

New Hampshire Supreme Court

Professional Conduct Committee

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Benette Pizzimenti, Vice Chair
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Nadeau, James P. Jr. advs. William F. Becksted # 04-048

Public Censure

On October 21, 2008, the Professional Conduct Committee deliberated the above referenced matter. The Professional Conduct Committee consisted of Margaret H. Nelson, Chair (by phone), Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Thomas P. Connair, David N. Cole, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling, James R. Martin and Marilyn Billings McNamara. Gretchen Rule Hamel abstained. Following Oral Argument, it was recommended that a Stipulation dated October 10, 2008, by James P. Nadeau, Jr., his counsel, Richard Y. Uchida, Esquire, and Disciplinary Counsel be approved and that the sanction therein be imposed for ethical misconduct as set forth below. Said Stipulation contains an agreed upon sanction of a Public Censure accompanied by a resignation from the New Hampshire Bar by April 15, 2009, and an apology to the complainant, which Stipulation is attached to this order and incorporated herein by reference. The Professional Conduct Committee thoroughly reviewed the record in this matter and makes factual findings and rulings of law as detailed below.

I. FACTUAL FINDINGS

The Professional Conduct Committee has determined that the record supports the following factual findings by clear and convincing evidence:

1. At all times material to this proceeding, the letterhead of Nadeau Law Offices, P.L.L.C. included the names of three lawyers: Mr. Nadeau and two of his sons, Justin P. Nadeau, Esquire, ("Justin"), and Jay Nadeau, Esquire. In or about January 2004, Justin hired

Becksted Associates ("BA") to renovate and convert into a residential apartment the unused rear and second story floor space of the Nadeau law office building ("The Project").

2. BA is a construction partnership owned by William F. Becksted ("Rick, Sr.") and William F. Becksted, Jr. ("Rick, Jr.").
3. In 2004, during the course of their work on The Project, BA was named as a third-party defendant in an unrelated lawsuit.
4. The lawsuit was brought in Rockingham County Superior Court by a homeowner, Tina D. Montgomery, against Tucker's Cove Builders, LLC, for the allegedly faulty construction of her house.
5. The lawsuit was entitled, *Tina D. Montgomery v. Tucker's Cove Builders, LLC, et al.*, Docket #03-C-0146.
6. Tucker's Cove Builders impleaded BA as a third-party defendant in the *Tucker's Cove* lawsuit.
7. The Becksteds were originally represented in this lawsuit by Bernard W. Pelech, Esq.
8. In or about July 2004, Mr. Nadeau agreed to Mr. Becksted's request to represent the Becksteds in the Tucker's Cove lawsuit.
9. In or about August 2004, Mr. Pelech withdrew from representing the Becksteds.
10. On or about August 31, 2004, Mr. Nadeau filed his Appearance on behalf of BA in the *Tucker's Cove* lawsuit.
11. In December 2004, a dispute arose between the Becksteds and Justin regarding the cost of The Project.
12. On December 17, 2004, BA stopped work on The Project.

13. On December 20, 2004, BA submitted to Justin its final invoice for its work completed to date on The Project.
14. On or about December 22, 2004, Mr. Nadeau wrote a letter to BA, informing it that a mediation in the *Tucker's Cove* case had been scheduled for February 16, 2005, at Rockingham County Superior Court.
15. On or about December 29, 2004, Mr. Nadeau forwarded an invoice to BA covering his legal work on the *Tucker's Cove* case from July 2004 through December 29, 2004.
16. Mr. Nadeau's December 29 invoice to BA included an outstanding total legal bill of \$12,001.50. The December 29 invoice listed the total hours as 57.15, and an hourly fee of \$210.00.
17. The individual time entries on the December 29 invoice, however, added up to a total of only 22.05 hours. At an hourly rate of \$210.00, the total bill (using 22.05 hours) should have been only \$4,630.50.
18. Mr. Nadeau continued representing BA in the *Tucker's Cove* case until the *Tucker's Cove* lawsuit was settled at a mediation on February 16, 2005, and the paperwork was finalized on March 30, 2005.
19. While representing BA in the *Tucker's Cove* case, Mr. Nadeau became involved in the dispute between BA and Justin regarding The Project.
20. In a letter to Rick, Sr. dated January 11, 2005, Mr. Nadeau wrote:

Dear Rick:

There is no way Justin or I feel you should be paid anything further on your outstanding bill, and believe me, we both have high tolerance levels and bend over backwards to avoid confrontation.

