New Hampshire Supreme Court

Professional Conduct Committee

a committee of the attorney discipline system

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Ritzo, Joseph A. advs. Alexander Columbus # 07-052

REISSUED
SIX MONTH SUSPENSION WITH CONDITIONS

On January 19, 2010, the Professional Conduct Committee deliberated the above captioned matter. Members present included: Margaret H. Nelson, Chair; Toni M. Gray, Vice Chair; Susan R. Chollet, David N. Cole; Alan J. Cronheim; Gerald A. Daley; Richard H. Darling, and James R. Martin. Benette Pizzimenti was absent.

The Committee had previously denied the Motion to Waive the Hearings Committee Process on October 27, 2009, and sent the matter back to the Hearings Committee for fact finding. Following deliberations, the Committee granted an Assented- To Motion for Reconsideration on November 17, 2009. Respondent's Counsel then filed additional materials on November 30, 2009, and Assistant Disciplinary Counsel filed his response on December 14, 2009. Based on its consideration of the entire record, including the parties' Stipulation of Facts and Respondent's materials filed on November 30, 2009, and Assistant Disciplinary Counsel's filing on December 14, the Committee found the following facts, by clear and convincing evidence, as set forth below.

I. FINDINGS OF FACT

1. Joseph A. Ritzo, Esquire, is a New Hampshire attorney who was admitted to the New Hampshire Bar in 1985.

2. At all times material to this proceeding, Mr. Ritzo has maintained an office at 426 Middle Street, Portsmouth, New Hampshire, with a mailing address of P.O. Box 658, Portsmouth, New Hampshire 03802-0658. At all such times, Mr. Ritzo owned and operated his law business as a sole practitioner. He also employed non-lawyer assistants.

3. Complainant, Alexander Columbus, filed a complaint dated September 7, 2007. Mr. Columbus alleged that Mr. Ritzo violated the Rules of Professional Conduct in connection with his handling of a personal injury claim for Mr. Columbus.

4. In February 2005, Mr. Columbus retained Mr. Ritzo to represent him in connection with a personal injury claim arising out of a dog bite incident that occurred in October 2004. Mr. Ritzo agreed to represent Mr. Columbus in consideration of a one-third contingency fee. Under the contingent fee agreement executed by Mr. Columbus on February 28, 2005, neither Mr. Columbus nor Mr. Ritzo was authorized to settle the case without first obtaining the consent of the other.

5. Mr. Columbus and his wife, Carolyn, were advised by Mr. Ritzo or a member of his staff that a Power of Attorney ("POA") might be useful in connection with the execution of documents in the case. Consistent with usual office practice at the time, the Columbuses were advised that a POA would be held in their file and available for use if the Columbuses indicated their desire at some later time to have a document executed on their behalf.

6. Pursuant to the foregoing advice, Mr. and Mrs. Columbus executed a POA on or about February 28, 2005. Mr. and Mrs. Columbus executed the document which, by its terms, would appoint Mr. Ritzo their "lawful attorney in fact with full power and authority to act in [their] and on [their] behalf for the purpose of the settlement of the aforementioned claim."

7. However, as was often the case in Mr. Ritzo's office at the time, no witness signature was entered at the time of execution of the POA; nor was the specimen signature of Mr. Ritzo entered on the POA at that time.

8. Neither Mr. Ritzo nor anyone on his staff sent Mr. and Mrs. Columbus a copy of the POA at any time prior to settlement of the case.

9. Desiree McLoughlin, a full-time paralegal assistant employed by Mr. Ritzo, was assigned to handle the Columbus claim file through implementation of settlement. Mr. Ritzo's full-time office manager, Barbara MacKusick, was also involved in handling the Columbus file.

10. Ms. McLoughlin had been employed by Mr. Ritzo since 2002. Ms. McLoughlin had a variety of responsibilities as a paralegal associated with the handling of client files. Ms. McLoughlin's responsibilities included communications with insurance carriers representing defendants against whom Mr. Ritzo's clients asserted claims, communications with medical lien holders and service providers, and preparation of final settlement statements accounting for expenses and liens charged against the proceeds of settlements obtained for clients. Ms. McLoughlin also submitted check and funds

transfer requisitions to Mr. Ritzo's bookkeeper, and handled disbursements to clients, service providers, and lien holders.

11. Ms. McLoughlin retained her job and the aforementioned responsibilities after Mr. Ritzo discovered in August 2007 that, in 2005, Ms. McLoughlin had taken Mr. Ritzo's personal credit card without his authority and charged approximately $10,000 in purchases for Ms. McLoughlin, and that Ms. McLoughlin had also applied for and obtained a new credit card in Mr. Ritzo's name and had negotiated over $3,000 in unauthorized charges. Ms. McLoughlin was eventually terminated in September 2008, when Mr. Ritzo learned that she had engaged in other misconduct relating to client accounts.

