

New Hampshire Supreme Court

**Professional Conduct Committee**

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*Coddington, Paul F., Jr. advs. Professional Conduct Committee #04-095*

**Recommendation for Twenty Four Month Suspension**

On November 15, 2005, the Professional Conduct Committee considered the above-referenced matter. The Committee members hearing the matter included: Margaret H. Nelson, Chair; Toni M. Gray, Vice Chair; Thomas P. Connair; Alan J. Cronheim; Eleanor Wm. Dahar; Gretchen Rule Hamel; and David N. Page, Reporter. Not present were: David N. Cole; James R. Martin; Benette Pizzimenti, Vice Chair, and Stephen B. Stepanek. Mr. Paul Coddington appeared pro se, and James L. Kruse, Assistant Disciplinary Counsel, represented the Professional Conduct Committee. Landya B. McCafferty, Disciplinary Counsel, was also present.

Oral Argument proceeded, presented by Attorney Kruse and Mr. Coddington. These arguments were confined only to the matter of sanction since Mr. Coddington had, by default, as a consequence of his repeated failure to respond and to answer, admitted to the violations enumerated in the Notice of Charges.

The Committee then deliberated, reviewing the Notice of Charges dated September 9, 2005, the Proposed Findings of Fact and Rulings of Law and Request for Costs dated September 9, 2005, the pleadings of the parties, Disciplinary Counsel's Memorandum on Sanction: Disbarment dated September 9, 2005, the Transcript of the September 23, 2005 Hearing, including the Exhibits 1 - 6 from the Hearing, and the Hearing Panel Report dated October 4, 2005.

After due consideration, the Professional Conduct Committee determined the record supports the following Findings of Fact by clear and convincing evidence:

**I. FINDINGS OF FACT**

1. On May 9, 2005, pursuant to New Hampshire Supreme Court Rule 7A(III)(b)(2), the Attorney Discipline Office issued a Notice of Charges in this matter.
2. On June 10, 2005, the certified mailing was returned by the Post Office "unclaimed." See Exhibit 1, Copy of envelope returned by the Post Office.
3. On June 30, 2005, the Notice of Charges was sent to the Merrimack County Sheriff's Office for in-hand service.
4. On July 12, 2005, Paul F. Coddington, Jr. was served the Notice of Charges "In Hand" by Deputy Mario V. Messina. See Exhibit 2, Return of Service signed by Deputy Messina.
5. To date, the Attorney Discipline Office has not received an Answer to the Notice of Charges.
6. Pursuant to Rule 37A(III)(b)(3)(A), Mr. Coddington had thirty (30) days from the date of service (July 12, 2005) to file an Answer to the Notice of Charges.
7. Because of Mr. Coddington's failure to file an Answer, the same Rule requires that "the allegations set forth in the Notice of Charges shall be deemed to be admitted." N.H. Sup. Ct. R. 37(III)(b)(3)(A).
8. By operation of Rule 37(III)(b)(3)(A), this pleading incorporates as admissions the alleged facts and rule violations contained in the Notice of Charges.
9. The Notice of Charges is based on the content of an audit report dated November 17, 2004, from Craig A. Calaman, C.P.A. (hereinafter "Audit Report"). The Audit Report was attached to the Notice of Charges (as "Exhibit A") and was thereby incorporated and made a part of the Notice of Charges.
10. The Audit Report covers the following time-period: November 1, 2000 through August 31, 2004. During the relevant time-period, Mr. Coddington operated as a solo practitioner in Concord. In the Audit Report, Mr. Calaman discusses financial discrepancies in Mr. Coddington's firm's general client trust account at Citizens Bank, account number 330578-015-2 (hereinafter "firm's trust account").

11. By way of summary, the Audit Report reveals numerous financial irregularities on Mr. Coddington's part with respect to his firm's trust account. These irregularities include the following: (a) Mr. Coddington used funds from his firm's trust account to pay for his own personal and office expenses; (b) Mr. Coddington co-mingled his own funds with those of his clients by leaving fees in trust for extended periods of time after Mr. Coddington had earned the fees; and (c) Mr. Coddington did not comply with Supreme Court Rule 50 relative to the maintenance and administration of client trust accounts, as Mr. Coddington did not properly maintain client ledgers or perform monthly reconciliations.
12. A brief summary of the financial discrepancies in this account follows.

#### **Out-of-Trust Balances**

13. At pp. 3 - 5 of the Audit Report, Mr. Calaman discusses eight separate clients for whom Mr. Coddington's firm's trust account was out-of-trust. In numerous instances, Mr. Coddington wrote checks to himself at times when there were insufficient funds available in his firm's trust account for specific clients. See Audit Report at pp. 3 - 5. In other instances, Mr. Coddington made disbursements from client trust funds to third parties in payment of his own personal expenses. See Audit Report at pp. 3 - 7.

