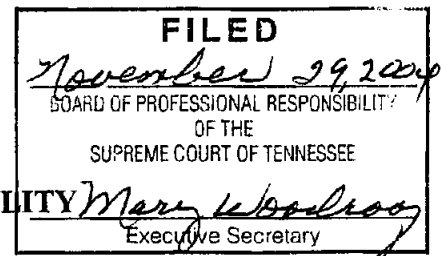


IN DISCIPLINARY DISTRICT IX  
OF THE  
BOARD OF PROFESSIONAL RESPONSIBILITY  
OF THE  
SUPREME COURT OF TENNESSEE



IN RE: **CLAIBORNE H. FERGUSON, BOPR #20457,**  
**Respondent. An Attorney Licensed**  
**to Practice Law in Tennessee**  
**(Shelby County)**

FILE NO. 27291-9-JJ

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**PUBLIC CENSURE**

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A complaint was filed against respondent by a former client in Shelby County. The Board of Professional Responsibility considered the matter pursuant to Tenn. R. Sup. Ct. 9 at its September, 2004 meeting and determined that issuance of a Public Censure was appropriate.

In the Spring of 2003, respondent was hired to represent this client in a Shelby County Municipality's City Court felony prosecution wherein this client was alleged to have stolen merchandise from her employer, a local department store. Respondent prepared no written employment contract or fee agreement, and the verbal agreement was for this client to pay a flat \$600 in attorney fees. The former client paid \$300 on May 4, 2003 and respondent disposed of the case on May 27, 2003 upon a judicial diversion plea to theft under \$500. The matter was then set for dismissal on May 26, 2004 assuming the client complied with all requirements of her deferment.

It appears the former client had only paid \$300 in attorney fees prior to May of 2003 and did not have the \$300 balance on the day of court last year. Respondent provided the client with an oral deadline of June 30, 2003 to pay the \$300 balance in full, but the former client has never paid the \$300 through the present. Respondent spoke to the client and sent letters to her several times during the remainder of 2003 and the Spring of this year requesting payment of the balance but the client did not respond.

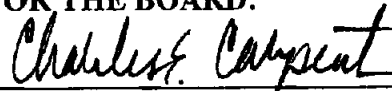
On April 16, 2004, respondent sent this former client a final letter, reiterating that the balance was several months overdue and that if it was not received within the next ten (10) business days. “. . . we will be filing charges against you for theft of service. Please also note that this charge would violate your probation . . . ”

We conclude that RPC 4.4(b) is applicable to respondent’s actions in this regard since his threats to file criminal charges of theft of services against his client as third party (and to have her diversion revoked) were actions respondent was taking on behalf of himself as *pro se* client toward the end of protecting his own financial interests.

The Board also concludes that the mere failure of a client to pay attorney fees pursuant to an oral agreement would rarely rise to the level of criminal fraud so as to constitute “theft of services”. We find the complainant's failure to pay in this instance did not rise to this level and believe respondent's remedy should have been civil in nature for an alleged breach of contract. Respondent's threats to present criminal charges against this former client and to have the client's deferment revoked in the very case in which he obtained this deferment for her, appear to have been made to gain an advantage in his civil dispute with the former client.

Accordingly, respondent Claiborne H. Ferguson has violated RPCs 4.4(b) and 8.4(a)(d) by his actions as detailed above. He is hereby **PUBLICLY CENSURED** due to such violations and the captioned file is hereby closed.

**FOR THE BOARD:**



Charles E. Carpenter, Chairman  
Board of Professional Responsibility  
of the Supreme Court of Tennessee

DATED: November 24, 2004