

New Hampshire Supreme Court
Professional Conduct Committee

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Salomon, Craig N. advs. Bernice C. Billewicz # 03-072

PUBLIC CENSURE

On August 21, 2007, the Professional Conduct Committee deliberated the above-captioned matter on a Stipulation of Facts, Rules Violated and Sanction jointly proposed by Craig N. Salomon, Esquire through his counsel Russell F. Hilliard, Esquire, and Landya B. McCafferty, Disciplinary Counsel. The Professional Conduct Committee voted to accept the proposed Stipulation of Facts, Rules Violated and Sanction. Members present were Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Richard H. Darling, Gretchen Rule Hamel, Thomas P. Connair, Gerald A. Daley, James R. Martin, and David N. Page, Reporter. Alan J. Cronheim and David N. Cole were absent, Toni M. Gray, Vice Chair, was recused, and James J. Tenn, Jr., abstained.

I. FACTUAL FINDINGS

The Professional Conduct Committee has determined that the record supports the following Findings of Fact by clear and convincing evidence:

1. Mr. Salomon is an attorney licensed to practice law in New Hampshire. Mr. Salomon was admitted to practice in 1973. At times material to this proceeding, Mr. Salomon has utilized the following address: Law Office of Craig N. Salomon, 750 Exeter Road, Hampton, New Hampshire 03842. Mr. Salomon's current physical address is: 100 Woodland Road, North Hampton, New Hampshire 03862.
2. From August 2002 through July 2003, the Respondent, Craig N. Salomon, represented the Complainant, Bernice C. Billewicz, in a probate matter pending in Rockingham

County Probate Court. Mr. Salomon entered his Appearance in that matter on August 20, 2002.

3. Ms. Billewicz paid Mr. Salomon a total of \$8,751.51 in retainer fees over the course of the representation.
4. Specifically, Ms. Billewicz made the following payments to Mr. Salomon as retainers:

<u>Date</u>	<u>Amount</u>
08/20/02	\$2,000.00
11/20/02	\$2,000.00
01/22/03	\$2,000.00
04/21/03	\$2,751.51

5. At no time did Mr. Salomon deposit these retainer payments into a client trust account.
6. Mr. Salomon deposited each of the above retainer payments into his Operating Account at the Bank of New Hampshire, Account #902-9302249.
7. Each of Ms. Billewicz's retainer payments were advance payments for legal work Mr. Salomon had not yet performed. Mr. Salomon should have placed this money in a trust account rather than his operating account.
8. In or around May 2003, Ms. Billewicz determined that she no longer wished to have Mr. Salomon represent her. On May 30, 2003, Ms. Billewicz terminated Mr. Salomon's services.
9. Mr. Salomon concedes that each of Ms. Billewicz's retainer payments were advance payments for legal work Mr. Salomon had not yet performed. Mr. Salomon concedes that he should have placed this money in a trust account rather than his operating account.
10. Prior to his termination, the most recent invoice Mr. Salomon had sent to Ms. Billewicz was dated May 29, 2003. That invoice indicated that Ms. Billewicz had a credit of \$1,204.62.
11. By letter dated July 7, 2003, Ms. Billewicz requested a refund of her money. In that letter, Ms. Billewicz asserted that, in addition to the \$1,204.62 credit, Mr. Salomon

should refund her for what she deemed “unsatisfactory” service during the month of May 2003. Ms. Billewicz requested a total refund of \$1,390.47.

12. While Mr. Salomon disputed Ms. Billewicz’s entitlement to \$1,390.47, he did not dispute that, as of his termination, he was holding \$1,204.62 of Ms. Billewicz’s money.
13. By letter to the Professional Conduct Committee dated August 14, 2003, Ms. Billewicz made allegations of professional misconduct against Mr. Salomon.
14. On August 18, 2003, Mr. Salomon received a copy of Ms. Billewicz’s complaint letter. On that date, Mr. Salomon wrote Ms. Billewicz a check for \$1,204.62. The memo line of the check reads “retainer refund.” The check was not written on a trust account; it was written on Mr. Salomon’s second Operating Account at Bank of New Hampshire, Account #924-987929.

II. RULES VIOLATED

The Professional Conduct Committee has determined that the record supports the following Rule violations as stipulated, by clear and convincing evidence:

N.H. R. Prof. Conduct 1.15(a)(1), Supreme Court Rule 50(2)(B) and (C), and 8.4(a).

Rule 1.15(a)(1) and Sup. Ct. R. 50(2)(B) & (C):

Failure to Safeguard Client Property

15. Allegations set forth above are incorporated by reference.
16. Mr. Salomon failed to separate and safeguard the assets of Ms. Billewicz that he was holding in connection with his representation of her.
17. Specifically, Mr. Salomon placed all of Ms. Billewicz’s retainer amounts (totaling \$8,751.51) into his operating accounts rather than into a client trust account.
18. Each of Mr. Billewicz’s retainer payments were advance payments for legal work Mr. Salomon had not yet performed. Mr. Salomon should have placed this money in a trust account rather than his operating account.

19. By placing these funds into his operating account, Mr. Salomon commingled client funds with his own property and failed to safeguard client funds in a clearly designated client trust account.
20. There is clear and convincing evidence that Mr. Salomon's failures to safeguard Ms. Billewicz's property constitutes a violation of N.H. R. Prof. Conduct 1.15(a)(1), as well as N.H. Sup. Ct. R. 50(2)(B) and (C).

Rule 8.4(a): Misconduct

21. Because there exists clear and convincing evidence that Mr. Salomon violated the above rules, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

III. SANCTION

Having made the above findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is to adopt the stipulated sanction of a Public Censure.

The Committee agrees with Disciplinary Counsel that Mr. Salomon's handling of Mrs. Billewicz's money falls more into the realm of negligence, than the realm of intentional misconduct. As such, a Public Censure in this case is more appropriate than a suspension. (See Standards Section 4.13.)

The Committee notes that Mr. Salomon has a prior disciplinary history of a Warning dated June 16, 1998, a Public Censure dated May 24, 2005, and a Warning dated June 16, 2005. While this history is an aggravating factor, it is not of a nature to raise the baseline sanction of a Public Censure to a Suspension. Furthermore, Mr. Salomon's misconduct in the instant case pre-dates both the prior Public Censure and the 2005 Warning. Had Mr. Salomon committed the misconduct in the instant case after having received the Public Censure and Warning in 2005, a Suspension on the basis of his prior record might be appropriate. Under the circumstances of this case, however, The Committee agreed that a Public Censure is a more appropriate sanction.

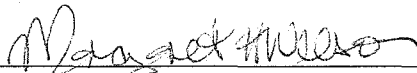
IV. COSTS

The Professional Conduct Committee orders Mr. Salomon to pay the expenses incurred by the Committee in the investigation and prosecution of this matter, as stipulated to by him.

V. CONCLUSION

For the above reasons, the Professional Conduct Committee issues a Public Censure to Craig N. Salomon for violating N.H. Prof. Conduct Rules 1.15(a)(1), Supreme Court Rule 50(2)(B)and (C), and 8.4(a).

September 28, 2007

By: 
Margaret H. Nelson, Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
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