

STATE OF NORTH CAROLINA

WAKE COUNTY

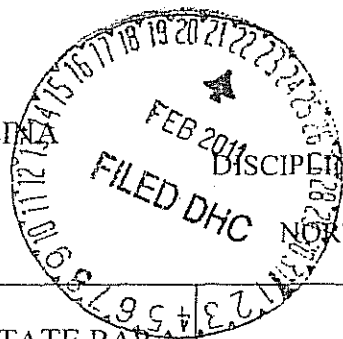
THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CHARLES M. FEAGAN, Attorney,

Defendant



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 32

ORDER OF DISCIPLINE

This matter was heard on February 4, 2011, before a hearing panel of the Disciplinary Hearing Commission composed of Theodore C. Edwards, II, Chair, Fred M. Morelock, and Patti Head. Barry S. McNeill represented Plaintiff, the North Carolina State Bar. Defendant did not appear for the hearing, and was not represented by legal counsel at the hearing.

Based upon the facts alleged in the Complaint that pursuant to 27 N.C.A.C. 1B § .0114(f) and Rule 8(b) of the North Carolina Rules of Civil Procedure are deemed admitted by Defendant's default and the resulting Default Judgment in this matter dated December 20, 2010, and based upon the additional evidence presented at the hearing, the Hearing Panel makes by clear, cogent, and convincing evidence the following::

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "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 M. Feagan ("Feagan"), was admitted to the North Carolina State Bar on August 23, 1997, 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 Rules of Professional Conduct.

3. During all or a portion of the relevant periods referred to herein, Feagan was engaged in the private practice of law in the city of Columbus, Polk County, North Carolina. From 1997 until early June of 2008, Feagan was affiliated with the Feagan Law Firm, PLLC, in Columbus, Polk County, North Carolina.

4. In or about January 2006, Robert Stamback ("Stamback") retained Feagan on a contingency basis for representation in a personal injury matter arising from an October 17, 2005 vehicular accident.

5. During the following four year period, Feagan failed to provide Stamback with status updates on his case despite repeated telephone calls requesting the same.

6. Unknown to Stamback, on April 21, 2008 the insurance company notified Feagan that it had decided to deny Stamback's claim.

7. In early July of 2008, Stamback received a letter from Feagan notifying him that Feagan had left the Feagan Law Firm and had moved his law office to his home at 900 Blanton Street, Columbus, Polk County, North Carolina. Feagan provided new contact information and a post office box address.

8. Stamback called Feagan's new telephone number numerous times, leaving messages the few times the answering machine came on. Feagan failed to return his calls.

9. Feagan failed to file a civil action within the applicable statute of limitations. As a result, Stamback's claim became time-barred after October 17, 2008.

10. On or about April 8, 2009, Stamback was able to track down Feagan at the Polk County Courthouse.

11. During this encounter, Feagan provided no update to Stamback regarding Stamback's claim or its denial by the insurance company.

12. Feagan again promised Stamback a status update by the end of that week.

13. Feagan failed to provide Stamback with a status update following their April 8, 2009 encounter.

14. On April 28, 2009, Stamback sent Feagan a letter requesting that he contact him.

15. Feagan failed to respond to Stamback's letter or otherwise contact Stamback.

16. On August 20, 2009, Stamback filed grievance complaint no. 09G0990 against Feagan.

17. On or about September 24, 2009, the State Bar sent a Letter of Notice to Feagan by certified mail regarding grievance file no. 09G0990. Feagan failed to accept service of the Letter of Notice.

18. On or about January 14, 2010, Feagan was served by sheriff with the Letter of Notice regarding file no. 09G0990. Feagan was required to respond to the Letter of Notice within fifteen days of receiving the letter.

20. Feagan failed to respond to the Letter of Notice within the fifteen day period as required.

21. On or about March 22, 2010, a follow-up letter was sent to Feagan requiring him to respond by April 2, 2010.

22. Feagan failed to respond to the March 22, 2010 follow-up letter.

23. Feagan was served with the Summons and Complaint in this disciplinary matter on September 23, 2010. Feagan's answer to the Complaint was due no later than October 13, 2010.

