



STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
21 DHC 2

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

KAREN C. WRIGHT, Attorney,

Defendant

ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of the Chair, Shannon R. Joseph, and members Margaret M. Hunt and Ron C. Brinson upon Plaintiff's Motion for Order of Discipline. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant Karen C. Wright (hereinafter Defendant or Wright) was not represented and did not file any written submissions in response to Plaintiff's Motion for Order of Discipline. After review of the pleadings herein and pursuant to 27 N.C. Admin. Code 1B.0115(g), the Hearing Panel determines it is appropriate to grant Plaintiff's Motion for Order of Discipline.

THEREFORE, based on the pleadings and the admissions established by Defendant's default pursuant to 27 N.C. Admin. Code 1B.0115(f), the Hearing Panel hereby finds by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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).

2. Defendant, Karen C. Wright ("Wright"), was admitted to the North Carolina State Bar in 1990, 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 North Carolina Rules of Professional Conduct.

3. The Complaint in this action was filed on January 5, 2021.

4. Defendant was served with the Summons and Complaint on January 13, 2021.

5. Defendant failed to file an answer or any responsive pleading by the deadline established by 27 N.C. Admin. Code 1B.0115(c).

6. Upon Plaintiff's motion, default was entered against Defendant by the Secretary of the State Bar on April 27, 2021.

7. Plaintiff filed a Motion for Order of Discipline on May 21, 2021 and served the motion on Defendant on that date by e-mail pursuant to the agreement of the parties.

8. During part of the relevant periods referred to herein, Wright was an inactive member of the North Carolina State Bar residing in Shelby, Cleveland County, North Carolina.

9. Wright's inactive status with the State Bar resulted from the Order of Discipline in 19 DHC 15 which suspended Wright's law license for five years. The Order of Discipline was filed and served on November 18, 2019 and effective on December 18, 2019.

10. Wright was properly served with process in this matter and this matter came before the Hearing Panel with due notice to all parties.

11. In April 2011, estate file 11E297 for the Estate of Teala McSwain ("the Estate") was opened in the Cleveland County Clerk's Office ("the Clerk").

12. Ethel Mozelle McSwain ("Ethel") was Teala McSwain's mother and the sole heir of the Estate.

13. Pursuant to power of attorney granted by Ethel to her son, Elbert Ted McSwain ("Ted"), Ted retained Wright to assist with administration of the Estate.

14. When Ted retained Wright, she told him her fees for administering the Estate would be about \$3,000.00 but no more than \$4,000.00.

15. On or about April 27, 2011, Ethel renounced her right to be appointed to administer the Estate and requested that Wright be appointed administrator of the Estate.

16. On or about April 27, 2011, Wright applied for and was issued Letters of Administration for the Estate, becoming administrator of the Estate.

17. According to Wright's Statement of time and costs ("Wright's Statement"), from the first entry on April 25, 2011 through April 20, 2012, Wright spent 25.25 hours in the administration and representation of the Estate and incurred \$40.00 in costs.

18. According to Wright's Statement, she charged \$200.00 per hour for her time expended for the Estate.

19. Based on Wright's Statement, Wright was due \$5,090.00 for fees and costs for administration of the Estate for the period of April 25, 2011 through April 20, 2012.

20. During the course of her administration of the Estate, Wright was provided funds for the Estate belonging to the Estate and/or Ethel.

21. Between April 25, 2011 and April 20, 2012, Wright disbursed to herself a total of \$12,600.00 from funds Wright had been provided for the Estate.

22. The \$12,600.00 Wright disbursed to herself between April 25, 2011 and April 20, 2012 from funds Wright had been provided for the Estate exceeded the amount she had told Ted she would be owed in fees for administering the Estate and exceeded the amount justified by Wright's Statement.

23. Wright embezzled at least \$7,510.00 of funds belonging to the Estate and/or Ethel between April 25, 2011 and April 20, 2012.

24. In January 2020, Wright submitted to the Clerk documents for the Estate, including the following:

- a. Annual Accounts for April 27, 2011 through April 26, 2019, with an Annual Account for each of the following accounting periods: April 27, 2011 through April 26, 2012; April 27, 2012 through April 26, 2013; April 27, 2013 through April 26, 2014; April 27, 2014 through April 26, 2015; April 27, 2015 through April 26, 2016; April 27, 2016 through April 26, 2017; April 27, 2017 through April 26, 2018; and April 27, 2018 through April 26, 2019 (hereinafter "the Annual Accounts");
- b. Motion for Payment of Commissions and Fees; and
- c. Trust Account Ledger purporting to show the deposits into and disbursements from her trust account for the Estate.

