

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 37

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DUJUAN E. BROWN, Attorney,

Defendant

CONSENT
ORDER OF DISCIPLINE

This matter was considered by a Hearing Panel of the Disciplinary Hearing Commission composed of Ronald R. Davis, Chair, and members William M. Claytor, and Joe Castro, pursuant to North Carolina Administrative Code, Title 27, Chapter 1, Subchapter B, § .0114(h). Plaintiff was represented by Mary D. Winstead. Defendant, Dajuan E. Brown, was represented by Alan M. Schneider. Both 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. Brown has freely and voluntarily stipulated to the following findings of fact and consents to the conclusions of law and entry of the Order of Discipline. Brown freely and voluntarily waives any and all right to appeal the entry of this consent Order of Discipline.

Based upon the pleadings in this matter and with the consent of the parties, the Hearing Panel 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 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, Dajuan E. Brown ("Brown" or "Defendant"), was admitted to the North Carolina State Bar in 1990 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. On or about August 2, 2011, in Alexandria, Virginia, Defendant drove a vehicle while under the influence of alcohol, was involved in a wreck, and failed to stop at the scene and report the wreck to law enforcement.

4. On November 21, 2011, in the Circuit Court of the City of Alexandria, Virginia, Defendant pled guilty to and was convicted of the felony of Driving While Intoxicated – Third Offense within 10 years in violation of Va. Code § 18.2-266 and § 18.2-270 and the misdemeanor of Hit and Run in violation of Va. Code § 46.2-894.

5. Defendant was sentenced to consecutive sentences of 5 years for Driving While Intoxicated – Third Offense, 12 months for Hit and Run, and 12 months for Refusal. All but one year of the sentence was suspended for five years and Respondent was placed on supervised probation for three years upon his release from incarceration.

Based upon the consent of the parties and the foregoing stipulated 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 and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the stipulated 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 Responsibility in effect at the time of the conduct as follows:

a. By committing the felony offense of Driving While Intoxicated – Third Offense within 10 years and by committing the offense of Hit and Run, Defendant engaged in criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b), and by committing the offense of Hit and Run, Defendant engaged in conduct involving dishonesty in violation of Rule 8.4(c).

3. Defendant's convictions, as set out in the stipulated Findings of Fact above, constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1) in that Defendant has been convicted of criminal offenses showing professional unfitness.

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

FINDINGS OF FACT REGARDING DISCIPLINE

1. Defendant engaged in dangerous behavior while under the influence of alcohol.
2. Defendant's conduct caused harm to the standing of the profession in the eyes of the public because it shows his disregard for his obligation to obey the law.
3. Defendant has no prior discipline.
4. Defendant self-reported this misconduct and has cooperated with the State Bar's investigation of the conduct described herein.
5. While incarcerated, Defendant successfully completed the Men's Sober Living Unit Program, a ninety day intensive therapeutic program.
6. After completing this initial ninety day program, Defendant spent over ninety additional days (until May 24, 2012) in this inpatient program.
7. Since November 20, 2012, Defendant has been enrolled in Círculo de Andromeda, a halfway house program, and has submitted to random urinalyses which have all yielded negative results for the presence of alcohol.
8. The Hearing Panel has carefully considered all of the different forms of discipline available to it, including admonition, reprimand, censure, suspension, and disbarment, in determining the appropriate discipline to impose in this case.

Based on the Findings of Fact and Conclusions of Law above and the 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 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 suspension of Defendant's license:
 - (B) Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
 - (C) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity; and

- (E) Negative impact of Defendant's actions on public's perception of the profession.

2. The Hearing Panel has considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that two factors, commission of a felony and dishonesty, are present and require the Hearing Panel to consider disbarment. The Hearing Panel has considered disbarment and has determined that disbarment is not warranted here given the nature, facts, and circumstances of the conduct in this case.

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

- (A) Absence of prior disciplinary offenses;
- (F) Pattern of misconduct;
- (G) Multiple offenses;
- (J) Interim efforts toward rehabilitation;
- (K) Full and free disclosure to the Hearing Panel and cooperative attitude toward the proceedings;
- (S) Defendant has practiced law for over 21 years; and
- (U) Other sanctions have been imposed by the court in connection with the criminal offenses which include an active sentence followed by a probationary sentence.

4. Defendant's criminal conduct reflects upon his fitness to engage in the practice of law and reflects negatively upon the legal profession.

5. 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 potential harm to the profession and the public. The Panel further concludes that such discipline would fail to acknowledge the seriousness of the violations committed by Defendant and send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

6. This Hearing Panel has considered lesser alternatives and concludes that suspension is necessary to adequately protect the public from future misconduct by Defendant.