12. Mr. Ritzo allowed Ms. McLoughlin to remain employed and to retain her job responsibilities without any additional supervision because Mr. Ritzo believed that she had been an effective employee, she apologized for her conduct, and she promised to make restitution. According to Mr. Ritzo, Ms. McLoughlin also told Mr. Ritzo that she suffered from a mental illness, that she had not been taking her medications at the time of her misconduct, and that she was obtaining appropriate medical treatment to control her condition.

13. Ms. MacKusick and Mr. Ritzo's wife and bookkeeper, Tracy Ritzo, were also aware of Ms. McLoughlin's misconduct in this regard.

14. In connection with the Columbus claims file, Ms. McLoughlin performed various tasks, including the following:

    a) communicating with and obtaining documents and invoices from medical and other service providers;

b) communicating with Nationwide Mutual Fire Insurance Company which provided coverage to the persons against whom the claims were being pursued;

c) submitting requisitions to Ms. Ritzo and obtaining checks intended as payment for services, expenses, and lien obligations associated with the claims;

d) preparing and submitting for Mr. Ritzo's review a settlement statement purporting to account for all amounts to be properly deducted from the proceeds of settlement of the claims;

e) preparing and obtaining documents required to implement settlement, and

f) attending to execution of documents required to close settlement and to make final disbursements.

15. In October 2006, Mr. Ritzo contacted Mr. Columbus and recommended that he accept a settlement from the insurance company in the amount of $50,000. Mr. Columbus agreed. Mr. Columbus indicates that there was no discussion with anyone in the office of the terms of the anticipated release or of the net recovery to Mr. Columbus after chargeable expenses and lien obligations were deducted from the settlement amount. Mr. Ritzo recalls discussing the terms of settlement, but he has no specific recollection of discussing the release with Mr. Columbus. Ms. MacKusick recalls talking to Mr. Columbus about the release, but Mr. Columbus denies that ever occurred.

16. Mr. Ritzo did not carefully review or check information incorporated by Ms. McLoughlin on the final settlement statement prepared in connection with the Columbuses' claim.

17. By letter dated October 17, 2006, addressed to Mr. Ritzo, the insurance company confirmed settlement in the amount of $50,000, in consideration of a Release of all Claims ("Release"). The Release was enclosed, requiring notarized signatures of both Mr. and Mrs. Columbus.

18. Neither Mr. Ritzo nor his staff forwarded a copy of the Release to Mr. and Mrs. Columbus at any time prior to execution and closing on the settlement. Nor were the Columbuses supplied before such closing with a copy of the final settlement statement prepared by Ms. McLoughlin, identifying expenses and other deductions from the settlement proceeds.

19. In anticipation of closing on the settlement, Ms. McLoughlin apparently entered her signature on the witness line of the POA that had been signed by Mr. and Mrs. Columbus when the claim file was first opened in February 2005. Ms. McLoughlin also apparently entered Mr. Ritzo's specimen signature on the POA.

20. While not necessarily the usual practice in Mr. Ritzo's office at the time, it was not uncommon to have the witness signature and the specimen signature (of Mr. Ritzo) on POAs filled in by office staff when the POA was used to execute documents. Further, it was not uncommon that POAs executed by clients would be used to execute documents without having any witness or specimen signatures entered on the POA. Mr. Ritzo knew and approved of these practices at the time.

21. On or about October 18, 2006, Ms. McLoughlin and Ms. MacKusick undertook to implement final settlement of the Columbus matter by executing the Release. Mr. and

Mrs. Columbus had approved of the $50,000 settlement, but they were not present at the closing.

22. Relying on the existence of the POA, and, following her usual office practice, Ms. McLoughlin entered what purported to be the signatures of Mr. and Mrs. Columbus on the Release. While not necessarily the usual practice in Mr. Ritzo's office, Ms. McLoughlin commonly executed settlement releases in this fashion. Mr. Ritzo was aware of and approved of Ms. McLoughlin's practice in this regard. Ms. McLoughlin also indicates that she varied the handwriting for Mr. and Mrs. Columbus to make it look like a male and a female signature.

23. Jessica Ruse, another employee in Mr. Ritzo's office, signed as witness to Ms. McLoughlin's entry of what purported to be the signatures of Mr. and Mrs. Columbus on the Release. Ms. Ruse describes the foregoing as a common practice in Mr. Ritzo's office at the time. Mr. Ritzo was aware of and approved of such practice.

24. Neither Mr. nor Mrs. Columbus was present at the execution of the Release and neither authorized Ms. McLoughlin or anyone else in Mr. Ritzo's office to sign their names to the Release. The POA, if properly prepared and used, would have granted the power exclusively to Mr. Ritzo. Mr. Ritzo represents that he no longer uses POAs in his practice.

25. While not necessarily the usual practice in Mr. Ritzo's office at the time, Mr. Ritzo knew and approved of the common practice of having Ms. McLoughlin sign clients' names on settlement releases in cases where the clients had signed a POA drafted to appoint Mr. Ritzo as their attorney-in-fact.

