

New Hampshire Supreme Court

Professional Conduct Committee

Margaret H. Nelson, Chair
Benette Pizzimenti, Vice Chair
Toni M. Gray,* Vice Chair
David N. Cole
Thomas P. Connair
Alan J. Cronheim
Gerald A. Daley*

4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
603-224-5828 ♦ Fax 228-9511

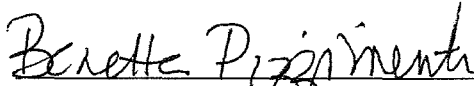
Richard H. Darling*
Gretchen Rule Hamel
James R. Martin
David N. Page*
James J. Tenn, Jr.
* non attorney member
Holly B. Fazzino, Admin. Coordinator

Salomon, Craig N. advs. David West # 05-104

PUBLIC CENSURE

On November 20, 2007, the Professional Conduct Committee, upon consideration, voted to grant the Motion to Permit Waiver of Hearings Committee Process, and voted to accept the Stipulation to a Public Censure, attached hereto and made part thereof.

November 20, 2007


Benette Pizzimenti, Vice Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
Craig N. Salomon, Esquire
File

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Salomon, Craig N.

advs.

David West

#05-104

STIPULATION

Disciplinary Counsel, Landya B. McCafferty, and Respondent, Craig N. Salomon, hereby submit this Stipulation in the above-referenced case.

I. Stipulation of Facts

1. Mr. Salomon is an attorney licensed to practice law in New Hampshire. Mr. Salomon was admitted to practice in 1973. At all times material to this proceeding, Mr. Salomon operated his law office as Salomon, Randlett & Bernard, 750 Exeter Road, Hampton, New Hampshire 03842. Mr. Salomon's current law firm address is: P.O. Box 427, North Hampton, New Hampshire 03862.
2. In the Fall of 1999, David West retained Arthur C. Randlett to represent him on a claim for damages relating to a chronic paint problem on his recently-purchased house.

3. Mr. West discovered Mr. Randlett through the local Yellow Pages advertisements.
4. In or about the Fall of 1999, Mr. Randlett shared office space at 750 Exeter Road in Hampton with two other attorneys, Mr. Salomon and H. Nina Bernard. They had no partnership agreement; rather, each agreed to pay a pro rata share of the overhead for the operational expenses of the office space.
5. In or about the Fall of 1999, Messrs. Randlett and Salomon and Ms. Bernard ran an advertisement in the Yellow Pages that consisted of a photo of the three of them together with the caption, "Salomon, Randlett & Bernard, Attorneys at Law." Nothing in the advertisement disclosed that they were simply sharing office space.
6. Upon seeing the advertisement, Mr. West reasonably concluded that Messrs. Randlett and Salomon and Ms. Bernard were in a law partnership or firm.
7. Mr. West did not have any prior knowledge or association with Mr. Randlett. In hiring Mr. Randlett, Mr. West believed that Mr. Randlett had two partners who supported and worked alongside him.
8. In a letter to Mr. West dated November 30, 1999, Mr. Randlett agreed to represent Mr. West and outlined the fee arrangement.
9. On December 15, 1999, Mr. West hired Mr. Randlett and paid him a \$2,500 retainer.

10. Throughout Mr. Randlett's representation of Mr. West, Mr. Randlett's letterhead bore the heading: "Salomon, Randlett & Bernard, Attorneys at Law."
11. Mr. Randlett signed his letters to Mr. West as follows: "Very truly yours, Salomon, Randlett & Bernard, Arthur C. Randlett."
12. Similarly, the sign outside Mr. Salomon's office read: "Salomon, Randlett & Bernard, Attorneys at Law."
13. From the Fall 1999 through February 2000, Messrs. Randlett and Salomon and Ms. Bernard shared a receptionist. She answered the phone for the three of them and identified the office to callers as "Salomon, Randlett & Bernard." On or about March 13, 2000, Ms. Bernard relocated her office. Thereafter, Messrs. Salomon and Randlett remained together in this office space as "Salomon & Randlett."
14. In or about May 2000, Mr. West and Mr. Randlett parted ways. As it turned out, Mr. West brought suit against Mr. Randlett, as well as Mr. Salomon and Ms. Bernard, for legal malpractice associated with Mr. Randlett's alleged negligent mishandling of Mr. West's claim. The lawsuit was dismissed on the basis that Mr. West's cause of action expired prior to his retaining Mr. Randlett; the dismissal was affirmed by the New Hampshire Supreme Court.
15. During the lawsuit, Mr. West learned that Messrs. Randlett and Salomon and Ms. Bernard were not, in fact, a legal partnership. Rather, they simply shared office space and expenses related thereto.

