

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Vanim-Botting, Jeanne M. advs. Attorney Discipline Office #08-047

RECOMMENDATION FOR DISBARMENT

The Professional Conduct Committee (the “Committee”) deliberated the above-captioned matter on February 15, 2011. The following Committee members were present: Margaret H. Nelson, Chair; Benette Pizzimenti, Vice Chair; Toni M. Gray, Vice Chair; Susan R. Chollet; David N. Cole; Alan J. Cronheim; Gerald A. Daley; Julie A. Introcaso; James R. Martin and Lawrence A. Vogelman. Thomas P. Connair and Richard H. Darling were absent.

Ms. Vanim-Botting declined to appear for Oral Argument and therefore this matter was submitted based on the written record. Having reviewed that record, including the initial record in this matter, the Assented-to Petition for Three-Year Suspension from the Practice of Law, the New Hampshire Supreme Court Orders following the filing of this Petition, the Supplemental Notice of Charges, Respondent’s Answer to the Notice of Supplemental Charges, the Hearing Transcript dated October 20, 2010, along with Disciplinary Counsel’s Exhibits and Memorandum on Sanction, the Hearing Panel Report and Respondent’s e-mail exchanges with Disciplinary Counsel and the Attorney Discipline Office, the Committee makes factual findings and ruling of law as detailed below:

I. FACTUAL FINDINGS

The Committee has determined that the record supports the following factual findings by clear and convincing evidence:

1. All findings made by the Professional Conduct Committee by Order dated October 7, 2009, are incorporated herein by reference.¹
2. Jeanne M. Vanim-Botting is an attorney whose license to practice law in New Hampshire is suspended. Ms. Vanim-Botting was admitted to practice on May 22, 2006. Ms. Vanim-Botting operated her law office as Jeanne Vanim-Botting, Attorney At Law, PLLC with an address of P.O. Box 2194, Conway, New Hampshire 03818. Her home address is 15 Rhodes Drive, Marietta, Georgia 30068 and her employment address is White, Choate, Watkins & Mroczko, 100 West Cherokee Avenue, Catersville, Georgia 30120. Record Tab 11, Answer at ¶2.1
3. On December 14, 2009, the New Hampshire Supreme Court issued the following order in LD-2009-0012, In the Matter of Jeanne M. Vanim-Botting:

On December 8, 2009, the Professional Conduct Committee (PCC) filed an assented-to petition for three-year suspension from the practice of law of Attorney Jeanne M. Vanim-Botting. Rule 37(16)(f) authorizes the Court to suspend an attorney from the practice of law if it deems suspension necessary for the protection of the public and the preservation of the integrity of the legal profession. Based on the allegations of the PCC's petition, the Court finds that Attorney Vanim-Botting's immediate suspension from the practice of law is necessary to protect the public and to preserve the integrity of the legal profession. See Rule 37(16)(f). Accordingly, it is hereby ordered:

1. Jeanne M. Vanim-Botting is immediately suspended from the practice of law in New Hampshire until further order of this court. Attorney Vanim-Botting may show cause on or before ten days from the date of service why the suspension should be lifted.
2. Copies of this order and of the assented-to petition for three-year suspension from the practice of law shall be served on Attorney Vanim-Botting by first class mail and certified mail, return receipt

¹ Record Tab 11, signifies the Record of the Professional Conduct Committee. "Answer" signifies Respondent's Answer to the Supplemental Notice of Charges dated August 4, 2010.

requested.

3. Attorney Vanim-Botting shall file an answer to the PCC's petition within 30 days after service of the petition. *See* Rule 37(16)(a) and (c). The allegations of the assented-to petition for three-year suspension from the practice of law shall be deemed admitted and no further hearing shall be required if Attorney Vanim-Botting fails to file an answer to the petition.