26. Upon execution of the Release by Ms. McLoughlin, Ms. MacKusick entered her signature as a notary public, attesting to the presence and voluntary acts of Mr. and Mrs. Columbus.

27. Ms. MacKusick's attestation as notary at the execution of the Columbus Release was false.

28. While not necessarily the usual practice in Mr. Ritzo's office at the time, Ms. MacKusick commonly undertook to notarize the execution of settlement releases by Ms. McLoughlin, attesting to the appearance and voluntary acts of the clients who were not present at such execution. Mr. Ritzo knew and approved of Ms. MacKusick's practice in this regard.

29. Neither Mr. Ritzo nor anyone else in Mr. Ritzo's office notified the insurance company that the Release of the Columbuses' claims was executed under the purported authority of a POA. Nor did Mr. Ritzo or anyone else in Mr. Ritzo's office notify the insurance company of the manner in which the Columbuses' Release was actually executed.

30. Ms. McLoughlin forwarded the Release executed on the Columbuses' behalf to the insurance company with a cover letter that purportedly bore the signature of Mr. Ritzo. Mr. Ritzo did not sign the letter. Ms. McLoughlin acknowledges entering Mr. Ritzo's signature for him.

31. Neither Mr. Ritzo nor anyone else in his office supplied Mr. and Mrs. Columbus with a copy of the signed Release.

32. Ms. McLoughlin was occasionally authorized to enter what purported to be Mr. Ritzo's signature on correspondence and other documents generated in Mr. Ritzo's office.

33. Ms. McLoughlin prepared and sent a letter to Mr. Columbus, dated May 24, 2007. The letter included a check for what purported to be Mr. Columbus's net recovery from the

settlement. It also included a copy of the settlement statement prepared by Ms. McLoughlin and approved by Mr. Ritzo. The letter purportedly bore the signature of Mr. Ritzo. However, Mr. Ritzo did not sign the letter. Ms. McLoughlin entered Mr. Ritzo's signature for him and Mr. Ritzo represents that she did so on this occasion without his express authority.

34. Shortly after receiving the final settlement disbursement check, Mr. Columbus recalls calling Ms. McLoughlin to question some of the deductions reflected in the settlement statement.

35. Ms. McLoughlin, in fact, had made certain false expense and lien entries in the settlement statement, effectively reducing the net payout to Mr. Columbus.

36. Ms. McLoughlin also submitted check requests to Ms. Ritzo who approved the disbursements in connection with the Columbus matter without requiring any supporting information or documents.

37. Some of the checks requested by Ms. McLoughlin and obtained from Ms. Ritzo were for fictitious payees falsely identified by Ms. McLoughlin. Ms. McLoughlin falsely endorsed certain checks obtained from Ms. Ritzo and deposited the proceeds in her own personal account.

38. In response to Mr. Columbus's inquiry, Ms. McLoughlin acknowledges undertaking to document a legitimate expenditure for medical narrative reports allegedly requested by Mr. Ritzo's office. Ms. McLoughlin admits she did so by fabricating two cancelled checks that had never been tendered to the providers and sent copies of the false documents to Mr. Columbus.

39. Having received no satisfactory response from Mr. Ritzo's office in response to his questions about deductions from the proceeds of settlement, Mr. Columbus undertook his own investigation. According to Mr. Columbus, he contacted the medical lien holder and various health care providers listed on the settlement statement and determined that approximately $2,400 had been improperly deducted from his net recovery of the settlement proceeds.

40. Mr. Columbus filed a small claim action in Auburn District Court on July 31, 2007. Ms. McLoughlin intercepted the mail from the Court and undertook to handle the claim on behalf of Mr. Ritzo, without notifying Mr. Ritzo. Ms. McLoughlin filed a letter of defense to the claim on August 30, 2007, using what purported to be Mr. Ritzo's signature. She also used personal funds to make partial restitution to Mr. Columbus in the amount of $1,425.

41. Ms. MacKusick was aware of Mr. Columbus's court filing and agreed with Ms. McLoughlin that, in order to avoid adding to Mr. Ritzo's level of stress at the time, Mr. Ritzo would not be notified of the proceeding in Auburn District Court. She recalls recommending that Ms. McLoughlin take the Columbus files to Attorney Brad Lown.

42. Ms. McLoughlin also intercepted correspondence from the Attorney Discipline Office ("ADO") enclosing Mr. Columbus's September 7, 2007, complaint against Mr. Ritzo. Ms. McLoughlin prepared and filed the response on behalf of Mr. Ritzo dated November 26, 2007, without informing Mr. Ritzo or the ADO of her action in this regard. Ms. McLoughlin signed the response letter using what purported to be Mr. Ritzo's signature.

