

STATE OF NORTH CAROLINA

WAKE COUNTY

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BEFORE THE

DISCIPLINARY HEARING COMMISSION

OF THE

NORTH CAROLINA STATE BAR

82 DEC 3

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

ROLAND C. BRASWELL, ATTORNEY AT LAW,
Defendant

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This cause came on to be heard by the undersigned duly appointed members of the Hearing Committee of the Disciplinary Hearing Commission on August 13, 1982, at the State Bar Building in Raleigh, North Carolina. The Plaintiff was represented by David R. Johnson, Esquire. The Defendant was present and represented by Herbert B. Hulse, Esquire of the Wayne County Bar. The Committee considered the evidence offered by the parties and the arguments of their respective counsel. Based upon clear, cogent, and convincing evidence, the Committee unanimously makes the following FINDINGS OF FACT:

1. The 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 promulgated thereunder.

2. The Defendant, Roland C. Braswell, was admitted to the North Carolina State Bar on October 6, 1952, and is, and was at all times referred to herein, an Attorney at Law, licensed to practice law in the State of North Carolina, subject to the Rules, Regulations, Canons of Ethics and Code of Professional Responsibility of the North Carolina State Bar and the laws of the State of North Carolina.
3. At and during all of the times hereinafter referred to, the Defendant was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Goldsboro, Wayne County, North Carolina.
4. On or about June 11, 1978, two criminal warrants were issued charging one William Jackson Neal, Jr. with possession with intent to sell a controlled substance, MDA, and with possession of a hyperdermic syringe needle for the purpose of administering a controlled substance. The charges were filed in the General Court of Justice as Wayne County file numbers 78 CR 8995 and 78 CR 8996. On or about June 19, 1978, Walter L. Travis, an attorney practicing in Mount Olive, North Carolina, was appointed to represent Mr. Neal on the two criminal charges.
5. On or about September 9, 1978, William J. Neal, Jr. employed the Defendant to represent him on the two drug charges. The Defendant was paid \$500.00 by a check from Neal's parents, William J. Neal, Sr. and Ruby C. Neal.

6. On or about October 31, 1978, Mr. Travis was relieved of his responsibility to represent Mr. Neal and permitted to withdraw his appearance by the Court.
7. The Defendant represented Mr. Neal at trial of the two charges. A jury found Mr. Neal guilty on both charges and judgment was entered by Judge Napoleon Barefoot on February 15, 1979. The Defendant gave Notice of Appeal and was allowed 55 days to prepare and serve the Record on Appeal on the State. An appearance bond was set at Twenty-Five Thousand Dollars (\$25,000.00) at that time.
8. On February 21, 1979, Mr. Neal executed an appearance bond and was released from custody.
9. On March 29, 1979, the Defendant was appointed to represent Mr. Neal to perfect the appeal of both charges in Wayne County file numbers 79 CR 8995 and 8996 by an Order entered by Judge Henry L. Stevens, III, Plaintiff's Exhibit 2 introduced into evidence at the hearing.
10. The Defendant failed and neglected to perfect the appeal on behalf of Mr. Neal although he received a copy of the transcript of testimony at trial and knew he had been appointed to perfect the appeal.
11. The Defendant failed to serve any Record on Appeal, move for any extensions of time to serve a Record, or take any other actions to assist in the appeal of Mr. Neal.
12. On or about February 16, 1980, Mr. Neal was again arrested on criminal charges, the possession without lawful excuse of implements of housebreaking. The charges were filed

in the General Court of Justice, Wayne County File # 80 CR 2394. The Defendant was appointed to represent Mr. Neal at trial on February 19, 1980.

13. On or about June 5, 1980, Mr. Neal was convicted by a jury of possession of implements of housebreaking. The Defendant gave Notice of Appeal in open court and was allowed 60 days to prepare and serve the Record on Appeal on the State.
14. On October 20, 1980, the District Attorney caused to be served on the Defendant a "Notice of Motion to Dismiss Appeal for Failure of Defendant to Serve Case on Appeal" in case file numbers 78 CR 8995 and 78 CR 8996, the first criminal trial of Mr. Neal. The Defendant was served with the Notice on October 24, 1980. On November 10, 1980, the District Attorney filed the Motion to Dismiss the appeal. On November 24, 1980, Judge Arthur Lane entered an Order in file number 78 CR 8995 and 78 CR 8996 dismissing the appeal for failure to serve a Proposed Record on Appeal.
15. Following the appointment of the Defendant on March 29, 1979, to perfect the appeal of Mr. Neal in Wayne County file numbers 78 CR 8995 and 8996, Mr. Neal and his parents had several conferences with the Defendant. During these conferences the Defendant communicated to Neal and his parents that the appeal had been or was being perfected in due course.

