

NORTH CAROLINA

WAKE COUNTY

10182

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
91 DHC 18

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.

WILLIAM E. MCPETERS, JR, ATTORNEY)
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter coming on to be heard and being heard on December 6, 1991 by a hearing committee composed of W. Harold Mitchell, Chairman, Stephen T. Smith and James Lee Burney; with the Defendant, William E. McPeters, Jr. (McPeters) not appearing and not represented at the hearing; and the Plaintiff, the North Carolina State Bar, being represented by A. Root Edmonson; and based upon the allegations in the Complaint being admitted by Mcpeters' failure to file an Answer or other pleading in this matter, and Entry of Default having been entered; and Notice having been given to McPeters that Plaintiff's Motion for Order of Discipline would be heard on this date; and further based upon the evidence and exhibits introduced into evidence at this hearing, the hearing committee finds the following to be supported by clear, cogent and convincing evidence:

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, William E. McPeters, Jr. (McPeters) was admitted to the North Carolina State Bar on April 14, 1982, 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 of the periods referred to herein,

McPeters was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Robbinsville, Graham County, North Carolina.

4. At some time prior to July 18, 1988, Ms. Lorene Williams consulted with McPeters about the need for a guardian to be appointed for her aunt, Carolyn Cooper. Ms. Williams had been handling Ms. Cooper's affairs but had never been formally appointed as her guardian.
5. McPeters agreed to initiate a guardianship proceeding and agreed to serve as the guardian for Carolyn Cooper.
6. McPeters advised Ms. Williams that his fee would be 5% of the gross value of Ms. Cooper's assets.
7. Ms. Williams left the checkbook for Ms. Cooper's account at Wachovia, account number 6542-457569, with McPeters after signing several checks in blank (without writing in the name of a payee). These checks were to be used by McPeters to pay Ms. Cooper's bills.
8. On July 18, 1988, McPeters made check number 150 on Ms. Cooper's account at Wachovia, previously signed by Ms. Williams in blank, payable to himself in the sum of \$2,350. He did so without Ms. Williams' or Ms. Cooper's knowledge or consent.
9. On July 27, 1988, McPeters made check number 203 on Ms. Cooper's account at Wachovia, previously signed by Ms. Williams in blank, payable to his law firm in the sum of \$2,350. He did so without Ms. Williams' or Ms. Cooper's knowledge or consent.
10. At the time McPeters negotiated checks 150 and 203 mentioned above, he had not initiated a guardianship proceeding for Ms. Cooper and had performed no other legal services for Ms. Cooper or Ms. Williams of that value.
11. McPeters never reported his receipt of the above sums to the Clerk of Superior Court, even after the guardianship was initiated. The fees were never approved by the Clerk of Superior Court.
12. McPeters became the signatory on Ms. Cooper's checking account at Wachovia, account number 6542-457569 (hereinafter referred to as the guardianship account).
13. On February 9, 1989, McPeters wrote check number 155 on the guardianship account to McPeters and

Davis in the sum of \$1,000. McPeters did so without Ms. Williams' or Ms. Cooper's knowledge or consent.

14. On March 3, 1989, McPeters wrote check number 164 on the guardianship account to William E. McPeters, Jr. in the sum of \$3,000. McPeters did so without Ms. Williams' or Ms. Cooper's knowledge or consent.
15. At the time McPeters negotiated checks 155 and 164 mentioned above, he had not initiated a guardianship proceeding for Ms. Cooper and had performed no other legal services for Ms. Cooper or Ms. Williams of that value.
16. McPeters never reported his receipt of the above sums to the Clerk of Superior Court, even after the guardianship was initiated. The sums were never approved by the Clerk of Superior Court, as fees or otherwise.
17. McPeters petitioned the Clerk of Superior Court of Graham County for an adjudication of incompetency and appointment of a guardian for Carolyn Cooper on March 17, 1989. McPeters was appointed guardian for Ms. Cooper by order of O. W. Hooper, Jr., Clerk of Superior Court of Graham County, dated April 3, 1989.
18. On April 10, 1989, McPeters wrote check number 172 on the guardianship account to McPeters & Davis in the sum of \$2,000. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
19. On June 12, 1989, McPeters wrote check number 184 on the guardianship account to McPeters & Davis in the sum of \$2,000. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
20. On June 30, 1989, McPeters wrote check number 191 on the guardianship account to McPeters & Davis in the sum of \$2,500. On June 30, 1989 McPeters filed a motion for allowance of a counsel fee for an attorney serving as a fiduciary alleging 33.25 hours of legal services beyond the ordinary management of the guardianship estate of a type that would reasonably justify the retention of legal counsel by a fiduciary not licensed to practice law. The representation by McPeters of having performed 33.25 hours of legal work for the Cooper guardianship estate was a false representation. Based upon McPeters' representation of having spent 33.25 hours performing legal services for the Cooper

