

New Hampshire Supreme Court  
**Professional Conduct Committee**

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Toni M. Gray, \* Vice Chair  
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*Olson, Carl advs. Maynor Lopez Santizo - #08-044*

*and*

*Olson, Carl advs. Jeffrey C. O'Neil - #08-045*

**REPRIMAND**

On June 17, 2009, the Professional Conduct Committee ("Committee") deliberated the above-captioned matters. Committee members present included: Margaret H. Nelson, Chair; Benette Pizzimenti, Vice Chair; Toni M. Gray, Vice Chair; Susan R. Chollet; Alan J. Cronheim; David N. Cole (via telephone); Thomas P. Connair; Gerald A. Daley; James R. Martin, and Marilyn Billings McNamara. Richard H. Darling was absent.

The Respondent and Disciplinary Counsel ("ADO") assented to, and the Committee voted to accept the Assented-to Motion to Permit Waiver of Formal Proceedings.

**1. FINDINGS OF FACT**

The Respondent and the ADO have stipulated, and the Committee accepts the Stipulation, ("Stipulation") as to the facts of this matter. Accordingly, the facts described below as set forth in the Stipulation are established by clear and convincing evidence:

**A. Summary of the Facts in Docket #08-044**

1. Respondent, Carl D. Olson, Esq., is a New Hampshire attorney who was admitted to the Bar in 1990. At all times material to this matter, Mr. Olson practiced law at the Law Office of Carl D.

Olson, 50 Nashua Road, Suite 201, Londonderry, New Hampshire 03053.

2. The Complainant in this matter is Maynor Lopez Santizo, an inmate at the Hillsborough County House of Corrections. On July 17, 2008, Mr. Santizo filed a grievance against Mr. Olson related to Mr. Olson's representation of him on multiple felony-level drug charges. Mr. Santizo claimed that Mr. Olson provided ineffective assistance of counsel.
3. Having received no voluntary response to the grievance from Mr. Olson, the Attorney Discipline Office docketed Mr. Santizo's complaint on September 10, 2008. By letter of that same date, Thomas V. Trevethick, Esq., Deputy General Counsel of the Attorney Discipline Office, forwarded Mr. Olson a copy of the docketed complaint and wrote:

I am forwarding herewith a copy of a professional conduct complaint filed by Maynor Lopez.

You are required to submit an original and two copies of your reply within 30 days of the date of this letter to James L. DeHart, General Counsel, Attorney Discipline Office, 4 Chenell Drive, Suite 102, Concord, New Hampshire 03301. See Supreme Court Rule 37A(II)(a)(5)(C).

IT IS EXPECTED THAT YOU WILL PROMPTLY RESPOND TO THE REQUESTS OF THIS OFFICE. THE FAILURE TO COOPERATE WITH A DISCIPLINARY AGENCY COULD RESULT IN THE SCHEDULING OF A PUBLIC HEARING AND IN A FINDING THAT THE RULES OF PROFESSIONAL CONDUCT HAVE BEEN VIOLATED. RULE 8.1(b).

(Emphasis in original).

4. Mr. Olson received, but did not respond to Mr. Trevethick's September 10, 2008, letter.
5. On October 15, 2008, James L. DeHart, Esq., General Counsel of the Attorney Discipline Office, wrote a letter to Mr. Olson as follows:

On September 10, 2008, you were mailed a copy of a complaint filed by Maynor Lopez Santizo. We have not received your reply, which was due on October 10, 2008. Please give this matter your **immediate** attention.

If you fail to immediately file your answer to the complaint this Office will recommend that the matter be referred to Disciplinary Counsel for the issuance of a Notice of Charges for a public hearing on the issue of your failure to cooperate. See Rule 8.1(b) of the Rules of Professional Conduct. In the event a Notice of Charges is issued, the file will become public.

A copy of our letter to you dated September 10, 2008 is enclosed.

6. Mr. Olson received, but did not respond to Mr. DeHart's October 15, 2008, letter.
7. On November 13, 2008, the Complaint Screening Committee forwarded Mr. Santizo's complaint to Disciplinary Counsel for prosecution.
8. On February 18, 2009, Mr. Olson filed a detailed response to Mr. Santizo's complaint.

**B. Summary of the Facts in Docket #08-045**

9. The Complainant in this matter is Jeffrey C. O'Neil, a resident of Manchester, New Hampshire. On July 14, 2008, Mr. O'Neil filed a grievance against Mr. Olson related to Mr. Olson's representation

of him on several counts of domestic-related assault and one count of felony criminal threatening. At the time he filed his grievance, Mr. O'Neil was a resident of the Hillsborough County House of Corrections. Mr. O'Neil claimed that Mr. Olson provided ineffective assistance of counsel.

