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NORTH CAROLINA

WAKE COUNTY

JUL 1998 FILED DHC

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
98 DHC 12

THE NORTH CAROLINA STATE BAR,	)	
	)	
Plaintiff	)	**FINDINGS OF FACT,**
	)	**CONCLUSIONS OF LAW**
v.	)	**AND ORDER OF DISCIPLINE**
	)	
STEPHAN FOSTER LAPPING, Attorney	)	
	)	
Defendant	)	

This matter was heard on the 21st day of May, 1998, before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb, Jr., Chair; Michael L. Bonfoey; and A. James Early, III. The Plaintiff was represented by Larissa J. Erkman. The defendant, Stephan Foster Lapping, appeared but was not represented by counsel. Based on the pleadings and the arguments of counsel at the hearing, the hearing committee hereby enters the following:

FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.

2. The defendant, Stephan Foster Lapping (hereafter "Lapping"), was admitted to the North Carolina State Bar in 1986 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the law of the State of North Carolina.

3. During all times relevant hereto Lapping was actively engaged in the practice of law in Carthage, Moore County, North Carolina and maintained a law office there.

4. The parties presented a Consent Order of Discipline to the hearing committee. By agreement with plaintiff's counsel prior to the hearing and upon the Chair's inquiry on the record at the hearing, Lapping waived his right to seek assignment of a newly constituted hearing committee of the Disciplinary Hearing Commission in the event that the hearing committee declined to approve the consent order. After consideration of the parties' respective recitation of the facts, the hearing committee rejected the Consent Order of Discipline.

5. The complaint in this action was filed on March 9, 1998. Lapping was personally served with the summons and complaint on March 16, 1998 by an officer of the Moore County Sheriff's Department. Pursuant to N.C. Rules Civ. P., Rule 12 and the North Carolina State Bar Discipline & Disability Rules § .0114(e), Lapping's answer was due to be filed no later than April 15, 1998. Lapping did not file an answer or any other responsive pleading herein.

6. Default was entered against Lapping on May 5, 1998.

7. Plaintiff filed and duly served on Lapping a motion for default order imposing discipline.

8. Lapping filed and served a motion to set aside the default. After hearing argument by Lapping, the hearing committee denied Lapping's motion to set aside the default.

9. Lorie McNeill ("Ms. McNeill") filed a grievance with the North Carolina State Bar on October 17, 1996, alleging that, in approximately July, 1995, she retained Lapping to represent her in a domestic matter involving issues of divorce, child custody, child support, equitable distribution, and other property matters.

10. Ms. McNeill paid Lapping a total retainer of $230.00 with the understanding that he would promptly handle these matters and would adequately communicate with her about her case.

11. When she retained Lapping in July 1995, Ms. McNeill provided to Lapping an itemized list of the marital assets and debts, including a 1989 Ford Mustang and a 1988 manufactured home ("the marital residence") containing personal property (such as furnishings) that Ms. McNeill had paid for during her marriage.

12. On or around July 21, 1995, Lapping filed, on behalf of Ms. McNeill, a motion in the cause, seeking an order granting her custody of her two children; child support; divorce from bed and board; an award of alimony pendente lite and permanent alimony. The motion further sought transfer of possession of certain automobiles as between the parties with each party assuming any loan amount outstanding on the respective cars. Ms. McNeill sought possession of the couple's Ford Ranger, which had an outstanding loan balance of approximately $7,887.00, and sought to transfer possession of her Ford Mustang, which had an outstanding loan balance of approximately $1,000, to her husband.

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13. As of October 1995, when Lapping had not taken any further action in her case, Ms. McNeill consulted the Moore County Child Support Enforcement Agency (the "Agency"). As a result of action taken by the Agency, Ms. McNeill's husband agreed to pay $63.00 per month in child support beginning January 1, 1996.

14. At the time, Lapping was not aware that Ms. McNeill had consulted the Agency for assistance in obtaining child support.

15. On November 27th, 1995, Lapping filed a calendar notice for hearing of the motions for temporary custody, alimony and child support during the December 18, 1995 term. The motions were actually called for hearing during the January 2, 1996 district court session. Prior to appearing in court on the motions, Lapping consulted Ms. McNeill. She told him that her husband had signed a Voluntary Support Agreement through the Agency.

