

## New Hampshire Supreme Court

### Professional Conduct Committee

Margaret H. Nelson, Chair  
Benette Pizzimenti, Vice Chair  
Toni M. Gray,\* Vice Chair  
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*Gray, Douglas C. Advs. Attorney Discipline Office and Tammy Gardner #04 - 020*

### DISBARMENT

On July 19, 2005, the Professional Conduct Committee considered the above-referenced matter at its regular monthly meeting. Neither Disciplinary Counsel nor Attorney Gray requested oral argument.

Members present included: Margaret H. Nelson, Chair and Reporter, Benette Pizzimenti, Toni M. Gray, Richard B. McNamara, Stephen B. Stepanek, David N. Cole, Gretchen Rule Hamel, Nancy R. Hacking and David N. Page. Members absent included: James R. Martin and Thomas C. Connair. Alan J. Cronheim recused himself from discussion and voting on this matter.

The Professional Conduct Committee thoroughly reviewed the record in this matter which included:

- 01/11/05 Letter from Disciplinary Counsel ("DC") requesting Hearing Panel
- 01/20/05 Hearing Panel Appointment  
Notice of Hearing  
Cover letter to Hearing Panel with Notice of Charges  
Notice of Charges
- 02/04/05 Cover letter to Hearing Panel  
Cover letter from DC  
Proposed Order
- 02/07/05 Letter to Counsel re: Ruling on Offers of Proof -- CONFIRMED
- 02/14/05 Cover letter to Hearing Panel  
Assented to Motion to Continue  
Motion to Clarify
- 02/16/05 Cover letter to Parties  
Order on Motion to Continue – GRANTED IN PART
- 02/18/05 Notice of Hearing

- 03/31/05 Letter from Rouvalis to DC  
Supreme Court Order In the Matter of Arthur C. Randlett LD 2004-0004  
Appearance by William Saturley, Esquire  
Request to Stay the Proceedings  
Email from Rouvalis to DC  
11/9/04 Ltr to T. Gardner from M. Dyner, Complaint Screening Comm.
- 04/01/05 Cover letter to Hearing Panel  
Cover letter from DC dated 04/01/05  
Mr. Gray's Annual Trust Compliance Cert. for 2000, 2001, 2002 and 2003
- 04/01/05 Letter from DC re: procedure for submitting position of Atty. Mathieu  
Letter from HBF confirming procedure
- 04/11/05 Cover letter to Hearing Panel with Transcript of 03/31/05 Hearing
- 04/18/05 Cover letter to Hearing Panel  
Cover letter from Atty. Saturley  
Motion to Stay Proceedings and Affidavit of Catherine B. Cosgrove, Esq.
- 04/22/05 Cover letter to Hearing Panel  
Cover letter from DC dated 04/22/05  
Cover letter and Response from Atty. Mathieu  
DC's Objection to Motion to Stay Proceedings
- 05/27/05 Order on Respondent's Motion To Stay – DENIED
- 06/15/05 Cover letter to Parties with Hearing Panel Report  
Cover letter to PCC with Record

Prior to the PCC meeting, Attorney William Saturley withdrew his appearance on behalf of Attorney Gray.

Having reviewed the record, including the Hearing Panel Appointment, Notice of Hearing, Notice of Charges, Proposed Order, Ruling on Offers of Proof, Assented-to Motion to Continue, Motion to Clarify, Order on Motion to Continue, Notice of Hearing, Appearance by William Saturley, Esquire, Request to Stay the Proceedings, Transcript of the March 31, 2005 Hearing, Motion to Stay Proceedings, Affidavit of Catherine B. Cosgrove, Esquire, Objection to Motion to Stay Proceedings, and Order on Respondent's Motion to Stay and Hearing Panel Report, the Professional Conduct Committee makes factual findings and rulings as detailed below.

## **I. FACTUAL FINDINGS**

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

1. The Notice of Charges was based on the content of an audit report dated September 29, 2004, from Craig A. Calaman, CPA ("Audit Report").
2. The Audit Report covers the following time-period: July 1, 1999 through June 30, 2004.