7. For these reasons, this Hearing Panel finds that an order imposing discipline short of suspension of Defendant's law license would not be appropriate.

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

ORDER OF DISCIPLINE

1. Defendant, Dajuan Brown, is hereby suspended from the practice of law for three years, effective immediately.
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(b) of the North Carolina State Bar Discipline & Disability Rules. 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, through counsel, has represented to the State Bar that he is not engaged in the private practice of law and has no clients or client files and therefore is not required to comply with the provisions of .0124(a) of the North Carolina State Bar Discipline & Disability Rules concerning client notification.
5. Defendant shall pay the administrative fees and costs of this disciplinary proceeding within 30 days of service of the statement of fees and costs upon him.
6. After serving one year of the active suspension of his license, Defendant may be eligible to petition to have the remainder of the suspension stayed if he meets the conditions set out below. Defendant must be in compliance with these conditions at the time of his petition as well as at the time of the effective date of any stay of his suspension. Defendant must prove compliance with these conditions by clear, cogent, and convincing evidence. After one year from the effective date of this Order, Defendant may apply to have the remainder of the suspension stayed by filing a petition with the Secretary of the North Carolina State Bar demonstrating the following:
 - (a) That he properly wound down his law practice and complied with the terms of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the State Bar Discipline & Disability Rules;
 - (b) That he paid the fees and costs of this proceeding within 30 days of service of the statement of fees and costs upon him;

- (c) That Defendant remained enrolled in and successfully completed the Circulo De Andromeda halfway house program;
- (d) That Defendant complied with all terms and conditions of any order of the court pertaining to his guilty pleas and convictions, including, but not limited to, reporting to the City of Alexandria Office of Probation and Parole within 72 hours of his release from Circulo De Andromeda;
- (e) That Defendant has not been charged with any violation of his probation or any criminal offense at any time from the date this Order is entered through the date any petition is filed and that Defendant has not been charged with any violation of his probation or any criminal offense at any time from the date any petition is filed through the date any stay of his suspension is granted;
- (f) That Defendant has not been incarcerated at any time from the date this Order is entered through the date any petition is filed and that Defendant has not been incarcerated at any time from the date any petition is filed through the date any stay of his suspension is granted;
- (g) That Defendant has abstained from the consumption of any alcohol and from the consumption of any controlled substance, other than as expressly authorized by a treating physician, continuously for the year immediately preceding the filing of his petition for stay.
 - i. This abstinence must continue from the date of the filing of his petition through the effective date of any stay;
 - ii. Evidence of compliance with this condition must include compliance with any monitoring requirements required by Circulo de Andromeda and/or the City of Alexandria Office of Probation and Parole. Defendant will sign all necessary releases or documents to authorize his case manager and his probation officer to immediately report to the North Carolina State Bar: 1) any failure to test, and 2) any positive test (urine, blood, breath, or hair) for the presence of alcohol and/or controlled substances and shall not revoke the release during the period of monitoring;
 - iii. Defendant shall instruct his case manager and probation officer to immediately report to the State Bar any: 1) failure to test, and 2) positive test for the presence of alcohol (urine, blood, or breath) and/or controlled substances;
 - iv. In the event that no such testing is required in connection with Defendant's convictions (i.e. testing not required by Circulo de Andromeda or Defendant's probation officer), or in the event that

such testing is required but the requirement of testing is discontinued at any time while this Order of Discipline is in effect, Defendant shall immediately so inform the State Bar. In that event, evidence of compliance with this condition must include compliance with the monitoring requirements of a monitoring laboratory agreed to in advance by the Office of Counsel of the North Carolina State Bar (hereinafter "monitoring laboratory"). Such monitoring will be at Defendant's expense. Such monitoring will include daily call-ins, random observed urine, breath, blood, or hair collection, and testing for the substances identified by the North Carolina State Bar. Such monitoring will include at least twelve random drug and alcohol screens per year. Compliance shall include having no failures to test and having no positive test results that are not consistent with proper authorized use of a prescribed medication. The monitoring agreement with the monitoring laboratory will require the monitoring laboratory to report to the North Carolina State Bar the following: any failure of Defendant to call in; any failure of Defendant to submit an observed urine, blood, breath, or hair sample at a location approved by the monitoring laboratory when directed to do so by the monitoring laboratory; any failure of Defendant to pay for a test; any dilution or other indication of any attempt by Defendant to alter his urine, blood, breath, or hair specimen or impair the ability of the testing to detect alcohol or controlled substances in his sample; and any positive test result. If there is any positive test result, Defendant shall cooperate at Defendant's expense in any medical review to determine whether any positive test result is consistent or inconsistent with any authorized medications prescribed to Defendant. The monitoring laboratory will report the results of any such medical review to the State Bar. The monitoring agreement will include authorization for the State Bar to set the hours during which Defendant must call in and the hours during which Defendant must have his urine, blood, breath or hair sample collected. Defendant will sign all necessary releases or documents to authorize such reporting and shall not revoke the release at any time while this Order of Discipline is in effect;

v. During the period of suspension, Defendant shall report to the North Carolina State Bar any positive test for the presence of alcohol and/or controlled substances within 24 hours of learning of a positive result.

