

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Jones, Jennifer R. advs. Attorney Discipline Office - #09-041

REPRIMAND

On January 18, 2011, the Professional Conduct Committee (“Committee”) deliberated the above-captioned matter. Committee members present included: Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, David N. Cole, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling, and Julie A. Introcaso. Committee members James r. Martin and Lawrence A. Vogelman were absent.

The Respondent and Assistant Disciplinary Counsel (“ADO”) assented to, and the Committee voted to accept the Assented-to Motion to Permit Waiver of Formal Proceedings.

I. FINDINGS OF FACT

The Respondent and the ADO have stipulated, and the Committee accepts the Stipulation, (“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. Ms. Jones is a New Hampshire attorney who was admitted to the Bar on October 30, 1995. At all times relevant to this proceeding, Ms. Jones was not engaged in the private practice of law. Since November 2007, she has been employed as general counsel and legislative liaison in the Division of Family Assistance in the New Hampshire Department of Health and Human Services.
2. This disciplinary matter was initiated by referral dated June 2, 2009, and filed with the Attorney Discipline Office (ADO) pursuant to New Hampshire Supreme

Court Rule 37A(II)(a)(2).

3. Ms. Jones was one of four surviving heirs of Keta C. Jones of Concord, New Hampshire, who died on August 10, 2007. The other heirs were Ms. Jones's sisters, Cecelia Pan, Angela Jones, and Kellie Jones.
4. Keta Jones died intestate. Her only asset was a manufactured home located on land owned by the Kaufman Trust, located in a manufactured home park on Beth Drive in Concord, N.H.
5. Ms. Jones and her sisters agreed to sell the manufactured home immediately after Keta Jones's died. After selling the property, the sisters planned to pay back Cecelia for a loan she made to Keta Jones to purchase the property, to pay for funeral expenses and any other debts, and then divide the remaining proceeds among the sisters.
6. Ms. Jones agreed to handle the transaction on behalf of the four sisters and the unit was posted for sale by the park manager, Mike Morgan. The listed price was \$45,000.
7. In anticipation of the transaction, Ms. Jones prepared powers of attorney for each of her sisters, appointing Ms. Jones as attorney-in-fact with authority to convey her sisters' interests in the property.
8. Louisa Sargent of Bow, New Hampshire, learned of the sale and went to see the unit in mid-September 2007. Mrs. Sargent was accompanied by her real estate agent, Dennis Potter, who handled the sale of Mrs. Sargent's property in Bow. Mr. Potter was not a lawyer.
9. Ms. Jones met with Mrs. Sargent and Mr. Potter and showed them the property.
10. Mrs. Sargent, through Mr. Potter, offered to purchase the property for a compromise amount. The offer was rejected by Ms. Jones.
11. On or about September 20, 2007, Mr. Potter prepared a proposed purchase and sale agreement ("Agreement") reflecting Mrs. Sargent's offer to purchase the property for \$45,000. Mrs. Sargent gave Mr. Potter a check for \$900, made payable to the real estate agency, as a deposit on the anticipated transaction. Mr. Potter tendered the Agreement to Ms. Jones.
12. The seller under the Agreement was identified as "Keta C. Jones Estate, Jennifer Jones Executor." Ms. Jones accepted and initialed the Agreement in her purported capacity as "Executor" of the Keta C. Jones Estate.