3. The Audit Report discusses financial discrepancies in two of Mr. Gray's firm's bank accounts as follows: (1) Citizens Bank – general client trust account, account number 330135-421-3 (hereinafter “Mr. Gray's firm's trust account”); and (2) Citizens Bank – operating account, account number 330106-677-3 (hereinafter “Mr. Gray's firm's operating account”).
4. The Audit Report also discusses financial discrepancies in certain escrow accounts which Mr. Gray managed for specific clients as follows: (1) Michael Shawn Gardner Special Needs Trust, Citizens Bank Money Market Account, account number 330569-050-1 (hereinafter “First Special Needs Trust Account”); Michael Shawn Gardner Special Needs Trust, Citizens Bank Money Market Account, account number 330636-689-9 (hereinafter “Second Special Needs Trust Account”); The Deborah Bonner Trust, Citizens Bank Checking Account, account number 330493-216-1 (hereinafter “Bonner Trust Account”); The Estate of Jeannette L. Harriman, Citizens Bank Account, account number 330106-677-3 (hereinafter “Harriman Estate Account”); and the Anthony Acevedo Escrow Account, Citizens Bank Account, account number 330493-200-5 (hereinafter “Acevedo Escrow Account”).
5. By way of summary, the Audit Report reveals numerous financial irregularities on Mr. Gray's part with respect to these accounts. These irregularities include the following: (a) Mr. Gray converted client funds to his own use by removing funds from particular trust accounts without entitlements to the funds; (b) Mr. Gray commingled his own funds with those of Mr. Gray's clients by leaving fees in trust for extended periods of time after he had earned the fees; (c) Mr. Gray did not comply with Supreme Court Rule 50 relative to the maintenance and administration of client trust accounts, as Mr. Gray did not maintain client ledgers or perform monthly reconciliation; and (d) Mr. Gray was not truthful with the Supreme Court when he filed his Trust Accounting Compliance Certificates in every year following 2000.
6. Over the time-period of the audit, Mr. Gray misappropriated, at a minimum, a total amount of \$389,053.60 in client trust funds.

#### **First and Second Special Needs Trust Accounts**

7. The genesis for the First and Second Special Needs Trust Accounts was a 1998 medical malpractice settlement for Michael S. Gardner, then a four-year-old boy, who had suffered serious complications relating to this birth.
8. The trust document, entitled “Supplemental Care Trust Document,” describes the purpose of the Trust: “[T]his is a purely Discretionary Non-Support Spendthrift Trust.... This Trust and its corpus are to be used only for the supplemental care of [Michael S. Gardner].”
9. On June 22, 2001, the York County Superior Court in Maine appointed Mr. Gray as Successor Trustee.

10. As of August 2, 2001, the prior trustee had wired into Mr. Gray's firm's trust account a total of \$704,554.15.
11. On August 3, 2001, Mr. Gray also began receiving the monthly settlement payments (\$2,501.39) on behalf of the trust from the insurance company. On that date, Mr. Gray deposited the first such monthly settlement check into Mr. Gray's firm's trust account.
12. Thus, as of August 3, 2001, Mr. Gray had been entrusted with a total amount of \$706,973.25 for Michael's special needs.
13. With this money, on September 7, 2001, Mr. Gray established the First Special Needs Trust Account.
14. Within two months of being appointed the Successor Trustee, Mr. Gray paid himself \$25,000.00 and transferred \$110,000.00 out of the First Special Needs Trust Account into Mr. Gray's firm's trust account, where, as the Audit Report states, the \$110,000.00 "would generate absolutely no income for the Trust."
15. As detailed in the Audit Report, as of December 31, 2001, Mr. Gray's misappropriation of Michael's money rendered the First Special Needs Trust Account out of trust by \$38,668.00.
16. Mr. Gray also failed to safeguard the portion of Michael's money (\$110,000.00) that Mr. Gray had transferred into his firm's trust account. Specifically, as of December 31, 2001, Mr. Gray's firm's trust account was out of trust with respect to Michael's money by \$84,598.00.
17. On January 16, 2002, Mr. Gray created the Second Special Needs Trust Account. To do this, Mr. Gray removed \$368,378.68 from the First Special Needs Trust Account. Mr. Gray did not, however, deposit the full \$368,378.68 into the Second Special Needs Trust Account. Rather, Mr. Gray deposited only \$358,378.68 into the Second Special Needs Trust Account; Mr. Gray placed the remaining \$10,000.00 directly into his firm's operating account.
18. Two months later, on March 22, 2002, Mr. Gray removed another \$1,500.00 from the First special Needs Trust Account as "fees."
19. Thereafter, in 2002, Mr. Gray removed a total of \$65,000.00 from the Second Special Needs Trust Account and deposited these funds into Mr. Gray's firm's operating account.
20. As of January 24, 2003, the balance in the First Special Needs Trust Account was \$16,167.33. During 2003, Mr. Gray transferred a total of \$13,000.00 out of the First Special Needs Trust Account and into Mr. Gray's firm's operating account.

