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WAKE COUNTY BEFORE THE DISCIPLINARY HEARING COMMISSION
NORTH CAROLINA OF THE NORTH CAROLINA STATE BAR
99 DHC 6 and 12

THE NORTH CAROLINA STATE BAR,)
Plaintiff)
v.)
KEVIN B. MORSE, ATTORNEY)
Defendant)

FINDINGS OF FACT
AND CONCLUSIONS OF LAW
AND ORDER OF DISCIPLINE

This matter was heard on the 27th day of August, 1999, before a hearing committee of the Disciplinary Hearing Commission composed of James R. Fox, Chair; Michael L. Bonfoey, and Catharine Sefcik. The plaintiff, the North Carolina State Bar, was represented by Fern Gunn Simeon. The defendant, Kevin B. Morse, was represented by David B. Freedman and Dudley A. Witt. Based upon the pleadings and the evidence introduced at the hearing, 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, Kevin B. Morse (hereafter Morse), was admitted to the North Carolina State Bar in 1993 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 relevant periods referred to herein, Morse was actively engaged in the practice of law in North Carolina and maintained a law office in Greensboro, North Carolina.

4. Morse was properly served with process and the hearing was held with due notice to all parties.

5. In 1996, Imani Parker retained Morse to represent her in several drug charges in Guilford County Superior Court. In October of 1996, Morse filed a motion to suppress evidence in Ms. Parker's case and that motion was denied after a hearing in Superior Court. Ms. Parker's case ended in a mistrial on November 1, 1996. Morse was subsequently appointed by the court to represent Ms. Parker in a retrial of the drug charges.

6. On December 13, 1996, Ms. Parker was convicted of conspiracy to traffic cocaine in more than 200 grams, but less than 400 grams and trafficking in cocaine by transporting more than 200 grams, but less than 400 grams.

7. On January 8, 1997, judgment was entered in Ms. Parker's cases. She was sentenced to a minimum term of 70 months and a maximum term of 84 months for each conviction, the sentences to run consecutively.

8. On January 17, 1997, Morse filed written notice of appeal to the North Carolina Court of Appeals on behalf of Ms. Parker.

9. Morse initially told Ms. Parker and her mother, Willena Cannon, that he would represent Ms. Parker in the appeal for a fee of \$10,000.00.

10. Morse met with Ms. Parker's mother, Willena Cannon, and Ms. Cannon's friend, Martha Thompson, in Morse's office on March 6, 1997. He talked about Ms. Parker's case and the appeal process.

11. At the March 6, 1997 meeting with Ms. Cannon and Ms. Thompson, Morse reduced his attorney's fee for the appeal to \$8,000.00.

12. Morse told Ms. Cannon that he needed \$5,000.00 to begin working on the appeal, but he never gave her a deadline to pay the \$5,000.00.

13. In July 1997, Ms. Cannon paid Morse \$5,000.00, the down payment on his attorney's fee.

14. At the time that Morse received the \$5,000.00 attorney's fee from Ms. Cannon, the time to perfect Ms. Parker's appeal of her conviction had expired.

15. At the time that Morse received the \$5,000.00 attorney's fee in July 1997, he knew that he had not taken any steps to perfect Ms. Parker's appeal.

16. Ms. Cannon telephoned Morse on numerous occasions after she paid him his initial fee in July 1997. She wanted an update on the status of Ms. Parker's appeal. Morse was unavailable to talk with Ms. Cannon.

17. Ms. Cannon was finally able to talk with Morse in mid-October 1997 when she saw him in his office parking lot. Morse told Ms. Cannon that he was working on Ms. Parker's appeal. Morse also told Ms. Cannon that he had about ten pages of work on Ms. Parker's appeal that he could show Ms. Cannon. Morse told Ms. Cannon to make an appointment so that he could show her his work on the appeal. Ms. Cannon was given appointments to see Morse on October 29 and November 4, 1997, but Morse did not show up for the appointments.

