

NORTH CAROLINA
WAKE COUNTY



12334

BEFORE THE
DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA STATE BAR
99 DHC 13

THE NORTH CAROLINA STATE BAR,)
)
Plaintiff)
v.)
)
JENNIFER D. BROCK, Attorney)
)
Defendant)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard on the 6th day of August, 1999, before a hearing committee of the Disciplinary Hearing Commission composed of Joseph G. Maddrey, Chair; Elizabeth Bunting, and Anthony E. Foriest, Hearing Committee Member. The defendant, Jennifer Brock, was represented by David Freedman. The plaintiff was represented by Larissa Erkman. Based upon the pleadings and stipulations of fact contained in the Stipulations on Prehearing Conference filed by the parties, the Hearing Committee hereby enters the following:

FINDINGS OF FACT

1. The 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 promulgated thereunder.
2. The Defendant, Jennifer D. Brock (hereinafter, the "Defendant"), was admitted to the North Carolina State Bar in 1984 and is, and was at all times referred to herein, an attorney at law licensed to practice law 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 periods referred to herein, the Defendant was engaged in the practice of law in the City of Mocksville, Davie County, North Carolina.
4. The Defendant was properly served with process and the hearing was held with due notice to all parties.
5. In September 1993, Diane Newsome (hereafter, "Mrs. Newsome") retained the Defendant to secure an adoption of her daughter, Kayla Michelle Cowgur (hereafter, the "minor child"), by Mrs. Newsome's husband and the minor child's step-father, Edwin Randall Newsome, Jr. (hereafter, "Mr. Newsome").
6. On September 16, 1993, Mrs. Newsome paid the Defendant \$150 in attorney's fees.

7. On September 29, 1993, the Defendant sent a certified letter to the minor child's father, Gregory Scott Cowgur (hereafter, "Mr. Cowgur"), requesting him to consent to the adoption of his minor child by Mr. Newsome and enclosing an adoption form.

8. The certified letter to Mr. Cowgur was signed as received on October 7, 1993 by Fern Borum at the address where Mr. Cowgur apparently lived. However, Mr. Cowgur neither returned the consent form nor contacted the Defendant about the proposed adoption.

9. The Defendant took no further action on the adoption until Mrs. Newsome contacted the Defendant in early 1994. At that time, the Defendant prepared a petition to terminate Mr. Cowgur's parental rights (hereafter, the "Petition").

10. Mrs. Newsome signed a verification page attached to the Petition on February 23, 1994.

11. The Defendant signed the Petition as attorney for the Petitioner, Mrs. Newsome, on August 16, 1994.

12. The Defendant never filed the Petition in the District Court, Davie County, North Carolina.

13. The Defendant wrote a district court file number at the top right-hand side of the pleading caption in order to make it appear that the Petition had been filed.

14. In August 1994, the Defendant prepared and signed a Notice Of Service Of Process By Publication (hereafter, the "Notice") addressed to Mr. Cowgur and advising that a pleading seeking relief in the nature of termination of his parental rights had been filed against him and that he was required to respond within a certain period of time.

15. The Defendant never filed the Notice in the District Court, Davie County, North Carolina.

16. The Defendant wrote a district court file number at the top right-hand side of the pleading caption in order to make it appear that the Notice had been filed.

17. The Defendant never submitted the Notice for publication in the newspaper.

18. Thereafter, Mrs. Newsome called the Defendant concerning the status of the proceeding to terminate Mr. Cowgur's parental rights and the adoption.

19. At all relevant times, the Defendant led Mrs. Newsome to believe that the adoption was proceeding and would be completed.

20. Some time in 1995, Mr. Newsome came to the Defendant's office seeking documentation showing that the adoption of the minor child had been finalized.

21. At that time in response to Mr. Newsome's demand, the Defendant materially altered a final adoption order entered in another case so that the final adoption order would appear to effectuate the adoption of the minor child by Mr. Newsome.

22. Specifically, the Defendant deleted the names of the real parties from a true and accurate adoption decree entered in another case and inserted the names of Mr. Newsome and the minor child. She also inserted fictitious dates.

23. The Final Order For Adoption, as altered by the Defendant, purported to bestow upon Mr. Newsome and the minor child the relationship of parent and child, with all the rights, responsibilities and duties of that parental relationship.

24. The Final Order For Adoption, as altered by the Defendant, also purported to change the minor child's surname from "Cowgur" to "Newsome" and directed the State Registrar of Vital Statistics to issue a new birth certificate recording this name change.