21. In that same year, Mr. Gray removed \$97,500.00 from the Second Special Needs Trust Account and placed it into Mr. Gray's firm's operating account. As detailed in the Audit Report, when Mr. Gray described the individual disbursements on the checks, he generally wrote the word "fees," and in one instance, Mr. Gray wrote the word "loan." On many of the disbursements, Mr. Gray simply left the memo line on the checks blank.
22. Similarly, in the first part of 2004, Mr. Gray continued this pattern of disbursements from the Second Special Needs Trust Account to himself. From February to April 2004, Mr. Gray removed \$80,000.00 from the Second Special Needs Trust Account and deposited it into Mr. Gray's firm's operating account.
23. The Audit Report delineates the total disbursements from Michael's money to himself as follows:
 

|                     |   |
|---------------------|---|
| \$ 39,000.00        | -classified by Mr. Gray as "fees"   |
| \$ 63,500.00        | -classified by Mr. Gray as "loans" and "advances"                         |
| \$224,500.00        | -unidentified by Mr. Gray ( <i>i.e.</i> , memo line on checks left blank) |
| <u>\$101,053.60</u> | -removed from Mr. Gray's firm's trust account                             |
| = \$428,053.60      | -total amount out of trust (including "fees")                             |
24. Even if each of the disbursements that Mr. Gray classified as "fees" were legitimate, the total amount of Michael's money that Mr. Gray misappropriated was \$389,053.60.

**The Promissory Note**

25. In a document dated October 12, 2001, Mr. Gray acknowledged that he was removing funds from Michael's Trust for Mr. Gray's own benefit. Mr. Gray wrote:

I, Douglas C. Gray, of 456 Central Avenue, Dover, NH, Do hereby promise to pay to Michael Gardner Supplemental Needs Trust of 456 Central Avenue, Dover, NH, or order, on demand, such monies as are advanced hereafter by the holder to the borrower, together with interest thereon at the annual rate of three (3) percent. When payment is demanded hereunder, the payments shall then be made by the borrower at the rate of \$2,000 per month until the total balance then due at the time of demand, plus interest, has been paid in full. Nevertheless, the borrower may take credit for legal and trustee fees earned against any monies advanced hereunder or make payments on account, prior to any demand as set forth aforesaid.

(hereinafter referred to as "the Note").

26. The Note is signed by Mr. Gray; Mr. Gray's signature is not witnessed. There is no designation as to whether Mr. Gray was signing as trustee approving the Note or as the borrower receiving the funds.

27. Neither Michael's representative (his mother, Tammy Gardner) nor the Co-Trustee (his grandmother, Esther Thompson) was aware of the Note.
28. Paragraph 8.1 of the Trust Document states, "During all periods of time when the office of Trustee is occupied by Co-Trustees, such Co-Trustees must exercise the powers of Trustee by unanimous consent, except as provided in paragraph 8.7." Paragraph 8.7 states, "...one Trustee may delegate ministerial powers; such as signing checks for already approved expenditures. This delegation must be evidenced by an instrument in writing, signed by the delegating Trustee, and witnessed in the same manner as deeds to real estate are required to be acknowledged."
29. During the audit, Mr. Calaman could not locate a document delegating the power to approve the Note. However, even if there were such a document, that power is not ministerial and its delegation would, therefore, require the Co-Trustee's consent.

