

New Hampshire Supreme Court

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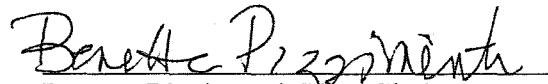
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*Bernard, H. Nina advs. David West # 05-103*

**REPRIMAND**

On November 20, 2007, the Professional Conduct Committee, upon consideration, voted to grant the Motion to Permit Waiver of the Hearings Committee Process. The Committee also voted to issue a Reprimand in the above-captioned matter on the basis of the Stipulation filed by the parties attached hereto and made part thereof.

November 20, 2007

  
Benette Pizzimenti, Vice Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel  
H. Nina Bernard, Esquire  
File

**NEW HAMPSHIRE SUPREME COURT**  
**PROFESSIONAL CONDUCT COMMITTEE**

Bernard, H. Nina

advs.

David West

#05-103

**STIPULATION**

Disciplinary Counsel, Landya B. McCafferty, and Respondent, H. Nina Bernard, hereby submit this Stipulation in the above-referenced case.

**I. Stipulation of Facts**

1. Ms. Bernard is an attorney licensed to practice law in New Hampshire. Ms. Bernard was admitted to practice in 1985. Ms. Bernard operated her law office as Salomon, Randlett & Bernard, 750 Exeter Road, Hampton, New Hampshire 03842 from November 1997 until February 2000. Her current law office address is 25 Hampton Road, Exeter, New Hampshire 03833.
2. In the Fall of 1999, David West retained Arthur C. Randlett to represent him on a claim for damages relating to a chronic paint problem on his recently-purchased house.

3. Mr. West discovered Mr. Randlett through the local Yellow Pages advertisements.
4. In or about the Fall of 1999, Mr. Randlett shared office space at 750 Exeter Road in Hampton with two other attorneys, Craig N. Salomon and Ms. Bernard. They had no partnership agreement; rather, each agreed to pay a pro rata share of the overhead for the operational expenses of the office space.
5. In or about the Fall of 1999, Messrs. Randlett and Salomon and Ms. Bernard ran an advertisement in the Yellow Pages that consisted of a photo of the three of them together with the caption, "Salomon, Randlett & Bernard, Attorneys at Law." Nothing in the advertisement disclosed that they were simply sharing office space.
6. Upon seeing the advertisement, Mr. West reasonably concluded that Messrs. Randlett and Salomon and Ms. Bernard were in a law partnership or firm.
7. Mr. West did not have any prior knowledge or association with Mr. Randlett. In hiring Mr. Randlett, Mr. West believed that Mr. Randlett had two partners who supported and worked alongside him.
8. In a letter to Mr. West dated November 30, 1999, Mr. Randlett agreed to represent Mr. West and outlined the fee arrangement.
9. On December 15, 1999, Mr. West hired Mr. Randlett and paid him a \$2,500 retainer.

10. Throughout Mr. Randlett's representation of Mr. West, Mr. Randlett's letterhead bore the heading: "Salomon, Randlett & Bernard, Attorneys at Law."
11. Mr. Randlett signed his letters to Mr. West as follows: "Very truly yours, Salomon, Randlett & Bernard, Arthur C. Randlett."
12. Similarly, the sign outside Ms. Bernard's office read: "Salomon, Randlett & Bernard, Attorneys at Law."
13. From the Fall 1999 through February 2000, Messrs. Randlett and Salomon and Ms. Bernard shared a receptionist. Their receptionist answered the phone for the three of them and identified the office to callers as "Salomon, Randlett & Bernard."
14. In or about February 2000, Ms. Bernard moved out of the office and her association with Messrs. Randlett and Salomon ended.
15. In or about May 2000, Mr. West and Mr. Randlett parted ways. As it turned out, Mr. West brought suit against Mr. Randlett, as well as Mr. Salomon and Ms. Bernard, for legal malpractice associated with Mr. Randlett's alleged negligent mishandling of Mr. West's claim. The lawsuit was dismissed on the basis that Mr. West's cause of action expired prior to his retaining Mr. Randlett.
16. During the lawsuit, Mr. West learned that Messrs. Randlett and Salomon and Ms. Bernard were not, in fact, a legal partnership. Rather, they simply shared office space and expenses related thereto.

17. In a letter dated July 20, 2005, Mr. West asserted allegations of professional misconduct against Ms. Bernard for, inter alia, having held herself out as a partnership or law firm when she was not in a partnership or firm with either Mr. Randlett or Mr. Salomon.

