

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
25CV028388-910

R. DANIEL BRADY,  
Plaintiff,

v.

COBIN LAW GROUP, PLLC. (f/k/a  
BRADY COBIN LAW GROUP  
PLLC); TRUSTS AND ESTATES  
LAW GROUP; and  
ANDREW J. COBIN, Individually  
and as Managing Partner,  
Defendants.

**ORDER ON MOTION FOR LEAVE TO  
AMEND COMPLAINT**

**THIS MATTER** is before the Court on Plaintiff R. Daniel Brady's Motion for Leave to Amend Complaint ("Motion to Amend" or "Motion," ECF No. 35.)

**THE COURT**, having considered the Motion, the briefs of the parties, the arguments of counsel, and all appropriate matters of record, **CONCLUDES** that the Motion should be **GRANTED** for the reasons set forth below.

**FACTUAL AND PROCEDURAL BACKGROUND**

1. Plaintiff Brady is an attorney licensed in North Carolina who lives in Wake County, North Carolina. (Compl. ¶ 3, ECF No. 2.)

2. The caption of the Complaint lists the following two entities as Defendants: Cobin Law Group, PLLC (f/k/a Brady Cobin Law Group PLLC) and Trusts and Estates Law Group. However, it appears that they are the same entity with the former doing business as the latter. For clarity, the Court will refer to them collectively as the "Law Firm."

3. The Law Firm is a North Carolina professional limited liability company with its principal place of business in Wake County, North Carolina. (Compl. ¶ 4.)

4. Defendant Andrew J. Cobin is an attorney licensed in North Carolina and the current managing partner of the Law Firm. (Compl. ¶ 5.)

5. Brady was the founding partner of Brady Cobin Law Group PLLC. (Compl. ¶ 8.) Brady acted as Organizer and Member of that firm—and later, the Law Firm—from its founding in 2002 until 1 December 2020. (Compl. ¶ 8.)

6. Upon his decision to relinquish his equity in the Law Firm, Brady executed a Membership Interest Redemption and Purchase Agreement (“Purchase Agreement”) dated 1 November 2020. (Compl. ¶ 9.) Under the Purchase Agreement, Brady sold his membership interest in the Law Firm for \$75,000 and his goodwill for \$100,000—the latter of which would be paid to Brady in “six equal annual payments of principal and interest” starting on 1 January 2022. (Compl. ¶¶ 10–11.) The Law Firm’s payment obligation to Brady pursuant to the Purchase Agreement was confirmed by a promissory note. (Compl. ¶ 11.)

7. In addition to the Purchase Agreement, Brady and the Law Firm entered into a Security and Pledge Agreement (“Security Agreement”). (Compl. ¶ 12.) Brady alleges that under the Security Agreement, he received a first priority lien and security interest in certain assets of the Law Firm, including “all client files, records, billing records, electronic or otherwise, from or related to all client relationships originated by . . . Brady and for all client relationships created before January 1, 2014.” (Compl. ¶ 12.) Brady’s interest in the Security Agreement was perfected by

filing a Form UCC-1 with the North Carolina Secretary of State. (Compl. ¶ 13.)

8. Pursuant to the terms of the Purchase Agreement, Brady and the Law Firm entered into an Employment Agreement on 1 December 2020 (the closing date for the Purchase Agreement) for an initial term of six years. (Compl. ¶¶ 14–15, 17.) The Employment Agreement set out—among other things—the terms of his compensation as well as the circumstances upon which his employment could be terminated. (Compl. ¶¶ 16–19.)

9. In his Complaint, Brady alleges that he “originated numerous client relationships” during his employment with the Law Firm and that he “has at all times complied with and fully performed his obligations under the material terms of the Purchase Agreement, the Security Agreement and the Employment Agreement.” (Compl. ¶¶ 20–21.)

10. In or around March of 2024, Brady raised concerns to Cobin about the Law Firm’s compliance with its ethical obligations to conduct monthly reconciliations of its IOLTA trust account and asked to look into that issue. However, Cobin refused to allow Brady to do so. (Compl. ¶¶ 23–24.)

11. Between March 2024 to January 2025, Brady made repeated requests to Cobin for access to the Law Firm’s IOLTA trust account reconciliations. (Compl. ¶ 24.)

12. On 5 March 2025, Cobin terminated Brady’s employment with the Law Firm without any prior notice. (Compl. ¶ 25.)

13. Upon Brady’s termination, on 12 March 2025 Defendants sent

notification letters to “clients with current open matters for whom . . . Brady was the responsible attorney.” (Compl. ¶ 30.)

