

New Hampshire Supreme Court  
**Professional Conduct Committee**

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*Walsh, Richard J. advs. Attorney Discipline Office # 05-053*  
**and**  
*Walsh, Richard J. advs. David Kossuth # 07-022*

**Public Censure with Mandatory Diversion**

On April 15, 2008, the Professional Conduct Committee heard oral arguments by Russell F. Hilliard, Esquire, for Richard J. Walsh, Esquire, and Landya B. McCafferty, Disciplinary Counsel for the Attorney Disciplinary Office regarding the above referenced consolidated matters. The Professional Conduct Committee members present included Benette Pizzimenti, Vice Chair, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling, Gretchen Rule Hamel and James R. Martin. Toni M. Gray was recused.

The Professional Conduct Committee thoroughly reviewed the record in this matter, including the Committee's February 19, 2008 Order accepting 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:

### *Walsh, Richard J. advs. Attorney Discipline Office # 05-053 (TAYLOR)*

1. Mr. Walsh is an attorney licensed to practice law in New Hampshire. Mr. Walsh was admitted to practice in 1976. At all times material to this proceeding, Mr. Walsh used the following addresses: (a) from June 1997 to February 7, 2001 - Joseph F. McDowell, III, PA; (b) from February 7, 2001 to January 25, 2005 - McDowell & Osburn, P.A.; and (c) from January 25, 2005 to the present - Attorney at Law, 212 Coolidge Street, Manchester, New Hampshire 03102.
2. On April 18, 1999, John Taylor (then a minor) was seriously injured while playing on property owned by Certified Mortgage Corp. ("CMC"). John's hand was crushed by rocks that fell from a pile on the property.
3. On or about June 28, 1999, Andrew M. Richelson, Esq., counsel for John and John's mother, Lana Lynch, filed a Writ of Summons in Rockingham County Superior Court against CMC. The Writ alleged that CMC was negligent and it sought damages for both John and Ms. Lynch.
4. On July 21, 1999, James D. Gleason, Esq., filed an appearance on behalf of CMC.
5. In the summer of 2000, Mr. Richelson relocated to North Carolina and referred John and Ms. Lynch to Mr. Walsh's law firm, McDowell & Osburn, P.A. Mr. Walsh accepted the case.
6. On or about July 28, 2000, Mr. Walsh filed an Appearance for John and Ms. Lynch.

7. On or about December 22, 2000, Mr. Walsh filed a pleading entitled, "Plaintiff's Motion to Continue Trial Management Conference and Jury Trial." In that pleading, Mr. Walsh indicated that his clients needed a continuance so that he could explore the possibility of bringing suit against additional defendants and consolidating such actions with the pending case.
8. The Court granted that motion and trial was rescheduled for the week of April 30, 2001.
9. As a result of a subsequent request from Mr. Walsh to further extend the time for trial to allow him to file lawsuits against other defendants and to consolidate those lawsuits with the pending case, the Court again continued the trial until February 19, 2002.
10. Because of Mr. Richelson's longstanding relationship with Ms. Lynch's father, Robert Clivio, Mr. Richelson was kept informed by Mr. Clivio as to what was happening in the case.
11. Mr. Clivio began telephoning Mr. Richelson in the Fall of 2001, and inquiring as to what was happening with the lawsuit. Apparently, Ms. Lynch was having difficulty reaching Mr. Walsh.
12. In a letter to Mr. Walsh dated September 26, 2001, Mr. Richelson inquired as to the status of the case. Mr. Richelson indicated in the letter that Mr. Clivio had been inquiring about the case. Mr. Walsh did not respond to Mr. Richelson's September 26 letter.
13. Meanwhile, the trial was once again continued by agreement until September 2002, and then again until October 28, 2002.
14. In a letter to Mr. Walsh dated February 25, 2002, Mr. Richelson wrote:

By letter of six months ago, I requested an update on the status of this matter. Since that time, I have left at least three

telephone messages for you making the same request. As you know, to date, I have heard nothing from you.

In reviewing the file, it is my understanding that by order dated April 19, 2001, trial was to be rescheduled until February 19, 2002 to allow you time to file suit against two other defendants. Although as referring attorney, I believe that I should be kept apprised of the developments, I have had no update from you as to the additional defendants, the status of their actions, the consolidation of the matters, or the rescheduling of the trials.

