

NORTH CAROLINA

WAKE COUNTY



23424

BEFORE THE
 DISCIPLINARY HEARING COMMISSION
 OF THE
 NORTH CAROLINA STATE BAR
 00 DHC 24

THE NORTH CAROLINA STATE BAR,)
)
 Plaintiff,)
)
 v.)
)
 JOHN G. KNIGHT, Attorney,)
)
 Defendant.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF DISCIPLINE

This matter was heard on the 12th day of January, 2001, before a hearing committee of the Disciplinary Hearing Commission composed of James R. Fox, Chair, Richard T. Gammon and Lorraine Stephens. David C. Pishko and Rachel Esposito represented Defendant, John G. Knight. Douglas J. Brocker represented Plaintiff. Based upon the stipulations and the evidence presented at the hearing, the Hearing 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 promulgated thereunder.
2. Defendant, John G. Knight, (hereinafter "Knight"), was admitted to the North Carolina State Bar in 1996, 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, Knight was actively engaged in the practice of law in the State of North Carolina and maintained a law office in the City of Lexington, Davidson County, North Carolina.

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

5. Jane Doe¹ (hereafter "Ms. Doe") was a freshman at a University (hereafter "University") in May, 1999.

6. Ms. Doe was allegedly sexually assaulted on campus by a fellow student on May 1, 1999.

7. University administrative officials met Ms. Doe at the hospital emergency room, where she was examined and treated for the alleged sexual assault.

8. Ms. Doe initially pursued the alleged assault through the University's judicial system and did not file criminal charges.

9. On October 27, 1999, the University's Faculty Executive Committee voted to prohibit the school judicial system from hearing and deciding Ms. Doe's case against her assailant.

10. After the University's decision, Ms. Doe filed a criminal complaint against her assailant for the alleged sexual assault.

11. Upon Ms. Doe's complaint, the State of North Carolina subsequently filed criminal charges Ms. Doe's assailant.

12. Ms. Doe and her parents (hereafter referred to collectively as "Does") contacted Knight in approximately November, 1999 regarding potential representation.

¹ Knight's former client and the complainant in this matter is identified by the generic name "Jane Doe" to protect her privacy given the nature of the allegations at issue.

13. The Does retained Knight and his law firm on or about December 3, 1999 to pursue civil claims against Ms. Does' assailant and the University for physical and emotional injuries resulting from the alleged sexual assault.

14. The Does paid Knight \$9,000 to retain his services and an additional \$1,000 for expenses.

15. Mr. Doe paid the \$10,000 fee to Knight out of his retirement account.

16. The Does told Knight that they were using funds from Mr. Doe's retirement account and that they did not otherwise have the funds to pay his retainer fee.

17. During their initial meeting in November, 1999, Knight asked the Does whether Ms. Doe was seeing a psychiatrist or psychologist and was told that Ms. Doe was seeing a counselor.

18. On or about the time they retained him, the Does told Knight that Ms. Doe had been and was being treated for emotional and psychological difficulties since the alleged sexual assault.

19. The Does also told Knight about the emotional or psychological damage that Ms. Doe had sustained as a result of the alleged sexual assault.

20. In December, 1999, Knight's office requested Ms. Doe's medical and psychological records.

21. On December 30, 1999, Knight contacted Ms. Doe and requested that she come to his office the following day, December 31, 1999.

22. Knight scheduled the December 31, 1999 meeting with Ms. Doe for the specific purpose of having a sexual liaison. Knight had no business purpose for the meeting.

23. All of the employees in Knight's law firm and his partner left the office at some point during his meeting with Ms. Doe.

24. Knight engaged in sexual relations with Ms. Doe in his law office during that December 31, 1999 meeting.

25. On or before December 31, 1999, Knight knew that his sexual relations with Ms. Doe could harm the cases which the Does retained him to pursue.

26. On or before December 31, 1999, Knight knew that he could be disciplined by the North Carolina State Bar for his sexual relations with Ms. Doe.

27. In early January, 2000, Knight promised Ms. Doe that he would not have sexual relations with her again.

28. On or around January 19, 2000, Knight received Ms. Doe's psychological records.

29. Knight met with Ms. Doe in his law office on January 31, 2000.

30. Prior to this January 31st meeting with Ms. Doe, Knight reviewed her psychological records.

31. At the January 31st meeting, Knight discussed Ms. Doe's psychological records with her and asked her questions about the contents of those records.

32. The psychological records Knight received, reviewed, and discussed with Ms. Doe indicated that she suffered from psychological and emotional difficulties.

