

23960

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

Consent Order of Discipline

This matter came before a Hearing Committee of the Disciplinary Hearing Commission composed of W. Steven Allen, Sr., Esq., Chair; Karen E. Eady, Esq.; and Marguerite P. Watts, pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B Section .0114 (H) of the Rules and Regulations of the North Carolina State Bar. The defendant, Mark A. Key, was represented by Alan M. Schneider. The plaintiff was represented by David R. Johnson. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Further, by entering into this consent order of discipline, Defendant freely, voluntarily, and with the advice of counsel consents to the order of discipline, waives a formal hearing in the above referenced matter, and waives all right to appeal this consent order or challenge in any way the sufficiency of the findings, the conclusions, or the discipline imposed. Based upon the consent of the parties 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 Mark A. Key (hereinafter "Defendant"), was admitted to the North Carolina State Bar on April 11, 1997, 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 Revised 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, the Defendant was actively engaged in the private practice of law in the State of North Carolina in Wake County, North Carolina.

4. During the month of February 2002, one Melissa Thomas (hereinafter "Thomas") consulted with the Defendant concerning a land/property legal dispute she was having with her aunt. By consulting with Thomas on her legal problem, an attorney-client relationship was established. At the time, Thomas was married and Defendant was aware of that fact.

5. On February 27, 2002, Thomas met with the Defendant on this legal matter at the Defendant's law office located at 16 Martin Street in Raleigh, North Carolina around 6:00 p.m. During the course of that meeting, the Defendant made sexual advances toward Thomas and kissed and otherwise engaged in physical contact with Thomas for the purpose of arousing the sexual desire of the parties.

6. On February 28, 2002, Thomas again met alone with the Defendant at his law office around 6:00 p.m. During this second meeting, the Defendant again made sexual advances toward Thomas and engaged in physical contact with Thomas for the purpose of arousing the sexual desire of the parties.

7. On or about May 29, 2002, the Defendant was convicted of assault on a female, a misdemeanor, arising from his conduct with Thomas. On July 26, 2002, the court entered a judgment against the Defendant on the conviction with a sentence of 45 days in jail, suspended on condition of supervised probation for 24 months, and a fine of \$500.00. The Defendant was also ordered to pay court costs, undergo a sexual offender assessment, and follow any recommended treatment plan as a special condition of probation. The Defendant agreed and consented to the conditions of probation and has fully complied with such conditions, although Defendant is still under supervised probation.

Based upon the foregoing Findings of Fact, the Committee enters the following:

## CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Committee, and the Committee has jurisdiction over the Defendant, Mark A. Key, and the subject matter of this proceeding.

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) as follows:

- a. The Defendant has been convicted of a criminal offense showing professional unfitness to practice law in violation of N.C. Gen. Stat. §84-28(b)(1) and that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects in violation of Rule 8.4(b) of the North Carolina Rules of Professional Conduct.
- b. By making sexual advances toward Thomas and engaging in physical contact intended to arouse the sexual desires of the parties, the Defendant engaged or attempted to engage in sexual relations with a client in violation of Rule 1.18 of the North Carolina Rules of Professional Conduct.

Based upon the consent of the parties, the hearing committee also enters the following:

### ADDITIONAL FINDINGS OF FACT REGARDING DISCIPLINE

1. The Defendant was motivated by a desire for his sexual gratification.
2. The Defendant has no prior disciplinary record.
3. The Defendant has obtained a comprehensive psychological evaluation from Christopher Norris, Ph.D. a psychologist who specializes in evaluating and treating professionals who have engaged in sexual boundary violations.
4. It is Dr. Norris' professional opinion that the Defendant does not suffer from any condition creating a predisposition for predatory sexual behavior, but does recommend ongoing treatment and counseling.

Based on the Findings of Fact and Conclusions of Law above and the additional Findings of Fact Regarding Discipline, the hearing committee makes the following:

### CONCLUSIONS WITH RESPECT TO DISCIPLINE

1. The Defendant's misconduct is aggravated by the following factor:
  - a. a selfish motive.
2. The Defendant's misconduct is mitigated by the following factors:
  - a. absence of any prior disciplinary record;
  - b. full and free disclosure to the North Carolina State Bar and cooperative attitude toward the proceedings;
  - c. good character and reputation;
  - d. remorse;
  - e. interim rehabilitation through individual psychotherapy and counseling; and
  - f. imposition of other sanctions.
3. The mitigating factors outweigh the aggravating factors.
4. The Defendant's conduct, if repeated, poses significant potential harm to future clients and the reputation of the profession and, therefore, entry of an order of discipline with a stayed suspension of Defendant's law license is necessary to insure that the Defendant complies with the agreed conditions of the stay of the suspension.

Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW and the ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS REGARDING DISCIPLINE, and based upon the consent of the parties, the Hearing Committee enters the following:

### ORDER OF DISCIPLINE

1. The license of the Defendant, Mark A. Key, is hereby suspended for two years, beginning thirty (30) days from the date this Order of Discipline is

served upon him. The suspension is stayed for a period of three years beginning immediately upon service of this Order of Discipline on Defendant upon compliance by the Defendant with the following conditions:

- a. Defendant shall continue treatment with Christopher Norris, Ph.D. or some other psychiatrist or psychologist acceptable to the Office of Counsel of the North Carolina State Bar until the successful completion of treatment;
- b. The Defendant shall comply with all treatment plans and recommendations of his treating psychologist or psychiatrist during the period of the stay. Defendant is solely responsible for all costs of his treatment;
- c. Within 15 days of the service of this Order on him, Defendant will execute and deliver to the Office of Counsel of the North Carolina State Bar any and all necessary and appropriate releases and authorizations directing all treating psychologists and psychiatrists to immediately report any failure to follow any prescribed course of treatment and/or counseling to the State Bar's Office of Counsel;
- d. Within 15 days of the service of this Order on him, Defendant will execute and deliver to all treating psychologists and psychiatrists, with a copy to the Office of Counsel of the North Carolina State Bar, a directive instructing him or her to provide quarterly reports of Defendant's compliance with and progress in his treatment program to the State Bar's Office of Counsel. Defendant will, at all times, be responsible for seeing that these reports are provided on a timely basis and for any costs of providing these reports. These reports shall be provided no later than the fifteenth day after the end of each calendar quarter (i.e. January 15, April 15, July 15, and October 15) during each year of the stay. Defendant will likewise execute and deliver the same directive with a copy to the Office of Counsel within 15 days after any change in his treating psychologists and psychiatrists. The directive will also instruct his treating psychologist or psychiatrist to inform the State Bar immediately if he fails to comply with any therapy or treatment recommendations;

- e. The Defendant shall not meet with any female client unless another person who is a member of his staff under his direct supervision and who has been trained in the obligations of an attorney under the Revised Rules of Professional Conduct, including the preservation of client confidences, is present during all such meetings;
- f. During the period of the stay, Defendant will pay all Membership dues and Client Security Fund assessments and will comply with all Continuing Legal Education requirements on a timely basis;
- g. During the period of the stay, Defendant will keep his address of record with the North Carolina State Bar current, will accept all certified mail from the North Carolina State Bar, and will respond to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication;
- h. The Defendant shall not violate any state or federal laws during the period of the stayed suspension;
- i. Defendant will satisfy any civil judgments entered against him on behalf of Thomas that he has the means to satisfy within 90 days of final judgment or comply with any terms of any settlement agreements on any civil claims between he and Thomas on a timely basis;
- j. The Defendant shall not violate any provisions of the Rules of Professional Conduct during the period of his stayed suspension; and
- k. The Defendant shall pay all costs incurred in this proceeding, as assessed by the Secretary, within 30 days of service of the notice of costs upon him

2. If, upon a motion by the State Bar, a Hearing Committee of the DHC finds that the Defendant has violated any of the conditions in Section 1(a)-(k) of this Order, the suspension of the Defendant's license shall be activated. If the

suspension is activated, prior to seeking reinstatement of his license, the Defendant must:

- a. comply with all provisions of 27 N.C. Admin. Code Chapter 1, Subchapter B, Sec. .0125(b) of the N.C. State Bar Discipline & Disability Rules;
- b. satisfy all the conditions set forth in section 1. (a)-(k) above.

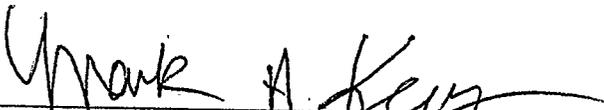
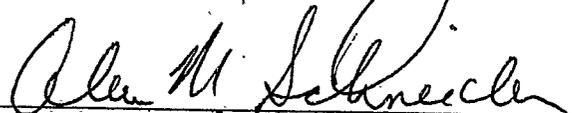
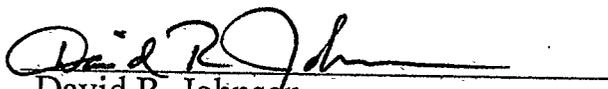
Signed by the undersigned Chair with the full knowledge and consent of the other members of the Hearing Committee.

This the 21<sup>st</sup> day of May, 2003



W. Steven Allen, Sr., Chair  
Hearing Committee

We Consent:

  
Mark A. Key, Defendant  
Alan M. Schneider  
Attorney for Defendant  
David R. Johnson  
Attorney for Plaintiff