25. The Defendant delivered to Mr. Newsome a copy of the Final Order for Adoption, as altered by the Defendant.

26. Mr. and Mrs. Newsome later discovered that the Final Order for Adoption delivered to Mr. Newsome by the Defendant was not an authentic order of the court and, in fact, that an adoption proceeding relating to the minor child had ever been instituted, much less finalized.

27. The adoption of the minor child by Mr. Newsome has been finalized with the assistance of a new attorney.

28. The Defendant has not reimbursed Mr. and Mrs. Newsome for attorney's fees paid to the Defendant by Mrs. Newsome in the amount of \$150.00.

Based upon the foregoing Findings of Fact and the stipulations contained in the Stipulations on Prehearing Conference filed by the parties, the Hearing Committee enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee and the Committee has jurisdiction over the defendant, Jennifer Brock, and the subject matter.

2. 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:

- (a) By failing to keep Mrs. Newsome reasonably informed about the status of the adoption matter and by failing to promptly and accurately respond to all requests for information, the Defendant violated Rule 6(b)(1) of the Rules of Professional Conduct;
- (b) By failing to explain the adoption matter to the extent reasonably necessary to permit Mrs. Newsome to make informed decisions regarding the representation, the Defendant violated Rule 6(b)(2) of the Rules of Professional Conduct;

- (c) By failing to act with reasonable diligence and promptness in representing Mrs. Newsome, the Defendant neglected a legal matter entrusted to her in violation of Rule 6(b)(3) of the Rules of Professional Conduct;
- (d) By intentionally failing to seek the lawful objectives of Mrs. Newsome through reasonably available means, the Defendant violated Rule 7.1(a)(1) of the Rules of Professional Conduct.
- (e) By intentionally failing to carry out a contract of employment entered into with Mrs. Newsome for professional services, the Defendant violated Rule 7.1(a)(2) of the Rules of Professional Conduct;
- (f) By materially altering the Final Adoption Order and delivering the altered document to Mr. Newsome meanwhile representing that it was an authentic order of the District Court of Davie County, North Carolina, the Defendant:
 - (1) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 1.2(c) of the Rules of Professional Conduct; and
 - (2) 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 additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factors:
 - record of prior discipline
 - pattern of misconduct, including similar misconduct for which the Defendant has already been disciplined
 - selfish or dishonest motive for the misconduct
 - multiple offenses
 - no efforts to rectify misconduct before being confronted by Mrs. Newsome
2. The Defendant's misconduct is mitigated by the following factors:
 - personal or emotional problems
 - full and free disclosure to the Grievance Committee and the DHC
 - physical or mental disability or impairment
 - delay in disciplinary proceedings through no fault of the Defendant
 - efforts toward interim rehabilitation
3. The aggravating factors do not 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 license of the defendant, Jennifer Brock, is hereby suspended for three years upon the following terms and conditions:

a. The Defendant shall submit her license and membership card to the Secretary of the North Carolina State Bar no later than 30 days from service of this order upon her.

b. The suspension will become effective 30 days from service of this order upon the Defendant and will continue for a period of not less than 36 consecutive months.

c. At any time after a period of 12 consecutive months, the Defendant may seek a stay of the remaining period of suspension and reinstatement of her license upon filing a written petition and demonstration of compliance with all provisions of 27 NC. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the North Carolina State Bar Discipline & Disability Rules and the following conditions:

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

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

3. The Defendant shall have paid all costs incurred in this proceeding and taxed against the Defendant within ninety (90) days of service of this order upon the Defendant.

4. The Defendant shall have paid restitution to Mr. and Mrs. Newsome in the total amount of \$350.00, representing the attorney's fee paid to the Defendant by Mr. and Mrs. Newsome and an adoption fee of \$200.00 incurred by Mr. and Mrs. Newsome when the Defendant did not complete the adoption in a timely manner.

5. The Defendant, at her own expense, shall have remained a patient of Dr. Stephen Hebert, or another board-certified psychiatrist (hereinafter referred to as "her Doctor"), during the period of the active suspension (unless discharged by her Doctor) and shall have complied with the course of treatment prescribed.

6. The Defendant shall have authorized her Doctor to release to the North Carolina State Bar information about her status as a patient upon the request of the North Carolina State Bar, and shall have further authorized her Doctor to release to the North Carolina State Bar any and all medical records including, but not limited to records detailing the course of treatment, any diagnosis, and the Defendant's prognosis.

