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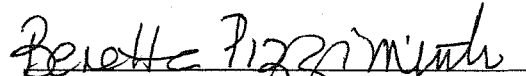
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*Sheedy, Timothy G. advs. Nicholas and Astrid Pishon # 05-089*

**REPRIMAND**

On November 20, 2007, the Professional Conduct Committee, upon consideration, granted the Motion to Permit Waiver of Hearings Committee Process, and voted to issue a Reprimand in the above-captioned matter on the basis of the Stipulation filed by the parties attached hereto and made part thereof.

November 20, 2007

  
Benette Pizzimenti, Vice Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel  
Shane R. Stewart, Esquire  
File

**NEW HAMPSHIRE SUPREME COURT**  
**PROFESSIONAL CONDUCT COMMITTEE**

Sheedy, Timothy G.

advs.

Nicholas and Astrid Pishon

#05-089

**STIPULATION**

Disciplinary Counsel, Landya B. McCafferty, and Respondent, Timothy G. Sheedy, hereby submit this Stipulation in the above-referenced case.

**I. Stipulation of Facts**

1. Mr. Sheedy is an attorney licensed to practice law in New Hampshire. Mr. Sheedy was admitted to practice on October 22, 1993. At all times material to this proceeding, Mr. Sheedy has been practicing law at Tarbell Professional Association, 45 Centre Street, Concord, New Hampshire 03301.
2. On October 6, 2004, Astrid F. and Nicholas E. Pishon (the Complainants) had a meeting with Mr. Sheedy to discuss their estate planning. The Pishons had a Will at that time but wanted to explore the possible benefits of using a trust instrument and otherwise updating their Will.

3. The Pishons were particularly interested in moving certain real estate holdings into a revocable trust to avoid probate.
4. During the meeting, the Pishons provided Mr. Sheedy with a copy of each of their Wills, codicils to both Wills, and additional personal and financial data pertaining to their situation. During the meeting, Mr. Sheedy accepted the paperwork the Pishons provided and made notes about their desires and concerns with respect to their familial relationships and familial issues.
5. One of the issues that surfaced at the meeting was whether the bank, which held the mortgage on the Pishons' real estate, would agree to allow the Pishons to put the real estate into a trust. The Pishons agreed to follow up on that issue.
6. In addition to discussing their estate planning issues at the October 6, 2004 meeting, the Pishons also sought Mr. Sheedy's counsel with respect to their son, Curtis Pishon, who, while working as a security guard at Seabrook on July 4, 2000, disappeared and has not been seen since. The Pishons were interested in finding out from Mr. Sheedy if there was any further information they could learn about their son's disappearance.
7. After the meeting, the Pishons obtained the bank's concurrence to move their real estate holdings into a trust. In a letter to Mr. Sheedy dated October 13, 2004, the Pishons informed Mr. Sheedy that the bank had approved the trust, and asked a series of follow-up questions with

respect to certain estate planning issues. With the October 13<sup>th</sup> letter, the Pishons enclosed a copy of certain documents, including the bank's written approval to put the properties into a trust.

8. Having received no response from Mr. Sheedy, on January 16, 2005, Mr. Pishon wrote the following in an email to Mr. Sheedy:

We had a meeting last October in your offices and had hoped to have heard from you by now. When may we expect to continue planning?

9. Mr. Sheedy had recommended to the Pishons that email was a good method of communication with him.
10. Still having received no response from Mr. Sheedy, on April 11, 2005, the Pishons sent a letter to Mr. Sheedy by certified mail, return receipt requested, as follows:

Since we have not been contacted in relation to our account since our initial meeting last October we request that our documents, and your notes relating thereto, be returned to us and that our account be closed. This will enable us to seek legal assistance elsewhere to resolve our continuing issues.

11. The return receipt indicated that Mr. Sheedy's law firm received the April 11<sup>th</sup> letter on April 12, 2005.
12. Having received no response from Mr. Sheedy, the Pishons, in a letter to the Attorney Discipline Office dated September 25, 2005, filed a formal complaint against Mr. Sheedy and again requested their file.
13. In a letter to Mr. Sheedy dated September 28, 2005, James L. DeHart, General Counsel of the New Hampshire Supreme Court Attorney

Discipline Office, forwarded to Mr. Sheedy a copy of the Pishons' complaint and requested his reply.

14. On or about September 30, 2005, Mr. Sheedy forwarded to the Pishons their complete file.
15. On or about October 28, 2005, Mr. Sheedy filed his written response to the Pishons' Attorney Discipline Office complaint.

## **II. Stipulation as to Rules Violated**

### **Rule 1.3(a): Lack of Diligence**

16. Allegations set forth above are incorporated by reference.
17. Mr. Sheedy had an attorney-client relationship with the Pishons from and after the initial meeting in Mr. Sheedy's office on October 6, 2004.
18. As explained above, following the October 6, 2004 meeting, through April 12, 2005, Mr. Sheedy failed to take any legal action on behalf of the Pishons.
19. Mr. Sheedy's failure to take any legal action on the Pishons' behalf during this time-frame constitutes a lack of diligence.
20. Mr. Sheedy's failure to act with reasonable promptness and diligence on the Pishons' behalf caused avoidable harm to their lawyer-client relationship.
21. Mr. Sheedy's failure to take legal action on the Pishons' behalf during this time-frame constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3(a).