16. On January 2, 1996, Ms. McNeill's husband appeared at the calendar call and stipulated to Ms. McNeill's temporary custody of their two children. Lapping did not pursue the issue of alimony because the facts demonstrated that Ms. McNeill was actually the supporting spouse. Lapping did not pursue child support because a Voluntary Support Agreement had already been entered.

17. Lapping did advise Ms. McNeill that her husband stipulated to her temporary custody of the children. However, Lapping failed to adequately discuss with Ms. McNeill the meaning of such stipulation and the effect of the Voluntary Support Agreement on her motion for child support in the pending civil domestic matter. Lapping did not prepare and file a consent order on temporary custody, relying instead on the courtroom clerk's minutes to document the stipulation on temporary custody.

18. From the time of the hearing on January 2, 1996, to January 23, 1997, Lapping attempted to calendar for hearing the motion for permanent custody; however, he took no action on Ms. McNeill's pending motion in the cause for transfer of the family automobiles and respective loan payments or obligations coincident with ownership of those automobiles.

19. The motion for permanent custody was finally called for trial on November 3, 1997. The clerk of court recorded that "Plaintiff [Ms. McNeill] was not present but was represented by counsel; the defendant was present. The defendant stipulated to signing over custody of children to the plaintiff and be [sic] subject to standard visitation. Stephan Lapping is to draw the consent order."

20. Lapping drafted an order granting custody of the two children to Ms. McNeill. The consent order on permanent custody and visitation was not entered until May 15, 1998. There has never been a ruling on Ms. McNeill's request for distribution of the family automobiles.

21. Additionally, Lapping delayed in seeking a judgment for absolute divorce on behalf of Ms. McNeill. The statutorily mandated marital separation period of one year expired in July 1996. Lapping did not file a complaint for divorce and did not seek

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equitable distribution of the marital property (other than the automobiles) until February 6, 1997. Ms. McNeill's divorce judgment was entered on June 23, 1997.

22. From January 2, 1996 to the present, Lapping has failed to keep Ms. McNeill adequately informed about the status of her case, and Lapping has also failed to take adequate steps to obtain the relief sought by Ms. McNeill by failing to obtain transfer of the family automobiles, by failing to resolve Ms. McNeill's child permanent custody and divorce claims promptly, and by failing to take any action on Ms. McNeill's equitable distribution claim, which is still pending. Lapping thereby prejudiced or damaged Ms. McNeill during the course of the professional relationship.

23. By October 11, 1996 when Lapping had failed to take any action on her case since January 1996, Ms. McNeill filed a petition with the State Bar for fee arbitration. On October 14, 1996, the State Bar sent Notification of Mandatory Fee Arbitration to Lapping requesting a response within 15 days of his receipt of the letter. Lapping received this letter but did not respond.

24. On November 19, 1996, the State Bar sent Lapping a letter notifying him that no response had been received, and that Rule 2.6(e) of the Rules of Professional Conduct required him to participate in good faith in the State Bar's fee arbitration program.

25. On December 31, 1996, Lapping sent a letter to the State Bar advising that he had returned the sum of $230.00 to Ms. McNeill. The fee arbitration matter has therefore been satisfactorily resolved, although Lapping initially failed to respond to the State Bar's fee arbitration program.

26. On October 17, 1996, Ms. McNeill filed her grievance underlying this disciplinary action.

27. On November 29, 1996, Lapping was served with a Letter of Notice from the North Carolina State Bar by certified mail, return receipt requested, which notified him that a grievance had been filed by Ms. McNeill and requested his response within 15 days of service.

28. Lapping did not respond to the Letter of Notice within 15 days of the date of service.

29. On January 14, 1997, counsel for the Plaintiff sent a letter by United States mail and addressed to Lapping, informing him that the State Bar's records indicated that he had not responded to the grievance filed against him by Ms. McNeill. This letter granted Lapping until January 28, 1997 to respond to the grievance. Lapping received the letter.

30. Lapping did not respond to Ms. McNeill's grievance on or before January 28, 1997.

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31. On February 3, 1997, Lapping was personally served by the Moore County Sheriff's Department with a subpoena commanding him to appear before Deputy Counsel of the North Carolina State Bar on February 21, 1997 to testify and to produce at the North Carolina State Bar office all records, papers and documents pertaining to Ms. McNeill's grievance.

