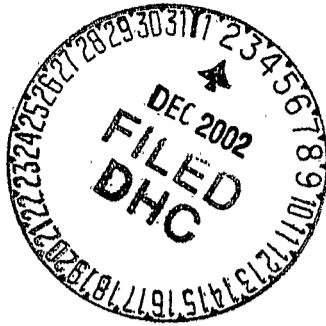


WAKE COUNTY
NORTH CAROLINA



7024

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
02 DHC 9

THE NORTH CAROLINA STATE BAR)
Plaintiff,)
vs.)
MELVYN H. BROWN, JR., ATTORNEY)
Defendant.)

**CONSENT ORDER
OF DISCIPLINE**

THIS MATTER came on to be heard and was heard before a duly assigned hearing committee of the Disciplinary Hearing Commission of the North Carolina State Bar. The Defendant, Melvyn H. Brown, Jr. was represented by his attorney, David R. Tanis of the Forsyth County Bar. Carolin Bakewell represented the North Carolina State Bar. Based upon the pleadings herein, and stipulations and the consent of all parties, the Hearing Committee makes the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of the state of North Carolina, and is the proper party to bring this proceeding under the authority granted pursuant to Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations promulgated thereunder.
2. The Defendant, Melvyn H. Brown, Jr., hereinafter referred to as Brown, was admitted to the North Carolina State Bar in 1976, and is, and 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 all relevant times, Brown maintained a law office in Winston-Salem, N.C.
4. Brown waived his right to a formal hearing.
5. Brown was properly served with process and is subject to the jurisdiction of the Disciplinary Hearing Commission.

6. In or prior to 2001, Brown entered into an unwritten agreement with William Merritt, Jr. (hereinafter referred to as Merritt) a non-lawyer who was on parole from federal prison. Pursuant to this agreement Merritt was to personally solicit and refer potential clients to Brown. Merritt also agreed to provide office space in his home in Greensboro, and secretarial and transportation services to Brown. In return Brown agreed to pay Merritt 40 % of any fee collected in cases in which Brown used Merritt's services.

7. Brown was significantly motivated by his own pecuniary gain in arriving at the agreement with Merritt.

8. Brown's gross income from the practice of law has never exceeded \$10,000.00 in any given calendar year.

9. Merritt personally solicited some potential clients to be represented by Brown.

10. Pursuant to his relationship with Brown, Merritt collected advance fees for Brown's legal services from several clients, including Arlicia F. Campbell (Mrs. Campbell) and Rev. Howard and Mamie (the Pages). Merritt did not deposit these advance legal fees in a trust account and did not keep the records referred to in the applicable provisions of the Revised Rules of Professional Conduct regarding the fees.

11. Brown failed to take adequate steps to ensure that appropriate records regarding the fees were kept and failed to ensure that all client funds were handled in a manner consistent with the Revised Rules of Professional Conduct.

12. Brown divided legal fees with Merritt on at least four occasions. On other occasions Merritt received fees from clients of Brown which were not divided.

13. Between February and April, 2001, Ms. Campbell paid a total of \$1,025.00 in legal fees to Brown or to Merritt.

14. Brown did not earn the entire fee paid to him and failed to refund any portion of the fee. Brown did expend time attributable to furthering Ms. Campbell's case. He discussed Ms. Campbell's case in numerous telephone calls with Ms. Campbell and persons associated with the facts of her case, and conducted several interviews. Ms. Campbell informed Brown she was terminating his services because her father was retaining an attorney from Greensboro. Mandatory fee resolution by the North Carolina State Bar is pending.

15. In or prior to 2001, Brown undertook to represent Edward Miller (Miller) regarding Miller's claim for Social Security disability benefits. Miller, who had met Merritt in prison, is functionally illiterate and relied on and trusted Merritt. Miller insisted that Merritt be involved on his case, which Brown refused to do which caused the stalemate in the proceedings.

16. Brown did not take effective action to assist Miller and neglected his case as a result of the aforesaid situation. Brown did not receive any money from his representation of Miller.

17. Brown failed to effectively communicate with Miller or respond to his inquiries about his legal matter.

18. In, or prior to 2001, Brown undertook to represent the Pages regarding claims arising out of damage to their property by Bell South Telephone Co. He did work on their case, including interviewing the clients on at least three occasions for approximately one hour each, examining the site, writing to a representative of Bell South, and researching legal issues. The relationship between the pages and Brown deteriorated. The Pages retained Brown to represent them in this matter and subsequently released him as their attorney on two separate occasions.

