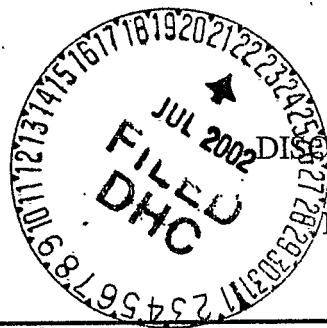


NORTH CAROLINA
WAKE COUNTY



5053

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

MICHAEL H. McGEE, Attorney,
Defendant

)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND
) ORDER OF DISCIPLINE
)
)
)

On June 21, 2002, this matter came on to be heard before a hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair; Joseph G. Maddrey; and Marguerite P. Watts. A. Root Edmonson represented the North Carolina State Bar and the Defendant appeared *pro se*. Based upon the stipulated facts and the evidence presented at the hearing, the hearing committee finds the following facts to be supported by clear, cogent and convincing evidence:

FINDINGS OF FACT

1. The North Carolina State Bar, the plaintiff, is a body duly organized under the laws of North Carolina and is the proper party to bring disciplinary proceedings under the authority granted it in Chapter 84 of the North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The defendant, Michael H. McGee (hereafter, Mr. McGee), was admitted to the North Carolina State Bar on August 14, 1971 and is, and was at all times referred to herein, an attorney at law licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar, Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of North Carolina.

3. During all times relevant hereto, Mr. McGee was actively engaged in the practice of law and maintained a practice in Charlotte, Mecklenburg County, North Carolina.

4. In February 1998, Mr. McGee represented Julie Cline (hereafter, Ms. Cline), the mother of John Stanley Wernek, in a petition for termination of the parental rights (hereafter, petition) of the child's father, John Gerard Wernek.

5. After a hearing, the court dismissed Ms. Cline's petition by an order dated December 11, 1998.

6. On March 29, 1999, Attorney Terri L. Young (hereafter, Ms. Young), filed a Motion for Relief from Judgment (Rule 60) and for Reconsideration/Rehearing (hereafter, motion) on Ms. Cline's behalf.

7. Ms. Young alleged in her motion that Ms. Cline should be granted a new trial because of various shortcomings in Mr. McGee's representation of Ms. Cline.

8. A hearing was held on the motion and the motion was dismissed by an order dated September 9, 1999.

9. On September 29, 1999, Ms. Young appealed the dismissal of the motion to the North Carolina Court of Appeals.

10. Thereafter, the parties in the petition action filed briefs with the North Carolina Court of Appeals. Ms. Young's brief was not filed in accordance with the rules of the North Carolina Court of Appeals. The court permitted Ms. Young to re-file her brief in the proper format.

11. In her brief, Ms. Young focused primarily on various shortcomings in Mr. McGee's representation of Ms. Cline.

12. On July 24, 2000, Mr. McGee filed a "Motion to Permit Michael H. McGee to Enter as Amicus Curiae Outside Normal Entry Time and Briefing Schedule" (hereafter, Amicus Curiae Motion) with the North Carolina Court of Appeals.

13. In his Statement of Interest of Proposed Amicus Curiae on the first page of his Amicus Curiae Motion, Mr. McGee stated that he represented the minor child, John Stanley Wernek, at the trial of the case that was the subject of the appeal. Mr. McGee didn't state that he had represented Ms. Cline at trial.

14. Mr. McGee stated in his Amicus Curiae Motion: "Ms. Young has attacked my abilities, and impugned my reputation as a lawyer, throughout this proceeding, and continues to do so before this Court."

15. On pages four and five of Mr. McGee's Amicus Curiae Motion, he stated:

Therefore I fear that the fierceness with which Ms. Young attacks me may be a reflection of unresolved anger at some physical or sexual abuse she may have suffered as a child in a situation similar to the one at bar, or of unresolved anger at some adult situation such as being raped. If any one of these is a factor, then Ms. Young should seek professional therapy rather than using this Court and a case involving a defenseless child as a vehicle for spewing her free-floating anger. Confused and unfocused lawyering is a rather natural result of approaching a case from personal anger as opposed to professional advocacy.

16. At the time that Mr. McGee made the above statement, he had no actual knowledge that Ms. Young had ever been raped or sexually abused at any time in her life.

17. On August 8, 2000, the North Carolina Court of Appeals entered an Order denying Mr. McGee's Amicus Curiae Motion and forwarded a copy of the Amicus "Curiae Motion to the North Carolina State Bar for "whatever inquiry or action it deems appropriate."

