

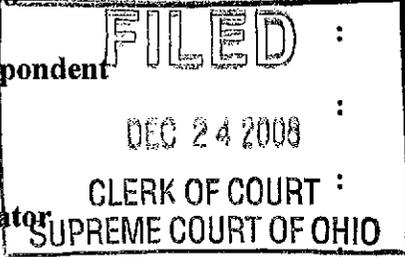
**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In Re: : **08-2470**

Complaint against : **Case No. 07-094**

Thomas M. McNerney : **Findings of Fact,**
Attorney Reg. No. 0076108 : **Conclusions of Law and**
Respondent : **Recommendation of the**
: **Board of Commissioners on**
Akron Bar Association : **Grievances and Discipline of**
: **the Supreme Court of Ohio**

Relator : **CLERK OF COURT :**
SUPREME COURT OF OHIO



1. This matter came on for final hearing on October 8, 2008 in Akron, Ohio before panel members Attorney Shirley J. Christian of Salem, Judge Otho Eyster of Mt. Vernon and Attorney Jean M. McQuillan of Rocky River, Ohio, Chair of the Panel. None of the panel members was a member of the probable cause panel that heard this Complaint or resided in the appellate district from which this Complaint arose.

2. This grievance relates to Respondent's representation of one client, Laquia Bradford and his management of his IOLTA account.

3. Relator filed its complaint on November 19, 2007 and Respondent's counsel filed an answer on February 5, 2008.

4. This matter was originally set for final hearing on July 18, 2008. Respondent's counsel moved to continue the hearing date to complete discovery on matters in mitigation. The continuance was granted and the final hearing was re-scheduled on October 8, 2008.

5. On September, 18, 2008, Respondent's counsel filed a Motion to Withdraw citing irreconcilable differences with his client. The Motion to Withdraw was granted and a final pre-hearing conference was held on September 29, 2008. Notice was sent directly to Respondent. Respondent did not participate in this conference and hearing was confirmed for October 8.

6. Respondent appeared at final hearing and with leave of the panel to delay the start of the hearing, met with Relator's counsel and entered into stipulations of fact. The stipulations had originally been proposed by Relator to Respondent's counsel in July and for purposes of the hearing were entitled "Proposed Findings of Fact." A copy was admitted as Exhibit A at the hearing and at the hearing the Respondent agreed to stipulate to all of the "Proposed Findings of Fact" except three paragraphs which were supplemented or corrected by his testimony at hearing.

7. The Respondent was present at the final hearing and represented himself. Attorneys Thomas M. Parker and Maria R. Schimer represented the Relator.

8. The panel heard testimony from the Respondent and a witness, James Ludt, and accepted the exhibits submitted by both parties.

Findings of Fact

9. Respondent, Thomas McNerney graduated from the University of Akron Law School in 1999 and was admitted to the Ohio Bar in 2003. He went through an intensive program with the Ohio Lawyers Assistance Program (OLAP) with regard to alcohol abuse in 2000-2004 as a requirement for his admission to the Bar. He successfully completed a four-year OLAP contract. (T. 41, Ex. A ¶73)

10. Mr. McNerney entered the practice of law as a second career, having worked in banking: "at a regulatory agency in this area, then an accounting firm and then a bank." He served as a bank president in the 1990's. (T.71)

11. Respondent represented Laquia Bradford beginning in August 2006 regarding a personal injury as a result of a fall at an apartment building. Respondent was referred the case because of conflict of Ms. Bradford's original counsel and the client's file already contained medical records and bills. After receiving the referral in August 2006, Respondent met with the client twice, spoke with her a number of times, visited the site of the accident and made two calls to the insurance adjuster. Respondent determined that Ms. Bradford needed to obtain additional medical records and prepared a release but Respondent testified that Ms. Bradford never returned the signed forms to him. Respondent admitted he did not follow up with her. Respondent testified that he was ill in late 2006 and that may have affected his work. In January 2007 Respondent returned the Bradford file to the original referring attorney and the claim was settled to the client's satisfaction with the insurance adjuster in May 2007. Respondent never received nor requested a fee for the work he did for Ms Bradford.

