

New Hampshire Supreme Court

Professional Conduct Committee

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Hogan, Dennis C. advs. Attorney Discipline Office #09-016

PUBLIC CENSURE

On April 20, 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, Richard H. Darling, Julie A. Introcaso, James R. Martin and Jennifer L. Parent. David N. Cole was absent.

The Professional Conduct Committee (PCC) voted to grant the Joint Motion to Permit Waiver of Formal Proceedings and for Final Ruling.

Having reviewed the record, Stipulation as to Facts, Violations, and Recommended Sanction, the Professional Conduct Committee makes factual findings and rulings as detailed below:

I. FACTUAL FINDINGS

The Respondent and the ADO have stipulated, and the Committee accepts the 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:

1. Mr. Hogan is an attorney licensed to practice law in New Hampshire. Mr. Hogan was admitted to practice on October 28, 2002. At all times material to this proceeding, Mr. Hogan has operated as a solo practitioner with a law office at 11 Concord Street, Suite 4, Nashua, New Hampshire.

2. The subject disciplinary proceeding was initiated by referral dated May 27, 2009, pursuant to New Hampshire Supreme Court Rule 37(1)(2)(h) and Rule 37A(I)(c).
3. In or about January 2009, Kathleen and Domenic Feroce retained Mr. Hogan to prepare and file the pleadings and paperwork required to obtain a divorce.
4. Mr. Hogan agreed to provide such services in consideration of a fixed fee of \$750.00. At Mr. Hogan's request, the Feroce made an initial payment of \$375.00, and a subsequent payment in the amount of \$175.00 to cover court filing costs.
5. Mr. Hogan met with the Feroce and obtained from them the information and data that Mr. Hogan determined was required in order to prepare and file a Joint Petition, Permanent Stipulation, Parenting Plan, and data sheets.
6. Mr. Hogan determined that the Feroce were in agreement as to the cause and terms of divorce. He had Kathleen and Domenic sign the completed Joint Petition, Permanent Stipulation, and Parenting Plan. Mr. Hogan executed the Joint Petition as "Attorney for Wife" and "Attorney for Husband." Mr. Hogan executed the Permanent Stipulation as "Attorney for Petitioners."
7. On January 13, 2009, Mr. Hogan filed with the Salem Family Division Court the aforesaid documents, along with a Personal Data Sheet, Vital Statistics Form, and Financial Affidavits executed by Kathleen and Domenic.
8. In February 2009, the Court issued a notice requiring that a proposed Uniform Support Order be filed in order to complete the case. The Court also wrote to the Feroce, indicating that if Mr. Hogan intended to represent a party in the matter, he was required to file an appearance form.
9. Mr. Hogan obtained additional information from his clients and prepared the proposed Uniform Support Order. Mr. Hogan had the document signed by Domenic as "Obligor" and by Kathleen as "Obligee."
10. On March 3, 2009, Mr. Hogan filed the proposed Uniform Support Order, along with the Child Support Guideline Worksheet, with the Court.
11. On March 10, 2009, Mr. Hogan filed his appearance with the Court as "counsel for: Kathleen Feroce and Domenic Feroce."
12. Kathleen's interests in the divorce matter were adverse to Domenic's interests in the divorce matter.
13. Mr. Hogan's representation of both Kathleen and Domenic in the divorce matter involved a concurrent conflict of interest.

14. Mr. Hogan did not at any time confer with Kathleen or Domenic about the actual or potential conflict of interest associated with his concurrent representation of both of them in the divorce proceeding.
15. On March 10, 2009, the Court issued an order scheduling an uncontested divorce hearing for May 19, 2009.
16. At the May 19, 2009, hearing, Mr. Hogan represented himself as counsel for both parties in the matter. The Court issued an Interim Order noting that Mr. Hogan's appearance was prohibited under N.H. R. Prof. Conduct 1.7 and disqualifying him from representing either party in the matter. The Court also rescheduled the matter for hearing at a later date, after the Feroce each had an opportunity to consult with independent, separate counsel.
17. Kathleen retained new counsel and the parties proceeded to final divorce.
18. On or about June 3, 2009, Kathleen e-mailed a message to Domenic outlining her complaints about various mistakes Mr. Hogan had made in his representation, causing her to incur the expense of hiring new counsel. Kathleen threatened formal action against Mr. Hogan and demanded a refund of fees paid to Mr. Hogan. She asked Domenic to provide Mr. Hogan with a copy of the message.
19. Mr. Hogan received a copy of Kathleen's aforesaid e-mail message. He agreed to refund the fees paid in consideration of an agreement signed by Kathleen and Domenic releasing Mr. Hogan from any claims arising out of his conduct. Such an agreement was executed on June 14, 2009. Neither Kathleen nor Domenic was represented by independent counsel in connection with the release agreement.