### **The Bonner Trust Account**

30. Mr. Gray created the Deborah Bonner Trust on March 7, 2000. The genesis of the Bonner Trust was the settlement of a personal injury claim for Ms. Bonner.
31. After deducting attorney's fees and expenses, the net amount in the Bonner Trust was \$290,004.30. Mr. Gray placed the majority of these funds into investment accounts at A. G. Edwards.
32. Mr. Gray was the sole trustee. Mr. Gray was granted absolute discretion to manage and maintain the assets of the trust. Ms. Bonner was the settler and beneficiary.
33. On April 24, 2000, Mr. Gray opened the Bonner Trust Account at Citizens Bank. The funds in the Bonner Trust Account were intended to cover Ms. Bonner's expenses. Mr. Gray lost no time in channeling money from that Account to himself.
34. Indeed, when Mr. Gray made the initial transfer of money from the investment accounts into the Bonner Trust Account, Mr. Gray retained \$1,000.00 for himself. As a result, the Bonner Trust Account was out of trust by \$1,000.00 at its inception on April 24, 2000. As of that date, the Bonner Trust Account totaled \$9,786.00.
35. From the initial deposit, Mr. Gray withdrew in two disbursements a total of \$5,000.00. Mr. Gray classified these disbursements as an "advance on fees" and placed them directly into his firm's operating account.
36. On May 23, 2000, Mr. Gray transferred \$5,000.00 from the A. G. Edwards investment accounts to the Bonner Trust Account. On June 16, 2000, Mr. Gray disbursed \$1,800.00 from the Bonner Trust Account to his firm's operating account as an "advance on fees."
37. On June 23, 2000, Mr. Gray transferred \$40,000.00 from the A. G. Edwards investment accounts to the Bonner Trust Account.

38. Shortly thereafter, on June 30, 2000, Mr. Gray disbursed \$7,500.00 from the Bonner Trust Account to his firm's operating account as payment for "fees." On July 11, 2000, Mr. Gray wrote a check to himself from the Bonner Trust Account in the amount of \$1,000.00. Mr. Gray cashed this check and wrote nothing in the memo line.
39. In the summer of 2000, Ms. Bonner needed funds to purchase a piece of real estate in Raymond. As a result of the \$16,300.00 that Mr. Gray had diverted out of the Bonner Trust Account since its inception, there was not enough money in the Account to cover the cost of that real estate purchase. On July 19, 2000, and August 2, 2000, Mr. Gray covered this discrepancy by transferring a total of \$30,000.00 from the A. G. Edwards investment accounts into the Bonner Trust Account.
40. At the same time, Mr. Gray also paid himself \$3,000.00 as "fees."
41. On September 11, 2000, Mr. Gray wrote a \$1,000.00 check to Ms. Bonner which "bounced" due to insufficient funds in the Bonner Trust Account. At that time, Ms. Bonner complained to Mr. Gray and sought an explanation. Mr. Gray did not provide her an explanation.
42. Mr. Gray stopped using the Bonner Trust Account after that incident. Thereafter, Mr. Gray began using his firm's trust account for all Bonner Trust transactions.
43. From July 12, 2000, to September 20, 2000, Mr. Gray deposited \$10,785.25 from the A. G. Edwards investment accounts into his firm's trust account. Notably, of that money, Mr. Gray only spent \$2,386.72 on Ms. Bonner. Mr. Gray claimed \$7,500.00 of that money for himself as "fees," and wrote checks to himself accordingly.
44. On September 29, 2000, Mr. Gray deposited \$10,000.00 into his firm's trust account for Ms. Bonner, bringing the balance of her funds to \$10,895.00.
45. Between October 1, 2000, and December 1, 2000, Mr. Gray expended a total of \$18,907.70 from his firm's trust account for Ms. Bonner. However, as a result of Mr. Gray's prior misuse of her funds, there were insufficient funds (shortfall of \$8,009.17) in his firm's trust account for Ms. Bonner.
46. Ms. Bonner became concerned about Mr. Gray's handling of her money, and she investigated the situation. On or about September 21, 2000, Ms. Bonner contacted the investment company and learned of Mr. Gray's numerous transfers. Ms. Bonner telephoned Mr. Gray and requested an explanation. Mr. Gray did not provide her with an explanation.
47. Ms. Bonner hired new counsel, Nicholas Aeschliman, who wrote Mr. Gray a letter on October 20, 2000, notifying him of Mr. Gray's pending removal as trustee and requesting Mr. Gray's immediate resignation.

