

New Hampshire Supreme Court  
**Professional Conduct Committee**

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**Decision on Reconsideration**

**Public Censure**

**I. Background**

This matter was initiated by the Attorney Discipline Office based on an attorney referral. Prior to a hearing, Mr. Runge and Disciplinary Counsel executed a stipulation in which Mr. Runge admitted to the facts alleged by Disciplinary Counsel, but did not agree that the facts constituted the violations of the Rules of Professional Conduct ("Rules") that had been alleged. On September 29, 2005, a Hearing Panel heard arguments as to whether the facts supported a finding that the Rules had been violated and regarding the appropriate sanction if such violations were found to have occurred.

The Professional Conduct Committee ("Committee") considered the complete record, including the Notice of Charges, the Answer, the Stipulation, the hearing exhibits, the transcript of the September 29, 2005, hearing, and the Hearing Panel Report and recommendation. At the Committee's meeting on January 17, 2006, the Committee deliberated and found violations of Rules 1.3 (diligence), 1.4 (client communications), and 8.4(a), and found that a Public Censure was the appropriate sanction. (See original decision dated April 5, 2006.) On or about April 12, 2006, Mr. Runge filed a Motion for Reconsideration, asserting that the Committee erred in rejecting the Hearing Panel's finding of no violation of Rule 1.4 and the recommended sanction of a Reprimand.

The Committee granted the Motion to Reconsider on May 17, 2006, and heard oral argument at its meeting on June 20, 2006. Committee members present included: Alan J. Cronheim, serving as Chair, David N. Cole, Eleanor Wm. Dahar, Gerald A. Daley, Gretchen Rule Hamel, Reporter, James R. Martin, and David N. Page. Recused from the matter were Margaret H. Nelson and Toni M. Gray. Thomas P. Connair was absent and did not participate in the discussion or vote.

Having considered the arguments presented, the Committee reached the decision detailed below.

## **II. Stipulation: Findings of Fact**

On reconsideration, the Committee affirmed the facts found in the original decision, by clear and convincing evidence, as follows:

1. On or about March 22, 2001, Linda St. Onge retained Mr. Runge to represent her in a medical malpractice lawsuit. Ms. St. Onge's malpractice claim arose out of her physician's allegedly negligent administration of a triple dose of her allergy injections. In this matter, the statute of limitations was set to expire on July 18, 2003.
2. On January 13, 2003, the defendant's insurance adjuster, Alison A. Dick, Esquire, wrote a letter to Mr. Runge acknowledging his settlement demand of \$150,000. Ms. Dick's letter included the following:

We would welcome the opportunity to review those documents which you feel substantiate a demand of \$150,000. Alternatively, we are prepared to engage counsel to accept service should you elect to file suit.
3. In a letter dated January 31, 2003, Ms. Dick wrote to Mr. Runge as follows:

Since our assessment of this matter differs to such a material degree from that of your client, we would accept service of a writ of summons on behalf of [defendants].
4. In a letter dated April 14, 2003, Ms. Dick wrote to Mr. Runge and acknowledged her understanding that the defendants' offer of \$5,000 was not acceptable to Ms. St. Onge and, once again, offered to accept service of the writ of summons on behalf of her clients.
5. On July 15, 2003, a Tuesday, Mr. Runge was aware both that the statute of limitations expired on that Friday and that Superior Court Rule 2 provided an alternative means of service of the writ by simply filing the writ in the appropriate Court.
6. Mr. Runge signed the Writ of Summons on July 15, 2003. Also on July 15, 2003, Mr. Runge telephoned the Sheriff's Office and learned that timely service could be accomplished if he hand delivered the writ to the Sheriff's Office on that date. On that same date, Mr. Runge's office mailed the writ to the Sheriff's Office for service.
7. Between July 15, 2003, and July 18, 2003, Mr. Runge took no action to follow up with the Sheriff's Office to ensure timely service of the writ, as he did not believe any follow up was necessary.
8. Two of the defendants received notice of the writ on July 22, 2003, and the third received notice on July 30, 2003.
9. On August 5, 2003, Mr. Runge filed the writ with the filing fee and returns of service at the Hillsborough County Superior Court. Mr. Runge did not inform Ms. St. Onge that her

lawsuit was subject to dismissal on grounds of the statute of limitations.

10. On September 19, 2003, the defendants' attorney, Mark D. Attorri, filed a Motion to Dismiss, based on the statute of limitations. On September 29, 2003, Mr. Runge filed an Objection arguing accident, mistake, or misfortune. Mr. Runge copied Ms. St. Onge on the Objection.

11. On October 7, 2003, the Court (Brennan, J.) granted the Motion to Dismiss.

12. On October 8, 2003, the Court mailed the dismissal Order to the parties.

13. By letter dated October 16, 2003, Mr. Runge wrote to Ms. St. Onge and enclosed a copy of the Court's order. In that letter, Mr. Runge wrote:

Enclosed please find a copy of the Court's Notice of Decision dated October 8, 2003, in the above listed matter. As you can see, the Court has granted the defendant's Motion to Dismiss for lack of service within the statute of limitations. Accordingly, your suit has been dismissed by the Court.

This is an unfortunate situation for which we do not see any recourse on your behalf. We understand that you will want to discuss this matter in greater detail. Accordingly, it would be appreciated if you could contact this office so that we may address your concerns.

14. Mr. Runge did not file a Motion to Reconsider on Ms. St. Onge's behalf, as he did not believe that a good faith basis existed to file such a motion.

15. Upon her receipt of the Court order, Ms. St. Onge consulted a different attorney. That attorney informed her that the deadline for filing a Motion to Reconsider had passed. See N.H. Super. Ct. R. 59-A (requiring motions to reconsider to be filed "within ten (10) days of the date on the clerk's written notice of the order or decision").