**Rule 1.4(a)-(c): Failure to Communicate**

22. Allegations set forth above are incorporated by reference.
23. From their initial meeting on October 6, 2004, through April 12, 2005, the date on which the Pishons terminated their attorney-client relationship with Mr. Sheedy, Mr. Sheedy failed to communicate with the Pishons about their legal issues.
24. By failing to communicate with the Pishons, Mr. Sheedy failed to keep the Pishons reasonably informed regarding the status of their legal matters.
25. By failing to respond to the Pishons' October 13, 2004 letter, January 16, 2005 email, and April 11, 2005 letter, Mr. Sheedy failed to promptly comply with the Pishons' reasonable requests for information.
26. Mr. Sheedy's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a)-(c).

**Rule 1.16(d): Failure to Return File**

27. Allegations set forth above are incorporated by reference.
28. In two separate correspondences, one dated January 16 and the other dated April 11, 2005, the Pishons requested that Mr. Sheedy return their file to them.
29. Mr. Sheedy did not respond to those correspondences until September 28, 2005, after the Pishons filed their September 25, 2005, complaint with the Attorney Discipline Office against Mr. Sheedy.

30. Following the Pishons' January 16 and April 11, 2005, requests, Mr. Sheedy failed to ensure the return of the Pishons' file to them in a timely manner; Mr. Sheedy had erroneously believed the file had been returned to the Pishons shortly after receipt of their April 11, 2005 request.
31. Mr. Sheedy's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.16(d).

**Rule 8.4(a): General Rule**

32. Because there exists clear and convincing evidence that Mr. Sheedy 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**

33. Disciplinary Counsel and Mr. Sheedy jointly recommend a Reprimand as the appropriate sanction in this matter. A Reprimand would serve the purposes of attorney discipline.
34. Both case law in New Hampshire and the American Bar Association's Standards for Imposing Lawyer Sanctions (1992) ("Standards") support the conclusion that Mr. Sheedy should be Reprimanded. 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.

35. 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.
36. 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.").
37. Under the first prong of the analysis, Mr. Sheedy violated his obligations both to represent his clients diligently and to communicate properly with them.
38. To determine the baseline sanction, the Standards next require analysis of both Mr. Sheedy's state of mind and the injury caused by his misconduct.

39. With respect to Mr. Sheedy's mental state, the evidence is clear that Mr. Sheedy acted negligently rather than purposefully. For example, with respect to the return of the file, Mr. Sheedy incorrectly thought that the Pishons had received their file following their April 11, 2005, certified mail request. Mr. Sheedy concedes that it was his obligation to ensure the return of the file. Nonetheless, it is also true that his failure to comply with that obligation was unintentional.
40. The third prong of the analysis requires consideration of the potential or actual injury caused by Mr. Sheedy's misconduct.
41. Here, the Pishons certainly suffered unnecessary frustration and anxiety as a result of Mr. Sheedy's neglect toward their legal issues. It is not clear if the Pishons suffered any legal harm as a result of Mr. Sheedy's neglect. Whenever an attorney is neglectful toward his clients, however, the integrity of the profession suffers actual harm.
42. The section of the Standards that deals with a lawyer's diligence and communication obligations is Standard 4.4. That standard differentiates between a Reprimand and Public Censure based on whether and to what extent the attorney's negligence caused harm to the client.
43. Standard 4.43 states:

Reprimand<sup>1</sup> is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

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<sup>1</sup> Section 4.43 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

44. Standard 4.44 states:

Admonition<sup>2</sup> is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

45. While the Pishons no doubt suffered frustration and anxiety as a result of Mr. Sheedy's misconduct, this is not the type of harm that warrants the application of Standard 4.43.

46. Having characterized the misconduct and analyzed the facts under the first three prongs of the test, the appropriate baseline sanction in this case is a Reprimand rather than a Public Censure.

47. The final step in the analysis, however, is to determine whether there are any aggravating and/or mitigating factors that affect the baseline sanction.

48. There is one significant aggravating factor. Mr. Sheedy has a disciplinary history. On June 19, 2000, Mr. Sheedy received a Public Censure for conduct similar to that at issue here. See Exhibit A (a copy of Mr. Sheedy's disciplinary record is attached hereto).

49. Without any mitigation, there can be no question but that Mr. Sheedy's prior record should increase the baseline sanction to a Public Censure.