18. On October 3, 2000, the North Carolina Court of Appeals dismissed Ms. Young's appeal as being untimely filed.

19. On September 11, 2000, Mr. McGee filed a lawsuit, captioned Michael H. McGee v. Janet Reno et al., in the United States District Court for the Western District of North Carolina. The Honorable Graham Mullen was the judge who handled the case. Mr. McGee later filed an amended complaint in the action which, among other things, resulted in the dismissal of all class allegations, and limited the case to the personal causes of action alleged by Mr. McGee. In his complaint and amended complaint, Mr. McGee challenged the record keeping practices of several federal, state and local entities, including the Internal Revenue Service, the Federal Bureau of Investigation, the Central Intelligence Agency, the Administrative Office of the United States Court, the Charlotte-Mecklenburg Police Department, the Mecklenburg County Sheriff and the North Carolina State Bar. According to documents of record, Mr. McGee filed his complaint "for the purpose of eradicating each and every government record relating to him, where such record can or has the potential to cause actual or reputational harm to him, where the record is not needed for a legitimate governmental purpose that is permitted or not prohibited by the US Constitution or by federal laws, or state constitution or laws, that are in conformity with the US Constitution."

20. Many of the defendants filed motions to dismiss Mr. McGee's lawsuit.

21. On or about January 3, 2001, Mr. McGee filed with the court a Memorandum in Opposition to Defendants' Motions to Dismiss (hereafter, Memorandum).

22. Mr. McGee attached as Exhibit A to his Memorandum "copies of spoof pages" from the "Inmate Lookup" web site of the Mecklenburg County Sheriff. Mr. McGee created a fictitious criminal record for the Honorable Graham C. Mullen, Chief District Judge of the United States District Court for the Western District of North Carolina (hereafter, Judge Mullen). In this criminal record that Mr. McGee created and attached to his Memorandum, Judge Mullen has been purportedly charged with "conspiracy-child pornography-felony" and "1st Deg Anal Rape-Felony."

23. Mr. McGee knew when he created this "criminal record" of Judge Mullen and attached it to his Memorandum that was filed in federal district court that the material contained in the "spoof pages" was not true.

24. In his Memorandum, Mr. McGee stated that his Exhibit A was now a permanent part of a court document. On page 10 of his Memorandum, Mr. McGee stated:

Now that these documents are a part of the record in this case, any person can come look at the court file, and copy only the pages that they want, and publish them in any newspaper or on any web site, with or without any explanatory comment, for any purpose they want to accomplish. No one is under any obligation to say that these are spoof pages and that the Chief District Judge did not do these things and was not ever arrested for these things. Isn't freedom wonderful! And as long as they only publish the pages, and don't comment on whether they are true or not, they can't be sued for libel, due to the absolute privilege that attaches to court filings.

25. Mr. McGee further stated on page 11 of his Memorandum:

There will come a point where the Chief District Judge will not be able to go even one day without a small snake of fear slithering through his thoughts, where he "feels the burn." And this feeling will happen even though as a federal judge he has lifetime job security, and even though since none of this happened it's clear that no one can ever prove any misconduct.

26. Mr. McGee's Exhibit A attached to his Memorandum was not pertinent to any issues argued in McGee's Memorandum.

27. On January 5, 2001, Judge Mullen sent a letter to the North Carolina State Bar for consideration by the Grievance Committee. Judge Mullen subsequently sanctioned Mr. McGee for his conduct, but left the issue of whether his conduct deserved professional discipline to the North Carolina State Bar.

28. On June 20, 1999, Linda D. Wiley (hereafter Ms. Wiley), with whom Mr. McGee had a personal relationship, initiated a criminal misdemeanor charge against Mr. McGee. She alleged that he had made harassing phone calls to her between May 30, 1999 and June 19, 1999.

29. The matter was scheduled for trial on September 14, 1999.

30. On or about August 19, 1999, after the initiation of the court proceeding but before the trial date, Mr. McGee drafted an agreement that had a signature line for Ms. Wiley and delivered the draft document to Ms. Wiley. The draft agreement was never made into a final document and was never signed.

31. The draft agreement, among other things, provided that Ms. Wiley would "take such actions as may be necessary to drop the pending charges, including but not limited to declining to appear in court on any day that the matter be called for trial." In exchange, the draft agreement called for Mr. McGee and his wife to agree, among other things, not to file suit against Ms. Wiley for malicious prosecution or alienation of affection.

32. Soon after Mr. McGee delivered the draft document to Ms. Wiley, a subpoena was issued by the District Attorney's office requiring Ms. Wiley to appear in court and testify when the case was called for trial on September 14, 1999. Mr. McGee's agreement didn't attempt to discourage Ms. Wiley from obeying a subpoena.

33. At some time after August 19, 1999, and prior to the trial of the case, Assistant District Attorney Roberta Tepper voluntarily dismissed the charges.

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

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over Mr. McGee and the subject matter.

