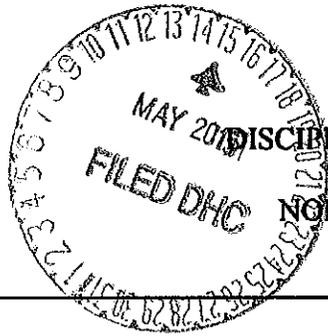


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 BSR 1 & 13 DHC 4

IN THE MATTER OF)

Petition for Stay of Suspension of)
WILLIAM TRIPPE MCKENY, Attorney)

ORDER DENYING
PETITION FOR STAY

THIS MATTER was heard on 1 May 2015 by a Panel of the Disciplinary Hearing Commission to consider the Petition for Stay filed 12 February 2015 by Petitioner, William Trippe McKeny. Petitioner was present and represented himself. The North Carolina State Bar was represented by Carmen Hoyme Bannon. The Panel consisted of Chair Fred M. Morelock and members Irvin W. Hankins III and Patti Head. Based upon the record and the evidence presented, the Hearing Panel makes the following:

FINDINGS OF FACT

1. On 21 November 2013, an Order of Discipline was entered suspending Petitioner William Trippe McKeny from the practice of law for three years effective 30 days from the date the order was served on McKeny. (*State Bar v. McKeny*, 13 DHC 4, 11/21/2013 Order of Discipline).
2. The effective date of the Order of Discipline was 25 December 2013.
3. The Order of Discipline provided that McKeny could apply for a stay of any remaining period of suspension after serving one year of the active suspension and upon compliance with conditions stated in the Order. McKeny was required to comply with the procedures set forth in 27 N.C.A.C. 1B § .0125(b) (hereafter "Rule .0125") in applying for a stay.
4. McKeny filed a Petition for Stay on 12 February 2015, and the State Bar filed an Objection to Petition for Stay on 13 March 2014. A hearing before the DHC was scheduled pursuant to Rule .0125(b)(7).
5. To be eligible for a stay of the remaining period of suspension, McKeny had the burden of establishing by clear, cogent, and convincing evidence: (a) each of the reinstatement requirements set forth in Rule .0125(b)(3); and (b) that he complied with the other conditions set forth in the Order of Discipline.

6. Among the reinstatement requirements set forth in Rule .0125(b)(3) is that a petitioner must prove compliance with 27 N.C.A.C. 1B § .0124 (“Obligations of Disbarred or Suspended Attorneys”), which governs a suspended lawyer’s wind-down of his law practice during the 30 days before the suspension takes effect.

13. Specifically, Rule .0124 requires a suspended attorney to promptly notify by certified mail all clients with pending matters that he has been suspended and the reasons for the suspension. The suspended lawyer must also properly withdraw from all pending matters and “take reasonable steps to avoid foreseeable prejudice to the rights of his or her clients, including promptly delivering all file materials and property to which the clients are entitled.” Rule .0124 expressly requires the suspended lawyer to retain documentation of his compliance with these wind-down requirements.

14. McKeny moved away from North Carolina before his law license was suspended. As of September 2013, he was residing in Colorado and returning to North Carolina occasionally.

15. McKeny’s 30-day wind-down period ran from 25 November 2013 through 25 December 2013. McKeny was in Colorado from 5 November 2013 through approximately 13 December 2013, when he went to his mother’s house in West Virginia. He remained out of state throughout his wind-down period.

16. McKeny had a large case load and was counsel of record on many pending cases—civil and criminal, in district and superior courts—at the time his license was suspended.

17. McKeny did not properly withdraw from his pending cases. He did not file motions to withdraw, nor did he seek to have his cases calendared so that he could orally move to withdraw.

18. On or about 19 December 2013 (six days before his suspension was effective, and six weeks after he left North Carolina), McKeny sent a notification letter to some, but not all, of his clients via regular mail. The letter indicated that McKeny’s law license had been suspended, but did not state the reasons for the suspension.

19. McKeny did not promptly refund unearned fees to all clients. Although McKeny acknowledged that at least 18 of his clients were entitled to refunds, three of whom were owed amounts exceeding \$3,000.00, he did not begin issuing refunds until September 2014.

20. McKeny did not promptly deliver to all clients file materials to which they were entitled. For example, McKeny represented Michael Paul Miller in an appeal that was pending before the North Carolina Supreme Court at the time he was suspended. McKeny did not send Miller his file until March 2015, over a year after McKeny was suspended.

21. At the close of Petitioner’s evidence, the State Bar made a motion to dismiss the petition on the grounds that the evidence presented by McKeny demonstrated his failure to

properly wind-down and thus established his ineligibility for a stay. For the reasons stated herein, that motion was granted.

Based on the foregoing Findings of Fact, the Hearing Panel makes the following

CONCLUSIONS OF LAW

1. All parties are properly before the Disciplinary Hearing Commission and the Disciplinary Hearing Commission has jurisdiction over Petitioner, William Trippe McKeny, and the subject matter of this proceeding.

2. McKeny is not eligible for a stay of suspension because he did not comply with the wind-down requirements set forth in 27 N.C.A.C. 1B § .0124. Specifically:

- (a) McKeny's notification to clients regarding his suspension was not prompt, in that he left North Carolina six weeks before he notified clients that he would no longer be representing them;
- (b) McKeny did not notify all clients with pending matters of his suspension;
- (c) McKeny did not notify clients of the reasons for his suspension;
- (d) McKeny did not send notice of his suspension to clients via certified mail;
- (e) McKeny did not properly withdraw from all pending matters;
- (f) McKeny did not promptly deliver to all clients the file materials and unearned fees to which they were entitled.

3. McKeny's non-compliance with the wind-down requirements was neither minor nor technical.

4. "[P]roof of compliance [with wind-down requirements] will be a condition precedent to consideration of any petition for reinstatement." 27 N.C.A.C. 1B, § .0124(e). Accordingly, it is unnecessary for the Hearing Panel to make findings and conclusions regarding McKeny's compliance or non-compliance with the other conditions set forth in the 21 November 2013 Order of Discipline, as McKeny's non-compliance with the wind-down requirements renders him ineligible for a stay.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel enters the following

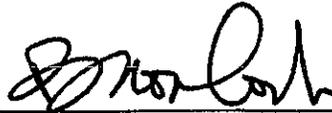
ORDER

It is hereby ordered that:

- (a) The State Bar's motion to dismiss is allowed and Petitioner's Petition for Stay is DENIED; and

(b) Petitioner is taxed with the costs and administrative fees, which Petitioner shall pay within 180 days of service upon him of the statement of costs by the Secretary.

Signed by the undersigned Chair with the knowledge and consent of the other members of the Hearing Panel, this 15th day of May, 2015.



FRED M. MORELOCK, CHAIR
HEARING PANEL