

New Hampshire Supreme Court
Professional Conduct Committee

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Vanim-Botting, Jeanne M. advs. Attorney Discipline Office #08-047

**RECCOMENDATION TO PETITION SUPREME COURT
FOR THREE YEAR SUSPENSION**

On August 18, 2009, the Professional Conduct Committee deliberated the above matter. The following Committee members were present: Margaret H. Nelson, Chair; Benette Pizzimenti, Vice Chair; Toni M. Gray, Vice Chair; David N. Cole (via telephone); Alan J. Cronheim; Gerald A. Daley; Gretchen Rule Hamel; James R. Martin and Jennifer L. Parent. Thomas P. Connair, Richard H. Darling and Susan Chollet were absent.

Having reviewed the record, including the Notice of Charges, Stipulation as to Facts and Rules, and Disciplinary Counsel's Memorandum on Sanction, 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, by clear and convincing evidence:

On or about November 26, 2008, Ms. Vanim-Botting voluntarily agreed to permit Craig A. Calaman, CPA, to conduct an audit of the trust/escrow accounts and operating account of her law firm, Jeanne Vanim-Botting, Attorney At Law, PLLC. Mr. Calaman completed his audit and set forth his conclusions in a report dated March 11, 2009. Mr. Calaman's audit covered the

period from June 1, 2007, through November 30, 2008. (Mr. Calaman's audit report is hereafter referred to as "Audit Report.") The Audit Report was incorporated into, and made a part of the Stipulation as to Facts and Rules by reference, which states in pertinent part as follows:

1. Ms. Vanim-Botting is an attorney licensed to practice law in New Hampshire. Ms. Vanim-Botting was admitted to practice on May 22, 2006. Ms. Vanim-Botting operated her law office as Jeanne Vanim-Botting, Attorney At Law, PLLC, at 577 East Madison Road, P. O. Box 142, Madison, New Hampshire 03849. At some point near the end of 2008, the law firm's address changed to P. O. Box 2194, Conway, New Hampshire 03818.
2. Ms. Vanim-Botting represented Tara S. Casson in her divorce from her former husband, Matthew Casson.
3. Mr. Casson was represented by Sarah Fisher Fuller, Esq., of Fisher and Fuller in Dover, NH.
4. Filed in the Conway Family Division, the divorce case was entitled, "In the Matter of Tara Sue Casson and Matthew Casson," docket no. 07-M-115.
5. While the divorce was pending, Ms. Casson received disbursements from an inheritance.
6. On July 23, 2008, Ms. Vanim-Botting deposited into her client trust account Ms. Casson's inheritance, in the amount of \$16,060.97. By agreement of the parties, Ms. Vanim-Botting was to hold those funds until the execution of the final stipulations in the case.
7. The Final Decree of Divorce was issued on August 27, 2008.
8. Pursuant to Paragraph 11 of the Decree, Ms. Casson's inheritance in the amount of \$16,060.97 was to be divided as follows: \$7,000.00 to Mr. Casson (from which Mr. Casson's child support arrearage of \$1,500.00 was to be paid), and the remainder, \$9,060.97, to Ms. Casson.
9. As of the date of the Decree, therefore, Ms. Vanim-Botting was holding funds in trust for both Mr. Casson and her client.
10. On July 30, 2008, Ms. Vanim-Botting disbursed from her client trust account two checks related to Mr. Casson's portion (\$7,000.00) of the funds, as follows:

- a. First, Ms. Vanim-Botting issued check #1022 (\$5,500.00) to the order of Mr. Casson and Fisher & Fuller.
 - b. Second, Ms. Vanim-Botting issued check #1023 (\$1,500.00) to the New Hampshire Department of Health and Human Services ("DHHS") to pay, per the terms of the Divorce Decree, Mr. Casson's total child support arrearage.
11. While check #1023 to the DHHS cleared the bank, check #1022 to Mr. Casson and Fisher & Fuller did not.
 12. On August 14, 2008, Ms. Fuller telephoned Ms. Vanim-Botting to inform Ms. Vanim-Botting that check #1022 had been returned for insufficient funds. They agreed that Ms. Vanim-Botting would replace check #1022 in two payments. The first payment, in the amount of \$3,000.00, would be sent immediately to Ms. Fuller. The second payment, in the amount of \$2,500.00, would be sent in the near future; Ms. Vanim-Botting indicated that she hoped she could send it by the end of the next week. Ms. Fuller requested that the checks be made payable to her office. Ms. Fuller memorialized their agreement in a letter of the same date.
 13. In a letter to Ms. Fuller dated August 14, 2008, Ms. Vanim-Botting enclosed check #1027, written on her client trust account, in the amount of \$3,000.00, made payable to Ms. Fuller's firm.
 14. In her August 14 letter to Ms. Fuller, Ms. Vanim-Botting promised to remit the balance owed (\$2500.00) "as soon as possible"
 15. On August 29, 2008, Ms. Vanim-Botting wrote a letter to Ms. Fuller in which she stated that she had enclosed check #1028, written on her client trust account, in the amount of \$500.00, made payable to Ms. Fuller's firm. In her letter she wrote:

Also enclosed is my firm's check for \$500, towards the balance of the prior returned check. My other client has not replace (sic) as promise (sic) and I am struggling with the fall out, and must replacing (sic) the funds with personal funds. I promise to continue to send funds weekly until repaid in full. I deeply apologize for the trouble and inconvenience this has caused your firm and will do my utmost to make it right in as short a time as possible.
 16. At some point shortly thereafter, Ms. Fuller notified Ms. Vanim-Botting that she did not receive check #1028.

17. On September 5, 2008, Ms. Vanim-Botting sent by telefax a copy of her August 29 cover letter and a copy of check #1028. Ms. Fuller asked that Ms. Vanim-Botting cancel check #1028 and issue a replacement check. Ms. Vanim-Botting did not comply with her request, or otherwise respond to Ms. Fuller about that issue.
18. In a letter to Ms. Vanim-Botting dated September 16, 2008, Ms. Fuller wrote:

It has been over a month since your \$5,500.00 Iolta check was returned. Although I appreciate the immediate replacement of \$3,000.00 I am concerned about the remaining \$2,500.00. Further, I would like confirmation, a cancelled check, that the Department of Revenue received and processed Mr. Casson's child support payment.

I will need the remaining funds replaced by October 12, 2008.

Should you have any questions please feel free to contact me.
19. In a letter dated October 17, 2008, to James L. DeHart, Esq., General Counsel to the Attorney Discipline Office, Ms. Fuller described the situation and stated that she still had not been paid by Ms. Vanim-Botting.
20. In a letter to Ms. Vanim-Botting dated October 20, 2008, Mr. DeHart enclosed a copy of Ms. Fuller's letter and notified Ms. Vanim-Botting that the Attorney Discipline Office had docketed a formal complaint against Ms. Vanim-Botting on the basis of Ms. Fuller's letter.
21. In a letter to Mr. DeHart dated November 19, 2008, Ms. Vanim-Botting responded to the complaint.
22. In her response, Ms. Vanim-Botting explained the overdraft as having been caused by a different client's bad check. Ms. Vanim-Botting described her situation as follows:
 - a. Ms. Vanim-Botting believed that she had \$18,360.97 in available funds in her client trust account at the relevant time.
 - b. This amount included the Casson inheritance (\$16,060.97), a check for \$2,300.00 from an unnamed client in another matter, and \$437.00 in trust for a different unnamed client.
 - c. Ms. Vanim-Botting made a series of disbursements out of her client trust fund based upon her belief, as described above, that she had a total of \$18,360.97 in her client trust account.