10. Having received no voluntary response to the grievance from Mr. Olson, the Attorney Discipline Office docketed Mr. O'Neil's complaint on September 10, 2008. By letter of that same date, Mr. Trevethick forwarded Mr. Olson a copy of the docketed complaint and wrote:

I am forwarding herewith a copy of a professional conduct complaint filed by Jeffrey C. O'Neil.

You are required to submit an original and two copies of your reply within 30 days of the date of this letter to James L. DeHart, General Counsel, Attorney Discipline Office, 4 Chenell Drive, Suite 102, Concord, New Hampshire 03301. See Supreme Court Rule 37A(II)(a)(5)(C).

IT IS EXPECTED THAT YOU WILL PROMPTLY RESPOND TO THE REQUESTS OF THIS OFFICE. THE FAILURE TO COOPERATE WITH A DISCIPLINARY AGENCY COULD RESULT IN THE SCHEDULING OF A PUBLIC HEARING AND IN A FINDING THAT THE RULES OF PROFESSIONAL CONDUCT HAVE BEEN VIOLATED. RULE 8.1(b).

(Emphasis in original).

11. Mr. Olson received, but did not respond to Mr. Trevethick's September 10, 2008, letter.
12. On October 15, 2008, Mr. DeHart wrote a letter to Mr. Olson as follows:

On September 10, 2008, you were mailed a copy of a complaint filed by Jeffrey C. O'Neil. We have not received your reply, which was due on October 10, 2008. Please give this matter your **immediate** attention.

If you fail to immediately file your answer to the complaint this Office will recommend that the matter be referred to Disciplinary Counsel for the issuance of a Notice of Charges for a public hearing on the issue of your failure to cooperate.

See Rule 8.1(b) of the Rules of Professional Conduct. In the event a Notice of Charges is issued, the file will become public.

A copy of our letter to you dated September 10, 2008 is enclosed.

13. Mr. Olson received, but did not respond to Mr. DeHart's October 15, 2008, letter.
14. On November 13, 2008, the Complaint Screening Committee forwarded Mr. O'Neil's complaint to Disciplinary Counsel for prosecution.
15. On February 18, 2009, Mr. Olson filed a detailed response to Mr. O'Neil's complaint.

Stipulation ¶¶ 1-15.

## II. RULINGS OF LAW

The Respondent and the ADO have stipulated, and the Committee accepts the Stipulation, as to the Rules of Professional Conduct that were violated. The Stipulation establishes these violations by clear and convincing evidence:

### **Rule 8.1(b): Failure to Cooperate**

16. Mr. Olson has an obligation "to respond to a lawful demand for information from [a] . . . disciplinary authority . . . ." N.H. R. prof. Conduct 8.1(b).

17. In matter #08-044, Mr. Trevethick's letter dated September 10, 2008, and Mr. DeHart's letter dated October 15, 2008, were lawful demands for information from the Attorney Discipline Office.
18. In matter #08-045, Mr. Trevethick's letter dated September 10, 2008, and Mr. DeHart's letter dated October 15, 2008, were lawful demands for information from the Attorney Discipline Office.
19. In each instance, Mr. Olson knew of the letters and was aware of his obligation to respond to them.
20. Mr. Olson's failure to respond to those letters constitutes a knowing violation of his obligation to respond to lawful demands for information from the Attorney Discipline Office.
21. Mr. Olson's conduct constitutes clear and convincing evidence of a violation of Rule 8.1(b).

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

22. Because there exists clear and convincing evidence of the above violation as set forth herein, Mr. Olson has necessarily violated Rule 8.4(a).

*Id.* ¶¶ 16-21.

### III. ANALYSIS

Although New Hampshire has not adopted the *American Bar Association's Standards for Imposing Lawyer Sanctions* (2005) (*Standards*), the Committee looks to them for guidance. *See, e.g., Shillen's Case*, 149 N.H. 132, 139 (2003) (noting that although the Court has never formally adopted the *Standards* the Court has considered them when imposing sanctions). The *Standards* list the following factors to be considered in imposing sanctions: (a) the duty violated; (b) the lawyer's mental state; (c) the actual or potential injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. *Standards, supra* § 3.0; *Coffey's Case*, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). In applying these factors the Committee first categorizes the respondent's misconduct, then identifies the appropriate sanction. *Coddington's Case*, 155 N.H. 66, 71 (2007). The Committee then considers the effect of any

aggravating or mitigating factors on the ultimate sanction. *Id.*

The first three parts in the analysis recommended in the *Standards* create the framework for characterizing the misconduct and determining a baseline 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 Wolterbeek's Case*, 152 N.H. 710, 714 (2005).

