

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

Margaret H. Nelson, Chair  
Benette Pizzimenti, Vice Chair  
Toni M. Gray,\* Vice Chair  
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***Green, Paula J. advs. Cynthia Haley #09-034***

**PUBLIC CENSURE**

On February 16, 2010, the Professional Conduct Committee deliberated the above-referenced matter. Members present included: Margaret H. Nelson, Chair; Benette Pizzimenti, Vice Chair; Toni M. Gray, Vice Chair; Susan R. Chollet; Thomas P. Connair; Alan J. Cronheim; Gerald A. Daley; James R. Martin; and Jennifer L. Parent. David N. Cole and Richard H. Darling were absent.

Having reviewed the Record, including the Notice of Charges, and Stipulation as to Facts, Rules and Sanction, the Professional Conduct Committee makes factual findings and rulings as detailed below:

**I. FACTUAL FINDINGS**

The parties stipulated to, and the Committee thus finds, by clear and convincing evidence, the following facts:

1. Ms. Green is an attorney licensed to practice law in New Hampshire. Ms. Green was admitted to practice on October 28, 1996. At all times material to this proceeding, Ms. Green operated her law office as Law Offices of Paula J. Green, PLLC, 67 Central Street, Manchester, New Hampshire 03101.

2. On January 12, 2009, Cynthia A. Castanino (formerly known as Cynthia A. Haley) retained Ms. Green to represent her in her divorce. The fee agreement was signed by both Ms. Castanino and Ms. Green. It quoted Ms. Green's hourly rate as \$225.00. Ms. Castanino paid Ms. Green a \$2,500.00 retainer.
3. Between January 12 and April 2009, Ms. Green worked on the case on behalf of Ms. Castanino, drafting pleadings and conversing with opposing counsel. On or about April 15, 2009, Ms. Green sent Ms. Castanino an invoice with a legal bill totaling \$1,284.49. On the invoice, Ms. Green billed Ms. Castanino at \$250.00 per hour, instead of \$225.00.
4. On April 28, 2009, Ms. Castanino met in person with Ms. Green about her case. They went over financial paperwork for the divorce and had a detailed discussion regarding the case. Ms. Castanino pointed out the discrepancy between Ms. Green's stated hourly rate in the fee agreement (\$225.00) and the rate charged in the invoice (\$250.00). Ms. Green agreed to correct the invoice and send Ms. Castanino a new bill.
5. Ms. Green did not issue a corrected invoice.
6. On May 11, 2009, Ms. Castanino wrote the following email to Ms. Green's Legal Assistant, Donna Jesmer:

Hi, Donna

I met with Paula on April 28<sup>th</sup> and we reviewed my financials and also discussed some of the details of the divorce such as Allison's schedule, living arrangements, current child support that I am receiving, etc. Paula advised against finalizing the divorce until David finds employment but I saw David on Sat. at the Child Impact seminar and we discussed finalizing the divorce. David's track record with employment hasn't been great, he's had 4 employers in the past 2 years and I don't expect anything to change in the future. David has agreed to pay approximately 25% of his income for Allison's care and needs and we also discussed adding something into the divorce settlement that would say that David would be responsible for ½ of Allison's college expenses. I received another letter for a court appearance scheduled for August but both David and I would like to finalize the divorce as soon as possible. Could we either schedule another meeting for me to review what Paula has prepared for my divorce or could she send me what she has so that I can review it?

Thanks,  
Cindy Haley

7. Having heard nothing in response, on May 18, 2009, Ms. Castanino wrote a follow-up email to Ms. Jesmer:

Hi Donna,

Do you have an update for me? Should I schedule a call or meeting with Paula to discuss finalizing my divorce?

Thanks,  
Cindy

8. On or about June 4, 2009, Ms. Castanino received from Ms. Jesmer a Notice of Hearing in her case. In her cover letter, Ms. Jesmer asked Ms. Castanino about her availability for a scheduling conference on August 17, 2009.
9. Having heard nothing more from Ms. Jesmer, on June 23, 2009, Ms. Castanino wrote to her again:

Hi Donna,

Can I please get an update as to where we stand on my divorce paperwork? I had a meeting with Paula on April 28<sup>th</sup> to discuss the parenting plan and she was going to draft up the divorce paperwork for me to review. I have not received any updates in almost 2 months and I'd just like to understand where we are at.

