



STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
16-DHC 87

THE NORTH CAROLINA STATE BAR,
Plaintiff

v.

JERRY BRASWELL, Attorney,
Defendant

ORDER OF DISCIPLINE

This matter was heard on 1-2 June 2017 and 17 July 2017 by a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, Allison C. Tomberlin, and Christopher R. Bruffey. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Jerry Braswell, was represented by Glenn A. Barfield.

Based on the evidence presented at the hearing, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "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, Jerry Braswell ("Defendant" or "Braswell"), was admitted to the North Carolina State Bar on 13 December 1977 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 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 actively engaged in the practice of law in the State of North Carolina and maintained a law office in Goldsboro, Wayne County, North Carolina.
4. In or about the summer of 2015, J. M., a resident of Wilmington, N.C., became a defendant in two actions that had been filed against her by her ex-boyfriend: a civil action filed on or about 10 June 2015 and a special proceeding filed on or about 30 July 2015.

5. These actions were instituted against J.M. after a contentious break-up between her and her ex-boyfriend.
6. Braswell undertook representation of J.M. in both matters as a favor to his nephew, a lawyer licensed in Georgia, whom J.M. was dating at the time Braswell's representation of her began.
7. Braswell had minimal contact with J.M. until he appeared on her behalf at a hearing on 17 November 2015 in Wilmington, N.C. This hearing was the first time that Braswell met J.M. in person.
8. After the hearing, Braswell invited J.M. to have lunch with him to discuss the hearing. Braswell and J.M. had lunch at a restaurant in Wilmington.
9. At lunch, Braswell and J.M. discussed personal matters unrelated to the representation in addition to discussing her case.
10. J.M. sent Braswell the following text message after the hearing: "I just wanted to say thank you for today. [J.M.'s ex-boyfriend] certainly doesn't paint a very pretty picture of me. I never asked, do you mind if we can be on a first name basis now."
11. Braswell sent the following response to J.M.'s message: "It would disappoint me greatly if we are not now on a first name basis. I look forward to developing our friendship."
12. Between 17 November 2015 through 19 December 2015, Braswell communicated with J.M. frequently by telephone including the following dates and times:
 - a. 11/17 at 10:06 p.m. for 43 minutes;
 - b. 11/18 at 10:06 p.m. for 104 minutes;
 - c. 11/19 at 7:41 p.m. for 27 minutes;
 - d. 11/23 at 8:01 p.m. for 70 minutes;
 - e. 12/1 at 10:12 p.m. for 16 minutes;
 - f. 12/2 at 10:50 p.m. for 29 minutes;
 - g. 12/5 at 9:33 p.m. for 19 minutes;
 - h. 12/7 at 10:50 p.m. for 19 minutes;
 - i. 12/11 at 10:02 p.m. for 24 minutes;
 - j. 12/12 at 11:09 p.m. for 21 minutes;
 - k. 12/15 at 10:51 p.m. for 48 minutes;
 - l. 12/17 at 9:57 p.m. for 20 minutes;
 - m. 12/18 at 10:17 p.m. for 12 minutes; and
 - n. 12/19 at 10:46 p.m. for 15 minutes.
13. Many of the discussions Braswell had with J.M. were personal in nature and were not in furtherance of his representation of her in legal matters.
14. Braswell and J.M.'s next in-person meeting was on 24 November 2015.

15. Braswell and J.M. had several text message exchanges before he met with her on 24 November 2015 to include the following exchanges:

- a. 11/19 message from Braswell to J.M.: "Thinking of you. Is that ok?"
- b. 11/19 message from J.M. to Braswell: "Why do you think you need to ask?"
- c. 11/19 message from Braswell to J.M.: "Then you have also figured out that my interest in you goes beyond helping you out of your current situation. But if you want me to stop there then you should tell me now. Not that I would stop but I would know your position."
- d. 11/19 messages from J.M. to Braswell: "I would like to get to know you. The worst thing that can happen for either of us is we made a new friend. I feel that if I don't leave myself open I will continue to live with regret!" "And you are supposed to be working!"
- e. 11/19 message from Braswell to J.M.: "I couldn't agree more. I think we share a lot of mutual interests and a relationship would only enhance our potential."
- f. 11/19 message from J.M. to Braswell: "I would like to know what did I do to capture your attention. I did not get the impression many women distract you like this. I may be completely off base."
- g. 11/19 message from Braswell to J.M.: "You are very perceptive. If you must know...the eyes, the smile the mind"
- h. 11/20 message from J.M. to Braswell: "Just got to the hotel. You need to watch out, someone might think you like me!"
- i. 11/20 message from Braswell to J.M.: "And the problem would be..."
- j. 11/20 message from Braswell to J.M.: "I think you are exactly my type...[sic] expressive, energetic, confident, sexy and fun"
- k. 11/21 message from Braswell to J.M.: "Good morning. Woke up thinking of you. Taking the kids to the kiddy museum later today. When is the first soccer match"
- l. 11/22 message from Braswell to J.M.: "I look forward to making you smile and laugh. That is the least I can do to thank you for adding value to my life."

- m. 11/23 message from Braswell to J.M.: "...Remember try not to look as good as you did before otherwise I can't promise that I won't try and kiss you."
16. On 24 November 2015, J.M. met Braswell at his office in Goldsboro at or about 12:04 p.m. and Braswell treated J.M. to lunch at a local Chinese restaurant.
17. J.M. left Goldsboro at or about 2:25 p.m. on November 24th.
18. Braswell and J.M.'s next in-person meeting was on 28 November 2015. The two met for dinner in Goldsboro after Braswell invited J.M. to join him for dinner at a local steakhouse.
19. J.M. was scheduled to meet Braswell at 7 p.m. on November 28th.
20. Braswell and J.M. had the following text message exchange before she left for Goldsboro on November 28th:
- a. J.M. to Braswell: "What would you like me to wear."
- b. Braswell to J.M.: "You look good in anything you wear. A pretty dress."
21. At 6:25 p.m. on November 28th during J.M.'s drive to Goldsboro, Braswell called J.M. and the two spoke for 2 minutes.
22. J.M. arrived in Goldsboro at 6:50 p.m. and she and Braswell went to dinner.
23. After dinner, Braswell invited J.M. to come inside his house where the two had sexual relations.
24. J.M. was Braswell's client at the time he had sexual relations with her.
25. J.M. left Goldsboro at approximately 10:51 p.m. on November 28th.
26. Braswell and J.M. continued to communicate by text and telephone after 28 November 2015.
27. Braswell's next in-person meeting with J.M. was at the Hilton Hotel in Wilmington, N.C. on 9 December 2015.
28. Braswell and J.M. had sexual relations again while Braswell was in Wilmington on December 9th.
29. Braswell still represented J.M. in December 2015.
30. On 6 February 2012, Chris Rogerson was appointed as counsel for A. Hart in two Lenoir County criminal matters: cases ending in numbers 316 and 317.

31. On or about 22 February 2012, Braswell entered a Notice of Limited Appearance & Representation for Hart in Lenoir County District Court for the same matters for which Rogerson had been appointed to represent Hart earlier that month.
32. The Notice of Limited Appearance & Representation limited Braswell's representation of Hart to proceedings in District Court only.
33. Braswell did not inform Rogerson of his representation of Hart.
34. As part of his representation of clients in District Court, Braswell would provide written notice to the client of the client's next scheduled District Court date.
35. Braswell did not appear in court in-person on behalf of Hart.
36. Braswell provided Hart written notice of each scheduled District Court date until 25 March 2013.
37. On or about 25 March 2013, Braswell wrote Hart and informed him that Braswell was closing Hart's file and thus ending his representation of Hart.
38. Braswell did not take any further action on behalf of Hart after sending him the March 25th letter ending his representation of Hart.
39. Braswell failed to obtain leave of court to withdraw from his representation of Hart as required by N.C. Gen. Stat. §15A-144.
40. The court was not aware that Braswell ended his representation of Hart while the matter was still pending in District Court.
41. Rogerson continued his representation of Hart throughout the matter both before and after Braswell's involvement in the case.
42. On or about 18 June 2015, Kim Benton was appointed by the court to represent K. Durham in two Lenoir County criminal matters: cases ending in numbers 440 and 445.
43. Benton filed motions for bond reduction on behalf of Durham on the following dates: 23 June 2015, 24 August 2015, 24 September 2015 and 12 October 2015.
44. On or about 23 September 2015, Braswell filed a motion for bond reduction on behalf of Durham in the same matters for which Benton had been appointed by the court to represent Durham. Braswell indicated in this motion that he was the attorney for Durham.
45. The bond motion Braswell filed on behalf of Durham constituted Braswell's general appearance in the Durham matter though Braswell did not file with the court a document titled "Notice of Appearance" to indicate his general appearance in the Durham case.

