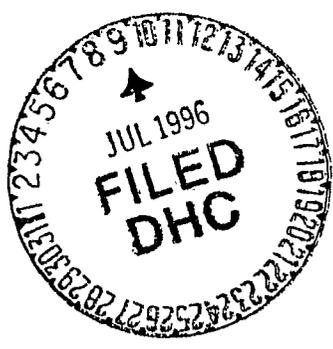


NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
95 DHC 14

THE NORTH CAROLINA STATE BAR,	)	
Plaintiff	)	CONSENT
	)	FINDINGS OF FACT
v.	)	AND
	)	CONCLUSIONS OF LAW
BARBARA K. MORENO, Attorney,	)	
Defendant	)	

This cause being scheduled to be heard on November 10, 1995 before a hearing committee composed of Henry C. Babb, Jr., Chair, Michael L. Bonfoey, and A. James Early, III; with A. Root Edmonson representing the North Carolina State Bar and James B. Maxwell representing Barbara K. Moreno, no hearing was held as the matter was concluded by consent; and based upon the admissions of the Defendant as evidenced by her consent to this document, the hearing committee finds the following to be supported by clear, cogent, and convincing evidence:

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, Barbara K. Moreno (hereinafter Moreno), was admitted to the North Carolina State Bar on May 2, 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 the time relevant to this Complaint, Moreno was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of High Point, Guilford County, North Carolina.

FINDINGS OF FACT  
AS TO THE FIRST CLAIM FOR RELIEF ALLEGED IN THE COMPLAINT

4. On or about March 26, 1991, Moreno, on behalf of The Legal Alternative, entered into a contingency fee contract with Mary Robinson (hereinafter Robinson) for representation of

Robinson and her two minor daughters, Roseann and Denise Reed, in connection with injuries alleged to have been suffered in an automobile accident on March 25, 1991.

5. The contingency fee contract called for Moreno's office to receive a contingency fee of one-third of any amount recovered on behalf of Robinson and her daughters.

6. On March 6, 1992, Moreno settled a claim with Integon Insurance Company on behalf of Roseann Reed in the amount of \$17,000. This sum was accepted by Robinson on behalf of her daughter, and the fee contracted for was paid.

7. In mid-April, 1992, representatives of Integon Insurance Company, the carrier for the negligent party in the March 25, 1991 accident, communicated to Moreno's office an indication that the Denise Reed matter could be settled for \$60,000 and Robinson's claim could be settled for \$11,500.

8. Those offers were communicated to Robinson by Moreno's office, and Robinson rejected them.

9. Sometime prior to April 20, 1992, Robinson discharged Moreno and her office from further representation of her and her daughter, Denise Reed.

10. By letter dated April 20, 1992, Robinson's new attorney, Raymond A. McAllister, Jr. (hereinafter McAllister), advised Moreno that any fees due and payable to Moreno for services rendered to Robinson and Denise Reed would be withheld from their settlements upon request.

11. By letter dated May 12, 1992, McAllister advised Moreno, in response to a communication from her, that he had not agreed to honor Moreno's one-third contingency fee contract and asked Moreno to produce a breakdown of the dates, time, activity and amount charged for services rendered to Robinson and Denise Reed.

12. Moreno produced a statement of expenses, costs advanced and attorney fees earned by her firm dated July 24, 1992 for Denise Reed's March 25, 1991 accident. That statement claimed total legal fees due of \$18,832.50 and costs of \$225.20, for a total due of \$19,057.70.

13. Robinson filed a grievance against Moreno based upon the July 24, 1992 statement. The matter was referred to the High Point Division of the Eighteenth District Bar Grievance Committee for investigation.

14. The investigating member of that grievance committee, Sammie Chess, Jr. (hereinafter Chess), asked Moreno for a breakdown of the amounts listed in her July 24, 1992 statement.

