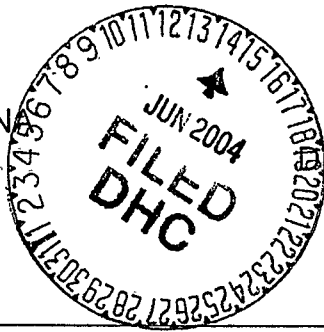


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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 11

THE NORTH CAROLINA STATE BAR,)
Plaintiff,)
v.)
MELVIN L. WALL, JR., Attorney,)
Defendant.)

ORDER OF DISCIPLINE

This matter was heard by a Hearing Committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair; M. Ann Reed and H. Dale Almond on May 7, 2004. Thomas F. Moffitt represented the plaintiff, and W. Terry Sherrill represented the defendant. The complaint was filed on June 24, 2003. In his answer, filed on July 7, 2003, the defendant admitted all of the factual allegations in the complaint and the allegations of misconduct.

Based on the pleadings and evidence introduced during the hearing, the Hearing Committee makes the following:

FINDINGS OF FACT

1. 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 (Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC")).
2. Defendant, Melvin L. Wall, Jr., (hereinafter "Wall" or "Defendant"), was admitted to the North Carolina State Bar in 1990, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.
3. During the times relevant to this Complaint, Wall actively engaged in the practice of law in the State of North Carolina and practiced law in the city of Charlotte, Mecklenburg County, North Carolina. In 1997 and 1998, Defendant was practicing law with Frank C. Creft, Jr.

4. On August 27, 1997, Marion Elizabeth Forney ("Forney") was injured in a fall on a wet floor in a Winn Dixie food store, and on October 13, 1997, she entered into a contingency fee contract with Frank C. Creft, Jr. to represent her to recover damages for personal injuries sustained in the fall.

5. On January 14, 1998, Forney was injured in an automobile accident in which she was a passenger in a car that was hit from behind by a car driven by Bobby Dean Pressl y, Jr., and on February 10, 1998, Forney entered into a contingency fee contract with Frank C. Creft, Jr. to represent her to recover damages for personal injuries she sustained in the collision.

6. On May 1, 1998, Forney was injured in a collision when Crystal Cribb made an unlawful turn in front of Forney's car, and on May 6, 1998, Forney entered into a contingency fee contract with Frank C. Creft, Jr. to represent her to recover damages for personal injuries she sustained in the collision.

7. Defendant provided legal services relating to all three of Forney's personal injury cases.

8. In June 2000, Creft and Wall stopped practicing law together. Wall sent a letter to the clients whose cases he was handling, including Forney, and informed them that they had the option of allowing him to continue to represent them or to choose to have Creft represent them. Forney returned the form sent to her and indicated on it that she elected to have Wall continue to represent her.

9. Wall filed a complaint against Bobby Dean Pressley, Jr. in Superior Court for Mecklenburg County on March 17, 1999 (*Forney v. Pressley*, No. 99 CVS 4202). An answer was filed on May 3, 1999, and Wall voluntarily dismissed the case on May 10, 1999, pursuant to Rule 41 (a) of the North Carolina Rules of Civil Procedure. Wall did not re-file this action within one year of the dismissal, and Forney's legal right to seek compensation in the courts for recovery for her personal injuries arising from Pressley's negligence was extinguished.

10. Wall failed to take timely action on Forney's other two personal injury claims described above against Winn Dixie and Cribb, and those claims now are barred by the applicable three-year statute of limitations for such claims (N.C. Gen. Stat. § 1-52 (16)).

11. Forney repeatedly tried to contact Wall to learn about the status of her cases and the progress he was making on them, but her efforts were unsuccessful. When she tried to contact him, Wall was either out of the office or was too busy to talk with her. He did not have meaningful communications with her or provide timely meaningful legal advice concerning her three personal injury cases until after recovery of damages in all three was barred by the applicable statute of limitations.