18. Morse did not have any work to show Ms. Cannon relative to Ms. Parker's appeal.

19. Morse took no action in Ms. Parker's appeal, other than filing the notice of appeal on January 17, 1997.

20. Morse never perfected Ms. Parker's appeal to the North Carolina Court of Appeals.

21. Morse did not petition the appellate court for a writ of certiorari in Ms. Parker's case after he was paid in July 1997.

22. On November 21, 1997, Ms. Cannon went to Morse's office and asked that he return the \$5,000.00 she paid him to handle her daughter's appeal. Morse promised to return the money to Ms. Cannon.

23. Morse's law firm returned \$4,225.00 to Ms. Cannon on March 3, 1998. Ms. Cannon did not receive the full \$5,000.00 that she paid Morse to handle her daughter's appeal.

24. Ms. Cannon later hired Attorney Seth Cohen to help her daughter. On April 7, 1998, Mr. Cohen filed a petition for writ of certiorari with the North Carolina Court of Appeals in Ms. Parker's case. The petition for writ of certiorari was allowed by the court on April 21, 1998. Oral arguments before the North Carolina Court of Appeal are scheduled in Ms. Parker's appeal.

25. At the March 6, 1997 meeting, Morse also talked about getting Ms. Parker out of prison on an appeal bond. Morse told Ms. Cannon and Ms. Thompson that Ms. Parker had as good a chance as anyone to get out on bond pending the appeal.

26. Morse agreed to represent Ms. Parker in an appeal bond hearing.

27. Morse told Ms. Parker and Ms. Cannon that an appeal bond hearing was scheduled for various dates in September and October 1997: September 9, September 22, and early October. When those hearings were not held, Morse told Ms. Parker and Ms. Cannon that the hearings had been continued or rescheduled for various reasons.

28. Morse never filed a motion for an appeal bond or otherwise requested an appeal bond hearing for Ms. Parker.

29. In December 1997, Ms. Cannon filed a grievance with the North Carolina State Bar (hereafter State Bar) against Morse.

30. On February 20, 1998, Morse was served with the State Bar's substance of grievance and letter of notice in Ms. Cannon's grievance.

31. Pursuant to the State Bar's Discipline and Disability Rules, Morse's response to Ms. Cannon's grievance was due no later than March 9, 1998.

32. Morse failed to respond to Ms. Cannon's grievance.

33. Bar counsel sent a follow up letter to Morse on April 2, 1998, reminding him that he had not responded to Ms. Cannon's grievance and giving him an extension until April 20, 1998 to respond.

34. Morse failed to respond to Ms. Cannon's grievance by April 20, 1998.

35. Thereafter, the State Bar issued a subpoena to Morse, requiring him to appear in Raleigh on May 14, 1998 and respond in person to the grievance filed by Ms. Cannon. The subpoena also required him to bring all documents relating to Ms. Cannon's grievance with him.

36. Morse was personally served with the subpoena on May 11, 1998 by the Guilford County Sheriff's Department.

37. Morse did not appear in response to the subpoena nor did he produce any documents to the State Bar.

38. The State Bar issued a second subpoena to Morse, requiring him to appear before the State Bar's Grievance Committee in Pinehurst, North Carolina on July 16, 1998 relative to Ms. Cannon's grievance.

39. Morse was personally served with the subpoena on July 8, 1998 by the Guilford County Sheriff's Department.

40. Morse did appear at the State Bar's Grievance Committee meeting at Pinehurst, North Carolina on July 16, 1998.

41. In December of 1995, Linda Ann Ingram retained Morse to represent her in a sexual harassment case involving her former employer, Oakwood Homes Inc.

42. Morse wrote a letter dated May 15, 1996 to Nicholas St. George of Oakwood Homes Inc., relative to her sexual harassment claim.

43. After Morse wrote the May 15, 1996 letter to Mr. St. George of Oakwood Homes Inc., he did not do any other work in Ms. Ingram's case.

44. Morse told Ms. Ingram that he would prepare a complaint in her case. Morse never drafted or filed a complaint for Ms. Ingram in her sexual harassment case.

