New Hampshire Supreme Court

**Professional Conduct Committee**

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**FINDINGS OF PROFESSIONAL MISCONDUCT**
**and**
**RECOMMENDATION FOR DISBARMENT**

On October 18, 2005, the Professional Conduct Committee heard oral argument in the above-referenced matter. Landya B. McCafferty, Disciplinary Counsel, appeared for the Attorney Discipline Office. Joseph F. Daschbach, Esquire, appeared on behalf of David A. Young, who was also present.

The Committee members hearing the matter included: Margaret H. Nelson, Chair; Benette Pizzimenti, Vice Chair; Toni M. Gray, Vice Chair; Gretchen Rule Hamel; James R. Martin; Stephen B. Stepanek; Eleanor Wm. Dahar, and David N. Page. Ms. Hamel did not participate in the deliberations. Those recused from the matter were: Alan J. Cronheim; David N. Cole, and Thomas P. Connair.

The Professional Conduct Committee thoroughly reviewed the record, including the Notice of Charges, the Answer, the Hearing Panel Reports dated July 29, 2005, (merits) and September 14, 2005 (sanction), transcript of the April 15, 2005, July 18, 19, 21, 2005, and September 2, 2005, hearings, and Memoranda. The Professional Conduct Committee makes factual findings and rulings as detailed below:

## I. FACTUAL FINDINGS

Disciplinary Counsel and Respondent stipulated to the following facts:

1. On September 28, 1998, Ms. LaClair brought suit in Sullivan County Superior Court (docket #98-C-064) against her former employer, Developmental Services of Sullivan County, Inc., and multiple other defendants (referred to collectively as "DSSC"), to recover for the injuries caused by a sexual assault ("the Superior Court case"). See Mr. Young's "Response to Notice of Charges" (hereinafter referred to simply as "Mr. Young's Response") at ¶ 3.
2. The sexual assault occurred on August 30, 1998. The perpetrator was a developmentally disabled client of DSSC ("Robert"). Ms. LaClair was employed, at the time of the assault, as a caregiver for DSSC. See Mr. Young's Response at ¶ 4.
3. Mr. Young represented Ms. LaClair in the Superior Court case, a related Worker's Compensation claim ("Worker's Comp. case"), and a related Whistleblower's Complaint filed with the New Hampshire Department of Labor. See Mr. Young's Response at ¶ 5.
4. In October 1999, Mr. Young reached a verbal agreement to settle the Worker's Comp. case for Ms. LaClair. The written settlement agreement was signed in December 1999. See Mr. Young's Response at ¶ 6.
5. The settlement amount in the Worker's Comp. case was $85,000.00. The settlement was paid in two installments: one in the amount of $15,000.00, disbursed to Mr. Young on December 23, 1999, and a second in the amount of $70,000.00, disbursed to Mr. Young on or about January 11, 2000. See Mr. Young's Response at ¶ 7.
6. The first disbursement on December 23, 1999, was not deposited into Mr. Young's trust account but was deposited into his law office operating account as "fees earned." See Mr. Young's Response at ¶ 8.
7. On January 11, 2000, Stacia Yonce, Mr. Young's then-bookkeeper, deposited the second disbursement into a trust account at Claremont Savings Bank, account

number 8218655 (hereinafter "CSB Trust Account"). See Mr. Young's Response at ¶ 9.

8. Prior to the settlement disbursements, Mr. Young advanced Ms. LaClair $7,700.00. See Mr. Young's Response at ¶ 10; Mr. Young's Deposition at p. 16.[1]

9. As of January 11, 2000, the CSB Trust Account had a balance of $70,200.00. See Mr. Young's Response at ¶ 11; Mr. Young's Deposition at p. 21.

10. On January 12, 2000, an additional deposit of $200.00 for an unidentified client was made into the CSB Trust Account. See Mr. Young's Response at ¶ 12.

11. As of January 12, 2000, Mr. Young was holding $70,000.00 in trust for Ms. LaClair, and $400.00 for other(s). See Mr. Young's Response at ¶ 13; Mr. Young's Deposition at p. 22.

12. On January 16, 2000, Mr. Young disbursed $54,116.99 out of the CSB Trust Account to a different client (Mark Mais). This disbursement rendered Mr. Young's CSB Trust Account out-of-trust with respect to Ms. LaClair. To disburse this money to Mr. Mais, Mr. Young was necessarily using money belonging to Ms. LaClair. See Mr. Young's Response at ¶ 14; Mr. Young's Deposition at pp. 22-23.

13. On January 18, 2000, a deposit of $78,000.00 was made to Mr. Young's CSB Trust Account, presumably a settlement deposit related to Mr. Mais. See Mr. Young's Response at ¶ 15.

14. On that same date, Mr. Young wrote a check to Ms. LaClair for $17,300.00. The memo line of that check reads "full settlement." See Mr. Young's Response at ¶ 16.

15. As of January 18, 2000, Mr. Young was holding a total of $41,500.00 from the Worker's Comp. case settlement in trust for Ms. LaClair in his CSB Trust Account. The $41,500.00 amount is computed as follows:

| | |
|---|---|
| $85,000.00 | (total settlement) |
| -$17,000.00 | (Mr. Young's legal fees) |
| -$ 7,700.00 | (Mr. Young's advances to Ms. LaClair) |

1 A copy of excerpts from Mr. Young's Deposition of June 8, 2005, are attached to this Stipulation. All excerpts are attached in sequential order by page number.

| | |
|---|---|
| -$17,300.00 | (1st disbursement to Ms. LaClair) |
| -$ 1,500.00 | (Medquest expert expense) |
| $41,500.00 | |

See Mr. Young's Deposition at pp. 25-30; Mr. Young's Deposition Exh. 14 at p. 1.

