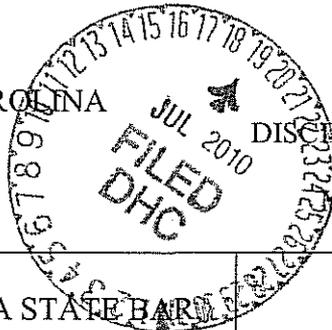


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 09 DHC 33

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

WILLIAM E. BROWN, Attorney,

Defendant

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF DISCIPLINE

This matter was heard on 11 June 2010 before a hearing panel of the Disciplinary Hearing Commission composed of the Chair, J. Michael Booe, and members Harriett T. Smalls and Dr. Charles L. Garrett, Jr. Jennifer A. Porter represented Plaintiff, the North Carolina State Bar. Defendant appeared pro se.

Based upon the pleadings, the stipulated facts, and the evidence introduced at the hearing, the hearing 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, William E. Brown ("Brown"), was admitted to the North Carolina State Bar in 1993, 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. Brown was properly served with process, a hearing in this matter was set, and the matter came before the hearing panel with due notice to all parties.

4. During all or part of the relevant periods referred to herein, Brown was engaged in the practice of law in the State of North Carolina and maintained a law office in Fayetteville, Cumberland County, North Carolina.

5. Brown was appointed by the Cumberland County District Court to represent Rickey D. Snow ("Snow") in or about April 2008.

6. Brown represented Snow from about April 2008 through September 30, 2008.

7. Between about April 2008 and September 30, 2008, Brown made inappropriate comments of a sexual nature to Snow, both in person and by text messages. The text messages Brown sent Snow included the following messages: "can I hold your boobs," "love you," "wish I was with you," "can help but you know ... fill it in," and "be nekked."

8. Between about April 2008 and September 30, 2008, Brown made it known to Snow that he wanted to have sex with her.

9. Between April 2008 and September 30, 2008, Brown tried to touch Snow in a sexual manner, touched Snow's breast, and tried to convince Snow to have sex with him.

10. Brown was appointed by the Cumberland County District Court to represent Jennifer Stokes ("Stokes") in about 2007.

11. Brown represented Stokes through at least early April 2010.

12. During Brown's representation of Stokes, Brown made inappropriate comments of a sexual nature to Stokes.

13. During Brown's representation of Stokes, Brown made it known to Stokes that he wanted to have sex with her and asked her to have sex with him.

14. During Brown's representation of Stokes, Brown tried to touch Stokes in a sexual manner, touched Stokes' breast, grabbed Stokes' hand and tried to have her touch his pubic area, and tried to convince Stokes to have sex with him.

15. Brown was retained by Harmony Sell ("Sell") to represent her in a matter to regain custody of her child in about 2008.

16. Brown represented Sell for several months.

17. When Sell initially sought to discuss her case with Brown, Brown instead asked her if she wanted to have sex with him.

18. During Brown's representation of Sell, Brown made it known to Sell that he wanted to have sex with her and asked her to have sex with him.

Based upon the foregoing Findings of Fact, the hearing panel enters the following

### CONCLUSIONS OF LAW

1. All the parties are properly before the Disciplinary Hearing Commission and the Disciplinary Hearing Commission has jurisdiction over Defendant, William E. Brown, and the subject matter.

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), for engaging in conduct in violation of the Rules of Professional Conduct in effect at the time of his actions as follows:

- a. By making sexually explicit comments to Snow and Stokes, attempting to touch Snow and Stokes in a sexual manner, and attempting to convince Snow and Stokes to have sex with him, Brown attempted to have sex with his clients which constitutes an attempted violation of Rule 1.19(a) in violation of Rule 8.4(a) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- b. By soliciting sex from Sell and by attempting to convince Sell to have sex with him, Brown attempted to have sex with a client which constitutes an attempted violation of Rule 1.19(a) in violation of Rule 8.4(a) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the hearing panel hereby finds by clear, cogent, and convincing evidence the following additional

### FINDINGS OF FACT REGARDING DISCIPLINE

1. The evidence at hearing established that Brown not only attempted to touch Stokes and Snow in a sexual manner, but in fact touched their breasts, which falls within the definition of sexual relations in Rule 1.19 and is a violation of Rule 1.19(a).