7. The Defendant shall have voluntarily reported to the State Bar any instances of misconduct involving neglect of client matters occurring during the period from June 1, 1993 to the date her license is hereby suspended, and the Defendant shall have executed a statement under oath verifying that no other instances of gross neglect or deceit exist (other than those for which she has been disciplined in this matter or in 97 DHC 7 or those that she has voluntarily reported).

8. The Defendant shall have successfully completed, at her expense, a law office management training program approved by the State Bar.

9. At the time she seeks a stay of the remaining period of suspension, the Defendant shall not be suffering from any physical or emotion condition that would impair her ability to practice law.

2. 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 federal or state 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 her reinstatement proceeding and assessed against her.
- d. The Defendant, at her expense, shall remain a patient of Dr. Stephen Hebert, or other board-certified psychiatrist (hereinafter referred to as "her Doctor"), for the balance of the term of suspension (unless the Defendant is discharged from treatment by the Doctor) and shall comply with the course of treatment prescribed.
- e. At any point during the balance of the term of suspension, the Defendant shall immediately inform the State Bar in writing if she ever ceases to be a patient, or otherwise fails to comply with the course of treatment prescribed by her Doctor. The Defendant shall further instruct her Doctor to immediately inform the State Bar if she ever ceases to be a patient, or otherwise fails to comply with the course of treatment prescribed. The Defendant shall authorize her Doctor to release to the State Bar information about her status as a patient upon the request of the State Bar, and shall have further authorized her Doctor to release to the State Bar any and all medical records including, but not limited to, records detailing the course of treatment, any diagnosis, and the Defendant's prognosis.
- f. The Defendant shall submit written reports signed by her Doctor providing full details about her course of treatment, diagnosis, and prognosis, and certifying that she remains a patient and is complying with the Doctor's prescribed treatment plan. The reports shall be filed at the same time that the Defendant's quarterly reports are due under subparagraph (g) below. If the Defendant is discharged prior to the end of the balance of the term of suspension, then the Defendant shall file a report signed by her Doctor indicating that no further treatment

is required and that, in the opinion of the Doctor, the Defendant should be allowed to continue in the practice of law.

g. The Defendant shall submit to the State Bar quarterly reports assessing her ability to handle her then present case load, which reports must be signed by another lawyer practicing in the same office or a lawyer approved by the State Bar who practices in her community. The Defendant shall also submit quarterly reports certifying that she is in compliance with all of the terms of the stayed suspension (as set forth herein and as may be amended by subsequent order of this Commission). These reports are due on the first day of January, April, July and October during the balance of the term of the suspension.

3. If during any period in which the three-year suspension is stayed the Defendant fails to comply with any one or more conditions stated in paragraphs 2 (a) – (g), then the stay of the suspension of his law license may be lifted as provided in §.0114(x) of the North Carolina State Bar Discipline & Disability Rules.

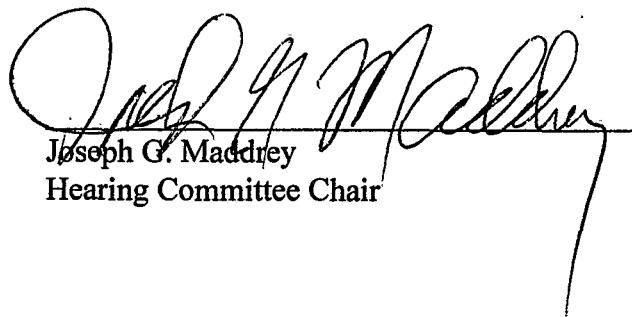
4. If any stay of the suspension of the Defendant's law license is lifted, as provided in the foregoing paragraph, the Disciplinary Hearing Commission may enter an order providing for such conditions as it deems necessary for obtaining a stay of the remaining period of suspension or for reinstatement of the Defendant's license at the end of the three-year suspension period.

5. To obtain reinstatement of her license at the end of the three-year suspension period, if no stay is sought or entered, the Defendant must demonstrate that she has fully complied with all provisions of 27 NC. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the North Carolina State Bar Discipline & Disability Rules. The Defendant must also demonstrate by clear, cogent and convincing evidence that she is not suffering from any mental or physical condition that impairs her professional judgment or ability to engage in the practice of law in a competent manner.

6. The Disciplinary Hearing Commission will retain jurisdiction of this matter pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, §.0114(x) of the North Carolina State Bar Discipline & Disability Rules throughout the period of the three-year suspension.

Signed by the undersigned Hearing Committee chair with the consent of the other Hearing Committee members.

This the 21 day of ~~August~~ ^{September}, 1999.


Joseph G. Maddrey
Hearing Committee Chair