16. Between January 18 and February 23, 2000, Mr. Young made no further disbursements to Ms. LaClair nor any transfers from the CSB Trust Account to any other trust account for her benefit. As of February 23, 2000, Mr. Young's CSB Trust Account should have had a minimum balance (for the benefit solely of Ms. LaClair) of $41,500.00. As of February 23, 2000, Mr. Young's CSB Trust Account had a total balance of only $41,932.09. See Mr. Young's Deposition at pp. 30-31, 36.

17. On March 13, 2000, Mr. Young transferred $10,000.00 out of his CSB Trust Account into one of his operating accounts, a Fleet tax account. That left a balance of only $31,975.56 in Mr. Young's CSB Trust Account. This transfer rendered Mr. Young's CSB Trust Account out-of-trust for Ms. LaClair by a total of $9,524.44. See Mr. Young's Deposition at pp. 43; Mr. Young's Deposition Exh. 14 at p. 1.

18. Also on March 13, 2000, Mr. Young transferred $30,000.00 out of his CSB Trust Account into his other operating account, a Fleet checking account. This transfer left a balance of only $1,975.56 in Mr. Young's CSB Trust Account. This transfer rendered Mr. Young's CSB Trust Account out-of-trust for Ms. LaClair as of March 13, 2000, by a total of $39,524.44. See Mr. Young's Deposition at pp. 43-46, 49; Mr. Young's Deposition Exh. 14 at p. 1.

19. Mr. Young maintained one other trust account during this time-period, a Fleet Bank IOLTA Account. However, from March 12 through March 31, 2000, there was a total balance in that account of only $100.94. See Mr. Young's Response at ¶ 21; Mr. Young's Deposition at pp. 50-51.

20. Mr. Young was not safeguarding Ms. LaClair's money in any other trust fund during this time period. See Mr. Young's Response at ¶ 22.

21. On April 3, 2000, Mr. Young transferred $3,500.00 of "LaClair Trust" money out of his Fleet checking account into his Fleet IOLTA account. In doing so, Mr. Young was refunding Ms. LaClair $2,000.00 of legal fees and a $1,500.00 Medquest expert expense. See Mr. Young's Deposition at pp. 51-52; Mr. Young's Deposition Exh. 14 at p. 2.

22. As of April 12, 2000, Mr. Young' s Fleet IOLTA account had a balance of $13,600.00. According to Mr. Young's records, only $3,500.00 of that amount was held in trust for Ms. LaClair. See Mr. Young's Deposition at pp. 53-55.

23. According to Mr. Young's records, the next banking transaction that involved Ms. LaClair's money occurred on April 13, 2000. On that date, several LaClair transactions occurred as follows:

- Mr. Young first transferred $10,000.00 out of his Fleet tax account (the same $10,000.00 of Ms. LaClair's money that Mr. Young had transferred out of the CSB Trust Account on March 13, 2000) into his Fleet checking account.

- Mr. Young then transferred $30,800.00 out of his Fleet checking account into his Fleet IOLTA Account.

- Mr. Young then wrote Ms. LaClair two checks from his Fleet IOLTA account, one for $35,000.00, and another for $10,000.00.

See Mr. Young's Response at ¶ 25; Mr. Young's Deposition at p. 56.

24. In sum, as of April 13, 2000, Mr. Young had disbursed to Ms. LaClair a total of $72,300.00 of the Worker's Comp. case settlement funds. Of the total settlement, Mr. Young had retained $15,000.00 for legal fees and $7,700.00 for prior advances to Ms. LaClair. This computes as follows:

| | |
|---|---|
| $85,000.00 | (total settlement) |
| -$15,000.00 | (legal fees) |
| -$ 7,700.00 | ("advances") |
| -$17,300.00 | (disbursement on 1/18/00) |
| -$45,000.00 | (disbursements on 4/13/00) |

The Professional Conduct Committee determined that the Record supports the following findings of fact by clear and convincing evidence:

25. On February 4, 2005, pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(2), the Attorney Discipline Office issued a Notice of Charges in this matter.

26. By letter dated April 17, 2000, and supplemental letters thereafter, Jodie LaClair-Roby ("Ms. LaClair") has asserted allegations of professional misconduct against David A. Young.

27. On September 28, 1998, Ms. LaClair brought suit in Sullivan County Superior Court (docket #98-C-064) against her former employer, Developmental Services of Sullivan County, Inc., and multiple other defendants (referred to collectively as "DSSC"), to recover for the injuries caused by a sexual assault ("the Superior Court case").

28. The sexual assault occurred on August 30, 1998. The perpetrator was a developmentally disabled client of DSSC ("Robert"). Ms. LaClair was employed, at the time of the assault, as a caregiver for DSSC.

29. Mr. Young represented Ms. LaClair in the Superior Court case, a related Worker's Compensation claim ("Worker's Comp. case"), and a related Whistleblower's Complaint filed with the New Hampshire Department of Labor (except Whistleblower Complaint).

30. On or about April 13, 2000, Ms. LaClair terminated her attorney-client relationship with Mr. Young. Thereafter, she hired David N. Cole and James L. Mulligan as successor co-counsel.

31. On April 17, 2000, Ms. LaClair filed the instant PCC complaint against Mr. Young.

32. Approximately one year later, on or about April 16, 2001, Mr. Young gave notice to Mr. Mulligan that he "intend[ed] to hold a lien on the interests of [his] former client Jodie LaClair in the amount of $45,000.00 against Jodie LaClair's interest" in the Superior Court case. See JS Exh. 1 at p. 169.