13. The parties to the Agreement anticipated a closing on or before September 27, 2007.
14. Prior to closing, Ms. Jones told Mr. Potter that she was an attorney and would prepare all of the paperwork required for the transaction.
15. Ms. Jones was familiar with the title history of the property because she had assisted her mother in purchasing the property.
16. Ms. Jones prepared a Manufactured Housing Warranty Deed ("Deed") conveying the property from "the Estate of Keta C. Jones. . . by and through the heirs of said Estate." Each of the signatories (the four sisters) was identified as "Heir of Estate." Ms. Jones prepared a Consent of Park Owner to be signed by the Kaufman Trust. In anticipation of closing, Ms. Jones also prepared the Settlement Statement (required by the U.S. Dept of Housing and Urban Development (HUD)) identifying herself ("Jennifer R. Jones, Esq.") as the settlement agent.
17. Closing on the property occurred on September 27, 2007, at the Christian Mutual Building in Concord, N.H. At the closing, Ms. Jones produced the various closing documents and executed the Deed on her own behalf and in her capacity as attorney-in-fact for each of her sisters. Mrs. Sargent tendered to Ms. Jones the balance of consideration due for the property in cash.
18. At the time of closing, Ms. Jones said that she would record the Deed and return it to Mrs. Sargent.
19. Mr. Potter and Mrs. Sargent were led to believe that Ms. Jones, as the attorney who was preparing the paperwork, would handle the transaction in the proper way.
20. Ms. Jones failed to record the Deed and return it to Mrs. Sargent, as promised. Ms. Jones deposited the sale proceeds in a bank account she held jointly with her mother. Ms. Jones made certain disbursements out of the sale proceeds. On or about September 28, 2007, Ms. Jones paid the transfer tax associated with the transaction in the amount of \$675. In September and October, Ms. Jones paid the funeral expenses and other debts of the Estate in the amount of \$974. 24. On October 12, 2007, Ms. Jones repaid Cecelia for the aforementioned loan (\$24,000) and then disbursed portions of the remaining proceeds to her sisters. All of these disbursements were made without first recording the Deed. Mr. Potter negotiated the \$900 deposit check and retained the proceeds as his commission.
21. Ms. Jones had forgotten to record the Deed, as promised. Ms. Jones was reminded of the issue when Mrs. Sargent called on at least two occasions to ask Ms. Jones for the Deed. Ms. Jones reassured Mrs. Sargent that she would put it in

the mail and then failed to do so. Ms. Jones also answered a call from Ms. Sargent's son. Ms. Jones recalls that by that time she had already recorded the Deed.

22. In January 2008, Mrs. Sargent retained Attorney Melissa Gulbrandsen to represent her in connection with the transaction.
23. Ms. Gulbrandsen wrote to Ms. Jones on January 18, 2008. Ms. Gulbrandsen noted that a photocopy of the Deed produced at the closing was not fully executed. Further, Ms. Gulbrandsen complained that the Deed had not been recorded; there was no title search; probate of the estate of Keta Jones had not been opened, as required to effect the transfer of clear title; and the proceeds of the sale had been prematurely disbursed.
24. Ms. Jones responded to Ms. Gulbrandsen's complaint by recording the fully executed Deed and Consent of Park Owner at the Merrimack County Registry of Deeds on January 23, 2008.
25. In further correspondence dated January 29, 2008, February 6, 2008, April 15, 2008, and January 30, 2009, Ms. Gulbrandsen demanded that Ms. Jones petition the probate court for administration of the estate of Keta Jones and sought to confirm Ms. Jones's promises to comply with such demands.
26. Ms. Jones did not respond in writing to any of Ms. Gulbrandsen's demands and did not petition the probate court for administration of her mother's estate. Ms. Jones did not believe that probate administration was necessary in order to convey clear title.
27. On May 31, 2009, Ms. Gulbrandsen filed a Petition for Estate Administration and Verified Attachment in the Merrimack County Probate Court. Ms. Gulbrandsen requested that she be appointed administrator of the estate of Keta Jones for the purpose of clearing title to the property that was conveyed to Mrs. Sargent.
28. In her Verified Attachment to Petition, Ms. Gulbrandsen alleged that "Mrs. Sargent did not have counsel with respect to the closing, and believed that Attorney Jones was handling the transfer correctly and properly and for Mrs. Sargent's benefit."
29. On or about July 8, 2009, Ms. Jones moved to dismiss Ms. Gulbrandsen's petition on grounds that Ms. Gulbrandsen had no standing, that Mrs. Sargent was not a creditor of the estate, and that there was no defect in the Deed to Mrs. Sargent. In her supporting memorandum, Ms. Jones argued that title to the property passed automatically to the intestate decedent's heirs and that subsequent

transfer by the heirs required no involvement of the probate court.