43. Mr. Ritzo has since been apprised of Mr. Columbus's complaint and made restitution of funds wrongfully taken from Mr. Columbus's settlement by Ms. McLoughlin. Mr. Ritzo has also fired Ms. McLoughlin. Ms. McLoughlin is currently the subject of a criminal proceeding.

44. Mr. Ritzo has undertaken an investigation of the handling of other personal injury claim files following disclosure of Ms. McLoughlin's transgressions in connection with the Columbus matter. The investigation was performed by John T. Schiffman, CPA, with the assistance of Ms. MacKusick.

45. Mr. Schiffman's investigation report dated August 31, 2008, reveals that, during the period 2005 to 2008, Ms. McLoughlin misappropriated over $60,000 from 25 clients whose claims were settled by Mr. Ritzo and whose settlement funds were being held in trust by Mr. Ritzo.

46. Ms. McLoughlin obtained most of the misappropriated client funds by submitting "bogus" check requests to Ms. Ritzo without regard to whether or not an invoice existed. Ms. Ritzo approved the requests without requiring supporting information or documentation. According to Mr. Schiffman, Ms. Ritzo "relied on Ms. McLoughlin's integrity and did not require that check requisitions be accompanied by an invoice."

47. During the period of Ms. McLoughlin's aforesaid misconduct, Mr. Ritzo's client trust account was "out of trust" with regard to each client whose funds were misappropriated. Upon disbursement of "bogus" checks drawn on the client trust account or other transfers requested by Ms. McLoughlin and approved by Ms. Ritzo, the balance of funds held in

the client trust account did not equal or exceed the obligations Mr. Ritzo owed to his clients with respect to such account.

48. During the period of Ms. McLoughlin's aforesaid misconduct, Mr. Ritzo failed to perform monthly client trust account reconciliations as required under New Hampshire Supreme Court Rule 50(2)(F).

49. Mr. Ritzo represents that he believed he was in compliance with the Rule during this period of Ms. McLoughlin's misconduct. However, he acknowledges the following: In a spot audit conducted by the ADO's auditor, Craig Calaman, in 2001, Mr. Ritzo was found in noncompliance with Rule 50(2)(F). Mr. Calaman met with Mr. Ritzo and explained in detail how to perform the monthly client trust account reconciliations and what was required in order to comply with the Rule. Mr. Calaman also expressed concern that Mr. Ritzo's wife and bookkeeper, Tracy Ritzo, was not qualified to manage the firm's financial affairs, with particular regard to client trust accounting.

50. Relying on Melissa Zani, an attorney in his office with accounting expertise, to handle certain bookkeeping functions and to prepare the monthly client trust account reconciliations, Mr. Ritzo was in compliance with the Rule in 2002. After Ms. Zani left the office in late 2002, Mr. Ritzo retained Mr. William Powers, CPA, (with whom Mr. Ritzo had previously consulted) to provide financial services for the firm. While Mr. Ritzo represents that he thought Mr. Powers would perform the monthly client trust account reconciliations previously handled by Ms. Zani, none of the reports prepared and delivered to Mr. Ritzo thereafter by Mr. Powers included any such reconciliations. Mr.

Powers reconciled the client trust account check book to the bank statements, but he did not address the individual client balances, as required under the Rule.

51. Mr. Ritzo's New Hampshire Supreme Court Annual Trust Accounting Compliance Certificates ("Compliance Certificates") filed for 2003, 2004, 2005, 2006, 2007, and 2008 reported in error, as follows: a) that Mr. Ritzo had undertaken the requisite monthly reconciliations with respect to funds of each client held in the client trust account, as required by New Hampshire Supreme Court Rule 50; and b) that, at all times during the reporting period, the balance of funds in Mr. Ritzo's client trust account equaled or exceeded the obligations Mr. Ritzo owed to his clients with respect to such account.

52. With respect to each of the aforesaid Compliance Certificates, Mr. Ritzo certified that he had read Rule 1.15 of the Rules of Professional Conduct and New Hampshire Supreme Court Rule 50, Section 2 and that, based upon his own personal knowledge, client funds maintained by him or his firm were held in accounts "in full compliance with the foregoing rules."

II. FINDINGS REGARDING RULES VIOLATIONS

The Committee accepted the Stipulation of the parties to the violation of Rules 1.15(a), 5.3(a), 5.3(b), 5.3(c), 8.4(a), 8.4(b), and 8.4(c), by clear and convincing evidence as follows:

Rule 1.15: Safekeeping Property

53. Mr. Ritzo owed Mr. Columbus and his other clients a duty to safeguard funds received on each client's behalf as proceeds of the settlement of claims, and to maintain an account for such funds in accordance with New Hampshire Supreme Court Rule 50.

54. Mr. Ritzo also owed Mr. Columbus and his other clients a duty to promptly deliver any funds that Mr. Columbus and Mr. Ritzo's other clients were entitled to receive.

55. Mr. Ritzo breached his duty to safeguard settlement funds received on behalf of Mr. Columbus and other clients by failing to conduct monthly client trust account reconciliations pertaining to such funds during the period 2005 to 2008, as required under New Hampshire Supreme Court Rule 50.