guardianship estate, O. W. Hooper, Jr., Clerk of Superior Court, Graham County, signed an order presented to him by McPeters allowing a counsel fee of \$2,500 on June 30, 1989.

21. On August 4, 1989, McPeters wrote check number 178 on the guardianship account to McPeters & Davis in the sum of \$2,000. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
22. On October 5, 1989, McPeters wrote check number 104 on the guardianship account to McPeters and Davis in the sum of \$2,000. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
23. On November 22, 1989, McPeters wrote check number 115 on the guardianship account to McPeters & Davis in the sum of \$1,950. On November 22, 1989 McPeters filed a motion for allowance of a counsel fee for an attorney serving as a fiduciary alleging 26 hours of legal services beyond the ordinary management of the guardianship estate of a type that would reasonably justify the retention of legal counsel by a fiduciary not licensed to practice law. The representation by McPeters of having performed 26 hours of legal work for the Cooper guardianship estate was a false representation. Based upon McPeters' representation of having spent 26 hours performing legal services for the Cooper guardianship estate, O. W. Hooper, Jr., Clerk of Superior Court for Graham County, signed an order presented to him by McPeters allowing a counsel fee of \$1,950 on November 22, 1989.
24. On January 5, 1990, McPeters wrote check 128 (misdated 1989) on the guardianship account to McPeters & Davis in the sum of \$2,000. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
25. On January 17, 1990, McPeters wrote check 130 on the guardianship account to McPeters & Davis in the sum of \$1,500. On January 17, 1990, McPeters filed a motion for allowance of a counsel fee for an attorney serving as a fiduciary alleging 20 hours of legal services beyond the ordinary management of the guardianship estate of a type that would reasonably justify the retention of legal counsel by a fiduciary not licensed to practice law. The representation by McPeters of having performed 20 hours of legal work for the Cooper guardianship estate was a false representation. Based upon

McPeters' representation of having spent 20 hours performing legal services for the Cooper guardianship estate, O. W. Hooper, Jr., Clerk of Superior Court for Graham County, signed an order presented to him by McPeters allowing a counsel fee of \$1,500 on January 17, 1990.

26. On March 1, 1990, McPeters wrote check 140 on the guardianship account to William E. McPeters, Jr. in the sum of \$1,000. On March 1, 1990, McPeters filed a motion for allowance of a counsel fee for an attorney serving as a fiduciary alleging 14 hours of legal services beyond the ordinary management of the guardianship estate of a type that would reasonably justify the retention of legal counsel by a fiduciary not licensed to practice law. The representation by McPeters of having performed 14 hours of legal work for the Cooper guardianship estate was a false representation. Based upon McPeters' representation of having spent 14 hours performing legal services for the Cooper guardianship estate, O. W. Hooper, Jr., Clerk of Superior Court for Graham County, signed an order presented to him by McPeters allowing a counsel fee of \$1,000 on March 1, 1990.
27. On April 24, 1990, McPeters wrote check 153 on the guardianship account to McPeters, Davis & Inge in the sum of \$1,000. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
28. On May 15, 1990, McPeters wrote check 164 on the guardianship account to McPeters & Davis in the sum of \$1,500. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
29. On July 10, 1990, McPeters wrote check 180 on the guardianship account to McPeters, Davis & Inge in the sum of \$2,000. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
30. On August 10, 1990, McPeters wrote check 192 on the guardianship account to himself or his firm in the sum of \$2,000. On August 10, 1990, McPeters filed a motion for allowance of a counsel fee for an attorney serving as a fiduciary alleging 27 hours of legal services beyond the ordinary management of the guardianship estate of a type that would reasonably justify the retention of legal counsel by a fiduciary not licensed to practice law. The representation by McPeters of having performed 27 hours of legal work for the Cooper guardianship

