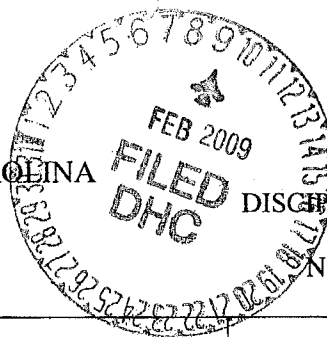


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
08 DHC 8

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

ROBERT BROWN, JR., Attorney,

Defendant

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISCIPLINE BY CONSENT

This matter came on to be heard and was heard before a Hearing Committee of the Disciplinary Hearing Commission composed of the Chair, F. Lane Williamson, Sharon B. Alexander, and Joe Castro. The plaintiff was represented by William N. Farrell, Deputy Counsel. Defendant was represented by Ernest "Jay" Reeves, Jr. and Karlene Turrentine.

Defendant admits that he has violated Rule 8.4(d) of the Revised Rules of Professional Conduct by engaging in conduct that is prejudicial to the administration of justice by sexually harassing Janice Ingram, Rachel Allen, and Danielle Bruno, all who were employees of the Public Defender's office whom defendant supervised, and by engaging in conduct that brought the office of the Public Defender into disrepute.

Both parties stipulate and agree to the findings of fact and conclusions of law recited herein and to the order of discipline imposed. Based upon the consent of the parties, the Hearing Committee hereby enters the following.

FINDINGS OF FACT

1. 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, Chapter 1 of Title 27 of the North Carolina Administrative Code ("NCAC").

2. Defendant, Robert Brown, Jr. ("defendant") was admitted to the North Carolina State Bar in 1975, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the rules and regulations of the North Carolina State Bar and the Rules of Professional Conduct.

3. At all relevant times pertaining to the events in this complaint, defendant served as the appointed public defender for Durham County.

4. Defendant was appointed the Public Defender for Durham County in 1990 and was reappointed in 1994, 1998 and 2002.

5. In his role as Public Defender for Durham County, defendant functioned as the director and highest policy maker for the Durham Public Defender's Office, directly supervising all attorneys and staff with the ultimate authority to hire, fire, and discipline all employees in his office.

6. Janice Ingram was employed by defendant in March 2005 to work at the Public Defender's office. She was initially employed as a temporary full-time legal assistant.

7. At the time of her employment, Ingram was a 29-year-old woman who was divorced and the mother of two young children.

8. Defendant interviewed Ingram and hired her for the position. At the time he offered her the job, defendant informed Ingram that he would allow her to work a flexible schedule so that she could continue to attend classes and also take care of the needs of her two young children.

9. Rachael Allen ("Allen") was hired to work as a legal assistant by the Durham County Public Defender's Office on August 19, 2005.

10. At the time of her employment, Allen was a 30-year-old woman who was a single mother.

11. Defendant hired Allen.

12. At the time defendant offered Allen a job he informed Allen that he would allow her to work a flexible schedule so that she could continue to attend classes and also take care of the needs of her children.

13. In February 2005, Danielle Bruno ("Bruno") was employed by the Durham County Public Defender's Office as an assistant public defender.

14. Defendant interviewed Bruno and hired her for the position as an assistant public defender.

15. At the time of her employment, Bruno was a 32-year old woman.

16. At all times relevant to this action defendant was Bruno's supervisor and was also the ultimate supervisor for Ingram and Allen.

17. Sometime after Ingram began employment, defendant began engaging Ingram in inappropriate and unwelcome intimate sexual conversations.

18. Defendant made promises to Ingram about how he could help her personal and professional life and how he could do favors for her.

19. Defendant frequently called Ingram into his office, closed the door and asked her to sit close to him and keep her there for long periods while he talked about non-work related matters.

20. Defendant frequently told Ingram that he could help her if she would "trust him."

21. Defendant frequently remarked to Ingram that it must be difficult for her to take care of her school and work responsibilities along with the responsibilities of raising her children and told her how hard it would be for her to find other employers that would let her work flexible hours.

22. Defendant frequently told Ingram that he wanted to help her and her children, including giving Ingram and her children gifts such as a computer.

23. Defendant promised Ingram he would promote her and give her pay increases if she would "trust me."

24. Defendant did favors for Ingram including allowing her to bring her children to work on weekends and buying Ingram and her children food and DVDs.