56. Mr. Ritzo breached his duty to promptly deliver funds that Mr. Columbus and other clients were entitled to receive by allowing false expense and lien amounts to be charged against the proceeds of settlement of claims, thereby improperly reducing the net settlement disbursement to Mr. Columbus and other clients.

57. There is clear and convincing evidence that Mr. Ritzo's conduct, as described herein, was in violation of N.H. R. Prof. Conduct 1.15(a) and (b).

Rule 5.3 (a) and (b): Responsibilities Regarding Non-Lawyer Assistants

58. Mr. Ritzo, as sole practitioner, manager, and owner of his law practice, was required to make reasonable efforts to ensure that his firm had in effect measures giving reasonable assurance that the conduct of his non-lawyer assistant employees was compatible with Mr. Ritzo's professional obligations as a lawyer.

59. Having direct supervisory authority over his non-lawyer assistants, Mr. Ritzo was also required to make reasonable efforts to ensure that the conduct of such non-lawyer assistants was compatible with Mr. Ritzo's professional obligations as a lawyer.

60. Mr. Ritzo failed to comply with the aforementioned requirements, as follows:

a) Mr. Ritzo did not make reasonable efforts to ensure that powers of attorney signed by clients in favor of Mr. Ritzo were properly prepared, executed, and used by Mr. Ritzo or his non-lawyer assistants in conformance with the clients' intentions and interests.

b) Mr. Ritzo did not make reasonable efforts to ensure that Ms. McLoughlin and other non-lawyer assistants did not undertake to execute claims releases required in consideration of the settlement by falsely entering the clients' signatures, without the clients' authority, and without notifying the party for whom the release was intended.

c) Mr. Ritzo did not make reasonable efforts to ensure that Ms. MacKusick and other non-lawyer notaries public in his office properly notarized claims release documents and did not falsely attest to the presence and execution of any authorized signatory.

d) Mr. Ritzo did not make reasonable efforts to ensure that Ms. McLoughlin and other non-lawyer assistants in his office properly handled and accounted for expenses and liens associated with settlement of a client's claims and chargeable against settlement proceeds.

e) Mr. Ritzo did not make reasonable efforts a) to ensure that Ms. Ritzo did not authorize disbursements of client funds without the necessary back-up information and documentation; and b) to ensure that Ms. McLoughlin, or any other non-lawyer assistant in the office, was not able to successfully submit fraudulent check and funds transfer requisitions.

f) Mr. Ritzo did not undertake regular monthly trust account reconciliations or implement any other measures to ensure that his non-lawyer assistants with access to

the client trust account were properly safeguarding client funds, and to ensure that the balance of funds equaled or exceeded the obligations Mr. Ritzo owed to each of his clients.

g) Notwithstanding Ms. McLoughlin's prior fraudulent conduct, Mr. Ritzo did not make reasonable efforts to protect the interests of his clients, of parties in civil actions handled by the firm, or of the public, from Ms. McLoughlin's further misconduct.

61. Mr. Ritzo's foregoing failures enabled the following:

a) Ms. McLoughlin prepared and misused a defective POA executed by the Columbuses;

b) Ms. McLoughlin improperly entered the Columbuses' signatures on the insurance company claims Release;

c) Ms. McLoughlin forwarded the Release to the insurance company settling the Columbuses' claims without advising the company of the purported use of the POA or of the other irregularities in execution, thereby misrepresenting the validity and authenticity of the Release;

d) Ms. MacKusick falsely attested to the execution of the Columbuses' Release, thereby misrepresenting the validity and authenticity of the Release, and

e) Ms. McLoughlin, without Mr. Ritzo's actual knowledge, fraudulently obtained funds belonging to the Columbuses and to 24 other clients served by Mr. Ritzo and his non-lawyer assistants.

Rule 5.3 (c): Responsibilities Regarding Non-lawyer Assistants, including conduct in violation of Rules 1.15(a), 8.4(b) and (c)

62. Mr. Ritzo was responsible for the conduct of his non-lawyer assistants that would be in violation of the Rules of Professional Conduct if engaged in by a lawyer, if

a) Mr. Ritzo ordered or, with the knowledge of the specific conduct, ratified such conduct; or

b) Mr. Ritzo knew of the conduct at a time when its consequences could be avoided or mitigated and failed to take reasonable remedial action.