2. Mr. McGee's conduct, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(a) & (b)(2) as follows:

- (a) By stating in his Amicus Curiae Motion that Ms. Young's advocacy in the representation of her client "may be a reflection of unresolved anger at some physical or sexual abuse she may have suffered as a child" or "unresolved anger at some adult situation such as being raped," Mr. McGee alluded to a matter that he could not have reasonably believed was relevant to Ms. Cline's appeal or was supported by any evidence in violation of Revised Rule 3.4(e) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (b) By filing an Amicus Curiae Motion that undermined the efforts of Ms. Cline's new counsel, Ms. Young, in the prosecution of Ms. Cline's appeal, Mr. McGee allowed his personal interests to conflict with the interests of his former client, Ms. Cline, in violation of Revised Rules 1.7(b).
- (c) By knowingly placing false, impertinent and defamatory information about Judge Mullen in Exhibit A to his Memorandum, Mr. McGee engaged in undignified or discourteous conduct that was degrading to a tribunal in violation of Revised Rule 3.5(a)(4)(ii); used means that had no substantial purpose other than to embarrass or burden a third person, Judge Mullen, in violation of Revised Rule 4.4; and engaged in conduct prejudicial to the administration of justice in violation of Revised Rule 8.4(d).
- (d) Mr. McGee's conduct didn't violate any of the other Revised Rules alleged in the Complaint.

BASED UPON the foregoing Findings of Fact, the Conclusions of Law, and the evidence presented at the hearing, the hearing committee hereby makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Mr. McGee's misconduct is aggravated by the following factors:
 - (a) multiple offenses; and
 - (b) Mr. McGee's refusal to acknowledge the wrongful nature of his conduct.

4. Mr. McGee's misconduct is mitigated by the following factors:
 - (a) absence of a prior disciplinary record;
 - (b) absence of a dishonest or selfish motive;
 - (c) personal or emotional problems; and
 - (d) a cooperative attitude toward the proceedings


BASED UPON the foregoing Findings of Fact Regarding Discipline and the arguments of counsel, the hearing committee hereby enters the following:

ORDER OF DISCIPLINE

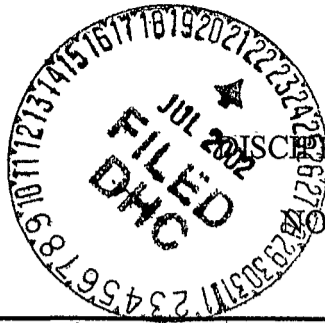
1. The appropriate discipline in this matter is for the defendant, Michael H. McGee, to be reprimanded. A reprimand will accompany this order.

2. Mr. McGee shall pay the costs of this proceeding as assessed by the Secretary within six (6) months of the date this disciplinary order is served upon him.

Signed by the chair with the consent of the other hearing committee members, this the 18th day of July, 2002.


Stephen E. Culbreth, Chair
Hearing Committee

NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
MICHAEL H. McGEE, Attorney,)
Defendant)

REPRIMAND

On June 21, 2002, a hearing committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair; Joseph G. Maddrey; and Marguerite P. Watts considered the allegations made in the Complaint filed against you on February 5, 2002 in the above referenced disciplinary proceeding. The hearing committee's Findings of Fact, Conclusions of Law and Order of Discipline is being entered contemporaneously with this reprimand.

The hearing committee found that you had violated some of the Revised Rules of Professional Conduct, and ordered that you be reprimanded. This document constitutes that reprimand.

A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure.

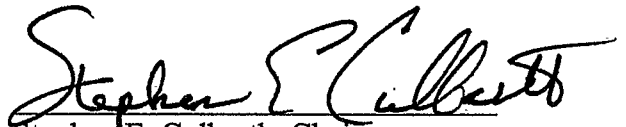
By stating in your Amicus Curiae Motion in the Court of Appeals that another lawyer's advocacy in the representation of her client "may be a reflection of unresolved anger at some physical or sexual abuse she may have suffered as a child" or "unresolved anger at some adult situation such as being raped," you alluded to a matter that you could not have reasonably believed was relevant to the appeal or was supported by any evidence in violation of Revised Rule 3.4(e) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

By knowingly placing false, impertinent and defamatory information about Judge Mullen in Exhibit A to your Memorandum filed in his court, you engaged in undignified or discourteous conduct that was degrading to a tribunal in violation of Revised Rule 3.5(a)(4)(ii); used means that had no substantial purpose other than to embarrass or

burden a third person, Judge Mullen, in violation of Revised Rule 4.4; and engaged in conduct prejudicial to the administration of justice in violation of Revised Rule 8.4(d).

The hearing committee of the Disciplinary Hearing Commission hereby reprimands you for your professional misconduct. The hearing committee hopes that you will heed this reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

Issued this the 18th day of July, 2002.



Stephen E. Culbreth, Chair
Hearing Committee