48. Mr. Gray responded more than one month later, on December 4, 2000. Mr. Gray forwarded to Attorney Aeschliman Mr. Gray's resignation as trustee, an "accounting" of the trust money, and a check drawn on Mr. Gray's firm's trust account to the Bonner Trust in the amount of \$12,917.11.
49. Mr. Gray's "accounting" of Ms. Bonner's trust funds is misleading in several ways. First, it does not mention any of the disbursements Mr. Gray made to himself. It lists \$5,692.00 as the total amount of earned fees (from inception of the trust in March 2000 through November 30, 2000). Mr. Gray listed these fees as being paid in full and in one disbursement on December 1, 2000.
50. Taking Mr. Gray's assessment of his "earned fees" as true (\$5,692.00), Mr. Gray paid himself out of Ms. Bonner's funds a total of \$21,108.00 more than Mr. Gray earned.
51. Due to Mr. Gray's mishandling of Ms. Bonner's money, Mr. Gray's final disbursement check (\$12,917.11) to Attorney Aeschliman resulted in a cumulative shortfall of \$20,926.34 in Mr. Gray's firm's trust account with respect to Ms. Bonner.
52. To cover this shortfall in his firm's trust account, Mr. Gray necessarily used other clients' money.

#### **Harriman Estate Account**

53. Jeanette Harriman died on January 30, 1998. Ms. Harriman named her grandson, Steven A. Hall, as the beneficiary in her Will.
54. The primary asset of her estate was a parcel of real estate which sold for \$90,000.00.
55. The closing took place on October 2, 1998, and, on October 5, 1998, Mr. Gray opened the Harriman Estate Account. Mr. Gray deposited the net proceeds to the Estate from the closing (\$82,567.97) into the Harriman Estate Account.
56. Mr. Gray should have paid Mr. Hall the money due him and closed the Estate shortly thereafter. Instead, fourteen months after the closing, Mr. Gray made a partial payment to Mr. Hall in the amount of \$10,000.00. Mr. Gray retained control over the Harriman funds until May 1, 2000, when Mr. Gray issued a final disbursement check to Mr. Hall.
57. While Mr. Gray had control over the Harriman Estate Account, Mr. Gray issued checks to himself totaling \$46,007.00, which is \$38,250.00 more than Mr. Gray had earned. Mr. Gray characterized each of these disbursements as earned fees.
58. To cover the shortfall Mr. Gray's misappropriations had caused, before sending a final disbursement check to Mr. Hall, Mr. Gray transferred \$33,318.00 to the Harriman Estate Account from his firm's operating account.
59. Mr. Gray's final disbursement check to Mr. Hall on May 1, 2000, was for \$62,697.06, which, as the Audit Report explains, was \$4,932.00 short of what Mr. Gray owed him.

60. Significantly, in the Estate's Accounting which Mr. Gray filed on October 8, 1999, in Strafford County Probate Court, Mr. Gray included a receipt signed by Mr. Hall falsely indicating that, as of October 8, 1998, Mr. Hall had received the total amount owed him (\$72,923.11).