25. The Trust Account Ledger that Wright submitted to the Clerk in January 2020 was false in that it failed to show all deposits and disbursements of funds for the Estate in Wright's trust account, including failing to show Wright's disbursement of funds to herself from the Estate's funds in 2011 and 2012.

26. The Trust Account Ledger that Wright submitted to the Clerk in January 2020 contained false statements of the balance in Wright's trust account for the Estate as of May 4, 2011 and forward through the September 20, 2013 entry on the ledger which purported to be the balance for the Estate in her trust account through January 16, 2020.

27. Wright knew the Trust Account Ledger that she submitted to the Clerk in January 2020 was false in that it failed to show all deposits and disbursements of funds for the Estate in Wright's trust account, including failing to show the funds Wright had disbursed to herself from the Estate's funds in 2011 and 2012.

28. Wright knew the Trust Account Ledger that she submitted to the Clerk in January 2020 was false in that it contained false statements of the balance in Wright's trust account for the

Estate as of May 4, 2011 and forward through the September 20, 2013 entry on the ledger which purported to be the balance for the Estate in her trust account through January 16, 2020.

29. The Annual Accounts that Wright submitted to the Clerk in January 2020 were false in that the balance each reported as held in Wright's trust account for the Estate at the end of each respective period was higher than the actual balance Wright had in her trust account for the Estate at that time.

30. The Annual Account that Wright submitted to the Clerk in January 2020 for the accounting period of April 26, 2011 through April 27, 2012 was false in that it failed to show all deposits and disbursements of funds for the Estate in Wright's trust account, including failing to show Wright's disbursement of funds to herself from the Estate's funds during that time period.

31. Wright knowingly, willfully, and designedly made the false statements regarding the balance held for the Estate in Wright's trust account on each of the Annual Accounts she submitted for the Estate in January 2020.

32. N.C. Gen. Stat. § 28A-21-1 requires a personal representative for an estate to file under oath an annual account of the property for the estate received by the personal representative, investments of estate property by the personal representative, and receipts and disbursements by the personal representative for the year.

33. Each of the Annual Accounts that Wright submitted to the Clerk in January 2020 stated "I, the undersigned representative, being first duly sworn, say that the following is a complete and accurate account of my receipts, disbursements and other transactions as representative of this estate or trust."

34. Each of the Annual Accounts that Wright submitted to the Clerk in January 2020 was signed by Wright in the field for "Signature of Fiduciary" and was dated and signed by Carrie T. Howell, Assistant Clerk of Superior Court, in the fields under the heading "Sworn/Affirmed and Subscribed to Before Me."

35. During the wind-down period following the effective date of Wright's suspension, attorney A. Susan Biggers ("Biggers") undertook representation of Wright's former client, James Boyte Lutz, in his role as personal representative of the Estate of E. Lutz.

36. By letter dated January 8, 2020, sent to counsel for Wright, Biggers asked Wright for the client file and trust account ledger for James Boyte Lutz with respect to the Estate of E. Lutz ("the Lutz client file and ledger").

37. Wright did not provide the Lutz client file and ledger to Biggers in January 2020.

38. On or about January 30, 2020, Biggers sent Wright another letter, in which she requested Wright deliver to her the Lutz client file and ledger within the next ten days.

39. Wright did not provide the Lutz client file and ledger to Biggers within ten days of Biggers' January 30, 2020 letter, and still had not done so as of March 9, 2020.

40. On or about March 9, 2020, Biggers communicated with Wright, again requesting Wright deliver to her the Lutz client file and ledger.

41. Wright subsequently provided Biggers the Lutz client file and ledger in March 2020.

Based upon the pleadings, Defendant's default, and the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

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

2. Defendant has failed to file any responsive pleading in this matter and a proper entry of default has been entered by the Secretary of the State Bar.

3. 27 N.C. Admin. Code 1B.0115(f) provides that allegations contained in the complaint will be deemed admitted if the defendant fails to file an answer. The allegations of Plaintiff's complaint are deemed admitted.