30. Ms. Gulbrandsen filed an objection to the motion to dismiss, arguing that, while the property passed directly to the intestate decedent's heirs, New Hampshire law and the New Hampshire Bar Association Title Examination Standards provide that probate administration is required to convey marketable title.
31. Ms. Gulbrandsen's Petition was scheduled for hearing on September 17, 2009.
32. On September 16, 2009, Ms. Jones filed a Petition for Estate Administration, requesting that Ms. Jones be appointed administrator of her mother's estate. The Petition was granted on the following day. The court ordered that Ms. Jones, as fiduciary, file a \$33,000 corporate surety bond within thirty days. Ms. Jones did not comply with the Court's order to file a surety bond. Ms. Jones wanted instead to obtain a personal surety bond, but neglected to obtain the Court's permission to do so.
33. On October 23, 2009, Ms. Gulbrandsen filed a Statement of Claim and Affidavit of Account on behalf of Mrs. Sargent alleging Ms. Jones's failure to convey marketable title to the manufactured home and seeking costs associated with Mrs. Sargent's efforts to clear title through the probate proceeding.
34. On October 23, 2009, the Court issued an order scheduling a conference for November 12, 2009, at which Ms. Jones would be asked to explain why she had not filed the required corporate surety bond.
35. Ms. Jones made a mistake in calendaring the scheduled hearing and failed to appear at the November 12, 2009, hearing. Accordingly, the Court vacated its order appointing Ms. Jones as administrator and appointed Ms. Gulbrandsen instead, subject to filing a \$33,000 corporate surety bond by December 15, 2009.
36. Ms. Gulbrandsen filed the appropriate fiduciary bond which was approved by the Court on December 17, 2009.
37. Ms. Gulbrandsen filed the Inventory of Fiduciary on April 1, 2010, which the Court approved on April 13, 2010.
38. Ms. Jones and her sisters subsequently executed assents required in support of a confirmatory deed regarding the property conveyed to Mrs. Sargent. The confirmatory deed conveying the property from "Melissa C. Gulbrandsen, Administrator of the Estate of Keta C. Jones" to Louisa Sargent was recorded on June 28, 2010.

39. On July 2, 2010, Ms. Guldbrandsen filed a Motion for Summary Administration of the Estate Keta Jones in which she represented that there were no debts of the estate. The Motion is currently pending.

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:

Rule1.1: Competence

1. Ms. Jones knew or should have known that her sisters were relying on Ms. Jones, as a lawyer, to prepare the necessary documentation and otherwise to effect the real estate transaction in conformity with applicable law.
2. Ms. Jones owed a duty to her sisters to handle the subject real estate transaction competently.
3. Ms. Jones breached that duty by engaging in areas of practice about which she lacked sufficient experience and knowledge and by failing to associate herself with another lawyer who possessed the necessary skill and knowledge to handle the matters competently.
4. Ms. Jones failed to handle the real estate transaction and the ensuing probate proceeding competently, as follows:
 - i. Ms. Jones executed a purchase and sale agreement that identified her as the Executor of the Estate of Keta Jones where there was no will or probate process appointing her to serve in that capacity. Ms. Jones also tendered a deed on behalf of the estate without the requisite authority.
 - ii. Ms. Jones disbursed the proceeds of sale without recording the deed that purported to convey title to the property to Mrs. Sargent.
 - iii. Ms. Jones misperceived applicable New Hampshire law and undertook to effect the transfer of property obtained by her and her sisters through intestate succession without pursuing estate administration in probate court, as required by law.
5. As a consequence of Ms. Jones's misperception of the law and her aforesaid conduct, clear title to the property and the cash tendered in consideration of sale were placed at risk, the transaction was subject to unnecessary and costly legal

process, and Ms. Jones and her sisters were potentially liable for costs claimed by Ms. Guldbrandsen on behalf of Mrs. Sargent.