24. Feagan failed to file an answer or any responsive pleading by the deadline established by Rule 4 of the North Carolina Rules of Civil Procedure and 27 N.C. Admin. Code 1B § .0114(e).

25. On October 28, 2010, the Secretary of the State Bar entered Feagan's default.

26. On December 20, 2010, a Default Judgment was filed against Feagan by the Hearing Panel.

CONCLUSIONS OF LAW

1. The Hearing Panel has jurisdiction over Defendant Feagan and over the subject matter.

2. Default was properly entered against Feagan for his failure to timely file an answer or other responsive pleading to the Complaint.

3. Pursuant to 27 N.C. Admin. Code 1B § .0114(f) and Rule 8(d) of the North Carolina Rules of Civil Procedure, the allegations in the State Bar's Complaint are deemed admitted by Feagan and the violations of the Rules of Professional Conduct set out in the Complaint are deemed admitted by Feagan as a matter of law. Plaintiff also presented evidence at the hearing proving the allegations of the State Bar's Complaint.

4. Feagan's conduct, as set forth above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and (b)(3) in that Feagan violated the Rules of Professional Conduct as follows:

a) By failing to pursue Stamback's legal matter for approximately four years, Feagan failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;

b) By failing to timely respond to Stamback's inquiries or otherwise keep Stamback informed about the status of his case, Feagan failed to keep his client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a)(4); and,

- c) By failing to respond to the State Bar's Letter of Notice regarding grievance file no. 09G0990, Feagan failed to respond as required to a lawful demand for information from a disciplinary authority in violation of Rule 8.1(b) and N.C. Gen. Stat. § 84-28(b)(3).

Based upon the foregoing Findings of Fact and Conclusions of Law and the evidence presented at the hearing, the Hearing Panel hereby makes by clear, cogent and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Feagan failed to communicate with Stamback, his client, by returning his telephone inquiries or responding to his written letter for an update on the status of his claim.
2. Feagan failed to properly handle Stamback's personal injury claim.
3. Stamback depended upon Feagan to ensure that his legal matter was being handled in a timely manner.
4. Stamback's wife testified that because of the manner in which she and Stamback were treated by Feagan and the harm they suffered from his misconduct, she and Stamback lost faith in the legal profession and would have difficulty ever trusting a lawyer again in the future.
5. Feagan has been disciplined in the past for similar conduct: Feagan was reprimanded in 2009 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 fee dispute resolution; and, for failing to timely respond to lawful demands for information from a disciplinary authority.
6. Feagan has repeatedly failed to communicate with the State Bar and to participate in the self-regulatory process.
7. Feagan failed to answer the Complaint and failed to participate in this matter before the Hearing Panel.
8. Because Feagan did not comply with the State Bar's Continuing Legal Education ("CLE") requirements in 2008 and 2009, in February of 2010 the Administrative Committee of the State Bar issued an order suspending Feagan's license to practice law in North Carolina. The State Bar attempted to serve the suspension order upon Feagan at his last known address (provided to the State Bar), but the order was returned to the State Bar as "unclaimed/refused."
9. In November of 2010, the State Bar attempted to serve Feagan at his last known address with a second order suspending his license to practice law. This second order was issued as a result of Feagan's failure to comply with CLE requirements and failure to satisfy his obligations of membership, including failing to certify his participation in the State Bar's

Interest on Lawyers' Trust Accounts ("IOLTA") and failing to pay mandatory membership dues, Client Security Fund assessment, and mandatory \$50 surcharge. The second suspension order also was returned to the State Bar on December 20, 2010 as "unclaimed/refused."

10. Feagan's neglect of his client and failure to comply with the rules applicable to members of the legal profession demonstrates an inability to conform his conduct to the requirements of the State Bar and the Rules of Professional Conduct.

