

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Quinn, Charles R., III advs. Attorney Discipline Office # 06-047

RECOMMENDATION TO PETITION SUPREME COURT FOR DISBARMENT

On November 17, 2009, the Professional Conduct Committee deliberated the above captioned matter. Members present included Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling and Jennifer L. Parent. David N. Cole, Thomas P. Connair, Gretchen Rule Hamel and James R. Martin were absent. The Record consisted of the Notice of Charges, Disciplinary Counsel's Memorandum on Sanction, exhibits, transcript of hearing before the Hearing Panel and Hearing Panel Report.

I. FINDINGS OF FACT

Upon consideration, the Committee voted to accept the Hearing Panel's Findings of Fact, as found by clear and convincing evidence, consistent with Rule 37AIII(b)(3)(A). The facts are as follows:

The matter was referred to the Attorney Discipline Office (ADO) pursuant to Rule 37(1)(2)(h) and Rule 37A(I)(c).

Respondent, Charles R. Quinn, III, was admitted to the New Hampshire Bar on October 30, 1995. He was also admitted to the Massachusetts Bar on June 28,

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Respondent, Charles R. Quinn, III, was admitted to the New Hampshire Bar on October 30, 1995. He was also admitted to the Massachusetts Bar on June 28,

1994. At all times material to this proceeding, Mr. Quinn maintained a law office at 68 Main Street, Andover, Massachusetts. His other address listed with the bars of both states is 14 Clark Road, Andover, Massachusetts¹.

By Order of the New Hampshire Supreme Court dated April 26, 2007, Mr. Quinn was suspended from the practice of law in New Hampshire for failure to file his 2006 annual trust accounting certificate of compliance. Mr. Quinn had failed to respond to an earlier Order of the Court and to bring himself into compliance with Supreme Court Rule 50-A(2). By Order of the New Hampshire Supreme Court dated July 17, 2007, Mr. Quinn was also suspended for failure to comply with minimum legal education requirements under Supreme Court Rule 53.7(A)(3).

By Order of the Supreme Judicial Court of Massachusetts dated July 15, 2008, Mr. Quinn was suspended from the practice of law in Massachusetts. An Order of Immediate Administrative Suspension was also issued by the United States District Court for the District of Massachusetts. Notices issued by both courts to Mr. Quinn were “unclaimed” or returned as “undeliverable as addressed” and “unable to forward.”

Karla Lavigne, formerly of Somerville, Massachusetts, was Mr. Quinn’s client. It was in connection with Mr. Quinn’s representation of Ms. Lavigne in a probate case that this matter was referred to the Attorney Discipline Office in June 2006.

Following the death of Ms. Lavigne’s late husband, Edward C. Lavigne, of Hillsboro, New Hampshire, a Petition for Estate Administration was filed in Hillsborough County Probate Court in April 2004.

In or about September 2003, Ms. Lavigne retained Mr. Quinn to represent her in connection with the probate of this estate.

In May 2004, Mr. Quinn filed a motion for the appointment of Ms. Lavigne as administratrix of the estate. The Court granted the motion and issued a certificate of appointment. It then ordered Ms. Lavigne to file an inventory of estate assets by October 31, 2004, and an accounting by August 3, 2005.

Mr. Quinn subsequently filed a motion to extend the time for filing the inventory. The Court granted the motion, extending the time to January 25, 2005.

On behalf of Ms. Lavigne, Mr. Quinn prepared and filed the Inventory of Fiduciary, so-called, dated January 26, 2005. The Inventory included what

¹ The ADO has recently been advised by authorities in Maine that Mr. Quinn may now reside in Harpswell, Maine.

purported to be Ms. Lavigne's oath as fiduciary, attesting to her knowledge and possession of the total estate of the deceased. Mr. Quinn executed the document as a notary public (applying his Massachusetts notary stamp), attesting to the oath taken and subscribed to in his presence by Ms. Lavigne.

A fiduciary accounting was not filed by the August 3, 2005, deadline and, by Order of November 2, 2005, the Court declared the estate in default. On January 23, 2006, Mr. Quinn filed a motion to extend the time for filing the accounting. The Court granted the motion, extending the deadline to March 23, 2006.

Mr. Quinn prepared and filed the administratrix's accounting, as directed. However, the filing was returned by the Court noting certain errors and requesting additional information. Ms. Lavigne then sought leave of the Court to terminate Mr. Quinn. She entered a *pro se* appearance and completed the accounting on May 19, 2006. The final accounting was approved on September 5, 2006.

At a subsequent hearing before the Court regarding the final accounting, Ms. Lavigne advised the Court that she was dissatisfied with Mr. Quinn's representation. Ms. Lavigne filed a list of complaints about Mr. Quinn, alleging, among other things, as follows: "My signature on the inventory is forged. I did not sign the inventory." Ms. Lavigne did not allege that the inventory was in any other way inaccurate.