## **II. Stipulation as to Rules Violated**

### **Rule 7.5(d): Implying a Partnership/Law Firm**

18. Allegations set forth above are incorporated by reference.
19. Under Rule 7.5(d), Ms. Bernard had a duty to “imply that [she] practice[s] in a partnership or other organization only when that is the fact.”
20. From the Fall of 1999 through February 2000, Ms. Bernard shared office space and overhead expenses with Messrs. Randlett and Salomon. Ms. Bernard never entered into a law partnership or firm agreement with Messrs. Randlett and Salomon; nor did they ever share profits with one another.
21. Although Ms. Bernard was not, in fact, in a law partnership or firm with Messrs. Randlett and Salomon during this time-frame, Ms. Bernard knowingly implied that she was in such a law partnership or firm with them in the following ways: (a) her business advertisement in the Yellow Pages (the name “Salomon, Randlett & Bernard, Attorneys at Law” alongside a photo of the three attorneys); (b) her business letterhead and stationery of the same name; (c) her use of a shared receptionist who identified Ms. Bernard’s business to the public as “Salomon, Randlett &

Bernard;” and (d) her business sign identifying itself as “Salomon, Randlett & Bernard, Attorneys at Law.”

22. Ms. Bernard’s conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 7.5(d).

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

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

**III. Stipulation as to Sanction**

24. Disciplinary Counsel and Ms. Bernard jointly recommend a Reprimand as the appropriate sanction in this matter. A Reprimand would serve the purposes of attorney discipline.
25. Both case law in New Hampshire and the American Bar Association’s Standards for Imposing Lawyer Sanctions (1992) (“Standards”) support the conclusion that Ms. Bernard should be Reprimanded. 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., Coffey’s Case, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). “The sanction must take into account the severity of the misconduct.” Id.
26. Although the Court has not adopted the Standards, it looks to them for guidance. Coffey’s Case, 152 N.H. at 513. 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." Standards § 3.0; Coffey's Case, 152 N.H. at 513.

27. The first three steps create the framework for characterizing the misconduct and determining a baseline sanction. See Wolterbeek's Case, 152 N.H. 710, 714 (2005) ("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 step in the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. See id. ("After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.").
28. Under the first prong of the analysis, Ms. Bernard violated her professional obligation to communicate accurately about the nature of her law practice.
29. The Standards next require analysis of both Ms. Bernard's state of mind and the injury caused by her misconduct.
30. With respect to Ms. Bernard's mental state, Ms. Bernard acted negligently concerning the misleading communications about her law practice and association with Messrs. Randlett and Salomon. However, Ms. Bernard acted without any purposeful intent to harm or deceive.

31. The third prong of the analysis requires consideration of the potential or actual injury caused by Ms. Bernard's misconduct.
32. Here, Mr. West suffered harm as a result of Ms. Bernard's actions because, in deciding to hire Mr. Randlett, Mr. West relied on the communications and advertising that implied that Mr. Randlett was in a partnership. Mr. West would testify that he would not have hired Mr. Randlett had he known Mr. Randlett was a solo practitioner.
33. Ms. Bernard would testify that, had Mr. West spoken directly with her about his difficulties dealing with Mr. Randlett, she would have confronted Mr. Randlett directly on behalf of Mr. West. Ms. Bernard wishes that Mr. West had been able to reach her so that she could have helped him when he was having difficulty getting Mr. Randlett to respond to him. Ms. Bernard is not clear on how her intervention might have changed the end result in this case (i.e., the dismissal of Mr. West's underlying claim as untimely), but she is certain that she would have intervened with Mr. Randlett on behalf of Mr. West.
34. Having analyzed the facts under the first three prongs of the test, the appropriate baseline sanction in this case falls somewhere between a Reprimand and a Public Censure. See Standards § 7.0.
35. The final step in the analysis, however, is to determine whether there are any aggravating and/or mitigating factors that affect the baseline sanction.

36. There are several mitigating factors and no aggravating factors. First, Ms. Bernard has no prior disciplinary record. Second, Ms. Bernard has acknowledged her misconduct, accepted responsibility and cooperated fully with the disciplinary process. See Standards § 9.32(e). Additionally, while Ms. Bernard's misconduct was negligent, she was not motivated by dishonesty or deceit. See id. at § 9.32(b).
37. In light of the underlying facts as well as the mitigating factors, a Reprimand rather than a Public Censure, is the appropriate sanction in this matter.
38. In sum, taking into consideration both the four part analysis recommended by the Standards, as well as the purposes of attorney discipline in New Hampshire, the appropriate sanction in this matter is a Reprimand.

#### **IV. Stipulation as to Costs**

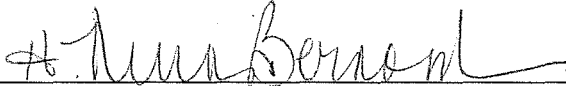
39. Ms. Bernard agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

#### **V. Effect of Stipulation**

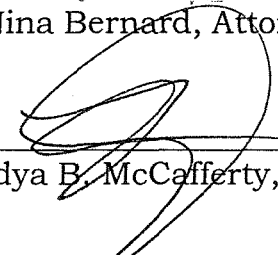
40. Respondent understands that by signing this Stipulation, she is hereby bound to the facts as stipulated. In the event that the Professional Conduct Committee does not agree with the Stipulation as to Rules Violated and/or the Stipulation as to Sanction, the Respondent is nonetheless hereafter bound to the facts as stipulated.

Respectfully submitted

Dated: October 4, 2007

  
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H. Nina Bernard, Attorney

Dated: October 5, 2007

  
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Landya B. McCafferty, Disciplinary Counsel