

New Hampshire Supreme Court
Professional Conduct Committee

Margaret H. Nelson, Chair
Benette Pizzimenti, Vice Chair
Toni M. Gray,* Vice Chair
Susan R. Chollet*
David N. Cole
Thomas P. Connair
Alan J. Cronheim

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

Gerald A. Daley*
Richard H. Darling*
Gretchen Rule Hamel
James R. Martin
Marilyn Billings McNamara
* non attorney member
Holly B. Fazzino, Admin. Coordinator

Christy, Robert advs. Attorney Discipline Office # 08-017

PUBLIC CENSURE

On February 17, 2009, the Professional Conduct Committee (the “Committee”) deliberated the above-captioned matter. Members present included Benette Pizzimenti, Vice Chair and Chair of the matter, Toni M. Gray, Vice Chair, Susan R. Chollet, David N. Cole, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, Gretchen Rule Hamel, James R. Martin, and Marilyn Billings McNamara. Richard H. Darling was absent. Margaret H. Nelson was recused.

Having reviewed the record, including the Notice of Charges, Answer, and Stipulation as to Facts, Rules and Sanction, the Professional Conduct Committee made factual findings and rulings as detailed below. The Committee determined that it wished to hear Oral Argument on the issue of sanction. Accordingly, the Committee set the matter for Oral Argument to be held on March 17, 2009, and deferred ruling on sanction to that date.

The Respondent and Disciplinary Counsel (“ADO”) assented to, and the Committee voted to accept, the Assented-to Motion to Permit Waiver of Hearings Committee Process.

I. FINDINGS OF FACT

The Respondent and the ADO stipulated, and the Committee voted to accept the Stipulation (“Stipulation”) to the facts of this matter, which establishes the following facts by clear and convincing evidence:

1. Mr. Christy is an attorney licensed to practice law in New Hampshire. Mr. Christy was admitted to practice in 1959. At all times material to this proceeding, Mr. Christy was a semi-retired principal in the law office of Christy & Tessier, P.A., 37 Salmon Street, Manchester, New Hampshire 03104.
2. Mr. Christy and Thomas J. Tessier, have been together as principals in the same law office for over 40 years.
3. In or about August 1987, Frederick A. Jakobiec, M.D., retained Mr. Tessier to draft a will for him.
4. Dr. Jakobiec’s mother, Beatrice Jakobiec, was Mr. Tessier’s aunt. On May 11, 2001, at the age of 87, Beatrice died. She apparently died intestate.
5. On or about May 14, 2001, Dr. Jakobiec asked Mr. Tessier to handle Beatrice’s probate administration. At that time, Dr. Jakobiec was residing in Boston, Massachusetts. He was the Chief of Ophthalmology at the Massachusetts Eye and Ear Infirmary, and a tenured member of the faculty at Harvard Medical School. At all relevant times, Mr. Tessier informed Mr. Christy that Dr. Jakobiec was laboring under some sort of impairment and was no longer a practicing physician.
6. At the time of her death, Beatrice resided at 560 Candia Road in Manchester. She had only two heirs: her sons, Dr. Jakobiec and Thaddeus Jakobiec, Jr. (hereinafter referred to as “Thaddeus”).
7. Thaddeus had resided with his mother at the Candia Road property. Thaddeus has been completely blind since birth.