46. Braswell did not inform Benton or the court that he had been retained to represent Durham.
47. Braswell did not make any additional filings for Durham after filing the motion for bond reduction.
48. Braswell never appeared in court in support of the motion that he filed on behalf of Durham.
49. Although Braswell did not appear in District Court on behalf of Durham, Benton was present in court on the day that the bond motion Braswell filed was scheduled for hearing and Benton asked to have the matter continued because she had not been aware of the motion. The matter was continued in response to her request.
50. Approximately three weeks after the date Braswell's bond motion was scheduled to be heard, a bond motion filed by Benton on behalf of Durham was heard.
51. Ultimately, Durham's state criminal case was dismissed after criminal charges were instituted against him in federal court.

Based on the foregoing Findings of Fact, the Hearing Panel hereby enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction of Defendant, Jerry Braswell.
2. Defendant'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 engaging in sexual relations with J.M., Defendant had sexual relations with a current client in violation of Rule 1.19(a) and
 - (b) By entering a Notice of Limited Appearance on behalf of Hart and then failing to appear at scheduled hearings and failing to properly terminate his representation of Hart, Defendant failed to comply with applicable law requiring notice to or permission of a tribunal when terminating representation in violation of Rule 1.16(c).
3. The allegations of violation of Rule 8.4(d) with regard to Hart and Durham -- engaging in conduct prejudicial to the administration of justice -- were not proven by clear, cogent and convincing evidence.

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel hereby makes by clear, cogent and convincing evidence the following:

ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. J.M. was contacted by Defendant's wife about J.M.'s relationship with Defendant on 10 April 2016.
2. J.M. sent the following text messages to Defendant after she was contacted by his wife:
 - a. "Hey, your wife called me. I told here [sic] I had the kids in the car, which I did. Guess you are going to have a shitty night, I am calling her back shortly. She has a lot of questions"
 - b. "Just to let you know I am filing a complaint with the board. You are unethical!"
3. On 10 April 2016, Defendant sent the following text message to his wife:
 - a. "I will contact my client in writing when I get to the office tomorrow. Do not interfere with my legal business as this could have bar implications and I don't need you to tell me how to do my business."
4. On 11 April 2016 at 9:17 a.m., J.M. emailed Defendant again informing him that she had received a call from his wife and stating her intention to contact "the board."
5. Defendant replied to J.M.'s email at 11:43 a.m. on April 11th and stated: "I will contact you after I have spoken with Shean [Defendant's nephew]. I understand that he is trying to reach you. There is no urgency about the posture of your case and I should be able to contact you no later than tomorrow."
6. J.M. and Defendant discussed her legal matters and their personal relationship during a 12 April 2016 telephone conversation. During this conversation, Defendant never denied that he had a sexual relationship with J.M. nor did Defendant state his intention to withdraw from representation of J.M. Instead, Defendant indicated his willingness to continue with the representation if that was what J.M. wanted him to do.
7. On 13 April 2016 at 11:13 a.m., J.M. sent an email to Defendant terminating his representation of her and asking him to send her client files to her.
8. Defendant submitted false information in his answer to the complaint:
 - a. Defendant denied the allegation that he invited J.M. to have lunch with him after the hearing, but offered testimony at the hearing that contradicted this denial; and
 - b. Defendant denied the allegation that on or about Saturday, 28 November 2015 at 7:00 p.m. J.M. met Braswell for dinner in or around Goldsboro, N.C. despite offering testimony at his deposition and at the hearing that contradicted this denial. Also, telephone records and text message

communications between J.M. and Defendant showed that J.M. was in Goldsboro with Defendant on 28 November 2015.

