

New Hampshire Supreme Court
Professional Conduct Committee

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Payne, Curtis E. advs. Douglas Larocque #08-010

Reprimand with Mandatory Diversion

On September 16, 2008, the Professional Conduct Committee deliberated the above-captioned matter. Members present included: Toni M. Gray, Vice Chair, David N. Cole, Esq., Alan J. Cronheim, Esq., Richard H. Darling, Gretchen Rule Hamel, Esq., James R. Martin, Esq. and Marilyn Billings McNamara, Esq. The Committee thoroughly reviewed the record in this matter, including the Motion to Permit Waiver of Hearings Committee Process, to Find Professional Misconduct Based on a Stipulation, and to Issue a Reprimand with Provision for Mandatory Diversion.

The Committee granted the Motion to Permit Waiver of Hearings Committee Process, to Find Professional Misconduct Based on a Stipulation, and to Issue a Reprimand with Provision for Mandatory Diversion. The Committee voted to accept the Stipulation as to the facts by clear and convincing evidence, and acceptance of the Stipulation as to the Rule violations by clear and

convincing evidence. The Committee reiterates those 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. Mr. Payne was admitted to the New Hampshire Bar in 2002.
2. At all relevant times hereto Mr. Payne has maintained a law practice in Enfield, New Hampshire with a mailing address of 278 New Hampshire Route 4, Suite 3, P.O. Box 52, Enfield, New Hampshire 03748.
3. Mr. Payne was appointed by the Court to represent Douglas Larocque in the matter of State v. Larocque, Docket No. 05-S-880, 881 and 882 in Grafton County Superior Court.
4. At the time of the final pretrial hearing, Mr. Payne filed a Motion with the Court asking for permission to withdraw.
5. In that Motion, Mr. Payne stated that he “makes this request after investigating Mr. Larocque’s case and finding his allegation of the facts to be false.” He further stated that “Mr. Larocque is insisting on a trial and Attorney Payne is unable to mount a defense on his behalf.”
6. Mr. Payne filed the Motion after two witnesses whom Mr. Larocque had identified as being potentially helpful to Mr. Larocque’s defense, directly contradicted Mr. Larocque’s version of events.

7. Mr. Payne may have had reason to request permission from the Court to withdraw if he believed that there was a fundamental breakdown in his relationship with his client. Nonetheless, to withdraw appropriately, Mr. Payne would be required to take necessary steps to protect Mr. Larocque's interests upon withdrawal.
8. Mr. Payne's disclosure to the Court that he had investigated Mr. Larocque's case and had found Mr. Larocque's allegations as to the facts to be false amounted to an unauthorized disclosure of confidential information and violated Mr. Payne's obligation to withdraw in a manner that protected his client's interests.

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 Curtis E. Payne violated the Rules of Professional Conduct as follows:

9. It is agreed that the conduct described in this Stipulation constitutes violations of N.H.R. Prof. Conduct 1.6(a) and 1.16(d) by clear and convincing evidence.
10. It is also agreed that the above violations necessarily constitute a violation of the general rule, N.H.R. Prof. Conduct 8.4(a).

III. DISCUSSION AND SANCTION

Following a careful review of the record by the PCC panel members sitting, the Committee accepted the Stipulation as to sanction and concludes that the appropriate discipline in this matter is a reprimand with mandatory diversion as set forth below. 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).

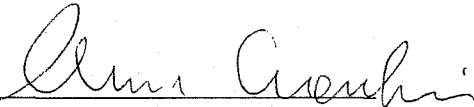
11. Mr. Payne has no instances of prior misconduct.
12. Mr. Payne's misconduct in this matter did not involve a dishonest or selfish motive, but rather resulted from his negligence in failing to understand how a criminal defense lawyer should appropriately request leave of the Court to withdraw in circumstances such as this.
13. Mr. Payne has been cooperative with the Attorney Discipline Office.
14. In light of the mitigating factors, the Committee concludes that a reprimand when coupled with mandatory diversion requiring Mr. Payne to complete 12 additional hours of continuing legal education in the areas of criminal law and ethics, is the appropriate sanction, and is consistent with the purposes of the ABA Standards for Imposing Lawyer Sanctions, Standard 4.23, as well as the purposes of attorney discipline in New Hampshire. See, e.g. Coffey's Case, 152 N.H. 503, 513 (2005).