33. Despite numerous requests from Mr. Mulligan, Mr. Young failed to supply him with any documentation (invoices, or the like) to support Mr. Young's claim of a $45,000.00 lien on Ms. LaClair's money.

34. In a letter dated November 21, 2001, Mr. Young informed Mr. Mulligan that he intended to file a lawsuit against Ms. LaClair on the basis of what Mr. Young claimed was "fraud" on her part. See JS Exh. 8 at pp. 415-417. In that letter, Mr. Young included nine numbered paragraphs, setting forth the basis for his fraud lawsuit against Ms. LaClair. See id.

35. Mr. Young's central allegation against Ms. LaClair was that she had not been truthful about the sexual assault on her by "Robert," which assault formed the basis for her Worker's Comp. and Superior Court cases.

36. In paragraph 3 of Mr. Young's letter, he wrote:

> LaClair, at no time, informed Deb Dow, DSSC management, Chris Hohn, Heather Bressette, Cecilia Sardina or myself of any sexual overtones of the Collins attack. Only after discussions with Gordon did sexual acts all of a sudden become part of the causes of action. Upon learning from Hohn that he believed LaClair had made up the sexual attack, combined with Gordon's statements that he did not believe LaClair was being truthful, I and Julia Sciotto spoke with LaClair. LaClair agreed to a polygraph test to refute any allegation but soon after said she didn't need to take one, obviously leading me to doubt her truthfulness. The issues of LaClair's truthfulness about the attack and her knowing and willful participation in a fraud will be determined by a jury.

See JS Exh. 8 at p. 416.

37. On December 6, 2001, Mr. Mulligan filed a pleading in the Sullivan County Superior Court case entitled "Motion to Determine Attorney Lien." See JS Exh. 1 at pp. 169-173.

38. On December 14, 2001, Mr. Young responded by filing a pleading entitled "Objection to Plaintiff Jodie LaClair's Motion to Determine Attorney Lien and for Attorneys Fees Pursuant to Rule 57 & 59" (hereinafter "Mr. Young's Objection"). See JS Exh. 2 at pp. 174-180.

39. With respect to Mr. Young's attorney lien, he wrote:

> 2. Respondent did notice Attorney Mulligan that he was asserting a lien dated April 16, 2001. This lien was specifically intended to recover costs associated with his representation of Ms. LaClair prior to receiving a letter from Attorney Mulligan indicating that respondent was being replaced. These costs were specifically permitted under the terms of the fee agreement which was signed between LaClair and respondent.

See JS Exh. 2 at pp. 174-175.

40. In Mr. Young's Objection, he also included allegations that Ms. LaClair had not been truthful about the sexual assault which formed the basis of her lawsuits against DSSC. In Mr. Young's Objection, he wrote:

5. After the onset of the physical abuse case, respondent and co-counsel, Kenneth I. Gordon, worked with LaClair to develop the case. It was only after a meeting attended only by LaClair and Gordon did the instance of sexual abuse come to light.

6. Prior to that meeting, LaClair had not told her good friend, Heather Bressette, Chris Hohn, her boyfriend and soon to be fiancé, Deborah Dow, and her therapist (until after her conversation with Gordon), about any instance of sexual abuse by a resident of DSSC, only physical abuse. LaClair's initial and secondary incident reports failed to mention any sexual abuse by a resident of DSSC, only physical abuse. Further, after discussions with her mother, respondent learned that LaClair also did not inform her mother. Additionally, LaClair's boyfriend, Chris Hohn stated that LaClair never mentioned the sexual abuse incident to him initially and never discussed it with him until later in the process.

9. After LaClair and her fiancé, Hohn, broke off their relationship, allegations arose that she may have falsified statements about the assault. After these issues arose, paralegal Julia Sciotto, employee of the respondent, suggested that LaClair take a polygraph test on the issue of sexual assault or indicated that respondent would terminate his representation of LaClair. This was based on the risks of insurance fraud and potential falsification of records and respondent not wanting to represent her if she wasn't being truthful.

10. Respondent explained the consequences of these issues. LaClair initially stated she would take a polygraph examination, but shortly thereafter changed her mind and declined.

See JS Exh. 2 at pp. 175-176.

41. As a result of the allegations of fraud Mr. Young asserted against Ms. LaClair, on December 27, 2001, DSSC filed a pleading in the Superior Court case entitled, "Defendant's Motion to Rescind Settlement with Ms. LaClair and for Attorney's Fees." See JS Exh. 3 at pp. 181-198. Along with that pleading, DSSC attached eight exhibits. See JS Exh. 3. at pp. 181-217.

42. In that pleading, DSSC asserted that "if either the court or the Attorney General's office conclude that [Mr. Young's fraud allegations against Ms. LaClair] are true, then Ms. LaClair and/or [Mr. Young] have likely committed a felony under RSA 638:20, II & III, and the settlement agreement should be rescinded." See JS Exh. 3 at p. 182.