4. 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) for violation of the Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By disbursing to herself at least \$7,510.00 more than she was entitled to for fees and costs for administering the Estate between April 25, 2011 and April 20, 2012, Wright embezzled entrusted property belonging to the Estate and/or Ethel in violation of Rule 1.15-2(a), (k), and (n) and Rule 8.4(b) and (c);
- (b) By knowingly making false statements regarding receipts, disbursements and trust account balances on the Trust Account Ledger and Annual Accounts Wright submitted to the Clerk in January 2020, Wright knowingly made false statements of material fact to a tribunal in violation of Rule 3.3(a), engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (c) By knowingly, willfully and designedly making under oath false statements regarding receipts, disbursements and trust account balances on the Annual Accounts Wright submitted to the Clerk in January 2020 for the Estate, Wright committed perjury and thereby engaged in a criminal act that reflects adversely on

the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b); and

- (d) By failing to promptly provide new counsel for her client James Boyte Lutz with the client's file and trust account ledger, Wright failed to take steps to the extent reasonably practicable to protect a client's interests in violation of Rule 1.16(d).

5. 27 N.C. Admin. Code 1B.0115(g)(2)(B) provides that, upon entry of the defendant's default by the Secretary, the State Bar counsel may then apply to the hearing panel for a default order imposing discipline. This provision states, "Upon such motion, the hearing panel shall enter an order making findings of fact and conclusions of law as established by the facts deemed admitted by the default. If such facts provide sufficient basis, the hearing panel shall enter an order imposing the discipline deemed to be appropriate." The hearing panel may, but is not required, to hear additional evidence before entering an order of discipline. 27 N.C. Admin. Code 1B.0115(g)(2)(B).

6. Defendant knowingly and willfully misappropriated at least \$7,510.00 of funds belonging to the Estate and/or Ethel between April 25, 2011 and April 20, 2012.

7. 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.

8. Defendant knowingly and willfully made false statements under oath on annual accounts she was statutorily required to file under oath.

9. Knowingly and intentionally making false statements under any oath administered or concerning any matter where the person is lawfully required to be sworn or affirmed constitutes the crime of perjury under N.C. Gen. Stat. § 14-209. Perjury is a felony.

10. Additional evidence is not necessary to determine the appropriate discipline in this case.

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 of fact in paragraphs 1 – 41 above are reincorporated as if set forth herein.

2. Defendant embezzled funds that should have been available for Estate of Teala McSwain and for the benefit of the Estate's sole beneficiary Ethel Mozelle McSwain and converted those funds to her own use, causing significant harm in the deprivation of those funds to the Estate and to Ms. McSwain.

3. Defendant betrayed the trust of Ted McSwain, who had retained her to assist with the administration of the Estate for his mother Ethel, by acting contrary to her statement to him that her fees would not exceed \$4,000.00 and by embezzling funds entrusted to her for the Estate, causing potential significant harm to Ted McSwain and to the legal profession through the potential negative impact upon Mr. McSwain's view of attorneys, undermining trust and confidence in lawyers and the legal system.

4. Defendant knowingly and intentionally made false statements under oath on the annual accounts she submitted to the Clerk in January 2020 for the Estate of Teala McSwain that served to hide disbursements she had made to herself from the Estate's funds, causing significant harm to the administration of justice in the resulting burden placed upon the Clerk's ability to accurately perform her statutory duties with respect to the Estate.

5. Defendant's 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 by attorneys tends to bring the legal profession into disrepute.

6. Defendant, by engaging in conduct involving embezzlement, false statements, and perjury, has shown herself to be untrustworthy.

7. Defendant's failure to promptly turn over the client file and ledger to new counsel for her former client James Boyte Lutz caused significant harm to her former client who needed that documentation to proceed in administering the Estate of E. Lutz.

8. Defendant was suspended from the practice of law for five years in 19 DHC 15 for misconduct including neglect of estate matters, including the E. Lutz estate referenced above and the M. White and V. Grigg estates referenced below, as well as other misconduct such as failing to promptly disburse entrusted funds, collection of illegal and excessive fees, improper disbursements exceeding the amount in trust for the pertinent matter, and failure to keep accurate records.

9. Defendant has a prior admonition issued in April 2010 for her neglect and failure to communicate with respect to Estate of M. White, file no. 07 E 527. Defendant filed the overdue account and made two significant distributions to the two beneficiaries while the grievance was pending but then filed no subsequent accounts until 2018.

10. Defendant has a prior reprimand issued in April 2014 for her neglect and failure to communicate with respect to the estates of the parents of D.G., one of which was the Estate of V. Grigg, 09 E 756.

11. Defendant has been licensed since 1990.

12. The Hearing Panel finds by clear, cogent, and convincing evidence any additional facts that may be contained in the conclusions regarding discipline set out below.