Under the first and second prongs of the analysis in this case, Mr. Olson's violation was a knowing breach of his duty to cooperate with the Attorney Discipline Office.

Under the third prong of the analysis, Mr. Olson acknowledges causing harm to the discipline process by failing to respond in a timely manner to the demands for information about the two complaints at issue here.

Although not directly applicable, *Standard 7.0*, entitled "Violations of Duties Owed as a Professional," provides some guidance for determining a baseline sanction for a failure to cooperate charge.

That Standard provides that disbarment is the appropriate sanction for a knowing violation of a professional obligation where the lawyer acts with an intent to obtain a benefit for himself. *Standards* §7.1. A suspension from the practice of law is appropriate for a knowing violation of a professional obligation, *id.* §7.2, and either a public censure or reprimand is appropriate where the violation is negligent. *Id.* §7.3, 7.4.

While Mr. Olson's mental state was knowing, he did not act with any intent to benefit himself; therefore, disbarment is not an appropriate baseline sanction. Nor is a suspension an appropriate baseline sanction in this case. Although his mental state was knowing, Mr. Olson did ultimately file responses to the complaints in both matters. Further, in terms of injury, Mr. Olson's belated responses to the complaints reveal that his misconduct ultimately caused direct harm only to himself, because the matters may have been disposed of earlier in the process had he promptly responded to the complaints.

Upon consideration of the initial three-part test and the above-referenced language of the *Standards*, the parties agree that Mr. Olson's conduct warrants a baseline sanction of reprimand or public censure. A reprimand is most appropriate in this case once the mitigating and

aggravating factors are considered, pursuant to the fourth prong of the recommended sanction analysis.

There is one aggravating factor in this case. Mr. Olson has two prior warnings in 2008 for his failure to cooperate. In the Fall of 2008, Mr. Olson was the subject of five different grievances from former clients, each of whom was an inmate at the Hillsborough County House of Corrections. Two of those five grievances are the subject of this stipulation. The Complaint Screening Committee issued the two Warnings in matters #08-057 and #08-059, by letters dated February 13, 2009. In one matter, #08-033, Mr. DeHart dismissed the complaint without issuing a warning.

In those cases, Mr. Olson's responses were tardy, but he was able to persuade the Complaint Screening Committee that the complaints were without merit. Notably, Mr. Olson filed his responses to the four docketed complaints around the same time, in February 2009.

There is some evidence that the inmates acted in concert with one another in filing the complaints. In light of Mr. Olson's responses, their complaints do not offer sufficient bases on which to bring charges. This does not excuse Mr. Olson's behavior, but it helps explain the frustration, anxiety, and ultimately, inaction, that resulted, as Mr. Olson temporarily "buried his head in the sand."

Disciplinary Counsel has seen many cases where respondents become temporarily unable to respond to a disciplinary complaint for a variety of reasons. Very often, a respondent's failure to cooperate persists well beyond Disciplinary Counsel's prosecution. Here, however, Mr. Olson was able to concede his failure to cooperate and, although belated, file detailed responses to each complaint. This is both fortunate and mitigating.

Further mitigating factors include Mr. Olson's cooperation with Disciplinary Counsel, his remorse and acknowledgment of error. Other than this bevy of complaints in 2008, Mr. Olson has no disciplinary record.

#### **IV. SANCTION**

Having made the above findings and rulings, the Committee concludes that the appropriate discipline in this matter is a Reprimand. 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 Standards.*

**V. COSTS**

The Respondent and the ADO have stipulated, and the Committee accepts, that the Respondent will pay all costs associated with the investigation and prosecution of this matter.

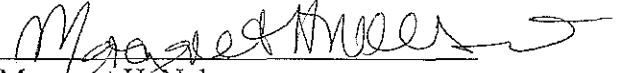
**VI. CONCLUSION**

For the above reasons the Committee issues a Reprimand to the Respondent for violating N.H. R. Prof. Conduct 8.1(b): Failure To Cooperate, and 8.4(a): Misconduct.

**VII. RIGHT TO APPEAL**

Pursuant to Supreme Court Rule 37(A)(III)(d)(2)(D)(4)(A), the parties have the right to appeal this decision to the New Hampshire Supreme Court. *See also* Supreme Court Rule 37(3)(c).

June 22, 2009

  
Margaret H. Nelson  
Chair

**Distribution:**

Landya B. McCafferty, Disciplinary Counsel  
Carl D. Olson, Esquire  
File