43. In paragraph 6 of DSSC's pleading, DSSC summarized the factual basis for its rescission request:

> 6. The following facts are drawn from either court documents signed by Attorney Young, sworn testimony of witnesses (who were clients of Attorney Young) or Attorney Young's sworn statements in his recent objection:
>
> a. The first writ in this case was dated September 28, 1998. It alleged that an incident took place on August 30, 1998 between Ms. LaClair and Robert. (See writ, paragraph 24, attached hereto as Exhibit A.)
>
> b. Attorney Young signed this writ. (See Exhibit A, page 9 of Declaration.)
>
> c. Paragraph 25 of the writ claims that Ms. LaClair was sexually assaulted. (See Exhibit A.)
>
> d. Attorney Young now claims that he first became aware of Ms. LaClair's claim of sexual abuse **after** the civil suit was initiated. (See paragraph 4 of recent objection, attached hereto as Exhibit B.)
>
> e. Attorney Young claims that Ms. LaClair also failed to mention her claims of sexual assault to Ms. Dow (among others) until after the civil lawsuit was filed. (See paragraph 6 of Exhibit B.)
>
> f. Attorney Young was present for the deposition of Ms. LaClair on December 12, 1999. On this date, Ms. LaClair testified that she immediately reported all of the details of her sexual assault to Ms. Dow. (See Exhibit C, Volume III of LaClair deposition, pages 388-390). At no time during this deposition did Attorney Young make any effort to clarify this testimony, which he now claims he knew was false.

g. Attorney Young was also present for the deposition of Ms. Dow. At the time of the deposition, she was either a present or former client of Attorney Young, as she was one of the "whistleblowers."

h. During this deposition, Ms. Dow agreed that Jodi told her that she was sexually assaulted by Robert within a day of the event. (See Exhibit D, Volume II of Dow deposition, pages 340-344.) Just like in the LaClair deposition, Attorney Young did nothing to clarify testimony he believed to be false.

i. Ms. LaClair's deposition continued through March 31, 2000, and at no time did Ms. LaClair or Attorney Young correct this apparently false testimony. (See Exhibit E, the cover sheet and page 532 of Volume V of Ms. LaClair's deposition.)

j. Attorney Young stated in his sworn statement that he was concerned enough about Ms. LaClair's veracity that his paralegal asked her to take a polygraph test. (See paragraph 9 of Exhibit B.) He stated that his [sic] happened before Ms. LaClair was hospitalized at the New Hampshire State Hospital. *Id.*

k. Ms. LaClair was only at the New Hampshire State Hospital once, and that was in late February or early March of 2000. (See Exhibit E, page 602)

l. Despite his grave concerns regarding the legitimacy of her claim, and his own liability for continuing to represent her, Attorney Young was present for the continuation of LaClair's deposition on both March 29, 2000 and March 31, 2000. (See Exhibit B and Exhibit E.)

m. Attorney Young did not withdraw until June 7, 2000. (See withdrawal, attached hereto as Exhibit F.)

See JS Exh. 3 at pp. 182-184.

44. In its concluding paragraphs, DSSC wrote:

> 19. This is likely a case of first impression for the court, as it is for the defendants. In his attempt to collect all or part of his fee, Attorney Young had made startling revelations regarding the conduct of his former client and himself, exposing each of them to criminal liability, and disclosing grounds upon which to rescind the settlement itself, which of course renders the fee issue moot.
>
> 20. The defense has little option but to pursue this course of action, particularly in light of the reporting requirements of RSA 417:28. Given the nature of Attorney Young's affidavit, if it is believed, the settlement should be rescinded and the defendant is entitled to the recovery of its attorney's fees pursuant to RSA 507:17, as this was a frivolous claim, forcing the expenditure of considerable time, expense and personal anguish upon the defendants.

See JS Exh. 3 at p. 187.

45. While the litigation related to DSSC's Motion to Rescind was pending, on January 6, 2002, Mr. Young and Ms. LaClair entered into a settlement agreement to resolve the attorney lien aspect of the litigation. See JS Exh. 8 at pp. 350-358.

46. As part of that settlement, Mr. Young and Ms. Sciotto drafted Affidavits addressing the precise question of their views of Ms. LaClair's truthfulness during Mr. Young's representation of her. See JS Exh. 8 at pp. 359-360. Both Affidavits are sworn to and dated January 7, 2002.

47. Mr. Young's Affidavit states:

> I David Young do hereby swear and affirm.
>
> At no time during or after my representation of LaClair have I found her testimony to be untruthful or intentionally misstated. After a romantic break up between LaClair and her then fiancé, LaClair's former fiancé made unsubstantiated allegations about LaClair. This was approx. March 2000 [sic] at this time I re-investigated the claims as filled [sic] in the complaint. I personally spoke with several witnesses, LaClair and staff members who had dealt with LaClair's file. At no time in my or Julia Sciotto's R.N. investigation did we determine that LaClair was not being truthful. After a requested polygraph test purely for the file, LaClair raised concerns with her prescription medication and asked Sciotto to

look into the drugs. Shortly after that due to discussions on payment of litigation costs LaClair changed counsel.

See JS Exh. 8 at p. 360.

48. Mr. Young did not file any subsequent pleading to correct these misrepresentations.

49. Following DSSC's "Motion to Rescind," the Court (Morrill, J.) permitted discovery on the issues raised therein. This discovery included Interrogatories propounded on Mr. Young by DSSC.

50. The Court's Order specifically instructed the parties to provide "complete and detailed answers to those interrogatories and originals of all the requested documents and records. Both shall certify under oath that they made a diligent and thorough search and that they know of no other documents and records that could be considered pertinent to defendants' requests." JS Exh. 7 at p. 253 (emphasis added).

51. Mr. Young submitted his sworn answers to those Interrogatories on March 25, 2002. See JS Exh. 8 at pp. 260-274.

52. On March 26, 2002, Mr. Mulligan felt the need to supplement Mr. Young's answers with a sworn "Addendum" and seven exhibits containing information within his possession that he deemed responsive to those Interrogatories. See JS Exh. 8.

53. Question 32 of the Interrogatories asked Mr. Young:

> 32. Please describe the terms of your agreement with Ms. LaClair to resolve your claim or assertion of a lien against the proceeds of her settlement with these defendants. In answering this question, please provide a copy of any and all documents relating to this agreement. Please state the extent to which you compromised your claim of lien. Please also state whether you made any promise, formally or informally, to assist Ms. LaClair in her efforts to object to defendants' Motion to Rescind. If your answer is in the affirmative, please describe in detail the nature of that agreement.