2. Brown's victims were vulnerable not just in terms of their legal status but also with respect to their economic status. Brown was appointed to represent female clients in DSS cases, who did not have the financial means to fire him and retain another attorney. Brown's other female clients also had similar financial constraints. Brown's behavior left his victims feeling trapped.

3. Brown took advantage of times when Stokes and Snow would have to be in his presence, at court for DSS hearings, to get them alone in a consultation room at the

courthouse and accost them. Brown's conduct harmed his clients and the administration of justice.

4. Clients are entitled to attorneys they can trust. Brown violated the trust inherent in an attorney-client relationship, the trust that he would act with commitment and dedication to the interests of his clients in his representation of them. Instead, Brown placed his sexual desires above the best interests of his clients. Brown betrayed his clients' trust and caused them to feel trapped with an attorney whose interest was in having sex with them rather than assisting them in their legal matters. Brown's conduct reflects negatively on his trustworthiness and integrity.

5. Brown received a reprimand from the North Carolina State Bar in January 2008 for neglect, failure to promptly turn over the client's file, and failure to timely respond to the inquiry of the State Bar.

6. The local newspaper where Brown practices law, The Fayetteville Observer, has published four articles about the allegations against Brown, now found to have been proven by clear, cogent, and convincing evidence. Brown's conduct has had a negative impact on the public's perception of the profession.

7. Brown denied the allegations and did not at any time acknowledge the wrongfulness of his conduct. Brown's denials necessitated presentation by the State Bar of an expert witness, who testified that the saved text messages on Snow's phone from Brown had not been altered and the content was as sent by Brown.

8. Brown's conduct manifests an inappropriate perception of women and an inappropriate perception of a proper relationship with female clients.

Based upon the foregoing Findings of Fact, Conclusions of Law, Findings of Fact Regarding Discipline, and upon the evidence and arguments presented at the hearing concerning appropriate discipline, the hearing panel hereby enters the following additional

#### CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has carefully considered the factors listed in Rule .0114(w) of the North Carolina State Bar Discipline and Disability Rules. The hearing panel finds evidence of the following factors:

- a. From Rule .0114(w)(1):
  - i. Intent of the defendant to commit acts where the harm or potential harm is foreseeable. Brown intended to commit the conduct found herein, making inappropriate sexual comments to his clients, attempting to have sex with his clients, and touching Stokes and Snow in a sexual manner. The harm to the clients, the profession, and the administration of justice outlined above were the foreseeable consequences of Brown's intentional conduct.

- ii. Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity. Brown's conduct reflects adversely on his trustworthiness and integrity.
  - iii. Elevation of the defendant's own interest above that of the client. Brown placed his sexual interests above the best interests of his clients.
  - iv. Negative impact of the defendant's actions on the clients' or public's perception of the profession.
  - v. Negative impact of the defendant's actions on the administration of justice.
- b. From Rule .0114(w)(3):
- i. There is prior discipline although it is not particularly relevant to the conduct in this case.
  - ii. Dishonest or selfish motive. Brown's conduct placed his interests over his clients' interest and shows a selfish motive.
  - iii. A pattern of misconduct. Brown engaged in his conduct of trying to get clients to have sex with him with more than one client.
  - iv. Multiple offenses. Brown's conduct with his clients violated more than one provision of the Rules of Professional Conduct as set out above.
  - v. Refusal to acknowledge wrongful nature of conduct. Brown did not acknowledge the wrongful nature of his conduct in his response to the Grievance Committee or at the hearing before the Disciplinary Hearing Commission and has shown no remorse.
  - vi. Vulnerability of the victims. Brown's victims were in a very vulnerable position not just with respect to their legal status but also with respect to their economic duress.
  - vii. Degree of experience in the practice of law. Brown has been practicing law since 1993 and has been practicing law for long enough to know better.

2. Brown's conduct resulted in significant harm to his clients, the profession, and the administration of justice.

3. The hearing panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in considering the appropriate discipline to impose in this case.