The Court inquired of Mr. Quinn regarding Ms. Lavigne's allegations and indicated it was "extremely dissatisfied with his [Mr. Quinn's] position as it relates to whether or not Mrs. Lavigne had signed the inventory"

This matter was referred to the ADO on June 29, 2006.

Mr. Quinn responded to the allegations of the referral by letter of January 19, 2007. With respect to the allegation of forgery, Mr. Quinn did not answer the question whether he had signed Ms. Lavigne's name to the inventory. He stated as follows:

The inventory was the very first document filed in the case, and it was only after explaining to Ms. Lavigne that many hours have gone into her late Husband's Estate, and that additional attorney fees were being incurred, did Ms. Lavigne decide that it was not her signature on the inventory. I did, however, notarize the initial inventory in Massachusetts with my Massachusetts Notary. . . . I certainly would not have forged my client's own signature, as there

would be nothing to gain by doing so.

Mr. Quinn has not responded to requests for additional information, including access to his file. The ADO has written letters to Mr. Quinn dated January 24, 2007; April 27, 2007; November 20, 2008; and March 9, 2009. Mail addressed to Mr. Quinn at both of the aforementioned Andover, Massachusetts, addresses has been unclaimed or returned as undeliverable, with no forwarding address.

See PCC Tab 2, at ¶¶ 1-17.

Abode service was effected on June 4, 2009. Prior to service, Harpswell, Maine, Deputy Roberts reported that he had reached Mr. Quinn by cell phone. Mr. Quinn indicated he was willing to pick up the documents when he returned from Massachusetts. Mr. Quinn did not make any further contact with the Harpswell, Maine Sheriff's Department.

See PCC Tab 4, at ¶¶ 11-12.

II. RULINGS OF LAW

The Committee voted to accept the Rulings of Law found by the Hearing Panel, by clear and convincing evidence. The Rulings are as follows:

Rule 3.3(a)(1)(3): Candor Toward the Tribunal

Mr. Quinn appeared as counsel for Ms. Lavigne in a Hillsborough County Probate Court proceeding, as described above.

Mr. Quinn owed a duty of candor to the Probate Court in connection with the referenced proceeding.

Mr. Quinn violated said duty by knowingly entering a false attestation to the signature and oath of Ms. Lavigne as fiduciary in connection with the preparation and filing of an estate inventory. Mr. Quinn also violated his duty in this regard by falsely entering Ms. Lavigne's signature on the aforesaid inventory.

The oath and signature of Ms. Lavigne, as well as Mr. Quinn's attestation thereof, were material requirements of the inventory submitted for review and approval by the Probate Court.

Rule 8.1(b): Cooperation with Disciplinary Authority

Mr. Quinn was timely apprised of the disciplinary referral in this matter.

Having been duly apprised of the subject disciplinary matter, Mr. Quinn owed a duty to the disciplinary authority to cooperate with such authority and to respond to requests for information.

The letterhead on his January 2007 response to the ADO's initial inquiry indicated that Mr. Quinn continued to maintain an office at the 68 Main Street, Andover, Massachusetts, address.

At no time since January 2007 has Mr. Quinn apprised the ADO or the New Hampshire Bar of any change in his office address, or of his other Andover, Massachusetts, address.

Mr. Quinn has declined to accept or respond to any of the aforesaid correspondence from the ADO. Nor, apparently, has Mr. Quinn made any arrangements to have his mail forwarded to another address.

Mr. Quinn has violated the aforesaid duty by failing to apprise the ADO of any change of address or to respond to its various requests for information:

Rule 8.4(a): General Rule

There is clear and convincing evidence that Mr. Quinn breached said duty, having found the foregoing violations.

See PCC Tab 2, at ¶¶ 19-33.

III. ANALYSIS

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., Conner's Case*, 158 N.H. 299, 303 (2009). "The sanction must take into account the severity of the misconduct." *Coffey's Case*, 152 N.H. 503, 513 (2005).

Although the Court has not adopted the *Standards*, it looks to them for guidance.

Conner's Case, 158 N.H. at 303. 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.” *Id.* (quoting *Douglas' Case*, 155 N.H. 613, 621 (2007)); *Standards* § 3.0.

The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner's Case*, 158 N.H. at 303. (“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 part of 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.”)

In the case of multiple charges of misconduct, the ABA recommends that the sanction imposed “should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct.” *Id.* (citing *Richmond's Case*, 152 N.H. 155, 160 (2005)).

Under the first prong of the analysis, Mr. Quinn violated duties owed to his client, to the Court, and to the legal profession. Mr. Quinn misrepresented the signature, oath, and presence of Ms. Lavigne in connection with execution of the fiduciary inventory; he was not candid with the Court in responding to questions raised about his conduct; he was not candid or cooperative with

the ADO; and he has apparently sought to evade the regulatory process. These are serious violations.