19. Brown did not take effective action to assist the Pages and neglected their case.

Based upon the consent of the parties, the pleadings herein and the foregoing Findings of Fact, the Hearing Committee hereby makes the following

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over the person of the Defendant and over the subject matter of this proceeding.

2. Brown's conduct, as set out in the Finding of Fact, above, constitutes grounds for discipline pursuant to North Carolina General Statute § 84-28(b)(2) as follows:

a. By effectively dividing legal fees on at least four occasions with William A. Merritt, Jr., a non-lawyer, based upon a percentage of the fees derived from cases respecting which Merritt provided services for Brown, Brown violated Rule 5.4 of the Revised Rules of Professional Conduct.

b. By failing to take adequate steps to ensure that his non-lawyer assistant, William A. Merritt, Jr., was depositing advance fees into a trust account, was maintaining the records required by Rule 1.15-2 of the Revised Rules of Professional Conduct and was handling the funds in a manner consistent with the Revised Rules of Professional Conduct, Brown failed to adequately supervise a non-lawyer assistant in violation of Rule 5.3 of the Revised Rules of Professional Conduct.

c. By entering into an agreement with a non-lawyer, William A. Merritt, Jr., whereby Merritt was to personally solicit and did personally solicit potential clients for Brown, Brown engaged in direct contact with prospective clients in violation of Rule 7.3 of the Revised Rules of Professional Conduct.

d. By failing to refund the unearned portion of the fee received from Ms. Campbell, Brown retained an excessive fee in violation of Rule 1.5 of the Revised Rules of Professional Conduct.

e. By failing to take effective action to assist Miller and the Pages, Brown neglected clients' cases in violation of Rule 1.3 of the Revised Rules of Professional Conduct.

f. By failing to communicate effectively with Miller and by failing to respond to Miller's inquiries about his case, Brown failed to keep his client reasonably informed about the status of his case, in violation of Rule 1.4 of the Revised Rules of Professional Conduct.

Based upon the consent of the parties, the Hearing Committee also enters the following:

FINDINGS OF FACT REGARDING DISCIPLINE

1. At the time during which the misconduct mentioned in the Findings of Fact herein occurred, Brown was suffering from medical conditions, including hypertension, congestive heart failure and stress related difficulties, which condition contributed to his lack of attention and supervision resulting in violation of the Revised Rules of Professional Conduct.

2. Brown does not maintain a trust account or a separate business account for his law office.

3. Brown's law office and practice is in disarray and he would benefit from a course in law office management.

4. Brown's misconduct is mitigated by the following factors:

a. Brown has not been previously disciplined by the North Carolina State Bar.

b. Brown was suffering from physical/mental/emotional difficulties at the time of the misconduct, which affected his attention to and supervision of his practice.

c. Brown has exhibited remorse.

d. Brown has shown a cooperative attitude toward the disciplinary process.

e. Brown's misconduct did not involve dishonesty.

5. Brown's misconduct is aggravated by the following factors;

a. Multiple violations of the Revised Rules of Professional Conduct.

b. Substantial experience in the practice of law.

6. The mitigating factors outweigh the aggravating factors.

Based upon the Findings of Fact and Conclusions of law, the findings regarding discipline and the consent of the parties, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. Melvyn H. Brown, Jr., is hereby suspended from the practice of law for a period of one year effective thirty days from the service of this Order upon him. The active suspension of Brown's law license is stayed for a period of three years on the following conditions:

a. Defendant shall not violate the Revised Rules of Professional Conduct, the laws of any state or of the United States during the term of the stayed suspension.

b. Defendant shall successfully complete a three hour course in law office management offered by a sponsor approved by the North Carolina State Bar as soon as is practicable considering the times and places such a course may be offered, but no later than March 1, 2003 unless a written request based on reasonable cause is approved by the Office of the Counsel for the State Bar. Brown shall provide written proof of successful completion of the course to the Office of the Counsel of the North Carolina State Bar no later than April 15, 2003, unless otherwise ordered.

c. Defendant shall successfully complete a three hour course in trust account management offered by a sponsor approved by the North Carolina State Bar no later than March 1, 2003 or as soon thereafter as such a course is available. Brown shall provide written proof of successful completion of the course to the Office of the Counsel of the North Carolina State Bar no later than April 15, 2003, or as soon thereafter as is feasible.