33. After reviewing and discussing those records, Knight again had sexual relations with Ms. Doe at that January 31, 2000 meeting.

34. Knight next met with Ms. Doe in his law office again on February 18, 2000.

35. During that meeting, Knight discussed the fact that Ms. Doe, at the time, was receiving intensive outpatient treatment for psychological or emotional problems.

36. After being told that Ms. Doe currently was receiving such treatment, Knight again has sexual relations with her at that February 18, 2000 meeting.

37. Ms. Doe was Knight's current client at all times from December 31, 1999 through February 18, 2000.

38. Knight did not have a sexual relationship with Ms. Doe before the legal representation commenced.

39. Knight knew at the time he was engaging in sexual relations with Ms. Doe that his conduct could jeopardize her potential civil claims against her assailant and the University, which were the claims the Does had retained him to pursue.

40. Knight's conduct of engaging in sexual relations with Ms. Doe prejudiced or damaged her legal positions.

41. Ms. Doe told her parents in April 2000 that Knight had engaged in sexual intercourse with her.

42. The Does sent Knight a letter dated April 13, 2000 terminating his representation of them in all matters. In the same letter, the Does requested that Knight return to them the \$10,000 paid to him, "[d]ue to the serious conditions that have precipitated this dismissal."

43. When he received the Does letter, Knight knew or believed that Ms. Doe had told her parents about Knight's sexual relations with her.

44. Between April 18th and 19th, Knight spoke with Ms. Doe. During that conversation, Mr. Doe informed Knight that he had not retained another lawyer as of that time.

45. Within one or two days after he was informed that the Does had not retained another lawyer, Knight sent the Does a letter dated April 20, 2000, with a release enclosed.

46. The release Knight enclosed with his April 20 letter purported to release Knight from all civil liability in connection with his representation of the Does or any misconduct committed by him during the representation.

47. In his April 20 letter to the Does, Knight told the Does that he would refund the \$9,000 retainer only on the condition that the Does all sign the release.

48. Knight knew that Mr. Doe paid the \$9,000 retainer by withdrawing the funds from his retirement account, and that the Does did not otherwise have the funds to pay a fee to retain an attorney.

49. Knight believed that the Does would retain another attorney after he returned their file and fee.

50. Before sending the release, Knight reviewed the Revised Rules of Professional Conduct.

51. Knight did not advise the Does that they should seek independent legal representation in the April 20th letter or release.

52. After he sent the April 20th letter and release, Knight contacted the Does by telephone. During these conversations, Knight failed to advise the Does that they should seek independent legal representation in connection with the release.

53. Knight never advised the Does to seek independent legal representation in connection with the release before they filed a grievance with the North Carolina State Bar and retained another attorney.

54. Knight's intent when he sent them the April 20th letter and release was to prevent the Does from bringing a civil suit against him for his conduct while representing them.

55. Knight's intent in conditioning the return of the fee on the execution of release was to get the Does to sign a liability release before they retained another attorney.

56. The Does did not sign the release prepared by Knight.

57. Knight did not report his misconduct to the State Bar until he discovered that Ms. Doe had told her parents that he had engaged in sexual relations with her.

58. Thereafter, on April 20, 2000, Knight sent a letter to the North Carolina State Bar reporting that he had had sexual relations with a client in violation of Revised Rule 1.18 of the Rules of Professional Conduct.

59. Knight's April 20, 2000 letter, which was dated the same day as his letter and release to the does, did not disclose the fact that he had requested the Does to sign a release from liability.

60. It was not until after the Does retained another attorney that Knight returned the \$9,000 retainer fee paid by the Does.

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 Knight and the subject matter of this proceeding.

2. Knight'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) and the North Carolina Revised Rules of Professional Conduct (hereafter "Revised Rules") in that:

A. By engaging in sexual relations with Ms. Doe, whom he was representing in civil claims for sexual assault at the time, Knight:

i. had sexual relations with a current client in violation of Revised Rule 1.18,

- ii. represented and continued to represent a client when representation of that client was materially limited by his own interests in violation of Revised Rule 1.7(b), and
 - iii. intentionally prejudiced or damaged his client in violation of Revised Rule 8.4(g).
- B. By conditioning the return of the Does' \$9,000 retainer fee on executing a release from liability, Knight attempted to settle a claim for liability against him with unrepresented former clients, without first advising them in writing to seek independent representation in connection therewith, an attempted violation of Revised Rule 1.8(h), in violation of Revised Rule 8.4(a).