8. At the time of her death, Beatrice owned the Candia Road property with Dr. Jakobiec, as joint tenants with rights of survivorship.
9. In or about June 2002, Mr. Tessier filed the paperwork to administer the Estate of Beatrice Jakobiec, and, on June 26, 2002, the Hillsborough County Probate Court appointed him to administer her Estate. The Court assigned docket #2002-1201 to the Estate of Beatrice Jakobiec. The Beatrice Jakobiec Estate is hereinafter referred to as "the Estate."
10. From June 2002 through 2005, Mr. Tessier utilized his position as Administrator of the Estate to defraud the Court, the Estate, and the two beneficiaries of the Estate, Dr. Jakobiec and Thaddeus. Mr. Tessier's fraud included the creation of false affidavits and powers of attorney, which documents he later utilized to gain unauthorized access to Estate accounts and assets belonging to Dr. Jakobiec and Thaddeus. Not only did Mr. Tessier gain unauthorized access to funds belonging to others, but Mr. Tessier also misappropriated for his own personal use significant sums of Estate assets, and assets belonging to Dr. Jakobiec and Thaddeus.
11. Throughout Mr. Tessier's fraudulent scheme, Mr. Christy was unaware of Mr. Tessier's intent and actions.
12. Mr. Tessier was able to entangle Mr. Christy at various points in his fraudulent scheme.
13. The first occasion on which Mr. Christy became entangled in Mr. Tessier's fraudulent scheme occurred on June 24, 2002. Mr. Christy has no personal memory of this event but does not dispute the evidence that it occurred. On that date, Mr. Christy bore false witness to the signature and state of mind of Thaddeus Jakobiec on a "Durable Power of Attorney for Health Care." This document is hereinafter referred to as "POA1."
14. POA1 contains Mr. Christy's signature underneath the following paragraph:

I declare that the principal [Thaddeus]

appears to be of sound mind and free from duress at the time this durable power of attorney for health care is signed and that the principal has affirmed that he or she is aware of the nature of the document and is signing it freely and voluntarily.

15. Mr. Christy did not witness Thaddeus sign POA1.
16. Thaddeus Jakobiec never signed POA1.
17. The signature on POA1, purporting to be Thaddeus's signature, was a forgery undertaken by Mr. Tessier.
18. Mr. Christy was unaware of the forgery, but he was aware at the time that he placed his signature on POA1 as a "witness" that he was making a false statement: he had not witnessed Thaddeus's signature, nor had he assessed Thaddeus's state of mind.
19. The second occasion on which Mr. Christy became entangled in Mr. Tessier's fraudulent scheme occurred on March 18, 2003. On that date, Mr. Christy falsely notarized a document entitled "General Durable Power of Attorney (RSA 506:6)." This document is hereinafter referred to as "POA3." Before having engaged in the false notarization, Mr. Christy was persuaded by Mr. Tessier that there was urgency involved in the creation of POA3. Mr. Christy recalls that after the death of Beatrice Jakobiec, Mr. Tessier was very concerned about the welfare of her blind son, Thaddeus Jakobiec. Mr. Tessier told Mr. Christy that Frederick Jakobiec had suffered some kind of nervous breakdown and could not be located. Mr. Tessier and his brother, Michael Tessier, told Mr. Christy they went on an emergency basis to attempt to locate Frederick. When they returned, Mr. Tessier advised Mr. Christy that they had located Frederick, and he had signed the POA3. Mr. Christy notarized POA3 with the understanding that this would enable Thomas and Michael Tessier to provide assistance to Thaddeus.
20. POA3 granted Mr. Tessier "the fullest and broadest powers" to act for Dr. Jakobiec "in all matters. . . ."

21. Mr. Christy did not witness Dr. Jakobiec sign POA3.
22. Dr. Jakobiec never signed POA3. What appeared on POA3, purporting to be Dr. Jakobiec's signature, was a forgery undertaken by Mr. Tessier.
23. Mr. Tessier falsely informed Mr. Christy that Dr. Jakobiec had signed POA3 in Mr. Tessier's presence.
24. While Mr. Christy was unaware of the forgery, Mr. Christy was aware at the time that he placed his signature and notary seal on POA3 that he was making a false statement: Mr. Christy had not witnessed Dr. Jakobiec's signature on POA3.
25. As a consequence of POA3, Mr. Tessier was able to gain unauthorized access to, and misappropriate for his own personal use, a significant amount of Dr. Jakobiec's personal assets.
26. The third occasion on which Mr. Christy became entangled in Mr. Tessier's fraudulent scheme occurred on May 17, 2005. On that date, Mr. Christy falsely notarized another of Mr. Tessier's fraudulent powers of attorney.
27. The document is dated May 17, 2005, and it is entitled "Power of Attorney." The document purports to grant Mr. Tessier authority to act for Thaddeus in regard to the sale of the Candia Road property. This document is hereinafter referred to as "POA4."
28. Mr. Christy notarized Thaddeus's signature on POA4.
29. Thaddeus never signed POA4. What appears on POA4, purporting to be Thaddeus's signature, was a forgery undertaken by Mr. Tessier.
30. Mr. Tessier falsely informed Mr. Christy that Thaddeus had signed POA4 prior to Mr. Christy's notarization.
31. Mr. Christy was unaware of the forgery, but Mr. Christy was aware at the time that he placed his signature and notary seal on POA4 that he was making a false statement: he had not witnessed Thaddeus's signature on POA4.