### Acevedo Escrow Account

61. Mr. Gray represented Anthony Acevedo in his divorce. His wife, Jeanne Marie R. Acevedo, was represented by Attorney Bradley Lown.
62. On April 4, 2000, Mr. Gray opened the Acevedo Escrow Account and deposited the net proceeds from the sale of the marital home (\$28,634.52). Mr. Gray was the only signatory on the Acevedo Escrow Account.
63. This money should have remained untouched in the Acevedo Escrow Account until January 18, 2001, the date Mr. Gray received the divorce decree and the court's escrow disbursement instructions.
64. But, like other accounts over which Mr. Gray had control, Mr. Gray began removing money from the Acevedo Escrow Account and enriching himself shortly after he opened it.
65. Specifically, Mr. Gray transferred a total of \$18,500.00 from the Acevedo Escrow Account into Mr. Gray's firm's operating account. Mr. Gray characterized almost all of these disbursements to himself as "fees."
66. As a result of Mr. Gray's misuse of the funds, at the time Mr. Gray made the escrow payments, there were insufficient funds in the Acevedo Escrow Account to cover them.
67. On March 12, 2001, Mr. Gray issued Ms. Acevedo's check (\$14,740.67) from his firm's trust account. At that time, the balance on hand for Mr. Acevedo in that account was only \$375.00. Mr. Gray's firm's trust account was, therefore, out of trust on this matter by a total of \$14,365.65.
68. As of the beginning of April, 2001, the balance in the Acevedo Escrow Account equaled \$10,874.56. In that month, Mr. Gray disbursed to himself another \$8,000.00 from that account. These disbursements reduced the balance of this account to \$2,874.56.
69. Mr. Gray did not issue Mr. Acevedo's escrow payment (\$12,740.67) until July 9, 2001. On that date, there were no funds available for Mr. Acevedo in Mr. Gray's firm's trust account. As a result, Mr. Gray's issuance of this check increased the out of trust balance of his firm's trust account for Mr. Acevedo to \$27,106.34. Mr. Gray covered this out of trust situation and issued a check to Mr. Acevedo by misappropriating funds from his firm's trust account.

70. The amount remaining in the Acevedo Escrow Account (\$2,874.56) earned \$25.00 in interest between May 15, 2001, and February 15, 2002, raising the balance to \$2,900.20. On February 22, 2002, Mr. Gray closed the Acevedo Escrow Account by transferring the remaining balance into his firm's operating account.

#### **Mr. Gray's Firm's Trust Account**

71. As explained above (and in greater detail in the Audit Report), Mr. Gray reimbursed the Bonner Trust Account and Acevedo Escrow Account (which Mr. Gray had depleted) by taking funds from his firm's trust account. For the Bonner Trust, Mr. Gray removed \$20,926.34, and for the Acevedo Escrow Account, Mr. Gray removed \$27,106.34.
72. The Audit Report lists sixteen other clients for whom Mr. Gray's firm's trust account was out of trust. *See* Audit Report at pp. 25-30.
73. The Audit Report also lists numerous instances where Mr. Gray did not remove his fees from his firm's trust account. *See* Audit Report at pp. 32-39. Mr. Gray commingled his money with his firm's trust account to bolster the overall balance, as Mr. Gray was aware of the shortfalls due to his misappropriation of funds in this account.

#### **Mr. Gray's Firm's Operating Account**

74. The Audit report lists fifteen clients to whom Mr. Gray remitted retainer funds from his firm's operating (rather than trust) account. *See* Audit Report at pp. 39-42. Of those fifteen clients, ten had no funds available in Mr. Gray's firm's trust account. *See* Audit Report at pp. 40-42.
75. In addition to retainer refunds from Mr. Gray's firm's operating account, the Audit Report lists eight clients on whose behalf payments were made from his firm's operating (rather than trust) account. *See* Audit Report at pp. 42-43.
76. In all of the above instances, Mr. Gray should have been disbursing the money in question from his firm's trust account.

## **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 Mr. Gray has violated the following Rules of Professional Conduct:

#### **Rule 1.15(a)(1): Failure to Safeguard Client Property**

77. As of April 30, 2004, Mr. Gray was out of trust with respect to Mr. Gray's clients' trust accounts by a minimum of \$389,053.60.

78. Mr. Gray failed to safeguard the assets of Mr. Gray's clients which were entrusted to Mr. Gray's care over a long period of time. At times, Mr. Gray actively misappropriated funds by failing to deposit client retainers into trust, and by withdrawing funds from Mr. Gray's client trust accounts for Mr. Gray's own use prior to earning those funds and without proper authorization.
79. Mr. Gray failed to safeguard his clients' property by commingling his earned legal fees with their property, which Mr. Gray held in his firm's trust account.
80. Based upon all of the aforementioned facts, there exists clear and convincing evidence that Mr. Gray's failures to safeguard his clients' property constitutes a violation of N.H. R. Prof. Conduct 1.15(a)(1).