Pursuant to Supreme Court Rule 37(17), Attorney Alethea L. Froburg is appointed to take immediate possession of the client files and trust and other fiduciary accounts of Attorney Vanim-Botting, to make an inventory of such files and accounts, and to take such action as is necessary to protect the interests of Attorney Vanim-Botting's clients. Attorney Froburg is ordered to take the following actions:

- a. notify all employees of Attorney Vanim-Botting of her appointment by the court and of Attorney Vanim-Botting's suspension from the practice of law;
- b. notify all banks and other entities where any trust or fiduciary accounts and operating accounts of Attorney Vanim-Botting are held of Attorney Vanim-Botting's suspension and of her appointment;
- c. review any client files that Attorney Vanim-Botting maintained, and take such actions as she deems necessary to protect the interests of the clients;
- d. notify Attorney Vanim-Botting's clients by certified mail, return receipt requested, of her suspension, informing them of any action which appears to be required in the immediate future in order to preserve their legal rights and advising them that they should obtain the services of other lawyers of their choice; and
- e. make an inventory of Attorney Vanim-Botting's client files and trust and other fiduciary accounts, and file a copy of the inventory with the court on or before February 12, 2010, together with a report of her actions taken under this order and a recommendation as to what further actions should be taken to protect the interests of Attorney Vanim-Botting's clients.

The Committee on Professional Conduct shall pay the fees of Attorney Froburg,

in the first instance, to be reimbursed by Attorney Vanim-Botting unless otherwise ordered by the court.

Record Tab 11 at J 3.

4. On March 4, 2010, the New Hampshire Supreme Court issued the following order in LD-2009-0012, In the Matter of Jeanne M. Vanim-Botting:

On December 14, 2009, the court suspended Attorney Jeanne M. Vanim-Botting from the practice of law on an interim basis and appointed Attorney Alethea Froborg to take possession of Attorney Vanim-Botting's client files and trust accounts. On February 16, 2010, Attorney Froborg filed a report with the court describing her efforts to comply with the court's order. She reported that she has made numerous attempts to contact Attorney Vanim-Botting by telephone and mail, but that Attorney Vanim-Botting has not responded. As a result, Attorney Froborg has been unable to take possession of Attorney Vanim-Botting's client files and trust accounts as ordered by the court.

Attorney Vanim-Botting is ordered to contact Attorney Froborg upon receipt of this order and to comply with Attorney Froborg's requests to turn over her client files and to provide information about her trust and operating accounts. **Attorney Vanim-Botting is cautioned that if she fails to comply with this order, she may be held in contempt and subject to sanctions, including incarceration, until she complies.**

On or before March 19, 2010, Attorney Froborg shall notify the court whether she has been contacted by Attorney Vanim-Botting, and whether Attorney Vanim-Botting has complied with this order and with her requests. If the court is notified by Attorney Froborg that Attorney Vanim-Botting has not complied with this order, an order will be issued scheduling a contempt hearing.

A copy of Attorney Froborg's report shall be sent to Attorney Vanim-Botting by first class and certified mail. A copy of the report shall also be provided to the Attorney Discipline Office.

Record Tab 11 at ¶ 4.

5. On March 29, 2010, the New Hampshire Supreme Court issued the following order in LD-2009-0012, In the Matter of Jeanne M. Vanim-Botting:

On March 4, 2010, an order was issued requiring Attorney Jeanne M. Vanim-Botting to contact Attorney Froborg and to comply with Attorney Froborg's requests to turn over her client files and to provide information about her trust and operating accounts. Attorney Vanim-Botting was advised that if she failed to

comply with the order, a contempt hearing would be scheduled to determine whether she could be held in contempt and subject to sanctions, including incarceration, until she complies.

Attorney Froburg has notified the court that Attorney Vanim-Botting has not contacted her or complied with her requests related to her client files and trust and operating accounts.

Attorney Vanim-Botting is ordered to appear for a hearing at the Supreme Court on April 21, 2010, at 11:30 a.m. and to show cause why she should not be held in contempt and subject to sanctions, including possible incarceration, until she complies with this court's orders.

