

New Hampshire Supreme Court

Professional Conduct Committee

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Cormier, B. Michael advs. Joseph Bailey # 05-002

REPRIMAND

On May 20, 2008, the Professional Conduct Committee, upon consideration, granted Disciplinary Counsel's Motion to Consolidate and to Permit Waiver of Hearings Committee Process. The Committee voted to adopt the Stipulation dated May 3 and 7, 2008, in its entirety, attached hereto and made part thereof. The facts, allegations and Rule violations contained in said Stipulation are found by clear and convincing evidence. Mr. Cormier violated Rules 3.4(c) and 8.4(a) and is hereby reprimanded, and shall pay all costs associated with the investigation and prosecution of this matter.

May 20, 2008


Margaret H. Nelson, Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
B. Michael Cormier, Esquire
File

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Cormier, B. Michael

advs.

Joseph Bailey

#05-002

STIPULATION

Disciplinary Counsel, Landya B. McCafferty, Disciplinary Counsel, and Respondent, B. Michael Cormier, hereby submit this Stipulation in the above-referenced case.

I. Stipulation of Facts

1. Mr. Cormier is an attorney licensed to practice law in New Hampshire. Mr. Cormier was admitted to practice in 1991. At all times material to this proceeding, Mr. Cormier operated his law office as Law Office of B. Michael Cormier, 86 Summer Street, Haverhill, Massachusetts 01830-6199.
2. On or about January 13, 2004, Mr. Cormier filed an appearance on behalf of Joseph Bailey (the complainant) in a child custody case then pending in Rockingham County Superior Court.

3. The case was entitled: In the matter of Susan (Bailey) Desharnais and Joseph Bailey, docket #92-M-0389.
4. By way of background, Mr. Bailey and Ms. Desharnais were divorced by order dated December 2, 1997.
5. At all times relevant to this attorney discipline case, Mr. Bailey and Ms. Desharnais had two minor children: [REDACTED] (DOB: [REDACTED]) and [REDACTED] (DOB: [REDACTED]). They had joint legal custody of the children; Ms. Desharnais had primary physical custody of both children.
6. On or about June 2, 2003, Mr. Bailey filed a pro se "Motion for Modification" of his child support.
7. On or about August 18, 2003, Paula M. DeSaulnier, Esq., entered an appearance on Mr. Bailey's behalf, and represented him in the matter until January 6, 2004.
8. While Ms. DeSaulnier was representing Mr. Bailey, he filed a petition to modify and bring forward, seeking primary physical custody of his children.
9. On or about January 13, 2004, Mr. Cormier filed an appearance in the case on Mr. Bailey's behalf.
10. Mr. Cormier represented Mr. Bailey in the case for approximately one year thereafter.
11. On or about September 21, 2004, the Court scheduled a final hearing on the pending motions to modify orders on custody and support, to occur

- on December 6, 2004. Mr. Cormier, as counsel of record for Mr. Bailey, received a copy of the Court's scheduling order/notice.
12. On or about October 11, 2004, Mr. Cormier wrote a letter to Mr. Bailey explaining that he no longer wanted to represent him and would be filing a motion to withdraw. At or about that same time, Mr. Cormier spoke with Mr. Bailey on the telephone about his desire to withdraw.
 13. On or about November 3, 2004, Mr. Cormier filed a pleading entitled, "Withdrawal of Counsel." The pleading consisted of the following sentence: "TO THE CLERK: Please WITHDRAW my Appearance on behalf of Joseph Bailey in the above matter."
 14. Mr. Cormier did not file a motion to withdraw.
 15. On or about November 4, 2004, Mr. Bailey filed an appearance pro se.
 16. On or about November 17, 2004, Mr. Bailey filed a pro se Motion to Continue the December 6, 2004 hearing. Mr. Cormier was not copied on that Motion to Continue.
 17. In that motion, Mr. Bailey argued that he only recently had learned of the December 6th hearing date due to the fact that his counsel had not forwarded to him the hearing notice, and that he had not received a copy of his file from Mr. Cormier until November 17, 2004, the same day he filed his motion to continue.
 18. Mr. Cormier maintains that he made Mr. Bailey aware of the December 6 hearing date well in advance of the hearing date.

19. In an Order dated December 3, 2004, the Court ruled: "PLEASE NOTE: Case will proceed to hearing on December 6, 2004 at 9:30 a.m." The Court did not copy Mr. Cormier on the December 3rd Order.
20. On December 6, 2004, Mr. Bailey appeared at Rockingham County Superior Court. Mr. Cormier did not appear at the hearing. Ms. Desharnais was present with her counsel, Keri J. Marshall, Esq. The GAL, Nathan Weeks, was present.
21. Ms. Marshall and her client were prepared for the final hearing.
22. The court continued the hearing because Mr. Bailey appeared without his counsel of record, Mr. Cormier.
23. The Court Order dated December 16, 2004, states:

Following a hearing on December 6, 2004 at which Petitioner appeared with counsel and Respondent appeared pro se, the master recommends that the following decree be entered:

Counsel for Respondent filed a withdrawal of his representation of Respondent on November 5, 2004, having failed to observe the requirement of Rule 15, which states "(n)o attorney shall be permitted to withdraw his appearance in a case after the case has been assigned for trial or hearing, except upon motion to permit such withdrawal granted by the court for good cause shown, and on such terms as the court may order."

This matter was scheduled for hearing on December 6, 2004 by Pretrial Order issued by the court on September 29, 2004. Counsel for Respondent did not file a motion requesting leave to withdraw but merely notified the clerk's office more than one month after that he no longer represented Respondent.

