

STATE OF NORTH CAROLINA
WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PAUL B. BROCK, Attorney,

Defendant

CONSENT ORDER OF DISCIPLINE

THIS MATTER was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, and members Shirley L. Fulton and Patti Head. Carmen Hoyme Bannon represented Plaintiff, the North Carolina State Bar. Defendant, Paul B. Brock, was represented by Douglas J. Brocker and K. Brooke Ottesen of The Brocker Law Firm, P.A. Defendant waives a formal hearing in this matter. Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily stipulates to the findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives any right to appeal the entry of this consent order of discipline. Based upon the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel hereby enters 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 1B of Title 27 of the North Carolina Administrative Code).

2. Defendant, Paul B. Brock, was admitted to the North Carolina State Bar in August 1992 and is an Attorney at Law 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, Brock was engaged in the practice of law in Durham, Durham County, North Carolina.

4. In March 2013, Brock began representing Client A¹ in a child custody dispute with the father of Client A's four-year-old daughter. Brock had no personal or social relationship with Client A prior to the representation.

5. Client A paid Brock \$6,200.00 in attorney's fees.

6. In September 2013, while still representing Client A, Brock began a sexual/dating relationship with Client A.

7. In late December 2013, Brock expressed to Client A his desire to end their dating relationship.

8. During the first several months of 2014, while Brock continued to represent Client A, they saw each other less frequently but still went on occasional dates. On at least one instance during this period Brock and Client A had sexual contact, but at other times Brock reiterated his intent that they would just be friends.

9. Client A reported that she experienced significant emotional distress related to her personal relationship with Brock and his vacillation regarding whether their relationship was to be platonic or romantic.

10. In late January 2014, Brock and Client A went to a counselor together. The counselor declined to see them further because she was not comfortable with the fact that Brock was Client A's lawyer.

11. During the first several months of 2014, Client A expressed to Brock that—because interacting with him was emotionally painful—she wanted to hire another lawyer to represent her. Client A asked Brock to refund the attorney's fees she had paid him so that she could afford to pay another lawyer's retainer, but he declined to do so.

12. Brock discouraged Client A from seeking alternate representation, at one point telling her that another lawyer wouldn't be able to familiarize him/herself with the case in time to meet upcoming deadlines, and at another point telling Client A that he didn't believe she had any further need for representation in her custody matter.

13. At the time he discouraged Client A from seeking alternate representation, Brock knew or should have known that if Client A hired another lawyer to take over the case, she was likely to divulge to that lawyer that she had been in a sexual relationship with Brock.

14. In April 2014, Client A retained new counsel, with whom she discussed her personal relationship with Brock and her prior requests for Brock to refund the fees she had paid him.

¹ To protect the privacy of the client, no identifying information is included in this order, which will be publically available on the State Bar's website.

15. Client A's new counsel contacted Brock, notified him that she was taking over the representation of Client A, and requested a copy of Client A's file.

16. During their conversation, Client A's new counsel informed Brock that she was aware of his sexual relationship with Client A and reiterated Client A's request for a refund of fees.

17. In response to urging by Client A's new counsel to refund fees paid by Client A, Brock said that he had sought legal advice about the situation and been advised that refunding Client A's money would be an admission of guilt.

18. After Brock was notified that Client A had a new lawyer, he did not file a motion to withdraw from Client A's case.

19. In responding to the Grievance Committee of the State Bar regarding allegations of misconduct in his representation of Client A, Brock made false and misleading statements in an effort to undermine Client A's credibility. Specifically:

(a) Brock stated that his personal relationship with Client A was "short-lived," lasting only until December 2013;

(b) Brock stated that he and Client A mutually agreed in December 2013 to terminate the romantic relationship. He stated that Client A later wavered on that decision, but Brock did not. Brock told the Grievance Committee that shortly thereafter, Client A began engaging in "bizarre, obsessive, and stalking-like behavior." He stated that the contact he had with Client A "after the relationship was terminated was primarily through her bizarre stalking-like behavior . . . and not any continuation of their personal relationship."