FINDINGS OF FACT REGARDING DISCIPLINE

1. Knight's misconduct is aggravated by the following factors:
 - a. dishonest or selfish motive;
 - b. a pattern of misconduct;
 - c. vulnerability of the victim; and
 - d. prejudice and damage to the clients.
2. Knight's misconduct is mitigated by the following factors:
 - a. absence of a prior disciplinary record;
 - b. full and free disclosure to the Hearing Committee and cooperative attitude toward the proceedings;
 - c. character and reputation; and
 - d. remorse.
3. The aggravating factors outweigh the mitigating factors.

Based upon the foregoing Findings of Fact, Conclusions of Law, and the Findings of Fact Regarding Discipline, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. Defendant, John G. Knight, is hereby suspended from the practice of law for a period of three (3) years, effective thirty (30) days from service of this order upon him.
2. Defendant shall submit his license and membership card to the Secretary of the North Carolina State Bar at the end of this thirty (30) day period.

3. After not less than one year following the effective date of the order, Knight may file a verified petition for a stay of the remaining period of the suspension in accordance with the requirements of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b) of the N.C. State Bar Discipline & Disability Rules ("Discipline Rules"). The remaining term of Knight's suspension may be stayed only if he establishes by clear, cogent, and convincing evidence the following conditions:

- a. Knight submitted to comprehensive psychiatric and psychological evaluations by two separate individuals selected by or acceptable to the North Carolina State Bar: (1) a board certified psychiatrist, and (2) a psychiatrist who specializes in treating sexual offenders in the professions.

Knight is solely responsible for paying all costs associated with the evaluations.

Both psychiatrists must have certified under oath, based on a comprehensive evaluation of Knight, that in their professional opinion he does not suffer from any condition creating a predisposition for predatory sexual behavior.

Knight must attach to his reinstatement petition the sworn certifications from the two evaluating psychiatrists. Knight also must attach to his reinstatement petition releases or authorizations allowing the evaluating psychiatrists to discuss their evaluation of him and release any corresponding records to the State Bar Office of Counsel.

- b. Knight complied with all of the requirements of Discipline Rule .0124.
- c. Knight complied with all of the requirements of Discipline Rule .0125(b).
- d. Knight paid all costs assessed by the Secretary in connection with this proceeding, including deposition costs, within thirty (30) days of service of these costs upon him by the Secretary.
- e. Knight violated no federal or state laws during the term of the suspension.
- f. Knight violated no provisions of the Revised Rules of Professional Conduct of the North Carolina State Bar during the term of the suspension.

4. Upon entry of an order staying the suspension and granting reinstatement of Knight's license to practice, the order stayed suspension may continue in effect only upon compliance with all of the following conditions during the balance of the term of the suspension:

- a. Defendant shall receive any psychiatric and psychological care recommended by either or both of the evaluating psychiatrists. Knight is solely responsible for paying for all costs of such recommended treatment.

If treatment is recommended, Knight shall be responsible for providing reports from his treating psychiatrist and psychologist on a biannual basis certifying for the past six (6) months that:

- i. He has followed all recommendations for treatment of any diagnosed psychological conditions; and
- ii. Knight's psychological or psychiatric conditions will not prevent him from adequately performing the responsibilities of an attorney or pose a threat to the public if he is allowed to practice law.

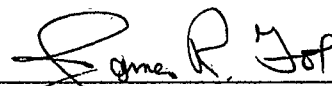
These reports shall be provided no later than January 31st and July 31st of each year the suspension is stayed. Knight is solely responsible for providing these reports on a timely basis and for paying all costs associated with providing such reports. Knight also shall provide the State Bar with a letter to his treating psychiatrist and psychologist directing them to inform the State Bar immediately if he fails to comply with their recommendations for treatment or, in their professional opinion, he becomes a threat to the public.

- b. Knight shall not meet with any female client unless another person is present during all such meetings.
- c. Knight shall violate no state or federal laws.
- d. Knight shall violate no provisions of the Revised Rules of Professional Conduct.
- e. Knight shall pay all costs incurred in connection with the reinstatement proceeding and assessed against Knight within thirty (30) days of service of these costs upon him by the Secretary.

5. If no part of this suspension is stayed, Knight must petition the DHC at the end of the three (3) year suspension, and establish by clear, cogent, and convincing evidence all conditions set forth in paragraph 3 above, before his license to practice is reinstated.

Signed by the Chair with the consent of the other Hearing Committee members, this the

13th day of February, 2001.



James R. Fox, Chairman
The Disciplinary Hearing Commission