16. On or about March 27, 2003, Mr. Salomon discontinued his association with Mr. Randlett, who left the office space. Mr. Salomon remained at that location through October 2004.
17. In a letter dated July 20, 2005, Mr. West asserted allegations of professional misconduct against Mr. Salomon for, inter alia, having held himself out as a partnership or law firm when he was not in a partnership or firm with either Mr. Randlett or Ms. Bernard.

II. Stipulation as to Rules Violated

Rule 7.5(d): Implying a Partnership/Law Firm

18. Allegations set forth above are incorporated by reference.
19. Under Rule 7.5(d), Mr. Salomon had a duty to “imply that [he] practice[s] in a partnership or other organization only when that is the fact.”
20. From the Fall of 1999 through February 2000, Mr. Salomon shared office space and overhead expenses with Mr. Randlett and Ms. Bernard. Mr. Salomon never entered into a law partnership or firm agreement with Mr. Randlett and Ms. Bernard; nor did they ever share profits with one another.
21. Although Mr. Salomon was not, in fact, in a law partnership or firm with Mr. Randlett and Ms. Bernard during this time-frame, Mr. Salomon knowingly implied that he was in such a law partnership or firm with them in the following ways: (a) his business advertisement in the Yellow Pages (the name “Salomon, Randlett & Bernard, Attorneys at Law” alongside a photo of the three attorneys); (b) his business letterhead and

stationery of the same name; (c) his use of a shared secretary who identified Mr. Salomon's business to the public as "Salomon, Randlett & Bernard;" and (d) his business sign identifying itself as "Salomon, Randlett & Bernard, Attorneys at Law."

22. If proven by clear and convincing evidence, Mr. Salomon's conduct in this regard would constitute a violation of N.H. R. Prof. Conduct 7.5(d).

Rule 8.4(a): General Rule

23. 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. Stipulation as to Sanction

24. Disciplinary Counsel and Mr. Salomon jointly recommend a Public Censure as the appropriate sanction in this matter. A Public Censure would serve the purposes of attorney discipline.
25. Both case law in New Hampshire and the American Bar Association's Standards for Imposing Lawyer Sanctions (1992) ("Standards") support the conclusion that Mr. Salomon should be Publicly Censured. The purpose of the Court's disciplinary power "is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." E.g., Coffey's Case, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). "The sanction must take into account the severity of the misconduct." Id.

26. Although the Court has not adopted the Standards, it looks to them for guidance. Coffey's Case, 152 N.H. at 513. The Standards set forth a four part analysis for courts to consider in imposing sanctions: "(a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." Standards § 3.0; Coffey's Case, 152 N.H. at 513.
27. The first three steps create the framework for characterizing the misconduct and determining a baseline sanction. See Wolterbeek's Case, 152 N.H. 710, 714 (2005) ("In applying these factors, the first step is to categorize the respondent's misconduct and identify the appropriate sanction"). Once the baseline sanction is determined, the Court then looks to the fourth and final step in the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. See id. ("After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.").
28. Under the first prong of the analysis, Mr. Salomon violated his professional obligation to communicate accurately about the nature of his law practice.
29. The Standards next require analysis of both Mr. Salomon's state of mind and the injury caused by his misconduct.