Given my lengthy relationship with the plaintiffs (Lana and John) and Bob Clivio, their father/grandfather, it is important for me to be able to advise them of the progress in their case. Bob reports to me that Lana has also heard little from you, and this is causing alarm. Although I am sure that you are working diligently on the matter, I would most appreciate your filling me in on the trial status, the current defendants, the insurance coverage, the settlement prospects, etc. so that I, as referring attorney, may stay abreast of these matters and continue to communicate intelligently with my client.

I look forward to hearing from you shortly. . . .

15. On or about October 25, 2002, the parties negotiated a settlement of the pending lawsuit.  
  
On or about May 8, 2003, the parties jointly filed a request with the Court to close the case.
16. On May 14, 2003, Mr. Gleason forwarded to Mr. Walsh a settlement check for \$13,000.00, made payable to Mr. Walsh.
17. Mr. Walsh persuaded Ms. Lynch to allow him to use the \$13,000.00 to fund other lawsuits against potentially liable defendants. Ms. Lynch agreed to do this.
18. In a letter to Mr. Walsh dated September 11, 2003, Mr. Gleason wrote:

Kindly permit this letter to confirm my recent telephone messages on your answering machine. Specifically, our records reflect that the settlement draft has not yet been negotiated. I am optimistic that your sense of common courtesy will soon motivate

you to return my numerous phone calls with an explanation.

I look forward to hearing from you shortly.

Thank you.

Mr. Walsh did not respond to that letter.

19. In a letter to Mr. Walsh dated December 23, 2003, Mr. Richelson wrote:

When we last spoke, over a year ago, you had settled the Certified Mortgage matter and were going to pursue the other defendants, including the condo association, the builder, and the contractor who deposited the stones creating the attractive nuisance. Has any of that been accomplished?

Could you please give me an up-date as to the status of this matter, including forwarding to me information regarding the prior settlement, which I trust will yield a small legal fee, filings against the new defendants, and any other information which would allow me to converse knowledgeably with my client.

I look forward to hearing from you, and I hope this letter finds you and your family well during this holiday season.

Thank you.

Mr. Walsh did not respond to that letter.

20. Following the settlement, Ms. Lynch had difficulty reaching Mr. Walsh. Ms. Lynch left numerous voicemail messages for Mr. Walsh inquiring about the status of the other lawsuits, all of which went unanswered. On an ongoing basis, Mr. Clivio telephoned Mr. Richelson to seek his assistance and advice with respect to his daughter's difficulties reaching Mr. Walsh.
21. In a letter to Mr. Walsh dated January 22, 2004, Mr. Gleason again inquired as to the status of the settlement check:

On January 20, 2004, I explained to your secretary Laurie

that our records do not yet show our May 31, 2003, check to you as being returned. Again, I would greatly appreciate it if you could check your records to determine the status of that check and advise me of your findings.

I look forward to hearing from you shortly.

Thank you.

Mr. Walsh did not respond to this letter.

22. In a letter to Mr. Walsh dated June 5, 2004, Mr. Richelson requested an update:

Enclosed please find a copy of a letter that I wrote to you six months ago, but have yet to receive a reply. As referring counsel who has a significant interest in this matter, and given my relationship with the client, it is embarrassing that I cannot give them updates on the progress of this matter and when I have to try to explain your lack of communication when I was the person who recommended you to them.

Would you please update me on the progress of this case as soon as possible.

Thank you.

Mr. Walsh did not answer this letter.

23. In a letter to Mr. Walsh dated March 15, 2005, Mr. Richelson wrote:

It has now been over a year since we last spoke. Again, I have called you, left messages, and written, all to no avail. You continue to ignore my inquiries. As referring attorney, I feel an obligation to my client to be informed as to the case, and your lack of communication makes that impossible. Further, in speaking with my client's father, I am informed that with the exception of the phone call asking for permission to take this case with you when you left your former position, you have failed to return any of Lana's phone calls either.

