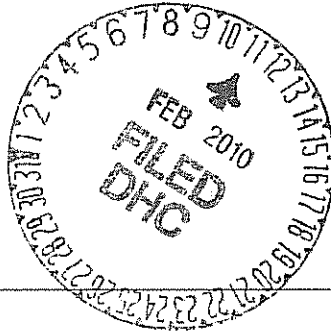


NORTH CAROLINA

WAKE COUNTY



BEFORE THE DISCIPLINARY
HEARING COMMISSION OF
THE NC STATE BAR
04 DHC 21R

IN RE: PETITION FOR REINSTATEMENT OF)

MICHAEL H. McGEE,
Petitioner)

ORDER DENYING
REINSTATEMENT

This matter was heard on the 29th day of January 2010 via telephone conference call by a panel of the Disciplinary Hearing Commission composed of Theodore C. Edwards, II, Chair; C. Colon Willoughby, Jr. and Michael J. Houser. The petitioner, Michael H. McGee, represented himself. The State Bar was represented by A. Root Edmonson. Based upon Petitioner's Petition for Reinstatement to Active Status filed September 3, 2009, the Waiver of Hearing and Consent to Judgment filed by Petitioner on January 20, 2010, the Order of Discipline filed herein on August 24, 2004, the Order Denying Reinstatement filed in this matter on March 7, 2008 and the arguments of Counsel, the panel hereby enters the following:

Findings of Facts

1. Michael H. McGee (hereinafter, "McGee"), was admitted to the North Carolina State Bar on 14 August 1971, and was an attorney at law licensed to practice in North Carolina who actively engaged in the private practice of law in the city of Charlotte, Mecklenburg County, North Carolina, until his suspension from the practice of law that became effective on October 1, 2004.

2. The August 24, 2004 Order of Discipline (hereinafter, "Order of Discipline") suspending McGee's license provided that, after three years, McGee could petition to have the remaining period of his five year suspension stayed if he met the following conditions:

- (a) The Defendant timely and properly submitted his license and membership card to the Secretary, complied with the winding down provisions of the rules, and paid the costs of this proceeding;
- (b) The Defendant shows by clear, cogent, and convincing evidence that the Defendant has reformed and presently possesses the moral qualifications for admission to practice law and that permitting the Defendant to resume the practice of law will not be detrimental to the integrity and standing of the Bar, the administration of justice, or the public interest;
- (c) The Defendant has complied with all present and any future orders of the DHC;
- (d) The Defendant has not engaged in the unauthorized practice of law during the period of suspension;
- (e) The Defendant has not been found in contempt of any court or agency during the period of suspension;
- (f) The Defendant has not engaged in any conduct during the period of suspension that would constitute grounds for discipline under N.C. Gen. Stat. § 84-28;
- (g) The Defendant understands the then current Rules of Professional Conduct;
- (h) The Defendant paid all mandatory Bar dues and assessments, including State Bar and District Bar dues and Client Security Fund assessments, and fully complied with all requirements of the State Bar Continuing Legal Education Department that were due and owing at the time of suspension;
- (i) The Defendant has kept his address of record with the North Carolina State Bar current, has accepted all certified mail from the North Carolina State Bar, and has responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication; and
- (j) The Defendant has not violated any local, state, or federal laws, excluding traffic offenses for which appearance may be waived.

3. McGee petitioned for a stay of the remaining term of his suspension that resulted in a hearing on February 22, 2008. The panel hearing that matter found facts supporting its conclusions that McGee had engaged in the unauthorized practice of law on two occasions during his suspension and failed to pay the costs of his disciplinary hearing as ordered. In addition, McGee failed to prove that he had reformed and possessed the moral qualifications for admission to practice law and that permitting him to resume the practice of law would not be

detrimental to the integrity and standing of the Bar, the administration of justice, or the public interest. That panel denied McGee's petition to have the remaining term of his suspension stayed.

4. The Order of Discipline required McGee to satisfy all of the conditions enumerated in paragraph 2 above, except subparagraph (a), for him to be reinstated after the October 2009 termination of his suspension.

5. On September 3, 2009, McGee filed his Petition for Reinstatement to Active Status that was scheduled to be heard on January 29, 2010.

6. On January 20, 2010, McGee filed a Waiver of Hearing and Consent to Judgment that acknowledged the scheduled January 29, 2010 hearing date for his petition, waived any right to attend his hearing and present evidence in support of his petition, waived any right to object or cross-examine if the State Bar put on evidence, and authorized the panel to make its decision without the necessity for a hearing. McGee asked the panel to consider leaving him in a suspended status until August 1, 2010 and then to allow him to be granted "retired/non-practicing" status.

7. Since no evidence was going to be presented by McGee, the Chair determined that a hearing should be held by telephone conference call at the time of the scheduled hearing at 10:00 a.m. on January 29, 2010. McGee participated in the telephone hearing and made arguments, but was not sworn and did not present evidence. No court reporter was included in the telephone hearing and the telephone hearing was not recorded.

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

Conclusions of Law

1. The panel has personal jurisdiction over the petitioner and subject matter jurisdiction over McGee's petition for reinstatement pursuant to the terms of the Order of Discipline and 27 NCAC 1B, §§ .0109(12) and .0125(b)(8).

2. This panel does not have the authority to change McGee's status from suspended to "retired/non-practicing." Only the Council has the authority to grant inactive status which has a subcategory of "retired/non-practicing."

3. Because McGee did not present evidence in support of his petition for reinstatement, McGee did not satisfy the conditions contained in the Order of Discipline for his

license to be reinstated. Particularly, McGee failed to prove that he paid the costs of his 2004 hearing within the time allowed, that he did not engaged in the unauthorized practice of law during his suspension, or that he has reformed and possesses the moral qualifications for admission to practice law and that permitting him to resume the practice of law would not be detrimental to the integrity and standing of the Bar, the administration of justice, or the public interest, all conditions that the hearing panel at the February 22, 2008 hearing found that McGee had failed meet.

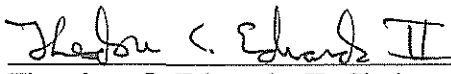
4. Should McGee choose to appeal the decision of this panel, his appeal is pursuant to N.C.G.S. § 84-28(h) as the decision of this panel is a final order of the Disciplinary Hearing Commission appealable to the North Carolina Court of Appeals. Because his petition was filed pursuant to 27 NCAC 1B, § .0125(b), rather than 27 NCAC 1B, § .0125(a), he has no appeal to the Council.

THEREFORE, BASED UPON the foregoing Findings of Fact and Conclusions of Law, the hearing committee enters the following:

ORDER DENYING REINSTATEMENT

McGee's Petition for Reinstatement to the practice of law in North Carolina is hereby DENIED.

Signed by the Chair of the panel with the full knowledge and consent of the other members of the panel this the 10th day of February 2010.



Theodore C. Edwards, II, Chair