A copy of Attorney Froburg's report shall be sent to Attorney Vanim-Botting with this order by first class and certified mail.

Record Tab 11 at ¶ 5.

6. On April 22, 2010, the New Hampshire Supreme Court issued the following order in LD-2009-0012, In the Matter of Jeanne M. Vanim-Botting:

Attorney Jeanne M. Vanim-Botting was ordered to appear for a hearing on April 21, 2010, at 11:30 a.m., to show cause why she should not be held in contempt and subject to sanctions, including possible incarceration, for failing to comply with the court's orders of March 4, 2010 and March 29, 2010. Attorney Vanim-Botting failed to appear for the hearing, and the court entered a finding that Attorney Vanim-Botting was in contempt. The court then directed the clerk to prepare a *caus* for Attorney Vanim-Botting's immediate arrest.

On April 22, 2010, the court received an emergency motion to continue the show cause hearing. In the motion, Attorney Vanim-Botting incorrectly stated that the hearing was scheduled for April 23, 2010. She stated that she had moved to Georgia, was recovering from an emotional and mental breakdown, and was unable to attend the hearing.

The court will delay the issuance of a *caus* for Attorney Vanim-Botting's arrest provided that Attorney Vanim-Botting contacts James DeHart, General Counsel, Attorney Discipline Office, (603) 224-5828, by 12:00 noon on Monday, April 26, 2010, and arranges for the transfer of her client files and trust accounts to Attorney DeHart without delay. Attorney DeHart shall notify the clerk of court by 4:00 p.m. on Monday, April 26, 2010, whether Attorney Vanim-Botting has done so. If Attorney Vanim-Botting fails to contact Attorney DeHart, or fails to arrange for the transfer of her files and trust accounts, a *caus* for Attorney Vanim-Botting's arrest shall issue.

Record Tab 11 at ¶ 6.

7. On April 29, 2010, the New Hampshire Supreme Court issued the following order in LD-2009-0012, In the Matter of Jeanne M. Vanim-Botting:

Attorney Jeanne M. Vanim-Botting was ordered to appear for a hearing on April 21, 2010, at 11:30 a.m., to show cause why she should not be held in contempt and subject to sanctions, including possible incarceration, for failing to comply with the court's orders of March 4, 2010 and March 29, 2010. Attorney Vanim-Botting failed to appear for the hearing, and the court entered a finding that Attorney Vanim-Botting was in contempt. The court then directed the clerk to prepare a *capias* for Attorney Vanim-Botting's immediate arrest.

On April 22, 2010, the court received an emergency motion to continue the show cause hearing. In the motion, Attorney Vanim-Botting incorrectly stated that the hearing was scheduled for April 23, 2010. She stated that she had moved to Georgia, was recovering from an emotional and mental breakdown, and was unable to attend the hearing. On April 22, 2010, the court issued an order stating that it would delay the issuance of a *capias* for Attorney Vanim-Botting's arrest provided that Attorney Vanim-Botting contacted James DeHart, General Counsel, Attorney Discipline Office, (603) 224-5828, by 12:00 noon on Monday, April 26, 2010, and arranged for the transfer of her client files and trust accounts to Attorney DeHart without delay. Attorney DeHart was ordered to notify the clerk of court by 4:00 p.m. on Monday, April 26, 2010, whether Attorney Vanim-Botting had done so. The order concluded by stating that if Attorney Vanim-Botting failed to contact Attorney DeHart, or failed to arrange for the transfer of her files and trust accounts, a *capias* for Attorney Vanim-Botting's arrest shall issue.

On April 26, 2010, at approximately 3:30 p.m., Attorney DeHart notified the clerk that Attorney Vanim-Botting did not contact him by noon (or at any other time) on April 26, 2010, as was required by the Court's order of April 22, 2010.

Consequently, a *capias* shall be issued for Attorney Vanim-Botting's immediate arrest, with bail set at \$100.00, personal recognizance.

