

New Hampshire Supreme Court

Professional Conduct Committee

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Walsh, Thomas M. advs. Attorney Discipline Office # 05-107

Recommendation for Disbarment

On October 17, 2006, the Professional Conduct Committee deliberated the above-referenced matter. Members present were Margaret H. Nelson, Chair, Benette Pizzimenti, Ellen L. Arnold, David N. Cole, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling, Reporter, Gretchen Rule Hamel and James R. Martin. Toni M. Gray and David N. Page were absent.

Having reviewed the Record, including the Notice of Charges, Disciplinary Counsel's Proposed Findings of Fact and Rulings of Law and Request for Costs, Disciplinary Counsel's Memorandum on Sanction: Disbarment, Disciplinary Counsel's discovery file, various correspondence including a letter from Mr. Walsh dated July 28, 2006, indicating that he did not plan to participate in the proceedings before the Hearing Panel, and Transcript of the July 28, 2006, hearing before the Hearing Panel, the Professional Conduct Committee makes factual findings and rulings as detailed below:

FACTUAL FINDINGS

The Professional Conduct Committee, upon consideration and review of the Hearing Panel Report, determined that the record supports the following findings of fact by clear and convincing evidence:

Mr. Walsh is licensed to practice law in New Hampshire, and was admitted to practice in 1987. At all times material to this proceeding, Mr. Walsh operated his law office at 870 Hall Street, Manchester, New Hampshire, 03104. The communication from Mr. Walsh described above and received on the morning of the hearing was or purported to be from this address.

Mr. Bilger Duruman is a dual citizen of Turkey and the United States. Mr. Duruman owns a condominium in Manchester, New Hampshire, but also maintains an address in Istanbul. Prior to the events described below, Mr. Walsh and Mr. Duruman had an attorney-client relationship. Mr. Walsh had represented Mr. Duruman on several real estate matters.

A Power of Attorney ("POA") dated January 14, 2004, which appears to contain Mr. Duruman's signature, appoints Mr. Walsh to conduct Mr. Duruman's affairs, including:

2. To mortgage, purchase, lease, negotiate, or otherwise acquire, upon such terms and for such consideration, as my said Attorney may deem proper, the real estate known as 140 Chase Way, Manchester, New Hampshire.
3. Without limiting the same, my said Attorney shall have the right to execute mortgages, promissory notes, affidavits and all other documents which as the case may be, may be required to consummate such purchase, transfer, conveyance, refinance or mortgage activity.

The signature of Mr. Duruman on the POA was purportedly witnessed and notarized by Mr. Vincent J. Nardi. On January 30, 2004, Mr. Walsh, acting pursuant to the POA, obtained a loan in the amount of \$30,000.00 from Mr. Mark N. Plantier. The \$30,000.00 loan was evidenced by a

note and secured by a mortgage on Mr. Duruman's condominium in Manchester. Mr. Walsh signed the note and mortgage pursuant to the POA as Mr. Duruman's "power of attorney." In making the loan to Mr. Duruman, Mr. Plantier relied upon the POA that purportedly gave Mr. Walsh the authority to sign the note and mortgage on Mr. Duruman's behalf. In a "Note and Mortgage Modification Agreement" dated April 12, 2004, Mr. Walsh and Mr. Plantier increased the loan by \$25,000.00. Mr. Walsh signed the "Note and Mortgage Modification Agreement" as Mr. Duruman's "power of attorney" and pursuant to the POA. Mr. Plantier entered into the "Note and Mortgage Modification Agreement" in reliance upon Mr. Walsh's purported authority under the POA. As of April 12, 2004, Mr. Plantier had loaned Mr. Duruman a total of \$55,000.00, with Mr. Walsh acting pursuant to the POA.

In September, 2005, the loan went into default, and Mr. Plantier sent Mr. Duruman a foreclosure notice. This was the first time Mr. Duruman learned of the existence of the \$55,000.00 loan and mortgage. Mr. Duruman received no disbursements from the \$55,000.00 loan, and until the foreclosure notice, was unaware of its existence.