11. Feagan's failure to respond to the disciplinary process interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating.

12. Feagan's uncle and former law partner at the Feagan Law Firm testified by affidavit that Feagan developed a substance abuse problem, resulting in Feagan separating from the Feagan Law Firm in July of 2008; that Feagan continues to suffer from the same or similar substance abuse issues; and, that, though Feagan initially received some extended in-patient treatment services, Feagan has not since that time made any serious efforts toward obtaining substance abuse treatment or assistance, and remains in desperate need of such treatment.

Based on the foregoing Findings of Fact, Conclusions of Law and Additional Findings of Fact Regarding Discipline, the Hearing Panel enters the following:

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B § .0114(w)(1), the Rules and Regulations of the State Bar, and concludes that the following factors that warrant suspension of Feagan's law license are present:

- a. intent of the defendant to commit acts where the harm or potential harm was foreseeable;
- b. circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
- c. elevation of the defendant's own interest above that of the client;
- d. the negative impact of the defendant's actions on the client and the public's perception of the profession;
- e. the negative impact of the defendant's actions on the administration of justice;
- f. the impairment of the client's ability to achieve the goals of the representation;
- g. acts of dishonesty, misrepresentation, deceit, or fabrication; and,

- h. multiple instances of failure to participate in the legal profession's self-regulation process.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2), the Rules and Regulations of the State Bar, and concludes that although acts of misrepresentation are present in this case, no factors are present in this instance that would warrant disbarment in order to protect the public.

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

- a. Feagan's prior disciplinary offenses;
- b. Lack of timely good faith efforts to make restitution or to rectify the consequences of his conduct;
- c. a pattern of misconduct;
- d. multiple offenses;
- e. lack of cooperative attitude toward the disciplinary proceedings;
- f. bad faith obstruction of the disciplinary proceedings by failing to comply with rules or orders of the disciplinary agency;
- g. refusal to acknowledge wrongful nature of his conduct;
- h. the vulnerability of the victims; and,
- i. Feagan's significant experience in the practice of law

4. Feagan's failure to respond to the State Bar and failure to participate in the disciplinary process caused harm to the legal profession by interfering with the State Bar's ability to regulate attorneys and by undermining the privilege of lawyers in this State to remain self-regulating.

5. Feagan's conduct caused significant harm or potential significant harm to his client, the public, the administration of justice and the legal profession in that his actions bring the legal profession into disrepute.

6. The Hearing Panel has considered lesser alternatives and finds that a censure, reprimand or admonition would be insufficient discipline because of the serious harm caused to his client by Feagan's misconduct, the negative effect of Feagan's misconduct on the administration of justice, and the harm to the legal profession caused by Feagan's misconduct.

7. The Hearing Panel finds that discipline short of suspension would not adequately protect the public because of the gravity of the harms Feagan's misconduct caused to his

client, to the public, and to the administration of justice. Additionally, Feagan has shown that lesser discipline, including reprimand, has been inadequate to protect the public from his neglect and failure to communicate with clients.

8. The Hearing Panel finds and concludes that the public will be adequately protected by suspension of Feagan's law license.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings of Fact Regarding Discipline, and Conclusions of Law Regarding Discipline, the Hearing Panel hereby enters the following:

ORDER OF DISCIPLINE

1. The law license of Defendant, Charles M. Feagan, is hereby suspended for five (5) years effective thirty (30) days from the date this Order of Discipline is served upon him.

2. Feagan shall submit his law license and membership card to the Secretary of the State Bar no later than thirty (30) days following the date that his Order is served upon Feagan.

3. Feagan shall comply with the wind down provisions contained in 27 N.C.A.C. 1B § .0124, the North Carolina State Bar Discipline and Disability Rules.

4. Feagan shall file an affidavit with the Secretary of the State Bar within ten (10) days of the effective date of this Order of Discipline certifying that he has complied with the wind down rule.