32. Lapping did not appear before Deputy Counsel at the North Carolina State Bar office on February 21, 1997.

33. Lapping did not produce at the North Carolina State Bar office on February 21, 1997 those documents and objects that Lapping was commanded to produce pursuant to the subpoena.

34. On February 21, 1997, Lapping contacted Deputy Counsel Fern Gunn Simeon via telephone to inform her that he had not responded to Ms. McNeill's grievance because the Letter of Notice and other correspondence from the North Carolina State Bar had been addressed to "Steve F. Lapping" and Lapping's correct legal name is "Stephan Foster Lapping". Lapping called Deputy Counsel Simeon prior to the time he was scheduled to appear pursuant to the subpoena.

35. Lapping was served by certified mail, return receipt requested, with a Letter of Notice dated February 21, 1997 and addressed to "Stephan Foster Lapping" from the North Carolina State Bar.

36. The Letter of Notice dated February 21, 1997 notified Lapping that a grievance had been filed against him by Ms. McNeill and directed him to respond within 15 days.

37. Lapping received the Letter of Noticed dated February 21, 1997 before February 21, 1997, but did not respond.

38. On March 19, 1997, Lapping was personally served by the Moore County Sheriff's Department with a subpoena commanding Lapping to appear before the North Carolina State Bar Grievance Committee on April 13, 1997 and to produce at the North Carolina State Bar office on April 3, 1997, all records, papers and documents pertaining to Ms. McNeill's grievance.

39. Lapping did not appear before the North Carolina State Bar Grievance Committee on April 3, 1997.

40. Lapping did not produce at the North Carolina State Bar office on April 3, 1997 those documents and objects that him was commanded to produce pursuant to the subpoena.

41. By letter dated May 29, 1997, and addressed to "Stephan Foster Lapping", Deputy Counsel Douglas J. Brocker notified Lapping that he would recommend to the North Carolina State Bar Grievance Committee that the grievance filed against Lapping be referred to the North Carolina State Bar Disciplinary Hearing Commission if Lapping

did not respond to the underlying allegations of Ms. McNeill's grievance on or before June 4, 1997.

42. Lapping received the letter from Mr. Brocker on May 31, 1997.

43. Lapping did not respond to Ms. McNeill's grievance on or before June 4, 1997.

44. Lapping sent a letter dated June 3, 1997 to Mr. Brocker of the North Carolina State Bar, enclosing a copy of Lapping's response to the underlying allegations of Ms. McNeill's grievance. The response is dated February 21, 1997.

45. Lapping did not deposit the letter and response referred to in Paragraph 45 above in the United States mail until June 14, 1997.

46. On March 22, 1994, Lapping was served with a Statement of Costs in the amount of $115.73 assessed against Lapping by the Disciplinary Hearing Commission in connection with a prior disciplinary action entitled *The North Carolina State Bar v. Stephan F. Lapping,* 93 DHC 6.

47. As of September 4, 1997, Lapping had not paid the costs taxed against him in 93 DHC 6.

48. On September 4, 1997, Counsel for the plaintiff wrote to Lapping requesting that he immediately remit payment of the costs taxed against him in 93 DHC 6.

49. Lapping received a copy of the September 4, 1997 letter. Lapping did not pay to the North Carolina State Bar the costs taxed against him in 93 DHC 6 until May 19, 1998, although at all relevant times, Lapping had the ability and financial resources to comply with the Disciplinary Hearing Commission's order taxing costs against him.

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

CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over Lapping and the subject matter of this proceeding.

2. Lapping's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(a), (b)(2) and (b)(3) as follows:

(a) by failing to take adequate steps to handle Ms. McNeill's case, Lapping neglected a legal matter entrusted to him in violation of Rule 6(b)(3) of the Rules of Professional Conduct;

(b) by failing to communicate adequately with Ms. McNeill about her case, Lapping violated Rule 6(b)(1) of the Rules of Professional Conduct;

(c) by failing to respond to the North Carolina State Bar regarding the grievance filed by Ms. McNeill and by failing to comply with subpoenas commanding him to appear and produce documents, Lapping has knowingly, willfully and consistently failed to respond to lawful demands for information from a disciplinary authority in violation of Rule 1.1(b) of the Rules of Professional Conduct and has engaged in a pattern of conduct amounting to contempt of the Grievance Committee in violation of N.C. Gen. Stat. Sec. 84-28(b)(3);

(d) by knowingly and willfully failing to pay the costs taxed against him in connection with the prior disciplinary proceeding, 93 DHC 6, Lapping has engaged in conduct amounting to contempt of an order of the Disciplinary Hearing Commission of the North Carolina State Bar in violation of N.C. Gen. Stat. Sec. 84-28(b)(3).

