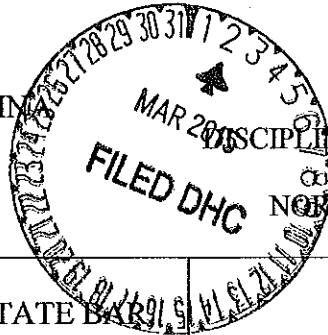


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 23

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

ORDER OF DISCIPLINE

CHARLES MARK FEAGAN, Attorney,

Defendant

This matter was heard on December 4, 2014 by a Hearing Panel of the Disciplinary Hearing Commission composed of Beverly T. Beal, Chair, and members Barbara B. Weyher and Randy A. Moreau, pursuant to 27 N.C.A.C. 1B § .0114 of the Rules and Regulations of the North Carolina State Bar. Plaintiff was represented by Barry S. McNeill, Deputy Counsel. Defendant, Charles Mark Feagan, was represented by Dudley A. Witt and David B. Freedman. Based upon the pleadings and evidence introduced at the hearing, as well as the stipulations of factual findings by the parties, the panel hereby finds by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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).

2. Defendant, Charles Mark Feagan ("Feagan" or "Defendant"), was admitted to the North Carolina State Bar on August 23, 1997, 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 Rules of Professional Conduct.

3. During all or part of the relevant periods referred to herein, Feagan was engaged in the practice of law in the State of North Carolina and practiced in Columbus, Polk County, North Carolina.

FIRST CLAIM FOR RELIEF

4. On or about October 20, 2010, Feagan obtained and possessed a business check (check number 2138, Asheville Savings Bank account) stolen from Alex V. and Heather Williams, doing business as RPM Retail Finance, of Asheville, North Carolina.

BTB

5. On or about the same date referenced in Paragraph 4 above, Feagan forged and uttered check number 2138 by cashing the check in the amount of \$486.53 at the Sav-Mor grocery store, Plaza Loop shopping center, in Canton, North Carolina.

6. The check referenced in Paragraphs 4 and 5 above was made payable to "Charles Mark Feagan" and was endorsed by Feagan, but Feagan was not an authorized payee.

7. On January 20, 2011, Haywood County law enforcement authorities charged Feagan in connection with the forgery and uttering of the check referenced in Paragraphs 4 and 5 with one count of felonious common law forgery in violation of N.C. Gen. Stat. § 14-119(A); one count of felonious common law uttering in violation of N.C. Gen. Stat. § 14-120; and, one count of misdemeanor possession of stolen property in violation of N.C. Gen. Stat. § 14-71.1.

8. After being initially indicted on the two felony charges on April 13, 2011, superseding indictments were returned by a Haywood County Grand Jury in *State v. Charles Mark Feagan*, No. 13-CRS-000048 (Haywood County Superior Court) charging Feagan with forgery in violation of N.C. Gen. Stat. § 14-119(A), and in *State v. Charles Mark Feagan*, No. 13-CRS-000049 (Haywood County Superior Court) with uttering in violation of N.C. Gen. Stat. § 14-120 .

9. On December 13, 2013, a jury convicted Feagan in Haywood County Superior Court of two felonies (forgery of check in case no. 13-CRS-000048 and uttering the forged check in case no. 13-CRS-000049) and one misdemeanor (possession of stolen goods—the stolen checks in case no. 11-CRS-050197) .

10. Feagan received two consecutive six-to-eight month sentences for the felony convictions referenced in Paragraph 9 above, suspended for 36 months on specified conditions of probation.

SECOND CLAIM FOR RELIEF

11. On September 4, 2010, Dr. Samuel E. Britt ("Dr. Britt") received a speeding ticket (citation no. 10IF701202) while travelling through Polk County.

12. Dr. Britt contacted Feagan about handling the speeding ticket referenced in Paragraph 11 above.

13. On September 21, 2010, Feagan informed Dr. Britt by letter that his fee for handling the ticket would be \$300, and that the fines and costs for the ticket would be \$171.

14. In the letter referenced in Paragraph 13 above, Feagan requested that Dr. Britt return an enclosed waiver of appearance form and the sum of \$471 to him.

