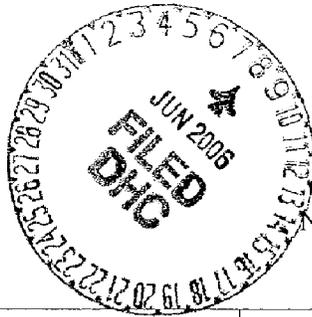


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING  
COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
02 DHC 22

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

MARK A. KEY, Attorney,

Defendant

FINDINGS OF FACT  
CONCLUSIONS OF LAW AND  
ORDER OF DISCIPLINE

THIS MATTER came on to be heard and was heard on Friday, May 5, 2006 before a duly assigned hearing committee of the Disciplinary Hearing Commission composed of W. Steven Allen, Sr., Chair; Karen Eady-Williams and Marguerite Watts. Penny K. Bell represented the defendant, Mark A. Key, and Carolin Bakewell represented the N.C. State Bar. Based upon the pleadings and the evidence introduced at the hearing, by the greater weight of the evidence, the 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.

2. Defendant, Mark A. Key ("Key"), was admitted to the North Carolina State Bar in 1997 and was at all times referred to herein an attorney at law licensed to practice in North Carolina and was subject to the laws of the State of North Carolina and the Revised Rules of Professional Conduct.

3. Key was properly served with process and the hearing herein was held with due notice to all parties.

4. On May 21, 2003, the Disciplinary Hearing Commission entered an order finding that Key violated the Revised Rules of Professional Conduct in several respects.

5. The May 21, 2003 Order of Discipline (“Order of Discipline”) suspended Key’s license to practice law for two years and stayed the suspension for three years, provided that Key complied with certain conditions set out in the order.

6. Key consented to the entry of the Order of Discipline, which is final and binding on all parties hereto.

7. No order has been entered amending or vacating the Order of Discipline.

8. Among other things, the Order of Discipline required Key to comply with the laws of the State of North Carolina and the Rules of Professional Conduct throughout the three year stayed suspension period.

9. Prior to Aug. 8, 2005, Tammy Faircloth (“Faircloth”) retained Key to represent her on charges that she used cocaine and failed to observe a curfew, in violation of the terms of her criminal probation (“cocaine/curfew violation”).

10. On Aug. 8, 2005, Key appeared on Faircloth’s behalf before Hon. Abe Jones (“Judge Jones”) regarding the cocaine/curfew violation charge. While awaiting the hearing on the cocaine/curfew violation charges, Faircloth was arrested on a new charge that she had absconded from supervision (“absconder violation”).

11. During the Aug. 8 hearing, Key asked Judge Jones to consider disposing of the cocaine/curfew and absconder violation charges in one order.

12. Margaret Price (“Price”), who was Faircloth’s probation officer at the time, opposed entry of an order disposing of the absconder violation charge at the same time as the cocaine/curfew charge.

13. Key did not limit the scope of his representation in any way, nor did he tell Judge Jones that he did not represent Faircloth on the absconder violation

14. Price left the Aug. 8 hearing under the impression that the absconder violation had not been resolved. Key and Faircloth believed that the absconder violation had been resolved by Judge Jones along with the cocaine/curfew charge.

15. Following the Aug. 8 hearing, Judge Jones ordered as follows in Faircloth’s case: “[g]et an assessment and follow through with any recommended treatment. The first positive or first missed curfew the probationer is to be arrested. Probationer is to be brought back before Judge Abraham Jones within 90days of this hearing for disposition of probation violation and probationer to remain on intensive probation for the next 3 months.” The written order did not address the absconder violation.

16. Thereafter, Robert Porter (“Porter”), a probation officer in Cumberland County, assumed responsibility for supervising Faircloth’s compliance with the terms of her probation.

17. In late August 2005, Porter told Faircloth that a hearing had been scheduled for her in Wake County Superior Court on Sept. 12, 2005. Faircloth relayed this information to Key.

18. Key agreed to appear on Faircloth's behalf at the Sept. 12, 2005 hearing before Judge Stafford Bullock ("Judge Bullock").

19. During the Sept. 12 hearing, in response to questions from Judge Bullock, Key admitted Faircloth's guilt to the absconder charge.

20. When Judge Bullock refused to be bound by Price's recommendation that the absconder charge be resolved by continuing Faircloth on intensive probation, Key moved to continue the case.

21. Key did not limit the scope of his representation of Faircloth during the hearing before Judge Bullock on Sept. 12.

22. The hearing on the absconder violation was rescheduled for Oct. 10, 2005.

23. Prior to the Oct. 10, 2005 hearing, Faircloth agreed to pay Key an additional \$200 to handle the absconder violation.

24. On Oct. 5, 2005, Key issued a subpoena to Porter to appear at the Oct. 10 hearing.

25. Before court began on the afternoon of Oct. 10, 2005, Key knew that the matter on the calendar was the absconder violation charge.

26. Shortly before court was to commence on Oct. 10, Faircloth told Key that she did not have the additional \$200 fee. Key left the courtroom area, and told Faircloth that he was not going to return to court because she had not paid his fee.