See JS Exh. 8 at p. 273.

54. Mr. Young's answer to Question #32 was as follows:

> **ANSWER:** The terms included good and valuable information that LaClair possessed specific to the actions of the Yonces and Gordon in withholding information from Young

> relating to approximately $900,000.00 in contingent fee cases.

See JS Exh. 8 at p. 273.

55. In his Addendum, Mr. Mulligan corrected the record with respect to Mr. Young's misleading answer to Question #32. See JS Exh. 8(b). Mr. Mulligan attached to his Addendum (as "Exhibit 6") a complete copy of Mr. Young's January 6, 2001, settlement agreement with Ms. LaClair together with related documents. See JS Exh. 8(b) at pp. 350-372. Mr. Mulligan included in Exhibit 6 both Mr. Young's and Ms. Sciotto's January 7, 2002, Affidavits. See JS Exh. 8 at pp. 359-360. (Except as to Mr. Young's answer being misleading.)

56. In Mr. Young's Objection, at paragraphs 5-6, Mr. Young states that Ms. LaClair delayed in disclosing the sexual aspect of the assault on her. See JS Exh. 2 at p. 175. Mr. Young falsely implied that Ms. LaClair first disclosed the sexual aspect of the assault only after a meeting she had with Attorney Kenneth Gordon, Mr. Young's co-counsel in the case.

57. At the time Mr. Young drafted his Objection, Mr. Young was at odds with Mr. Gordon, and Mr. Young blamed him for many of his problems. Mr. Young's suggestion that the sexual aspect of Ms. LaClair's assault was a result of Mr. Gordon's influence was false, and Mr. Young knew it was false at the time Mr. Young wrote his Objection.

58. In paragraph #6 of Mr. Young's Objection, he wrote:

> Prior to that meeting, LaClair had not told her good friend, Heather Bressette, Chris Hohn, her boyfriend and soon to be fiancé, Deborah Dow, and her therapist (until after her conversation with Gordon), about any instance of sexual abuse. LaClair's initial and secondary incident reports failed to mention any sexual abuse by a resident of DSSC, only physical abuse. . . .

See JS Exh. 2 at p. 175.

59. With respect to Deborah Dow (Ms. LaClair's supervisor at DSSC), Ms. LaClair's "therapist," and the incident reports, Mr. Young's assertion of delayed disclosure was false. As Ms. LaClair's attorney during the early stages of her cases, Mr. Young knew this statement was false at the time he wrote his Objection.

60. Several items in the record prove the falsity of Mr. Young's assertions with respect to what Mr. Young claimed were Ms. LaClair's delayed disclosures to Ms. Dow and Ms.

LaClair's therapist, as well as what Mr. Young claimed with respect to the incident report. (Except as to Young's claim re: incident report.)

61. With respect to Ms. Dow, DSSC attached to its Motion to Rescind relevant excerpts from her deposition. Those excerpts reveal that within three days after the date of the assault, Ms. LaClair disclosed to her the sexual nature of the assault. See JS Exh. 3 at pp. 208-209.

62. Specifically, at pages 341-42 of her April 11, 2000, deposition, Ms. Dow testified as follows:

> [Page 0341]
> . . .
>
> Q. Now, I am gathering, from what you said earlier, that Ms. LaClair filled you in on additional details that morning above and beyond what she told you the previous evening?
> A. She filled me in on a few.
> Q. What additional details?
> A. She was a little bit more descriptive in Robert's attack and the fact that he tried -- she told me, at that point, he tried to put his hand up her shorts. And I believe it took me approximately three days or so to get the entire story where she informed me that he had actually got his hands up her shorts and -- to touch her vagina. And so it took a total of about three days, I believe.
> Q. So it's your belief that, at least as of the next morning, Ms. LaClair did not tell you that Robert
>
> [Page 0342]
> vaginally penetrated her with his hands?
> A. I don't believe it was the next morning. I believe it was later on. We had many discussions and it took some time to get the whole story. . . .

See JS Exh. 3 at p. 208 (emphasis added).

63. With respect to Ms. LaClair's therapist, Mr. Mulligan attached Ms. LaClair's mental health records to his Addendum (at "Exhibit 5"). Those records reveal that on August 31, 1998, the day after the assault on Ms. LaClair, her therapist wrote:

> Client reported that she was assaulted by one of the clients in the Developmental Services group home where she works last night.

> Client talked about the events of the attempted rape, and said she was able to fend the man off after an hour long struggle.

See JS Exh. 8 at 278 (actual note at p. 346).

64. Ultimately, Judge Morrill denied DSSC's Motion to Rescind Settlement, finding several of Mr. Young's allegations concerning Ms. LaClair to be without merit.

65. With respect to paragraph 5 of Mr. Young's Objection, wherein Mr. Young suggested that Ms. LaClair first mentioned her sexual assault allegations only after speaking with Mr. Gordon, Judge Morrill found:

> I believe that Attorney Young's representation in paragraph 5 is either intentionally or accidentally misleading, but the suggest[ion] it raises is not supported by the evidence.

See JS Exh. 9 at p. 256.

66. With respect to paragraph 6 of Mr. Young's Objection, wherein Mr. Young asserted that Ms. LaClair had not spoken of the sexual nature of the assault to Ms. Dow and others, Judge Morrill concluded:

> Attorney Young's representation in paragraph 6 of his objection with respect to Deborah Dow misrepresents what he actually believed and knew to be the truth.