You and Rick, Jr. took a contract that you knew was not to exceed \$100,000.00, and turned it into \$200,000.00 of billings. You have tried to place blame on Justin and as far as I am concerned, that blame is misplaced. Gail and I made it clear to you in September when we met with you for Justin, that any "extras" were understood to be above the original contract price and we also made it clear you could not exceed your revised budget of \$154,000.00, which included the major "extras" and which I told you then was easily \$14,000.00 + over what could be considered reasonable at that time.

The charge of \$7,306.00 for the so-called "bed platform" and two 1 ½ sided unfinished closets is absurd, as is the charge of \$11,198.58 for the bar. Those charges which you said included "3 days of planning" the platform, along with charging \$50.00 per hour for common laborer work are abuses of the trust that Justin placed in you and Rick, Jr. You had an obligation to hire laborers to do "common laborer's work" much of which was involved in this project. That was our clear understanding from Rick, Jr., from the outset. Justin certainly did not expect to be paying Rick, Jr., Jim or anyone else, to do grunt work and as for the notations when you were charging \$50.00 per hour, we took those as your own record keeping, understanding that we were making "progress payments" on what we were led to believe was a contract price so we didn't care how you itemized your charges.

You also had an obligation to supervise the Electrician and Plumber who you offered to procure instead of us getting our own. You allowed the Electrician to run wires through the middle of the walls that you knew Justin wanted to have access through for storage and in which he wanted to place a rectangular fish tank, and which caused having to put the fish tank in the bar. You also charged him extra for the Plumber because you did not coordinate the bar with him.

Your adding a 20%-25% markup on the kitchen cabinets and flooring is outrageous. I was part of the initial discussions and it was made clear that we could purchase the flooring, cabinets, fixtures and appliances through clients and Contractor friends from whom we could buy the materials at their "cost" or at least at very favorable prices negotiated directly with the provider. When you recommended the flooring and cabinet companies to Justin, he never thought for a minute that you were secretly going to receive a 20% to 25% kick back mark up that he would not have to pay if we

arranged the purchases.

You knew from the outset that we had a client and friend through whom we intended to get the flooring. Justin thought you were treating him the same when you suggested B and C Floor Store for the hardwood flooring and Area Kitchen Centre for the kitchen cabinets. He found out what you were doing only because he called the flooring company to get a quote for me for the apartments that I was rebuilding and when he asked how much he paid per square foot for this flooring, the woman on the other end of the line refused to answer and IMMEDIATELY called you. You then confronted Justin at the apartment about his having called the flooring store. Justin told you how upset he [sic] that the store did not give him the information he requested and that is when you admitted to him that you had added 20% to 25% to the cost of his flooring notwithstanding the fact that Justin personally worked with Brett from B and C Floor Store to pick out the floors and wrote his own check to pay for the floors.

Your outstanding bill with Nadeau Law Office as of December 24, 2004 is in the amount of \$12,474.00. The office is willing to waive its bill and to represent you through the upcoming Mediation which has now been changed to February 16th at 9:00 am at no additional cost and as a good faith compromise of the dispute between you and Justin. This is equivalent to your being paid over \$15,000.00 which Justin and I feel is not owed. If your case does not settle at Mediation, however, you will have to obtain new counsel, or you may continue with us at our usual charge.

Justin mentioned that you would like to "finish" the project and for whatever reason you may want to do so, he has no objection to that so long as there are no further charges made for that work. He is not willing to incur any additional expenses for a project that has been billed at more than twice the original contract price, and particularly in light of the firm's willingness to waive its bill to resolve any difference. The Plumber and Electrician were under a fixed contract with you and have little remaining work to do. The remaining work that needs to be done is minimal, and as I see it, consists principally of finishing the stairway flooring, installing clothes rods in the closet, hinging the bar top and miscellaneous touch up work. [sic] is not willing to incur any additional expenses for a project that is more than twice the original contract price, and particularly in light of the firm's willingness to waive its bill to resolve any difference.

If I do not hear from you by Friday, we will proceed with having others complete what remains to be done.

