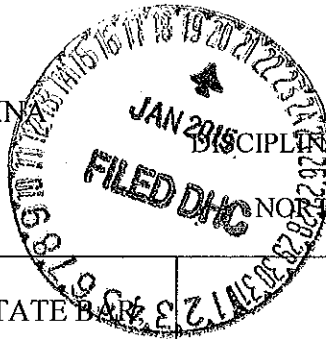


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR

Plaintiff

v.

ROBERT A. BRADY,

Attorney,

Defendant

CONSENT ORDER OF DISCIPLINE

This matter was considered by a hearing panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, Renny Deese and Percy L. Taylor. Leonor Bailey Hodge represented Plaintiff, the North Carolina State Bar. Defendant, Robert A. Brady, was represented by George B. Currin. Defendant waives a formal hearing in the above referenced matter. The parties stipulate and agree to findings of fact and conclusions of law recited in this consent order. The parties consent to the discipline imposed by 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 by consenting to entry of this order.

Based upon the foregoing and 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 ("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, Robert A. Brady ("Defendant" or "Brady"), was admitted to the North Carolina State Bar on 21 August 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, Brady actively engaged in the practice of law in the State of North Carolina and maintained a law office in Cary, Wake County, North Carolina.

4. On or about 1 April 1994, Brady and Dr. Susan Alexander ("Alexander") executed a Separation and Property Settlement Agreement ("Agreement").

5. The Agreement required, among other things, that Brady remain as guardian on an investment account that had been created for the benefit of his daughter.

6. The Agreement also required Brady to fund his daughter's post-high school education and that Brady use the funds that were held in the existing investment account for his daughter's post-high school education. Pursuant to the Agreement, Brady was entitled to offset his obligation to provide for his daughter's post-high school education using the funds held in the investment account.

7. The investment account was opened on or about 5 September 1990 and listed account title as Brady as custodian for his daughter ("Custodial Account").

8. The initial account documentation classified the account as "other" "UGMA."

9. The Custodial Account was not created pursuant to Uniform Transfer to Minors Act, N.C. Gen. Stat. § 33A-1 *et seq.* though it was intended as a custodial account for Brady's daughter.

10. The balance in the Custodial Account at the time the Agreement was entered was \$4,593.86.

11. Beginning 1 April 1994, Brady deposited additional funds into the Custodial Account.

12. Brady did not have any obligation to make these additional deposits into the Custodial Account.

13. As of 31 January 2004, the balance in the Custodial Account had grown to \$73,071.41.

14. Between July 2004 and August 2005, Brady withdrew \$82,000 of the funds he deposited into the Custodial Account from the Custodial Account.

15. Brady's withdrawals were made before his daughter's twenty-first birthday.

16. Brady used the funds he withdrew from the Custodial Account for his personal and business use. These funds were not used for his daughter's post-high school education and related living expenses.

17. Brady used his other personal funds to fulfill his obligation to fund his daughter's post-high school education. Brady expended an amount in excess of \$82,000 in fulfillment of his obligation to fund his daughter's post-high school education.

18. Brady had a fiduciary duty to his daughter as custodian of the Custodial Account.

19. Brady breached his fiduciary duty to his daughter.

20. Although Brady did not notify Alexander of the withdrawals he made from the Custodial Account, he did not conceal the fact that these withdrawals had been made.

21. As a result of Brady's withdrawals from the Custodial Account, the Internal Revenue Service imposed a tax increase on his daughter and Brady paid such tax.

Based upon the consent of the parties and 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 over Defendant, Robert A. Brady.

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: By withdrawing the funds that he deposited into the Custodial Account from the account for his personal use and not the use of his daughter, Defendant engaged in conduct 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. Defendant has been licensed to practice law for more than 37 years and has no prior discipline.

2. Defendant's reputation in the community is that of a person with good character.

3. Defendant paid the tax incurred on the funds that he withdrew from the Custodial Account.

4. Defendant transferred custodianship of the Custodial Account in or about August 2011 and it had an approximate value of \$12,000 at the time of the transfer.

5. A cornerstone of the public's trust in an attorney is that the attorney will properly protect and maintain entrusted funds, even when the lawyer holds the funds as a custodian for his minor child. The failure of an attorney to properly maintain entrusted

funds tends to erode the confidence the public places in attorneys and harms the profession as a whole.

Based upon the foregoing Findings of Fact, Conclusions of Law, Additional Findings of Fact Regarding Discipline and on the consent of the parties, the Hearing Panel 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 Defendant to commit acts where the harm or potential harm is foreseeable; and
- b. Negative impact of defendant's actions on public's perception of the profession.

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 factors are present:

- a. Lack of prior disciplinary offense;
- b. Timely good faith efforts to make restitution;
- c. Full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;
- d. Remorse;
- e. Character or reputation;
- f. Vulnerability of the victim;
- g. 37 years experience in the practice of law.

4. Defendant's conduct caused potential significant harm to his daughter in that funds belonging to her for use for her post-high school education were used for other purposes with no guarantee that there would be other funds available to fund said education costs.