See JS Exh. 9 at p. 257.

## II. RULINGS OF LAW

Disciplinary Counsel and Respondent stipulated to the following Rule violations:

**Rule 1.15(a)(1) and Sup. Ct. R. 50(2)(C): Failure to Safeguard Client Property**

67. Mr. Young's bank records reveal, as explained more fully above, that Mr. Young was out-of-trust with respect to Ms. LaClair's Workers Comp. case settlement funds on a continuing basis from March 13 through April 13, 2000, the date of Mr. Young's final disbursements to her.

68. Mr. Young's bank records further reveal, as explained more fully above, that Mr. Young withdrew monies belonging to Ms. LaClair from his CSB Trust Account for the benefit of a different client (Mark Mais) and, on other occasions, for the benefit of himself. Mr.

Young transferred Ms. LaClair's funds to himself prior to earning those funds and without proper authorizations.

69. The aforementioned constitutes clear and convincing evidence of Mr. Young's failure to safeguard Ms. LaClair's property in violation of N.H. R. Prof. Conduct 1.15(a)(1), as well as Sup. Ct. R. 50(2)(C).

**Rule 1.15(a)(2) and Sup. Ct. R. 50(2)(A) & (F): Failure to Maintain Proper Records**

70. Mr. Young claims that when he wrote the two checks (totaling $40,000.00) on March 13, 2000, he relied upon a "false surplus" of that amount in his ledger. Had Mr. Young been properly reconciling his trust account bank statements with his ledger on a monthly basis, and properly maintaining his trust accounting system, this error would not have occurred.

71. Between March 13, 2000, when the checks totaling $40,000.00 were deposited in Mr. Young's operating and tax accounts until April 13, 2000, the date when Mr. Young disbursed these funds to Ms. LaClair, the funds were not spent by Mr. Young.

72. Between March 13, 2000, and April 13, 2000, Ms. LaClair was informed by William Yonce, a lawyer affiliated with Mr. Young, and by Stacia Yonce, his wife who had bookkeeping and accounting responsibilities for Mr. Young, that there were insufficient funds being held for her benefit.

73. From March 13, 2000, through April 13, 2000, neither Mr. Yonce nor Ms. Yonce advised Mr. Young of that fact, nor that they had discussed this matter with Ms. LaClair.

74. Mr. Young sued both Ms. Yonce and Mr. Yonce in the Vermont Superior Court alleging fraudulent conspiracy based upon facts related to these pending charges.

75. The case against Ms. Yonce was terminated when Ms. Yonce filed for personal bankruptcy in Vermont.

76. The case against Mr. Yonce was terminated when Mr. Yonce defaulted. Judgment was entered for Mr. Young in the amount of $212,550.00.

77. Mr. Yonce was disbarred by the Supreme Judicial Court of Massachusetts on January 20, 2004, after having been charged with co-mingling trust funds with personal or business funds and intentional misappropriation of settlement funds with the intent to deceive his

client. Mr. Yonce was subsequently disbarred in New Hampshire as a result of the Massachusetts disbarment.

78. The aforementioned constitutes clear and convincing evidence of Mr. Young's failure to keep proper accounting records in violation of N.H. R. Prof. Conduct 1.15(a)(2), as well as Sup. Ct. R. 50(2)(A) & (F).

**Rule 8.4(a): Misconduct**

79. In light of the above violations, there exists clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

The Professional Conduct Committee determined that the Record supports the following rulings of law by clear and convincing evidence:

80. In Mr. Young's Objection, and as explained in more detail above, Mr. Young made false and material statements impugning Ms. LaClair's veracity.

81. First, in paragraph 5 of Mr. Young's Objection, Mr. Young falsely stated that "[i]t was only after a meeting attended by LaClair and Gordon [that] the instance of sexual abuse came to light." Mr. Young knew this statement was false at the time he included it in his Objection. This statement was material because it impugned Ms. LaClair's veracity. See Bruzga's Case, 145 N.H. 62, 69-70 (2000) ("These findings [under Rule 3.3] are supported by a record that reveals that the respondent knowingly exaggerated facts and omitted material detail regarding the events underlying his allegations to a point of perverting the truth. Claiming Buck had abandoned her children and suffered a mental incapacity are serious allegations that should not have been made lightly. The respondent practiced law for two decades and handled numerous mental health and abuse and neglect matters. Thus, he was familiar with the triggering language which would likely cause the district court concern, and chose to distort the true nature of the material underlying events. The circumstances of this case amply support the finding that the respondent knowingly made a false statement of material fact or law to the district court and offered evidence through his affidavits that he knew to be false.") (emphasis added).

82. Second, in paragraph 6 of Mr. Young's Objection, Mr. Young falsely stated that prior to Ms. LaClair's meeting with Mr. Gordon, Ms. LaClair had not disclosed to her therapist or to Deborah Dow "any instance of sexual abuse by a resident of DSSC, only physical abuse." Mr. Young knew this statement was false at the time he included it in his Objection. This statement was material because it impugned Ms. LaClair's veracity. See Bruzga's Case, 145 N.H. at 69.

83. Mr. Young's false statements in his Objection constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(c).

84. Mr. Young's false statements in his Objection constitute clear and convincing evidence of false statements of material fact to a tribunal in violation of N.H. R. Prof. Conduct 3.3(a)(1).

85. Mr. Young knew these statements were false but he took no action to correct them. Mr. Young's failure to take remedial measures under these circumstances constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 3.3(a)(3).