#### **Discrepancies in Accounting**

14. At pp. 5 - 6 of the Audit Report, Mr. Calaman discusses three checks issued from Mr. Coddington's firm's trust account which reveal accounting discrepancies between the face of the check and Mr. Coddington's check register.
15. By way of example, on March 3, 2003, check number 1077 was issued to Mr. Coddington in the amount of \$125.00. The memo line on the face of the check indicates that the payment related to an appeal for a particular client. However, in the check register, Mr. Coddington recorded the disbursement by allocating \$30.00 to earned fees for a second client, \$25.00 to fees for a third client, and \$75.00 for a fourth client. See Audit Report at pp. 5 - 6.

### **Personal Expenses Paid from Mr. Coddington's Firm's Trust Account**

16. At pp. 6 -7 of the Audit Report, Mr. Calaman discusses eleven (11) instances when Mr. Coddington paid personal or office expenses from his firm's trust account. In total, Mr. Coddington disbursed \$2,938.50 from his firm's trust account to pay his own personal or office expenses. See Audit Report at pp. 6 - 7.

### **Administrative Practices and Record-Keeping**

17. After reviewing Mr. Coddington's check register and client ledger, Mr. Calaman concluded that Mr. Coddington's client ledgers did not meet the minimum standards set forth in N.H. Sup. Ct. R. 50(2). See Audit Report at p. 8. Specifically, Mr. Coddington failed to maintain a running balance for each client, as required by Rule 50(2)(A). See Audit Report at p. 8. Further, Mr. Coddington rarely recorded the source and purpose of cash receipts, as required by Rule 50(2)(A). See Audit Report at p. 8. Mr. Coddington also failed to perform monthly reconciliations, as required by Rule 50(F). See Audit Report at p. 8.

### **Mr. Coddington's Failure to Cooperate**

18. On the basis of the Audit Report, on November 24, 2004, the Attorney Discipline Office docketed a complaint against Mr. Coddington. (A copy of this letter of complaint was attached to the Notice of Charges as "Exhibit B.")
19. Mr. Coddington failed to respond within 30 days of the date of that complaint, as required by N.H. Sup. Ct. R. 37A(2)(a)(5)(C).
20. Mr. Coddington also failed to respond to the Attorney Discipline Office's follow-up letter to him dated December 30, 2004. (A copy of this follow-up letter was attached to the Notice of Charges as "Exhibit C.")

## II. RULINGS OF LAW

The Professional Conduct Committee found by clear and convincing evidence that the following Violations occurred:

### **Rule 1.15(a)(1): Failure to Safeguard Client Property**

21. According to the Audit Report, Mr. Coddington was out of trust with respect to his firm's trust account for eight separate clients. See Audit Report at pp. 8 - 10.
22. The Audit Report reveals that Mr. Coddington failed to safeguard his clients' property by withdrawing funds from his firm's trust account for his own personal use without proper authorization. See Audit Report at pp. 6 - 10.
23. The Audit Report also reveals that Mr. Coddington failed to safeguard his clients' property by commingling his earned legal fees with their property, which Mr. Coddington held in his firm's trust account.
24. Mr. Coddington's failures to safeguard his clients' property constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.15(a)(1).

### **Rule 1.15(a)(2) and Sup. Ct. R. 50(2)A & F: Failure to Maintain Proper Records**

25. The Audit Report reveals that Mr. Coddington did not maintain his accounting records in accordance with New Hampshire Supreme Court Rules. See Audit Report at p. 8.
26. Specifically, Mr. Coddington failed to maintain a running balance for each of his clients, as required by Rule 50(2)(A). See Audit Report at p. 8.
27. Mr. Coddington rarely recorded the source and purpose of cash receipts, as required by Rule 50(2)(A). See Audit Report at p. 8.
28. Mr. Coddington also failed to perform monthly reconciliations, as required by Rule 50(2)(F). See Audit Report at p. 8.

29. Mr. Coddington's failures to keep proper records in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.15(a)(2), as well as N.H. Sup. Ct. R. 50(2)A & F.

**Rule 8.1(b): Failure to Cooperate**

30. Mr. Coddington's failure to respond to the Attorney Discipline Office's letter of complaint dated November 24, 2004 (Exhibit B in the Notice of Charges), constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.1(b).

**Rule 8.4(a): Misconduct**

31. Because there exists clear and convincing evidence of violation of the aforementioned Rules, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

**III. RECOMMENDATION ON SANCTION- ANALYSIS**

On June 30, 2004, The Supreme Court of New Hampshire suspended Mr. Coddington from practice of law until further Court Order for his failure to cooperate with the court ordered audit in this matter. He remains suspended at this time.