4. The hearing panel has considered all lesser forms of sanctions available to it and finds that suspension is the only appropriate discipline in this case, for the following reasons:

- a. Brown committed misdeeds involving moral turpitude and violations of the trust of both his clients and the system of justice. Brown's offenses demonstrate that he is not trustworthy. Clients are entitled to have trustworthy attorneys;
- b. The factors under Rule .0114(w) that are established by the evidence in this case are of a nature that support imposition of suspension as the appropriate discipline;
- c. Entry of an order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses committed by Brown and would send the wrong message to attorneys and the public regarding the conduct expected of members of the North Carolina State Bar; and
- d. The protection of the public and the legal profession requires that Brown not be permitted to resume representation of female clients until he demonstrates the following: that he has reformed; that he understands his obligations to his clients, the public, and the legal profession; and that permitting him to practice law will not be detrimental to the public or the integrity and standing of the legal profession or the administration of justice.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings of Fact Regarding Discipline, and Conclusions Regarding Discipline, the hearing panel hereby enters the following

#### ORDER OF DISCIPLINE

1. Defendant, William E. Brown is hereby suspended from the practice of law in North Carolina for three years.

2. The costs of this action are taxed to Defendant. The costs taxed to Defendant include deposition costs and expert witness costs as allowed by statute, which are found to have been reasonable and necessary expenses in this case. Defendant must pay the costs within 30 days of service of the statement of costs upon him.

3. Defendant's suspension is stayed for three years, contingent upon and only while Defendant is in compliance with the following conditions:

- a. Defendant shall not represent female clients.
- b. Defendant shall terminate his representation in all cases with female clients. Within 15 days of this Order, Defendant shall notify each female client in writing of this Order and the requirement that he terminate his representation, and shall contemporaneously provide a copy of said written notifications to the Office of Counsel of the State Bar. Defendant shall file the appropriate motions to withdraw from representation of all female clients in all cases pending before the court. Defendant shall provide the Office of Counsel of the North Carolina State Bar with all motions filed and orders by which he withdraws from representation in cases pending before the court within 10 days of the filing of such motions or orders. Defendant shall provide each client with her full and complete client file at or before the time he terminates the representation. For cases in which it is necessary for Defendant to file a motion to withdraw, he shall have provided the client with her file before he files the motion to withdraw and shall certify in his motion to withdraw that he has provided the client with her full and complete client file. Defendant shall assist in the transition of these cases to the maximum extent possible to ensure no prejudice or harm to the clients. Defendant will fully cooperate with successor counsel for the client. This process of terminating his representation of all female clients shall be complete within 60 days of entry of this order.
- c. Defendant shall not take on representation of female clients during the term of this stayed suspension.
- d. Defendant shall provide written notification of this order and the prohibition against him representing female clients to the Clerk of Court, the Senior Resident Superior Court Judge, the Chief Resident District Court Judge, and the District Attorney in all counties in which he practices law. Defendant shall also provide written notification to all appropriate persons or entities associated with the appointment of counsel for indigent persons, including but not limited to the Chief District Court Judge in Cumberland County and any other county in which Defendant practices and the North Carolina Office of Indigent Defense Services, that he cannot be appointed to represent women. Defendant shall provide these notifications within 15 days of the entry of this order and shall contemporaneously send a copy of those notifications to the Office of Counsel of the State Bar.
- e. Defendant shall not directly or indirectly meet with, talk with, consult with, or in any way interact with any woman as a client or prospective

client, including through use of third persons or intermediaries, telephone, voicemail, text messaging, e-mail, internet, or other form of electronic communication.

- f. Defendant's assistants shall not meet with, talk with, consult with, or in any way interact with any woman as a client or prospective client of Defendant's, including through use of third persons or intermediaries, telephone, voicemail, text messaging, e-mail, internet, or other form of electronic communication.
- g. Defendant shall comply with and submit to any and all measures by the State Bar to monitor and determine compliance with the terms of these conditions, including but not limited to complying with the following:

- i. Practice Monitor

1. Defendant shall arrange for an active member of the North Carolina State Bar in good standing who practices law in Fayetteville, North Carolina to serve as his practice monitor. The monitor must be approved in advance by the North Carolina State Bar. The monitor must agree to so serve as described herein. The monitor shall meet with Defendant every month to review Defendant's cases during the stayed suspension. The monitor must ensure Defendant is not representing female clients and is in compliance with conditions 3(a) to 3(e) above. The monitor must also supervise Defendant's meetings with any female witnesses or other female individuals related in any way to any cases during the stayed suspension.
2. Defendant shall meet with the practice monitor once a month each month during the stayed suspension. Defendant shall bring all client files with him to this meeting and review all client matters with the practice monitor.
3. Defendant shall have any meetings with any female individuals related in any way to any case, including but not limited to female clients if needed prior to or in the course of the termination of that relationship pursuant to this order and female witnesses, at the practice monitor's office under the direct supervision of the practice monitor during the term of the stayed suspension.
4. The practice monitor shall submit written quarterly reports of the meetings with and supervision of Defendant to the Office of Counsel of the State Bar. Such reports are due no later than

January 1, April 1, July 1 and October 1 of each year of the stay of the suspension.

5. Defendant shall be solely responsible for any cost charged by the practice monitor for these services and must pay the full amount due within 30 days of receipt of any invoice.
6. Defendant must have made the arrangements for this practice monitor and supplied the Office of Counsel of the State Bar with a letter from the monitoring attorney confirming the attorney's agreement to perform the duties listed herein no later than 60 days from the entry of this order.
7. Defendant shall cooperate with the Office of Counsel and make any appropriate arrangements for an alternate monitoring attorney if needed during the term of the stayed suspension.

ii. Tax Returns.

1. Each year during the term of the stayed suspension, Defendant will file state and federal income tax returns for himself and any corporate or partnership entity through which he practices law on a timely basis, and shall timely pay all amounts owed to taxing authorities as reflected thereon. Defendant will provide the state and federal income tax returns to the Office of Counsel of the State Bar within fifteen (15) days of filing, along with evidence of payment of all amounts due.
2. With each tax return, Defendant will provide the Office of Counsel with all supporting schedules. In addition, with each tax return, Defendant will provide the Office of Counsel with a document identifying income from attorneys' fees by client and amount per client, and such other information as the Office of Counsel may reasonably request to enable the Office of Counsel to crosscheck such data with the monthly list of clients provided pursuant to Section g.iii below.
3. Defendant shall provide the Office of Counsel with copies of all correspondence sent to or received from any taxing authorities regarding Defendant's income tax obligations.

iii. Monthly List of Clients.

1. Defendant will provide the Office of Counsel with a complete list of any and all clients during each calendar month, designating the gender of each individual client. Defendant

will provide this list no later than the first day of each month. The first list is due the earlier of fifteen (15) days from the entry of this Order or August 1, 2010.

2. On the monthly list of clients, as Defendant terminates his representation of female clients, Defendant shall identify the name of any attorney to whom a client was transferred.
- iv. Random Visits. Defendant and his office staff shall fully and completely permit and comply with any visit, inspection, or audit of the North Carolina State Bar.
- h. No later than September 1, 2010, Defendant shall undergo evaluation by a psychiatrist or psychologist approved in advance by the Office of Counsel of the North Carolina State Bar who specializes in treating sexual offenders in the professions and will comply with any and all treatments, programs, plans, and/or counseling determined by the evaluating psychiatrist or psychologist to be appropriate to ensure Defendant gains an appropriate perception of women and can have an appropriate relationship with female clients and to address any other mental health issues. Defendant shall provide the Office of Counsel of the State Bar with reports from his psychiatrist or psychologist every quarter describing the treatment received by Defendant, Defendant's progress, diagnosis, prognosis, and continuing treatment plan. These reports shall be provided to the Office of Counsel of the State Bar by Defendant no later than January 1, April 1, July 1, and October 1 of each year of the stay of the suspension. If no specific condition is diagnosed or if no treatment program prescribed by the evaluating psychiatrist or psychologist, then Defendant shall attend and complete once a year throughout the stay of the suspension a diversity training program approved in advance by the Office of Counsel of the North Carolina State Bar that includes a large component addressing sexual harassment. The initial program must be an intense live program and the subsequent ones should be programs that build upon the initial program. Defendant must provide written proof of attendance and completion of such diversity training to the Office of Counsel no later than June 30 of each year during the stayed suspension.
- i. Between 120 days and 90 days from the expiration of the stayed suspension period, Defendant shall submit to comprehensive psychiatric evaluations by two separate psychiatrists selected by or acceptable to the Office of Counsel of the North Carolina State Bar who specialize in treating sexual offenders in the professions. By 90 days from the expiration of the stayed suspension period, both psychiatrists shall have certified under oath, based on independent comprehensive evaluations of Defendant, whether in their professional opinion Defendant suffers from any condition creating a predisposition for inappropriate sexual behavior

and whether Defendant suffers from any mental, psychological, or emotional condition that significantly impairs his professional judgment, performance, or competence in the representation of female clients.

