

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

ORDER

LD-2016-0002, In the Matter of Brian F. McCaffrey, Esquire

On January 19, 2016, the Professional Conduct Committee (PCC) filed a recommendation that Attorney Brian F. McCaffrey be disbarred. The PCC's recommendation was based on a stipulation signed by Attorney McCaffrey and Disciplinary Counsel, in which Attorney McCaffrey admitted that he had violated numerous Rules of Professional Conduct and conceded that disbarment was the appropriate sanction for his misconduct.

After the PCC filed its recommendation, an order was issued, in accordance with Supreme Court Rule 37(16), notifying Attorney McCaffrey and Disciplinary Counsel of the PCC's recommendation and advising them to notify the court of any legal or factual issues relating to the PCC's recommendation that they wished the court to review. The order stated that if neither party identified an issue to be reviewed, no further hearing would be required, and the court could decide the matter based upon the record of the PCC proceedings. No response to the order has been filed.

In the "Stipulation to Disbarment" filed with the PCC, Attorney McCaffrey admitted that he violated the following Rules of Professional Conduct in the course of his representation of a particular client:

1. Rule 1.3, requiring a lawyer to act with reasonable diligence;
2. Rule 1.4, requiring a lawyer to keep the client reasonably informed about the status of the client matter and to comply with reasonable requests for information;
3. Rule 5.3(b)-(c), requiring a lawyer employing a non-lawyer assistant to make reasonable efforts to ensure that the non-lawyer assistant's conduct is compatible with the lawyer's professional obligations, and making the lawyer responsible for the conduct of a non-lawyer assistant when the lawyer orders or ratifies the conduct involved;
4. Rule 8.1(b), prohibiting a lawyer from knowingly failing to respond to a lawful demand for information from a disciplinary authority;
5. Rule 8.4(c), prohibiting a lawyer from engaging in conduct involving deceit, dishonesty, or misrepresentation; and
6. Rule 8.4(a), prohibiting a lawyer from violating the Rules of Professional Conduct.

An audit of Attorney McCaffrey's client files and IOLTA account showed that Attorney McCaffrey had misappropriated client funds in his possession,

had routinely paid himself fees before they were earned, and had operated his IOLTA account with a deficit balance. Attorney McCaffrey stipulated that the audit showed that he violated the following Rules of Professional Conduct:

1. Rule 1.1, requiring a lawyer to provide competent representation to a client;
2. Rule 1.3, requiring a lawyer to act with reasonable diligence;
3. Rule 1.4, requiring a lawyer to keep the client reasonably informed about the status of the client matter and comply with reasonable requests for information;
4. Rule 1.15, requiring a lawyer to safeguard the property of clients and third persons and to comply with court rules regarding client and third party funds;
5. Rule 5.3(b)-(c), requiring a lawyer employing a non-lawyer assistant to make reasonable efforts to ensure that the non-lawyer assistant's conduct is compatible with the lawyer's professional obligations, and making the lawyer responsible for conduct of a non-lawyer assistant when the lawyer orders or ratifies the conduct involved;
6. Rule 8.4(c), prohibiting a lawyer from engaging in conduct involving deceit, dishonesty, or misrepresentation; and
7. Rule 8.4(a), prohibiting a lawyer from violating the Rules of Professional Conduct.

Attorney McCaffrey also conceded that the audit showed that he violated Supreme Court Rules 50 and 50-A.

Attorney McCaffrey stipulated that the Public Protection Fund had paid \$119,000 to his clients who sought reimbursement for fees paid to him. He also conceded that he owed more than \$72,000 to clients who had not filed claims.

The court has reviewed the "Stipulation for Disbarment" and the PCC's recommendation that Attorney McCaffrey be disbarred. After considering the nature, seriousness, and extent of Attorney McCaffrey's misconduct, the court concludes that disbarment is the appropriate sanction in this case.

THEREFORE, the court orders that Brian F. McCaffrey be disbarred from the practice of law in New Hampshire. He is hereby assessed all expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

Dalianis, C.J., and Hicks, Conboy, Lynn, and Bassett, JJ., concurred.

DATE: March 18, 2016

ATTEST:



Eileen Fox, Clerk