Mr. Duruman did not sign the POA, and did not grant Mr. Walsh the authority to sign documents on his behalf. After receiving the foreclosure notice, Mr. Duruman contacted Mr. Walsh about this matter. In a handwritten note dated September 12, 2005, Mr. Walsh wrote to Mr. Duruman:

"Bilger

This is to verify that you do not owe anything on this mortgage and it is not your mortgage.

Thomas Walsh
9/12/05"

In a handwritten note dated the following day, September 13, 2005, Mr. Walsh wrote to Mr.

Duruman: "Dear Bilger:

Sorry about the mortgage of \$55,000.00. It is being removed and has nothing to do with you. You do not owe anything to Mark Plantier. I will clear this through Mark Plantier and John Allen.

This will verify that you did not receive any money \$55,000 from Mr. Plantier or me. I apologize for the misunderstanding. Please tell your wife I will clear everything. You do not owe me or Mr. Plantier anything. Your friend & atty.

Tom Walsh"

In a letter dated December 12, 2005, the Attorney Discipline Office informed Mr. Walsh that it had docketed a complaint against him based upon the foregoing events (hereinafter "December 12, 2005, complaint"). The December 12, 2005, complaint informed Mr. Walsh that, pursuant to N.H. Sup. Ct. R. 37A(2)(a)(5)(C), Mr. Walsh was required to respond within 30 days. The Attorney Discipline Office received no response from Mr. Walsh and wrote to him again in a letter dated January 17, 2006. In that letter, the Attorney Discipline Office informed Mr. Walsh that he must give the matter his "**immediate** attention." (Emphasis in original.) The Attorney Discipline Office informed Mr. Walsh in that letter that his failure to respond to the December 12, 2005, complaint would result in a charge of failure to cooperate pursuant to N.H. R. Prof. Conduct 8.1(b). The Attorney Discipline Office included in that letter another copy of the December 12, 2005, complaint. With the exception of the communication received by Disciplinary Counsel on the day of the hearing, Mr. Walsh has not responded to the December

12, 2005, complaint. Mr. Walsh submitted a letter on July 28, 2006, informing Disciplinary Counsel that he did not plan to participate in the proceedings before the Hearing Panel, and announced his plan to seek to resign from the New Hampshire Bar Association.

RULINGS OF LAW

The Professional Conduct Committee, upon consideration and review of the Hearing Panel Report, determined that the record supports the following rulings of law by clear and convincing evidence:

Rule 8.1(b): Failure to Cooperate

1. As described in detail above, the Attorney Discipline Office informed Mr. Walsh in the December 12, 2005, complaint that it had docketed a complaint against him based upon the foregoing events.
2. The December 12, 2005, complaint informed Mr. Walsh that, pursuant to N.H. Sup. Ct. R. 37A(2)(a)(5)(C), Mr. Walsh was required to respond within 30 days.
3. The December 12, 2005, complaint was a lawful demand for information from a disciplinary authority.
4. Mr. Walsh never responded to the December 12, 2005, complaint from the Attorney Discipline Office. Indeed, as the letter received on the day of the hearing evidences, Mr. Walsh was aware of the proceedings and appears to have deliberately neglected his duty to respond to a lawful demand for information from the ADO.

5. The Panel believes that Mr. Walsh's failure to respond to the December 12, 2005, complaint constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.1(b).

Rule 8.4(b): Criminal Act

6. As described in detail in the Panel's recitation of the admitted facts, Mr. Walsh signed Mr. Duruman's name to the POA on or about January 14, 2004, without Mr. Duruman's knowledge or consent.
7. Mr. Walsh utilized this POA to consummate the two loans with Mr. Plantier.
8. Mr. Plantier believed that Mr. Walsh had Mr. Duruman's authority to act on behalf of Mr. Duruman, pursuant to the POA.
9. Mr. Plantier relied upon the validity of the POA to enter into the two loan agreements with Mr. Walsh.
10. The conduct set forth in the admitted facts demonstrates, by clear and convincing evidence in the Panel's judgment, that Mr. Walsh purposely presented the POA to Mr. Plantier as genuine, knowing that it had not been executed by his client, intending that Mr. Plantier would rely upon it, and thereafter received and accepted money in the amount of \$55,000 from Mr. Plantier knowing that Mr. Plantier was relying on the validity of the POA.
11. The Panel believes that Mr. Walsh's conduct constitutes clear and convincing evidence of the crime of forgery, RSA 638:1, a crime that reflects adversely on Mr. Walsh's honesty, truthfulness or fitness as a lawyer in violation of N.H. R. Prof. Conduct 8.4(b).