- j. Defendant is solely responsible for paying, and shall pay, all costs associated with the above described evaluations, treatment, and reports.
- k. Defendant shall sign releases or authorizations to all providers providing treatment or evaluation under this order instructing the provider to discuss the treatment and/or evaluation of him with counsel in the Office of Counsel of the State Bar and to release any corresponding notes, test results, and records to the Office of Counsel of the State Bar.
- l. Defendant shall pay all costs assessed by the Secretary in connection with this proceeding, including deposition costs and expert witness costs as allowed by statute, within 30 days of service of a statement of these costs upon him.
- m. Defendant shall keep his address of record current, shall accept all certified mail sent to him from the State Bar, and shall respond to all communications from the State Bar by the deadline stated in the communication during the term of the stayed suspension.
- n. Defendant shall violate no federal or state laws during the term of the stayed suspension.
- o. Defendant shall violate no provision of the Rules of Professional Conduct of the North Carolina State Bar during the term of the stayed suspension.
- p. Defendant shall timely comply with State Bar Continuing Legal Education requirements and pay by the applicable deadline all fees and expenses assessed.

4. If during the stay of the suspension Defendant fails to comply with any one or more of the conditions stated in paragraph 3 , then the stay of the suspension of his law license may be lifted as provided in Rule .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

5. If the stay of the suspension is lifted and the suspension is activated for any reason, in order to be reinstated to the practice of law, Defendant must prove by clear, cogent, and convincing evidence compliance with the requirements of Rule .0125(b) of the North Carolina State Bar Discipline and Disability Rules as well as the following conditions:

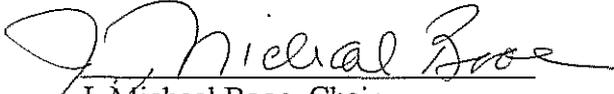
- a. Defendant shall submit to comprehensive psychiatric evaluations by two separate psychiatrists selected by or acceptable to the Office of Counsel of

the North Carolina State Bar who specialize in treating sexual offenders in the professions. Both psychiatrists must have certified under oath, based on independent comprehensive evaluations of Defendant, that in their professional opinion Defendant does not suffer from any condition creating a predisposition for inappropriate sexual behavior and that Defendant does not suffer from any mental, psychological, or emotional condition that significantly impairs his professional judgment, performance, or competence in the representation of female clients.

- b. Defendant must attach to his reinstatement petition the sworn certifications from the two evaluating psychiatrists. Defendant must also attach to his reinstatement petition releases or authorizations instructing the evaluating psychiatrists to discuss their evaluation of him and to release any corresponding records to the Office of Counsel of the State Bar, and provide any additional releases or authorizations that may be necessary upon request by the Office of Counsel.
- c. Defendant paid all costs assessed by the Secretary in connection with this proceeding, including deposition costs and expert witness costs as allowed by statute.
- d. Defendant submitted his license and membership card to the Secretary of the North Carolina State Bar within 30 days of the entry of the order activating his suspension and complied with all requirements of Rule .0124 of the North Carolina State Bar Discipline and Disability Rules on a timely basis.
- e. Defendant accepted all certified mail sent to him from the State Bar and responded to all communications from the State Bar by the deadline stated in the communication during the term of the suspension.
- f. Defendant violated no federal or state laws during the term of the suspension.
- g. Defendant violated no provision of the Rules of Professional Conduct of the North Carolina State Bar during the term of the suspension

6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to Rule .0114(x) of the North Carolina Discipline and Disability Rules throughout the period of the stayed suspension.

16<sup>th</sup> Signed by the Chair with the consent of the other hearing panel members, this the  
day of July 2010.

  
J. Michael Booe, Chair  
Disciplinary Hearing Panel