14. A few weeks later, Brady asked Defendants for the contact information for all clients he had originated since 2005, claiming that the North Carolina State Bar’s 2025 Formal Ethics Opinion 1 required broader client notification. (Compl. ¶ 31.)

15. Defendants promptly rejected Brady’s request based on the belief that their client notification obligation extended only to clients with whom Brady had an “ongoing professional relationship” or was “responsible for” as of the date of his termination. (Compl. ¶ 32.)

16. Brady alleges that following this dispute, Defendants notified him that they would cease making payments to him for matters he originated despite the “plain language in the Employment Agreement entitling . . . Brady to continued payments for the stated period.” (Compl. ¶ 34.)

17. On 15 August 2025, Brady initiated the present lawsuit by filing a Complaint in Wake County Superior Court. (ECF No. 2). In his Complaint, Brady asserted claims for declaratory judgment, breach of contract, violation of the North Carolina Wage & Hour Act, quantum meruit, wrongful discharge in violation of public policy, default on promissory note, and conversion. (ECF No. 2).

18. This matter was subsequently designated as a complex business case and assigned to the undersigned on 15 September 2025. (ECF No. 1.)

19. On 20 October 2025, Defendants subsequently filed a Partial Motion to

Dismiss Plaintiff's Complaint (ECF No. 23.) On that same date, they filed an Answer and Counterclaims. (ECF No. 25)

20. On 24 November 2025, Brady filed the present Motion to Amend along with a proposed First Amended Complaint ("FAC"). (ECF Nos. 35, 35.1.)

21. The Court held a hearing on the Motion to Amend via Webex on 9 January 2026 at which all parties were represented by counsel.

22. The Motion to Amend has been fully briefed and is now ripe for resolution.

### LEGAL STANDARD

23. Rule 15 of the North Carolina Rules of Civil Procedure states in pertinent part as follows:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not yet been placed upon the trial calendar, he may so amend it at any time within 30 days after it is served. Otherwise, a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

N.C. R. Civ. P. 15(a).

24. Our Supreme Court has held that "[t]here is no more liberal canon in the [R]ules than that leave to amend shall be freely given when justice so requires." *Vaughan v. Mashburn*, 371 N.C. 428, 434 (2018) (cleaned up). "This liberal amendment process under Rule 15 complements the concept of notice pleading embodied in Rule 8 . . . and reflects the legislature's intent that decisions be had on the merits and not avoided on the basis of mere technicalities[.]" *Id.* (cleaned up).

25. Nevertheless, “the [R]ules still provide some protection for parties who may be prejudiced by liberal amendment.” *Henry ex rel. Henry v. Deen*, 310 N.C. 75, 82 (1984) (cleaned up). “Reasons justifying denial of an amendment include: (1) undue delay, (2) bad faith, (3) undue prejudice, (4) futility of amendment, and (5) repeated failure to cure defects by previous amendments.” *Howard v. IOMAXIS, LLC*, 2021 NCBC LEXIS 116, at \*17 (N.C. Super. Ct. Dec. 22, 2021) (cleaned up). “The burden is upon the opposing party to establish that [it] would be prejudiced by the amendment.” *Vitaform, Inc. v. Aeroflow, Inc.*, 2021 NCBC LEXIS 79, at \*11 (N.C. Super. Ct. Sept. 16, 2021) (cleaned up).

26. Motions to amend are “addressed to the discretion of the trial court.” *Vaughan*, 371 N.C. at 433 (cleaned up).

## ANALYSIS

27. The proposed FAC does not add any new claims. Instead, it contains new allegations in support of Brady’s existing claims.

28. Defendants’ only ground for opposing the Motion is futility. “The futility standard under Rule 15 is essentially the same standard used in reviewing a motion to dismiss under Rule 12(b)(6), but provides the Court liberal discretion to find that an amendment lacks futility.” *Simply the Best Movers, LLC v. Marrins’ Moving Sys., Ltd.*, 2016 NCBC LEXIS 28, at \*5–6 (N.C. Super. Ct. Apr. 6, 2016) (cleaned up). “[A] motion to amend is not futile when the allegations of the [amendment], treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not.” *Howard v. IOMAXIS, LLC*, 2023

NCBC LEXIS 159, at \*15 (N.C. Super. Ct. Nov. 29, 2023) (cleaned up). On the other hand, “[a] motion for leave to amend is futile and appropriately denied when the proposed amendment could not withstand a motion to dismiss for failure to state a claim.” *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2016 NCBC LEXIS 77, at \*6 (N.C. Super. Ct. Oct. 7, 2016) (cleaned up).

