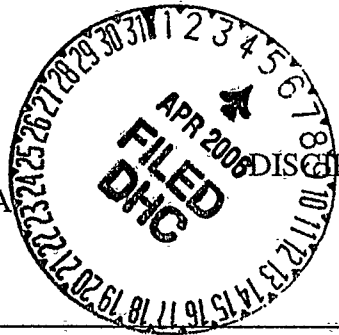


27291

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
05 DHC 19

THE NORTH CAROLINA STATE BAR,)
) Plaintiff)
) v.)
) CONSENT ORDER OF)
) DISCIPLINE)
 JOHN CHARLES MCNEILL, Attorney)
) Defendant)

THIS MATTER came on to be considered before a hearing committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, Karen Eady-Williams, and Marguerite P. Watts. The Defendant, John Charles McNeill, was represented by Alan M. Schneider. Margaret Cloutier represented the Plaintiff. Both parties stipulate and agree to the findings of fact and conclusions of law recited herein and to the order of discipline imposed. Defendant also stipulates that he waives his right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order. Based upon the consent of the parties, the hearing committee hereby enters the following:

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, John Charles McNeill, ("McNeill"), was admitted to the North Carolina State Bar on March 18, 2000, 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 all or a portion of the period relevant hereto, McNeill maintained a law office in Asheville, Buncombe County, North Carolina.
4. McNeill has knowingly and voluntarily waived his right to a formal hearing.
5. McNeill was properly served with process herein.

6. On or about August 29, 2004 an Asheville police officer stopped Defendant for careless driving. The officer found cocaine in Defendant's car and on his person.

7. Cocaine is a Schedule II controlled substance illegal to possess, manufacture, sell or deliver according to North Carolina Controlled Substance Act, N.C.G.S. 90-95(A)(1).

8. On February 7, 2005, McNeill tendered a plea of guilty in the Superior Court of Buncombe County, North Carolina to one count of Possession with Intent to Manufacture Sell and Deliver Cocaine and two counts of Maintaining a Vehicle or Dwelling for Controlled Substances. All three counts are felonies. Defendant's plea was accepted by the court and Defendant was given a six to eight month suspended sentence and was placed on probation. McNeill's plea arrangement provides that he participate in the drug court program in New Hanover County, and that upon one year's sobriety following his successful completion of that program, the State will not oppose the withdrawal of McNeill's guilty plea and will dismiss the charges.

Based upon the foregoing Findings of Fact, the hearing committee hereby enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the Defendant, John Charles McNeill, and the subject matter of this proceeding.

2. McNeill's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Section 84-28(b) as follows:

a. By knowingly possessing cocaine, McNeill engaged in criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b).

FINDINGS OF FACT REGARDING DISCIPLINE

1. McNeill's misconduct is mitigated by the following factors:

a. absence of a prior disciplinary record;

b. absence of a dishonest or selfish motive;

c. full and free disclosure and cooperative attitude toward the Bar proceedings;

d. active and successful treatment and counseling for substance addiction; and

e. remorse.

2. There are no aggravating factors.
3. McNeill successfully completed a 30-day residential substance abuse treatment program at Sierra Tucson in Arizona as well as a 90-day treatment program at Ocean Recovery in Newport Beach, California.
4. Upon discharge from the treatment programs, McNeill voluntarily entered into a three-year recovery contract with the North Carolina State Bar's Lawyer's Assistance Program (LAP).
5. To date, McNeill has fully complied with his LAP recovery contract and has made excellent progress in addressing his substance addiction. Further, McNeill has successfully completed the drug court program in New Hanover County.

CONCLUSIONS REGARDING DISCIPLINE

1. McNeill's misconduct, although occurring outside the practice of law, nevertheless adversely affected the standing of the legal profession in the eyes of the public and substantial discipline is warranted to assure the public that the Bar will not tolerate violations of the criminal laws by attorneys in this State.
2. Because of the nature of McNeill's misconduct, the DHC has determined that a censure would be insufficient discipline to protect the public but that, given McNeill's progress in receiving treatment for his addiction, disbarment is unnecessary. Suspension of McNeill's license is the most appropriate discipline to protect the public; however, should a portion of the suspension be stayed conditions should be imposed to ensure that McNeill continues receiving treatment for his substance addiction which will help ensure that he does not engage in future violations of the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of law and with the consent of the parties, the hearing committee enters the following:

ORDER OF DISCIPLINE

1. The law license of the Defendant, John Charles McNeill, is hereby suspended for three years. The suspension of Defendant's license shall be effective as of May 12, 2005, the date of service of the Interim Order of Suspension entered in this matter.
2. After serving fifteen months of the active suspension of his license from the May 12, 2005 effective date of this order, McNeill may apply for a stay of the remaining term of the suspension by filing a petition with the Secretary of the North Carolina State Bar demonstrating the following by clear, cogent, and convincing evidence:
 - a. That during the period of suspension of his license McNeill has complied with all treatments prescribed by his psychiatrist or other mental health professional for his

substance addiction and any other mental health problems diagnosed by such medical care providers, that McNeill participated in or had his treatment supervised by an abstinence-based program of his choice that was approved by the Office of Counsel of the North Carolina State Bar, and that McNeill complied with all terms of the program.

b. That within thirty days of any proposed effective date of such stay McNeill has provided the Office of Counsel with releases authorizing the Counsel or her designated representative to contact the treatment program and/or his medical care providers to determine if McNeill is complying with all requirements imposed by the program and/or providers. Such releases will not be revoked during the period of the stay.

c. That McNeill paid the costs of this proceeding within thirty days of service of the statement of costs upon him.

d. That McNeill complied with the provisions of 27 N.C.A.C. 1B, §.0124 regarding the winding down of his law practice and submitted his license and membership card within thirty days of this order.

3. If McNeill successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as he complies with the following conditions:

a. McNeill will provide the Office of Counsel with a current working street address (not a P.O. Box) and will advise the Bar in writing of any changes in his address within ten days of all changes.

b. McNeill will respond to all letters of notice and requests for information from the N.C. State Bar by the deadlines stated in the communication or, if none, within fifteen days of receipt of the communication by defendant.

c. McNeill will timely pay all State Bar membership dues and Client Security Fund assessments.

d. McNeill will timely comply with his continuing legal education requirements and will pay all fees and costs assessed by the applicable deadline.

e. McNeill will not violate any law of the United States or the laws of any state.

f. McNeill will not violate any provision of the Rules of Professional Conduct.

g. McNeill shall comply with all treatments prescribed by his psychiatrist or other mental health professional for his substance addiction and any other mental health problems diagnosed by such medical care providers. Such treatments shall be solely at McNeill's expense. McNeill shall, at his own expense, participate in or have his treatment supervised by an abstinence-based program of his choice that is approved by the Office of Counsel of the North Carolina State Bar, which approval shall not unreasonably be withheld. McNeill will comply with all terms of the program.

h. McNeill will provide the Office of Counsel with a release authorizing the Counsel or her designated representative to contact the treatment program and/or his medical care providers to determine if he is complying with all requirements imposed by the program and/or providers. McNeill shall not revoke the release at any time during the period of stayed suspension.

i. McNeill shall ensure that the Office of Counsel receives written reports from the treatment program confirming that he is complying with all requirements imposed by the program. The reports shall be due in the Office of Counsel on each January 1, April 1, July 1 and October 1 throughout the period of stayed suspension.

4. If McNeill does not seek a stay of this suspension or if some part of the suspension is stayed and thereafter the stay is revoked, before seeking reinstatement of his license to practice law, McNeill must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

a. Submitted his license and membership card to the Secretary of the N.C. State Bar within thirty days after the date of this order or any order activating the suspension of his law license.

b. Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following this order or any order activating the suspension of his law license.

c. Demonstrated that he is not suffering from any addiction, disability or condition that would impair his ability to competently engage in the practice of law.

d. Demonstrated that he has abstained from all alcohol or illicit drug use or consumption and has not taken any prescription drugs or controlled substances other than as authorized by his treating physician for at least one year next preceding the filing of his petition for reinstatement. This requirement will apply regardless of when any stay is lifted and regardless of whether enforcement of this provision would extend the period of suspension of McNeill's law license beyond the period set out herein.

e. Provided the Office of Counsel with releases to obtain and review his medical records, including psychological and mental health evaluations, and to interview his medical care providers.

f. Paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar.

g. Complied with all continuing legal education requirements imposed by the North Carolina State Bar.

5. McNeill shall pay the costs of this proceeding within thirty days of service of the statement of costs upon him by the Secretary of the State Bar.

Signed by the Chair of the Hearing Committee with the knowledge and consent of the other Committee members:

This 5th day of April, 2006

F. Lane Williamson

F. Lane Williamson, Chair,
Disciplinary Hearing Committee

Seen and consented to:

Alan M. Schneider

Alan Schneider
Defendant's Attorney

John Charles McNeill

John Charles McNeill
Defendant

Margaret Cloutier

Margaret Cloutier
Plaintiff's Attorney