9. Defendant submitted false and/or misleading responses to discovery:
 - a. Defendant failed to include his personal residence when he was asked to state in response to an interrogatory request the location of each and every in-person contact he had with J.M. though Defendant testified at trial that J.M. was present inside his home.
 - b. In response to an interrogatory request to identify the purpose and duration of J.M.'s visit to his personal residence, Defendant stated: "[J.M.] dropped me off at my house after lunch meeting," though Defendant testified at trial that J.M. was present inside of his home. Defendant's discovery response gave the false appearance that J.M. did not go inside Defendant's personal residence.
 - c. In response to an interrogatory request to state the date on which his representation of J.M. ended, Defendant stated: "On April 18, 2016 [sic] I notified [J.M.] of my intent to move to withdraw. I filed that motion on April 20, 2016. The motion was allowed and an order was entered on May 16, 2016." This response gave the false appearance that Defendant, and not J.M., terminated his representation of J.M. Actually, J.M. terminated Defendant's representation of her on 13 April 2016.
10. Defendant provided false testimony at his deposition:
 - a. Defendant stated that he informed J.M. on the evening of April 10th he was "dropping" her case. J.M.'s telephone records show that Defendant did not speak with her on the evening of April 10th. During an April 12th telephone conversation with J.M., Defendant did not tell her he was "dropping" her case.
 - b. Defendant stated that J.M. had falsely accused him of having a sexual relationship with him, that immediately upon realizing she had made such allegation Defendant determined that he would have to withdraw from her case and had a conversation with her to tell her why. Defendant spoke with J.M. on April 12th. However, during Defendant's April 12th conversation with J.M., Defendant never informed J.M. that he would have to withdraw from his representation of her because she falsely accused him of having sexual relations with him. Instead, Defendant told J.M. that if she didn't think he could represent her and didn't want him on her case, "that's fine", but if she wanted him to work on her case he would do his very best "as [he'd] always done."

11. Defendant's testimony at the hearing was generally not credible and, in certain specific instances, was refuted by other objective evidence admitted at trial.

12. J.M. sought Braswell's legal assistance to help her resolve the legal matters that were pending with her ex-boyfriend. These matters were not fully and finally resolved when J.M. terminated Braswell's representation of her after their personal relationship ended.

13. J.M. had to hire another lawyer to represent her in defense of the legal actions her ex-boyfriend had instituted against her. J.M. paid a \$5,000 retainer to her new lawyer.

14. Defendant should have withdrawn from his representation of J.M. promptly after he had sexual relations with her on November 28th, no later than November 29th, to mitigate the harm caused by his professional misconduct, but failed to do so.

15. J.M. was vulnerable in that she was seeking legal assistance to help her resolve legal issues that arose out of a domestic situation. Rather than help J.M. resolve her legal matters, Defendant engaged in sexual relations with J.M. which resulted in J.M. becoming a part of a domestic matter with Defendant and his wife.

16. J.M. used to trust lawyers, but since her involvement with Defendant she no longer holds members of the profession in the same high esteem.

17. Defendant did not express remorse for his misconduct.

18. 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 1.5-2(a), (k), (j), 1.15-3 (b), and (d).

19. By 2004 Order of the North Carolina Supreme Court, Defendant was censured 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 him.

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

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(1) and concludes that the following factors that warrant suspension or disbarment are present:

- (a) Intent of the defendant to cause the resulting harm or potential harm;
- (b) Intent of the defendant to commit acts where the harm or potential harm is foreseeable;
- (c) Circumstances reflecting the defendant's lack of honesty, trustworthiness, or integrity;

- (d) Elevation of the defendant's own interest above that of the client;
- (e) Negative impact of defendant's actions on client's or public's perception of the profession;
- (f) Negative impact of the defendant's actions on the administration of justice; and
- (g) Impairment of the client's ability to achieve the goals for the representation.

2. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(2) and concludes that no factors that warrant disbarment are present.

3. The Hearing Panel has considered all of the factors contained in 27 N.C. Admin. Code 1B § .0114(w)(3) and concludes that the following are applicable in this matter:

- (a) Prior disciplinary offenses in North Carolina: 30 October 2014 stayed suspension and 2004 censure by the Supreme Court;
- (b) Dishonest or selfish motive;
- (c) A lack of good faith effort to rectify the consequences of misconduct, including a failure to immediately withdraw from representation of J.M. on November 28th or 29th;
- (d) A lack of full and free disclosure to the hearing panel or cooperative attitude toward the proceedings;
- (e) Submission of false statements or other deceptive practices during the disciplinary process: including responses in the Answer, discovery, and testimony offered at trial;
- (f) Refusal to acknowledge the wrongful nature of the conduct;
- (g) Lack of remorse;
- (h) Vulnerability of victim; and
- (i) 40 years of experience in the practice of law.

4. Defendant caused harm to his client, J.M. by engaging in sexual relations with her during the representation resulting in J.M. needing to secure new counsel to represent her after Defendant had been involved in her legal matters for approximately one year.

5. J.M. suffered harm as a result of Defendant's conduct in that she had to miss time from work to appear and testify about very personal matters at a deposition and at the public hearing of this matter.

6. Defendant caused harm to the administration of justice in J.M.'s legal matters because once Defendant's sexual relationship with J.M. came to light, her case was delayed and she had to hire another attorney to represent her in her legal matters.

7. Defendant's conduct caused significant harm to the legal profession in that his actions bring the legal profession into disrepute.

8. Defendant's conduct caused potential harm to the administration of justice in Hart's case.

9. The conduct at issue in the judicial discipline imposed was similar to the conduct at issue in the J.M. claim in that Defendant persisted in the face of a conflict of interest that he either failed or refused to perceive.

10. 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 (i) of the gravity of potential significant harm to the legal profession, and (ii) any sanction less than suspension would fail to acknowledge the seriousness of the misconduct and would send the wrong message to attorneys and the public regarding the conduct expected of members of the bar of this state.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings of Fact Regarding Discipline, and Conclusions of Law Regarding Discipline, 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 30 days from service of this order upon Defendant.

2. Defendant shall submit his law 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 1B § .0124.¹ As provided in § .0124(d), 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 that he has complied with the wind down of his practice in accordance with the applicable rule.

¹ This rule is now codified in 27 N.C. Admin. Code 1B § .0128. Though the rule number change occurred as a part of changes adopted by the North Carolina Supreme Court on 22 September 2016, it has not yet been published in the North Carolina Reports as required by N.C. 84-21(b).

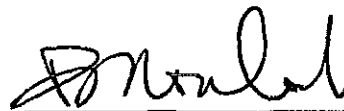
4. If Defendant fails to fully comply with 27 N.C. Admin. Code 1B § .0124 and the Court appoints a trustee to wind down any portion of Defendant's practice, Defendant shall reimburse the State Bar for all expenses incurred by the State Bar in winding down Defendant's practice. Such expenses may include, but are not limited to, storage facility fees, rent payments, moving expenses, charges for secure disposal of client files, postage or other mailing expenses, and compensation paid to the trustee and/or the trustee's assistant for time and travel associated with the trusteeship. After the Court has discharged the trustee, the State Bar shall send an invoice of wind-down expenses to Defendant at Defendant's last known address of record with the North Carolina State Bar. Defendant shall not be eligible for reinstatement until he has reimbursed the State Bar for all wind-down expenses incurred.

5. Defendant shall provide a physical address (not P.O. Box or Drawer) and telephone number at which clients seeking return of their files can communicate with Defendant and obtain such files.

6. Defendant shall return client files 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.

7. 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, including all of costs of depositions.

Signed by the Chair with the consent of the other Hearing Panel members this
the 7th day of August, 2017.



Fred M. Morelock, Chair
Disciplinary Hearing Panel