The Attorney Discipline Office initially argued for disbarment before the Hearing Panel because of the serious problems with Respondent's accounting system and the potential for substantial loss to Respondent's clients as well as Respondent's complete failure to respond to the audit inquiry and charges ultimately brought against him. The Office did not argue that there was intentional theft and agreed that only one client had been damaged in amount only \$39.60 which has now been repaid. The Office also recognized that the "deer in the headlights" reaction to its investigations which Mr. Coddington had blamed for his lack of responsiveness was not uncommon.

At Oral Argument before the Professional Conduct Committee on November 15, 2005, Attorney Kruse

of the ADO recommended that the Professional Conduct Committee adopt the Hearing Panel Report and recommend a 3 year suspension, running from the date of the Court's order establishing such a suspension. He noted that the ABA Standards for Imposing Lawyer Sanctions (the "ABA Standards") recommend suspension for a simple case of co-mingling of client's funds and disbarment for the use of client funds for personal use. He indicated that the Respondent's state of mind at the time was gross negligence or recklessness but that the actual loss to any client was negligible and had been repaid and the total amount of money appropriated for personal use over the course of the period of irregularities (almost 4 years) was \$2,800.00.

Mr. Coddington agreed that a term of suspension was appropriate but took the position that it should not exceed three years, taking into account the 18 months since he was initially suspended. He noted the serious impact the current suspension has already had on him and maintained that it was unlikely that his conduct would occur again. He did not challenge the other recommendations set forth in the Hearing Panel report.

The Committee found that Mr. Coddington's co-mingling of funds warrants a suspension. To determine the appropriate term of suspension, the Committee considered the pertinent aggravating and mitigating factors as discussed in the ABA Standards.

The Committee found aggravating factors in the Respondent's failure to respond and communicate with the Attorney Discipline Office, and in his failure to initially supply the records required for the Audit. The Committee also noted that in filling out his June 2003 Trust Accounting Report, Mr. Coddington had left blank the answer to the question of whether or not he had used Trust Funds for business or personal purposes because he knew an honest answer (yes) would cause him to be out of trust while leaving a blank answer would perhaps go unnoticed.

As mitigating factors, the Committee recognized that Mr. Coddington had no prior disciplinary record (although he has only been a member of the Bar since 2000) and that the actual amount of money involved in these matters was relatively small and that he had repaid the funds a client actually lost.

#### IV. SANCTION

The Committee found that an appropriate sanction for all the violations enumerated above was a suspension. Accordingly, the Committee recommends that the New Hampshire Supreme Court continue the suspension of Mr. Coddington for an additional twenty four (24) months following the date of final Court approval of this recommendation, and that the Court impose the following conditions to Reinstatement:

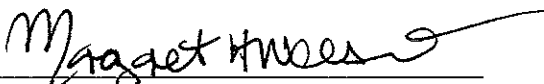
1. Upon re-entering practice, Respondent must demonstrate to the Staff Auditor of the Attorney Discipline Office that he has in place an accounting system that complies with Rule 50 of the Supreme Court Rules.
2. In each of the first 3 years of resuming practice, Respondent's practice will be subject to random audit by the Staff Auditor with the costs of such audit to be paid by Respondent.
3. Prior to, but as close as possible to resuming practice, Respondent will attend a full session of the Practical Skills Course offered annually by the New Hampshire Bar Association.
4. Respondent will, on demand, reimburse the Professional Conduct Committee for all investigative and prosecution expenses.

This sanction is in accord with the purposes of attorney discipline as described by the New Hampshire Supreme Court. *See, Feld's Case*, 149 N.H. 19, 28 (2002). This case is also in accord with the ABA Center for Professional Responsibility, Standards for Imposing Lawyer Sanctions (1991). *See, e.g., Shillen's Case*, 149 N.H. 132, 139 (2003) (noting that although the Court has never formally adopted these Standards, the Court has considered them when imposing sanctions).

In arriving at this sanction, the Committee also considered *Morgan's Case* 143 N.H. 475 (1999) wherein the Court ordered a two year suspension for misappropriating a similarly small amount of client funds but then suspended the suspension because of the mitigating factors. The Committee found that the protection offered to the public by the two additional years of suspension, and conditions 1, 2 and 3 of the Reinstatement as itemized above, as well as the fact that the Respondent

has been suspended since June 30, 2004, is in proper balance with the disbarment ordered in *Woicak's Case*, 131 N.H. 735, 740 (1980) (noting the lack of uniformity in the Court's sanctions for misuse of client's funds, but stating that "the general rule in cases involving misuse of client's funds is disbarment") where a large amount of client funds were misappropriated. The Committee noted that in this case there was a co-mingling of client funds but no theft of funds, and that the amounts of money involved were relatively small.

November 30, 2005

  
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Margaret H. Nelson  
Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel

Paul F. Coddington, Jr.

File