15. Dr. Britt sent Feagan the waiver of appearance form and the sum of \$471 by personal check on September 24, 2010.

16. On or about October 1, 2010, Feagan received and cashed Dr. Britt's check referenced in Paragraph 15 above.

17. Feagan did not deposit into his trust account and did not identify or maintain the \$171 in court costs and fines as entrusted funds from Dr. Britt.]

18. On December 15, 2010, Feagan appeared in court on behalf of Dr. Britt and entered a guilty plea to a reduced charge in connection with the speeding ticket citation referenced in Paragraph 11 above.

19. Feagan did not pay the \$171 in court costs and fines to resolve Dr. Britt's speeding ticket citation and guilty plea referenced in Paragraphs 11 and 18 above.

20. Dr. Britt subsequently received a notice of the revocation of his driver's license as a result of Feagan's failure to pay the court costs and fines referenced in Paragraph 19 above.

21. Feagan failed to identify, hold, and maintain Dr. Britt's \$171 in entrusted property separate from his own funds.

22. Feagan failed to timely disburse to the court Dr. Britt's \$171 in entrusted funds for the court costs and fines in connection with the speeding ticket citation and guilty plea referenced in Paragraphs 11 and 18 above.

23. Feagan converted the \$171 of Dr. Britt's entrusted fiduciary funds to his own use and benefit.

24. Dr. Britt subsequently filed a fee dispute petition with the State Bar's Attorney Client Assistance Program, which was served upon Feagan by personal service on June 5, 2011.

25. Feagan failed to respond to the fee dispute petition referenced in Paragraph 24 above.

26. On or about April 11, 2011, Feagan was served with a Letter of Notice in grievance file no. 11G0365 concerning his handling of Dr. Britt's speeding ticket citation referenced in Paragraph 11 above.

27. In his response to the Letter of Notice referenced in Paragraph 26 above, Feagan stated that he had issued a refund and a letter of apology to Dr. Britt.

28. Feagan's representations in his response referenced in Paragraph 27 above, that he had issued a refund and a letter of apology to Dr. Britt, were false.

Based upon the stipulations of factual findings by the parties, the evidence presented, and the foregoing Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.
2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:
 - a) By his commission of the felonious forgery and uttering of the check, Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
 - b) By failing to identify, hold, and maintain Dr. Britt's entrusted funds separate from his own funds, by failing to deposit Dr. Britt's entrusted funds into a fiduciary account or his trust account, and by failing to disburse or pay Dr. Britt's court costs and fines with the funds Dr. Britt had entrusted to him for that purpose, Defendant failed to act with reasonable diligence and promptness in representing Dr. Britt in violation of Rule 1.3, Defendant failed to promptly identify, hold and maintain Dr. Britt's entrusted funds separate from his own in violation of Rule 1.15-2(a), Defendant failed to deposit Dr. Britt's entrusted funds into a fiduciary account or Defendant's trust account in violation of Rule 1.15-2(c), and Defendant failed to promptly pay to the court Dr. Britt's entrusted funds for the court costs and fines in violation of Rule 1.15-2(m);
 - c) By converting Dr. Britt's entrusted funds to his own benefit, Defendant used entrusted funds for his personal benefit in violation of Rule 1.15-2(j), Defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 8.4(b), and Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c);
 - d) By failing to respond to Dr. Britt's fee dispute petition, Defendant failed to participate in good faith in the fee dispute resolution process in violation of Rule 1.5(f)(2); and,
 - e) By falsely stating in his response to the State Bar's Letter of Notice in grievance file no. 11G0365 that he had issued a refund and letter of apology to Dr. Britt, Defendant knowingly made a false statement of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