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 1.7(a) and (b): Conflicts of Interest

1. Mr. Hogan owed a duty to Kathleen and Domenic Feroce to avoid legal representation involving a concurrent conflict of interest.
2. Mr. Hogan breached said duty by undertaking to represent both Kathleen and Domenic in the divorce matter under the following circumstances:

- a. The interests of Kathleen and Domenic were directly adverse;
 - b. There was a significant risk that Mr. Hogan's representation of either Kathleen or Domenic would be materially limited by his representation of the other;
 - c. Mr. Hogan could not reasonably have believed that he could provide competent and diligent representation to both Kathleen and Domenic; and
 - d. Neither Kathleen nor Domenic provided informed consent to Mr. Hogan's concurrent representation, although such consent could not reasonably have been obtained under the circumstances.
3. There is clear and convincing evidence that Mr. Hogan's conduct, as described herein, constitutes a violation of N.H. R. Prof. Conduct 1.7 (a) and (b).

Rule 1.8(h): Conflict of Interest: Prohibited Transactions

4. Mr. Hogan, knowing that one or both of his clients might assert a claim against him for malpractice, negotiated an agreement with his clients which was intended to prospectively limit his liability for such claim.
5. Neither Kathleen nor Domenic was represented by independent counsel in connection with the negotiation and execution of such agreement.
6. There is clear and convincing evidence that Mr. Hogan's conduct, as described herein, constitutes a violation of N.H. R. Prof. Conduct 1.8(h).

Rule 8.4(a): General Rule

7. Having found the foregoing violations, there is clear and convincing evidence that Mr. Hogan's conduct, as described herein, violated, N.H. R. Prof. Conduct 8.4(a).

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, Mr. Hogan violated the duty of loyalty owed to his clients by a) engaging in representation while confronted with a concurrent conflict of interest and by negotiating and obtaining a release from his clients intended to limit his own liability for errors committed during the course of his representation.

Under the second prong of the sanction analysis, there is an element of knowing misconduct in connection with Mr. Hogan’s determination to obtain a release from his clients. However, the Committee determined that Mr. Hogan’s failure to recognize and avoid the underlying conflict of interest associated with his representation of both parties in a divorce proceeding was more likely the product of negligence.

The third prong of the analysis yielded potential harm to the interests of both clients and potential harm to public confidence in the legal professional. Mr. Hogan’s representation also caused actual harm to the Feroces as neither was adequately represented.

In determining the appropriate sanction, the *Standards* offer material guidance in determining the baseline sanction. *Standards* § 4.33, entitled “Failure to Avoid Conflicts of Interest”

4.33 Reprimand¹ is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer’s own interests, or whether the representation will adversely affect another client, and cause injury of potential injury to a client.

Mr. Hogan has no prior disciplinary record and he is relatively inexperienced.

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. This sanction is in

¹ The most analogous sanction in New Hampshire is a Public Censure.

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., 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).

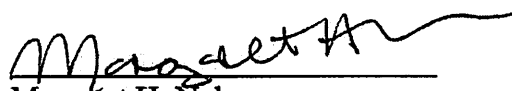
V. COSTS

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 all of the above reasons, the Professional Conduct Committee Publicly Censures Dennis C. Hogan for violating N.H. R. Prof. Conduct 1.7(a) and (b): Conflicts of Interest; 1.8(h): Conflict of Interest: Prohibited Transactions; and 8.4(a): Misconduct.

April 28, 2010


Margaret H. Nelson
Chair

Distribution:

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File