## **I. Subject Matter Jurisdiction**

29. Defendants first assert that Brady’s two claims for declaratory judgment are barred by lack of subject matter jurisdiction.

30. In his proposed FAC, Brady summarizes the relief he seeks through his two declaratory judgment claims as follows:

77. A declaration by this Court as to the Parties’ rights and responsibilities under Sections 2(c) and 7(b) of the Employment Agreement pertaining to their obligations to notify affected clients of Plaintiff Brady’s departure from [the Law] Firm would terminate the uncertainty and controversy between the Parties.

...

104. [A] declaration by this Court as to the Parties’ rights and responsibilities under the Employment Agreement pertaining to Defendants’ obligations under Paragraphs 2(c) and 7(e) to provide Plaintiff Brady with contact information for all clients for whom he provided significant legal services and/or had significant legal contact from January 1, 2005 through March 5, 2025, while employed at [the Law] Firm would terminate the uncertainty and controversy between the Parties.

(FAC ¶¶ 77, 104.)

31. Defendants argue that the Court lacks subject matter jurisdiction to provide this relief because although courts have authority to discipline attorneys under the North Carolina Rules of Professional Conduct (“RPC”), the RPC cannot be

used as an independent basis for civil liability. *See Robertson v. Steris Corp.*, 234 N.C. App. 525, 534 (2014) (“The breach of a provision of the Rules [of Professional Conduct] is not in and of itself . . . a basis for civil liability.” (cleaned up)).

32. In response, Brady argues that he is not seeking to impose civil liability against Defendants simply on the theory that they violated the RPC. Instead, Brady asserts, he is asking the Court to determine the parties’ rights under a contract (the Employment Agreement)—a contract that contains provisions directly implicating the RPC.

33. Those provisions state as follows:

1(b). Employee’s Obligations. . . . Employee shall also (i) maintain his license in good standing with the North Carolina State Bar (the “State Bar”); (ii) observe and comply with all laws, rules and regulations applicable to the practice of law in North Carolina as set forth in the North Carolina General Statutes, the North Carolina Administrative Code, by the State Bar, and otherwise; and (iii) immediately notify the Company of any alleged malpractice claim against Employee or complaint filed with the State Bar[.]

1(c). Obligations of the Company. The Company shall not impose upon Employee any duties or responsibilities that would cause Employee to be in violation of the State Bar’s Rules of Professional Conduct.

. . .

3(f) . . . [I]n the event this Agreement would terminate due to the death or disability of Employee pursuant to Section 5(a) herein and the continued payment of the Net Employee Compensation to the Employee (or his estate) would constitute a violation of any applicable law or regulation (including but not limited to the State Bar’s Rules of Professional Conduct), then in such circumstances the Company and the Employee (or his legal representative) shall discuss in good faith and agree to recharacterize the Net Employee Compensation as a form of consideration that is not in violation of such laws or regulations.

. . .



7(b). Upon termination of this Agreement for any reason, the Parties shall comply with all State Bar rules and regulations pertaining to the notification of clients upon Employee's dissociation from the firm, as well as custody and retention of all client files.

(Compl. Ex. D ¶¶ 1, 3, 7.)

34. The Court agrees with Brady on this issue. The only way for the Court to fully adjudicate Brady's claims in this case that relate to the Employment Agreement is by determining whether any of Defendants' acts were inconsistent with the terms of the contract. Although Defendants argue that they already had a preexisting obligation to comply with the RPC (such that their alleged failure to do so cannot serve as the basis for civil liability), the parties *jointly chose* to make compliance with the RPC a contractual obligation.

35. Defendants have failed to cite any North Carolina case law for the proposition that such contractual provisions cannot be given effect.

36. Therefore, Defendants have not shown a lack of subject matter jurisdiction with regard to Brady's two declaratory judgment claims.

37. Alternatively, Defendants contend that this Court has discretion to abstain from ruling on these claims in light of the State Bar's concurrent authority over attorney disciplinary matters. In making this assertion, Defendants appear to be suggesting that the Court could determine that the issues raised by Brady should instead be decided by the State Bar (rather than by judicial adjudication of the present lawsuit).