A further hearing will be scheduled upon return of the *capias*.

Record Tab 11 at ¶ 7.

8. On May 6, 2010, the New Hampshire Supreme Court issued the following order in LD-2009-0012, In the Matter of Jeanne M. Vanim-Botting:

Payment of Attorney Froburg's invoice of March 19, 2010, in the amount of \$627.42 is approved. It shall be paid in the first instance by the Professional

Conduct Committee (PCC), which may seek reimbursement from Attorney Vanim-Botting. A copy of Attorney Froburg's invoice shall be provided to the PCC with this order.

The invoice contains documentation that contains the names of clients and other confidential information. The invoice shall be placed in a confidential file. *See* Rule 37(17). A redacted copy of the invoice shall be placed in the public file.

Record Tab 11 at ¶ 8.

9. On June 15, 2010, the New Hampshire Supreme Court issued the following order in LD-2009-0012, In the Matter of Jeanne M. Vanim-Botting:
On December 8, 2009, the Professional Conduct Committee (PCC) filed an assented-to petition for three year suspension of Attorney Jeanne M. Vanim-Botting from the practice of law. After the petition was filed, Attorney Vanim-Botting was found in contempt by the court for failing to comply with orders requiring her to contact Attorney Alethea Froburg, who was appointed by the court to protect the interests of Attorney Vanim-Botting's clients. A *capias* for Attorney Vanim-Botting's arrest was issued on April 29, 2010.

This matter is remanded to the Professional Conduct Committee for it to consider whether the events that have transpired since the filing of the petition affect its recommendation that Attorney Vanim-Botting be suspended for three years.

Record Tab 11 at ¶ 9.

10. Ms. Vanim-Botting is in contempt of court regarding the December 14, 2009 Order in LD-2009-0012, In the Matter of Jeanne M. Vanim-Botting.
11. Ms. Vanim-Botting blatantly and willfully disregarded the orders of the New Hampshire Supreme Court dated December 14, 2009, March 4, 2010, March 29, 2010, and April 22, 2010.

II. RULINGS OF LAW

The Respondent and the Attorney Discipline Office ("ADO") stipulated in the initial proceedings that Respondent violated Rules 1.15(a), 1.15(b), 4.1(a), 8.1(a), 8.4(c) and 8.4(a).

The Committee incorporates by reference the prior Rulings of Law and makes these further Rulings of Law by clearing convincing evidence.

Rule 3.4(c): Fairness to Opposing Party and Counsel

12. Allegations set forth above are incorporated by reference.
13. Ms. Vanim-Botting owed the Attorney Discipline Office, as the complainant in this matter, the Professional Conduct Committee, as Petitioner, and the New Hampshire Supreme Court, tribunal in this matter, the duty to obey any and all obligations under the rules of the tribunal.
14. Ms. Vanim-Botting's refusal to comply with the Court's December 14, 2009 Order, and all subsequent Orders, is not an open refusal based on an assertion that no valid obligation existed.
15. Ms. Vanim-Botting breached the duty to obey her obligation under the rules of the tribunal, according to the New Hampshire Supreme Court's Order of December 14, 2009, LD-2009-0012, In the Matter of Jeanne M. Vanim-Botting, by failing to disclose information and files to Attorney Alethea L. Froburg as directed by the New Hampshire Supreme Court, as well as failing to act in other ways specifically directed by the Court.
16. There is clear and convincing evidence of the above-referenced conduct which the New Hampshire Supreme Court found to constitute contempt of aforesaid orders. This constitutes a violation of Rule 3.4(c). *See Kersey's Case*, 150 N.H. 585 (2004).

Rule 8.4(a): General Rule

17. As a result of Ms. Vanim-Botting having committed the above-referenced violations, there is clear and convincing evidence that she committed a violation of N.H. R. Prof. Conduct 8.4(a).