Thank you,  
Cindy Haley

10. On July 10, 2009, having heard nothing in response from Ms. Jesmer, Ms. Castanino wrote an email to both Ms. Jesmer and Ms. Green as follows:

Hi Paula/Donna,

It has been over 2 months since our last meeting and I've received no phone or e-mail communication from you. I have sent a couple of e-mails and left several messages over the past 4 weeks and still have not received any response back from you regarding my case and where we stand. During our last meeting on April 28<sup>th</sup> I reviewed the parenting plan with you as well as my financial info.

I told you that I did not want to have to go to trial in August but instead just wanted you to draw up the necessary paperwork so that I can move forward with the divorce. At this time it does not seem that you are interested in continuing with my case since I have received no communication from you. Also, during our meeting at the end of April we had reviewed the 1 invoice that

you had submitted to me for the work you had completed but you had charged me the wrong rate per hour. You were going to make the adjustment and send me a new statement which I never received. Due to these circumstances I would like to end our engagement, please let me know when I can receive my full refund of \$2,500. If you would like to discuss this further you can reach me on my cell at 603-674-6755 or work 603-994-2059 so that we can discuss my case. Please confirm receipt of this e-mail. If I do not hear back from you by Monday, July 13<sup>th</sup> at 5:00 pm I will be contacting the Professional Conduct Committee in Concord to discuss this with them.

I am extremely disappointed with the lack of attention & communication from you because you had been a referral from a very close family friend.

Regards,  
Cindy Haley

11. In addition to the aforementioned email correspondence, between April 28 and July 18, 2009, Ms. Castanino attempted to telephone Ms. Green and/or Ms. Jesmer on numerous occasions, and left voicemail messages, but not one of her telephone calls was returned.
12. On July 18, 2009, Ms. Castanino filed a grievance with the Attorney Discipline Office about Ms. Green's failures to communicate.
13. In a letter to Ms. Green dated July 28, 2009, James L. DeHart, Esq., General Counsel to the Attorney Discipline Office, informed Ms. Green that the Attorney Discipline Office was docketing Ms. Castanino's July 18 grievance as a formal complaint. Mr. DeHart enclosed a copy of the July 18 grievance with his July 28 letter to Ms. Green. The letter included the following language:

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.)

14. In August 2009, Ms. Castanino was able to finalize her divorce without the assistance of counsel.

15. Having heard nothing from Ms. Green, on September 1, 2009, Mr. DeHart sent Ms. Green the following letter:

On July 28, 2009, you were mailed a copy of a complaint filed by Cynthia Haley. We have not received your reply, which was due on August 27, 2009. 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 my letter to you dated July 28, 2009 is enclosed.

(Emphasis in original).

16. On October 13, 2009, Martha Van Oot, Esq., Chair of the Complaint Screening Committee, sent Ms. Castanino and Ms. Green the following letter:

Dear Ms. Haley and Ms. Green:

After considering the information now on hand, the Complaint Screening Committee voted to refer this matter to Disciplinary Counsel for further action on both the failure to respond to a disciplinary authority and on the merits of the complaint. See Supreme Court Rule 37A(II)(a)(5)(C) and (7)(D). Disciplinary Counsel may serve a Notice of Charges and request a hearing panel be appointed by the Hearings Committee Chair. See Supreme Court Rule 37A(III)(b)(1) *et seq.*

Sincerely,  
Martha Van Oot

17. At some point after Ms. Van Oot's letter, Ms. Castanino was able to schedule a meeting with Ms. Green. That meeting took place on October 15, 2009. At that meeting, Ms. Green made adjustments to Ms. Castanino's final bill and returned to Ms. Castanino the balance of her retainer.
18. Ms. Green had not responded to Mr. DeHart's letter dated July 28, 2009.

Stipulation as to Facts, Rules and Sanction ¶1-18 at pp 1-6.

## 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 as follows:

### **Rule 1.4: Communications**

19. Ms. Green owed Ms. Castanino a duty to keep Ms. Castanino reasonably informed regarding the status of her marital case and to promptly respond to Ms. Castanino's reasonable requests for information about the case.
20. Ms. Green breached this duty by neglecting to respond to Ms. Castanino's inquiries via email and telephone from May through July 2009, seeking information about the status of her case.
21. Ms. Green's conduct in this regard constitutes clear and convincing evidence of violation of N.H. R. Prof. Conduct 1.4(a)(4).