12. The Respondent did not respond promptly to the initial investigation of the Bradford grievance in February 2007, failing to return phone calls from the investigator or reply to the initial letter from the Bar association and two other letters from the investigator. Respondent had moved his office during this time and did not inform the Akron Bar of his new address. Respondent did not check his post office box from January until May 2007, partially due to illness. He did receive a subpoena for a deposition from the Akron Bar in May 2007 and appeared for the deposition. He produced documents at the May deposition, submitted additional requested documents in August 2007 and appeared for a second deposition in September 2007.

13. From at least January 2006 until at least September 13, 2007 Respondent maintained only a single bank account for his law practice. Respondent deposited personal, earned funds, retainers and client funds into a single IOLTA account. Respondent paid personal expenses from

the IOLTA account, including repayment of personal loans. Respondent never reconciled his IOLTA account and kept only the bank statements, checkbook, cancelled checks and copies of client checks he deposited in the account.

14. Respondent learned at his May 2007 deposition that it was inappropriate to use the IOLTA account for personal funds. He also learned that rules required that the IOLTA account be reconciled monthly. Between May 2007 and September 2007 Respondent took no steps to open a separate banking account for personal expenses, reconcile his IOLTA account or to consult with any person or organization about appropriate accounting practices for lawyers. Respondent testified that while he knew as of May 2007 that IOLTA account reconciliations were required he did not do reconciliations because he wanted to wait to go to a seminar in September 2007 to learn how to do it.

15. In the absence of records, Respondent explained that he could not be certain that he had not taken a client's money from his IOLTA account. He explained that his practice involved mostly small flat fees from criminal defense cases and he had only two or three clients who had money in the account. He deposited all his receipts into the account and then he would take out what he believed was his portion of the fees. (T.35-38, 76)

16. In January 2007, Respondent's malpractice insurance lapsed. Between January 2007 and May 2007 Respondent did not have malpractice insurance coverage. He did not notify clients of the lapse in coverage or obtain signed consents or waivers from his clients. (Ex. A ¶ 59-65)

17. Respondent was not registered with the Supreme Court at the date of his second deposition in September 2007 and he remained unregistered until October 23, 2007. (Ex. A ¶ 66-67)

18. Respondent filed no state or federal income tax returns for the two years preceding his September 2007 deposition. At hearing he testified that he had engaged an accountant to assist him

in filing late returns. (T. 41, Exhibit 1)

19. A client of Respondent's, James Ludt, appeared unexpectedly at the hearing and was called to testify by Relator. Respondent represents Mr. Ludt in a criminal appeal of an aggravated menacing charge. Respondent had not filed a reply brief and it was past the deadline. Mr. Ludt reported difficulty reaching Respondent for the prior six months. Mr. Ludt testified that he did have a phone conversation with Respondent within the week before the hearing and he believed that the Respondent was inebriated; "I obviously could not say he was on alcohol but he was on something. This is not the gentleman that I talked to in any other state." (T.79)

20. Respondent admitted that he is an alcoholic and also admitted at the time of his May and September depositions that he was consuming alcohol. Respondent has been cited for driving while intoxicated three times, the last time in 2005. (Ex. A ¶ 71) At final hearing he produced a new contract from OLAP that he had received on July 15, 2008 which was signed by an OLAP representative but not by the Respondent. (Ex. 2) He testified that he had "rarely" consumed alcohol between July and the date of this hearing in October. He also testified that he had signed a copy of this new OLAP contract probably on October 3, 2008, the week preceding this hearing and had returned the contract to OLAP via regular mail. Respondent had not spoken to anyone from OLAP since July 2008. He testified, "If the Panel or the Akron Bar believes that that's some kind of issue, then I need to address it and that's what I've done." (T.41) Respondent also testified to attending two AA meetings in the week before this hearing. (T. 71)

