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NORTH CAROLINA
WAKE COUNTY

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BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
92 DHC 11

THE NORTH CAROLINA STATE BAR)

Plaintiff)

v.)

JONATHAN SILVERMAN, ATTORNEY)

Defendant)

CONSENT ORDER OF DISCIPLINE

This matter, coming before the undersigned Hearing Committee of the Disciplinary Hearing Commission pursuant to Section 14(8) of Article IX of the Discipline & Disbarment Procedures of the North Carolina State Bar; and it appearing that both parties stipulate and agree to the following Findings of Fact and Conclusions of Law recited in this Consent Order and to the discipline imposed, the Hearing Committee therefore 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, Jonathan Silverman was admitted to the North Carolina State Bar in 1985, and is, and was at all times referred to herein, an Attorney at Law licensed to practice 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 all of the periods referred to herein, Silverman was actively engaged in the practice of law in the State of North Carolina and was employed as an assistant district attorney in the 11th Judicial District in Lee, Harnett, and Johnston Counties, North Carolina.

4. Since January 1990, Silverman has been engaged in the private practice of law in Sanford, North Carolina.

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5. In the Fall of 1988, the Johnston County Sheriff's Department began an investigation of child-molestation charges against Patrick Figured.

6. On November 5, 1988, Figured was arrested and charged with committing a first degree sexual offense against Michelle Blackmon.

7. In December 1988, Figured and his girlfriend Sonja Hill, each submitted to a polygraph examination administered by the State Bureau of Investigation, to test their truthfulness in denying involvement in the child molestation cases. Figured failed his examination, but Hill passed hers.

8. On January 5, 1989, Figured was served with two additional arrest warrants for committing first degree sexual offenses against Michael Blackmon and Zachary Byrd.

9. On January 9, 1989, Figured was indicted by John Twisdale, District Attorney in the 11th Judicial District to the three counts of first degree sexual offense for which he had been previously arrested:

10. Twisdale declined to indict Hill.

11. In January, 1989, Twisdale assigned Silverman, then an assistant district attorney working for Twisdale, to handle the cases against Figured.

12. On February 10, 1989, Hill was arrested on three warrants charging her with first degree sexual offense against the same children Figured was charged with molesting.

13. On February 13, 1989, Silverman signed and submitted bills of indictment against Hill to the Johnston County Grand Jury for each of the three sexual offenses.

14. Both the Hill and Figured cases were on the calendar for trial the week of March 27, 1989. The state decided not to join the two defendants for trial.

15. Hill was represented by Thomas Lock.

16. Figured was represented by John P. O'Hale.

17. The Honorable Samuel Currin was the judge assigned to hear Figured's case.

18. On Monday, March 27, 1989, the State called the Figured case for trial. Jury selection began that same day.

19. On Tuesday, March 28, 1989 O'Hale met with Silverman to discuss the possibility of entering a plea agreement in Figured's case.

20. During the discussion with O'Hale, Silverman made representations to O'Hale which O'Hale reasonably believed indicated that the State would dismiss the charges against Sonja Hill in return for Figured's agreement to plead guilty to the three first degree sex offenses as charged.

21. Following the discussions between Silverman and O'Hale, O'Hale told his client, Figured, that the charges against Hill would be dismissed as part of the agreement in Figured's case.

22. Figured relied on these representations and agreed to enter the plea based upon his understanding that the Hill charges would be dismissed.

23. Figured entered a plea of guilty to the three first degree sex offenses in open court on March 28, 1989.

24. Figured did not reveal to the court that he understood that the Hill charges would be dismissed as part of the plea in his case.

25. Neither Silverman nor O'Hale repeated to the court the substance of the discussions referred to in paragraph 20 above.

26. Regardless of Silverman's understanding about whether the charges against Hill would be dismissed as part of the plea agreement in Figured's case, Silverman should have revealed the full discussions to the Court.

27. On April 24, 1989, Twisdale dismissed the charges against Ms. Hill.

28. On July 9, 1990, Twisdale reindicted Ms. Hill.

29. After Ms. Hill was reindicted, Figured filed a motion to withdraw his guilty plea, alleging that the State had failed to honor its original plea agreement to dismiss the charges against Ms. Hill.

30. During the August 26, 1991 hearing of Figured's motion, Silverman failed to disclose to the Court that he had made representations to O'Hale that, regardless of Silverman's specific intent, could reasonably have caused O'Hale to believe that the charges against Hill would be dismissed as part of the plea agreement in Figured's case.

Based upon the consent of the parties and the foregoing Findings of Fact, the Committee makes the following:

CONCLUSIONS OF LAW

1. By failing to reveal to the Court on March 28, 1989 that he had made representations to O'Hale regarding dismissal of the Hill charges that O'Hale could reasonably have concluded were part of the plea agreement in Figured's case, Silverman engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D) of the Rules of Professional Conduct.

2. By failing to reveal to the Court during the August 26, 1991 hearing that he had made representations to O'Hale regarding dismissal of the Hill charges that O'Hale could reasonably have concluded were part of the plea agreement in Figured's case, Silverman engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(D) of the Rules of Professional Conduct.

Based upon the consent of the parties and the foregoing Findings of Fact and Conclusions of Law, the Committee hereby enters the following:

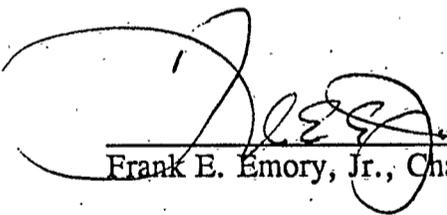
ORDER OF DISCIPLINE

1. The Defendant, Jonathan Silverman is hereby admonished for the conduct as hereinabove described. A separate Letter of Admonition will be prepared by the Committee and delivered to Defendant.

2. The Defendant shall pay the costs of this proceeding.

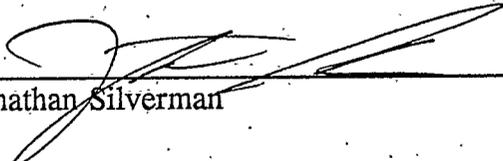
This the 6th day of ~~December~~ ^{January} 1993, 1992.

Signed by the Chairman for the Committee with the express consent of the parties and all Committee members.

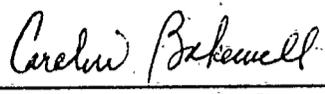


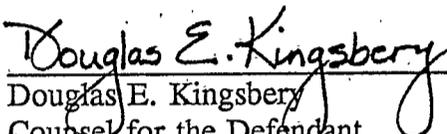
Frank E. Emory, Jr., Chair

Seen and consented to:


Jonathan Silverman

NORTH CAROLINA STATE BAR


Carolin D. Bakewell, Counsel


Douglas E. Kingsbery
Counsel for the Defendant

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