estate was a false representation. Based upon McPeters' representation of having spent 27 hours performing legal services for the Cooper guardianship estate, O. W. Hooper, Jr., Clerk of Superior Court for Graham County, signed an order presented to him by McPeters allowing a counsel fee of \$2,000 on August 10, 1990.

31. On August 22, 1990, McPeters wrote check 195 on the guardianship account to McPeters, Davis & Inge in the sum of \$1,500. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
32. On September 28, 1990, McPeters wrote check 201 on the guardianship account to McPeters, Davis & Inge in the sum of \$3,000. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
33. On October 21, 1990, McPeters wrote check 208 on the guardianship account to McPeters, Davis & Inge in the sum of \$1,000. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
34. On October 25, 1990, McPeters wrote check 209 in the guardianship account to McPeters, Davis & Inge in the sum of \$3,000. McPeters wrote this check to his benefit without prior approval from the Clerk of Superior Court of Graham County.
35. In November, 1990, McPeters was aware of a subpoena issued in the name of the North Carolina State Bar for him to produce, among other things, the checking account records for the Cooper guardianship. The records were to be produced to David Frederick in McPeters' office on or about December 3, 1990.
36. On or before November 30, 1990, but after McPeters became aware of the subpoena, McPeters prepared seven motions for allowance of counsel fees for an attorney serving as fiduciary and five motions for allowance of partial compensation to the guardian to cover each of the checks written to his benefit from the guardianship account for which no prior authorization had been sought approving payment from the Clerk of Superior Court of Graham County.
37. The seven motions for allowance of counsel fees for an attorney serving as fiduciary each alleged hours of legal services performed beyond the ordinary management of the guardianship estate of a type that would reasonably justify the retention of legal counsel by a fiduciary not licensed to

practice law. Each of these motions was backdated to correspond to the date of the check it covered. The date of each motion and the number of hours of legal work alleged for each motion is as follows:

<u>Motion Date</u>	<u>Number of Hours</u>
April 14, 1989	27
June 2, 1989	27
October 5, 1989	27
April 24, 1990	13.5
May 15, 1990	20
August 22, 1990	20
October 21, 1990	13.5

38. The representations of McPeters in each of the motions referred to in the paragraph above of having performed legal services for the number of hours listed in each motion were false representations.

39. On November 30, 1990, O. W. Hooper, Jr.'s last day in office as the Clerk of Superior Court of Graham County, McPeters presented the seven motions for allowance of counsel fees and five motions for allowance of partial guardianship fees to O. W. Hooper, Jr. along with orders McPeters had prepared allowing the fees requested. Those orders had the month and year of the orders already typed in. Based upon McPeters' representation of services rendered, Hooper signed each of the orders presented to him by McPeters.

40. McPeters prepared fictitious time sheets listing dates, and time allegedly spent for each date, with a brief description of legal services allegedly rendered. Defendant presented these fictitious time sheets to the Clerk of Superior Court of Graham County, O. W. Hooper, Jr., when he presented the seven motions for allowance of counsel fees in November, 1990. McPeters presented these fictitious time sheets to Hooper to support his representations to Hooper that he had performed the services.

41. McPeters appropriated the sums he held in a fiduciary capacity that were unearned and were never authorized by the Clerk of Superior Court, and the unearned sums authorized by the Clerk of Superior Court based upon false representations of McPeters, to his own use.

42. McPeters gave the fictitious time sheets to Dave Frederick in response to the subpoena issued in the name of the North Carolina State Bar and told Frederick that he had expended the hours doing legal work as listed on the time sheets, knowing that he had not done so.