16. On June 25, 1980, the Defendant wrote a letter to Mr. Neal, introduced into evidence as Plaintiff's Exhibit 13. In the text of the letter the Defendant represented to Mr. Neal and his parents that the appeal was being perfected.
17. The representations of the Defendant regarding the status of the appeal were not in fact true and the Defendant knew they were not true when he made them.
18. On June 1, 1981, the Defendant received a Letter of Notice from the Chairman of the Grievance Committee issued pursuant to Section 12(2) of the Rules of Discipline and Disbarment. Under Section 12(3), the Defendant was required to respond to the Letter of Notice by providing a "full and fair disclosure of all the facts and circumstances pertaining to the alleged misconduct."
19. The Defendant responded to the Letter of Notice by letter dated June 12, 1981, addressed to Rivers D. Johnson, Jr., Chairman of the Grievance Committee, which letter was introduced into evidence as Plaintiff's Exhibit 12.
20. The Defendant failed to make in his letter of response, Plaintiff's Exhibit 12, a "full and fair disclosure of all of the facts and circumstances" as required by the rules of the North Carolina State Bar, concerning the representation of Mr. Neal.
21. The Defendant made certain representations in his letter of response, Exhibit 12, including:
 - a) Mr. Neal testified at the trial of Wayne County file numbers 78 CR 3995 and 78 CR 8996;
 - b) Mr. Neal's testimony was false; and

- c) The Defendant advised Mr. Neal that the Defendant would not seek to overturn the conviction by appeal because Mr. Neal had admitted his guilt to the Defendant and had committed perjury.

22. None of the representations by the Defendant set forth in paragraph 21 above are in fact true in that:

- a) Mr. Neal did not testify at the trial of Wayne County file numbers 78 CR 8995 and 8996;
- b) The Defendant did not advise Mr. Neal that he would no longer pursue the appeal; and
- c) The Defendant raised procedural grounds for dismissing the charges against Mr. Neal grounded on problems with a search warrant and probable cause to search or make an arrest.

23. The Defendant knew that the representations contained in his response were not in fact true at the time he made them.

Based upon the foregoing FINDINGS OF FACT, the Committee unanimously makes the following CONCLUSIONS OF LAW.

- 1. The Defendant engaged in conduct constituting grounds for discipline under North Carolina General Statute § 84-28(a) and (b) (2) in that by failing to perfect the appeal of William Jackson Neal, Jr. in Wayne County file numbers 78 CR 8995 and 8996 after being appointed and ordered to so act or by failing to take any other action to assist in the appeal of Mr. Neal, the Defendant neglected a legal matter entrusted to him in violation of Disciplinary Rule 6-101(A) (3) of the Code of Professional Responsibility of the North Carolina State Bar.

2. The Defendant has engaged in conduct constituting grounds for discipline under North Carolina General Statute § 84-28(a) and (b) (2) in that by representing to Mr. Neal and his parents that the appeal in Wayne County file numbers 78 CR 8995 and 78 CR 8996 was being perfected when the same was not in fact true, the Defendant engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Disciplinary Rule 1-102(A) (4) of the Code of Professional Responsibility of The North Carolina State Bar.
3. The Defendant has engaged in conduct constituting grounds for discipline under North Carolina General Statute §84-28(a) and (b) (3) in that by making the representations set forth in paragraph 21 of the FINDINGS OF FACT when the Defendant knew the facts set forth were not true, the Defendant made a knowing misrepresentation of facts in response to a formal inquiry of The North Carolina State Bar in violation of North Carolina General Statute § 84-28(b) (3).

This the _____ day of _____, 1982.

Garrett D. Bailey, Chairman

Robert W. Wolf
Robert W. Wolf

Mary Cecile Bridges
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WAKE COUNTY

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B.E. JAMES, SEC.
THE N.C. STATE BAR
BEFORE THE
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THE NORTH CAROLINA STATE BAR,

Plaintiff

v

ORDER OF DISCIPLINE

ROLAND C. BRASWELL, ATTORNEY
AT LAW,

Defendant

This cause came on to be heard before the undersigned duly appointed members of the Hearing Committee of the Disciplinary Hearing Commission on Friday, August 13, 1982, at the State Bar Building in Raleigh, North Carolina. Based upon the FINDINGS OF FACT and CONCLUSIONS OF LAW entered by this Hearing Committee, the evidence of prior discipline, and the evidence in mitigation of the offense, introduced of record in these proceedings, the Hearing Committee enters this ORDER OF DISCIPLINE:

1) The defendant is hereby suspended from the practice of law for a period of 90 days, effective beginning 30 days from service of this Order upon the defendant or 30 days after affirmation of this Order on appeal.

2) The defendant shall surrender his license and his permanent membership card to the Secretary of the North Carolina State Bar who shall maintain both items in his possession during the period of suspension.

3) The costs of this proceeding shall be taxed to the defendant.

This 12 day of September 1982.

Garrett D. Bailey, Chairman

Robert W. Wolf

Mary Cecile Bridges