d. Defendant shall open and maintain a business account, separate from his personal bank account, throughout the portion of the stayed suspension of his law license.

e. If Defendant receives or handles client or fiduciary funds in any respect during the stayed suspension of his law license, he shall deposit such client funds in a trust account and handle the funds in accordance with the revised Rules of Professional Conduct. Brown shall submit a written proposal concerning the form and procedures he will use for the application of trust account funds to the Office of the Counsel for the State Bar for their approval.

f. Defendant shall permit random audits of his trust, business and personal bank accounts by the North Carolina State Bar throughout the three year stayed suspension of his law license. Such audits will be conducted at the Defendant's expense. The North Carolina State Bar will not review the Defendant's bank account more than four times each year.

g. The Defendant shall continue to seek treatment for his medical condition, including hypertension, congestive heart failure and stress related problems from Dr. Harvey Allen, Jr. and shall comply with all treatment plans and directives of his treating physician throughout the three year stayed suspension of his law license.

h. No later than November 1, 2002 the Defendant shall execute and deliver to the Office of the Counsel of the North Carolina State Bar a written release permitting the Office of the Counsel to contact his treating physicians to determine if the Defendant is complying with all the terms and plans of treatment. The Defendant shall not revoke the release at any time during the stayed suspension and shall execute a new written release and deliver it to the Office of the Counsel within 15 days after such time, if any, that he begins treatment with a substitute physician.

i. No later than November 30, 2002, the Defendant shall select a practice monitor, to be approved by the Office of Counsel. Defendant shall personally meet with his practice monitor at least once a month throughout the stayed suspension of his law license. The Defendant shall keep the monitor apprised of all open and pending client matters and the status of all such matters. On Jan. 1, April 1, July 1, and October 1, of each year during the stayed suspension of his law license, the Defendant shall deliver to the Office of the Counsel written reports signed by the practice monitor confirming that the meetings are occurring and reporting on the status of Defendant's client matters. Defendant shall be solely responsible for all costs associated with the monitoring of his law practice.

j. The Defendant shall pay all mandatory membership dues, Client Security Fund assessments, applicable late fees and shall comply with all requirements of the State Bar Continuing Legal Education Department on a timely basis throughout the three year stayed suspension of his law license.

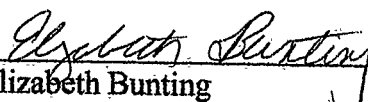
k. During the three year stay period, Defendant shall keep the North Carolina State Bar Membership Department apprised of his current address, will accept all certified mail from the North Carolina State Bar and will respond in a timely fashion to all letters of notice and requests for information from the North Carolina State Bar.

2. If the suspension of the Defendant's law license is activated at any time during the three-year stay period, Defendant shall comply with the provisions of paragraphs 1(b)(c), and (j) herein before resuming the practice of law. In addition, prior to resuming the practice of law, the Defendant shall provide written evidence to the Office of Counsel establishing that he is not suffering from any mental or physical condition that significantly impairs his professional judgment, performance or competence as an attorney.

3. The Defendant shall pay the costs of this proceeding no later than January 1, 2003.

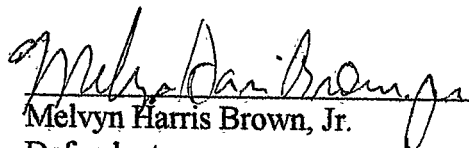
Signed by the Chair of the Hearing Committee with the knowledge and consent of the other Committee members.


This, the 19th day of November, 2002.

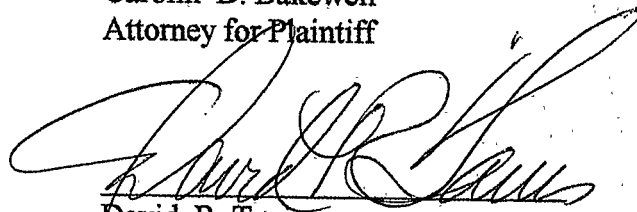

Elizabeth Bunting
Chairman, Disciplinary Hearing Committee

Consented To :

For the North Carolina State Bar
Plaintiff


Melvyn Harris Brown, Jr.
Defendant


Carolin D. Bakewell
Attorney for Plaintiff


David R. Tanis
Attorney for Defendant