Rule 8.4(c): Fraud and Deceit

12. As described in detail above, Mr. Walsh signed Mr. Duruman's name to the POA without Mr. Duruman's knowledge or consent.
13. At the time that Mr. Walsh utilized the POA to consummate the two loans with Mr. Plantier, Mr. Walsh intended to defraud Mr. Plantier.
14. Mr. Plantier relied upon the POA to enter into the two loan agreements with Mr. Walsh.
15. Mr. Plantier believed that Mr. Walsh had Mr. Duruman's consent to act on behalf of Mr. Duruman pursuant to the POA.
16. In doing the above described acts, Mr. Walsh engaged in conduct involving or constituting acts of dishonesty, fraud, deceit or misrepresentation.
17. The Panel believes that Mr. Walsh's conduct constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(c).

Rule 8.4(a): Misconduct

18. The Panel also concludes that, in view of its conclusion that there exists clear and convincing evidence of violation of the aforementioned Rules, there is likewise necessarily clear and convincing evidence of a violation of Rule 8.4(a).

SANCTION

As the New Hampshire Supreme Court noted in *Coffey's Case*, 152 N.H.503, 513 (2005), "the sanction must take into account the severity of the misconduct." Both case law in New Hampshire and the American Bar Association's Standards For Imposing Sanctions (1992) ("Standards"), which our Supreme Court has looked to for guidance, support the conclusion that

Mr. Walsh should be disbarred from the practice of law, for conduct involving intentional fraud and misrepresentation, and criminal conduct reflecting adversely on his fitness to practice law. 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." Coffey's Case, 152 N.H. 503, 513 (2005) (internal quotation marks omitted).

Section 5.11 (a)-(b) of the Standards entitled "Failure to maintain personal integrity," is an applicable guideline for Mr. Walsh's misconduct. The evidence is clear and convincing that Mr. Walsh's acts of deceit were both knowing and intentional. Mr. Walsh acted with a dishonest and selfish motive in forging Mr. Duruman's name to the financial documents: Standards §9.22(b). The actual injury to Mr. Duruman was significant and the injury to the integrity of the New Hampshire Bar is substantial. Mr. Walsh also committed multiple offenses: Standards §9.22(d).

An aggravating factor in this case is that Mr. Walsh never responded to this complaint brought against him, nor did he answer, either in person or in writing, any of the communications sent to him by the Attorney Discipline Office. After numerous attempts to serve Mr. Walsh through the United States mail, on April 28, 2006, the respondent was served "In Hand" with a Notice of Charges by Hillsborough County Sheriff's Deputy Molloy. To date, the Attorney Discipline Office has not received an Answer to the Notice of Charges. Therefore, under N.H. Sup Ct. R 37A(III)(H)(3)(A), "the allegations set forth in the Notice of Charges shall be deemed to be admitted." Attorney Walsh has, in fact, expressly advised the Attorney Discipline Office that he did not plan to participate in this proceeding. His lack of cooperation in this process is

plainly an aggravating factor. No mitigating factors were presented for the Hearing Panel or the Committee's consideration: Standards §9.32(a).


CONCLUSION

For all of the above reasons, the Professional Conduct Committee hereby directs the Attorney Discipline Office to file a Petition seeking disbarment, based on the Rules violations set forth above, and the immediate interim suspension of Thomas M. Walsh due to public safety concerns. The Committee also directs the Attorney Discipline Office to make a referral to the Attorney General's Office. The Professional Conduct Committee also orders Mr. Walsh to pay all costs associated with the investigation and prosecution of this matter.

RIGHT TO APPEAL

Pursuant to Supreme Court Rule 37(A)(III)(d)(2)(D)(4)(A), Mr. Walsh has the right to appeal to the New Hampshire Supreme Court. See also Supreme Court Rule 37(3)(c), last paragraph.

October 25, 2006


Margaret H. Nelson
Chair

Distribution:

Landy B. McCafferty, Disciplinary Counsel
Thomas M. Walsh, Esquire
File