

STATE OF NORTH CAROLINA
WAKE COUNTY

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

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

JERRY BRASWELL, Attorney,
Defendant

ORDER OF DISCIPLINE

This matter was heard on 12 September 2014 by a hearing panel of the Disciplinary Hearing Commission composed of Walter E. Brock, Jr., Chair, Joshua W. Willey, Jr. and Michael S. Edwards. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Jerry Braswell, was represented by Abraham P. Jones.

Based upon the evidence presented at the hearing, the Hearing Panel hereby 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 promulgated thereunder.

2. Defendant, Jerry Braswell ("Defendant" or "Braswell"), was admitted to the North Carolina State Bar on 13 December 1977 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant period referred to herein, Braswell actively engaged in the practice of law in the State of North Carolina and maintained a law office in Goldsboro, Wayne County, North Carolina.

4. In or about January 2012, Patricia Cobb (hereinafter "Cobb") consulted with Braswell about obtaining a divorce.

5. Braswell did not instruct his staff person to verify Cobb's date of separation as listed in the divorce complaint.

6. Cobb had not yet been separated from her husband for one year when she signed the verification for her divorce complaint.

7. Braswell did not have any employees who were notaries when Cobb signed the verification of her divorce complaint.

8. During this time period, Braswell would call on his former employee, Katherine Shadding (hereinafter "Shadding"), to notarize signatures in furtherance of his law practice.

9. Shadding performed the notary function for Braswell when Braswell called to request it.

10. On or about 30 May 2012, Braswell signed Cobb's divorce complaint.

11. Although the verification of Cobb's complaint was dated 30 May 2012, Cobb could not have signed the verification on 30 May 2012.

12. Braswell filed Cobb's divorce complaint on 13 June 2012.

13. After a 22 January 2013 hearing on the complaint, the court dismissed the complaint because the verification was not valid

14. Braswell opened a trust account ending in no. 6108 at The Little Bank in 2009 ("Little Bank trust account").

15. The Rules of Professional Conduct require lawyers to file a directive with any bank where they maintain a trust account instructing the bank to inform the State Bar if any item drawn on the trust account is returned unpaid due to insufficient funds.

16. Braswell failed to file a directive with the Little Bank for approximately three years until Braswell was directed by the bank to do so after an item was returned due to insufficient funds in the account.

17. On or about 19 September 2012, Braswell was contacted via email by an unknown individual who identified herself as "Harmony Young" (hereinafter "Young").

18. Young claimed to be seeking legal assistance to collect unpaid child support.

19. Young indicated that she resided in South Korea and that her ex-husband lived in Goldsboro, North Carolina.

20. All of Braswell's communications with Young were by email or telephone.

21. Young provided Braswell with documents that she claimed supplied the basis for her \$941,000.00 claim for support from her ex-husband. These documents were titled "Separation Agreement" and "Decree of Divorce" and were purportedly issued by the South Korean court.

22. These purported South Korean court documents were inexplicably written in English.

23. Braswell told Young that his representation of her would require him to file a civil action in Wayne County so that the foreign judgment could be incorporated into a North Carolina judgment, and that his fee for this representation would be a \$3,500.00 payment up front plus 5% of the recovered support amount.

24. On or about 26 September 2012, Young returned the signed retainer agreement to Braswell via email.

25. Young did not include the initial \$3,500.00 payment with the signed retainer agreement. Instead, Young requested (i) a non-post office box address to which to send the retainer fee, and (ii) the name of Braswell's bank. Young instructed Braswell not to contact her ex-husband until Young authorized him to do so.

26. On 9 October 2012, before his receipt of the retainer or before undertaking any action whatsoever on behalf of Young, Braswell received a Federal Express package that contained a cashier's check for \$298,900.00 purportedly issued by Chase Manhattan Bank. This cashier's check was sent under cover of memo titled "Child, Medical and Spousal Settlement."

27. The memo was purportedly from Shin Young, Young's purported ex-husband, though it was unsigned.

28. Braswell deposited the \$298,900.00 check into his trust account on or about 10 October 2012.

29. Braswell notified Young of his receipt and deposit of this check via email on or about 10 October 2012.

30. Young responded to Braswell's email within thirty-five minutes of his sending of the email.

31. In her response, Young claimed that she needed the funds urgently. Young instructed Braswell to transfer the full amount of the proceeds of the cashier's check less Braswell's agreed upon fee immediately. Young further directed Braswell (i) to instruct the bank to make the value date for the transfer "10 October 2012 BEFORE 12:00 PM", and (ii) send her a copy of the transfer receipt and "the Federal Reserve Number."

