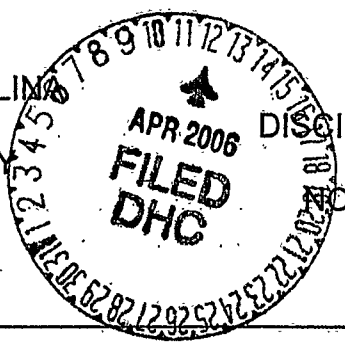
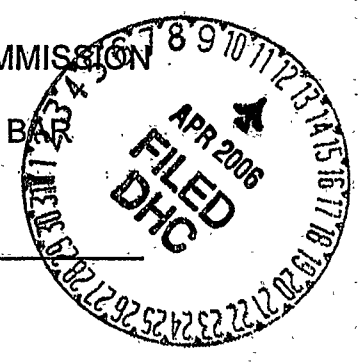


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NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
06 DHC 4



THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
BENJAMIN G. BROWN, JR., Attorney,)
Defendant)

CONSENT ORDER OF
DISCIPLINE

This matter was considered by a Hearing Committee of the Disciplinary Hearing Commission composed of F. Lane Williamson, Chair, Karen Eady-Williams, and Marguerite P. Watts. Margaret Cloutier represented plaintiff. Defendant was represented by Alan M. Schneider. Defendant has agreed to waive 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 and to the discipline imposed. Defendant also stipulates that Defendant waives his right to appeal this consent order or challenge in any way the sufficiency of the findings by consenting to the entry of this order.

Based on the consent of the parties, the Hearing Committee hereby finds by clear, cogent and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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. Defendant, Benjamin G. Brown, Jr. (hereinafter "Brown" or "Defendant"), was admitted to the North Carolina State Bar on August 20, 1993 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in North Carolina, subject to the rules, regulations, and Revised Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant herein, Defendant actively engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. From an indeterminate time before July 1, 1999 until December 31, 2002, Defendant maintained an attorney trust account at First Union National Bank bearing account number ending in the digits 9018 into which Defendant deposited client funds (hereinafter referred to as Defendant's "trust account").

5. Defendant did not reconcile his trust account at least quarterly during the period from July 1, 1999 through December 31, 2002.

6. Defendant did not retain appropriate client ledgers, and did not maintain all monthly bank statements, check stubs, deposit slips, canceled checks, debit memos and deposited items relating to his trust account for the period from July 1, 1999 through December 31, 2002.

7. From July 1, 1999 through December 31, 2002 Defendant accepted credit card payments for his fees from clients into the trust account. When a client used a credit card to pay Defendant, the credit card company deducted a fee for its services from the amount charged on the client's card and credited the remaining amount to Defendant's trust account. This process occurred by agreement between Defendant and the credit card company.

8. Defendant regularly withdrew from the trust account the full amounts charged to those clients who paid with credit cards and did not promptly reimburse the account or otherwise ensure that non-client funds were deposited in the account to cover the amounts deducted by the credit card company for its fees. As a result, Defendant used other clients' funds to pay for the credit card company fees without their knowledge or consent.

9. Defendant received authorization to charge the credit cards of several clients for payment of fees to Defendant. Defendant wrote checks from his trust account made payable to himself in the amounts authorized and attributable to those clients.

10. The credit card company did not credit Defendant's trust account with the amounts authorized by those clients. Defendant did not confirm the deposit of the clients' funds by the credit card company and did not take steps to cover the checks written. However, First Union National Bank paid when presented the checks written on Defendant's trust account for his fees. As a result, other clients' funds were used to cover the funds received by Defendant on behalf of those clients without the knowledge or consent of the other clients.

11. Between July 1, 1999 and December 31, 2002, Defendant deposited funds into his trust account on behalf of twenty-five specific clients. Defendant

did not disburse promptly to various third parties or to those clients all the funds he received and was directed to disburse on behalf of those clients.

12. Between July 1, 1999 and December 31, 2002, Defendant deposited funds into his trust account on behalf of six specific clients. Defendant disbursed funds on behalf of those clients in excess of the funds on deposit for them and did not take appropriate steps to cover the checks written. As a result, other clients' funds were used to cover the funds disbursed on behalf of those clients without the knowledge or consent of his other clients.

13. On July 1, 1999 Defendant's trust account had a balance of \$12,680.33. Defendant has not identified the owner(s) of those funds and is unable to determine whether the funds belong to him or to his clients. For the period from July 1, 1999 through December 31, 2002 the owners of all funds deposited into the account were identified and all checks clearing the trust account related to the deposits made during that period, except certain checks for persons who were not clients of Defendant in July 1999. As of December 31, 2002, Defendant's trust account held unidentified funds in the amount of \$2,900.10.