Over the past three years I have been most patient with you awaiting information and replies to my contacts. However, I am most concerned that your silence does not bode well for the progress on this matter. You settled a portion of the case but have

never distributed any of the funds, either to the client or to me pursuant to our agreement. However, you have also never indicated whether or how the retained funds have been used for litigation purposes.

At this juncture, I must demand that you give me and your client a lengthy and comprehensive up-date as to the status of this matter, including forwarding to me information regarding the prior settlement, which I trust will yield a small legal fee, filings against the new defendants, and any other information which would allow Lana and me the opportunity to be reasonably informed of the progress you are making. As patience has run out, be advised that if this information is not received by the end of this month, and does not show that satisfactory progress has been made in the case over the last three years, my next letter will be to the Professional Conduct Committee as you have grossly violated the mandates of the CPR which call for an attorney to "keep the client reasonably informed about the status of the matter" and "promptly comply with reasonable requests for information", and may be in violation of the Due Diligence requirements also.

Mr. Walsh did not respond to this letter, nor did he contact Ms. Lynch to give her an update on the status of the matter.

24. Having received no response from Mr. Walsh, on April 15, 2005, Mr. Richelson referred the matter to the Attorney Discipline Office.
25. In a letter to Mr. Walsh dated April 29, 2005, Mr. Richelson wrote:

Please let me say that I am extremely surprised, saddened, and disappointed that you have refused to respond to any of my requests for updates on this file. However, as Lana has received the same lack of communication, and given her request that the PCC be notified of your actions, please be advised that she has requested that you return the entire file directly to her along with the entire amount of the settlement. Given the obvious lack of action on your part on this matter over the past three years, her request that you cease being attorney for her and her son seems quite reasonable, and clearly, she and her son are entitled to the settlement funds.

Please see that this matter is resolved immediately. Further

delay or obfuscation on your part will only serve to exacerbate an already unpleasant situation.

26. In a letter to Mr. Walsh dated May 26, 2005, James L. DeHart, General Counsel of the Attorney Discipline Office, informed Mr. Walsh that the Attorney Discipline Office had docketed a formal complaint against him on the basis of Mr. Richelson's referral.
27. In a letter to Mr. DeHart dated June 27, 2005, Mr. Walsh wrote:

I respectfully enclose a copy of my correspondence of even date to Mrs. Lana Lynch, which I believe is self-explanatory, along with a copy of the Trust Account Check referenced in same. Atty. Gleason's office can verify that this item was never negotiated or deposited. I assume that either Mrs. Lynch, Atty. Richelson, and/or new counsel will attend to this aspect.

I trust this will be satisfactory. Please advise if your office requires further information or action on my part.

Thank you for your attention to this matter.

With that letter, Mr. Walsh attached a copy of correspondence dated June 27, 2005, to Ms. Lynch enclosing the file, as well as the \$13,000.00 check from Mr. Gleason's trust account which Mr. Walsh had never negotiated. At the close of his letter to Ms. Lynch, Mr. Walsh wrote:

I assume that you will be contacting Atty. Richelson and/or other counsel with respect to any additional suits that may be filed on Jon's behalf in connection with this matter. In this regard, you should note that any such action(s) must be commenced before September 29, 2007 (i.e., within two (2) years of Jon's eighteenth birthday), or they will be barred by the applicable Statute of Limitations, RSA 508:8.

If there is anything I can do to help your new counsel with respect to any aspect of this matter, I am ready and willing to do so.

I wish you and Jon the very best for the future.