- d. According to Ms. Vanim-Botting, the disbursements were as follows:

\$1,500.00 to Child Support Office (to cover Mr. Casson's arrearage)
\$7,560.97 to Ms. Casson (her share of inheritance minus legal fees)
\$1,500.00 to herself as legal fees (Casson)
\$1,750.00 to an unnamed opposing counsel "in the other matter"
\$550.00 to herself as legal fees for "the other matter"
\$5,500.00 to Ms. Fuller (for Mr. Casson)

- e. The total of the above disbursements equals \$18,360.97.
- f. According to Ms. Vanim-Botting, the \$2,300.00 check from the client "in the other matter" had bounced. This left her with a shortfall of \$2,300.00, which caused the \$5,500.00 check to Ms. Fuller to bounce.
- g. Taking into account the \$2,300.00 shortfall, Ms. Vanim-Botting realized that she only had \$3,200.00 (\$5,500.00 minus \$2,300.00) available in her client trust account.
- h. Ms. Vanim-Botting disbursed \$3,000.00 (of the available \$3,200.00) to Ms. Fuller, and would have disbursed the additional \$2,500.00, but she did not have enough available funds in her client trust account as a result of the \$2,300.00 "bad check" from the other client.

23. In a letter dated November 20, 2008, Mr. DeHart requested that Ms. Vanim-Botting voluntarily agree to an audit of her client trust account.
24. Meanwhile, on November 24, 2008, Ms. Vanim-Botting paid Ms. Fuller the remaining amount she owed Mr. Casson (\$2,500.00) in the form of a cashier's check.
25. In a letter dated November 26, 2008, Ms. Vanim-Botting did not agree that an audit was necessary, but she was willing to undergo the audit if the Attorney Discipline Office still deemed it necessary.
26. Thereafter, Mr. DeHart requested that Mr. Calaman perform an audit of Ms. Vanim-Botting's client trust account.

27. In a letter dated December 15, 2008, the Complaint Screening Committee referred the complaint to Disciplinary Counsel for prosecution.
28. Mr. Calaman's audit was scheduled to begin at Ms. Vanim-Botting's office on December 16, 2008, but was rescheduled, at Ms. Vanim-Botting's request, to begin on January 6, 2009.
29. On March 11, 2009, Mr. Calaman filed the Audit Report.

Mr. Calaman's Audit

30. Mr. Calaman's audit covered the time period beginning June 1, 2007, when Ms. Vanim-Botting opened her IOLTA client trust account (TD Banknorth Acct. No. 9242502981), through November 30, 2008. Mr. Calaman also examined Ms. Vanim-Botting's operating account (TD Banknorth Acct. No. 924-2502999).
31. Mr. Calaman reviewed financial records including the law firm's IOLTA check register (which Ms. Vanim-Botting identified as the IOLTA Balance Sheet") and its client ledger cards (which Ms. Vanim-Botting identified as "Client Retainer Balance Sheets"). The IOLTA check register is hereinafter referred to as the "IOLTA Balance Sheet"; the Client Retainer Balance Sheets are hereinafter referred to simply as client "ledger cards."
32. Mr. Calaman's review of Ms. Vanim-Botting's financial records from the time period beginning June 1, 2007, through June 30, 2008, revealed numerous deficiencies in Ms. Vanim-Botting's client trust account, which Mr. Calaman attributed to Ms. Vanim-Botting's clerical errors and "sloppy bookkeeping practices."
33. From the time period beginning July 1, 2008, through November 30, 2008, the Audit Report revealed deficiencies of a more serious nature. These are discussed in detail below.
34. First, with respect to Ms. Vanim-Botting's claim that a \$2,300.00 check from a client in "the other matter" had bounced, Mr. Calaman concluded that there was no evidence to support this.
35. Second, with respect to Ms. Vanim-Botting's claim that she was holding \$487.00 in trust for a third client, Mr. Calaman concluded that there was no evidence to support this.
36. Third, based upon his review of her financial records, Mr. Calaman concluded that, in order to explain her shortfall with respect to Mr. Casson's funds, Ms. Vanim-Botting created two fictitious clients: one of whom wrote a "bad check"

for \$2,300.00 and to whose attorney Ms. Vanim-Botting purportedly paid \$1,750.00, and the other for whom Ms. Vanim-Botting was purportedly holding \$487.00 in trust. There was no evidence to support the existence of these two other clients.