Based on the foregoing Findings of Fact, the Committee enters the following

CONCLUSIONS OF LAW

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

2. Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. §84-28(b)(2) in that Defendant violated one or more of the Revised Rules of Professional Conduct in effect at the time of the actions as follows:

a. by failing to reconcile his trust account at least quarterly, Defendant violated Rule 1.15-3(c);

b. by failing to maintain appropriate client ledgers, all monthly bank statements, check stubs, deposit slips, canceled checks, debit memos and deposited items relating to his trust account, Defendant did not maintain necessary trust account records in violation of Rule 1.15-3(b);

c. by allowing other clients' funds to be used without their knowledge and consent to pay credit card company fees and to cover the checks written for Defendant's fees on behalf of certain clients, and by disbursing more funds than he had on deposit on behalf of several clients, Defendant used entrusted

property for his personal benefit and for the benefit of other persons in violation of Rule 1.15-2 (a) and (j);

d. by failing to disburse the funds deposited on behalf of several clients as directed, Defendant failed to promptly pay or deliver to his clients or to third persons as directed by those clients entrusted property belonging to the client and to which the client is currently entitled in violation of Rules 1.15-2(a) and (m);

e. by failing to disburse funds deposited on behalf of clients as fees for his services at the time the fees were earned, whether such funds were deposited during the period from July 1, 1999 to December 31, 2002 or whether, and to the extent, any of the \$12,680.33 balance in his trust account on July 1, 1999 represented earned fees, Defendant failed to hold and maintain entrusted property separate from the property of the lawyer in violation of Rule 1.15-2(a); and

f. by spending down the \$12,680.33 balance in his account on July 1, 1999 to the \$2,900.10 balance in the account on December 31, 2002 when he had not determined whether he or his clients were the owner(s) of the funds held on July 1, 1999, Defendant either failed to identify, hold, and maintain entrusted property separate from his own property in violation of Rule 1.15-2(a) and (f) or used entrusted property for his personal benefit and for the benefit of other persons in violation of Rule 1.15-2 (a) and (j).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee also enters the following

FINDINGS REGARDING DISCIPLINE

1. Defendant's misconduct is aggravated by the following factors:

a. his conduct constituted multiple violations of the rules governing entrusted funds.

2. Defendant's misconduct is mitigated by the following factors:

a. he had no prior or subsequent discipline;

b. there is no credible evidence of a dishonest or selfish motive;

c. during the time of the violations, he was suffering from a physical impairment, depression, illicit drug abuse and alcohol addiction for which he has sought and successfully completed treatment as indicated below;

d. he has made full and free disclosure to the hearing committee and has had a cooperative attitude toward these proceedings;

e. the disciplinary proceedings were substantially delayed through no fault of Defendant; and

f. he has demonstrated remorse for his misconduct.

3. The mitigating factors outweigh the aggravating factors.

4. During the period covered by the audit review of Defendant's trust account, Defendant was suffering from physical health problems, depression, illicit drug abuse and alcohol addiction. These conditions directly contributed to the egregious state of his trust account. In late 2002 Defendant first sought treatment for his depression, eventually entering a residential recovery program in May 2003. Defendant continued treatment after release and has been alcohol free since May 2003. In October 2003 Defendant reopened his law practice and has since met weekly with an experienced attorney mentor. Defendant has adhered to all rules and regulations of trust accounting in maintaining his current trust account. Defendant has voluntarily and successfully participated in the Lawyer's Assistance Program.

5. There is no evidence that any specific client of Defendant was harmed by the mismanagement of Defendant's trust account. There is no evidence that any of Defendant's actions relating to his trust account described in the Findings of Fact above were intentional misappropriations but rather were the result of gross inattention to the status of the account in general and directly related to the effects of the mental health issues he suffered from at the time. However, such mismanagement in the handling of client funds erodes the confidence clients place in attorneys who handle their affairs and, as a result, such conduct harms the profession as a whole.

6. For the nature and extent of Defendant's trust account violations and the protection of the public this committee would consider an active suspension of Defendant's license to practice law if it were not for the evidence of Defendant's subsequent efforts and success in recovery, his lack of dishonest motive, and consideration of the time elapsed between the audit period and this action. Given those circumstances, the Hearing Committee finds and concludes that the public will be adequately protected by suspension of Defendant's license, stayed for a period of time with conditions imposed upon Defendant designed to ensure protection of the public and Defendant's continued compliance with the Revised Rules of Professional Conduct.