21. Respondent further testified that he has begun treatment with a psychologist, Dr. Hetrick, whom he testified has diagnosed him with depression as well as physicians, Dr. Norr and Martin, who had treated him and prescribed medications. Respondent submitted a bill from Dr. Hetrick that lists a diagnosis of depression. (Ex. 3) After determining that Respondent did not have

records or a report from his doctors, the panel chair granted him leave to submit such reports after the conclusion of the hearing. No records or reports were received.

22. Respondent volunteered in his testimony that he had had four grievances filed against him in his five years of practice but believed that since he had represented 100 to 200 clients, "I don't know if that's good or bad." (T.46) He acknowledged that two other grievances are presently pending and he had not responded to Akron Bar investigators about these matters because he believed his former counsel was handling them or that they had been dismissed. (T. 57-63)

Conclusions of Law

23. In Count One Relator charged Respondent with a violation of DR 6-101(A)(3), neglect of a legal matter. In Count two Relator alleged violations of DR 9-102(A) and (B) and ORPC 1.15(a) and (b), failing to preserve the identity of client funds and failing to keep complete records. Relator in Count Three charged a violation of DR 1-104(A) and (B) and ORPC 1.4(c)(1), failing to give the client notice concerning malpractice insurance. Respondent was charged in Count Four with a violation of DR 1-102(A)(6) and ORPC 8.4(h), conduct that adversely reflects on the lawyer's fitness to practice law and in Count Five with a violation of DR 7-101(A)(2), intentionally fail to carry out a contract of employment.

24. The panel finds that the Relator did not prove by clear and convincing evidence that the Respondent violated DR 6-101(A)(3) in the first count or DR 7-101(A)(2) in the last count. Respondent's testimony established that he did work on behalf of Ms. Bradford after he was hired in August. There was a dispute as to the cause of any delays and there was no evidence that the matter would have been concluded sooner or in any different fashion had the client not transferred her file to another attorney in January.

25. The panel finds by clear and convincing evidence that the Respondent violated the remaining rules charged in Counts Two, Three and Four: Rule 1.15 (a) and (b), DR 9-102(A) and (B)(3), Rule 1.4(c)(1), DR 1-104, Rule 8.4(h) and DR 1-102(A)(6). Respondent's failure to maintain proper accounts and records, his misuse of his IOLTA account by commingling personal and client funds as well as his failure to maintain his attorney registration and give proper notice of his lapsed malpractice insurance all reflect adversely on his fitness to practice law.

Mitigation, Aggravation and Sanction

26. The Relator recommended that the appropriate sanction was an indefinite suspension since the violations alleged would warrant a two year suspension and the alcohol and medical issues disclosed at the hearing required that Respondent credibly establish that he is dealing with the issues before he returns to practice. Respondent believed that he was addressing his alcohol issues, the public was not put at risk by his continued practice and that any sanction should be a probation to prevent any continued violations of the rules.

27. The Panel finds pursuant to BCGD Proc. Reg. 10(B)(2) the following matters in mitigation are present: absence of a prior disciplinary record.

28. The Panel finds pursuant to BCGD Proc. Reg. 10(B)(1) the following matters in aggravation are present: a pattern of misconduct and inconsistent/lack of cooperation in the disciplinary process.

20. The underlying rule violations for mismanagement of an IOLTA account typically result in a term suspension of 6 to 24 months, totally or partially stayed depending on the length and severity of the financial mismanagement. In this case while the Relator proved that Respondent improperly maintained his IOLTA account for almost two years, there was no specific charge that any client funds were improperly taken. The challenge in this case is that evidence at hearing clearly and convincingly showed the Panel that Respondent has untreated and unresolved substance abuse and medical issues that threaten his ability to practice law.