86. Mr. Young's Objection contains numerous statements, as detailed above, that impugn Ms. LaClair's veracity with respect to her claim of having been sexually assaulted by Robert. Mr. Young's statements in this respect are consistent with Mr. Young's November 21, 2001, letter to Mr. Mulligan, in which Mr. Young asserted that he doubted Ms. LaClair's truthfulness and accused Ms. LaClair of a "knowing and willful participation in a fraud . . . ."

87. As explained in more detail above, Mr. Young's "threat to sue" letter to Mr. Mulligan dated November 21, 2001, contained false and misleading allegations against Ms. LaClair. Mr. Young falsely stated in that letter that Ms. LaClair "at no time, informed Deb Dow, DSSC management, Chris Hohn, Heather Bressette, Cecilia Sardina or [Mr. Young] of any sexual overtones of the Collins attack. Only after discussions with Gordon did sexual acts all of a sudden become part of the causes of action." Mr. Young knew this statement was false at the time he wrote this letter.

88. In that letter, Mr. Young also falsely accused Ms. LaClair of "knowing and willful participation in a fraud" based on what Mr. Young described as her having "made up the sexual attack," which assault served as the factual basis of her Workers Comp. and

Superior Court cases. Mr. Young knew these statements were false at the time he wrote this letter.

89. The false statements made in Mr. Young's November 21, 2001, letter to Mr. Mulligan constitutes clear and convincing evidence of conduct involving dishonesty, deceit and misrepresentation in violation of N.H. R. Prof. Conduct 8.4(c). Cf. Bruzga's Case, 145 N.H. at 69.

90. Because there exists clear and convincing evidence of violation of the aforementioned Rules, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

The above-listed Facts, having been found by clear and convincing evidence, and based on the Rulings of Law, also having been found by clear and convincing evidence, the Professional Conduct Committee concludes that there is clear and convincing evidence that Mr. Young has violated the following Rules of Professional Conduct and Supreme Court Rules:

N.H. R. Prof. Conduct 1.15(a)(1); Sup. Ct. R. 50(2)(C); N.H. R. Prof. Conduct 1.15(a)(2); Sup. Ct. R. 50(2)(A) and (F); N.H. R. Prof. Conduct: 8.4(a) (all by Stipulation dated July 12, 2005, Tab 16); 8.4(c); 3.3(a)(1), and 3.3(a)(3).

## III. ANALYSIS

Mr. Young made numerous intentional misrepresentations to the Court and to the Professional Conduct Committee investigating this matter. His actions were intended to, and did in fact, inflict substantial harm on his former client Ms. LaClair.

Mr. Young represented Ms. LaClair in the suit against the Department of Developmental Services of Sullivan County (DSSC) in connection with a sexual assault on Ms. LaClair by a developmentally disabled man for whom Ms. LaClair was assisting as a caretaker. In that action, Mr. Young made specific allegations concerning the sexual assault. (Tab 16, p. 192) In the Spring of 2000, before the case was resolved, Mr. Young was replaced as counsel by Ms. LaClair-Roby.

On November 21, 2001, while settlement of the DSSC action was pending, Mr. Young threatened to sue Ms. LaClair for fraud and alleged that Ms. LaClair had been untruthful concerning the assault (Tab 16, p. 416). Mr. Young made detailed allegations concerning Ms. LaClair's alleged fraud.

Mr. Mulligan, Ms. LaClair's new attorney, filed a Motion to Determine Attorney's Lien (Tab 16). Mr. Young filed a detailed objection to that motion and again alleged that Ms. LaClair had been untruthful about the sexual assault which formed the basis of her suit against DSSC (Tab 16, p. 175).

Having received Mr. Young's Objection, DSSC filed a Motion to Rescind the Settlement (Tab 16).

On April 1, 2002, Judge Morrill denied DSSC's Motion to Rescind, finding that there was no support for Mr. Young's allegation that Ms. LaClair had committed any fraud (Tab 16, p. 255). Specifically, Mr. Young alleged that there had, in fact, been, no "sexual assault" and that Ms. LaClair had not reported a sexual assault to her supervisor, Ms. Deborah Dow. Mr. Young then constructed a "house of cards" argument to the effect that while there had been "digital penetration" of Ms. LaClair, there had never been a "sexual assault" and that when he used the words "sexual assault" in the DSSC complaint, he did not mean "sexual assault" but "digital penetration."

Judge Morrill reviewed all of the evidence, including Mr. Young's deposition, answers to interrogatories and the full record before DSSC. Judge Morrill not only concluded that Mr. Young's assertions with respect to Ms. LaClair's credibility were without merit, but he found Mr. Young to lack credibility. "Attorney Young's representation in paragraph 6 of his [O]bjection with respect to Deborah Dow [Ms. LaClair's supervisor] misrepresents what he actually believed and knew to be the truth" (Tab 16, p. 257).

Counsel for Mr. Young called Judge Morrill as a witness as the Sanction Hearing on September 2, 2005, and, over the objection by Disciplinary Counsel, Judge Morrill interpreted and characterized his written order of April 1, 2002 (Tab 16, p. 257) and (Tab 28, pp. 104-116).

Counsel for Mr. Young relies on this testimony for the proposition that there was no offense in the proceedings before Judge Morrill to be reported to the Professional Conduct Committee and that Mr. Young was "overstating and exaggerating."

Whatever little probative value Judge Morrill's observations three years after the fact may have, the Professional Conduct Committee holds that the testimony is inadmissible under the deliberative process privilege. Judges cannot be subject to examination concerning their decisions or the judicial process would come to a stop. They would spend as much time testifying in collateral matters as they do on the bench. More importantly, the integrity of the judicial process, and specifically, the deliberative process must be protected. It was improper to propound these questions to Judge Morrill.