Very truly yours,
J. P. Nadeau

21. On February 16, 2005, Mr. Nadeau represented BA at the mediation in Rockingham County Superior Court (Maher, J.) in the *Tucker's Cove* case. The settlement at mediation resulted in BA, upon the signing of mutual releases, being removed as a named defendant from the lawsuit.
22. At no time prior to or during the mediation did Mr. Nadeau discuss with anyone from BA the conflict of interest between himself, his law firm, and BA as a result of the ongoing dispute between BA and Justin.
23. On or about February 24, 2005, Mr. Nadeau sent a second legal bill to BA for the *Tucker's Cove* representation. This February 24 invoice listed a total balance due as \$15,708.00.
24. The February 24 invoice listed \$12,474.00 as a carry-over amount from the December 29.
25. According to the February 24 invoice, J.P. Nadeau's legal bill (since the date of the December 29 invoice) totaled \$3,234.00. The February 24 invoice listed the total hours as 15.40, and an hourly fee of \$210.00.
26. However, at an hourly rate of \$210.00, the total bill (using 15.04 hours reflected on the February 24 invoice) should have been \$3,160.00.
27. On February 25, 2005, Mr. Nadeau sent the Becksteds (via mail and telefax) a letter regarding Rick, Sr.'s execution of the mediation agreement and some outstanding issues with respect to the finalization of the *Tucker's Cove* case.

28. In a letter to BA dated March 4, 2005, written on Nadeau Law Office stationary, Justin responded to an invoice from BA with accusations against BA and disputes regarding, *inter alia*, BA's billing for work on The Project. Justin concluded the March 4, 2005, letter to BA as follows:

. . . I fully conferred with my father in the preparation of the letter that he signed and sent to you on January 11, 2005. The positions stated in that letter are my positions. I have absolutely no intention of paying you one cent more. You took advantage of my trust and abused it while I was running for public office. You have caused me substantial damages and losses and I have all I can do to restrain myself from suing you.

Very truly yours,

Justin P. Nadeau.

29. In a letter dated March 18, 2005, to the New Hampshire Bar Association's Dispute Resolution Committee, Rick, Sr. cited multiple errors in Mr. Nadeau's legal bills for the *Tucker's Cove* representation and sought to resolve them with the assistance of the Dispute Resolution Committee.

30. In a letter dated March 30, 2005, to the Dispute Resolution Committee, Mr. Nadeau conceded the errors in his bills and enclosed corrected bills with a new total bill of \$9,639.00. Mr. Nadeau noted in his letter that Rick, Sr.'s letter to the Dispute Resolution Committee dated March 18, 2005, was the first time he had received notice that his bills contained errors.

31. Also on March 30, 2005, the Becksteds went to Nadeau Law Offices and signed mutual releases, thereby concluding their involvement in the *Tucker's Cove* case.

32. Also on March 30, 2005, BA filed a lawsuit against Mr. Nadeau, Justin, and their law firm seeking, *inter alia*, payment on their outstanding bill (approximately \$40,000.00) for The Project.

II. RULINGS OF LAW

The above-listed facts having been found by clear and convincing evidence, the Professional Conduct Committee concludes that there is clear and convincing evidence that James P. Nadeau, Jr. has violated the Rules of Professional Conduct as follows:

Rule 1.7(b): Conflict of Interest

33. Allegations set forth above are incorporated by reference.
34. On December 17, 2004, BA stopped work on The Project as a result of a dispute with Justin regarding outstanding bills and payment for work already completed on The Project.
35. Despite the dispute between Justin and BA, Mr. Nadeau continued to represent BA in the *Tucker's Cove* case until the conclusion of the case, on or about March 30, 2005.
36. From December 17, 2004, through the end of his representation of BA in the *Tucker's Cove* case, Mr. Nadeau did not discuss with either Rick, Sr. or Rick, Jr., the existence of an actual or potential conflict of interest associated with pursuit of his and/or Justin's construction dispute, while, at the same time, representing BA in the *Tucker's Cove* case.
37. Mr. Nadeau's letter to BA dated January 11, 2005, confirms Mr. Nadeau's direct involvement in Justin's dispute with BA.
38. Mr. Nadeau's representation of BA in the *Tucker's Cove* case may have been materially limited by Mr. Nadeau's pursuit of his own interests (and/or those of Justin's) with respect to the ongoing dispute between Justin and BA, from and after December 17, 2004, when BA stopped work on the Project, and certainly as of Mr. Nadeau's January 11, 2005, letter to BA.