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 defendant, Melvin L. Wall, Jr., and the subject matter of this proceeding.
2. Wall's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28 (b)(2) and Revised Rules of Professional Conduct 8.4 (a) in that he violated the Revised Rules of Professional Conduct as follows:
 - (a) By failing to act with reasonable diligence and promptness in representing his client, Marion Elizabeth Forney, in the three personal injury cases which now are barred by the statute of limitations, the defendant violated Rule 1.3;
 - (b) By failing to keep his client, Marion Elizabeth Forney, informed about the status of her personal injury cases and by failing to promptly comply with her reasonable requests for information, the defendant violated Rule 1.4 (a), and
 - (c) By failing to explain the matters to the extent reasonably necessary to permit his client, Marion Elizabeth Forney, to make informed decisions regarding the representation, the defendant violated Rule 1.4 (b).

Based upon the evidence presented, the Hearing Committee also makes the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Grievance Committee of the State Bar censured the defendant on May 4, 2002, for neglect of his client's case in violation of Rule 1.3 of the Revised Rules of Professional Conduct and Rule 8.4 (c) for conduct involving dishonesty, fraud, deceit or misrepresentation. The censure states that defendant failed to provide discovery responses, failed to attend a scheduled deposition and made false representations to the federal judge concerning the matter. As a result of his conduct, defendant's client's case was dismissed.
2. The Grievance Committee of the State Bar reprimanded the defendant on January 24, 1998, for neglect of his client's case and failure to communicate with his client. The reprimand states that defendant had been ordered by a judge to provide discovery materials or face dismissal of his client's case. He failed to do; the case was dismissed and was not re-filed before the statute of limitations barred his client's claims. The reprimand found numerous violations of the Rules

of Professional Conduct, including neglect of his client's case, failure to adequately communicate with his client and conduct prejudicial to the administration of justice.

3. The Grievance Committee of the State Bar issued an admonition to defendant on November 6, 1997, for his misconduct in handling several legal matters for his clients, including failure to adequately communicate with them, failure to promptly refund the unearned portion of a fee they paid, failure to promptly return the clients' files, failure to maintain a trust account and place unearned fees in it and failure to promptly respond to the local grievance committee's legitimate request for information.

4. The Grievance Committee of the State Bar issued a reprimand to the defendant on November 15, 1993, for conducting interviews with an adverse party in civil litigation on behalf of his client, knowing that the adverse party was represented by counsel and without the knowledge or consent of the adverse party's counsel.

5. Defendant's license was suspended from October 24, 1997 until April 17, 1998 for failure to pay State Bar membership fees for 1997.

6. Defendant failed to pay a judgment rendered against him in 1999 in a civil action by a former client arising from neglect of the client's case. (*Barnes v. Wall*, 99 CVD 9665, Guilford County).

7. Defendant failed to pay a judgment rendered against him in 1999 in a civil action filed by a court reporter for failure to pay for preparation of transcripts. (*Frassinelli v. Wall*, 01 CVD 817A, Orange County)

8. Wall has not made restitution to Marion Elizabeth Forney.

Based upon the Findings of Fact Regarding Discipline, the Hearing Committee also makes the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factor:

- (a) Prior disciplinary offenses;
- (b) A pattern of misconduct relating to client neglect and failure to keep his clients informed;
- (c) Multiple offenses;
- (d) Substantial experience in the practice of law; and

(e) Indifference to making restitution.

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

(a) Absence of a dishonest or selfish motive; and

(b) Physical or emotional problems during the time period in which the violations occurred.

3. The aggravating factors outweigh the mitigating factors.

4. Defendant has violated Revised Rules of Professional Conduct 1.3 and 1.4. His misconduct resulted in significant harm to his client, Marion Elizabeth Forney. Defendant failed to keep her informed about the progress and status of her cases despite her repeated requests for information. She had three personal injury claims that now are barred by the statute of limitations due to defendant's neglect and failure to communicate with her. This pattern of misconduct follows a history and progression by defendant of misconduct for which the State Bar has imposed lesser sanctions in the past, including an admonition, two reprimands and a censure, in an effort to protect the public and to help the defendant see the error of his ways and correct those errors. Those lesser sanctions have not been successful to achieve those purposes. The Hearing Committee finds that suspension of the defendant's law license now is necessary to protect the public. However, disbarment is not warranted and staying a portion of the suspension may be appropriate, provided that the defendant meets the conditions of the stay set forth below.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW and the FINDINGS OF FACT REGARDING DISCIPLINE and CONCLUSIONS OF LAW REGARDING DISCIPLINE, the Hearing Committee makes the following:

ORDER OF DISCIPLINE

1. The defendant, Melvin L. Wall, Jr., is hereby suspended from the practice of law for three years, effective thirty (30) days from service of this order upon him.