63. Mr. Ritzo knew or should have known of the following conduct of his non-lawyer assistants at times when the consequences of such conduct could have been avoided or mitigated with remedial action that Mr. Ritzo failed to take:

a) Ms. McLoughlin undertook to steal money from Mr. Ritzo in 2005. Notwithstanding Mr. Ritzo's knowledge of Ms. McLoughlin's misconduct and dishonesty in 2005, he failed to discharge Ms. McLoughlin or to take any other remedial action limiting her involvement in client matters and restricting her access to client funds. Such action would have avoided the misappropriation of client funds that followed. The misappropriation of client funds violated Rules 1.15(a), 8.4(b) and (c).

b) During the period 2005 to 2008, Ms. McLoughlin submitted check requisitions without proper back-up and supporting documentation. Ms. Ritzo approved the unsupported requisitions. Mr. Ritzo knew or should have known of Ms. Ritzo's practice in this regard. Mr. Ritzo failed to take any remedial action which would have

avoided the issuance of "bogus" checks and the consequent failure to safeguard client funds. Such conduct violated Rule 1.15(a). The consequent misappropriation of client funds by Ms. McLoughlin also violated Rules 8.4(b) and (c).

c) Ms. McLoughlin and Ms. MacKusick did not properly prepare or use POAs in connection with closing settlement of claims on behalf of clients. Nor did they obtain other appropriate authority to execute claims releases on behalf of clients. Mr. Ritzo was aware of such conduct and failed to take any remedial action to avoid the conduct of non-lawyer assistants resulting in the fraudulent execution and disbursement of releases in exchange for settlement proceeds. Such conduct violated Rule 8.4(c).

64. There is clear and convincing evidence that Mr. Ritzo's conduct, as described herein, was in violation of N.H. R. Prof. Conduct 5.3(c). Such violations would also render Mr. Ritzo responsible for conduct described herein in violation of N.H. R. Prof. Conduct 1.15(a), 8.4(b), and 8.4(c).

Rule 8.4(a): General Rule

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

III. ANALYSIS REGARDING SANCTION

Both case law in New Hampshire and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support the conclusion that Mr. Ritzo should be suspended.

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.

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. Ritzo violated duties owed to Mr. and Mrs. Columbus and other clients, as well as to the legal profession, by failing to make reasonable efforts to ensure that the conduct of his non-lawyer assistants was consistent with Mr. Ritzo's professional obligations as a lawyer. The non-conforming conduct of Mr. Ritzo's non-lawyer

assistants in this matter included: a) Ms. McLoughlin's false accounting of expenses and other deductions chargeable against the settlement proceeds; b) Ms. McLoughlin's submission to Mr. Ritzo's bookkeeper of fraudulent check requests without supporting documentation; c) disbursement by Mr. Ritzo's bookkeeper of such checks requested by Ms. McLoughlin without requiring supporting documentation; and d) Ms. McLoughlin's fraudulent negotiation of such checks and misappropriation of funds. Similar conduct occurred at the expense of several other clients over the period 2005 to 2008.

In addition the non-conforming conduct of Mr. Ritzo's non-lawyer assistants in this matter included a) their defective and incomplete preparation of a power of attorney executed by Mr. and Mrs. Columbus and their unauthorized use of such power in executing a release of the Columbuses' claims; b) their fraudulent execution of the release and fraudulent notarization of such execution; and c) their delivery of the release to the insurance carrier without disclosing the circumstances of execution, thereby misrepresenting the validity and authenticity of the release. The foregoing conduct of Mr. Ritzo's non-lawyer assistants commonly occurred in Mr. Ritzo's office with his knowledge and approval.

Mr. Ritzo violated his duty to his clients, to the legal profession, and to the Court by a) allowing Ms. McLoughlin to remain employed and to retain job responsibilities involving the handling of client settlements, accounting for expenses chargeable against the proceeds of settlement, and related disbursements, after Ms. McLoughlin's prior acts of theft; b) allowing the client trust account to be "out of trust" during the period of Ms. McLoughlin's misconduct; c) failing to perform monthly client trust account reconciliations during the period 2003 to 2008, as required by New Hampshire Supreme Court Rule 50; and d) filing annual trust accounting

compliance certificates with the Court representing falsely that he had performed such monthly reconciliations.

With respect to the second prong of the sanction analysis, Mr. Ritzo's aforesaid breaches, for the most part, were knowing. Some aspects of Mr. Ritzo's conduct, if not entirely knowing, were the product of gross negligence. For Example:

a) Mr. Ritzo knew that, notwithstanding Ms. McLoughlin's history of credit card theft, Ms. McLoughlin continued to process client claims (including accounting for expenses and other deductions chargeable against settlement proceeds, submitting check requests, and handling the distribution and disbursement of such checks) without direct supervision.

b) Mr. Ritzo knew that he did not undertake a complete and thorough review of many of Ms. McLoughlin's final settlement statements.

c) Mr. Ritzo knew or should have known that his wife, as bookkeeper, frequently neglected to require Ms. McLoughlin to accompany her check requests with appropriate supporting documentation.

d) At the conclusion of the spot audit conducted in 2001, Mr. Ritzo knew that he had not properly performed monthly reconciliations of his client trust account and he knew what he was required to do thereafter in order to comply with Supreme Court Rule 50.

e) During the period 2002 to 2008, Mr. Ritzo received financial reports regarding his firm from an outside accountant. Mr. Ritzo knew or should have known, upon review of the reports, that monthly client trust account reconciliations, as required

under Rule 50, were not being performed by his accountant during the period in question.