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

ORDER OF DISCIPLINE

1. The license of Defendant, Benjamin G. Brown, Jr., is hereby suspended for two years from the date this Order of Discipline is served upon him. The period of suspension is stayed for two years upon the following conditions:

a. For any and all trust accounts maintained by him, Defendant shall provide to the Office of Counsel of the North Carolina State Bar quarterly reports, in compliance with the requirements of Rule 1.15-3 of the Revised Rules of Professional Conduct, prepared by a certified public accountant engaged at defendant's own expense. Defendant shall provide the certified public accountant the necessary information to satisfactorily prepare such quarterly reports. Defendant is to submit such reports by each January 15, April 15, July 15, and October 15 during the period of stay;

b. Defendant shall demonstrate, to the satisfaction of the Office of Counsel of the North Carolina State Bar, that Defendant has reimbursed from his own funds all amounts disbursed during the audit period without authorization from his attorney trust account at First Union National Bank bearing account number ending in the digits 9018, including but not limited to credit card company fees, attorney fees for which no corresponding deposits were made, and other disbursements in excess of deposits made on behalf of specific clients;

c. Defendant shall demonstrate, to the satisfaction of the Office of Counsel of the North Carolina State Bar, that Defendant has identified all clients 1) with funds remaining in his attorney trust account at First Union National Bank bearing account number ending in the digits 9018, and 2) who should have funds remaining in that trust account. Once those clients are identified to the satisfaction of the Office of Counsel, Defendant shall properly disburse the identified funds and/or initiate escheat procedures as appropriate. In the event the account does not contain sufficient funds for clients identified who should have funds in the account, Defendant shall reimburse to the account those amounts from his own funds in order to properly disburse funds behalf of those clients;

d. If, after complying with subparagraphs b and c above, funds remain in Defendant's attorney trust account at First Union National Bank bearing account number ending in the digits 9018 that cannot be properly identified by Defendant as belonging to a specific person, Defendant shall escheat such funds as allowed by law. All identification, submission for approval, and disbursements or escheats shall be completed by September 30, 2006. Defendant shall provide documentation of the final

disbursement and/or initiation of escheat procedures to the Office of Counsel by October 15, 2006;

e. In six month intervals during the period of stay, Defendant shall be evaluated, at Defendant's own expense, by a licensed and qualified psychiatrist or similar mental health professional approved by the Office of Counsel for the purpose of determining whether Defendant has any current mental or psychological impairment, or current chemical, drug, or alcohol dependence, use or abuse that would affect Defendant's ability to practice law and comply with the Rules of Professional Conduct or cause harm to the public by continuing to practice law. Defendant will ensure that such psychiatrist or similar mental health professional, at Defendant's own expense, provides a written report of such evaluation to the Office of Counsel of the North Carolina State Bar within 30 days of each evaluation. The written reports shall be provided to the Office of Counsel by each October 31 and April 30 during the stay. In addition, Defendant shall provide the Office of Counsel with necessary and appropriate releases and medical authorizations for the Office of Counsel to review the written evaluation reports and interview the evaluating professional(s) and shall not revoke such releases during the period of stay;

f. Defendant shall not violate any state or federal laws or any provisions of the Revised Rules of Professional Conduct during the period of the stayed suspension;

g. Defendant shall respond to all State Bar requests for information by the earlier of the deadline stated in the communication or within 30 days, as required by Rule 8.1(b) of the Revised Rules of Professional Conduct;

h. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and

i. Defendant 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.

2. If the stay granted herein is revoked or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of his license to practice law, Defendant must show by clear, cogent and convincing evidence that he has complied with each of the following conditions:

a. Submitted his license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order suspending his law license;

b. Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following the order suspending his law license;

c. Demonstrated that he is not suffering from any addiction, disability or condition that would impair his ability to competently engage in the practice of law;

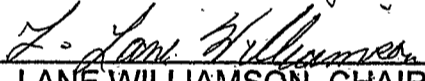
d. Demonstrated that he has abstained from all alcohol or illicit drug use or consumption and has not taken any prescription drugs or controlled substances other than as authorized by his treating physician for at least one year next preceding the filing of his petition for reinstatement. This requirement will apply regardless of when any stay is lifted and regardless of whether enforcement of this provision would extend the period of suspension of Defendant's law license beyond the period set out herein;

e. Provided the Office of Counsel with releases to obtain and review his medical records, including psychological and mental health evaluations; and to interview his medical care providers; and

f. Paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with all continuing legal education requirements imposed by the State Bar.

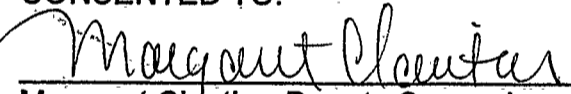
3. Defendant is taxed with the costs of this action as assessed by the Secretary which shall be paid within thirty days of service of the notice of costs upon the Defendant.

Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee, this 7th day of April, 2006.

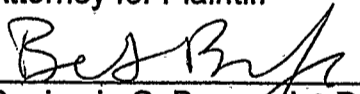


F. LANE WILLIAMSON, CHAIR
HEARING COMMITTEE

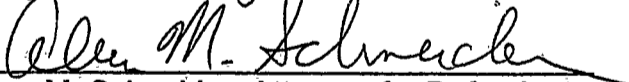
CONSENTED TO:



Margaret Cloutier, Deputy Counsel
Attorney for Plaintiff



Benjamin G. Brown, Jr., Defendant



Alan M. Schneider, Attorney for Defendant