21. Respondent's behavior in rushing to put in place "treatment" for his admitted substance abuse only days before the hearing and seeking to document a mental illness with a bill from a psychiatrist do not meet the evidentiary standards required for mitigation nor do they persuade the panel that Respondent has recognized critical issues that affect his ability to practice or that he is committed to treatment of these problems. Likewise the panel is troubled by a former bank president who claims he did not know how to correctly reconcile an IOLTA account. Therefore, despite the apparently straightforward rule violations, the Panel is convinced that any sanction must address Respondent's present mental health and substance abuse issues for the protection of the public.

22. The panel recommends Respondent be suspended from the practice of law for one year and that his reinstatement be subject to the more stringent requirements of Gov. Bar Rule V(10)(C) - (G) in order to assure that he has addressed all unresolved medical and substance abuse issues present at final hearing. The panel recommends submission of a report from his treating medical professionals opining that any mental health issues have been resolved, that Respondent has followed all treatment recommendations and that he is competent to return to practice and also a report from OLAP certifying that Respondent has fulfilled all recommendations and conditions of his 2008 OLAP contract. Following reinstatement, the panel also recommends probation for an additional year with his practice monitored by an attorney appointed by Relator and his probation also subject to compliance with any terms and conditions of his OLAP contract.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 4, 2008. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. After discussion and consideration of Respondent's troubled circumstances, the Panel accepted a friendly amendment to its recommended sanction and the Board recommends that the Respondent, Thomas M.

McNerney, be suspended from the practice of law for a period of two years with one year stayed based upon conditions contained in the Panel Report. It is further recommended that the Respondent meet Gov. Bar R. V(10)(C) requirements prior to being reinstated to the practice of law in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.


JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

IN RE:

COMPLAINT AGAINST
THOMAS M. MCNERNEY

RESPONDENT

AKRON BAR ASSOCIATION

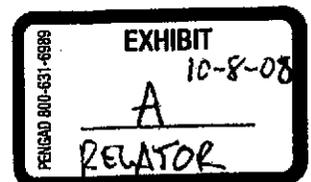
RELATOR

)
) CASE NO, 07-094
)
)
)
) PROPOSED FINDINGS OF FACT
) SUBMITTED BY RELATOR
) AKRON BAR ASSOCIATION
)

Relator, Akron Bar Association submits the following proposed findings of fact supported by the evidence to be submitted at the hearing scheduled to be conducted on October 10, 2008 in connection with the above-captioned matter.

Information Concerning Original Complaint

1. McNerney was referred to represent Laquia Bradford by another Akron attorney and law firm because the original firm had developed a conflict of interest. (Answer of Respondent, ¶ 1 (hereinafter "Answer"))
2. McNerney met with Bradford on two occasions, August 9, 2006 and August 28, 2006. (Dep. v. I p. 7)
3. Following the August 9 meeting, McNerney prepared a retainer letter to Bradford dated August 10, 2006. (Dep. I p. 7). The letter may have been sent out "a little after that." (Id. p. 8)
4. At the time of the August 28, 2006 meeting with McNerney, Bradford executed and delivered the retainer letter to McNerney. (Dep. I p. 8)



5. After receiving the signed engagement letter, McNerney requested the file from the referring law firm. (Id. at 9)

6. The referring attorneys had already assembled medical records, medical bills and other items which were in the file. (Id. at 10)

7. "Sometime in September" McNerney contacted the insurance adjuster for the prospective defendant in a Bradford matter, who was already familiar with the file as a result of his dealings with Bradford's prior counsel. (Id.)