*Walsh, Richard J. advs. David Kossuth # 07-022*

28. On or about February 13, 1999, David Kossuth (the Complainant), was involved in a car accident with an uninsured motorist.
29. On May 9, 2000, Mr. Kossuth engaged Mr. Walsh to represent him on an uninsured motorist claim against GEICO, Mr. Kossuth's carrier.
30. In a letter to Mr. Kossuth dated May 20, 2000, Mr. Walsh requested certain information from Mr. Kossuth and enclosed a copy of the contingent fee agreement.
31. After obtaining the necessary documentary and other evidence regarding the claim, Mr. Walsh began negotiations with GEICO. These negotiations culminated in a "demand for arbitration" letter, which Mr. Walsh sent to GEICO on or about December 11, 2003.
32. On November 29, 2004, Mr. Kossuth gave a deposition in the case at Mr. Walsh's office. GEICO's attorney, Richard E. Mills, Esq., took the deposition.
33. Mr. Walsh had informed Mr. Kossuth that the case would likely be settled in the spring or summer of 2005.
34. The spring and summer of 2005 passed without Mr. Kossuth hearing anything further about the case from Mr. Walsh.
35. In the late summer of 2005, Mr. Kossuth called Mr. Walsh's office and left several messages seeking a return call from Mr. Walsh.
36. Having received no return call, Mr. Kossuth telephoned Mr. Walsh sometime in the late summer of 2005, after business hours. Mr. Kossuth expected to leave another voicemail message for Mr. Walsh, but Mr. Walsh answered the call.

37. Mr. Walsh informed Mr. Kossuth that GEICO was only offering to pay for medical expenses. Mr. Walsh wanted to take the case to arbitration because Mr. Walsh believed he could get \$14,000 - \$15,000 in arbitration. Mr. Walsh informed Mr. Kossuth that he would move forward on scheduling a date for the arbitration.
38. Near the end of 2005, Mr. Kossuth had heard nothing further from Mr. Walsh about the case. Mr. Kossuth began leaving voicemail messages on Mr. Walsh's answering machine over a three-month time period, requesting a call back.
39. Mr. Walsh did return one of these messages. Following Mr. Kossuth's conversation with Mr. Walsh, Mr. Walsh forwarded a letter dated February 21, 2006, to Mr. Mills, in which Mr. Walsh wrote:

This matter has been dormant for too long for which I take responsibility, and I want to take all steps necessary at this time to rectify this situation and bring this uninsured motorist (UM) to a close.

At this point, your company has had the benefit of requiring my client to answer interrogatories and to take his deposition, and you are certainly in receipt of all information necessary in order to formulate a meaningful settlement offer in this matter, but none has been forthcoming. Accordingly, I want to take whatever steps are necessary to schedule this matter for arbitration and to hopefully do so before the summer months. In this regard, I am quite willing to undertake the necessary steps to schedule this matter for arbitration and to call the arbitration panel, but my file does not indicate that any party-selected arbitrator has been named by your side so please supply me with the identity of your choice as arbitrator in this matter and provide me with dates and times that would be convenient to your calendar for the scheduling of this matter for arbitration once and for all. In this regard, at least at the present time, the last week of April looks good for me and virtually the entire month of May is pretty wide open as well. The same would be true for the month of June, so I think there are certainly plenty of dates that we can work with to get this matter scheduled for hearing and be done with same once and for all.

My file indicates that we have a settlement demand in this matter dating back quite some time (see letter dated October 27, 2003), to which no formal response was ever made by GEICO in terms of an offer, so if either you or their claims representative wishes to contact me to indicate an offer on this file, I would be glad to hear from them or you. Otherwise, let's complete the selection of the arbitration panel and get this matter behind us.

I look forward to your early reply and thank you.

40. Following the February 21, 2006, letter to Mr. Mills, Mr. Kossuth again waited to hear something further about the case from Mr. Walsh.
41. On August 10, 2006, having heard nothing further from Mr. Walsh, Mr. Kossuth telefaxed to Mr. Walsh's office a copy of Mr. Walsh's February 21, 2006, letter to Mr. Mills with the following handwritten notations: "Rick, I'd really like to resolve this. When are we going to move forward? Dave."
42. On August 18, 2006, having heard nothing in response from Mr. Walsh, Mr. Kossuth left a voicemail message on Mr. Walsh's answering machine requesting a return call.
43. On October 12, 2006, having heard nothing in response from Mr. Walsh, Mr. Kossuth sent Mr. Walsh a letter via Federal Express, which Mr. Walsh received on October 13, 2006. In that letter, Mr. Kossuth wrote:

When are we going bring my case to settlement?

Right from our first conversation you said you wanted to go to arbitration. All the necessary documentation has been obtained and we had a deposition hearing on November 29, 2004 with Geico's lawyer. At that time you said the case would be settled, by arbitration, by the spring, or summer the latest, of 2005. This is October of 2006 and we still have not gone to arbitration and there's been no movement towards getting there.