The court was never asked to conduct a hearing or consider whether there was "good cause" for counsel to

withdraw, much less to impose any terms, since he failed to file the required motions.

Accordingly, Respondent's Motion to Continue must be GRANTED, but Attorney Cormier is herewith assessed Petitioner's reasonable attorney's fees, as well as the Guardian ad Litem's fees, incurred in attending the December 6, 2004 hearing.

This matter is rescheduled to January 12, 2005, at 9:30 AM.

The parties shall exchange proposed exhibits within 30 days.

II. Stipulation as to Rules Violated

Rule 3.4(c): Disobeying Rule of Tribunal

24. Allegations set forth above are incorporated by reference.
25. Superior Court Rule 15(d) provides:

. . . No attorney shall be permitted to withdraw his appearance in a case after the case has been assigned for trial or hearing, except upon motion to permit such withdrawal granted by the Court for good cause shown, and on such terms as the Court may order. Any motion to withdraw filed by counsel shall set forth the reason therefor but shall be effective only upon approval by the Court. A factor which may be considered by the Court in determining whether good cause for withdrawal has been shown is the client's failure to meet his or her financial obligations to pay for the attorney's services.
26. In this case, the December 6, 2004, trial date was scheduled by the Court in an Order dated September 28, 2004.
27. Mr. Cormier filed his "Withdrawal of Counsel" on or about November 3, 2004.

28. Mr. Cormier's "Withdrawal of Counsel" reflected Mr. Cormier's apparent intention to withdraw on the eve of trial. However, it did not seek leave of the Court or articulate any basis for finding "good cause" for withdrawal, as required under Superior Court Rule 15(d).
29. Prior to the December 6, 2004, trial, the Court had not granted, or otherwise ruled on, Mr. Cormier's November 3rd "Withdrawal of Counsel."
30. As of the December 6, 2004, trial date, Mr. Cormier was still counsel of record for Mr. Bailey.
31. Mr. Cormier failed to attend the December 6, 2004, hearing even though he was still counsel of record for Mr. Bailey.
32. The Court continued the trial date due to Mr. Cormier's failure to appear and over the objection of Ms. Marshall, whose client was fully prepared for trial.
33. In its Order dated December 16, 2004, the Court noted Mr. Cormier's failure to comply with Superior Court Rule 15, and ordered Mr. Cormier to pay both Ms. Marshall's attorney's fees and the GAL's fees associated with their attendance at the December 6th hearing.
34. Mr. Cormier's conduct as described herein constitutes a knowing failure to comply with Superior Court Rule 15(d).
35. Mr. Cormier's conduct as described above constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 3.4(c).

Rule 8.4(a): General Rule

36. Because there exists clear and convincing evidence that Mr. Cormier 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

37. Disciplinary Counsel and Mr. Cormier jointly recommend a reprimand as the appropriate sanction in this matter. A reprimand would serve the purposes of attorney discipline.
38. Both case law in New Hampshire and the American Bar Association's Standards for Imposing Lawyer Sanctions (1992) ("Standards") support the conclusion that Mr. Cormier 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.
39. 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.

40. 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.").
41. Under the first prong of the analysis, Mr. Cormier violated a duty to his client and to the profession to follow all rules of the court.
42. The Standards next require analysis of Mr. Cormier's state of mind. Mr. Cormier's state of mind was negligent rather than purposeful. Mr. Cormier understood that Mr. Bailey was in the process of hiring alternative counsel to represent Mr. Bailey at the December 6 hearing. Mr. Cormier failed to follow the proper procedure to withdraw from the case, but Mr. Cormier did not do so with any intent to cause harm to his client or in any way to undermine the judicial process.
43. The third prong of the analysis requires consideration of the actual or potential injury caused by Mr. Cormier's misconduct.

44. The potential harm to Mr. Bailey was significant. The Court could have forced Mr. Bailey to go forward at the hearing without a lawyer. Fortunately for both Mr. Bailey and Mr. Cormier, the Court did not do so.
45. Although the potential harm to Mr. Bailey was significant, Mr. Cormier's mental state weighs in favor of a minimum sanction.
46. Having characterized the misconduct, the appropriate baseline sanction in this case is a reprimand. A reprimand would address all four goals of attorney discipline in New Hampshire. See Coffey's Case, 152 N.H. at 513.
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 aggravating factor present in this case. Mr. Cormier has been a lawyer for over 15 years. Thus, he has substantial experience in the practice of law and should have known that he could not properly withdraw from a case in the manner he attempted to do so in Mr. Bailey's case.
49. There is also a significant mitigating factor here. Mr. Cormier has no prior disciplinary history. ABA Standards 9.32(a).
50. Weighing the aggravating factor alongside Mr. Cormier's mental state and his clean disciplinary record, a reprimand is the appropriate sanction.
51. 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


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

V. Effect of Stipulation

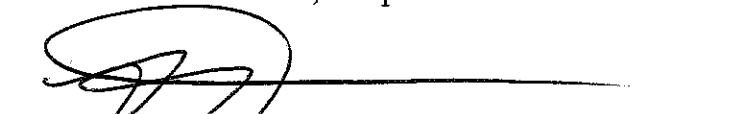
53. Mr. Cormier understands that by signing this Stipulation, he is hereby bound to the facts as stipulated. In the event that the Professional Conduct Committee does not agree with the Stipulation as to Rules Violated and/or the Stipulation as to Sanction, Mr. Cormier is nonetheless hereafter bound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

Respectfully submitted

Dated: ^{May} April 3, 2008


B. Michael Cormier, Esquire

Dated: ^{May 7} April __, 2008


Landya B. McCafferty, Disciplinary Counsel