney for Plaintiff