

WAKE COUNTY

NORTH CAROLINA



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
94 DHC 1

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

GERALD E. RUSH, Attorney

Defendant

FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
AND ORDER OF DISCIPLINE

This matter was heard on the 5<sup>th</sup> day of December, 1996, before a hearing committee of the Disciplinary Hearing Commission composed of Henry C. Babb Jr., Chair; James R. Fox and R. Stephen Huntley. The plaintiff was represented by Fern E. Gunn. The defendant, Gerald E. Rush, represented himself. This matter was heard on remand from an order of the North Carolina Court of Appeals in N.C. State Bar v. Rush, 121 N.C. App. 488 (1996). The defendant renewed his motion to dismiss the charge and the hearing committee dismissed the motion. Based upon the pleadings, the evidence introduced at the hearing on July 14 and 15, 1994 and the arguments of counsel presented at the hearing on December 5, 1996, the hearing committee hereby enters the following:

#### FINDINGS OF FACT

1. 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 North Carolina General Statutes and the Rules and Regulations of the North Carolina State Bar.

2. The defendant was admitted to the North Carolina State Bar on October 6, 1975 and was at all times relevant hereto licensed to practice law in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar.

3. During all times relevant hereto the defendant was actively engaged in the practice of law in Salisbury, North Carolina, and maintained a law office in Salisbury, North Carolina.

4. The defendant was properly served with process and the hearing was held with due notice to all parties.

5. On July 23, 1992, Priscilla Chambers Brown went to the defendant's law office for advice regarding a legal matter.

6. Ms. Brown and the defendant were the only two people present in the defendant's private law office when she sought advice from him.

7. The defendant engaged in unwanted and nonconsensual touchings of Ms. Brown on July 23, 1992 when he rubbed her hair, squeezed her breasts, pressed her legs together with his legs, and pressed down on her shoulders.

8. The defendant tried to make Ms. Brown touch his genitals. He also made inappropriate sexual remarks to her while she was in his private office.

9. Ms. Brown protested to the defendant about his conduct while she was in his private office. Ms. Brown did not make any protest about the defendant's conduct to his secretaries who were in the defendant's outer office when she hurriedly left the defendant's building.

Having found the foregoing findings of fact by clear, cogent, and convincing evidence, the hearing committee hereby enters the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the hearing committee and the committee has jurisdiction over the defendant, Gerald E. Rush, and the subject matter.

2. The defendant's touching of Ms. Brown violated N.C. Gen. Stat. Sec. 14-33(b)(2).

3. The defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows:

By engaging in the unwanted and nonconsensual touching of a client, Ms. Brown, the defendant committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects in violation of Rule 1.2(b) of the Rules of Professional Conduct and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 1.2(d) of the Rules of Professional Conduct.

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee hereby makes the additional:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. The defendant's misconduct is aggravated by the following factors:
  - a. selfish motive;
  - b. vulnerability of the victim;
  - c. breach of the duty of the trust in the attorney-client relationship; and
  - d. substantial experience in the practice of law.
2. The defendant's misconduct is mitigated by the following factors:
  - a. absence of a prior disciplinary record.
3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following:

#### ORDER OF DISCIPLINE

1. The defendant is hereby suspended from the practice of law for three years, and it is ordered that:

a. The 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 the defendant.

b. The discipline shall become effective 30 days following service of this order upon the defendant.

c. The defendant shall comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0124 of the N.C. State Bar Discipline & Disability Rules.

2. After six months active suspension, the defendant shall be eligible to apply for a stay of the balance of the suspension, upon filing a written petition and demonstrating compliance with the following conditions:

a. The defendant shall have received psychiatric counseling from a board certified psychiatrist, acceptable to the North Carolina State Bar, until that psychiatrist shall have indicated that the defendant does not suffer from any condition creating a predisposition for predatory sexual behavior. Furthermore, if after the six-month active period of suspension of the defendant's law license, the psychiatrist opined that the defendant had no predisposition for predatory sexual behavior, but believed that the defendant would benefit from continued psychiatric counseling beyond the six-month

active suspension period, this shall not alone be a bar to granting the stay of the 30 months remaining in the defendant's period of suspension.

b. The defendant shall not have violated any state or federal laws during the period of active suspension.

c. The defendant shall not have violated any provisions of the Rules of Professional Conduct during the period of active suspension.

d. The defendant shall have paid all costs incurred in this proceeding and taxed against the defendant, including Ms. Brown's travel expenses regarding the hearings held on July 14-15, 1994 and December 5, 1996.

e. The defendant shall have complied with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules.

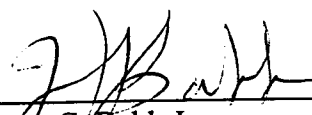
3. Upon entry of an order staying this suspension and granting the reinstatement of the defendant's license to practice law, the order of stayed suspension shall continue in force for the balance of the term of suspension, provided that the defendant complies with the following conditions:

a. The defendant shall violate no state or federal laws.

b. The defendant shall violate no provisions of the Rules of Professional Conduct.

c. The defendant shall pay any costs incurred in connection with his reinstatement proceeding and assessed against the defendant.

Signed by the chairman with the consent of the other hearing committee members, this the 24<sup>th</sup> day of January, 1997.

  
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Henry C. Babb Jr.  
Chairman  
Disciplinary Hearing Commission