IV. CONCLUSION

For all of the above reasons, the Professional Conduct Committee hereby issues a **Reprimand With Mandatory Diversion** as delineated above to Curtis E. Payne, Esquire, for violating N.H. Rules of Professional Conduct: 1.6(a), 1.16(d), and 8.4(a). In addition, Mr. Payne is required to

complete twelve Continuing Legal Education Credits in Ethics within one year from the date of this Order with at least four of these credits being "live." These credits can not be carried forward for the next reporting year. This requirement is in addition to the standard CLE requirements. The Committee orders Mr. Payne to reimburse the Professional Conduct Committee for all expenses associated with the investigation and prosecution of this matter.

Date: September 16, 2008

By: 
Alan J. Cronheim, Esquire

Distribution:

Curtis E. Payne, Esquire
Thomas V. Trevethick, Deputy General Counsel
Douglas Larocque
File

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Payne, Curtis E.

advs.

Douglas Larocque

#08-010

STIPULATION

Deputy General Counsel Thomas V. Trevethick and Respondent Curtis E.

Payne hereby stipulate as follows:

I. Stipulation to Facts

1. Mr. Payne was admitted to the New Hampshire Bar in 2002.

2. At all relevant times hereto Mr. Payne has maintained a law practice in Enfield, New Hampshire with a mailing address of 278 New Hampshire Route 4, Suite 3, P.O. Box 52, Enfield, New Hampshire 03748.
3. Mr. Payne was appointed by the Court to represent Douglas Larocque in the matter of State v. Larocque, Docket No. 05-S-880, 881 and 882 in Grafton County Superior Court.
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6. Mr. Payne filed the Motion after two witnesses whom Mr. Larocque had identified as being potentially helpful to Mr. Larocque’s defense, directly contradicted Mr. Larocque’s version of events.
7. Mr. Payne may have had reason to request permission from the Court to withdraw if he believed that there was a

fundamental breakdown in his relationship with his client. Nonetheless, to withdraw appropriately, Mr. Payne would be required to take necessary steps to protect Mr. Larocque's interests upon withdrawal.

8. Mr. Payne's disclosure to the Court that he had investigated Mr. Larocque's case and had found Mr. Larocque's allegations as to the facts to be false amounted to an unauthorized disclosure of confidential information and violated Mr. Payne's obligation to withdraw in a manner that protected his client's interests.

II. Stipulation as to Rules Violated

9. It is agreed that the conduct described in this Stipulation constitutes violations of N.H.R. Prof. Conduct 1.6(a) and 1.16(d) by clear and convincing evidence.
10. It is also agreed that the above violations necessarily constitute a violation of the general rule, N.H.R. Prof. Conduct 8.4(a).

III. Mitigating Factors

11. Mr. Payne has no instances of prior misconduct.

12. Mr. Payne's misconduct in this matter did not involve a dishonest or selfish motive, but rather resulted from his negligence in failing to understand how a criminal defense lawyer should appropriately request leave of the Court to withdraw in circumstances such as this.
13. Mr. Payne has been cooperative with the Attorney Discipline Office.

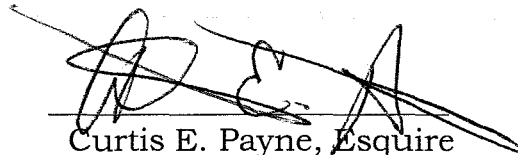
IV. Sanction

14. In light of the mitigating factors, it is agreed that a reprimand when coupled with mandatory diversion requiring Mr. Payne to complete 12 additional hours of continuing legal education in the areas of criminal law and ethics, is the appropriate sanction, and is consistent with the purposes of the ABA Standards for Imposing Lawyer Sanctions, Standard 4.23, as well as the purposes of attorney discipline in New Hampshire. See, e.g. Coffey's Case, 152 N.H. 503, 513 (2005).
15. While Deputy General Counsel and Respondent agree to be bound by the facts set forth in paragraphs 1 through 8, and the Rules violated as set forth in paragraphs 9 and 10 of this

Stipulation, Mr. Payne reserves the right to be heard on the question of sanction only if the Professional Conduct Committee does not accept the agreed sanction of reprimand with mandatory diversion.

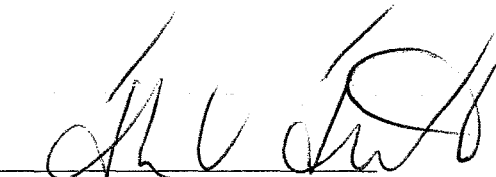
Respectfully submitted,

Dated: August 8, 2008



Curtis E. Payne, Esquire
Bar #15364

Dated: August 6, 2008



Thomas V. Trevethick
Deputy General Counsel
Bar #2571
Attorney Discipline Office