5. Within fifteen (15) days of the effective date of this Order, Feagan will provide the State Bar with a street address (not P.O. box or drawer address) and mailing address at which clients seeking return of their files and records in Feagan's possession or control may obtain such files and records and at which time the State Bar may serve any notices or other documents upon him.

6. All costs and administrative fees of this action are taxed to Feagan. Feagan shall pay the costs and administrative fees of this proceeding within thirty (30) days of service of the statement of costs and administrative fees upon him by the Secretary of the State Bar.

7. At the conclusion of the five (5) year active suspension, Feagan must comply with the reinstatement provisions of 27 N.C.A.C. 1B § .0125, the North Carolina State Bar Discipline and Disability Rules. In addition, Feagan must prove the following by clear, cogent and convincing evidence before he can be reinstated to the practice of law:

- a. that he properly wound down his law practice and complied with the requirements of 27 N.C.A.C. 1B § .0124, the North Carolina State Bar Discipline and Disability Rules;
- b. that he paid the costs and administrative fees as reflected on the statement of costs served upon him by the Secretary of the State Bar;

- c. that he did not violate the Rules of Professional Conduct, the laws of the United States, or the laws of any state or local government during his suspension;
- d. that there is no deficit in his completion of mandatory Continuing Legal Education (CLE) hours, in his reporting of such CLE hours, or in his payment of any fees associated with attendance at CLE programs;
- e. that he is current in payment of all Membership dues, fees and costs including all Client Security Fund assessments and other charges or surcharges the State Bar is authorized to collect from him, and including all judicial district dues, fees, and assessments;
- f. that he has responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty (30) days of receipt or by the deadline stated in the communication, whichever is sooner, and has participated in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this Order;
- g. that he is not suffering from any disability that would impair her ability to practice law;
- h. that within three (3) months of the date this Order was served upon him, he was evaluated by a psychiatrist approved by the Office of Counsel and has followed all treatment recommendations made by this psychiatrist; Feagan shall authorize and instruct his approved psychiatrist to provide quarterly written reports to the State Bar's Office of Counsel detailing the psychiatrist's diagnoses, prognoses, and treatment recommendations for Feagan, and confirming Feagan's continued compliance with all such treatment recommendations; the first such report shall be submitted to the State Bar's Office of Counsel not later than thirty (30) days from the psychiatrist's initial evaluation referenced above; subsequent reports shall be due and submitted to the State Bar's Office of Counsel every quarter (once every three months) thereafter; Feagan shall be solely responsible for all costs associated with this psychiatric evaluation, treatment, and reporting;
- i. that he has provided the Office of Counsel with releases authorizing and instructing his psychiatric, psychological and mental health care providers to provide the Office of Counsel with all medical records relating to his evaluations, prognosis, care and treatment, including psychiatric, psychological, substance abuse, and mental health evaluations, and authorizing and instructing such providers to submit to interviews by the Office of Counsel. Feagan shall be solely responsible for all costs associated with this production of records and with the State Bar's interview of their providers; and,

- j. that he has kept the North Carolina State Bar Membership Department advised of his current business and home street addresses (not P.O. box or drawer addresses) and notified the Bar of any Change in address within ten (10) days of such change.

8. After Feagan completes three (3) years of the active suspension of his law license, he may apply for a stay of the remainder of the suspension upon filing a motion in the cause at least thirty (30) days before any proposed effective date of the stay and demonstrating by clear, cogent and convincing evidence those factors delineated in paragraphs 7(a)-(j) above.

9. If Feagan successfully seeks a stay of the suspension of his law license, such stay will continue in force only as long as Feagan complies with those factors delineated in paragraphs 7(a)-(j) above.

10. If Feagan fails to comply with any of the conditions of paragraphs 7(a)-(j) incorporated by reference into paragraph 9 above, the stay of his remaining active term of suspension may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

Signed by the Chair with the full knowledge and consent of the other hearing panel members, this the 17th day of February, 2011.



Theodore C. Edwards II, Chair
Disciplinary Hearing Panel