I need to settle this case.

44. On or about December 9, 2006, having heard nothing in response from Mr. Walsh, Mr. Kossuth filed a grievance with the Attorney Discipline Office in which Ms. Kossuth asserted allegations of professional misconduct against Mr. Walsh for Mr. Walsh's failures to communicate with him about his case.
45. Beginning with a letter to Mr. Kossuth dated December 15, 2006, Mr. Walsh resumed communications with him, trained his focus on the case, and moved the case toward arbitration. On or about June 5, 2007, Mr. Walsh secured an arbitration award for Mr. Kossuth of \$20,000.

## 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 Richard J. Walsh violated the Rules of Professional Conduct as follows:

*Walsh, Richard J. advs. Attorney Discipline Office # 05-053 (TAYLOR)*

### **Rule 1.3(a): Lack of Diligence**

46. The facts set forth above are incorporated by reference.
47. As explained above, from July 28, 2000, through June 27, 2005, Mr. Walsh neglected to take substantive legal action on behalf of his clients, John and Ms. Lynch, to pursue their claim(s) against potentially liable defendants other than CMC, the defendant named in the Writ filed by Mr. Richelson.

48. Mr. Walsh's neglect of John and Ms. Lynch's case carried over into his failure to communicate both with opposing counsel, Mr. Gleason, and with John and Ms. Lynch's former counsel, Mr. Richelson.
49. Mr. Walsh further neglected John and Ms. Lynch's case in the manner in which Mr. Walsh treated the \$13,000.00 settlement check. Mr. Walsh received the check on May 14, 2003. Mr. Walsh never negotiated the check, nor did he place the check into an interest-bearing account for the benefit of his clients.
50. Mr. Walsh's conduct as described above constitutes a failure to act with reasonable promptness and diligence on behalf of his clients.
51. Mr. Walsh's failure to act with reasonable promptness and diligence on his clients' behalf caused avoidable harm to their lawyer-client relationship.
52. Mr. Walsh's failures in these regards constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3(a).

**Rule 1.4(a)-(c): Failure to Communicate**

53. The facts set forth above are incorporated by reference.
54. Beginning in the Fall of 2001, Ms. Lynch had difficulties receiving any form of communication from Mr. Walsh. From the Fall of 2001 through the termination of their relationship in April 2005, Mr. Walsh failed to respond to Ms. Lynch's reasonable and repeated requests for an update on the status of her case.
55. Ms. Lynch sought the assistance of Mr. Richelson in her communications with Mr. Walsh. Mr. Walsh failed to respond to Mr. Richelson's repeated and reasonable requests for information on Ms. Lynch's behalf.

56. By failing to communicate with Ms. Lynch, Mr. Walsh failed to keep her reasonably informed regarding the status of her legal matters.
57. By failing to respond to respond to Mr. Richelson's letters and requests for information on Ms. Lynch's behalf, Mr. Walsh failed to promptly comply with Ms. Lynch's reasonable requests for information.
58. Mr. Walsh's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a)-(c).

*Walsh, Richard J. advs. David Kossuth # 07-022*

**Rule 1.4(a): Failure to Communicate**

59. The facts set forth above are incorporated by reference.
60. Mr. Walsh had a duty to keep Mr. Kossuth reasonably informed regarding the status of his case and to promptly comply with reasonable requests for information.
61. Mr. Walsh violated these obligations by failing timely to respond to Mr. Kossuth's inquiries and otherwise to communicate with Mr. Kossuth at various intervals during the pendency of Mr. Kossuth's case (from the Spring of 2005 through December 9, 2006, as described more fully above).
62. It was only after Mr. Kossuth filed a formal complaint against Mr. Walsh with the Attorney Discipline Office that Mr. Walsh trained his focus on Mr. Kossuth's case, addressed the communication problems, and brought Mr. Kossuth's case to closure.
63. Mr. Walsh's conduct in this regard constitutes clear and convincing evidence of a violation of a violation of N.H. R. Prof. Conduct 1.4(a).