25. Defendant insinuated to Ingram that he wanted more from Ingram than a working relationship, including making comments to Ingram about how he would "help her if she would help him."

26. At some point in time, defendant touched Ingram in ways that were sexually inappropriate including putting his arm around her shoulder or waist, massaging her shoulders and otherwise touching her.

27. Defendant commented to Ingram about her physical appearance and breast size.

28. In telephone calls to Ingram defendant asked about her sexual preference and whether she was sexually involved with anyone.

29. Defendant talked to Ingram about his sex life and sexual preferences.

30. Ingram tried to avoid defendant by pulling away if he touched her and trying to change the subject when he made inappropriate comments as described above.

31. Ingram was especially vulnerable to defendant's conduct because of the employer/employee relationship.

32. Defendant's conduct occurred during the time defendant was Ingram's work supervisor who had complete and ultimate authority over all matters relating to salary, job assignment, and work hours.

33. Defendant interfered with Ingram's ability to perform her job by his actions.

34. Sometime after Rachel Allen began her employment, defendant began to call Allen into his office, close the door, tell Allen to sit next to him, ask Allen about her personal life and tell her he would "be loyal to you if you'll be loyal to me."

35. Soon after Allen's employment began, defendant began behaving towards Allen in ways that were sexually inappropriate.

36. Defendant touched Allen inappropriately by putting his hand around her waist, putting his hand on her stomach and/or stroking her stomach and massaging her shoulder and back as well as otherwise touching her.

37. Defendant often talked about Allen's physical appearance including remarks about her figure, her bra size, her buttocks and how attractive he found her.

38. Defendant frequently asked Allen about sex, including when she last had sex and whether she had oral sex with men.

39. Allen responded to defendant's behaviors to try and stop or avoid them including telling him to stop, trying to avoid contact with him, not going into his office, and asking other women to walk with her to the garage, pulling away if he touched her, not responding to his sexual comments and trying to change the subject.

40. Allen was especially vulnerable to defendant's conduct because of the employer/employee relationship.

41. Defendant's conduct occurred during the time defendant was Allen's work supervisor who had complete and ultimate authority over all matters relating to salary, job assignments and work hours.

42. Defendant interfered with Allen's ability to perform her job by his actions.

43. Approximately one month after Bruno started her job defendant called her into his office and told her that she was too nervous and that if she couldn't be comfortable around him she would not be able to keep her job.

44. Shortly after the conversation described above, defendant instructed Bruno to come into his office to discuss her duties.

45. During the ensuing conversation, defendant spoke to Bruno about "trusting him" and discussed personal matters beyond Bruno's duties as an assistant public defender.

46. During the next seven months, defendant continued on a regular basis to behave towards Bruno in ways that were sexually inappropriate.

47. Defendant asked Bruno her bra size. Defendant told Bruno that she was attractive. Defendant asked Bruno to turn around so that he could look at her body.

48. Defendant asked Bruno explicit questions of a sexual and private nature such as whether she was virgin when she married her husband and what her sexual experiences had been like.

49. Defendant frequently called Bruno into his office and closed the door in order to have the conversations described above.

50. Defendant sat in a chair close to Bruno as he talked to her so that Bruno justifiably feared that he would try to touch her inappropriately.

51. During the conversation described above, defendant made statements to Bruno including, but not limited to "if you're not comfortable here you won't do well," "things will be easier for you here if we get along," and "you have to trust me."

52. On one occasion defendant gave Bruno a detailed account of a sexual experience he had many years earlier.

53. Bruno responded to defendant's behavior by trying to stop or avoid defendant, including telling defendant she did not like the way he was talking, trying to avoid contact with defendant, asking to have her office moved away from defendant's office, avoiding going into defendant's office and asking other women to interrupt the conversations when defendant called her into his office.

54. On or about October 12, 2005, Bruno discussed with defendant Bruno's interest in being given a permanent position that had become available with the Public Defender's Office.

55. Defendant told Bruno that "she had three days to be his friend" if she wanted the permanent position.

56. Bruno wanted the permanent position but was offended and frightened by defendant's response to her expression of interest in the permanent position.

57. After the October 12, 2005 conversation, Bruno avoided defendant.

58. Defendant's conduct described above occurred at the work place, in defendant's role as Bruno's supervisor, while defendant was obligated to perform his duties as Public Defender and during hours when Bruno was trying to perform her job responsibilities.