32. As a consequence of POA4, Mr. Tessier was able to sell the Candia Road property without prior notice to the rightful owner, Dr. Jakobiec, and thereafter to gain unauthorized access to the proceeds of the sale, a significant portion of which Mr. Tessier misappropriated for his own personal use. Closing on the sale of the Candia Road property occurred at Mr. Tessier's law firm on May 24, 2005.

II. RULINGS OF LAW

The Respondent and the ADO stipulated, and the Committee voted to accept the Stipulation to the Rules of Professional Conduct that were violated. Therefore, the Committee finds the following violations of the N.H. Rules of Professional Conduct by clear and convincing evidence, described as follows in the Stipulation:

Rule 8.4(c): Dishonesty and Deceit

1. On June 24, 2002, Mr. Christy bore false witness to Thaddeus Jakobiec's signature and Thaddeus's state of mind on POA1.
2. On March 18, 2003, Mr. Christy falsely notarized Dr. Jakobiec's signature on POA3.
3. On May 17, 2005, Mr. Christy falsely notarized Thaddeus Jakobiec's signature on POA4.
4. In each of the three instances of deceit listed above, the three written representations, as witness and/or notary, were false.
5. The three instances, Mr. Christy made a false notarial act.
6. Mr. Christy's conduct as detailed above constitutes clear and convincing evidence of misrepresentation, a violation of N.H. R. Prof. Conduct 8.4(c).

Rule 8.4(a): General Rule

7. Because there is clear and convincing evidence that Mr. Christy violated the above rule, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

On March 17, 2009, the Committee heard Oral Argument and deliberated the matter with regard to sanction. Members present included Benette Pizzimenti, Vice Chair and Chair of the matter, Toni M. Gray, Vice Chair, Susan R. Chollet, David N. Cole, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling, Gretchen Rule Hamel, James R. Martin, and Marilyn Billings McNamara. Margaret H. Nelson was recused.

Landya B. McCafferty, Disciplinary Counsel, appeared for the Attorney Discipline Office. James Q. Shirley, Esquire, appeared on behalf of the Robert Christy, Esquire. Mr. Christy was also present. Oral presentations in support of Mr. Christy were made by David Nixon, Esquire, Vincent Wenners, Esquire, Joseph Michael McDonough, Esquire, and John Peltonen, Esquire.

III. ANALYSIS

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) (quotation omitted). "The sanction must take into account the severity of the misconduct." *Id.* Attorney discipline "is not intended as a mode of inflicting punishment for an offense." *Id.* at 512-13.

Although the Court has not adopted the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1992) (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.

The first three factors 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”). After 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. *Id.* (“After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.”).

Under the first prong of the analysis, Mr. Christy violated a duty to his profession to act with integrity and honesty. This is a fundamental duty.

The second prong requires analysis of Mr. Christy’s state of mind. Mr. Christy’s mental state is best characterized as knowing. Mr. Christy did not act with the purpose to deceive, and he did not initiate the notarial acts at issue in this case. However, Mr. Christy knew he acted improperly by notarizing documents in which he bore false witness to the signature and state of mind of the principal. On each occasion the acts were requested by Mr. Christy’s long-time partner and trusted friend, Mr. Tessier. Although Mr. Christy has a personal recollection of only one of the charged acts (POA3), he is confident that Mr. Tessier presented him with the same (or a similar) scenario on each occasion. The Committee underscores the importance of a notarial act as a substantive act and not a ministerial act.