Based upon the evidence presented, the Hearing Panel enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant fully cooperated with the State Bar's investigation and has been responsive to the State Bar's inquiries.
2. During the disciplinary process and to this panel, Defendant admitted to the underlying rules violations found by this panel above, and, as a result, the hearing proceeded solely on the issue of what discipline to impose.
3. Following being licensed as an attorney in 1997, Defendant began employment with his uncle's law firm and eventually became a partner in the firm in 2005.
4. Defendant developed a drug addiction to cocaine, and in 2006 Defendant's uncle paid for Defendant to undergo drug treatment rehabilitation.
5. Although Defendant remained drug-free for approximately six months, he relapsed into drug abuse and his uncle dissolved their partnership due to Defendant's relapse.
6. Following the disassociation from his uncle's law firm, Defendant practiced law solo without administrative assistance.
7. The expense associated with Defendant's regular drug abuse and addiction caused him to deplete his assets and resulted in financial hardship.
8. In or about April 2010, Defendant switched from using cocaine to using methamphetamines, and began associating with others who also used methamphetamines.
9. Defendant was addicted to methamphetamines and had begun winding down his solo law practice when he was engaged by Dr. Britt to handle Dr. Britt's speeding ticket and committed the criminal offenses.
10. Because of Defendant's methamphetamine addiction, Defendant suffered from physical and mental impairment during the time he represented Dr. Britt and forged and uttered the check.
11. Defendant continued to suffer from the impairment referenced in Paragraph 10 above in May 2011 at the time he falsely stated to the State Bar that he had not converted Dr. Britt's entrusted funds and had issued a refund to Dr. Britt.
12. Defendant voluntarily began drug rehabilitation again on June 22, 2011 at the Pavillon drug addiction treatment center in Mill Spring, North Carolina.
13. Defendant has successfully participated in and completed the State Bar's Lawyer's Assistance Program ("LAP") recovery contract program, and presently is in an extended recovery contract with LAP.

14. Defendant continues to be in compliance with his drug rehabilitation therapy and has not failed a drug test since his admission to Pavillon.
15. Defendant regularly attends and participates in Narcotics Anonymous meetings in the Charlotte, North Carolina area.
16. Defendant regularly meets with his LAP contract monitor and attends the monthly LAP attorney lunches.
17. Defendant currently serves as a home manager at Fresh Start Sober Living for other recovering alcohol and drug addicts.
18. Defendant's sponsors and mentors, including representatives of LAP, laud him for his dedication and commitment to his recovery from drug addiction, though there is no guarantee against relapse.
19. As a part of his recovery process, Defendant made full restitution to Dr. Britt.
20. Defendant is genuinely remorseful for his actions that resulted in the harm to his client and the victims of his crimes.
21. Defendant continues to be in compliance with the conditions of his probation in *State v. Charles Mark Feagan*, No. 13-CRS-000048 (Haywood County Superior Court), and *State v. Charles Mark Feagan*, No. 13-CRS-000049 (Haywood County Superior Court).
22. Defendant was reprimanded in 2009 (Grievance File Nos. 08G1338 & 09G0041) for failing to diligently pursue a client's civil case; for failing to appear on behalf of a client in a traffic matter; for failing to inform both clients about the status of their cases and to comply with the clients' requests for information; for failing to participate in good faith in a fee dispute resolution; and, for failing to timely respond to lawful demands for information from a disciplinary authority.
23. Effective April 14, 2011, Defendant's law license was suspended for five (5) years by the Disciplinary Hearing Commission in *The North Carolina State Bar v. Charles Mark Feagan*, No. 10 DHC 32, for neglect of a civil client and failing to respond to the State Bar's Letter of Notice.
24. Defendant affirmed that he will not seek reinstatement during the suspension of his law license in *The North Carolina State Bar v. Charles Mark Feagan*, No. 10 DHC 32.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the Hearing Panel makes the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are present:

- (B) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- (C) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- (D) Elevation of Defendant's own interest above that of his client;
- (F) Defendant's actions had negative impact on the administration of justice;
- (G) Impairment of the client's ability to achieve the goals of representation by Defendant; and,
- (I) Defendant committed acts of dishonesty, misrepresentation, deceit, and fabrication.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors warrant consideration of disbarment:

- (A) Defendant committed acts of dishonesty, misrepresentation, deceit, and fabrication;
- (C) Misappropriation or conversion of assets of any kind to which the Defendant or recipient is not entitled whether from a client or any other source; and,
- (D) Commission of felonies.

3. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and concludes the following factors are applicable:

- (A) Presence of prior disciplinary offenses by Defendant in this state;
- (C) Presence of a dishonest or selfish motive by Defendant;
- (G) Defendant engaged in multiple offenses;

- (H) Effect of personal or emotional problems on Defendant's conduct;
- (I) Effect of physical and mental impairment on Defendant's conduct;
- (J) Interim rehabilitation by Defendant;
- (K) Defendant's full and free disclosure to the hearing panel and cooperative attitude toward the disciplinary proceedings;
- (P) Defendant's remorse;
- (Q) Defendant's good character and reputation, which was adversely affected by his substance abuse;
- (S) Defendant's degree of experience in the practice of law;
- (U) Imposition of other penalties and sanctions, including Defendant's criminal conviction judgments;
- (V) Although not as timely as would be appropriate, Defendant ultimately made restitution

4. The Hearing Panel has considered issuing an admonition, reprimand or censure but concludes that such discipline would not be sufficient discipline because of the gravity of the misconduct at issue and the harm or potential harm Defendant's misconduct caused to the public, the administration of justice, and the legal profession.

5. The Hearing Panel also has considered the three disbarment factors found under 27 N.C.A.C. 1B §.0114(w)(2), but concludes that disbarment is not necessary to protect the public in this case.

6. For these reasons, this Hearing Panel finds that an order imposing discipline short of suspension of Defendant's law license would not adequately protect the public, the legal profession, or the administration of justice for the following reasons:

- a) The factors under 27 N.C.A.C. 1B §.0114(w)(1) and (w)(3) that are established by the evidence are of a nature that support imposition of suspension as the appropriate discipline; and,
- b) Entry of less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar in this State.

Based upon the foregoing findings of fact and conclusions of law and the findings of fact and conclusion regarding discipline, and based upon the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE

1. Defendant, Charles Mark Feagan, is hereby suspended from the practice of law for (5) five years, which suspension will commence at the expiration of the five (5) year suspension imposed by the Disciplinary Hearing Commission in *The North Carolina State Bar v. Charles Mark Feagan*, No. 10 DHC 32.

2. Defendant may not seek a stay of any portion of the five (5) year suspension.

3. With any petition Defendant files for reinstatement to active practice, Defendant must prove by clear, cogent, and convincing evidence that he complied with each of the following conditions:


- a) Submitted his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from the effective date of the order of suspension;
- b) Kept his address of record with the State Bar current, accepted all certified mail from the State Bar, and responded to all letters of notice and requests for information from the State Bar by the deadlines stated in the communication;
- c) Participated in LAP counseling, complied with the extended LAP recovery contract and treatment recommendations, and continued with the extended LAP recovery contract throughout his five (5) year suspension;
- d) Continues under an extended LAP recovery contract for two years after he applies for reinstatement and is reinstated, with the two years commencing upon his reinstatement;
- e) Provided a written release to the State Bar's Office of Counsel authorizing the Office of Counsel to confer with his LAP counselor, psychiatrist, psychologist or other LAP personnel, and to obtain copies of any records relating to his compliance with treatment recommendations. Defendant shall not revoke his written release;
- f) Complied with all provisions of 27 N.C.A.C. 1B § .0125(b) of the Rules and Regulations of the North Carolina State Bar on a timely basis. If the Defendant complies with all the provisions of this Order, this panel would deem the compliance to be affirmative evidence of "general fitness requisite for an attorney and counselor-at-law," as required by N.C. R. Gov'g Admis. to Practice Law, Admission Rules .0501 and .0601 (2014) for taking the North Carolina Bar Examination pursuant to the requirement of 27 N.C.A.C. 1B § .0125(b)(3)(D) of the Rules and Regulations of the North Carolina State Bar;

- g) Complied with all the terms and conditions of his probation in *State v. Charles Mark Feagan*, No. 13-CRS-000048 (Haywood County Superior Court), and *State v. Charles Mark Feagan*, No. 13-CRS-000049 (Haywood County Superior Court).
- h) Not have violated any of the Rules of Professional Conduct;
- i) Not have violated any laws of the State of North Carolina or of the United States; and
- j) Paid all costs of this proceeding as assessed by the Secretary within ninety (90) days of service of the notice of costs upon him.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within ninety (90) days of service of the notice of costs upon Defendant.

Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 10th day of February, 2015.



Beverly T. Beal, Chair
Disciplinary Hearing Panel