15. In response to Chess' request, Moreno produced an itemized statement purporting to represent the services which she performed for Denise Reed's March 25, 1991 accident case (hereinafter itemized statement) which she sent to Chess on July 13, 1993. A July 13, 1993 cover letter indicated that the listing for services after her discharge were for Chess' information only.

16. Since this was a contingent case, Moreno's office had not kept hourly records of time expended on the matter and thus, they had to "create" an itemized fee statement based on letters, correspondence, telephone messages, etc. from the file.

17. The ultimate statement submitted to Mr. Chess purporting to show "actual time" expended by Ms. Moreno, Fritz Austin and other staff members who had worked on the file, showed on all occasions at least two attorneys for every conference with Ms. Robinson, her daughter and numerous intra-office conferences which, given the circumstances of this particular case, were unnecessary and excessive. In addition, the itemized statement showed that each letter that was produced on Ms. Reed's behalf resulted in a charge of \$87.50.

18. The itemized statement for Denise Reed contained entries for twenty-two (22) hours of conferences with Robinson in which both attorneys billed their full rate, and fifty-two (52) hours of time that Moreno had intra-office discussions about the Denise Reed case with Austin.

19. For fifteen (15) letters sent by her office to insurance adjusters, doctors, requesting medical records or other correspondence before she was discharged, Moreno billed .5 hour of her time at a rate of \$125 per hour (\$62.50) and .5 hour of staff time at the rate of \$50 an hour (\$25) for the typing and mailing of the letters. Thus, Robinson was billed \$87.50 for each letter listed in the itemized statement prepared by Moreno's office for such items as requesting medical records from health care providers.

20. On November 10, 1992, Denise Reed's case was settled through the assistance of McAllister for \$60,000. Because Denise Reed was a minor, an order of settlement had to be approved by the court. Moreno's office was awarded \$13,332 in fees and McAllister was awarded \$6,668 in fees by the court when the matter was concluded.

BASED UPON the foregoing Findings of Fact relating to the First Claim for Relief alleged in the Complaint, the hearing committee makes the following:

#### CONCLUSION OF LAW

The conduct of the defendant, as set out above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. Sec. 84-28(b)(2) in that the Defendant violated the Rules of Professional Conduct as follows:

By charging Robinson for two attorneys to attend conferences with the client that could have been handled by one attorney, by billing each attorney's full rate for intra-office discussions, and by billing Robinson \$87.50 for each letter sent by her office, Moreno attempted to charge a clearly excessive fee in violation of Rule 2.6(a).

FINDINGS OF FACT  
AS TO THE SECOND CLAIM FOR RELIEF ALLEGED IN THE COMPLAINT

21. On September 13, 1993, Barbara Sue Green (hereinafter Green) was cited by Greensboro Police Officer Surratt with speeding 76 MPH in a 55 MPH zone in violation of N.C.G.S. Sec. 20-141. Green was cited to appear in Greensboro District Court at 9:00 a.m. on October 5, 1993 by citation number C4694270-1.

22. Green's citation was filed in Greensboro District Court where it was assigned file number 93CR63114.

23. On September 20, 1993 Moreno sent Green a targeted direct mail advertisement.

24. After receiving the mailing from Moreno, Green telephoned Moreno and the two reached an agreement for Moreno to represent Green on her speeding charge for a fee of \$200.00. Green was to forward \$50.00 to Moreno immediately and pay the additional \$150.00 before her court date. It was agreed that if she retained Moreno, Green would not have to appear in court.

25. On October 2, 1993, Green mailed Moreno a \$50.00 personal money order.

26. On October 7, 1993 Moreno mailed Green a notice of her new court date of October 26, 1993 and advised her that the balance of her fee needed to be paid a week prior to the court date so that her account could be properly credited and Moreno's office could appear on her behalf.

27. On October 20, 1993, Green purchased a personal money order made payable to Moreno in the sum of \$150.00 and mailed it to Moreno.

28. The personal money order in the sum of \$150.00 was received by Moreno's firm and deposited into Moreno's firm's account on October 25, 1993. At that time, Moreno's office had several clients with the last name "Green" and this deposit was made to the credit of another client and not to Green's credit. This was an error on the part of Moreno's office which had the effect of leaving Green's account showing a balance still due.