8. McNerney has testified that he recognized the need to obtain "some chiropractic bills" so he sent out a medical records authorization form to Bradford "sometime in October." (Id. at 11)

9. McNerney's computer file indicates that a records authorization form was prepared for the Bradford matter on August 26, 2006. (Letter of Counsel Discovery Response of Respondent, ¶ 1 dated May 13, 2008 (hereinafter "Discovery Response"))

10. McNerney has no paper or electronic record of any correspondence to Bradford by which the records authorization form was sent to Bradford. (No responsive document was ever produced)

11. McNerney never obtained a signed a records authorization from Bradford. (Discovery Response ¶ 1)

12. McNerney's files contain no paper or electronic records of receiving any telephone calls from Bradford at any time after August 28, 2006. (Discovery Response ¶ 2)

13. McNerney's files contain no paper or electronic records of placing any telephone calls to Bradford at any time after August 28, 2006. (Discovery Response ¶ 2)

14. McNerney did not return all of Bradford's calls. (Answer ¶ 4)

15. McNerney has no paper or electronic records reflecting the submission of any materials to the adverse insurance carrier. (Absence of documents produced)

16. Excluding any telephone contacts he may have had with Bradford, McNerney performed no services in connection with the Bradford matter other than creating a medical records authorization form and having one or two telephone calls with the insurance adjuster. (Absence of documents produced) (Dep. I p. 72)

17. McNerney kept no time records on the Bradford case because it was a contingent fee matter; as a result, he has no ability to determine the days on which the two telephone calls with the insurance adjuster took place. (Dep. I p. 72)

18. McNerney did not complete a settlement of the Bradford claim. (Dep. I p. 75)

19. McNerney did not return all of Bradford's calls. If she called three times in a week, he'd call her back once. (Dep. I p. 19) Sometimes he did not return her calls. (Id.)

20. In January 2007 the Bradford case file was returned to the original referring attorney. The Bradford matter was brought to a conclusion in May 2007 to Bradford's satisfaction. (Dep. I p. 75)

21. McNerney never received nor requested any fee for the work he did on the Bradford matter. (Dep. I p. 14)

22. On January 19, 2007 Bradford filed a complaint with the Akron Bar Association in which she alleged, *inter alia*, the neglect of her legal matter and that McNerney had failed to return her repeated (more than 30) phone calls. (Bradford complaint)

Information Concerning Akron Bar Association Investigation of Original Complaint

23. The Akron Bar Association investigative subcommittee assigned Attorney Michael Ciccolini ("Investigator") to investigate the Bradford complaint. The Investigator called McNerney's cell phone number on February 14 2007 and February 22, 2007. The

Investigator left messages in McNerney's cell phone voicemail on each occasion requesting a return call. (Testimony of Michael Ciccolini)

24. McNerney placed a return call to the Investigator "in February" but could not remember if he talked to the investigator or left him a voicemail message. (Dep. I p. 27)

25. The Investigator's report stated that McNerney left a single voicemail message promising to call back the next day; but McNerney never called again. (Testimony of Michael Ciccolini)

26. McNerney understood the gist of the phone messages from the Investigator was that a grievance complaint had been filed and that the Investigator was going to send a letter. (Dep. I p. 20, 78)

27. The Akron Bar Association sent a letter dated February 7, 2007 to McNerney advising him of the complaint filed against him and requesting his written response thereto together with pertinent file materials. (Testimony of Michael Ciccolini)

28. In addition, the Investigator wrote two letters to McNerney concerning the complaint he was investigating, one was dated February 15, 2007; the other was dated February 27, 2007. (Testimony of Michael Ciccolini)

29. McNerney did not submit a written response to the initial letter from the Akron Bar Association in which a written response to the Bradford complaint was requested along with copies of all relevant documents. McNerney did not submit written responses to the two letters from the Investigator. (Testimony of Michael Ciccolini)

30. McNerney had moved in January 2007 from the address to which the Bar Association and Investigator letters were mailed to his current address at 789 W. Market St., Akron, Ohio. (Dep. I pp. 22, 25)

31. McNerney asserts he did not receive the Bar Association and Investigator's letters referred to in ¶¶ 26-27 above because they were sent to an old mailing address. (Dep. I pp. 21-22)