The second prong of the three-part test requires analysis of Mr. Quinn's mental state. At the very least, Mr. Quinn has acted knowingly in connection with each breach of duty.

The third prong requires analysis of the actual or potential injury caused by Mr. Quinn's misconduct. Here, Mr. Quinn caused harm to his attorney-client relationship, as well as to the reputation and integrity of the legal profession. Through his apparent effort to evade the regulatory process, Mr. Quinn has interfered with the administration of justice. He thereby also poses a continuing danger to the public.

In determining a baseline sanction, the *Standards* provide material guidance. In connection with Mr. Quinn's lack of candor to the Court, the following provisions of the *Standards* are appropriate for consideration:

Standards §5.1 entitled "Failure to Maintain Personal Integrity," provides as follows:

- 5.11 Disbarment is generally appropriate when:
 - (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
 - (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
- 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard* 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
- 5.13 Reprimand [public censure] is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud,

deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

- 5.14 Admonition [reprimand] is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

Standards § 6.1, entitled "False Statements, Fraud and Misrepresentation," provides as follows:

- 6.11 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 adverse effect on the legal proceeding.
- 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
- 6.13 Reprimand [public censure] is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
- 6.14 Admonition [reprimand] is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

Applicable standards for failing to cooperate with the regulatory authority include the following:

Standards §7.0, entitled "Violations of Duties Owed as a Professional," provides as follow:

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.

- 7.3 Reprimand [public censure] is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition [reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

Mr. Quinn was properly served with the Notice of Charges, both at the addresses on file with the New Hampshire Bar, (*see In the Matter of Douglas H. Adamson*, New Hampshire Supreme Court, LD-93-001 (1993) and at a home address apparently supplied by Mr. Quinn to the Cumberland County District Attorney.

See PCC Tab 4, at p. 13.

Because of his default in answering the charges, Mr. Quinn is deemed to have admitted the allegations set forth in the Notice of Charges. Sup. Ct. R. 37A(III)(b)(3)(A).

Thus, it is undisputed that Mr. Quinn undertook to deceive the Court by forging his client's signature and then falsely swearing to her oath and presence at the execution of the inventory in order to satisfy the Court's requirement for timely filing of that document.

Mr. Quinn also knowingly sought to sidestep the truth in his evasive response to questions posed by the Court and by the ADO relative to the execution of the inventory filed on behalf of Ms. Lavigne.

Finally, there can be little doubt under the circumstances that Mr. Quinn has knowingly sought to avoid apprehension by apparently changing his professional and residential addresses (and failing to notify either the Massachusetts or New Hampshire Bar) or otherwise managing to avoid accepting delivery of mail from disciplinary authorities.

Mr. Quinn's conduct has caused harm both to his attorney-client relationship with Ms. Lavigne and to the integrity and reputation of the legal profession. Significantly, Mr. Quinn has also knowingly and effectively interfered with the administration of justice. Mr. Quinn's dishonest and evasive conduct reveals a lack of personal integrity, reflecting adversely on his fitness to practice and suggesting that his continued involvement in the practice of law would pose a danger to the public.

With the foregoing in mind, the baseline sanction is either a lengthy suspension or disbarment.

The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g.*, *Conner's Case*, 158 N.H. at 303. In this case, there are significant aggravating factors, which include Mr. Quinn's prior administrative suspensions; his offer of misleading and evasive evidence in his initial response to the complaint; his refusal to acknowledge the wrongful nature of his conduct; and his bad faith obstruction of the disciplinary process by eluding disciplinary authorities. *See Standards* § 9.22. There are no mitigating factors. *See Standards* § 9.32.

The aggravating factors evident in this case, combined with the baseline sanction analysis, make clear that disbarment is the appropriate sanction.

IV. SANCTION

It is the Committee's view that the public will be protected, public confidence in the bar can be maintained, and the integrity of the legal profession can be preserved by the disbarment of Mr. Quinn.

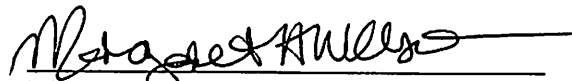
V. CONCLUSION

Based on the above reasons, having found violations of N.H. R. Prof. Conduct 3.3(a)(1)(3), 8.1(b) and 8.4(a) by clear and convincing evidence, the Committee directs Assistant Disciplinary Counsel to file a petition with the N.H. Supreme Court for the Disbarment of the Respondent. The Committee voted to assess all costs associated with the investigation and prosecution of this matter.

VI. RIGHT TO APPEAL

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

December 17, 2009


Margaret H. Nelson
Chair

Distribution:

James L. Kruse, Assistant Disciplinary Counsel
Charles R. Quinn, III
File