2. After no less than six months following the effective date of the order, the defendant may file a verified petition for a stay of the remaining period of the suspension in accordance with the requirements of 27 NCAC 1B. § .0125 (b) of the Discipline Rules. His remaining suspension may be stayed if he establishes by clear, cogent and convincing evidence that he has met the following conditions:

a. Defendant shall comply with the requirements of Discipline Rules .0124 and .0125 (b).

b. Defendant shall provide documentation to the State Bar that he has been evaluated by the State Bar's Lawyer Assistance Program (LAP) and has abided by the LAP recommendation for treatment and follow-up program for the physical, mental, emotional or substance abuse problems found to exist. Provided further that he shall enter into a LAP Recovery Contract that shall remain in effect during the three years that defendant's license is suspended, comply with the terms of the contract and authorize LAP to forward semi-annual reports to the Office of Counsel of the State Bar no later than January 1st and July 1st for each year during the suspension period. The reports shall either (i) certify defendant's continued compliance with the contract or (ii) alternatively, disclose the details of his non-compliance with the contract.

c. An arbitrator shall be appointed to determine the appropriate amount of restitution that Defendant shall pay to Marion Elizabeth Forney. The arbitrator shall be an attorney who practices law in Gaston County, is acceptable to the Defendant, and has been approved by the Office of Counsel for the State Bar. Once the amount of restitution has been determined, Defendant shall make arrangements, satisfactory to the Office of Counsel for the State Bar, to pay same.

d. Defendant shall make arrangements, satisfactory to the Office of Counsel for the State Bar, to satisfy the judgments entered against him in *Barnes v. Wall*, 99 CVD 9665 (Guilford County) and *Frassinelli v. Wall*, 01 CVD 817A (Orange County).

e. Defendant shall make good faith efforts to obtain and maintain malpractice insurance.

f. Defendant shall not violate any federal or state laws or any of the Revised Rules of Professional Conduct (2003), except minor traffic laws punishable as infractions.

g. Defendant will timely comply with all State Bar membership and Continuing Legal Education requirements.

h. Defendant shall make arrangements, satisfactory with the Office of Counsel for the State Bar, to pay all costs incurred in this proceeding, as assessed by the Secretary.

3. If no stay is sought or if a stay of suspension is obtained and subsequently is lifted and the suspension is activated for any reason, the defendant must show that he has complied with each of the following conditions precedent to reinstatement of his law license:

a. Defendant shall comply with the requirements of Discipline Rules .0124 and .0125 (b).

b. Defendant shall provide documentation to the State Bar that he has been evaluated by the State Bar's Lawyer Assistance Program (LAP) and has abided by the LAP recommendation for treatment and follow-up program for the physical, mental, emotional or substance abuse problems found to exist. Provided further that he shall enter into a LAP Recovery Contract that shall remain in effect during the three years that defendant's license is suspended, comply with the terms of the contract and authorize LAP to forward semi-annual reports to the Office of Counsel of the State Bar no later than January 1st and July 1st for each year during the suspension period. The reports shall either (i) certify defendant's continued compliance with the contract or (ii) alternatively, disclose the details of his non-compliance with the contract.

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f. Defendant shall not violate any federal or state laws or any of the Revised Rules of Professional Conduct (2003), except minor traffic laws punishable as infractions.

g. Defendant will timely comply with all State Bar membership and Continuing Legal Education requirements.

h. Defendant shall make arrangements, satisfactory with the Office of Counsel for the State Bar, to pay all costs incurred in this proceeding, as assessed by the Secretary.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this the 10th day of June 2004.


Stephen E. Culbreth, Chairman
Hearing Committee