### **Rule 8.4(a): General Rule**

64. Because there exists clear and convincing evidence that Mr. Walsh violated the above rules, there is necessarily clear and convincing evidence of a violation of 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, there was a lengthy debate regarding the appropriate sanction to be imposed. Having made the aforementioned findings and rulings, the Professional Conduct Committee, by majority vote, accepted the Stipulation as to sanction and concludes that the appropriate discipline in this matter is a public censure 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 NH 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").

65. A public censure is the appropriate sanction in these matters, accompanied by a mandatory diversion under Rule 37A(I)(g)(1). A public censure with mandatory diversion will serve the purposes of attorney discipline. The mandatory diversion component of the sanction will require Mr. Walsh to undergo an office management audit and comply with all recommendations of the auditor.

66. Both case law in New Hampshire and the American Bar Association's Standards for Imposing Lawyer Sanctions (1992) ("Standards") support the conclusion that Mr. Walsh should be publicly censured and required to undergo an office management audit.
67. 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.
68. 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.
69. 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").

70. In the Taylor case, Mr. Walsh violated his obligations to represent diligently John Taylor and his mother, Ms. Lynch. In both the Taylor and Kossuth cases, Mr. Walsh violated his obligations to communicate properly with his clients.
71. The section of the Standards that deals with a lawyer's diligence and communication obligations is Standard 4.4. That Standard provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. [Note: Section 4.43 uses the term "Reprimand"; the most analogous sanction in New Hampshire is a Public Censure.]

4.44 Admonition 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. [Note: Section 4.44 uses the term “Admonition”; the most analogous sanction in New Hampshire is a Reprimand.]

72. This Standard utilizes the nature of the injury (or potential injury) coupled with the attorney’s mental state to measure the appropriate sanction. Because Standard 4.4 requires an analysis of both the attorney’s mental state and the injury to the client, the first three prongs of the four-part test under the Standards can be collapsed into an analysis under this Standard.
73. While the language of Standards 4.41(b) and (c) are arguably applicable here, the nature of Mr. Walsh’s misconduct does not warrant disbarment as a baseline sanction. Rather, using this Standard as a guide, Mr. Walsh’s baseline sanction more appropriately falls between a suspension and public censure for the reasons discussed below.
74. Mr. Walsh’s misconduct in the Taylor case could be characterized as a “pattern of neglect,” as that term is used in Standard 4.42(b). The neglect took place over the course of 1½ years. Mr. Walsh failed to respond to any of his clients’ and/or Mr. Richelson’s inquiries about the case from December 2003 through the end of June 2005. When Mr. Walsh did finally respond, he did so only after the Attorney Discipline Office complaint was filed.
75. Although not communicating with his clients during this time, Mr. Walsh had control over their settlement funds totaling \$13,000.00. Mr. Walsh’s clients believed that Mr. Walsh was utilizing their funds (as Mr. Walsh had explained to them when he persuaded

them to allow him to retain the funds) to conduct research and investigation into the existence of other potentially liable defendants.

76. With specific reference to the Taylor matter, Mr. Walsh's misconduct may have caused harm to the client's ability to pursue other potentially liable defendants. By neglecting the case as he did, Mr. Walsh allowed valuable time to pass. Had Mr. Walsh given the case proper attention through investigation and discovery, he may have been able to uncover the names of other potential defendants. Alternatively, had Mr. Walsh properly communicated with his clients (and the referring attorney, Mr. Richelson) in the Taylor case, Mr. Walsh could have put them on notice of the need to hire new counsel. Mr. Walsh's lack of diligence and communication in the Taylor case caused potentially serious harm to his clients' case. Further, Mr. Walsh's misconduct caused his clients to suffer needless anxiety, a significant although unquantifiable injury.
77. Fortunately for his clients, Mr. Walsh was not engaged in any acts of self-dealing with their money. Rather, Mr. Walsh neglected to do anything with the funds (including depositing the check into a trust account) and failed to take action to move their case forward.
78. In the end, however, after Mr. Richelson referred the matter to the Attorney Discipline Office, Mr. Walsh responded to his clients by forwarding to them their file and the unnegotiated settlement check. At that point, Mr. Walsh's clients had approximately two years remaining under the statute of limitations to take further action. And, in the case of Mr. Kossuth, after the Attorney Discipline Office complaint was filed, Mr. Walsh was able to obtain a favorable arbitration result for his client.