27. Thereafter, Key told Porter that he (Key) had not been "fully retained" by Faircloth and released Porter from the subpoena.

28. Key did not seek or obtain the Court's permission to withdraw as Faircloth's attorney, nor did he take any steps to protect Faircloth's interests before he effectively concluded his involvement in the case.

29. As a result of Key's refusal to complete his representation, Faircloth was left without representation at the Oct. 10, 2005 hearing on the absconder violation.

30. After Faircloth's case was called and Key's absence became known, Judge Tom Haigwood ("Judge Haigwood") directed his courtroom clerk, Sonya Clodfelter ("Clodfelter") to contact Key and direct him to return to court.

31. After several attempts, Clodfelter spoke with Key, who indicated that he was on his way to meet with his child's teacher. It was ultimately determined that it was not possible for Key to attend the meeting and return before the close of court on Oct. 10.

32. Judge Haigwood ordered Key to return to court on Oct. 11 to handle Faircloth's case.

33. When Clodfelter told Key that he had been ordered to return to court to handle Faircloth's case, Key became angry and asked what Judge Haigwood would do if he (Key) did not appear for court on Oct. 11. Clodfelter indicated that the judge might issue a bench warrant for his arrest, to which Key replied that he "did not give a shit" what the judge did.

34. Because Key failed to handle Faircloth's case on Oct. 10, and did not return to court that day, Faircloth's case was continued until the following day.

35. Faircloth was adversely affected by Key's refusal to appear on her behalf in that she was required to return to court on Oct. 11 and by the fact that she was also subpoenaed to testify at a disciplinary hearing regarding Key conducted by the Court on Nov. 14 and 15, 2005.

36. Porter was also required to return to Raleigh for the Oct. 11 hearing and for the disciplinary hearing regarding Key.

Based upon 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 hearing committee has jurisdiction over the subject of this proceeding and over the person of the Defendant, Mark A. Key.

2. Key entered a general appearance regarding the absconder violation pending against Faircloth on Sept. 12, 2005. Consequently, he could not properly refuse to appear at the Oct. 10, 2005 hearing on the grounds that she had not paid his fee, without first seeking permission to withdraw from the court.

3. Key's conduct as set out herein violated the Revised Rules of Professional Conduct in the following respects:

- a. By refusing to appear on Faircloth's behalf at the Oct. 10, 2005 hearing, Key neglected a client matter in violation of Rule 1.3, and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

- b. By failing to seek Court permission before effectively concluding his representation of Faircloth, Key violated Rule 1.16(c).

4. By violating the Rules of Professional Conduct, Key has failed to comply with a material condition of the order staying the active suspension of his law license.

Based upon the foregoing Findings of Fact and Conclusions of Law and based upon the evidence and arguments of the parties concerning the appropriate discipline, the hearing committee by the greater weight of the evidence hereby finds the following additional:

#### FINDINGS OF FACT REGARDING DISCIPLINE

1. Key's misconduct is aggravated by the following factors:
  - a. Key has prior discipline.
  - b. Key engaged in multiple violations of the Revised Rules of Professional Conduct.
  - c. Key has substantial experience in the practice of law.
  - d. Part of Key's misconduct was caused by a selfish motive, namely his determination not to complete Faircloth's case until his fee had been paid in full, despite the fact that he had entered a general appearance on her behalf.
2. There are no mitigating factors.
3. The aggravating factors outweigh the mitigating factors.

4. An order calling for discipline short of a suspension of Key's law license will not sufficiently protect the public and the standing of the legal profession for the following reasons:

- a. Key's misconduct harmed his client and the administration of justice.
- b. Key has failed to demonstrate that he has taken steps to cure whatever character flaw or problem resulted in his misconduct and therefore, there is a risk that Key may engage in additional misconduct in the future.
- c. Entry of an order imposing less severe discipline would fail to acknowledge the seriousness of the offenses which Key committed, would be inconsistent with orders of discipline entered in similar cases

and would send the wrong message to the public and to attorneys regarding the conduct expected of members of the Bar of this state.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Regarding Discipline, the hearing committee hereby enters the following:

#### ORDER OF DISCIPLINE

1. The stay of the suspension of the law license of the defendant, Mark A. Key, is hereby lifted and Key's law license is actively suspended for a period of 90 days, effective 30 days from service of this order of discipline upon him.

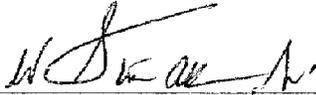
2. The remaining 21 month suspension of Key's law license shall be stayed until July 4, 2007, provided that Key complies with all of the conditions set out in the original order herein.

3. Key shall pay the costs of this proceeding prior to resuming the practice of law following the 90-day active period of suspension.

4. Except as expressly modified herein, all provisions of the original order of discipline herein remain in effect.

Signed by the Chair of the Hearing Committee with the consent and knowledge of the other Committee members.

This the 7<sup>th</sup> day of June, 2006.

  
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W. Steven Allen, Sr., Chair  
Hearing Committee