32. Young provided detailed wiring instructions for a bank in Japan, not South Korea.

33. On 10 October 2012, in less than two hours of his receipt of a response from Young, Braswell instructed The Little Bank to wire funds in the amount of \$280,600.00, which was the full amount of the proceeds, less his retainer and 5% fee, to The Bank of Fukuoka, Ltd. in Japan in accordance with Young's instructions.

34. When Braswell wired these funds to Japan and purported to collect his legal fee, Braswell had not taken any steps to incorporate Young's foreign judgment into a North Carolina action or performed any other meaningful work on Young's behalf.

35. By wiring these funds to Japan within hours of his deposit of the cashier's check, Braswell instructed the bank to disburse funds against provisional credit extended upon deposit of a financial instrument that he could not reasonably believe was certain to be honored when presented for collection.

36. Braswell failed to safeguard the funds entrusted to him by his bona fide clients.

37. Braswell's trust account had a balance of \$13,266.72 prior to the deposit of the \$298,900.00 check.

38. Braswell instructed the bank to issue a disbursement against uncollected funds in an amount above that which his assets or credit could fund if the provisionally credited item was dishonored.

39. On 12 October 2012, Braswell was informed that the \$298,900.00 check was counterfeit. The Little Bank attempted to reverse the wire transfer to Young's account, but was unsuccessful.

40. The State Bar received notice that items drawn on Braswell's trust account were returned for non-sufficient funds ("NSF Notice") after it was discovered that the Young cashier's check was counterfeit.

41. On 22 October 2012, the State Bar asked Braswell to provide the following documents in furtherance of its investigation of the NSF Notice: (i) October 2012 trust account statement, (ii) copy of the \$298,900.00 check, (iii) copies of all correspondence, including letters, emails, fee agreements, wiring instructions, and copies of other documents provided or shared between Braswell and Young, and Braswell and Young's ex-husband, and (iv) documentation that showed that Braswell had replenished his trust account to reimburse those clients whose funds were affected by the Young transaction.

42. On 8 November 2012, Braswell submitted a response to the 22 October letter. However, Braswell failed to provide proof that he replenished the missing funds.

43. The State Bar responded to Braswell's November 8th letter on 9 November 2012 and requested the October and November 2012 bank statements for Braswell's newly opened BB&T trust account, and reiterated its previous request for documentation showing that Braswell had replenished the missing trust account funds.

44. On 17 December 2012, Braswell responded to the 9 November 2012 request by providing October, November and December 2012 bank statements for the BB&T trust account. However, Braswell still failed to provide proof that he had replenished the funds that had been taken from the Little Bank trust account.

45. The State Bar followed up with Braswell again on 10 January 2013 and 16 January 2013 seeking documentation that showed that Braswell had replenished the missing trust account funds. In its 10 January 2013 letter, the State Bar also asked that Braswell provide his most recent reconciliation reports for the Little Bank trust account.

46. Braswell failed to provide the requested documentation showing that he had replenished the missing trust account funds until 28 January 2013.

47. Braswell did not provide copies of his quarterly reconciliations of the Little Bank trust account that were requested by the State Bar.

48. Braswell failed to quarterly reconcile the Little Bank trust account.

49. Braswell maintained earned fees in the Little Bank trust account for future payment of his quarterly tax obligations.

50. Braswell failed to maintain a ledger that showed what personal funds he maintained in the Little Bank trust account.

Based upon the foregoing Findings of Fact, the Hearing Panel hereby enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Jerry Braswell.

2. The State Bar has failed to establish by clear, cogent and convincing evidence the following:

- (a) That Defendant failed to act with reasonable diligence in representing Cobb in her divorce matter in violation of Rule 1.3;
- (b) That Shadding's notarization of Cobb's signature established that Defendant did not make reasonable efforts to ensure that a non-lawyer under his supervision engaged in conduct that was compatible with his professional obligations in violation of Rule 5.3(b);
- (c) That by filing a complaint containing inaccurate information about the date of separation which resulted in the dismissal of his client's complaint, Defendant failed to act with reasonable diligence in

representing a client in violation of Rule 1.3 and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);

- (d) That by filing the Cobb complaint which contained a false verification and jurat, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (e) That Defendant failed to maintain accurate client ledgers in violation of Rule 1.15-3(b); and
- (f) That Defendant failed to timely provide proof of his replenishment of missing trust account funds in violation of Rule 8.1(b).