BASED UPON the consent of the parties, the hearing committee also entered the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Lapping's misconduct is aggravated by the following factors:

(a) prior disciplinary offense involving, *inter alia,* the same allegations of failure to respond;

(b) a pattern of misconduct;

(c) multiple offenses;

(d) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency; and

(e) substantial experience in the practice of law.

2. Lapping's misconduct is mitigated by the following factors:

(a) absence of dishonest or selfish motive; and

(b) remorse.

3. The aggravating factors outweigh the mitigating factors.

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

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ORDER OF DISCIPLINE

1. Lapping is hereby suspended from the practice of law for a period of three (3) years, effective 30 days from the service of this Order upon Lapping. The suspension shall be active for a period of not less than six (6) months from the effective date of this Order.

2. At any time after the six-month active suspension period has elapsed, Lapping may seek a stay of the remaining suspension period; however, before a stay may be granted, Lapping must demonstrate by clear, cogent and convincing evidence that he has complied with the following conditions:

(a) Enrollment and participation, at his expense, in a program of law office management training approved by the State Bar. Should such training program last up through and beyond the date, if ever, Lapping seeks a stay of his suspension, then Lapping need only demonstrate that he has satisfactorily completed the training up through and including the date of his application for a stay of the suspension.

(b) Submission to counsel for the State Bar of a written evaluation by a board certified psychiatrist approved by counsel for the plaintiff. This evaluation must address whether Lapping is suffering from any mental or physical condition or addiction which impairs his professional judgment or his ability to engage in the practice of law in a competent manner. This evaluation also must fully assess Lapping's repeated failures to respond to lawful inquiries of the North Carolina State Bar as outlined above and in the prior disciplinary order entered in 93 DHC 6 (a copy of which is attached hereto as Exhibit A), and whether such misconduct is attributable to any mental or physical condition or addiction. Lapping is responsible for all costs associated with this evaluation.

(c) If the evaluating psychiatrist recommends that Lapping undergo continuing treatment for any mental or physical condition or addiction, compliance with the prescribed treatment, at Lapping's expense, throughout the active suspension period or, if the prescribed treatment period is less than the active suspension period, until released by the treating physician or psychiatrist. Lapping shall also submit to counsel for the State Bar an executed medical release, in the form of Exhibit B hereto, along with the names and addresses of any psychiatrist, psychologist, physician or other health care provider who has treated him during the active suspension period.

(d) If the evaluating psychiatrist recommends that Lapping undergo continuing treatment for any mental or physical condition or addiction, submission to counsel for the State Bar at quarterly intervals of a written report prepared by the treating psychiatrist, psychologist or physician, certifying Lapping's compliance with the prescribed treatment and addressing the current status of his condition. The first treatment report shall be due within 90 days of Lapping's initial consultation with the evaluating psychiatrist, and each

subsequent report shall be due within 45 days of the prior report until released by the treating physician or psychiatrist. When released from treatment, Lapping shall provide to counsel for the State Bar notification of his release from treatment and a final written report/discharge summary of the treating physician or psychiatrist.

(e) Should any prescribed treatment last up through and beyond the date, if ever, Lapping seeks a stay of his suspension, then Lapping need only demonstrate that, in the opinion of the evaluating psychiatrist and any treating psychiatrist, psychologist or physician, the condition for which he is being treated impair his professional judgment or ability to engage in the practice of law in a competent manner and he has complied with the treatment and all reporting requirements up through and including the date of his application for a stay of the suspension.

(f) Lapping shall not violate any law of the State of North Carolina, or any other state or of the United States.

(g) Lapping shall comply with all orders and requirements of the CLE Department of the North Carolina State Bar in a timely fashion.

(h) Lapping shall pay his mandatory North Carolina State bar dues in a timely fashion and all requirements or demands for reimbursement of the Client Security Fund.

(i) Lapping shall not violate any provisions of the Revised Rules of Professional Conduct.