16. Thereafter, Mr. Runge filed a Notice of Appeal on Ms. St. Onge's behalf with the New Hampshire Supreme Court. By order dated December 29, 2003, the Court declined to accept Mr. Runge's appeal.

17. On Tuesday, July 15, 2003, Mr. Runge was aware that the three-year statute of limitations on Ms. St. Onge's claim would run on Friday, July 18, 2003.

18. Mr. Runge was also aware on that date that New Hampshire Superior Court Rule 2 permits alternative service of process of filing the writ in the appropriate Court.

19. Rather than file the writ on July 15, 16, or 17, 2003, Mr. Runge decided on July 15, 2003, to forward the writ to the sheriff for service. Mr. Runge did not hand-deliver the writ to the sheriff on July 15, 2003. Rather, Mr. Runge's office mailed the writ to the sheriff on that date.

20. After mailing the writ to the sheriff on July 15, 2003, Mr. Runge did nothing thereafter to ensure that service took place before July 18, 2003, the date on which the statute of limitations expired.

### **III. Rulings of Law**

The above facts having been affirmed, the Committee affirmed its conclusions that Respondent violated the following Rules of Professional Conduct by clear and convincing evidence:

#### **Rule 1.3 Diligence**

(a) A lawyer shall act with reasonable promptness and diligence in representing a client.

(b) Performance by a lawyer is prompt and diligent when:

(1) it is carried out in the manner and within the time parameters established by the agreement between the client and the lawyer; however, the lawyer may not rely on the terms of an agreement to excuse performance which is not prompt and diligent in light of changes in circumstances, known to the lawyer, which require adjustments to the agreed upon schedule of performance.

(2) in all other matters of representation, it is carried out with no avoidable harm to the client's interest nor to the lawyer-client relationship.

Respondent violated the diligence requirement set forth in Rule 1.3 when he failed to timely file the Writ on behalf of his client. The Committee concurred with the Hearing Panel's rejection of Respondent's argument that his actions in this case met the minimum standard of diligence required by the Rules. Here, the Respondent had every opportunity to ensure timely filing, four days in advance of the statute of limitations deadline. Respondent cannot shift responsibility to the Sheriff's Office, as ethical obligations under the Rules cannot be overcome by citing the negligence of others. Respondent could have met the deadline by simply filing the Writ with the Court when he sent it to the Sheriff's Office. Failing to do so, the client's cause of action was irretrievably lost. Respondent's action constitutes "avoidable harm to the client's interests" contemplated by Rule 1.3.

#### **Rule 1.4: Client Communications**

(a) A lawyer shall keep a client reasonably informed regarding the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain the legal and practical aspects of a matter and alternative courses of action to the extent that such explanation is reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A client is reasonably informed when information relevant to the protection of the client's interest is provided at an appropriate time and an appropriate manner.

The Hearing Panel found no ethical violation and no harm to the client with respect to this Rule, although it did find that Respondent's actions, given the circumstances, were "inattentive." The Committee disagrees and finds, by clear and convincing evidence, based on the Finding of Fact, that the Respondent violated Rule 1.4(a). Respondent did not inform the client until sometime after September 29, 2003, that her action was subject to dismissal on statute of limitation grounds, although he became aware of this fact as early as August 5, 2003. Respondent's rationales for the delay, including that he hoped opposing counsel "might not notice" and that he wished not to cause the client additional emotional turmoil unnecessarily, are unconvincing. Respondent's client was not informed of the failure to meet the statute of limitations until Respondent filed an Objection to the defendant's Motion to Dismiss. Respondent also did not inform his client of the Court's dismissal of her case in a timely enough manner to allow her to consider all options to protect her interests, including consulting a different attorney, within the deadline for filing a motion to reconsider.

#### **Rule 8.4(a): Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or to do so through the acts of another;

As the Committee has found violations of Rule 1.3 and Rule 1.4, it also necessarily finds a violation under Rule 8.4(a).

#### **IV. Sanction**

The Committee originally determined that the appropriate sanction in this case is a Public Censure, for the reasons stated in the April 5, 2006, decision.

Reconsideration requests are governed by Rule 37A(VI). Specifically, Rule 37A(VI)(a) requires a request to "state, with particular clarity, points of law or fact that the committee has overlooked or misapprehended ..."

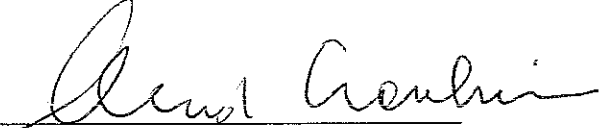
The Motion for Reconsideration asserts that the Committee erred in disagreeing with the Hearing Panel regarding the Rule 1.4. Deference is properly afforded a hearing panel when the case turns on issues of fact such that witness credibility is critical to the outcome of a case. Here, the facts were stipulated and so are not in dispute. The only dispute was which, if any, violation(s) could be found based on the stipulated facts. The Committee is not bound in such situations by the Hearing Panel's recommendations, but can exercise its own judgment. As the Committee did not find any points of law or fact that it had "overlooked or misapprehended," the Committee affirmed its decision on the appropriate sanction.

#### **V. Conclusion**

For the above reasons, the Professional Conduct Committee hereby issues this Public Censure of

Jeffrey A. Runge, for violating Rule 1.3, Rule 1.4(a), and Rule 8.4(a) of the New Hampshire Rules of Professional Conduct. Mr. Runge is assessed all costs associated with the investigation and prosecution of this matter, including all costs of reconsideration.

September 7, 2006

  
Alan J. Cronheim, Chair

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