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

- (a) By failing to file a directive with the Little Bank directing it to notify the State Bar when an item drawn on the trust account was returned unpaid due to insufficient funds, Defendant failed to file a bank directive in violation of Rule 1.15-2(k);
- (b) By instructing the bank to wire funds out of his trust account against provisionally credited funds from an instrument that he could not reasonably believe was certain to be honored and that was in an amount above that which his assets or credit could fund if dishonored, Defendant failed to properly maintain and disburse entrusted funds in violation of Rule 1.15-2(a) and used entrusted property for the benefit of a third person in violation of Rule 1.15-2(j);
- (c) By maintaining earned fees in his trust account, Defendant failed to maintain his funds separate from the funds of his clients in violation of Rule 1.15-2(a);
- (d) By failing to maintain an accurate ledger that showed the funds belonging to Braswell maintained in the trust account, Defendant failed to maintain minimum records for accounts at banks in violation of Rule 1.15-3(b);
- (e) By failing to reconcile his trust account, Defendant failed to perform quarterly reconciliations of his general trust account in violation of Rule 1.15-3(d).

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

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant served as a Wayne County Resident Superior Court Judge from 2000 – 2008.

2. Prior to serving as a judge, Defendant served 10 years in the North Carolina General Assembly.

3. Defendant was censured by the Supreme Court in 2004 for improperly failing to recuse himself from presiding over a matter in which the plaintiff in the case before Defendant was an opposing party in a pending lawsuit against Defendant.

4. Defendant reimbursed his clients for all funds that were used to make up for the shortfall caused by the \$280,600.00 wire transfer.

5. Defendant reimbursed the bank for a portion of the loss it suffered as a result of wiring funds in reliance upon the fraudulent check. Despite Defendant's payments to the bank, the Little Bank still suffered more than a \$200,000 loss from this incident.

6. Defendant's failure to comply with the Rules of Professional Conduct when handling entrusted funds has the potential to cause significant harm to the clients of Defendant and to the public's perception of the legal profession.

7. Defendant's failure to wait until provisionally credited funds were actually credited to the trust account before seeking to disburse said funds placed the funds entrusted to him by other clients at risk.

8. A cornerstone of client trust in an attorney is that the attorney will properly protect and maintain entrusted funds. Failure to do so erodes the confidence clients place in attorneys who handle their affairs and harms the profession as a whole.

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

CONCLUSIONS OF LAW

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 or disbarment are present:

- a. Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- b. Negative impact of Defendant's actions on clients' and public's perception of the profession;

c. Effect of Defendant's conduct on third parties.

2. The Hearing Panel has considered all of the factors contained in 27 N.C.A.C. 1B §.0114(w)(2), the Rules and Regulations of the State Bar, and concludes that the factors present do not warrant disbarment.

3. The Hearing Panel has considered all of the factors contained 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 present:

- a. A prior disciplinary offense with the Judicial Standards Commission;
- b. Remoteness of that prior offense;
- c. Absence of dishonest motive;
- d. Multiple offenses;
- e. Timely good faith efforts to rectify consequences of misconduct;
- f. Full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;
- g. Refusal to acknowledge the wrongful nature of conduct;
- h. Good character and reputation;
- i. Vulnerability of victim;
- j. Thirty-five years experience in the practice of law.

4. Defendant's failure to properly maintain and handle entrusted funds betrays a vital trust that clients and the public place in attorneys and the legal profession.

5. Defendant's misconduct caused potential significant harm to his clients in that his failure to safeguard entrusted client funds placed his clients' funds at risk.

6. The Hearing Panel has considered all lesser sanctions including: censure, reprimand and admonition, and finds that discipline less than suspension would not adequately protect the public from Defendant's future misconduct because of the potential significant harm to Defendant's clients caused by Defendant's failure to properly manage entrusted client funds. A period of monitoring of Defendant's handling of entrusted client funds and additional education is necessary to adequately protect the public and avoid future misconduct.

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. Defendant, Jerry Braswell, is hereby suspended from the practice of law for two years, effective 30 days from service of this order upon Braswell.

2. Defendant shall pay, within 30 days of service of the statement of fees and costs upon him by the Secretary of the State Bar, the administrative fees and costs of this proceeding.