32. The old mailing address referred to in ¶ 30 above was a post office box at the UPS Store located at 1700 W. Market St., Akron, Ohio. (Dep. I pp. 22-23)

33. McNerney changed his mailing address with the Ohio Supreme Court, but not the Akron Bar Association. He also didn't "go to the post office and have it forwarded there." (Dep. I p. 27, 28)

34. McNerney "thought" the Akron Bar Association had his new address. "I thought I had sent it – I sent it to the Ohio Supreme Court. I thought I had sent it to the Akron Bar Association, and I didn't." (Dep. I p. 28)

35. McNerney asserts he was ill from some time in January "a little into March" 2007. (Dep. I pp. 21, 26-27)

36. McNerney didn't check his post office box at 1700 W. Market St. between the time of his illness and May 2007 when he was served with a subpoena to appear for deposition on May 17, 2007 in connection with this matter. (Dep. I p. 28-29)

37. McNerney appeared for deposition on May 17, 2007 pursuant to a subpoena requested by the Akron Bar Association. He produced documents in response to said subpoena at the time of the deposition. During the deposition, he was requested to submit additional records, based on the information learned in the deposition. McNerney submitted a letter dated August 3, 2007 forwarding the additional records in response to said request. McNerney also appeared for a follow up deposition on September 13, 2007 and produced additional documents.

Information Discovered During Investigation

A. McNerney's Bank Account

38. From at least January 2006 until at least September 13, 2007 (the “bank account period”), McNerney maintained only a single bank account for his professional practice, his IOLTA account at US Bank. McNerney testified in deposition that he maintained no separate business account, savings account or checking account. (Dep. I p. 84, 85; Dep. II p. 50) McNerney also testified that he had a personal checking account “for like three months” in “like March of 2006.” (Dep. II p. 64)

39. McNerney deposited personal, earned funds; retainer; and client funds into the IOLTA account. (Dep. I pp. 47-53; Dep. II p. 16, 31, 43)

40. During the bank account period, McNerney paid personal expenses from his IOLTA account, including repaying personal loans. (Dep. II pp. 43-45; Relator's Deposition Exhibits 7A and 7B to Dep. II)

41. McNerney acknowledges the deposit of all funds into a single account “was an inappropriate way to handle it.” (Dep. II p. 17, 71)

42. McNerney learned that it was inappropriate to use the IOLTA account for holding and disbursing personal funds in the first deposition taken in this matter. (Dep. II p. 71-72)

43. Between the May 17, 2007 deposition and the September 13, 2007 deposition, McNerney took no steps to open a separate bank account of any kind. (Dep. II p. 72)

44. During the period between May 17 and September 13, 2007, McNerney consulted with no person or organization to obtain information about appropriate practices for law practice banking. (Dep. II p. 73)

45. During the bank account period, McNerney maintained only the bank statements, checkbook, and canceled checks pertaining to his IOLTA account.

46. During the bank account period, McNerney kept no ledgers reflecting deposits of client funds into the IOLTA account. (Dep. I pp. 51-52, 63; Dep. II p. 70)

47. During the bank account period, McNerney deposited earned fees from appointed criminal cases into the IOLTA account. (Dep. I pp. 49-50)

48. During the bank account period, McNerney deposited in criminal advance fee payments into the IOLTA account. (Dep. I pp. 49-50)

49. During the bank account period, most of McNerney's legal work was criminal defense work performed on a flat fee basis. (Dep. I p. 49)

50. During the bank account period, McNerney paid himself from the IOLTA account. (Dep. II p. 17; Dep. II p. 69)

51. McNerney determined how much he could draw for compensation from the IOLTA account by "just know[ing], how many hours I have got with each client." (Dep. I p. 50)

52. During the bank account period, McNerney never reconciled his IOLTA account. (Dep. I p. 64-65)

53. McNerney also, therefore, had no record of reconciling his IOLTA account during the bank account period. (Dep. II p. 76) He stated he did not know how to reconcile the account. (Dep. II pp. 76-77)