(h) That Defendant was evaluated within 30 days of the effective date of this Order by a mental health provider who specializes in treatment of substance abuse addiction;

- (i) That for the year immediately preceding his petition for stay, Defendant followed and complied with any treatment recommendations of the mental health provider, or, if there are no recommendations for further treatment, participated regularly and continually on at least a weekly basis in a counseling and support program designed to assist those with substance abuse addictions;
- (j) That Defendant submitted to a comprehensive evaluation by a mental health professional who specializes in the treatment of substance abuse addiction, who is selected by or acceptable to the Office of Counsel of the North Carolina State Bar. This evaluation must occur no sooner than 90 days prior to the date of filing of the petition. The mental health professional must have certified under oath, based on an independent comprehensive evaluation of Defendant, that in his/her professional opinion Defendant's addiction(s) are controlled and do not pose any risk of harm to potential clients or the public and that he does not suffer from any addiction, disability, or mental, psychological, emotional, or other condition or circumstance that significantly impairs his professional judgment, performance, or competence as an attorney;
- (k) That Defendant has kept the North Carolina State Bar Membership Department advised of his current physical home address;
- (l) That Defendant has responded to all communications from the North Carolina State Bar received after the effective date of this Order within 30 days of receipt or by the deadline stated in the communication, whichever is sooner;
- (m) That Defendant paid all outstanding membership fees, dues, surcharges, and assessments, Client Security Fund assessments and fees or costs assessed by the DHC or the State Bar and complied with and satisfied any outstanding continuing legal education requirements imposed by the State Bar; and
- (n) That Defendant has not violated the Rules of Professional Conduct or the laws of the United States, any state, or the District of Columbia.

7. The procedures of 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b) shall govern Defendant's petition for a stay of the remainder of the suspension of his law license.

8. If the State Bar does not file an objection to Defendant's petition for a stay of the remainder of his suspension as described in 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b)(6), then pursuant to Section .0125(b)(5) the Secretary shall put into effect the stay of the remaining period of suspension provided for in this Order by reinstating Defendant to active status subject to the terms, conditions, and

requirements of this Order of Discipline, with Defendant's active status contingent upon continued compliance with the terms of this Order. Such stay will continue in force only as long as Defendant continues to comply with all conditions in this Order, including the conditions set out in paragraph 10 below. The Disciplinary Hearing Commission will retain jurisdiction of the matter until all conditions of the Order are satisfied, under 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0114(x).

9. If the State Bar files an objection to Defendant's petition for a stay of the remainder of his suspension as described in 27 N.C. Admin. Code Chapter 1, Subchapter B, Section .0125(b)(6), then pursuant to Section .0125(b)(7) the Secretary shall refer the matter to the Chair of the Disciplinary Hearing Commission. The Chair of the Disciplinary Hearing Commission shall appoint a hearing panel and set the matter for hearing as described in Section .0125(b)(7). The Chair of the Disciplinary Hearing Commission shall appoint as members of the hearing panel the members entering this Order if practicable.

10. If Defendant is granted a stay of his suspension, the stay of his suspension will remain in effect only if Brown complies, and continues to comply, with the following conditions:

- (a) Comply with all terms and conditions of any order of the court pertaining to his guilty pleas and convictions;
- (b) Abstain from the consumption of any alcohol during the period of stay;
- (c) Abstain from the consumption of any controlled substance other than as expressly authorized by a treating physician during the period of stay;
- (d) Comply with the monitoring requirements of his probation officer and any treating mental health professional. In the event that no such testing is required by Defendant's probation officer or treating mental health professional, or in the event such testing was required but the requirement of testing is discontinued at any time while this Order of discipline is in effect, Defendant shall immediately so inform the State Bar. In that event, evidence of compliance with this condition must include compliance with the monitoring requirements of a monitoring laboratory agreed to in advance by the Office of Counsel of the North Carolina State Bar (hereinafter "monitoring laboratory"). Such monitoring will be at Defendant's expense. Such monitoring will include daily call-ins, random observed urine, blood, breath, or hair collection, and testing for the substances identified by the North Carolina State Bar. Such monitoring will include at least thirteen random drug and alcohol screens per year. Compliance shall include having no

