

New Hampshire Supreme Court
Professional Conduct Committee

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Hand, Thomas P. Jr. advs. Jorgene F. Wiggin # 06-044

REPRIMAND

On April 21, 2009, the Professional Conduct Committee heard Oral Argument in the above captioned matter. James L. Kruse, Assistant Disciplinary Counsel, appeared for the Attorney Discipline Office, Thomas P. Hand, Jr., Esquire, appeared pro se. Ms. Jorgene F. Wiggin was also present. Members present included: Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair; Toni M. Gray, Vice Chair; Susan R. Chollet; David N. Cole via telephone; Alan J. Cronheim; Gerald A. Daley; Gretchen Rule Hamel and James R. Martin. Marilyn Billings McNamara and Thomas P. Connair were absent.

By Order dated March 20, 2009, the Committee previously voted to accept the parties' Stipulation of Facts which established those facts by clear and convincing evidence. The Findings of Facts are set forth below:

I. FINDINGS OF FACT

1. Respondent, Thomas P. Hand, Jr., Esq., is a New Hampshire attorney who was admitted to the bar on October 28, 1996. At times material to the captioned matter, Mr. Hand practiced law with his partner, Dale T. Swanson, Esq., at Swanson and Hand, PLLC, at 53 Main Street, P.O. Box 358, Newmarket, New Hampshire 03857.

2. The Complainant is Jorgene F. Wiggin of Milton, New Hampshire. Mrs. Wiggin filed a complaint on September 19, 2006, regarding errors made by Mr. Hand in preparing documents, Mr. Hand's failure to complete the services promised, and Mr. Hand's failure to communicate with Mrs. Wiggin or her successor counsel. The complaint was formally docketed on November 15, 2006. Mr. Hand responded on December 11, 2006.
3. On or about June 2, 2005, Mrs. Wiggin retained Mr. Hand to revise her estate planning documents and to effect property transfers in New Hampshire and California following the death of her husband in April 2005.
4. The estate planning documents were to include references to Mrs. Wiggin's children and to Mr. Wiggin's children from an earlier marriage. The estate plan also contemplated that property in New Hampshire and California, held by Mr. and Mrs. Wiggin, would be conveyed into Mrs. Wiggin's Revocable Living Trust.
5. At the end of June 2005, Mr. Hand completed the estate planning documents and the deeds required to transfer the aforesaid property. Mrs. Wiggin executed the documents prepared by Mr. Hand. She left the original, executed deeds with Mr. Hand to be recorded. Mrs. Wiggin also supplied Mr. Hand with certified copies of her husband's death certificate.
6. In consideration of the legal services rendered, Mr. Hand charged Mrs. Wiggin \$900. Mr. Hand charged an additional \$84.37 to cover recording and transfer fees associated with the real estate conveyances in New Hampshire (\$56.37) and in California (\$28). Mr. Hand requested that Mrs. Wiggin tender payment for services and fees with checks made payable to Thomas Hand, personally.
7. Mrs. Wiggin tendered a check dated June 10, 2005, made payable to Thomas Hand in the amount of \$956.37. Mrs. Wiggin also tendered a check dated June 30, 2005, made payable to Thomas Hand in the amount of \$28.

8. Mr. Hand endorsed the referenced checks from Mrs. Wiggin and retained the proceeds thereof. Mr. Hand did not make any record at the law firm of having provided legal services to and collected fees from Mrs. Wiggin.
9. Unbeknownst to Mrs. Wiggin, Mr. Hand did not record either of the referenced deeds.
10. On or about September 30, 2005, Mr. Hand left the Swanson and Hand law firm and went to work for Stewart Title of Northern New England, with a business address at 282 Corporate Drive, Portsmouth, New Hampshire.
11. When Mr. Hand left the Swanson and Hand law firm, he did not leave behind a complete file or record associated with matters relating to Mrs. Wiggin.
12. In or about December 2005, Mrs. Wiggin noticed an error in the estate planning documents prepared by Mr. Hand. The identities of the Mrs. Wiggin's children and Mr. Wiggin's children had been confused.
13. Upon discovery of the mistake in her estate planning documents, Mrs. Wiggin tried to reach Mr. Hand at the Swanson and Hand law office. She was advised that Mr. Hand had left the firm and that he had gone to work for Stewart Title of Northern New England. Mr. Swanson's staff provided Mrs. Wiggin with Mr. Hand's new business address and telephone number.
14. Mrs. Wiggin called Mr. Hand several times at the new business number and left messages, to which Mr. Hand did not respond.
15. Mrs. Wiggin eventually reached Mr. Hand at the new business number. She apprised Mr. Hand of the problem with her estate planning documents. Mr. Hand said he would check into the situation and call back. Mr. Hand did not contact Mrs. Wiggin after that conversation.
16. In or about February 2006, Mrs. Wiggin communicated with Mr. Swanson, Mr. Hand's former partner, who agreed to assist her in correcting the estate planning documents. Mr. Swanson corrected the error in the estate planning

documents and made other recommended revisions. He also determined that neither of the referenced deeds had been recorded.