3. The two year suspension is stayed for a period of 2 years as long as Defendant complies with the following conditions:

- (a) Defendant pays the administrative fees and costs of this proceeding as assessed by the Secretary of the State Bar within 30 days of service of the statement of fees and costs upon him.
- (b) Defendant shall provide to the State Bar's Office of Counsel quarterly the written report of the three-way reconciliation of all attorney trust accounts to which he has access using the reconciliation method described in the State Bar Lawyer's Trust Account Handbook, rev. 05/2011, pages 34 - 43. In addition to the three-way reconciliation report, Defendant shall provide (i) client ledgers for each client whose funds are held in the trust account(s) during the months covered by the submitted report, (ii) ledger for any personal funds Braswell maintained in the trust account(s) for bank or credit card fees, (iii) the general ledger(s) for each trust account to which Braswell has access, and (iv) the following bank documentation for the quarter covered by the submitted report: the bank statement, canceled checks and deposit slips or other bank documentation that identifies the source of all deposits into the account for each trust account to which Braswell has access.
- (c) Defendant shall provide any other trust account related records requested by the Office of Counsel within ten days of the request.
- (d) Defendant shall complete 3 additional hours of trust account and 3 additional hours of law office management continuing legal education (CLE) each year. This CLE requirement is in addition to the CLE requirements set out in 27 N.C.A.C. 1D § .1518.
- (e) Defendant shall keep the State Bar Membership Department advised of his current business and home addresses. Defendant shall notify the State Bar

of any change of address within ten days of such change. His current business address must be a street address, not a post office box or drawer.

- (f) Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt of such communication or by the deadline stated in the communication, whichever is sooner.
- (g) Defendant shall participate 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.
- (h) Defendant shall timely comply with all State Bar Membership and CLE requirements.
- (i) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government.

4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end two years from the effective date of the Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C.A.C. § 1B.0114(x), the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains jurisdiction and the ability to lift the stay of the suspension and activate the one year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

5. If Defendant fails to comply with any one or more of the conditions set out above in this Order of Discipline, then the stay of the suspension may be lifted in accordance with 27 N.C.A.C. § 1B.0114(x).

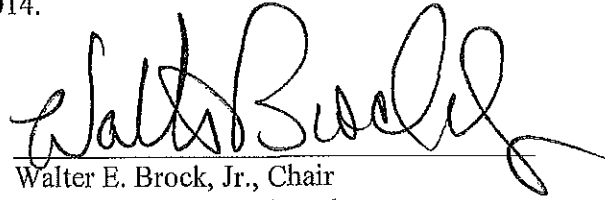
6. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an order imposing such conditions as it deems proper for the reinstatement of Braswell's license at the end of the suspension. Additionally, Braswell must establish the following by clear, cogent and convincing evidence prior to being reinstated to the practice of law after any period of active suspension:

- (a) Defendant submitted his law license and membership card to the Secretary of the State Bar within thirty days of the date the order lifting the stay and/or activating the suspension of his law license;

- (b) Defendant complied with the provisions of 27 N.C.A.C. § 1B .0124 of the State Bar Discipline and Disability Rules following entry of the order lifting the stay and/or activating the suspension of his law license;
- (c) Defendant timely paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar;
- (d) That within 15 days of the effective date of the order activating the suspension Defendant provided the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files;
- (e) That Defendant promptly provided client files to all clients who made a request for return of their files;
- (f) Defendant has kept the State Bar Membership Department advised of his current business and home street addresses (not post office box or drawer addresses) and notified the State Bar of any change in address within ten days of such change;
- (g) Defendant has responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner;
- (h) At the time of his petition for reinstatement, Defendant 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, including all judicial district dues and assessments;
- (i) At the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory CLE hours in reporting of such hours or in payment of any fees associated with attendance at CLE programs;
- (j) At the time of his petition for reinstatement, Defendant has completed the additional 6 hours per year of trust account and law office management CLE; and
- (k) Defendant has not violated the Rules of Professional Conduct or the laws of the United States, or the laws of any state or local government during his suspension.

7. The DHC will retain jurisdiction of this matter pursuant to 27 N.C.A.C. § 1B.0114(x) until all conditions of the stay of suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members this
the 30th day of October, 2014.



Walter E. Brock, Jr., Chair
Disciplinary Hearing Panel