59. Defendant interfered with Bruno's ability to perform her job by his conduct toward her.

60. Defendant's actions toward Bruno caused stress and anxiety in that she was not able to resist his conduct toward her without risk to her continued employment.

61. Bruno was especially vulnerable to defendant's conduct because of the employer/employee relationship.

62. Defendant's conduct occurred during the time defendant was Bruno's work supervisor who had complete and ultimate authority over all matters relating to salary, job assignment and work hours.

63. On December 21, 2005 an action was filed by Bruno seeking the removal of defendant as Public Defender.

64. On December 21, 2005, Senior Resident Superior Court Judge Orlando F. Hudson, Jr. suspended defendant with pay, finding probable cause to believe that defendant had engaged in willful misconduct in office and conduct prejudicial to the administration of justice.

65. On December 28, 2005 defendant tendered his resignation as Public Defender, effective January 31, 2006.

66. On May 8, 1996 defendant was charged by a criminal summons with the offense of assault on a female by grabbing the buttocks of S.L. Burnette with his hand.

67. Defendant pled no contest to this criminal offense of assault on a female on May 29, 1996, was fined \$500.00, and ordered to complete 60 hours of community service by the court.

68. On September 13, 1996 the Grievance Committee of the North Carolina State Bar reprimanded defendant for a violation of Rule 1.2(b) in connection with the offense described above. See Grievance File 96G0602(II).

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

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over Robert Brown, Jr. and the subject matter of the proceeding.

2. 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) in that the conduct violated the Revised Rules of Professional Conduct in effect at the time of the conduct as follows:

- (a) By engaging in conduct that is prejudicial to the administration of justice by individually and collectively sexually harassing Janice Ingram, Rachel Allen, and Danielle Bruno, all who were employees of the Public Defender's office who defendant supervised, and by engaging in conduct that brought the office of Public Defender into disrepute in violation of Rule 8.4(d).

In addition to the foregoing Findings of Fact and Conclusions of Law, the Hearing Committee hereby makes the following:

FINDINGS REGARDING DISCIPLINE

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

- (a) Prior disciplinary offense.
 - (b) Pattern of misconduct.
 - (c) Multiple offenses.
 - (d) Vulnerability of the victims.
 - (e) Substantial experience in the practice of law.
2. The prior disciplinary offense is of a similar type presently at issue indicating a risk of future potential harm.
3. Defendant's conduct is mitigated by the following factors:
- (a) Imposition of other penalties being the loss of his job as public defender.
 - (b) Participation in the lawyer's assistance program.
4. The aggravating factors outweigh the mitigating factors.
5. Defendant's conduct caused harm to Ingram, Allen, and Bruno.
6. Defendant's conduct caused harm and significant potential harm to the Public Defender's office, to the legal profession, to the administration of justice, and to the public by undermining public confidence in the ability of defendant, holder of an important public office, to fulfill the professional role of a lawyer.
7. The DHC Committee has considered lesser alternatives and finds that a Censure or Reprimand would not sufficiently protect the public because of the gravity of the harm caused by the conduct of defendant and the risk that similar conduct would occur in the future if defendant were permitted to meet with female clients, female family members of clients or female witnesses. No discipline short of an active suspension can maintain the reputation of the legal profession and instill the public's trust in the legal profession and in the administration of justice.
8. Entering an order imposing lesser discipline than an active suspension would fail to acknowledge the seriousness of the misconduct engaged in by defendant and would send the wrong message to the attorneys and the public regarding the conduct expected of members of the Bar of their State.
9. For these reasons, this DHC Committee finds that an order of discipline short of a long term suspension of defendant's law license would not be appropriate. An active term of suspension is the only sanction that can adequately protect the public.

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

ORDER OF DISCIPLINE

1. Defendant's license to practice law in the State of North Carolina is hereby suspended for five (5) years, effective thirty (30) days from entry of this order.

2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar at the end of the thirty (30) day period.

3. After a period of not less than three (3) years active suspension following the effective date of the order, defendant may file a verified petition for a stay of the remaining two (2) year period of the suspension in accordance with the requirements of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules ("Discipline Rules"). The remaining term of defendant's suspension may be stayed only if he establishes by clear, cogent, and convincing evidence the following conditions:

- (a) Defendant submitted to comprehensive psychiatric evaluations by two separate psychiatrists selected by or acceptable to the North Carolina State Bar: (1) a board certified psychiatrist and (2) a psychiatrist who specializes in treating sexual offenders in the professions.