79. For these reasons, the baseline sanction falls more appropriately on the spectrum between a suspension and public censure.
80. The final step in the analysis, however, is to determine whether there are any aggravating and/or mitigating factors that affect the baseline sanction.
81. There is one significant aggravating factor. Mr. Walsh has a disciplinary history and his underlying conduct in both cases is similar in nature to that present in these two cases. On October 12, 2004, Mr. Walsh received a Warning for failing to properly communicate with his clients. On April 20, 2006, Mr. Walsh received a Reprimand for having violated N.H. R. Prof. Conduct 1.4(a), (b) and (c). See Exhibit A (a copy of Mr. Walsh's disciplinary record is attached hereto).
82. There are two mitigating factors present in these matters: (1) Mr. Walsh lacked a dishonest or selfish motive, Standard 9.32(b); and (2) Mr. Walsh has had a cooperative attitude toward the disciplinary proceedings, id. at 9.32(e).
83. The aggravating factor (Mr. Walsh's prior disciplinary history) in these matters is of such a serious nature that a sanction of suspension could be warranted. In determining an appropriate sanction, however, one must be "mindful that the purpose of attorney discipline is not to inflict punishment, but rather to protect the public. . . ." Grew's Case, 156 NH 361, 365 (2007).
84. Disciplinary Counsel believes that the public protection goals served by a suspension would be adequately addressed if the Committee issued a public censure coupled with mandatory diversion, the terms of which are described in more detail below.

85. While an office management audit does not directly address Mr. Walsh's willful neglect in the Taylor case (i.e. refusing repeatedly to respond to inquiries from both Mr. Richelson and Mr. Gleason), Disciplinary Counsel expects that an audit of this nature will assist Mr. Walsh in developing practices and procedures that will guard against this type of willful neglect in the future. Disciplinary Counsel expects that the consultant/auditor will conduct the audit with an eye toward this particular issue when s/he performs the audit and issues recommendations.
86. Accordingly, taking into consideration both the four part analysis recommended by the Standards, as well as the purposes of attorney discipline in New Hampshire, the parties respectfully recommend that the Committee impose a public censure with mandatory diversion pursuant to Rule 37A(I)(g)(1). The parties recommend that the mandatory diversion require Mr. Walsh to undergo, at his expense, a formal audit of his law practice by a professional consultant skilled in office management, and to implement any and all recommendations of the consultant. The consultant must be approved by Disciplinary Counsel before the audit is undertaken.
87. Mr. Walsh shall be required to undergo the audit within three months from the date of the Committee's order in this matter. Disciplinary Counsel shall have the ability to contact the consultant to determine whether Mr. Walsh has completed the audit and implemented the consultant's recommendations. Mr. Walsh shall fully implement the consultant's recommendations and show proof of same to Disciplinary Counsel within six months from the date of the Committee's order in this matter. A second audit shall be conducted by the consultant one year following the date of the original audit to insure ongoing

compliance with the recommendations made. Copies of both audits shall be provided by the consultant to Disciplinary Counsel.

88. In the event that Mr. Walsh is unable or unwilling to comply with the terms of the mandatory diversion, and/or fails to allow Disciplinary Counsel to oversee his compliance with the terms of the mandatory diversion, he shall be brought before the Committee on a petition to show cause why he should not be held in contempt and subject to further orders of the Committee.
89. A public censure accompanied by the aforementioned mandatory diversion, will address all of the goals of attorney discipline. Ultimately, if successful, this remedial sanction will more effectively address public protection than a mere suspension.

#### IV. CONCLUSION

For all of the above reasons, the Professional Conduct Committee hereby issues a **Public Censure With Mandatory Diversion** as delineated above to Richard J. Walsh, Esquire, for violating N.H. Rules of Professional Conduct: 1.3(a); 1.4(a)-(c), and 8.4(a), and orders Mr. Walsh to reimburse the Professional Conduct Committee for all expenses associated with the investigation and prosecution of this matter.

Date: 6/12/2008

By: Benette Pizzimenti  
Benette Pizzimenti, Vice Chair

Distribution:

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