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. Admin. Code 1B.0116(f)(1), (2) and (3) and determined that the following factors are applicable:

27 N.C. Admin. Code 1B.0116(f)(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;
- c. Factor (D), Elevation of Defendant's own interest above those of her clients;
- d. Factor (E), Negative impact of Defendant's actions on client's or public's perception of the profession;
- e. Factor (F), Negative impact of Defendant's actions on the administration of justice;
- f. Factor (G), Effect of Defendant's conduct on third parties;
- g. Factor (I), Acts of dishonesty, misrepresentation, deceit or fabrication;

27 N.C. Admin. Code 1B.0116(f)(2)

- h. Factor (A), Acts of dishonesty, misrepresentation, deceit or fabrication;
- i. 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;
- j. Factor (D), Commission of a felony;

27 N.C. Admin. Code 1B.0116(f)(3)

- k. Factor (A), Prior record of disciplinary offenses;
- l. Factor (C), Dishonest or selfish motive;
- m. Factor (F), A pattern of misconduct;

- n. Factor (G), Multiple offenses;
- o. Factor (K), Absence of full and free disclosure to the Hearing Panel;
- p. Factor (O), Refusal to acknowledge wrongful nature of conduct;
- q. Factor (R), Vulnerability of the victims; and
- r. Factor (S), Substantial degree of experience in the practice of law.

3. The factors present under 27 N.C. Admin. Code 1B.0116(f)(1) and (2) support imposition of disbarment in this case.

4. Defendant caused significant harm and significant potential harm Defendant's clients, the public, the administration of justice, and the profession.

5. Proper maintenance and management of entrusted funds is a cornerstone of the public's trust in the legal profession. Embezzlement is one of the most serious offenses an attorney can commit, betraying the client's trust in the attorney and the public's trust in the legal profession. Defendant's misappropriation caused harm to the standing of the legal profession, undermining trust and confidence in lawyers and the legal system.

6. Defendant's commission of multiple 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. Defendant, by engaging in conduct involving embezzlement, false statements, and perjury, has shown herself to be untrustworthy. Furthermore, Defendant has engaged in a pervasive pattern of misconduct encompassing several instances of prior professional discipline. These circumstances indicate that only the most serious of discipline can adequately protect the public from future transgressions by Defendant.

8. 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 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.

9. 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 engaged in multiple criminal acts reflecting adversely on her honesty, trustworthiness or fitness as a lawyer, and abused the trust placed in her by her clients and as a fiduciary. Misappropriation of entrusted funds and perjury are

among the most serious types of misconduct in which an attorney can engage, and demonstrate the attorney is not trustworthy;

- b. 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
- c. 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, Karen C. Wright, is hereby DISBARRED from the practice of law.
2. Defendant shall surrender her North Carolina law 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 fees and the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the fees and costs within 30 days of service upon her of the statement of fees and costs by the Secretary.
4. Defendant shall comply with all provisions of 27 N.C. Admin. Code 1B.0128 of the North Carolina State Bar Discipline & Disability Rules.
5. Within 15 days of the effective date of this Order Defendant shall provide the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files. This address must be a physical address at which Defendant maintains a consistent presence and receives mail. Defendant must keep this information current with the State Bar, providing updated information to the State Bar within 15 days of any change.
6. Defendant shall promptly return client files in her possession, custody, or control to clients upon request, within 15 days of receipt of such request. Defendant will be deemed to have received any such request 3 days after the date such request is sent to Defendant, if the request is sent to the address Defendant provided the State Bar pursuant to the preceding paragraph or to Defendant's address of record with the State Bar if Defendant fails to provide another address pursuant to the preceding paragraph.

7. Pursuant to N.C. Gen. Stat. § 84-28(c), the following conditions precedent to any reinstatement are imposed:

- a. Defendant shall have reimbursed \$7,510.00 to the appropriate and surviving heir(s) of Teala McSwain. Provided, however, that if the Client Security Fund made any reimbursement with respect to the embezzlement set out in the complaint in this case, then Defendant shall have reimbursed the Client Security Fund for any amount paid, and, if that amount was less than \$7,510.00, shall have reimbursed the difference between \$7,510.00 and the amount paid by the Client Security Fund to the appropriate and surviving heir(s) of Teala McSwain; and
- b. Defendant shall have provided any requested client file within 15 days of receipt of the request for the file.

gr Signed by the Chair with the consent of the other Hearing Panel members, this the
day of June, 2021.



Shannon R. Joseph, Chair
Disciplinary Hearing Panel