29. On October 28, 1993, Moreno sent Green a notice of a new court date of November 16, 1993 and, because Green's money had been erroneously deposited to the credit of another client, she again advised Green that she had a balance due of \$150.00. This notice further advised Green that it would be mandatory for Green to be in court if her balance was not paid in full.

30. At that time, Green contacted Moreno's office and advised a staff member there that she had made her payment. The staff member directed her to obtain a copy of her payment and forward it to Moreno's office.

31. On November 17, 1993, Moreno sent Green a notice of a new court date of December 7, 1993 and again advised Green that she had a balance due of \$150.00.

32. At some point after being notified that she still had a balance due, Green again called Moreno's office. Green was again advised to send proof to Moreno's office that she had paid her balance and Moreno would still represent her.

33. Green was advised by Moreno's office that her December court date had been continued to January 25, 1994 and that Moreno would not be able to get her another continuance. Green was advised that Moreno would have to have proof of payment of the balance of her fee before Moreno would be able to represent her.

34. In late December, 1993, Green received a copy of the \$150.00 personal money order from the Dallas, TX office of Republic Money Order Company. Green sent a copy of the money order to Moreno.

35. Green subsequently called Moreno's office and an employee acknowledged receiving the copy of the money order proving that Green had paid the balance of the fee. Green asked for Moreno to call her if Moreno was not going to be able to take care of the matter at the next setting of court.

36. Moreno was in court on January 25, 1994, and did make a motion to continue the case once again. Because of the prior continuances, that motion was denied. Moreno did not file any Motion to Withdraw, nor did she make any further appearances or representation on behalf of Green at the hearing. Although there had been prior communications that they would not represent her unless they had proof of her payment, no formal Motion to Withdraw was made, nor was any further representation offered. The court called and failed Green on that date.

37. On January 28, 1994, Moreno sent Green a form letter indicating that Green's case had been on the calendar and that Moreno did not represent Green since the balance of her fee was outstanding.

38. After receiving Moreno's letter, Green called Moreno's office and spoke with the receptionist. The receptionist advised Green to send another copy of the money order she had received from Dallas to their office. Green advised the receptionist that someone in their office had previously acknowledged receiving the copy of the money order she had received from Dallas. Green asked that Moreno return her call.

39. Green again sent a copy of the money order she had received from Dallas to Moreno.

40. Moreno did not return her call. Green got no further communication from Moreno's office.

41. On February 24, 1994, the Division of Motor Vehicles sent Green a notice that her driving privilege would be suspended on April 25, 1994, due to Green's failure to appear in court on January 25, 1994.

42. Frustrated with dealing with Moreno's office, on April 6, 1994 Green filed her own motion in court to have her case recalendared.

43. On April 18, 1994, Green represented herself in getting her case resolved to prevent her driver's license from being suspended by DMV. Green had to pay an additional \$50.00 in costs due to her failure to appear in January, 1994.

44. On September 6, 1994, Moreno reimbursed Green her \$200 fee and the \$50 costs she had incurred to DMV.

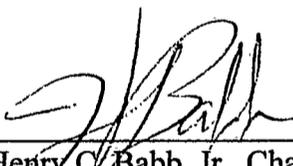
BASED UPON the foregoing Findings of Fact relating to the Second Claim for Relief alleged in the Complaint, the hearing committee makes the following:

#### CONCLUSIONS OF LAW

The conduct of the Defendant, as set out above, constitutes grounds for discipline pursuant to N. C. Gen. Stat. Sec. 84-28(b)(2) in that the Defendant violated the Rules of Professional Conduct as follows:

- (a) By failing to appear in Guilford County District Court for Green on January 25, 1994 after having been paid to do so, and thus causing Green to be called and failed, Moreno failed to seek the lawful objectives of her client through reasonably available means in violation of Rule 7.1(a)(1); failed to carry out a contract of employment entered into with a client for professional services in violation of Rule 7.1(a)(2); and prejudiced or damaged her client during the course of the professional relationship in violation of Rule 7.1(a)(3).
- (b) By failing to notify Green of her intent to withdraw from representation, Moreno withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of her client, including giving due notice to her client, allowing time for employment of other counsel, and complying with applicable laws and rules, in violation of Rule 2.8(a)(2).