37. Fourth, Mr. Calaman's audit revealed that the shortfall was not caused by a client's bad check. Rather, Mr. Calaman's audit revealed that the shortfall was due entirely to Ms. Vanim-Botting's having improperly disbursed to herself funds out of her client trust account that belonged to Mr. and Ms. Casson.
38. The financial transactions in 2008 that caused the shortfall in Ms. Vanim-Botting's client trust account are summarized below:
 - a. Ms. Casson was the first client in 2008 whose funds were placed in Ms. Vanim-Botting's client trust account. From January 31, 2008, through July 22, 2008, the reconciled balance in Ms. Vanim-Botting's client trust account had remained unchanged, at \$14.78. On July 23, there was a deposit of \$16,060.97 (Ms. Casson's inheritance) in Ms. Vanim-Botting's client trust account.
 - b. The next day, July 24, Ms. Vanim-Botting disbursed \$1,400.00 to herself as legal fees in the Casson matter, and the funds were placed in Ms. Vanim-Botting's operating account. Although Ms. Vanim-Botting properly recorded this disbursement on the client trust account balance sheet, Ms. Vanim-Botting's client ledger for Ms. Casson did not list this disbursement.
 - c. The next day, July 25, Ms. Vanim-Botting disbursed \$7,060.97 to Ms. Casson. Ms. Vanim-Botting properly recorded this transaction.
 - d. On July 28, Ms. Vanim-Botting disbursed \$1,000.00 from the client trust fund. On the same date, there is a record of a deposit of \$1,000.00 into Ms. Vanim-Botting's operating account. Ms. Vanim-Botting did not record, or otherwise identify, this disbursement in either her IOLTA Balance Sheet or on the Casson client ledger card.
 - e. As of July 30, Ms. Vanim-Botting's client trust fund had a balance of only \$6,600.00. However, Ms. Vanim-Botting was supposed to be holding in trust for Mr. Casson an amount totaling \$7,000.00. Thus, as of July 30, Ms. Vanim-Botting was out-of-trust with respect to Mr. Casson, in the amount of \$400.00.
 - f. On that date, July 30, Ms. Vanim-Botting made two disbursements on behalf of Mr. Casson. She wrote a check to DHHS in the

amount of \$1,500.00 for his child support arrearage. She also wrote a check to Ms. Fuller in the amount of \$5,500.00, to cover the remaining amount Mr. Casson was owed per the Divorce Decree. Because Ms. Vanim-Botting was out-of-trust on that date, she did not have sufficient funds in her client trust account to cover the larger disbursement to Mr. Casson.

- g. On July 31, Ms. Vanim-Botting disbursed \$1,000.00 to herself. Ms. Vanim-Botting did not record this disbursement on the IOLTA Balance Sheet, but she did record it on Casson ledger card.
- h. As of July 31, the client trust account had a negative balance totaling \$1,382.61.
- i. On August 5, Ms. Vanim-Botting issued check #1025 to herself in the amount of \$500.00.
- j. On August 7, the \$5,500.00 check to Mr. Casson and Fisher & Fuller was returned for insufficient funds.
- k. On August 14, Ms. Vanim-Botting issued check # 1026 to herself in the amount of \$500.00. This disbursement was not recorded on a client ledger card or on the IOLTA Balance Sheet.
- l. Also on August 14, Ms. Vanim-Botting issued check #1027 to Fisher & Fuller in the amount of \$3,000.00, in partial remittance of the balance owed Mr. Casson. This disbursement was not recorded on the Casson ledger card or on the IOLTA Balance Sheet.
- m. Ms. Vanim-Botting could not remit the entire amount owed to Mr. Casson on August 14 because the balance in the client trust account prior to the August 14 disbursements was only approximately \$3600.00. This was due to the fact that Ms. Vanim-Botting had already removed \$3,000.00 from the client trust account in payments to herself.
- n. After the two disbursements on August 14, the balance in the client trust account was \$89.78.
- o. On August 29, 2008, Ms. Vanim-Botting made an entry in the physical checkbook (of her client trust account) for the issuance of check #1028 to Fisher & Fuller in the amount of \$500.00. The memo line of the check reads: "\$2,000.00 balance remaining." The issuance of this check resulted in the client trust account having a negative balance of -\$407.63. This check never cleared the bank; it was never received by Ms. Fuller. This disbursement was not recorded on a client ledger card or on the IOLTA Balance Sheet.