6. During the period 2005 to 2008, Mr. Ritzo should have known that he was "out of trust" in connection with client accounts that were being looted by Ms. McLoughlin.
7. Mr. Ritzo knew and approved of the non-lawyer assistants' conduct described herein relating to the preparation and use of powers of attorney and the execution of releases tendered in consideration of settlement proceeds.

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Ritzo's misconduct. Mr. Ritzo caused harm or potential harm to Mr. and Mrs. Columbus and other clients by allowing Ms. McLoughlin to handle the accounting of charges against settlement proceeds and related check requests, resulting in the theft of funds from Mr. and Mrs. Columbus and many other clients; failing to safeguard client funds; and failing to correct common practices of his non-lawyer assistants that resulted in their fraudulent execution of releases of claims, potentially undermining settlements.

Mr. Ritzo caused harm to the legal profession by operating his office in such a way as a) to raise the question whether lawyers can be trusted to manage and safeguard their clients' affairs, and b) to give companies and institutions doing business with law firms reason to doubt whether they can rely on lawyers to generate valid and authentic documents. Mr. Ritzo also caused harm to the profession and to the Court by leaving the Court and the public in doubt as to the viability of trust accounting and certification requirements contemplated under Rule 50.

For determining a baseline sanction, the *Standards* provide material guidance.

Mr. Ritzo's failure to supervise his non-lawyer assistants in handling settlements of claims and his failure to properly maintain the client trust account involved breaches of Mr. Ritzo's duty to protect the interests and property of his clients. Section 4.1 of the *Standards* provides, in pertinent part, as follows:

> 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
>
> 4.13 Reprimand[1] is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

Mr. Ritzo's failure to supervise his non-lawyer assistants, especially in light of their past misconduct, in handling settlements of claims also involved a breach of duty owed to the public. Section 5.1 of the *Standards* ("Failure to Maintain Personal Integrity") provides, in pertinent part, as follows:

> 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 [specific criminal intent] 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.

Mr. Ritzo's failure to comply with Supreme Court Rule 50, with particular regard to the filing of accurate trust accounting compliance certificates, involves a breach of duty owed to the

[1] Section 4.13 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

legal system and to the Court. *Standards* § 6.1 (False Statements, Fraud and Misrepresentation) provides, in pertinent part, as follows:

> 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.

The parties agree that Mr. Ritzo did not intend to steal money from Mr. and Mrs. Columbus or other clients and that he did not know that Ms. McLoughlin was looting the accounts. However, Mr. Ritzo does not claim to be absolved of responsibility as a mere victim of Ms. McLoughlin's criminal scheme. Nor does Mr. Ritzo claim that, because of the unauthorized nature of Ms. McLoughlin's conduct, he should not be suspended from the practice of law. Rather, Mr. Ritzo acknowledges responsibility for Ms. McLoughlin's conduct because of his failure, after learning that Ms. McLoughlin had stolen from him: a) to terminate or to limit Ms. McLoughlin's job responsibilities and/or to exercise extra care in supervising and reviewing Ms. McLoughlin's work, and b) to ensure that his wife and bookkeeper consistently imposed appropriate requirements for approving check requests.

Mr. Ritzo is credited with having voluntarily disclosed to the ADO information about Ms. McLoughlin's prior efforts to steal from him.

The parties also agree that Mr. Ritzo did not have a specific intent a) to disregard the client trust account reconciliation requirements of Rule 50; b) to be "out of trust"; or c) to deceive the Court in filing his annual trust accounting compliance certificates. However, Mr. Ritzo acknowledges that he had the knowledge, information, and opportunity to determine whether he was in compliance with Rule 50, that he did not so determine, and that he nevertheless certified his compliance with the rule.

The parties agree that Mr. Ritzo had no specific intent to defraud Mr. and Mrs. Columbus by forging their signatures on the settlement release or to defraud the insurance company by tendering an invalid release. However, Mr. Ritzo acknowledges that he knew of and approved the improper measures employed by his non-lawyer assistants to close this and other settlements; that he failed to take remedial action; and that, pursuant to Rule 5.3(c), he is directly responsible for such improper conduct and the consequences thereof.

Under the foregoing circumstances, the parties agree that the combined baseline sanction for Mr. Ritzo's conduct is suspension.

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, aggravating factors include the following:

A pattern of misconduct characterized by Mr. Ritzo's failure to take appropriate action with regard to Ms. McLoughlin after learning of her prior acts of theft; Mr. Ritzo's repeated failure over an extended period of time, following a spot audit and warning, to properly manage and report on the client trust account; and Mr. Ritzo's failure over an extended period of time to

supervise his non-lawyer assistants and to take appropriate remedial action. Mr. Ritzo's substantial experience in the practice of law is also an aggravating factor. *See Standards* § 9.22.