20. Brock's statements described in paragraphs 19(a) and 19(b) were false and misleading, in that Brock's sexual relationship with Client A did not end in December 2013, and he did not seek to avoid her during the time period in which he claimed she was "stalking" him. On the contrary, Brock sought out Client A's company and continued having contact with her during the first several months of 2014.

Based on the foregoing Findings of Fact and with the consent of the parties, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All the parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Paul B. Brock, and the subject matter.

2. 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) and (b)(3) in that Defendant violated the Rules of Professional Conduct in effect at the time of his actions and § 84-28(b)(3) as follows:

- (a) By having a sexual relationship with Client A while he was representing her, Defendant engaged in sexual relations with a current client in violation of Rule 1.19(a) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (b) By continuing to represent Client A in her custody case while simultaneously attempting to end their romantic relationship and minimize negative consequences for himself, Defendant engaged in a representation that was materially limited by his personal interests in violation of Rule 1.7(a) and failed to withdraw from a representation that would result in a violation of the Rules of Professional Conduct in violation of Rule 1.16(a)(1);
- (c) By failing to file a motion to withdraw from Client A's case after he was aware that Client A had obtained other counsel, Defendant failed to obtain leave to withdraw from the tribunal in violation of Rule 1.16(c) and failed to take reasonably practicable steps to protect a client upon termination of the representation in violation of Rule 1.16(d); and
- (d) By making false and misleading statements to the Grievance Committee, Defendant engaged in conduct involving dishonesty, deceit, or misrepresentation in violation of Rule 8.4(c), knowingly made false statements of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and knowingly misrepresented facts and circumstances surrounding an allegation of misconduct in violation of N.C. Gen. Stat. § 84-28(b)(3).

Based on the foregoing Findings of Fact and Conclusions of Law, and with the consent of the parties, the Hearing Panel also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings of fact in paragraphs 1 – 20 above are reincorporated as if set forth herein.
2. Defendant has no prior professional discipline.
3. There is no indication that Defendant had sexual relations with any other client or that there is a pattern of such misconduct.
4. Defendant has established a reputation for good character, veracity, and truthfulness.
5. Defendant has indicated remorse for his actions.
6. Litigants in domestic cases are experiencing significant turmoil. They frequently have concerns about their financial futures, living arrangements, and the welfare of their children. As a result, they are often distressed, anxious, and not necessarily capable of making

dispassionate and well-informed decisions. Thus, they are particularly reliant upon their counsel to protect their interests. This makes litigants in domestic cases a particularly vulnerable segment of the population, including single mothers like Client A.

7. The attorney-client relationship involves an inherent element of trust, wherein the lawyer is expected to prioritize the client's interests over his own. Defendant elevated his own interests above the best interests of his client, which is prejudicial to the administration of justice.

8. At the time Defendant engaged in a sexual relationship with Client A, it was foreseeable that his actions would create a conflict of interest.

9. Self-regulation of the legal profession depends upon the cooperation and participation of lawyers in the self-regulatory process. When a lawyer submits false information in the disciplinary process it impedes the system of self-regulation.

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

CONCLUSIONS WITH RESPECT TO 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 warrant consideration of suspension of Defendant's license:

- (B) Defendant committed acts or omissions where the harm or potential harm was foreseeable;
- (C) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity in connection with the events described in this order;
- (D) Defendant elevated his own interest above that of the client;
- (F) Defendant's actions had a negative impact on the administration of justice;
- (I) Defendant engaged in an act of misrepresentation by making false or misleading statements to the Grievance Committee.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) and concludes that although Defendant engaged in an act of misrepresentation, disbarment is not warranted in this case.

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

- (A) Defendant's lack of prior disciplinary offenses;
- (C) Selfish or dishonest motive;
- (G) Multiple offenses
- (P) Defendant's remorse;
- (Q) Defendant's good character and reputation;
- (R) Vulnerability of the client; and
- (S) Defendant's degree of experience in the practice of law.

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 client and the administration of justice.

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

6. The 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 present in this case 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 conclusions regarding discipline, and with the consent of the parties, the Hearing Panel enters the following:

ORDER OF DISCIPLINE.

1. Defendant, Paul B. Brock, is hereby suspended from the practice of law for two years, effective 30 days from service of this order upon Defendant.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following service of this Order upon Defendant.