43. McPeters conducted a number of real estate closings in which he would receive the escrow deposit paid by the buyer when, or soon after, the Offer to Purchase and Contract was entered into by the parties to the sale. McPeters, as the escrow agent, served as a fiduciary for each of the parties to the sale. If

the sale closed, the buyer was credited with the escrowed funds at closing. If a sale did not close, the escrowed funds would go to the party not at fault. If fault was in dispute, the funds were not to be distributed until the parties agreed or until an order of a court. As escrow agent, McPeters was obligated to keep the funds in trust until the parties agreed to its disbursement, usually at closing.

44. During calendar year 1990, McPeters conducted closings in which he held escrow funds as described above for the clients listed below. In each of these closing transactions, McPeters deposited the escrow funds into his trust account on the dates listed below. McPeters removed various sums from the escrowed amounts prior to the closings and without the consent of both parties to the escrow agreements. The sums removed and date of removal are listed below.

<u>CLIENT</u>	<u>ESCROW FUNDS DEPOSITED INTO TRUST ACCOUNT</u>		<u>FUNDS REMOVED</u>		<u>CLOSING DATE</u>
	<u>DATE</u>	<u>AMT</u>	<u>DATE</u>	<u>AMT</u>	
Rangoon Moon, Inc.	4/14/89	500.00	1/25/90	300.00	4/24/90
Ducker	4/3/90	14,324.63	4/3/90	525.00	4/17/90
Burkhardt	5/31/90	100.00			
	7/4/90	400.00	8/6/90	400.00	No closing
MacGregor	6/18/90	1,000.00	8/20/90	925.00	8/30/90
Rhoads	6/22/90	500.00	9/17/90	400.00	9/24/90
Tumlin	6/28/90	1,000.00	7/30/90	400.00	8/7/90
Hamilton	6/29/90	1,000.00	7/24/90	550.00	8/28/90
Knight	6/29/90	20,782.75	7/19/90	462.50	8/7/90
Davidson	7/9/90	1,000.00	9/4/90	850.00	9/7/90
Dampier	7/12/90	600.00	7/30/90	455.00	8/22/90
Suggs	7/17/90	1,000.00	8/3/90	648.75	8/28/90
Wooland	7/19/90	1,000.00	8/6/90	750.00	9/4/90
Breithaupt	7/23/90	1,000.00	8/3/90	400.00	9/11/90
Kinney	8/3/90	1,000.00	8/6/90	575.00	8/14/90
Owen	8/3/90	1,000.00	8/6/90	815.00	Closing

					cancelled 10/90
Bork	8/3/90	1,000.00			
	8/14/90	2,000.00	8/14/90	400.00	9/28/90
Cunningham	8/10/90	500.00	9/11/90	350.00	9/28/90
Fouts	8/15/90	1,000.00	9/4/90	400.00	9/20/90
Surlak	8/20/90	3,500.00	8/20/90	1,050.00	Closing Cancelled 10/5/90
Mason	8/21/90	6,500.00	9/4/90	650.00	
			9/11/90	430.00	10/4/90
Reisz	9/4/90	1,000.00	9/7/90	400.00	11/14/90
Bond	9/4/90	1,000.00	9/7/90	500.00	11/15/90
Harris	9/7/90	100.00			
	9/11/90	900.00	9/24/90	655.00	12/3/90
Hyde	9/10/90	500.00	9/24/90	450.00	11/27/90
Berger	9/18/90	500.00	9/24/90	455.00	10/11/90
Stammer	9/26/90	1,000			
	10/22/90	2,000	11/1/90	490.00	11/21/90

45. McPeters appropriated the sums listed above which he held in a fiduciary capacity to his own use.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

The conduct of McPeters, as set forth above, constitutes grounds for discipline pursuant to N. C. Gen. Stat. Section 84-28(b)(2) and (3) in that:

- a) By knowingly making misrepresentations of facts or circumstances surrounding a complaint under investigation by the North Carolina State Bar, McPeters violated N. C. Gen. Stat. Section 84-28(b)(3).
- b) McPeters violated N. C. Gen. Stat. Section 84-28(b)(2) by violating the Rules of Professional Conduct as follows:
 1. By appropriating the funds he held in a fiduciary capacity for the Carolyn Cooper

guardianship estate to his own use either by taking the funds without authorization by the Clerk of Superior Court or by taking funds that were authorized by the Clerk of Superior Court based upon false representations to the Clerk of Superior Court, McPeters engaged in criminal conduct that reflects on the lawyer's honesty, trustworthiness, and fitness as a lawyer in other respects in violation of Rule 1.2(B); engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 1.2(C); and failed to preserve property received in a fiduciary capacity and hold that property separately from the lawyer's property, designated as such, in violation of Rule 10.1(A).

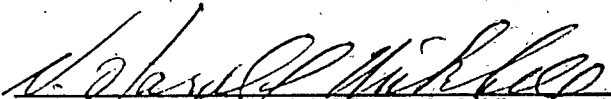
2. By presenting motions containing false representations of numbers of hours spent performing legal services for the Cooper guardianship estate to justify the Clerk of Superior Court approving the sums he had removed from the guardianship account as fees, McPeters engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 1.2(C); and knowingly made false statements of law or fact in violation of Rule 7.2(A)(4).
3. By preparing fictitious time sheets to support his motions for payment of counsel fees and presenting them to the Clerk of Superior Court in support of his motions, McPeters engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 1.2(C); participated in the creation of evidence when he knew the evidence was false in violation of Rule 7.1(A)(6); and knowingly used false evidence in violation of Rule 7.2(A)(5).
4. By presenting the fictitious time sheets to Dave Frederick during an investigation by the North Carolina State Bar of possible misconduct, and lying to Frederick about actually having done the legal work as listed on the time sheets, McPeters knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 1.1(A) and engaged in conduct involving dishonesty, fraud, deceit and

misrepresentation in violation of Rule 1.2(C).

5. By appropriating funds held by him as escrow agent prior to closing or other agreement for disbursement by both parties to the escrow agreement to his own use, McPeters engaged in criminal conduct that reflects on the lawyer's honesty, trustworthiness, and fitness as a lawyer in other respects in violation of Rule 1.2(B); engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of Rule 1.2(C); failed to preserve property received by a lawyer in a fiduciary capacity at all times held separately from the lawyer's property in a lawyer trust account in violation of Rule 10.1(A) and (C).

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee,

this the 6th day of December, 1991.


W. Harold Mitchell, Chairman
Hearing Committee

NORTH CAROLINA
WAKE COUNTY

DEC 9 11 27

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
91 DHC 18

THE NORTH CAROLINA STATE BAR,
Plaintiff

vs.


WILLIAM E. MCPETERS, JR, ATTORNEY)
Defendant

ORDER
OF DISBARMENT

BASED UPON THE Findings of Fact and Conclusions of Law of even date herewith; and further based upon the argument of counsel for the North Carolina State Bar; with McPeters not appearing or represented at this hearing; the hearing committee composed of W. Harold Mitchell, Chairman, Stephen T. Smith, and James Lee Burney enters the following Order of Discipline:

1. William E. McPeters, Jr. is hereby DISBARRED from the practice of law in North Carolina.
2. William E. McPeters, Jr. shall surrender his license certificate and membership card to the Secretary of the North Carolina State Bar forthwith.
3. William E. McPeters, Jr. shall comply with all of the requirements of Section 24 of Article IX of the Rules and Regulations of the North Carolina State Bar for winding down his practice.
4. As a condition of reinstatement to the practice of law in North Carolina, William E. McPeters, Jr. must prove that he has satisfied all civil judgments entered against him for money owed to clients that resulted from misappropriation of funds from clients, that he has complied with all orders of restitution entered by any court in this state, and that he has reimbursed the Client Security Fund of the North Carolina State Bar for any amounts it has paid to satisfy claims of his clients.
5. William E. McPeters, Jr. is taxed with the costs of this proceeding as assessed by the Secretary.

Signed by the undersigned chairman with the full knowledge and consent of the other members of the hearing committee this the 6th day of December, 1991.


W. Harold Mitchell, Chairman