38. This argument is problematic for several reasons. First, it need hardly

be said that the State Bar lacks the authority to adjudicate a civil lawsuit or to award damages to a claimant.

39. Furthermore, it is unclear how a prediction that the Court might conceivably make a discretionary decision to abstain from ruling on a claim would render the claim futile under Rule 15.

## **II. Absence of Necessary Parties**

40. Defendants next argue that Brady's declaratory judgment claims are futile because not all necessary parties have been joined.

41. Specifically, Defendants contend that because Brady's requested relief would impact all clients of the Law Firm that he originated—or for whom he was designated as the responsible attorney—over the past twenty years, N.C.G.S. §1–260 requires joinder of all such clients.

42. N.C.G.S. §1–260 provides in pertinent part as follows:

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings.

N.C.G.S. §1–260.

43. Defendants assert that the disclosure of those clients' contact information to Brady without their prior consent would necessarily affect them—thereby requiring their joinder as additional parties to this litigation.

44. The Court is unpersuaded by this argument. Defendants have not demonstrated that every client who Brady seeks to notify qualifies as a necessary party. As this Court has noted:

“A party is not a necessary party simply because a pending action might have some impact on the party’s rights, or otherwise affect the party.” *Cape Hatteras Elec. Mbrshp. Corp. v. Stevenson*, 2014 NCBC LEXIS 64, at \*4–5 (N.C. Super. Ct. Dec. 8, 2014). A party with an interest that “may be affected by a decree” but whose “presence is not essential in order for the court to adjudicate the rights of others,” is a “proper” party, but not a necessary party. *Wallach v. Linville Owners Ass’n*, 234 N.C. App. 632, 637, 760 S.E.2d 23, 26 (2014). Unlike necessary parties, a proper party may, but is not required to, be joined. *Crosrol Carding Devs., Inc. v. Gunter & Cooke, Inc.*, 12 N.C. App. 448, 452, 183 S.E.2d 834, 837 (1971).

*Adum v. Albemarle Plantation Prop. Owners Ass’n*, 2021 NCBC LEXIS 6, at \*18 (N.C. Super. Ct. Jan. 19, 2021) (cleaned up).<sup>1</sup>

### III. Unresolved Questions of Fact

45. Defendants also contend that Brady’s declaratory judgment claims are improper because they merely seek judicial declarations as to disputed factual issues rather than as to questions of law.

46. However, the declaratory judgment claims appear to seek application of law to fact—namely, whether Defendants’ provision of notice to the Law Firm’s clients upon Brady’s departure complied with the RPC so as to avoid a breach of the Employment Agreement.

47. It is clear under North Carolina law that a declaratory judgment of this type can be properly issued by a court. *See, e.g., Strickland v. Town of Aberdeen*, 124 N.C. App. 430, 432 (1996) (“[Q]uestions of fact necessary to the adjudication of the legal questions involved may be determined in a declaratory judgment action[.]” (cleaned up)).

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<sup>1</sup> Moreover, given that the estimated number of affected clients is in the thousands, it is not clear how joinder of all of them would even be feasible.

#### **IV. Merits-Based Arguments**

48. Finally, Defendants assert that various claims in the proposed FAC fail as a matter of law on their merits.

49. However, after careful consideration of these arguments (which go to the heart of this lawsuit in a number of respects), the Court believes it would benefit from a fuller record and more extensive briefing before addressing these substantive arguments. *See Trail Creek Invs. LLC v. Warren Oil Holding Co.*, 2023 NCBC LEXIS 128, at \*10 (N.C. Super. Ct. Oct. 13, 2023) (cleaned up) (granting a motion to amend seeking to add new claims based on the court’s determination “that a more factually developed record [was] necessary before a definitive ruling [could] be made on the application of the statute of limitations to [those] claims”); *Simply the Best Movers, LLC*, 2016 NCBC LEXIS 28, at \*12–13 (granting a motion for leave to amend where the court concluded that defendants’ merits-based arguments were better addressed at a later stage of the litigation).

#### **CONCLUSION**

**THEREFORE, IT IS ORDERED** that Brady’s Motion to Amend is **GRANTED**. Brady shall have up to and including **4 February 2026** in which to file his First Amended Complaint in the form attached as ECF No. 35.1.

**SO ORDERED**, this the 30th day of January 2026.

/s/ Mark A. Davis  
Mark A. Davis  
Special Superior Court Judge  
for Complex Business Cases