- p. On September 18, 2008, Ms. Vanim-Botting deposited \$479.76 into the client trust account that was attributed to Ms. Casson. This was not recorded on the Casson client ledger.
 - q. On September 22, 2008, Ms. Vanim-Botting issued check #1029 to Ms. Casson in the amount of \$500.00. The memo line of the disbursement indicates that it was "part of the remaining retainer." This disbursement is listed in the Casson client ledger with an incorrect date of September 19, 2008.
 - r. On September 26, 2008, there is a disbursement listed on the Casson client ledger card indicating a withdrawal of \$510.00, reducing the client balance listed on the ledger to zero. On September 26, 2008, Ms. Vanim-Botting withdrew \$610.00 from the client trust account, but no identifying information was recorded on either the IOLTA Balance Sheet or on a client ledger card.
 - s. On November 24, 2008, Ms. Vanim-Botting deposited into the client trust account \$2,200.00, followed by a disbursement of \$2,384.00. Ms. Vanim-Botting used these funds to purchase a cashier's check in the amount of \$2,500.00, which Ms. Vanim-Botting issued to Fisher & Fuller to pay the balance due to Mr. Casson.
39. Mr. Calaman's audit revealed that the sole reason that the \$5,500.00 check to Fisher & Fuller did not clear the bank was due to the Ms. Vanim-Botting's having improperly withdrawn funds, causing a shortfall in her client trust account.
40. As a result of her improper disbursements, Ms. Vanim-Botting's client trust account was out of trust initially, at the end of July 2008, by \$3,000.00. This amount was reduced to \$2,500.00 at the end of September when Ms. Vanim-Botting returned the balance of Ms. Casson's retainer (\$500.00) at the conclusion of the matter.
41. Thereafter, Ms. Vanim-Botting was out of trust by \$2,500.00 for approximately four months, from July 30, 2008, until November 24, 2008, the date on which she sent the \$2,500.00 cashier's check to Fisher & Fuller and thereby repaid the funds owed to Mr. Casson.

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 the following violations by clear and convincing evidence:

Rules 1.15(a) and 1.15(b): Safekeeping Property

1. Ms. Vanim-Botting owed a duty both to her clients and to third parties for whose benefit she was holding funds in trust and/or in escrow, to safeguard those funds in accordance with New Hampshire Supreme Court Rule 50 and New Hampshire Supreme Court Rule of Professional Conduct 1.15(a)(1).
2. Ms. Vanim-Botting breached this duty during the period July 2008 through November 24, 2008, by disbursing to herself funds from her client trust account to which she was not entitled and that belonged to Mr. and Ms. Casson.
3. Ms. Vanim-Botting also had a duty to promptly deliver to her clients any funds she held or obtained to which the clients were entitled. N.H. R. Prof. Conduct 1.15(b).
4. Ms. Vanim-Botting breached said duty by failing to deliver funds belonging to her client, Ms. Casson, for a period of several months.
5. Ms. Vanim-Botting's conduct in this regard constitutes clear and convincing evidence of violations of N.H. R. Prof. Conduct 1.15(a) and 1.15(b). *See also* N.H. Supreme Court Rule 50.