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<sup>2</sup> Section 6.14 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

50. However, there is significant and compelling mitigation in this case. Mr. Sheedy was suffering intense personal problems at the time of this misconduct.
51. Specifically, one month after Mr. Sheedy's initial meeting with the Pishons in his office, Mr. Sheedy's wife of almost nine years filed for divorce. The divorce involved adultery on the part of Mr. Sheedy's wife; the divorce was personally devastating to Mr. Sheedy. While Mr. Sheedy was dealing with his divorce, Mr. Sheedy's father was suffering from stage IV lung cancer. In January 2005, Mr. Sheedy also suffered from a serious health issue related to his heart, with the repercussions lasting through April of 2005. On May 22, 2005, approximately one month after the Pishons sent Mr. Sheedy their April 2005 certified letter, Mr. Sheedy's father died. Mr. Sheedy's father had lived in Pennsylvania, and during his illness, Mr. Sheedy had been traveling to and from Pennsylvania to visit and care for him.
52. While Mr. Sheedy's prior discipline record warrants serious attention by the Committee, the mitigation in this case is more compelling and should be given greater weight in the final sanction analysis.
53. Additionally, there are several other mitigating factors: Mr. Sheedy has been cooperative and forthcoming throughout this process, see Standard 9.32(c); his misconduct was neither deceitful nor selfish, see id. 9.32(b); he has devoted a great deal of his time as a volunteer for local charities, including his present service as Chairman of the Board of Directors for

the New Hampshire Chapter of the March of Dimes, on whose Board he has served for approximately ten years. See id. at 9.32(g).

54. In light of the nature of the underlying misconduct as well as the compelling mitigation, a Reprimand is the most appropriate sanction in this case.
55. 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 Reprimand.

**IV. Stipulation as to Costs**

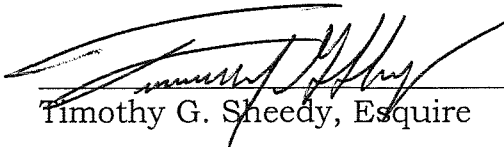
56. Mr. Sheedy agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

**V. Effect of Stipulation**

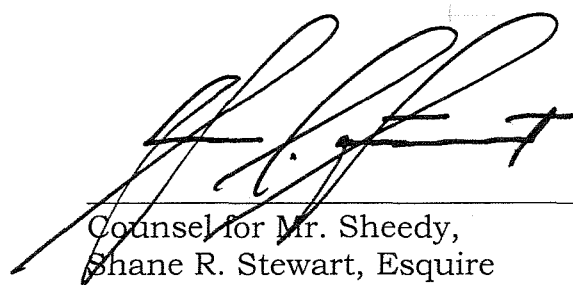
57. Mr. Sheedy understands that by signing this Stipulation, he is hereby bound to the facts as stipulated. In the event that the Professional Conduct Committee does not agree with the Stipulation as to Rules Violated and/or the Stipulation as to Sanction, the Respondent is nonetheless hereafter bound to the facts as stipulated.

Respectfully submitted

Dated: October 23, 2007

  
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Timothy G. Sheedy, Esquire

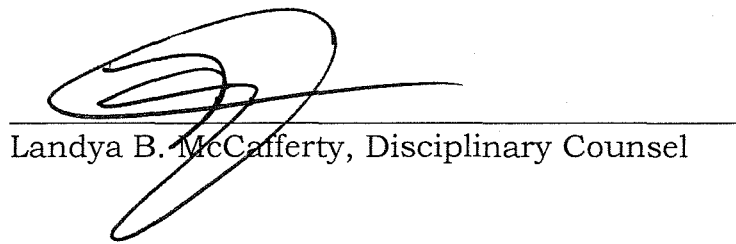
Dated: October 23, 2007



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Counsel for Mr. Sheedy,  
Shane R. Stewart, Esquire

Dated: October 25, 2007



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Landya B. McCafferty, Disciplinary Counsel

## THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

O R D E RLD-98-012, In the Matter of Timothy G. Sheedy

The court finds that Timothy G. Sheedy has violated the following Rules of Professional Conduct:

- (a) Rule 1.1(a) by failing to associate or consult with another lawyer who possessed the skill and knowledge required to assure competent representation;
- (b) Rule 1.1(c)(4) by failing to undertake actions on behalf of his client in a timely and effective manner;
- (c) Rule 1.3 by failing to act with reasonable promptness and diligence in the representation of his client;
- (d) Rule 3.4(c) by knowingly disobeying the obligations to make account filings as ordered by the probate court and having failed to file any motions for relief therefrom; and
- (e) Rule 8.4(a) by violating provisions of the Rules of Professional Conduct.

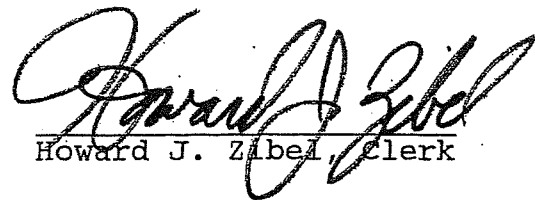
Timothy G. Sheedy is hereby publicly censured for violating Rules of Professional Conduct 1.1(a), 1.1(c)(4), 1.3, 3.4(c), and 8.4(a).

Timothy G. Sheedy is hereby assessed all expenses incurred by the professional conduct committee in the investigation and prosecution of this matter.

Brock, C.J., and Horton and Broderick, JJ., did not participate; Groff, Mangones, and Mohl, JJ., superior court justices, participated by special assignment under RSA 490:3.

Date: June 19, 2000

ATTEST:



Howard J. Zibel, Clerk