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

22. In its July 28, 2009, letter, the Attorney Discipline Office informed Ms. Green that it had docketed a complaint against her based upon Ms. Castanino's allegations. A copy of the complaint was enclosed.
23. The July 28, 2009, letter informed Ms. Green that, pursuant to N.H. Sup. Ct. R. 37A(II)(a)(5)(C), Ms. Green was required to respond within 30 days.
24. The Attorney Discipline Office also wrote to Ms. Green on September 1, 2009, reminding her of the complaint and of her obligation to respond.
25. Ms. Green did not respond to the Attorney Discipline Office's correspondence.
26. Ms. Green's failure to respond to the Attorney Discipline Office's correspondence represents a knowing failure to respond to a lawful demand for information from a disciplinary authority.
27. Ms. Green's conduct in this regard constitutes a violation of N.H. R. Prof. Conduct 8.1(b).

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

28. Because there exists clear and convincing evidence that Ms. Green violated the above rules, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).
29. Ms. Green is herein stipulating to the facts and rule violations although she acknowledges that, by operation of Rule 37A(III)(b)(3)(A), the allegations in the Notice of Charges are deemed admitted due to her failure to answer the Notice of Charges.

### **III. ANALYSIS**

The Committee agreed, consistent with the stipulated recommendation, that the appropriate sanction in this matter is a public censure. Both case law in New Hampshire and the *American Bar Association's Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support the Committee's conclusion. Although the Court has not adopted the *Standards*, it looks to them for guidance. *Conner's Case*, 158 N.H. 299, 303 (2009). 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. Once the baseline sanction is determined, the Court then looks to the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *Id.*

Under the first prong of the analysis, Ms. Green violated duties owed to her client by failing to keep Ms. Castanino reasonably informed regarding the status of her case and to promptly respond to Ms. Castanino's reasonable requests for information about the case. Ms. Green also failed to respond to the Attorney Discipline Office's lawful disciplinary authority. Under the second and third prongs of the analysis, there is an element of negligence with regard

to her failure to communicate with her client, which had the potential for harm, and some element of knowing misconduct with Ms. Green's disregard of the Attorney Discipline Office's correspondence.

In determining the appropriate sanction, the Committee considered prior similar misconduct by Respondent that resulted in a Reprimand issued on July 21, 2009. For a determination of a baseline sanction, the *Standards* offer appropriate guidance. Section 8.0 of the *Standards* (Prior Discipline Orders) provides, in pertinent part, as follows:

- 8.1. Disbarment is generally appropriate when a lawyer:
  - (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
  - (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts or misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
- 8.2. Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts or misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
- 8.3. Reprimand<sup>1</sup> is generally appropriate when a lawyer:
  - (a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
  - (b) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system or the profession.
- 8.4. An admonition is generally not an appropriate sanction when a lawyer violates the terms of a prior disciplinary order or when a lawyer has engaged in the same or similar misconduct in the past.

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<sup>1</sup> The most analogous sanction in New Hampshire is a Public Censure.

In this case the Committee considered as an aggravating factor the closeness in time of Ms. Green's prior July 21, 2009 Reprimand (Rule 1.4(a); Rule 8.4(a)) and the fact that the Reprimand was for similar misconduct in failing to promptly and reasonably keep her client informed regarding the status of her case and failing to comply with reasonable requests for information from her client. The Committee considered as a mitigator in this case Ms. Green's willingness to acknowledge and accept responsibility for her misconduct now.

#### **IV. SANCTION**

Having made the aforementioned findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is a Public Censure. The Committee's recommended sanction is in accord with the purposes of attorney discipline. *See, e.g., Conner's Case*, 158 N.H. 299, 303-305 (2009); *Richmond's Case*, 152 N.H. 155, 159-60 (2005). This sanction is also in accord with the *ABA Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*"). The purpose of the Court's disciplinary power is " 'not to inflict punishment but rather to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future.' " *Grew's Case*, 156 N.H. 361, 366 (2007) (*quoting Coddington's Case*, 155 N.H. 66, 68 (2007)).

The Committee voted to accept the Stipulation as to the sanction, and hereby issues a Public Censure.

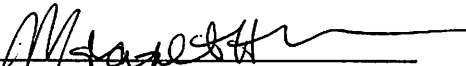
#### **V. COSTS**

The parties have stipulated to, and the Committee accepts Ms. Green's agreement to pay all costs associated with the investigation and prosecution of this matter.

**VI. CONCLUSION**

For all of the above reasons, the Professional Conduct Committee Publicly Censures Ms. Green for violating N.H. R. Prof. Conduct 1.4; 8.1(b); and 8.4(a).

March 29, 2010

By:   
Margaret H. Nelson  
Chair

c.c. Landya B. McCafferty, Disciplinary Counsel  
Paula J. Green, Esquire  
Cynthia Haley  
File