39. Mr. Nadeau could not reasonably believe that his decision to continue representing BA, under the circumstances described herein, would not adversely affect his representation of BA in the *Tucker Cove* matter.
40. Even if Mr. Nadeau had secured a waiver of the conflict, any such waiver would be ineffectual, as the conflict was in the nature of a “fundamental conflict” under Rule 1.7(b), that cannot be waived. *See Kelly’s Case*, 137 N.H. 314, 319 (1993).
41. Mr. Nadeau’s continued representation of BA after the dispute arose between Justin and BA, and following Mr. Nadeau’s January 11, 2005, letter to BA, constitutes a violation of Rule 1.7(b).

Rule 1.10(a): Imputed Disqualification

42. Allegations set forth above are incorporated by reference.
43. At all relevant times, Justin was associated with Mr. Nadeau in the Nadeau Law Offices.
44. Rule 1.10(a) states:

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8(c), 1.9 or 2.2.

45. Due to the ongoing dispute between Justin and BA, Justin could not have represented BA in the *Tucker’s Cove* case. Rule 1.7(b) prohibits a lawyer from representing a client where the representation “may be materially limited by the lawyer’s . . . own interests” except in limited circumstances. *See Kelly’s Case*, 137 N.H. at 319 (explaining that “fundamental conflicts” cannot be waived by the client).
46. Because Justin would be prohibited from representing BA in the *Tucker’s Cove* case, none of the lawyers in Mr. Nadeau’s law firm could knowingly represent BA in that case.
47. Mr. Nadeau represented BA in the *Tucker’s Cove* case after the dispute and conflict between Justin and BA became clear.

48. Mr. Nadeau's continued and knowing representation of BA in the *Tucker's Cove* case (after Mr. Nadeau became aware of the nature of the dispute between Justin and BA) constitutes a violation of Rule 1.10(a).

Rule 8.4(a): General Rule

49. In light of the above referenced violations of Rule 1.7(b) and 1.10(a), there necessarily is a violation of N.H. R. Prof. Conduct 8.4(a).

III. ANALYSIS


Following a careful review of the record by the PCC panel members sitting, there was lengthy debate regarding the appropriate sanction to be imposed. Having made the aforementioned findings and rulings, the Professional Conduct Committee, by majority vote, concludes that the Stipulation dated October 10, 2008, shall be approved and that the sanction therein is appropriate for the Rule violations as set forth above. Said Stipulation contains an agreed upon sanction of a Public Censure accompanied by a resignation from the New Hampshire Bar by April 15, 2009, and an apology to the complainant, and reimbursement of costs. 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).

IV. CONCLUSION

For all of the above reasons, the Professional Conduct Committee imposes a sanction of a Public Censure with the understanding that Mr. Nadeau will resign from the New Hampshire Bar by April 15, 2009. Mr. Nadeau is directed to write an apology to the complainant as provided in

the Stipulation dated October 10, 2008. These sanctions are imposed based on Mr. Nadeau's violation N.H. Rules of Professional Conduct: 1.7 (b); 1.10(a); and 8.4(a). The PCC directs Disciplinary Counsel to monitor compliance with, and confirm said resignation. As part of this Order, Mr. Nadeau is assessed all expenses and costs incurred by the Professional Conduct Committee for the investigation and prosecution of this matter.

January 12, 2009


Margaret H. Nelson, Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
Richard Y. Uchida, Esquire
File

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Nadeau, James P., Jr.

advs.

William F. Becksted

#05-048

STIPULATION

Respondent, James P. Nadeau, Jr., Esq., and Disciplinary Counsel, Landya McCafferty, Esq., hereby submit this Stipulation in the above captioned case.

1. A hearing on the merits in this matter was held on July 3, 2008.
2. Mr. Nadeau accepts the findings of the Preliminary Hearing Panel Report issued on July 14, 2008.
3. The Hearing Panel found clear and convincing evidence that Mr. Nadeau engaged in conduct constituting a conflict of interest, resulting in violations of Rules 1.7(b), 1.10(a) and 8.4(a) of the New Hampshire Rules of Professional Conduct as charged in the Notice of Charges issued on April 3, 2008.
4. Thus, Mr. Nadeau agrees that the charges in the Notice of Charges are proven by clear and convincing evidence and that he engaged in

conduct constituting a conflict of interest, resulting in violations of Rules 1.7(b), 1.10(a) and 8.4(a) of the N.H. Rules of Professional Conduct.