6. Ms. Jones's aforementioned conduct constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.1.

Rule 4.3: Dealing with Unrepresented Person

7. Ms. Jones participated in the real estate transaction on behalf of herself and her sisters as the sellers.
8. Ms. Jones owed a duty to Mrs. Sargent, who was not represented by counsel, to avoid giving Mrs. Sargent or her agent the impression that Ms. Jones would handle the real estate transaction in such a manner as to ensure protection of Mrs. Sargent's legal interests.
9. Ms. Jones breached that duty as follows:
 - i. Ms. Jones represented to Mrs. Sargent and/or Mr. Potter that, because she was a lawyer, she would produce the paperwork required to effect the real estate transaction.
 - ii. Ms. Jones knew or should have known that Mrs. Sargent and Mr. Potter misunderstood Ms. Jones's role as the "lawyer" and were relying on Ms. Jones to handle the transaction in such a way as to protect Mrs. Sargent's interests.
 - iii. Ms. Jones failed to make reasonable efforts to correct this misunderstanding.
10. Ms. Jones's aforementioned conduct constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 4.3.

Rule 1.15: Safekeeping Property

11. Ms. Jones assumed the responsibility of recording a valid deed conveying title to the property in consideration of the cash tendered by Mrs. Sargent.
12. Mrs. Sargent retained an interest in the cash she tendered until such time as she received title to the property.
13. Ms. Jones owed a duty to Mrs. Sargent to hold Mrs. Sargent's cash separate from Ms. Jones's own property at least until Ms. Jones recorded a valid deed conveying

title to Mrs. Sargent.

14. Ms. Jones breached that duty by depositing Mrs. Sargent's cash in the account maintained jointly by Ms. Jones and her mother and making the various disbursements, as aforesaid, before recording a deed and conveying title in the property to Mrs. Sargent.
15. Ms. Jones's aforementioned conduct constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.15(a) and (c).

Rule 8.4(a): General Rule

16. Because there exists clear and convincing evidence that Ms. Jones 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

Although New Hampshire has not adopted the *American Bar Association's Standards for Imposing Lawyer Sanctions* (2005) (*Standards*), the Committee looks to them for guidance. *See, e.g., Shillen's Case*, 149 N.H. 132, 139 (2003) (noting that although the Court has never formally adopted the *Standards* the Court has considered them when imposing sanctions). The *Standards* list the following factors to be considered 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; *Coffey's Case*, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). In applying these factors the Committee first categorizes the respondent's misconduct, then identifies the appropriate sanction. *Coddington's Case*, 155 N.H. 66, 71 (2007). The Committee then considers the effect of any aggravating or mitigating factors on the ultimate sanction. *Id.*

The first three parts in the analysis recommended in the *Standards* create the framework for characterizing the misconduct and determining a baseline 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 Wolterbeek's Case*, 152 N.H. 710, 714 (2005).

Upon consideration of the initial three-part test and the above-referenced language of the *Standards*, the Committee accepted the analysis set out by the parties in the Stipulation that Ms. Jones' conduct warrants a baseline sanction of public censure. *See* Stipulation as to the Facts, Violations, and Recommended Sanction, p. 16 ¶74. The Respondent's prior discipline was an aggravating factor. Ms. Jones' remorse, cooperation with Assistant Disciplinary Counsel, and restitution were identified as mitigating factors. A reprimand is most appropriate in this case once the mitigating and aggravating factors are considered, pursuant to the fourth prong of the sanction analysis.

IV. SANCTION

Having made the above findings and rulings, the Committee concludes that the appropriate discipline in this matter is a Reprimand. 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*.

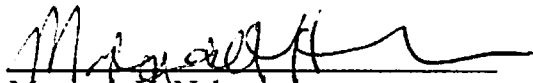
V. COSTS

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 the above reasons the Committee issues a Reprimand to the Respondent for violating N.H. R. Prof. 1.1: Competence; 4.3: Dealing with Unrepresented Person; 1.15: Safekeeping of Property; and 8.4(a): Misconduct.

February 16, 2011


Margaret H. Nelson
Chair

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