(j) Lapping shall respond in a timely fashion, as required by Discipline & Disability Rules of the North Carolina State Bar and N.C. Gen. Stat. § 84-28, et. seq., to all inquiries, subpoenas, discovery requests, orders and other matters requiring a response issued to Lapping by the State Bar Office of Counsel, the Grievance Committee, the Disciplinary Hearing Commission, and any other committee or agency of the North Carolina State Bar (such as the newly-formed Consumer Assistance Program). This condition applies to any inquiries and matters that may be pending at the time this Order is entered, as well as any subsequent inquiries and matters.

(k) Lapping shall respond in a timely fashion to all matters, proceedings, and inquiries of the State Bar's Fee Arbitration Committee.

(l) Lapping shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar within 30 days after his receipt of a Statement of Costs issued by the Secretary to Lapping.

(m) Lapping shall pay out-of-pocket expenses in the amount of $31.96 incurred by Ms. McNeill in connection with her appearance at the hearing of this matter within 30 days after service of this Order.

(n) Lapping shall comply with all provisions of 27 NC. Admin. Code Chapter 1, Subchapter B, § .0124 of the North Carolina State Bar Discipline & Disability Rules pertaining to the obligations of an attorney who has been suspended from the practice law. As required by § .0124(a), Lapping shall promptly notify each of his clients of his suspension and his inability to act as an attorney after the effective date of suspension. In addition, Lapping shall provide to counsel for the State Bar a list of all his clients and all pending administrative or litigation matters in which he has entered an appearance as attorney of record and a copy of all certified letters sent to each client. Lapping shall also provide to counsel for the State Bar documentation and written certification showing that he has complied with the remaining provisions of § .0124 within the time periods stated therein.

3. If Lapping demonstrates that he has complied with the above conditions and is entitled to a stay of the remaining period of the three-year suspension, then the Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0114(x) of the North Carolina State Bar Discipline & Disability Rules.

4. Throughout any period in which the three-year suspension is held in abeyance, Lapping must continue to comply with the conditions stated in paragraphs 2(f)-(k) above.

5. If during any period in which the three-year suspension is held in abeyance Lapping fails to comply with any one or more conditions stated in paragraphs 2(f)-(k), then the stay of the suspension of his law license may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline & Disability Rules.

6. In addition, the stay of the suspension of Lapping's law license may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline & Disability Rules for any of the following reasons:

(a) Failure to satisfactorily complete a program of law office management training approved by the State Bar. Lapping must provide to counsel for the State Bar a written statement from the program coordinator, certifying that he has satisfactorily completed such training program.

(b) With respect to any prescribed medical treatment, as referred to in paragraphs 2(b) - (e) above which continues beyond the period of active suspension, failure to comply with any continuing treatment program prescribed by the evaluating psychiatrist or any psychiatrist, psychologist, physician or health care provider rendering treatment to Lapping as prescribed by the evaluating psychiatrist.

(c) With respect to any prescribed medical treatment, as referred to in paragraphs 2(b) - (e) above which continues beyond the period of active suspension, failure to comply with the reporting requirements of paragraph 2(d)

(d) Receipt by the State Bar of any medical report pursuant to the reporting requirements of paragraph 2(d) above or otherwise, indicating that Lapping is suffering from any mental or physical condition or addiction which impairs his professional judgment or ability to engage in the practice of law in a competent manner.

7. If any stay of the suspension of Lapping's law license is lifted, as provided in the foregoing paragraphs, the Disciplinary Hearing Commission may enter an order providing for such conditions as it deems necessary for obtaining a stay of the remaining suspension period or for reinstatement of Lapping's license at the end of the three-year suspension period.

8. In any event, to obtain reinstatement of his license at the end of the three-year suspension period if no stay is sought or if a stay has been lifted, Lapping must demonstrate that he has fully complied with all provisions of 27 NC. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the North Carolina State Bar Discipline & Disability Rules. Lapping must also demonstrate by clear, cogent and convincing evidence that he is not suffering from any mental or physical condition or addiction which impairs his professional judgment or ability to engage in the practice of law in a competent manner.

Signed by the undersigned hearing committee chair with the consent of the other hearing committee members.

This the 12 day of July, 1998.

Henry C. Babb, Jr., Chair
Hearing Committee

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