

STATE OF NORTH CAROLINA

WAKE COUNTY

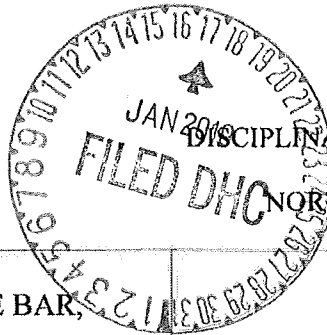
THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

GAVIN A. BROWN, Attorney,

Defendant



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
17 DHC 29

CONSENT ORDER
OF
DISCIPLINE

THIS MATTER came on for consideration before a Hearing Panel of the Disciplinary Hearing Commission ("DHC") composed of Donald C. Prentiss, Chair, and members David W. Long and Christopher R. Bruffey, pursuant to 27 N. C. Admin. Code 1B.0115(i). Plaintiff, the North Carolina State Bar, was represented by Mary D. Winstead. Defendant, Gavin A. Brown, appeared *pro se*. Both Plaintiff and Defendant stipulate and agree to the findings of fact and conclusions of law recited in this Consent Order and to the discipline imposed. Defendant has freely and voluntarily stipulated to the findings of fact and consents to the conclusions of law and entry of the order of discipline. Defendant freely and voluntarily waives any and all right to appeal the entry of this Consent Order of Discipline.

Based upon the pleadings in this matter, the parties' stipulations of fact, and with the consent of the parties, the Hearing Panel makes by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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).

2. Defendant, Gavin A. Brown, was admitted to the North Carolina State Bar in August 1972 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. During all or part of the relevant periods referred to herein, Brown was engaged in the practice of law in the State of North Carolina and maintained a law office in Waynesville, Haywood County, North Carolina.

4. In 1998, Brown prepared a general warranty deed conveying real property from Bennett-Piper Enterprises, Inc., a North Carolina Corporation, Grantor, to Kathleen Curl, Grantee.

5. On or about May 13, 1998, the deed was recorded with the Haywood County Register of Deeds in book 465, page 887.

6. In 2016, when the property was being sold by Kathleen Curl, the buyers' attorney, T. Michael Jordan ("Jordan"), identified an error in the plat book reference in the 1998 deed.

7. Jordan contacted Brown and notified him of the error.

8. Brown prepared a general warranty deed from Bennett-Piper Enterprises, Inc., Grantor, to Kathleen Curl, Grantee, which corrected the plat book reference ("corrective deed").

9. In 2016, Kendra M. Smathers ("Smathers") was a licensed notary public in North Carolina and worked for Brown's law partner.

10. On or about March 23, 2016, Brown forged the signature of Smathers as Notary Public on the corrective deed from Bennett-Piper Enterprises, Inc. to Kathleen Curl.

11. Brown also obtained Smathers' notary seal without her knowledge or consent and affixed the seal to the corrective deed.

12. The forged signature of Smathers and notary seal purportedly certified that James P. Bennett ("Bennett"), the president of Bennett-Piper Enterprises, Inc., had personally appeared before Smathers and executed the deed.

13. Although Bennett's signature appears on the corrective deed, Bennett was not aware of the problem with the 1998 deed when Brown prepared the corrective deed.

14. Bennett did not become aware of the problem with the 1998 deed until several months after the corrective deed was recorded.

15. Prior to the corrective deed being prepared and recorded, Bennett had pre-signed several deeds and left them with Brown for transactions unrelated to the property Bennett-Piper Enterprises, Inc. conveyed to Curl in 1998.

16. Brown affixed Smathers' signature and notary seal to one of the pre-signed deeds.

17. Brown provided the corrective deed with the forged notary signature to the closing attorney.

18. Brown knew when he provided the corrective deed with the forged notary signature to the closing attorney that the closing attorney would record the deed with the Haywood County Register of Deeds.

19. The corrective deed was recorded with the Haywood County Register of Deeds in book 903, page 2367.

20. By signing Smathers' name to the corrective deed without Smathers' knowledge or consent, Brown committed the crime of common law forgery.

21. Pursuant to N.C.G.S. § 10B-60(f), "[a]ny person who without authority obtains, uses, conceals, defaces, or destroys the seal or notarial records of a notary is guilty of a Class I felony."

22. By using Smathers' notary seal on the corrective deed without Smathers' authority, Brown violated N.C.G.S. § 10B-60(f).

Based upon the consent of the parties and the foregoing stipulated Findings of Fact, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant and the subject matter of this proceeding.

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

- a) By forging the signature of the notary on the corrective deed, Brown committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 8.4(c); and
- b) By using the notary's seal on the corrective deed without authorization, Brown committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness in other respects in violation of Rule 8.4(b), and engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation in violation of Rule 8.4(c).

Based upon the foregoing Findings of Fact, Conclusions of Law, and the consent of the parties, the Hearing Panel makes by clear, cogent, and convincing evidence the following

ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. Defendant, who was licensed to practice law in North Carolina in 1972, has substantial experience in the practice of law.

2. At the time of the misconduct, Defendant was the Mayor of Waynesville, N.C. and reports of Defendant's misconduct were published in the local media.

3. Defendant's conduct caused potential significant harm to the standing of the legal profession in the eyes of the public in that such conduct by attorneys erodes the trust of the public in the profession. Such erosion of public confidence in attorneys tends to sully the reputation of, and engenders disrespect for, the profession. Confidence in the legal profession is integral to public trust in the entire legal system.

4. Defendant's disregard for the notary requirements of this State caused potential significant harm to the administration of justice in the eyes of the public in that such conduct by attorneys damages and undermines the integrity of a notarized signature. By disregarding these requirements, Defendant showed indifference to his obligation as an attorney.