Rule 4.1(a): Truthfulness in Statements to Others

6. While representing Ms. Casson, Ms. Vanim-Botting owed a duty to be truthful to opposing counsel in Ms. Casson's case.
7. Ms. Vanim-Botting breached said duty in her August 29, 2008, letter to Ms. Fuller. In that letter, Ms. Vanim-Botting implied that her client trust account shortfall had been caused by a different client's failure to pay her the money he owed her.
8. At the time Ms. Vanim-Botting wrote the August 29 letter to Ms. Fuller, Ms. Vanim-Botting knew that her statements about a different client having caused the client trust account shortfall were false.
9. Ms. Vanim-Botting made the statements in order to induce Ms. Fuller to believe that the shortfall was an innocent mistake, rather than through any fault or negligence of her own.

10. The false statements were material in that they were capable of influencing Ms. Fuller's understanding of the cause of Ms. Vanim-Botting's client trust account shortfall and Ms. Vanim-Botting's failure to tender a valid check for monies due.
11. Ms. Vanim-Botting's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 4.1(a).

Rules 8.1(a) and 8.4(c): Deceit and Misrepresentation

12. Ms. Vanim-Botting had a duty not to make false statements of material fact in connection with a disciplinary matter and a general duty to refrain from engaging in any conduct involving dishonesty, fraud, deceit or misrepresentation.

Rule 8.1(a)

13. Ms. Vanim-Botting breached said duty to the disciplinary authority by including in her November 19, 2008, letter to Mr. DeHart false statements of material fact about the cause of the shortfall in her client trust account.
14. Ms. Vanim-Botting described the cause of the shortfall in her client trust account as resulting from a bad check from a different client, and other disbursements related to an "other matter." Ms. Vanim-Botting knew at the time she made these statements that they were false. These false statements were material to the disciplinary investigation because they represented that the shortfall was caused, not by her own misconduct, but by circumstances outside of her control.
15. In so doing, Ms. Vanim-Botting knowingly made a false statement of material fact in connection with a disciplinary matter.
16. Ms. Vanim-Botting's conduct as set forth above constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.1(a).

Rule 8.4(c)

17. Ms. Vanim-Botting engaged in a pattern of deceitful and dishonest acts by issuing a check to counsel knowing that there were not sufficient funds to cover the check and then misrepresenting to opposing counsel that the shortfall in her trust account was due to a bad check from another client, when in fact, there was no "other" client and that she had not received a bad check from another client. Ms. Vanim-Botting created fictitious clients in an attempt to cover up the fact that she had withdrawn \$3,000 in client trust funds for her own use. Ms. Vanim-Botting thus engaged in a pattern of misrepresentations, deceit and dishonesty to gain time and cover up her dishonesty.

18. Ms. Vanim-Botting also breached her general obligation to refrain from conduct involving deceit, dishonesty, fraud and misrepresentation by including in her letter to Mr. DeHart dated November 19, 2008, false statements about the cause of the shortfall in her client trust account.
19. Ms. Vanim-Botting intended at the time she made these false statements to induce Mr. DeHart to believe that the shortfall in her client trust account was caused by an error unrelated to her own negligence or fault.
20. Ms. Vanim-Botting's conduct, as set forth above, constitutes a violation of N.H. R. Prof. Conduct 8.4(c).

Rule 8.4(a): General Rule

21. Because there exists clear and convincing evidence that Ms. Vanim-Botting violated the above rules, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

III. ANALYSIS

Having found the foregoing facts and Rule violations by clear and convincing evidence, we now turn to a determination of the appropriate sanction. Although New Hampshire has not adopted the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1992) ("*Standards*"), we look to them for guidance. The standards list the following factors for consideration 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. In applying these factors, we first categorize the respondent's misconduct and then identify the appropriate sanction. *Coddington's Case*, 155 N.H. 66 (2007). We then consider the effect of any aggravating or mitigating factors in reaching the ultimate sanction. *Id.*

Here, Ms. Vanim-Botting engaged in serious misconduct breaching duties which are the

foundation of the legal profession. In violating Rules 1.15(a) and 1.15(b) she failed to safeguard her client's property which had been entrusted to her and which she had a duty to maintain in a separate trust account. While she initially placed those funds in her client trust account she then treated those funds as her own and withdrew \$3,000.00 for her own use, lying to opposing counsel and concocting a story to cover up her shortage. She failed to disburse the funds to her client when they were due and wrote a check on the trust account which was returned for insufficient funds. In making false statements to opposing counsel in an attempt to cover up her use of client funds, Ms. Vanim-Botting also violated Rule 4.1(a) requiring truthfulness to others—a hallmark of honesty and reliability of the legal profession.

