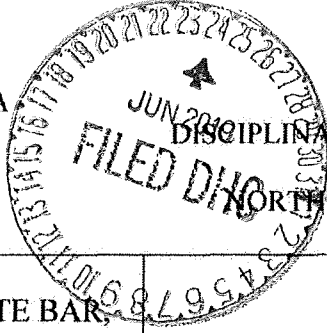


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
19 DHC 2

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

JERRY BRASWELL, Attorney,

Defendant

CONSENT ORDER
OF DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of R. Lee Farmer, Chair, Maya Madura Engle, and Ronald C. Brinson. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Jerry Braswell was represented by Alan M. Schneider. Defendant waives a formal hearing in the above-referenced matter. The parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by this order. By consenting to this order, Defendant knowingly, freely, and voluntarily waives his right to appeal this consent order or to challenge in any way the sufficiency of the findings.

Based on the foregoing and on the consent of the parties, the Hearing Panel hereby makes 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 North Carolina General Statutes, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Jerry Braswell (hereafter "Defendant" or "Braswell"), was admitted to the North Carolina State Bar on 13 December 1977 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, Braswell was actively engaged in the practice of law, maintaining a law office in Goldsboro, Wayne County, North Carolina until on or about 20 September 2017.

4. On 7 August 2017, a panel of the Disciplinary Hearing Commission issued an Order of Discipline in 16 DHC 37, *The North Carolina State Bar v. Jerry Braswell*, suspending for five years Defendant's license to practice law.

5. The suspension of Defendant's law license was effective 18 September 2017.

6. After the effective date of his suspension, Defendant was not an active member of the State Bar and thus was not permitted to hold himself out as competent or qualified to give legal advice, counsel, or to furnish the services of a lawyer to another.

7. On or about 16 February 2017, Skyline Restoration, Inc. filed a civil action in the United States District Court, Northern District of Illinois, Eastern Division against First Baptist Church and First Baptist Housing Development Corporation II – case file number 1:17-cv-01234 (“the lawsuit”).

8. Braswell represented the defendants, First Baptist Church and First Baptist Housing Development Corporation II (“First Baptist”), but he was not admitted to practice in the United States District Court, Northern District of Illinois, Eastern Division.

9. On or about 16 March 2017, Braswell applied for admission *pro hac vice* to the United States District Court, Northern District of Illinois in case file 1:17-CV-1234.

10. The application required Braswell to respond under penalty of perjury to several questions.

11. One such question was: “Has the applicant ever been: censured, suspended, disbarred, or otherwise disciplined by any court?”

12. Braswell checked the box for “no” in response to this inquiry.

13. Braswell's response was false.

14. At the time Braswell submitted the *pro hac vice* application, he had been censured by the North Carolina Supreme Court on 12 August 2004 and suspended by the Disciplinary Hearing Commission on 30 October 2014.

15. The *pro hac vice* application also required Braswell to answer whether he was “currently the subject of an investigation of [his] professional conduct?”

16. Braswell checked the box for “no” in response to this inquiry.

17. Braswell's response was false.

18. At the time Braswell submitted the application, he was the subject of a disciplinary matter pending before the Disciplinary Hearing Commission: The North Carolina State Bar v. Jerry Braswell, 16 DHC 37.

19. At the time Braswell submitted the application, he knew that he was the subject of the disciplinary action referenced in paragraph 18 above.

20. Braswell signed the *pro hac vice* application, declaring under penalty of perjury that his responses to the questions on the application were true and correct.

21. On or about 16 March 2017, the Honorable Thomas M. Durkin admitted Braswell *pro hac vice* to represent First Baptist in the lawsuit.

22. As a suspended member of the State Bar, Braswell was required to promptly notify by certified mail, return receipt requested, all clients being represented in pending matters of his suspension, the reasons for his suspension, and of his consequent inability to act as an attorney after the effective date of his suspension.

23. Braswell did not notify First Baptist, as required, of the suspension of his law license.

24. Braswell did not notify First Baptist, as required, of the reason for his suspension.

25. Braswell did not notify First Baptist, as required, that he would not be able to serve as their attorney after the effective date of his suspension.

26. Also, Braswell did not inform local counsel for First Baptist, Denny Ensford, of his suspension.

27. Braswell did not notify the court in case file 1:17-CV-1234 of the suspension of his law license.

28. Braswell was not licensed to practice law in any other jurisdiction.

29. Thus, when his North Carolina law license was suspended, Braswell was ineligible to appear *pro hac vice* in the lawsuit.

30. On or about 12 September 2017, Braswell sent an email to counsel for plaintiff stating that he was "retiring from [his] practice after 40 years and [would] be unable to complete this case before the end of this year," but he did not inform plaintiff's counsel of his suspension.

31. On or about 18 September 2017, Braswell filed a demand for arbitration on behalf of First Baptist.

32. On 20 September 2017, plaintiff's counsel informed the State Bar that Braswell had not withdrawn from the lawsuit but had instead recently initiated an arbitration in the case.

33. On 20 September 2017, Braswell filed a Motion to Withdraw as counsel for First Baptist, citing his suspension from the practice of law as the reason for his withdrawal.