I. Stipulation as to Sanction

5. The parties jointly propose that Mr. Nadeau shall be publicly censured for engaging in conduct constituting a conflict of interest, resulting in the violation of Rules 1.7(b), 1.10(a) and 8.4(a) of the N.H. Rules of Professional Conduct.
6. In addition to the Public Censure, Mr. Nadeau has agreed to resign from the New Hampshire Bar. Attached to this Stipulation is Mr. Nadeau's Affidavit in which he agrees to file his resignation on or before April 15, 2009.
7. Mr. Nadeau agrees to make a public and meaningful apology to William F. ("Rick, Sr.") Becksted, and to provide Disciplinary Counsel proof of the same on or before April 15, 2009.
8. Disciplinary Counsel shall monitor Mr. Nadeau's compliance with the terms of this Stipulation.
9. Mr. Nadeau enters into this Stipulation freely, intelligently and voluntarily, and he understands the consequences of this Stipulation.
10. In entering into this Stipulation, Mr. Nadeau has received the assistance and advice of counsel.

II. Stipulation as to Costs


11. Mr. Nadeau agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter, as well as in connection with any process required to implement and enforce the conditions of this Stipulation.

III. Effect of Stipulation

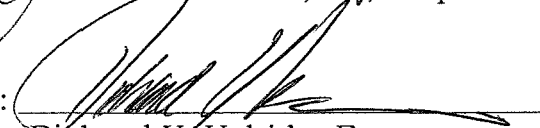
12. Mr. Nadeau understands that by signing this Stipulation, he is hereby bound to the facts and rule violations as stipulated. In the event that the Professional Conduct Committee does not agree with the Stipulation as to Rule Violations and Sanction, Mr. Nadeau is nonetheless hereafter bound to the facts and rule violations as stipulated.

Respectfully submitted,

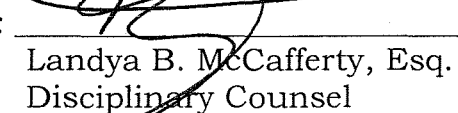
Dated: October 10, 2008

By: 
James P. Nadeau, Jr., Esq.

Dated: October 10, 2008

By: 
Richard Y. Uchida, Esq.
Counsel for James P. Nadeau, Jr., Esq.

Dated: October 10, 2008

By: 
Landya B. McCafferty, Esq.
Disciplinary Counsel

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Nadeau, James P., Jr.

advs.

William F. Becksted

#05-048

AFFIDAVIT

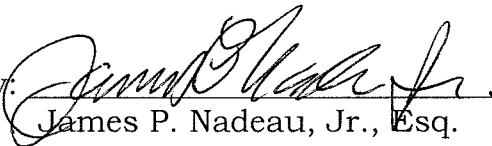
NOW COMES James P. Nadeau, Jr., the Respondent in the above-entitled matter, and being duly sworn, deposes and says as follows:

1. I am James P. Nadeau, Jr., the Respondent in the above-captioned professional conduct complaint.
2. I am currently an attorney and member of the New Hampshire Bar.
3. I have freely, intelligently and voluntarily entered into a stipulation executed by my counsel, disciplinary counsel, and me at even or near-even date (the "Stipulation"). In the Stipulation, I have agreed that as a result of a conflict of interest, I shall be publicly censured for the violations of Rules 1.7(b), 1.10(a) and 8.4(a) of the N.H. Rules of Professional Conduct.

4. I also understand that pursuant to the Stipulation, and in addition to the Public Censure, I shall submit my resignation from the New Hampshire Bar on or before April 15, 2009. The resignation shall become effective on April 15, 2009, and I will not seek reinstatement to the Bar, as I intend to retire from the practice of law.

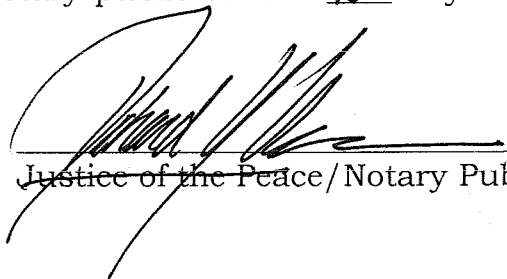
FURTHER THIS AFFIANT SAYETH NOT.

Dated: October 10, 2008

By: 
James P. Nadeau, Jr., Esq.

THE STATE OF NEW HAMPSHIRE
COUNTY OF Merrimack

Subscribed and sworn to by James P. Nadeau, Jr., before me, the undersigned justice of the peace/notary public on this 10th day of October, 2008.


Justice of the Peace/Notary Public

My Commission Expires:

RICHARD Y. UCHIDA, ESQUIRE, Notary Public
My Commission Expires June 27, 2012