failures to test and having no positive test results that are not consistent with proper authorized use of a prescribed medication. The monitoring agreement with the monitoring laboratory will require the monitoring laboratory to report to the North Carolina State Bar the following: any failure of Defendant to call in; any failure of Defendant to submit an observed urine, blood, breath, or hair sample at a location approved by the monitoring laboratory when directed to do so by the monitoring laboratory; any failure of Defendant to pay for a test; any dilution or other indication of any attempt by Defendant to alter his specimen or impair the ability of the testing to detect alcohol or controlled substances in his urine; and any positive test result. If there is any positive test result, Defendant shall cooperate in any medical review to determine whether any positive test result is consistent or inconsistent with any authorized medications prescribed to Defendant, at Defendant's expense. The monitoring laboratory will report the results of any such medical review to the State Bar. The monitoring agreement will include authorization for the State Bar to set the hours during which Defendant must call in and the hours during which Defendant must have his urine, blood, breath, or hair sample collected. Defendant will sign all necessary releases or documents to authorize such reporting and shall not revoke the release at any time while this Order of Discipline is in effect;

- (e) Report to the North Carolina State Bar any positive test (urine, blood, breath, or hair) for the presence of alcohol and/or controlled substances within 24 hours of learning of a positive result;
- (a) Sign all necessary releases or documents to authorize his probation officer and/or treatment provider to report to the State Bar a positive result of a test for the presence of alcohol and/or controlled substances and shall not revoke the release at any time while this Order of Discipline is in effect;
- (b) Instruct his probation officer and treatment provider to immediately report to the North Carolina State Bar any positive test (urine, blood, breath, or hair) for the presence of alcohol and/or controlled substances;
- (c) Engage in treatment by a mental health professional who specializes in substance abuse addiction or participate in a program approved by the Office of Counsel of the State Bar to ensure his addiction(s) remain under control and pose no risk to clients or the public. The mental health professional or the program shall notify the State Bar if Defendant fails to participate in the treatment or program or fails to follow the recommendations of the mental

health provider or the program, as applicable. Defendant shall ensure this notification is made. Defendant will sign all necessary releases or documents to authorize such notification and to authorize the mental health provider or program to discuss Defendant's participation and treatment with the Office of Counsel of the State Bar, and shall not revoke the release at any time while this Order of Discipline is in effect;

- (d) Brown shall not violate the laws of the United States, any state, or the District of Columbia, or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;
- (e) Brown shall not be not arrested or incarcerated for any reason during the stay of his suspension;
- (f) Brown shall immediately notify the State Bar if he is charged with any violation of his probation or any criminal offense;
- (g) Brown shall respond to all State Bar requests for information as required by Rule 8.1(b) of the Rules of Professional Conduct by the earlier of the deadline stated in the communication or within 30 days of receipt;
- (h) Brown shall timely comply with all State Bar membership and Continuing Legal Education requirements; and
- (i) Brown shall keep the North Carolina State Bar membership department advised of his current home and business street (not P.O. Box) addresses and telephone numbers.

11. If an order staying any period of this suspension is entered and the Defendant fails to comply with any one or more of the conditions set out in this Order of Discipline, then the stay of the suspension of his law license may be lifted as provided in § .0114(x) of the North Carolina State Bar Discipline and Disability Rules.

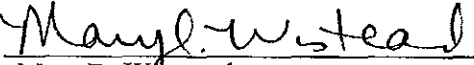
12. If Defendant does not seek a stay of the active portion of the suspension of his law license or if some part of the suspension is stayed and thereafter the stay is revoked, Defendant must comply with the conditions set out in paragraph 5 above as well as the requirements of 27 N.C. Admin. Code 1B, § .0125(b) in order to be reinstated from this suspension to active status.

13. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(x) of the North Carolina State Bar Discipline and Disability Rules at all times while this Order of Discipline is in effect.

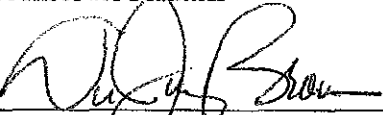
Signed by the Chair with the consent of the other Hearing Panel members, this the
11th day of FEBRUARY, 2013.


Chair, Disciplinary Hearing Panel

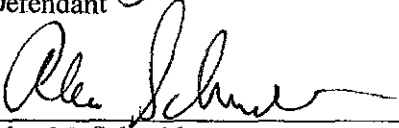
CONSENTED TO BY:


Mary D. Winstead
Counsel for Plaintiff

2/4/13
Date


Dajuan E. Brown
Defendant

1/31/2013
Date


Alan M. Schneider
Attorney for Defendant

2/4/2013
Date