Signed on this the 7<sup>th</sup> day of July, 1996 with the full knowledge and consent of the other members of the hearing committee.

  
Henry C. Babb, Jr., Chair  
Hearing Committee

CONSENTED TO:

*Barbara K. Moreno*

Barbara K. Moreno  
Defendant

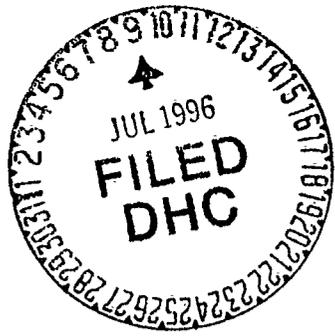
*James B. Maxwell*

James B. Maxwell  
Attorney for Defendant

*A. Root Edmonson*

A. Root Edmonson  
Deputy Counsel  
North Carolina State Bar

NORTH CAROLINA  
WAKE COUNTY



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
95 DHC 14

THE NORTH CAROLINA STATE BAR,  
Plaintiff

v.

BARBARA K. MORENO, Attorney,  
Defendant

)  
)  
) CONSENT  
) ORDER OF DISCIPLINE  
)  
)  
)

BASED UPON the Consent Findings of Fact and Conclusions of Law of even date herewith, and the consent of the parties, the hearing committee, composed of Henry C. Babb, Jr., Chair, Michael L. Bonfoey, and A. James Early, III, finds the following:

FACTORS IN AGGRAVATION

1. A prior disciplinary offense. Moreno was reprimanded by a hearing committee of the DHC on March 3, 1995 in 95 DHC 4.
2. Issuance of a letter of warning within the three years immediately preceding the filing of the Complaint in this matter. Moreno received a letter of warning from a hearing committee of the DHC on May 10, 1993 in 93 DHC 3.

FACTORS IN MITIGATION

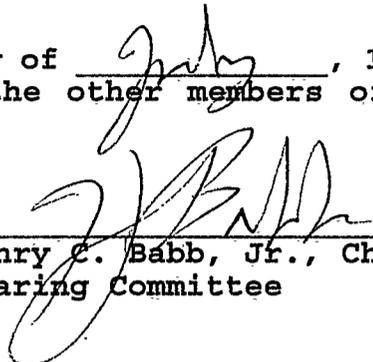
1. Because the Denise Reed claim was ultimately settled for the \$60,000 that had been offered during Moreno's representation of Robinson, Moreno may have been entitled to fees in the range she demanded had she based her claim upon quantum meruit rather than an inflated claim of time spent on the case.
2. Moreno made timely good faith restitution to Green when she discovered that Green had made full payment of her fee to Moreno's office.

BASED UPON the foregoing, the hearing committee enters the following ORDER OF DISCIPLINE:

1. Barbara K. Moreno is hereby ordered to be CENSURED.

2. The costs of this proceeding are taxed against Moreno as assessed by the Secretary.

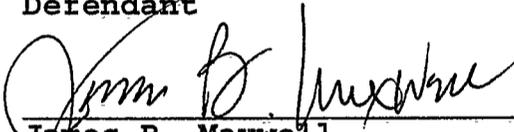
Signed on this the 9 day of July, 1996, with the full knowledge and consent of the other members of the Hearing Committee.

  
Henry C. Babb, Jr., Chair  
Hearing Committee

CONSENTED TO:



Barbara K. Moreno  
Defendant



James B. Maxwell  
Attorney for Defendant



A. Root Edmonson  
Deputy Counsel  
North Carolina State Bar

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