34. On 25 September 2017, Braswell's motion was granted, and he was terminated as counsel for First Baptist.

35. After the effective date of his suspension and before his withdrawal, Braswell continued to represent First Baptist.

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the panel has jurisdiction over Defendant, Jerry Braswell, and over the subject matter.
2. Braswell'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 submitting a *pro hac vice* application that falsely represented his disciplinary history, Defendant made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);
 - (b) By failing to inform First Baptist of his suspension from the practice of law as required by the rules, Defendant failed to keep the client reasonably informed about the status of the matter in violation of Rule 1.4(a)(3) and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);
 - (c) By failing to withdraw from his representation of First Baptist before the effective date of his suspension, Defendant engaged in representation of a client that would result in violation of the Rules of Professional Conduct and failed to withdraw from such representation in violation of Rule 1.16(a); and
 - (d) By continuing to represent First Baptist after (1) his law license was suspended in September 2017 and (2) without a law license from any other jurisdiction, Defendant engaged in the unauthorized practice of law in violation of Rule 5.5(a) and engaged in conduct that is 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 the consent of the parties, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. By reprimand issued on 8 February 2019, Defendant was disciplined for violation of Rules of Professional Conduct 1.4(a), 1.16(a)(1), 5.5(a), and 8.4(d).
2. By Order of Discipline in 16 DHC 37 entered on 7 August 2017, Defendant was suspended for five years for violation of Rules of Professional Conduct 1.19(a) and 1.16(c).
3. By Order of Discipline in 14 DHC 14 entered on 30 October 2014, Defendant was suspended for two years, stayed for two years for violation of Rules of Professional Conduct 1.15-2(a), (k), (j), 1.15-3 (b), and (d).
4. By 2004 Order of the North Carolina Supreme Court, Defendant was censured for his conduct while serving as a Superior Court Judge for violation of Canons 2A and 3C(1) of the North Carolina Code of Judicial Conduct and violation of N.C. Gen. Stat. § 7A-376 (conduct prejudicial to the administration of justice that brings the judicial office into disrepute) due to his failure to recuse where one of the litigants in the case before Defendant had an alienation of affection lawsuit pending against Defendant.

Based on the foregoing Findings of Fact, Conclusions of Law, and Additional Findings of Fact Regarding Discipline, and with the consent of the parties, the Hearing Panel makes the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B.0116(f)(1) and concludes that the following factors that warrant suspension or disbarment are present:
 - (a) Intent of the defendant to commit acts where the harm or potential harm is foreseeable;
 - (b) Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;
 - (c) Elevation of the defendant's own interest above that of the client;
 - (d) Negative impact of defendant's actions on client's or public's perception of the profession;

(e) Negative impact of the defendant's actions on the administration of justice; and

(f) Acts of dishonesty, misrepresentation, deceit, or fabrication.

2. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B .0116(f)(2) and concludes that the following factor exists that warrants consideration of disbarment:

(a) Acts of dishonesty, misrepresentation, deceit, or fabrication.

3. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B.0116(f)(3) and concludes that the following are applicable in this matter:

(a) Prior disciplinary offenses in North Carolina: 8 February 2019 reprimand, 7 August 2017 suspension, 30 October 2014 stayed suspension and 2004 censure by the Supreme Court;

(b) Dishonest and selfish motive;

(c) Multiple offenses;

(d) Cooperative attitude toward the proceedings; and

(e) Defendant has been licensed to practice law for approximately forty-two years.

4. By engaging in dishonest conduct, Defendant caused significant harm to the legal profession.

5. By providing false information to the federal court in support of his *pro hac vice* application Defendant caused harm to the administration of justice.

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 harm to the legal profession and the administration of justice and because of Defendant's prior disciplinary history.

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

ORDER OF DISCIPLINE

1. Defendant, Jerry Braswell, is hereby suspended from the practice of law for five years effective immediately upon the expiration of the five-year suspension imposed by the Order of Discipline in 16 DHC 37.

2. It is the intent of this Order that the five-year suspension of Defendant's license to practice law in the state of North Carolina is a second, independent order of suspension to run consecutively to the five-year suspension imposed upon him in 16 DHC 37, such that Defendant is ineligible to petition for reinstatement for ten years from the effective date of Defendant's suspension imposed in 16 DHC 37.

3. Within 30 days after service of this order, Defendant shall provide the State Bar's Office of Counsel with an address and telephone number at which clients seeking return of their files can communicate with Defendant to obtain such files.

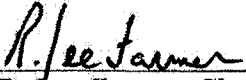
4. Defendant shall return a client file to the client within five days of receipt of a request for return of the client file. Defendant will be deemed to have received any such request three days after the date the request is sent to Defendant if the request is sent to the address Defendant provided to the State Bar pursuant to this order.

5. 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.

6. Defendant must show the following by clear, cogent, and convincing evidence in addition to those requirements set forth in 27 N.C. Admin. Code 1B.0128 in order to be reinstated to the practice of law at the conclusion of his active suspension:

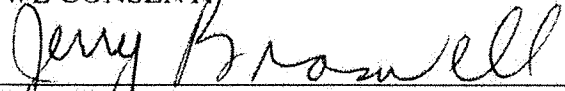
- a. That Defendant has attained a passing grade on a regularly scheduled written bar examination administered by the North Carolina Board of Law Examiners;
- b. That Defendant has attained a passing grade on a regularly scheduled written Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners; and
- c. That Defendant has completed five hours of continued legal education (CLE) devoted to professional responsibility. This CLE requirement is in addition to the CLE requirements set out in 27 N.C. Admin. Code 1D.1518.

Signed by the Chair with the consent of the other Hearing Panel members this
the 24th day of June, 2019.



R. Lee Farmer, Chair
Disciplinary Hearing Panel

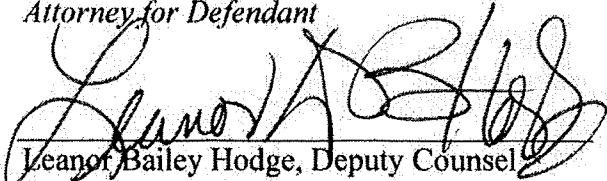
WE CONSENT:



Jeffrey Braswell
Defendant



Alan M. Schneider
Attorney for Defendant



Leann Bailey Hodge, Deputy Counsel
Attorney for Plaintiff