3. Defendant shall comply with the wind down provisions contained in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124. As provided in § .0124(d), Defendant shall file an affidavit with the Secretary of the North Carolina State Bar within 10 days of the effective date of this order, certifying he has complied with the wind down rule.

4. Defendant is taxed with the administrative fees and costs of this action as assessed by the Secretary, which shall be paid within thirty (30) days of service of the notice of costs upon Defendant.

5. One year from the effective date of this Order, Defendant may apply for a stay of the remaining period of suspension imposed by this Order by filing a petition with the Secretary of the North Carolina State Bar demonstrating by clear, cogent, and convincing evidence that, in addition to complying with the general provisions for reinstatement listed in 27 N.C.A.C. 1B § .0125 of the North Carolina State Bar Discipline & Disability Rules, Defendant has complied with the following conditions:

a. That Defendant has kept the North Carolina State Bar Membership Department advised of his current business and home addresses and notified the State Bar of any change in address within ten days of such change;

b. That Defendant has accepted all certified mail from the North Carolina State Bar, responded to all communications from the State Bar by the deadline stated in the communication, and participated in good faith in the State Bar's fee dispute resolution process for any petition received after the effective date of this Order;

c. That Defendant has not violated the Rules of Professional Conduct or the laws of the United States or any state or local government during his suspension, other than minor traffic violations;

d. That Defendant paid the costs of this action within 30 days after service of the statement of costs; and

e. That Defendant properly wound down his law practice and complied with the requirements of §.0124 of the North Carolina State Bar Discipline and Disability Rules.

6. Defendant may file a petition for stay up to 30 days prior to the end of the first year of the suspension period, but no stay will be allowed until at least one year from the effective date of this Order.

7. If Defendant successfully seeks a stay of the suspension of his law license pursuant to this Order, any stay will continue in force only as long as Defendant complies with the following conditions:

a. Defendant shall keep his address of record current with the State Bar and respond to all letters of notice and requests for information from the State Bar by the deadline stated in the communication;

b. Defendant shall timely comply with his State Bar membership and continuing legal education requirements and pay all fees and costs assessed by the applicable deadline;

c. Defendant shall participate fully and timely in the fee dispute resolution process when notified of any petitions for resolution of disputed fees;

d. Defendant shall not violate the laws of the United States or any state or local government, other than minor traffic violations; and

e. Defendant shall not violate any provision of the Rules of Professional Conduct.

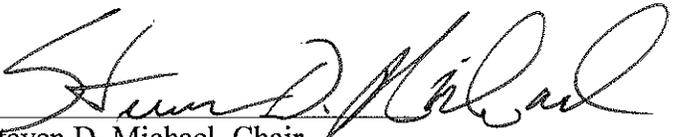
8. If Defendant fails to comply with any one or more of the conditions stated in Paragraph 7 above, then the stay of the suspension of his law license may be lifted as provided in 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules. If the stay granted herein is lifted or the suspension of Defendant's license is activated for any reason, before a subsequent stay of the suspension can be entered Defendant must show by clear, cogent, and convincing evidence that he has complied with each of the conditions referenced in Paragraph 5.

9. If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must provide in his application for reinstatement clear, cogent, and convincing evidence of compliance with each of the conditions referenced in paragraph 5.

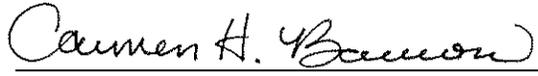
10. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C.A.C. 1B § .0114(x) of the North Carolina State Bar Discipline and Disability Rules throughout any period of stayed suspension.

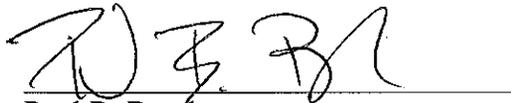
Signed by the undersigned Hearing Panel Chair with the consent of the other Hearing Panel members.

This the 13th day of August, 2015.


Steven D. Michael, Chair
Disciplinary Hearing Panel

Agreed and consented to by:


Carmen Bannon
Attorney for Plaintiff


Paul B. Brock
Defendant


Douglas S. Brocker
Attorney for Defendant