5. There is no evidence demonstrating that Defendant intended to harm or that he actually harmed the parties to the real estate transaction by signing the notary's name on the corrective deed.

6. The State Bar's investigation did not reveal any other instances in which Defendant forged a notary's signature or improperly used a notarial seal.

7. When confronted about the forgery, Defendant immediately acknowledged wrongdoing.

8. Although the individual whose signature Defendant purportedly notarized was not aware of Defendant's actions at the time, when he became aware that there was a problem with the earlier deed, he was glad that his attorney had taken steps to fix the problem and cooperated by executing a quitclaim deed to correct the problem.

9. Defendant has publicly accepted responsibility for his actions and acknowledged wrongdoing.

10. Defendant's misconduct necessitated corrective legal action by third parties in order to properly complete the real estate transaction.

11. Defendant was prosecuted for the forgery and use of the notarial seal and on September 20, 2018, entered pleas of guilty to the felonies of forgery of a deed and using a notarial seal without authority. Defendant was placed on supervised probation and for twenty-four months, must abide by the terms of probation, which include compliance with monetary conditions and completion of fifty hours of community service.

12. Defendant has prior professional discipline – a 2010 Admonition for neglecting a client matter and failure to communicate with the client.

13. Defendant has not practiced law since September 2018 and does not intend to practice law in the future.

Based upon the Findings of Fact, Conclusions of Law, Additional Findings Regarding Discipline, and with the consent of the parties, the Hearing Panel also enters the following:

CONCLUSIONS REGARDING DISCIPLINE

1. The Hearing Panel has carefully considered all of the different forms of discipline available to it. In addition, the Hearing Panel has considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(1) of the Rules and Regulations of the North Carolina State Bar and determines the following factors are present which warrant consideration of suspension of Defendant's license:

- (a) Defendant's intent to commit acts where the harm or potential harm is foreseeable;
- (b) Circumstances reflecting Defendant's lack of honesty, trustworthiness, or integrity;
- (c) Negative impact of Defendant's actions on the public's perception of the legal profession;
- (d) Negative impact of Defendant's actions on the administration of justice;
- (e) Effect of Defendant's conduct on third parties; and
- (f) Defendant's conduct included acts of dishonesty, misrepresentation, deceit, or fabrication.

2. The Hearing Panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(2) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factors warranting consideration of disbarment are applicable:

- a) Acts of dishonesty, misrepresentation, deceit, or fabrication; and
- b) Commission of felony offenses;

3. The Hearing Panel has carefully considered all of the factors enumerated in 27 N.C. Admin. Code 1B.0116(f)(3) of the Rules and Regulations of the North Carolina State Bar and concludes that the following factors are applicable:

- (a) Prior disciplinary offense;
- (b) Dishonest or selfish motive;
- (c) No pattern of misconduct;
- (d) Imposition of other penalties or sanctions; and
- (e) Defendant's substantial experience in the practice of law.

4. The Hearing Panel has considered all forms of discipline and concludes that any sanction less than active suspension of Defendant's law license would fail to acknowledge the seriousness of the offenses committed by Defendant, would not adequately protect the public, and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this State.

5. Under other circumstances, the misconduct in this case would warrant more serious discipline. The misconduct caused substantial potential harm to the public's confidence in the integrity of the legal profession and the administration of justice. However, the Hearing Panel finds and concludes that the unique circumstances surrounding this case justify lesser discipline than would otherwise be appropriate. The factors that particularly warrant lesser discipline include: there is no evidence Defendant's conduct resulted in actual harm to the parties to the transaction; Defendant did not gain financially from his misconduct; Defendant has accepted personal responsibility for his actions and has publicly acknowledged wrongdoing; Defendant practiced law for over forty years without any public discipline; Defendant accepted the consequences of his misconduct in the criminal justice system; the individual whose signature Defendant purportedly notarized was not harmed and later cooperated with the

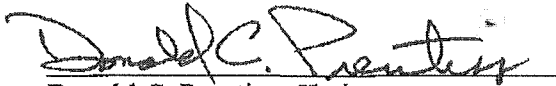
corrective action Defendant had been trying to accomplish; and Defendant has not practiced law since this matter came to light and does not intend to practice law in the future.

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

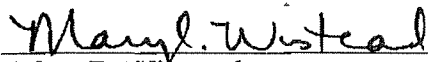
ORDER OF DISCIPLINE

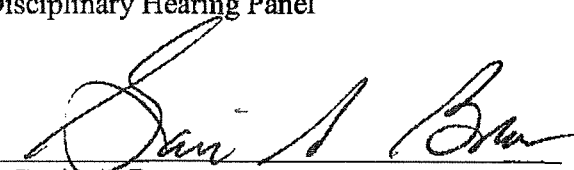
1. The license of Defendant, Gavin A. Brown, is hereby suspended for two years, effective 30 days from service of this order upon Defendant.
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar no later than 30 days following the effective date of this Order.
3. Defendant shall comply with the wind down provisions contained in Rule .0128 of the North Carolina State Bar Discipline and Disability Rules, located at 27 N.C. Admin. Code 1B.0128.
4. Defendant shall pay the costs and administrative fees of this proceeding as assessed by the Secretary within 30 days of service of the statement of costs upon him.
5. Defendant may file a petition seeking reinstatement pursuant to 27 N.C. Admin. Code 1B.0129 prior to the end of the two-year period, but shall not be reinstated prior to the end of that two-year period and until 30 days have elapsed from the date of the filing of the petition for reinstatement.

17 Signed by the Chair with the consent of the other Hearing Panel members, this the
day of January, 2019.


Donald C. Prentiss, Chair
Disciplinary Hearing Panel

CONSENTED TO BY:


Mary D. Winstead
Deputy Counsel
North Carolina State Bar
Counsel for Plaintiff


Gavin A. Brown
Defendant