The third prong of the analysis requires an examination of the harm caused by Mr. Christy’s misconduct. Using a “but for” causation analysis, the harm caused by Mr. Christy’s misconduct was substantial to the Estate of Ms. Jakobiec, Dr. Jakobiec’s personal finances, and the legal profession. POA3 enabled Mr. Tessier to gain access to, and to defalcate, enormous

sums of money belonging to the Estate and Dr. Jakobiec. This case provides a stark illustration of why the notarial act of witnessing a person's signature on a financial document such as a power of attorney is a critical legal requirement. Financial institutions relied on Mr. Christy's notarial seal in deciding to honor POA3. Thus, in a fundamental sense, Mr. Tessier's acts of theft could not have occurred without Mr. Christy's false notarial act. At the same time, although Mr. Christy's misconduct played a role in causing the harm, Mr. Christy's role was dwarfed by the intervening criminal actions of Mr. Tessier.

The applicable ABA Standard for a Rule 8.4(c) violation is *Standard* 5.1, entitled "Failure to Maintain Personal Integrity." In relevant part, that *Standard* provides:

- 5.11 Disbarment is generally appropriate when:
- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
 - (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
- 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard* 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
- 5.13 Reprimand¹ is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

¹ Section 5.13 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

5.14 Admonition² is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

Considering the facts in this case, Section 5.13 appears to be the most applicable. Mr. Christy "knowingly" engaged in conduct (false swearing) that involved misrepresentation, and his conduct "adversely reflect[ed]" on his fitness to practice law. Pursuant to § 5.13, a public censure is the appropriate baseline sanction.

With respect to aggravating factors, there is only one: Mr. Christy has substantial experience in the practice of law. *See Standards* § 9.22(i). At the time Mr. Christy falsely notarized and witnessed the documents in this case, Mr. Christy had been practicing law for over forty years. As an experienced lawyer Mr. Christy certainly knew that bearing false witness on a financial document is impermissible, even criminal. His experience should have deterred him from heeding the urgings of his partner. Although Mr. Christy's experience is a significant aggravating factor, it is not so compelling an aggravator, however, that it should raise a baseline sanction of public censure to suspension.

The mitigating factors in this case are numerous and each is compelling. First, Mr. Christy has no prior disciplinary record. *Standards* § 9.32(a). This is an especially powerful mitigator in light of Mr. Christy's otherwise unblemished forty year legal career. Second, Mr. Christy lacked a dishonest or selfish motive. *Id* § 9.32(b). Mr. Christy is 77 years old. He has enjoyed a first-rate reputation as a lawyer throughout his otherwise unblemished forty year legal career. *Id.* § 9.32(g). His career and reputation have now been significantly damaged as a result of his misconduct and his unfortunate relationship and association with Mr. Tessier.

² Section 5.14 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

The New Hampshire Supreme Court has repeatedly stated that punishment is not a goal of attorney discipline. *See, e.g., Grew's Case*, 156 N.H. 361, 365 (2007). Rather, the purposes of attorney discipline are primarily to restore public confidence and to protect the public. *See, e.g., id.*

Accordingly, the Committee concludes that the appropriate sanction in this matter is Public Censure.

Disciplinary Counsel and the Respondent have also stipulated that Public Censure is the appropriate discipline to be imposed in this matter, and Mr. Christy has agreed to pay all costs associated with the investigation and prosecution of this matter.

IV. SANCTION

It is the Committee's view that the public can be protected, public confidence in the Bar can be maintained, and the integrity of the legal profession can be preserved by imposing a Public Censure, with costs charged to the Respondent.

V. CONCLUSION

For all of the above reasons, the Professional Conduct Committee issues a Public Censure to Robert Christy for violating N.H. R. Prof. Conduct 8.4(c) and 8.4(a). Mr. Christy is also assessed all costs associated with the investigation and prosecution of this matter.

VI. RIGHT TO APPEAL

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

April 8, 2009

By: Benette Pizzimenti
Benette Pizzimenti
Vice Chair

c.c. Landya B. McCafferty, Disciplinary Counsel
James Q. Shirley, Esquire
File