The United States Supreme Court in United States v. Morgan, (Morgan IV), 313 US 409 (1941) held in the context of examining the deliberative process of a member of the Executive: "Such an examination of a judge would be destructive of judicial responsibility." 313 US at 421.

In Fayerweather v. Ritch, 195 US 276, 306, 07 (1904), the Court held: "Tested by the rule thus laid down the testimony of the trial judge, given six years after the case had been disposed of, in respect to the matters he considered and passed upon, was obviously incompetent....[N]o testimony should be received except of open and tangible facts, -- matters which are susceptible to evidence on both sides. A judgment is a solemn record. Parties have a right to rely upon it. It should not lightly be disturbed, and ought never to be overthrown or limited by the oral testimony of a judge or juror of what he had in mind at the time of the decision." 195 US 307.

When the matter came before the Professional Conduct Committee, Mr. Young continued to misrepresent the facts and intentionally mischaracterized the complaint he had filed before the DSSC, claiming that when he wrote "sexual assault," he did not mean that. His misrepresentations continued throughout the hearings. The factual assertions in Mr. Young's letter of November 21, 2001, threatening to sue his former client, Ms. LaClair, and in his Objections filed before the DSSC, were found to be false (Tab 18, findings 67, 69 and 70).

When Mr. Young threatened to sue Ms. LaClair in a selfish effort to secure attorney's fees for himself, and in an effort to revoke the settlement between Ms. LaClair and DSSC, Mr. Young not only made accusations found by Judge Morrill to be false, but he attacked his former client, a woman whom he knew to be vulnerable, thus inflicting additional economic and emotional harm (Tab 27). Mr. Young had a duty of loyalty to his former client with respect to the matter on which he had recently represented her. *Sullivan County Regional Refuse Disposal District v. Acworth*, 141 N.H. 479 (1996): "[A]n attorney owes a duty of loyalty to a former client that prevents that attorney from attacking, or interpreting, work the attorney performed, as supervised, for the former client." 141 N.H. at 484. Mr. Young breached that duty by his dishonest acts for the purpose of selfish gain.

Mr. Young showed no remorse at any time, either in the matter before Judge Morrill or before the Professional Conduct Committee. To the contrary, he continued to concoct new and equally incredible interpretations of the words he had written in his original complaint against DSSC.

The Committee finds no mitigating factors. Aggravating factors include three prior findings of professional misconduct against Mr. Young: 99-049 (Reprimand, for the violation of Rules 1.1(a); 1.1(b)(4); 1.1(b)(5); 1.1(c)(1); 1.1(c)(4); 1.5(f), and 7.1); 00-N-048 (Reprimand, for the violation of Rules 1.5(a) and 8.4(c)), and 00-N-106 (Reprimand, for the violation of Rules 1.5 and 8.4(a)).

## IV. SANCTION

Having made the aforementioned findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is Disbarment. This sanction is in accord with the purposes of attorney discipline as described by the New Hampshire Supreme Court. *See, e.g., Feld's Case*, 149 N.H. 19, 28 (2002). This sanction is also in accord with the ABA Center for Professional Responsibility, *Standards for Imposing Lawyer Sanctions (1991). See e.g., Shillen's Case,* 149 N.H. 132, 139 (2003) (noting that, although the Court has never formally adopted these Standards, the Court has considered them when imposing sanctions).

Prior discipline is an aggravating factor. *Richmond's Case*, 152 N.H. 155 at 161 (2005). Dishonest and selfish conduct by Mr. Young justify disbarment. *Coffey's Case,* 152 N.H. ___, 880 A2d 403, 414 (2005); *Wolterbeek's Case*, 152 N.H. ___, 886 A2d 990 (October 21, 2005).

The ABA Standards for Imposing Lawyer Sanctions, although not formally adopted by the New Hampshire Supreme Court, are instructive in determining the appropriate sanction. Standards 5.1, 6.11, 6.21, 7.1, provide that disbarment is the appropriate sanction where a lawyer engages in conduct involving dishonesty, fraud, deceit or misrepresentation that seriously reflects on the lawyer's fitness to practice; when a lawyer, with the intent to deceive the court, makes a false statement and causes serious or potential injury to a party; when a lawyer violates a court rule with the intent to obtain benefit for the lawyer and causes serious actual or potential injury to a party or seriously interferes with a legal proceeding; when a lawyer, knowingly engages in conduct that violates a duty owed to the profession with the intent to obtain a benefit for the lawyer and causes serious actual or potential injury to a client, the public or the legal system.

Mr. Young's behavior in attacking his former client, Ms. LaClair, with statements he knew to be false, and in causing the DSSC to move to rescind the settlement based on his false assertions, all with the purpose of obtaining a financial benefit for himself, require disbarment. Mr. Young continued to repeat and reinforce his false assertions before the Professional Conduct Committee thus aggravating his prior offenses.

## V. CONCLUSION

For all of the above reasons, the Professional Conduct Committee recommends that David A. Young be disbarred from the practice of law for violating N.H. R. Prof. Conduct: 1.15(a)(1); 1.15(a)(2); 3.3(a)(1); 3.3(a)(3); 8.4(a), and 8.4(c), and Sup. Ct. R.: 50(2)(A); 50(2)(F), and 50(2)(C). The Professional Conduct Committee also recommends that Mr. Young be assessed all costs associated with the investigation and prosecution of this matter.

## VI. PETITION FOR DISBARMENT

After consideration of the appropriate sanction, the Professional Conduct Committee hereby directs Disciplinary Counsel to file a Petition with the New Hampshire Supreme Court seeking the disbarment of Attorney David A. Young.

January 27, 2006

By: Margaret Nelson
Margaret H. Nelson
Chair

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