Defendant is solely responsible for paying all costs associated with the evaluations.

Both psychiatrists must have certified under oath, based on a comprehensive evaluation of defendant, that in their professional opinion he does not suffer from any condition creating a predisposition for inappropriate sexual behavior.

Defendant must attach to his reinstatement petition the sworn certifications from the two evaluation psychiatrists. Defendant also must attach to his reinstatement petition releases or authorizations instructing the evaluating psychiatrists to discuss their evaluation of him and to release any corresponding records to the State Bar Office of Counsel.

- (b) Defendant complied with all of the requirements of Discipline Rule .0124.
- (c) Defendant complied with all of the requirements of Discipline Rule .0125(b).

- (d) Defendant paid all costs assessed by the Secretary in connection with this proceeding, including deposition costs, within thirty (30) days of service of these costs upon him by the Secretary.
- (e) Defendant responded to all communications from the North Carolina State Bar by the deadline stated in the communication;
- (f) Defendant violated no federal or state laws during the term of the suspension.
- (g) Defendant violated no provisions of the Revised Rules of Professional Conduct of the North Carolina State Bar during the term of suspension.

4. Upon entry of an order staying the suspension and granting reinstatement of defendant's license to practice, the order of stayed suspension may continue in effect only upon compliance with all of the following conditions during the balance of the term of the suspension:

- (a) Defendant shall receive any psychiatric and psychological care recommended by either or both of the evaluating psychiatrists. Defendant is solely responsible for paying all costs of such recommended treatment.

If treatment is recommended, defendant shall be responsible for providing reports from his treating psychiatrist and psychologist on a biannual basis certifying for the past six (6) months that:

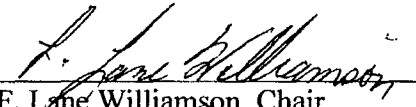
- i. He has followed all recommendations for treatment of any diagnosed psychological, mental, or emotional conditions; and
- ii. Defendant's psychological, mental, or emotional conditions will not prevent him from adequately performing the responsibilities of an attorney or pose a threat to the public if he is allowed to practice law.

These reports shall be provided no later than January 31st and July 31st of each year the suspension is stayed. Defendant is solely responsible for providing these reports on a timely basis and for paying all costs associated with providing such reports. Defendant also shall provide the State Bar with a letter to his treating psychiatrist directing them to inform the State Bar immediately if he fails to comply with their recommendations for treatment or, in their professional opinion, he poses any threat to the public.

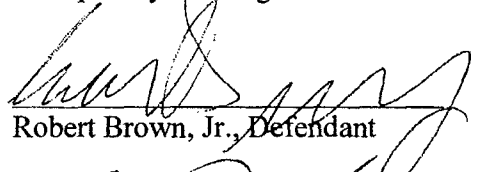
- (b) Defendant shall violate no state or federal laws.
- (c) Defendant shall violate no provisions of the Revised Rules of Professional Conduct.
- (d) Defendant shall pay all costs incurred in connection with the reinstatement proceeding and assessed against defendant within thirty (30) days of service of these costs upon him by the Secretary.

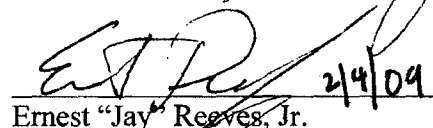
5. If no part of this suspension is stayed, defendant must petition the DHC at the end of the five (5) year suspension, and establish by clear, cogent, and convincing evidence all conditions set forth in paragraph 3 above, before his license to practice is reinstated.

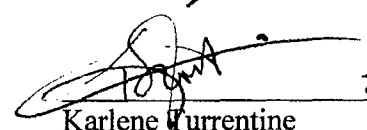
Signed by the Chair with the consent of the other hearing committee members, this the 6th day of February, 2009.

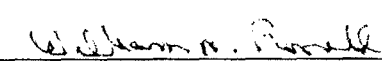

F. Lane Williamson, Chair
Disciplinary Hearing Committee

Consented to:


Robert Brown, Jr., Defendant


Ernest "Jay" Reeves, Jr.
Attorney for Defendant


Karlene Turrentine
Attorney for Defendant


William N. Farrell, Deputy Counsel
Attorney for Plaintiff

Feb 4, 2009