17. On February 14, 2006, Mr. Swanson wrote to Mr. Hand at his new business address, requesting information about the location and recording of the referenced deeds. Mr. Swanson further noted that the firm law had no record of Mr. Hand having collected fees associated with the anticipated recording of deeds.
18. Mr. Hand received Mr. Swanson's letter of February 14, 2006. However, Mr. Hand did not respond.
19. In addition to revisions to Mrs. Wiggin's estate planning documents, Mr. Swanson, who had been unable to locate any of the documents prepared by Mr. Hand, prepared the necessary deeds and real estate transfer documents. By invoice dated March 23, 2006, Mrs. Wiggin was charged \$350 for these services.
20. In April 2006, Mr. Swanson located and searched a box of materials left behind by Mr. Hand and found the deed executed by Mrs. Wiggin in June 2005 to transfer the New Hampshire property into her Revocable Living Trust. The deed had not been recorded. Mr. Swanson recorded the deed in Strafford County Registry of Deeds and subsequently performed additional services associated with the real estate conveyances in California and New Hampshire for which he billed Mrs. Wiggin an additional \$228.39.
21. After learning of Mrs. Wiggin's complaint filed in this matter, Mr. Hand called Mrs. Wiggin to apologize. Mr. Hand also made restitution by paying for the additional legal expenses incurred by Mrs. Wiggin. Mr. Hand tendered checks in October and December 2006, for a total of \$350. In January and February 2007, following notice of additional costs incurred by Mrs. Wiggin, Mr. Hand made further restitution in the total amount of \$218. 39.

In its Order of March 20, 2009, the Committee also previously voted to accept the parties' Stipulation as to the violations of the Rules of Professional Conduct, which were established by

clear and convincing evidence. The Rules which the Respondent violated were: N.H. Rules of Professional Conduct 1.3: Diligence; Rule 1.4: Client Communication and Rule 8.4(a): Misconduct, as discussed further below:

II. RULINGS OF LAW

Rule 1.3: Diligence

22. Mr. Hand and Mrs. Wiggin had an attorney-client relationship from and after June 2005 when Mrs. Wiggin retained Mr. Hand to provide legal services in connection with her estate plan and real estate conveyances in New Hampshire and California.
23. Mr. Hand owed Mrs. Wiggin a duty to provide such legal services with reasonable promptness and diligence, and in such a manner as not to cause avoidable harm. N.H. R. Prof. Conduct 1.3 (a) and (b).
24. Mr. Hand breached his aforesaid duty by failing to record deeds effecting the transfer of title to property in New Hampshire and California.
25. Mr. Hand also breached his aforesaid duty by causing avoidable harm to Mrs. Wiggin. His failure to record the referenced deeds clouded Mrs. Wiggin's title in the subject real estate and undermined the intent and effectiveness of her estate plan.
26. There is clear and convincing evidence of Mr. Hand's aforesaid breaches of duty in violation of N.H. R. Prof. Conduct 1.3 (a) and (b).

Rule 1.4: Client Communications

27. Mr. Hand owed Mrs. Wiggin a duty to keep her reasonably informed regarding the status of the matter, to promptly respond to inquiries, and to promptly comply with reasonable requests for information. N.H. R. Prof. Conduct 1.4(a) and (c).

28. Mr. Hand breached said duty by failing promptly to respond to Mrs. Wiggin's inquiries and requests (including such inquiries and requests made on her behalf) regarding necessary corrections to estate planning documents and the location and recording of deeds.
29. There is clear and convincing evidence of Mr. Hand's aforesaid breaches in violation of N.H. R. Prof. Conduct 1.4(a) and (c).

Rule 8.4(a): General Rule

30. Because there is clear and convincing evidence of other violations as set forth herein, Mr. Hand has also violated N.H. R. Prof. Conduct 8.4(a)

III. ANALYSIS

In assessing the appropriate sanction in attorney discipline cases, the Committee must remain "mindful that the purpose of attorney discipline is not to inflict punishment, but rather to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *Grew's Case*, 156 N.H. 361, 365 (2007). Each attorney discipline case is judged on "its own facts and circumstances, taking into account the severity of the misconduct and any mitigating circumstances appearing in the record." *Id.*

In determining an appropriate sanction, the Committee looks for guidance to the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*"). *Id.* The *Standards* set forth a four part analysis for the Committee 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. *Standard 3.0*; *Grew's Case*, 156 N.H. at 365.

The first three steps create the framework for characterizing the misconduct and determining a baseline sanction. *See, e.g., 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, e.g., id.* (“After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.”).

Under the first two prongs of the analysis, the Committee found that Mr. Hand’s violations were a knowing and negligent breach of duties to provide diligent representation and to communicate with his client.

Under the third prong of the analysis, the Committee found the potential harm to his client’s interests in both New Hampshire and California real estate, by not promptly recording the subject deeds. The baseline sanction is best described in the *Standards* as Section 4.44:

Admonition¹ is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

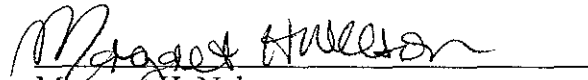
The Committee did not identify any aggravating factors in this case. Mitigating factors include Mr. Hand’s remorse, and an absence of a prior disciplinary record.

IV. SANCTION

Taking these factors into consideration, and the purposes of attorney discipline in New Hampshire, the Committee voted to impose a Reprimand in this matter. The Committee voted to accept the Stipulation that Mr. Hand shall pay all costs associated with the investigation and prosecution of this matter.

¹ Section 4.44 uses the term “Admonition.” The most analogous sanction in New Hampshire is a Reprimand.

May 5, 2009


Margaret H. Nelson
Chair

Distribution:

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File