**Rule 1.15(a)(2) and Sup. Ct. R. 50(2)A, C & F:**  
**Failure to Maintain Proper Records**

81. Mr. Gray did not maintain his accounting records in accordance with New Hampshire Supreme Court Rules. Indeed, as the Audit Report concluded, there "was little or no organization to any of [Mr. Gray's] firm's records." Mr. Gray maintained no client ledgers for his firm's trust account, nor did Mr. Gray perform reconciliations on this account. Mr. Gray failed in the same respects with Mr. Gray's individual client escrow accounts and special trust accounts.
82. Due to the inadequacy of Mr. Gray's financial records, Mr. Calaman could not match all of the recorded transactions with specific clients. The Audit Report devotes two full pages to what Mr. Calaman characterized as "unidentified disbursements."
83. Based upon all of the aforementioned facts, there exists clear and convincing evidence that Mr. Gray's failure in this regard constitutes a violation of N.H. R. Prof. Conduct 1.15(a)(2), as well as N.H. Sup. Ct. R. 50(2)A, C & F.

**Rule 1.15(b): Failure to Promptly Deliver Funds to Clients**

84. In the Harriman matter, Mr. Gray retained control of funds to which Mr. Hall was entitled for an excessive amount of time. The closing on the real estate (central asset of the Estate) occurred on October 2, 1998. Mr. Gray should have paid Mr. Hall the money to which he was entitled shortly thereafter. Instead, Mr. Gray issued Mr. Hall's final disbursement check on May 1, 2000, one year and eight months after the closing.
85. In the Acevedo matter, Mr. Gray received the court's order with respect to disbursement of the escrow funds on January 18, 2001. Mr. Gray should have disbursed Mr. Acevedo's funds (at the latest) on or about the same time Mr. Gray belatedly disbursed funds to Ms. Acevedo (March 12, 2001). Instead, Mr. Gray held onto Mr. Acevedo's money until July 9, 2001.

86. Based upon all of the aforementioned facts, there exists clear and convincing evidence that Mr. Gray's failure to deliver promptly to Mr. Hall and Mr. Acevedo the funds to which they were entitled constitutes a violation of N.H. R. Prof. Conduct 1.15(b).

**Rules 3.3(a)(1); 3.3(a)(3), and 8.4(c):  
Lack of Candor Toward New Hampshire Supreme Court**

87. From the year 2000 forward, Mr. Gray made material misrepresentations on the Annual Trust Accounting Compliance Certificates filed with the New Hampshire Supreme Court with respect to question six, which asks: "At all times since filing your last certificate, did the balance of funds in your clients' trust account equal or exceed the obligations you owed to your clients with respect to such accounts?" In each instance, Mr. Gray answered the question in the affirmative when Mr. Gray knew that was not the case.
88. Mr. Gray made material misrepresentations on the Annual Trust Accounting Compliance Certificates filed with the New Hampshire Supreme Court from the year 2000 forward with respect to questions 7(a) and 7(b), regarding the maintenance of an attorney trust accounting system. In each instance, Mr. Gray indicated that his accounting system was in complete compliance with the appropriate rules. In each instance, Mr. Gray knew that was not the case.
89. Mr. Gray's material misrepresentations on his Annual Trust Accounting Compliance Certificates constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 3.3(a)(1).
90. Mr. Gray knew of the misrepresentations and failed to take any remedial measures. Based upon all of the aforementioned facts, there exists clear and convincing evidence that Mr. Gray violated N.H. R. Prof. Conduct 3.3(a)(3).
91. The misrepresentations on Mr. Gray's Annual Trust Accounting Compliance Certificates also constitute clear and convincing evidence of acts of dishonesty and deceit on Mr. Gray's part in violation of N.H. R. Prof. Conduct 8.4(c).