30. With respect to Mr. Salomon's mental state, Mr. Salomon acted negligently concerning the misleading communications about his law practice and association with Mr. Randlett and Ms. Bernard. However, Mr. Salomon acted without any purposeful intent to harm or deceive.
31. The third prong of the analysis requires consideration of the potential or actual injury caused by Mr. Salomon's misconduct. Here, Mr. West would testify that he suffered actual harm as a result of Mr. Salomon's actions because he relied on the communications and advertising that implied that Mr. Randlett was in a partnership. Mr. West would testify that he would not have hired Mr. Randlett had he known Mr. Randlett was a solo practitioner.
32. It is not clear, however, how Mr. Salomon's conduct could have changed the end result in this case (i.e., the dismissal of Mr. West's lawsuit on the basis that the underlying cause of action had expired before Mr. West retained Mr. Randlett). Nonetheless, anytime an attorney engages in any sort of misleading advertisement, the public suffers potential harm and the integrity of the bar suffers actual harm.
33. Having analyzed the facts under the first three prongs of the test, the appropriate baseline sanction in this case falls somewhere between a Reprimand and a Public Censure. See Standards § 7.0.
34. The final step in the analysis, however, is to determine whether there are any aggravating and/or mitigating factors that affect the baseline sanction.

35. There are two mitigating factors and one aggravating factor. With respect to mitigation, Mr. Salomon has acknowledged his misconduct, accepted responsibility and cooperated fully with the disciplinary process. See Standards § 9.32(e). Additionally, while Mr. Salomon's misconduct was negligent, he was not motivated by dishonesty or deceit. See id. at § 9.32(b).
36. There is one significant aggravating factor in this case. Mr. Salomon has a prior disciplinary record (a copy of which is attached hereto as Exhibit A). Mr. Salomon's disciplinary history is as follows:
- March 25, 1998 Warning
 - May 24, 2005 Public Censure
 - June 16, 2005 Warning
 - September 28, 2007 Public Censure
37. With the exception of the 1998 Warning, Mr. Salomon's misconduct in the instant case pre-dates each sanction listed above.
38. None of Mr. Salomon's prior episodes of misconduct involve Rule 7.5. Nonetheless, the May 24, 2005 Public Censure involved a candor issue and Mr. Salomon's failure to disclose adverse material facts to a court under Rule 3.3(d). The instant misconduct involves a failure of communication as well, although not of an intentionally deceitful nature.
39. Clearly, a Reprimand would not be appropriate in light of Mr. Salomon's extensive prior record.

40. The question remains, however, whether Mr. Salomon's prior record is sufficient to increase the sanction from a Public Censure to a suspension.
41. A suspension is simply too great a sanction for misconduct constituting negligent communication, as occurred here. This is especially the case where Mr. Salomon's prior record involves dissimilar misconduct and, with the exception of the 1998 Warning, each of his prior sanctions predates the instant misconduct.
42. Having carefully considered Mr. Salomon's record as well as the underlying facts in this matter, Disciplinary Counsel has concluded that a Public Censure, rather than a suspension, is the appropriate sanction in this matter.
43. In sum, taking into consideration both the four part analysis recommended by the Standards, as well as the purposes of attorney discipline in New Hampshire, the appropriate sanction in this matter is a Public Censure.

IV. Stipulation as to Costs

44. Mr. Salomon agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

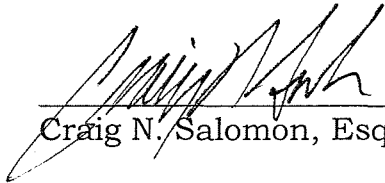
V. Effect of Stipulation

45. Mr. Salomon understands that by signing this Stipulation, he is hereby bound to the facts as stipulated. In the event that the Professional Conduct Committee does not agree with the Stipulation as to Rules

Violated and/or the Stipulation as to Sanction, Mr. Salomon is
nonetheless hereafter bound to the facts as stipulated.

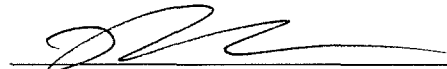
Respectfully submitted

Dated: October ~~29~~²⁹, 2007



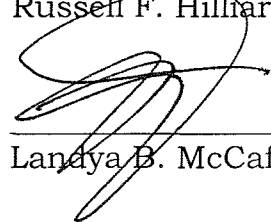
Craig N. Salomon, Esquire

Dated: October ~~31~~³¹, 2007



Counsel for Mr. Salomon
Russell F. Hilliard, Esquire

Dated: ~~October~~^{Nov} ~~2~~², 2007



Landya B. McCafferty, Disciplinary Counsel