54. McNerney admitted learning of the rules requiring reconciliation of IOLTA accounts after the May 2007 deposition. But between May 17, 2007 and September 13, 2007 he did not attempt to reconcile the IOLTA account. He knew in failing to do so he was not complying with the applicable rules. (Dep. II pp. 78-79)

55. In relation to the accounting for funds maintained in his IOLTA account, McNerney stated he was "confused on how we're supposed to do it." (Dep. I p. 50)

56. McNerney was president of a bank in the early 1990s. (Dep. II p. 67)

57. McNerney placed all of the statements for the IOLTA account for the bank account period into notebooks "when I was preparing for this [deposition]." (Dep. I p. 68)

58. All of the IOLTA account statements for the bank account period were mailed to McNerney's post office box at 1700 W. Market St. As a result, he didn't see any of his IOLTA statements for "literally months prior to picking up the mail . . . within the last two weeks. (Dep. I p. 68)

B. McNerney's Malpractice Insurance

59. McNerney's professional liability insurance lapsed on January 9, 2007. (Dep. I p. 58)

60. McNerney completed an application for renewal of his professional liability insurance on May 16, 2007. (Dep. I p. 57) According to a fax transmittal sheet produced by McNerney at the time of his first deposition, McNerney faxed the application to Main Street Financial Services, Inc. on May 17, 2007 at 12:23 p.m., approximately 2 hours before he was scheduled to appear for his deposition in this matter. (Dep. I Exhibit 9, final page)

61. McNerney "did not realize [he] did not have [malpractice insurance]. It just slipped my mind." (Dep. I p. 58)

62. Between January 9, 2007 and May 17, 2007 McNerney had no professional liability insurance coverage. (Dep. II p. 10)

63. McNerney produced a November 13, 2006 letter from Main Street Financial Services, Inc. notifying him that his professional liability insurance would expire on January 9, 2007. (Dep. I Exhibit 8)

64. Between January 9, 2007 and May 17, 2007 the date on which the binder for his renewed his malpractice insurance was issued, McNerney did not notify any clients that he was not covered by professional liability insurance. (Dep. I p. 58)

65. Between January 9, 2007 and May 17, 2007 (Dep. I p. 58) McNerney did not obtain any signed consent or waiver from any clients in regard to his lack of professional liability insurance.

C. McNerney's Registration Status

66. McNerney appeared for a second deposition on September 13, 2007. As of that date, he was not registered with the Ohio Supreme Court pursuant to the Ohio Rules for Governance of the Bar. (Dep. II pp. 4-5)

67. McNerney remained unregistered through October 23, 2007. (McNerney Answer, ¶ 11).

D. McNerney's Engagement Letters

68. McNerney did not send out engagement letters to all clients after February 1, 2007. (Dep. II pp. 18-19). Between January 1, 2006 and September 13, 2007, McNerney sent out 13 engagement letters. (Dep. II p. 19)

E. McNerney's Nonpayment of Taxes and Fees

69. McNerney filed no state or federal income tax returns for the two years preceding the September 13, 2007 deposition. (Dep. II pp. 51-52)

70. McNerney pled guilty in February 2007 for driving with expired license plates that arose due to the non-payment of renewal fees. (Dep. II p. 53; Relator's Exhibit 9 to Dep. II)

F. McNerney's Consumption of Alcohol

71. McNerney has been cited for driving under the influence of alcohol at least three times, the last in 2005. (McNerney Answer ¶ 12)

72. McNerney was in a three-month intensive alcohol outpatient program in 2001 or 2002. (McNerney Answer ¶ 12)

73. McNerney thinks it was a requirement of his admission to the bar that he'd participate in the OLAP; he was involved with OLAP from approximately 2001 through 2004. (McNerney Answer ¶ 12)

74. McNerney admits to currently being a wine and vodka drinker. (McNerney Answer ¶ 12)

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