45. Morse neglected Ms. Ingram's sexual harassment case.

46. Ms. Ingram wrote and telephoned Morse after he wrote the May 15, 1996 letter in an effort to obtain information about her case.

47. Morse did not diligently respond to Ms. Ingram's inquiries and he did not keep Ms. Ingram informed about the status of her case.

48. The State Bar did not prove by clear, cogent, and convincing evidence that Morse had a dishonest intent when he took the \$5,000 attorney's fee from Mrs. Cannon in July 1997 to handle Ms. Parker's appeal.

49. The State Bar did not prove by clear, cogent, and convincing evidence that Morse failed to refund the entire unearned portion of the \$5000.00 paid to him to appeal Ms. Parker's case.

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 committee has jurisdiction over Kevin B. Morse 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)(3) as follows:

a. By failing to take timely action or otherwise perfect Ms. Parker's appeal to the North Carolina Court of Appeals, Defendant 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) of the Revised Rules of Professional Conduct.

b. By informing Ms. Parker and Ms. Cannon that Ms. Parker would have an appeal bond hearing when he had not made a motion for an appeal bond hearing, Defendant engaged in conduct involving dishonesty in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

c. By failing to respond to the State Bar's letter of notice, follow-up letter, and first subpoena duces tecum respecting Ms. Cannon's grievance, Defendant failed to respond to a lawful inquiry of a disciplinary authority in violation of Rule 8.1(b) of the Revised Rules of Professional Conduct.

d. By neglecting Ms. Ingram's sexual harassment case, Defendant neglected a client matter in violation of Rule 6(b)(3) of the Rules of Professional Conduct and Rule 1.3 of the Revised Rules of Professional Conduct.

e. By failing to keep Ms. Ingram informed about the status of her case, Defendant failed to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of Rule 6(b)(1) and Rule 1.4(a) of the Revised Rules of Professional Conduct.

f. By telling Ms. Ingram that he would file a lawsuit in her sexual harassment action, but he did not file a lawsuit on her behalf, Defendant engaged in conduct involving dishonesty of Rule 1.2(c) of the Rules of Professional Conduct and Rule 8.4(c) of the Revised 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:

- a. pattern of misconduct;
- b. multiple offenses;
- c. vulnerability of victims; and
- d. issuance of letters of warning within the three years immediately preceding the filing of the complaint.

2. The defendant's misconduct is mitigated by the following factors:

- a. absence of a dishonest or selfish motive;
- b. personal or emotional problems;
- c. character or reputation; and
- d. remorse.

3. The aggravating factors do not outweigh the mitigating factors.

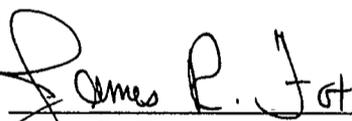
Based upon the foregoing aggravating and mitigating factors and the arguments of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of the defendant, Kevin B. Morse, is hereby suspended for three years and the suspension is stayed for three years upon the following terms and conditions:

- a. Morse is required to make restitution of \$775.00 to Ms. Cannon;
- b. Morse shall truthfully and promptly respond to all inquiries and requests for information from the North Carolina State Bar;
- c. Morse shall handle all client matters promptly and respond promptly to his clients' inquiries. He shall insure that his caseload is manageable. He shall not handle a legal matter that he knows or should know that he is not competent to handle, without associating with or consulting a lawyer who is competent to handle the matter.
- d. Morse shall not violate any state or federal laws.
- e. Morse shall not violate any provisions of the Revised Rules of Professional Conduct.
- f. Morse shall reimburse the North Carolina State Bar for the cost of his deposition.
- g. Morse shall pay the costs of this action within 30 days of receiving notice of the costs from the Secretary of the North Carolina State Bar. The deposition cost shall also be paid at that time.

Signed by the chair with the consent of the other hearing committee members, this
the 13th day of September, 1999.



James R. Fox
Hearing Committee Chair