Under Rule 8.1(a), Ms. Vanim-Botting owed a duty to be candid with the Attorney Discipline Office but she knowingly attempted to mislead that office by making statements which she knew at the time she was making them were false. She created fictitious clients and falsely blamed them for creating the shortfall in her client trust account. These attempts to defraud the Attorney Discipline Office involved deceit and the intentional misrepresentation of material facts.

Ms. Vanim-Botting's violation of Rule 8.4(c) results from her dishonest acts in using client trust funds for her own purpose and then misrepresenting those facts to opposing counsel and the Attorney Discipline Office.

The duties violated by this course of action are important and basic duties of the legal profession. It is clear that Ms. Vanim-Botting violated these duties knowingly and with the intent to mislead opposing counsel and the Attorney Discipline Office. These multiple violations

and acts of dishonesty and deceit caused both real and potential injury to the opposing party whose receipt of funds to which he was entitled was delayed by approximately four months, and to the legal profession and the attorney discipline system.

The applicable standard for misconduct involving deceit is section 5.1, entitled “Failure to Maintain Personal Integrity.” *Standards* § 5.1 provides:

- 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 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 is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer’s fitness to practice law.

Section 5.11(b) is the applicable standard for Ms. Vanim-Botting’s intentional deceit.

Ms. Vanim-Botting engaged in intentional conduct involving dishonesty that “seriously

adversely” reflected on her fitness to practice law. This is particularly applicable to her dishonesty toward the Attorney Discipline Office in the early stages of the Attorney Discipline Office’s investigation and audit in this case. The fact that Ms. Vanim-Botting engaged in misconduct with respect to her client trust account renders a baseline sanction of disbarment appropriate.

Having determined that the appropriate sanction is disbarment, we now turn to the aggravating and mitigating circumstances. In aggravation, we have the dishonest and selfish motive in removing funds from the client trust account and the submission of false statements to the Attorney Discipline Office. These factors were considered in reaching the baseline sanction of disbarment.

In mitigation Ms. Vanim-Botting has admitted her deceit and expressed genuine remorse. *See Standards* §§ 9.32(e); 9.32(l); *Feld’s Case*, 149 N.H. 19, 30 (2002). In addition Ms. Vanim-Botting is relatively new to the practice of law and has no prior disciplinary record. *See Standards* §§ 9.32(a); 9.32(f). Although her lack of experience does not mitigate her deceit, it played a role in her inappropriate and sloppy record keeping. Nevertheless, it is clear that Ms. Vanim-Botting knew she was out of trust and tried to cover up the fact that it was due to her knowing acts.

Taking into account all the facts and mitigating circumstances, the Professional Conduct Committee concludes that the appropriate sanction is a suspension from the practice of law for a period of three years.

IV. SANCTION

Having made the above findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is that Ms. Vanim-Botting be suspended from the practice of law for a period of three years. 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*. *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).

V. COSTS


Ms. Vanim-Botting has stipulated to pay all costs associated with the investigation and prosecution of this matter and is hereby assessed all costs.

VI. CONCLUSION

In view of the seriousness of Ms. Vanim-Botting's misconduct, it is the Committee's view that the public can be protected, public confidence in the bar can be maintained, and the integrity of the legal profession can be preserved only through Ms. Vanim-Botting's suspension.

Accordingly, the Committee directs Disciplinary Counsel to petition the Supreme Court for Ms. Vanim-Botting's suspension from the practice of law for a period of three years and assess Ms. Vanim-Botting the Committee's expenses of investigating and prosecuting this matter. N.H. Sup. Ct. R. 37(19).

October 7, 2009

By: 
Toni M. Gray
Vice Chair

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File