5. 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 entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offense Defendant committed and would send the wrong message to lawyers 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, 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 hereby enters the following:

ORDER OF DISCIPLINE

1. Defendant, Robert A. Brady, is hereby suspended from the practice of law for two years, effective 30 days from service of this order upon Brady.

2. 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.

3. The two year suspension is stayed for a period of 2 years as long as Defendant complies with the following conditions:

- (a) Defendant pays the administrative fees and costs of this proceeding as assessed by the Secretary of the State Bar within 30 days of service of the statement of fees and costs upon him.
- (b) Defendant shall keep the State Bar Membership Department advised of his current business and home addresses. Defendant shall notify the State Bar of any change of address within ten days of such change. His current business address must be a street address, not a post office box or drawer.
- (c) Defendant shall respond to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt of such communication or by the deadline stated in the communication, whichever is sooner.
- (d) Defendant shall participate in good faith in the State Bar's fee dispute resolution process for any petition of which he receives notice after the effective date of this order.
- (e) Defendant shall timely comply with all State Bar Membership and CLE requirements.

- (f) Defendant shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government.

4. Unless Defendant's obligations under this Order are modified by further order of the DHC, Defendant's obligations under this Order end two years from the effective date of the Order provided there are no motions or show cause proceedings pending alleging lack of compliance with the conditions of the stay of the suspension. Pursuant to 27 N.C. Admin. Code 1B § .0114(x), the DHC retains jurisdiction until all conditions of the stay of the suspension have been met. If a motion or show cause proceeding alleging lack of compliance with the conditions for the stay of the suspension is pending when the period of the stay of the suspension would otherwise have terminated, the DHC retains jurisdiction and the ability to lift the stay of the suspension and activate the two year suspension in whole or in part if it finds that any of the conditions of the stay have not been met. The stay of the suspension and Defendant's obligation to comply with the conditions for the stay will continue until resolution of any such pending motion or show cause proceeding.

5. If Defendant fails to comply with any one or more of the conditions set out above in this Consent Order of Discipline, then the stay of the suspension may be lifted in accordance with 27 N.C. Admin. Code 1B §.0114(x).


6. If the stay of the suspension is lifted and the suspension is activated for any reason, the DHC may enter an order imposing such conditions as it deems proper for the reinstatement of Brady's license at the end of the suspension. Additionally, Brady must establish the following by clear, cogent and convincing evidence prior to being reinstated to the practice of law after any period of active suspension:

- (a) Defendant submitted his law license and membership card to the Secretary of the State Bar within thirty days of the date the order lifting the stay and/or activating the suspension of his law license;
- (b) Defendant complied with the provisions of 27 N.C. Admin. Code 1B § .0124 following entry of the order lifting the stay and/or activating the suspension of his law license;
- (c) Defendant timely paid all administrative fees and costs assessed against him in this proceeding as reflected on the statement of costs served upon him by the Secretary of the State Bar;
- (d) That within 15 days of the effective date of the order activating the suspension Defendant provided the State Bar with an address and telephone number at which clients seeking return of files can communicate with Defendant and obtain such files;
- (e) That Defendant promptly provided client files to all clients who made a request for return of their files;

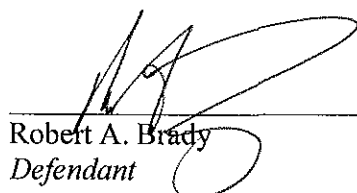
- (f) Defendant has kept the State Bar Membership Department advised of his current business and home street addresses (not post office box or drawer addresses) and notified the State Bar of any change in address within ten days of such change;
- (g) Defendant has responded to all communications from the State Bar, including communications from the Attorney Client Assistance Program, within thirty days of receipt or by the deadline stated in the communication, whichever is sooner;
- (h) At the time of his petition for reinstatement, Defendant is current in payment of all membership dues, fees and costs, including all Client Security Fund assessments, and other charges or surcharges the State Bar is authorized to collect from him, including all judicial district dues and assessments;
- (i) At the time of his petition for reinstatement, there is no deficit in Defendant's completion of mandatory CLE hours in reporting of such hours or in payment of any fees associated with attendance at CLE programs; and
- (j) Defendant has not violated the Rules of Professional Conduct or the laws of the United States, or the laws of any state or local government during his suspension.

7. The DHC will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code 1B §.0114(x) until all conditions of the stay of suspension are satisfied.

Signed by the Chair with the consent of the other Hearing Panel members this the 15th day of JANUARY, 2014-2015 ^{PM}

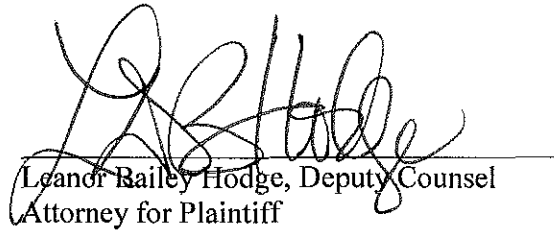

Steven D. Michael, Chair
Disciplinary Hearing Panel

WE CONSENT:


Robert A. Brady
Defendant

 1-12-15

George B. Currin
Attorney for Defendant


Leander Bailey Hodge, Deputy Counsel
Attorney for Plaintiff