Mitigating factors include the following: Mr. Ritzo has no prior disciplinary record; Mr. Ritzo's good faith effort to make restitution of money taken by Ms. McLoughlin from the referenced 25 clients. (Mr. Ritzo's efforts in this regard may have been undertaken sooner, had he taken more timely remedial action leading to the discovery of Ms. McLoughlin's misconduct.);Mr. Ritzo's full disclosure to the ADO and his cooperative attitude in the proceedings, including his disclosure of Ms. McLoughlin's prior misconduct and his commitment to undertake remedial action in connection with his office practices; Mr. Ritzo had no selfish motive; and Mr. Ritzo's expression of remorse and his acceptance of responsibility. *See Standards* § 9.32.

The aggravating and mitigating factors evident in this case, combined with the baseline sanction analysis, indicate that a six month suspension is the appropriate sanction, combined with conditions designed to ensure implementation of effective remedial measures.

The ADO has joined in this recommendation, in part, because of Mr. Ritzo's commitment to take remedial action to ensure that a) expenses charged against the proceeds of settlement are legitimate and properly documented and accounted for; b) policies with respect to the authority to make check requests and to handle disbursements are clearly defined and enforced; c) check requests and disbursements are properly documented, reviewed, approved, and accounted for; d) adequate safeguards are in place to ensure that no single employee in Mr. Ritzo's office has unchecked or unfettered access to firm or client accounts, or to records of such accounts; e) bookkeeping, accounting, and reporting practices are well-defined and consistently applied, and

monthly client trust account reconciliations are performed in full compliance with Supreme Court Rule 50; f) documents requiring client signatures are properly prepared and executed; and g) clients are fully informed as to the terms of settlement of their claims and their net recovery from the proceeds of settlement.

IV. SANCTION

The Committee voted to approve the Stipulation of a six month suspension with the following conditions:

1. Mr. Ritzo shall obtain an independent office practices audit, at Mr. Ritzo's expense. An initial report shall be filed with the ADO within three months of Mr. Ritzo's Reinstatement. The auditor shall be approved by the ADO and shall be charged with reporting on the implementation of remedial measures as described above and articulating his recommendations for further remedial action. Mr. Ritzo agrees to implement such additional measures as may be recommended by the auditor. A final report from the auditor shall be filed with the ADO within five months of Mr. Ritzo's return to practice, confirming the satisfactory implementation of all necessary remedial measures.
2. Within six months of his return to practice, Mr. Ritzo shall obtain and file a report with the ADO from Mr. Ritzo's financial consultant, Timothy Driscoll, CPA, (or other CPA approved by the ADO) confirming implementation of satisfactory accounting practices and procedures in Mr. Ritzo's office designed to ensure compliance with Supreme Court Rule 50. The financial consultant shall view and report on current monthly reconciliations of the client trust account. The report shall include any recommendations for further remedial action. Mr. Ritzo agrees to implement such additional measures and to report to

the ADO on his satisfactory compliance therewith within 30 days of the issuance of such report.

3. Following his return to practice, Mr. Ritzo shall file with the ADO his monthly client trust account reconciliations by the 15th of the following month for a period of twelve months.

4. In the event Mr. Ritzo fails to comply with any of the foregoing conditions of reinstatement, he will be subject to an order to show cause why he should not be found in contempt. In the event of such an order, Mr. Ritzo shall be entitled to an evidentiary hearing.

V. COSTS

The parties stipulated, and the Committee approves, 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 Committee suspends Joseph A. Ritzo from the practice of law for six months, for violating the New Hampshire Rules of Professional Conduct 1.15(a), 5.3(a), 5.3(b), 5.3(c), 8.4(a), 8.4(b), and 8.4(c). This Order shall take effect on March 1, 2010. At the conclusion of his suspension, Mr. Ritzo shall comply with N.H. Supreme Court Rule 37(14)(f) as to application for reinstatement to the practice of law. No further action of this Committee shall be required.

February 17, 2010

Margaret H. Nelson, Chair

Distribution:

James L. Kruse, Assistant Disciplinary Counsel
Stephen L. Tober, Esquire
Jeffrey K. Karlin, Esquire
Alexander Columbus
File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. LD-2010-0011, In the Matter of Joseph Anthony Ritzo, the court on October 14, 2010, issued the following order:

In accordance with Rule 37(14)(f), Joseph A. Ritzo filed a motion for reinstatement to the practice of law. Attorney Ritzo's motion for reinstatement is granted. He is reinstated to the practice of law in New Hampshire, effective immediately.

Broderick, C.J., and Dalianis, Duggan, Hicks and Conboy, JJ., concurred.

Eileen Fox,
Clerk

Distribution:
Joseph A. Ritzo, Esquire
Jeffrey H. Karlin, Esquire
James L. Kruse, Esquire
Margaret H. Nelson, Chair
NH Bar Association
File