**Rule 8.4(c): Deceit in Misappropriating Client Funds**

92. The Audit Report reveals numerous instances in which Mr. Gray failed to place client funds into a trust account, failed to safeguard client funds, and failed to return unearned retainer balances to clients. The Audit Report also reveals numerous instances in which Mr. Gray actively misappropriated client funds by withdrawing funds from client trust accounts for Mr. Gray's own use prior to those funds being earned and without proper authorization. Based upon all of the aforementioned facts, there exists clear and convincing evidence that Mr. Gray's misappropriation of client funds constitutes deceitful conduct in violation of N.H. R. Prof. Conduct 8.4(c).

**Rule 8.4(c): Deceit Regarding Ms. Bonner's Funds**

93. The "accounting" of the Bonner Trust monies (in the Bonner Trust Account and Mr. Gray's firm's trust account) which Mr. Gray forwarded to Attorney Aeschliman on December 4, 2000, was misleading and false in material respects.
94. Mr. Gray failed to include in that "accounting" any of the disbursements that Mr. Gray made to himself while he was entrusted with Ms. Bonner's money.
95. Mr. Gray also included in that "accounting" a single disbursement of \$5,692.00 on December 1, 2000, for Mr. Gray's earned fees with respect to Ms. Bonner. This falsely implied that Mr. Gray had made only one payment to himself as "fees," and that Mr. Gray made this single disbursement on the eve of Mr. Gray's resignation as Trustee.
96. Based upon all of the aforementioned facts, there exists clear and convincing evidence that Mr. Gray's misrepresentations in this December 4, 2000, "accounting" of the Bonner Trust funds constitute deceitful conduct in violation of N.H. R. Prof. Conduct 8.4 (c).

**Rule 8.4(a): Misconduct for Violating the Rules of Professional Conduct**

97. Because there exists clear and convincing evidence of the aforementioned violations of the N.H. Rules of Professional Conduct, there necessarily exists clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

### **III. SANCTION**

Having made the aforementioned findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is disbarment. 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., Coffey's Case*, 2005 N.H. LEXIS 126 (N.H. 2005); *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").

The Standards set forth the following factors pertinent to the imposition of 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 mitigation factors. Standards, §3-0.

Section 4.11 of the Standards provides that in cases involving the failure to preserve client property:

Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

Section 6.11 of the Standards also indicates that in cases involving conduct prejudicial to the administration of justice or that involves dishonesty, fraud, deceit or misrepresentation to a court:

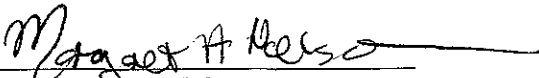
Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information and causes serious or potentially serious injury to a party, or causes a significant or potentially significant effect on the legal proceedings.

The conduct engaged in by Attorney Gray constituted knowing conversion of client property which caused actual or potential injury to his clients. This conduct reflects a devastating breach of the trust which his clients placed in Attorney Gray. He also made ongoing material misrepresentations to the New Hampshire Supreme Court in his Annual Trust Accounting Compliance Certificates which had the effect of concealing his knowing violations of his clients' trust. Sections 9.2 and 9.3 of the Standards lay out a variety of factors which can be considered as aggravating factors. Under §9.22, aggravating factors include: b) dishonest or selfish motive; c) a pattern of misconduct; d) multiple offenses; h) vulnerability of victim; and i) substantial experience in the practice of law. All these aggravating factors are present in this case. The Professional Conduct Committee is not aware of any mitigating factors which should be taken into account and which warrant a sanction less than disbarment, given the serious and harmful nature of Attorney Gray's conduct. Accordingly, the Professional Conduct Committee believes disbarment is the appropriate sanction.

#### IV. CONCLUSION

Based on its findings of violations of the following Rules of Professional Conduct: Rules 1.15(a)(1), 1.15(a)(2), 1.15(b), 3.3(a)(3), 8.4(c), 8.4(a) and Supreme Court Rule 50(2)A, C & F, and its consideration of the appropriate sanction, the Professional Conduct Committee hereby directs Disciplinary Counsel to file a Petition with the New Hampshire Supreme Court seeking the disbarment of Attorney Douglas C. Gray.

September 8, 2005

By:   
Margaret H. Nelson  
Chair

cc Landya B. McCafferty, Disciplinary Counsel  
Mark C. Rouvalis, Esquire  
File