III. ANALYSIS

Having made the above Findings of Fact and Rulings of Law, the Professional Conduct Committee concludes that the appropriate discipline in this matter is now disbarment. This judgment is different than our original recommendation of a three year suspension. It is based on Ms. Vanim-Botting's conduct referenced in our initial decision in conjunction with her flagrant disregard for the proceedings following the filing of the Assented-to Petition for Three Year Suspension which was filed in the New Hampshire Supreme Court.

In coming to this conclusion, we recognize that “the purpose of attorney discipline is not to inflict punishment, but rather to protect the public, maintain the confidence in the bar, preserve the integrity of the legal profession, and the prevent similar conduct to the future.” *Grew’s Case*, 156 N.H. 361, 365 (2007); quoting *Coddington’s Case*, 155 N.H. 66, 68 (2007).

In making the recommendation for disbarment, we focus on Ms. Vanim-Botting’s diversion of client funds for her own use, her deceit in dealing with opposing counsel, her creation of a fictitious story to account for her own misjudgments and her knowing attempt to mislead the Attorney Discipline Office by making statements which she knew at the time were false. Her later conduct addressing the case in the New Hampshire Supreme Court, conduct which ultimately led to a finding of contempt, leaves this Committee no choice but to now recommend that Ms. Vanim-Botting be disbarred.

In reaching this decision, we use the *American Bar Association Standards for Implementing Lawyer Sanctions* (2005) (*Standards*) for guidance. *Grew’s Case*, supra at 365, *Coffey’s Case*, 152 N.H. 503, 513 (2005).

Under the *Standards*, we are to consider a number of factors when recommending sanctions including “(a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by lawyer’s misconduct; (d) the existence of aggravating or mitigating factors.” *Standards*, supra, §3.0. In instances 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.” *Douglas’ Case*, 156 N.H. 613, 621 (2007), quoting *Richmond’s Case*, 152 N.H. 155, 160 (2005).

In first instance, we consider the ethical duty Ms. Vanim-Botting violated by failing to safeguard her client's property, property which had been entrusted to her and which she had a duty to maintain in a separate trust account. As we noted in our initial Order, while Ms. Vanim-Botting initially placed those funds in her client trust account, she then treated those funds as her own and withdrew \$3,000.00 for her own use. She then lied to opposing counsel and concocted a story to cover up the shortage. She failed to disburse the funds to her client when they were due and wrote a check on the trust account which was returned for insufficient funds. In making false statements to opposing counsel in an attempt to cover her use of client funds, Ms. Vanim-Botting also violated Rule 4.1(a) requiring full truthfulness to others – a mark of honesty and reliability required by the legal profession. Ms. Vanim-Botting then violated Rule 8.1(a) by knowingly attempting to mislead the Attorney Discipline Office by making statements which she knew at the time were false. She created fictitious clients and falsely blamed them for creating the shortfall in her client trust account. These attempts to mislead the Attorney Discipline Office involved deceit and the intentional misrepresentation of material facts. Her misconduct also constitutes a violation of Rule 8.4(c) in that she engaged in repeated acts of dishonesty and deceit by converting her client trust funds for her own use and then by misrepresenting those transactions to opposing counsel and the Attorney Discipline Office.

The duties violated by this course of action are critically important and are among the basic duties of the legal profession. It is clear that Ms. Vanim-Botting violated these duties knowingly and with the intent to mislead opposing counsel and the Attorney Discipline Office. These multiple violations and acts of dishonesty caused both real and potential injury to the opposing party whose receipt of funds was delayed by approximately four months. Her conduct

thereby also caused injury to the legal profession and the Attorney Discipline System. Ms. Vanim-Botting then knowingly disregarded her responsibilities to follow orders of the Supreme Court when she failed to contact Attorney Froberg who was appointed by the Court to take possession of Ms. Vanim-Botting's client files and trust accounts, failed to provide those files to Attorney Froberg and finally failed to appear for New Hampshire Supreme Court hearings on a repeated basis.

The duties violated by this course of action are important and fundamental responsibilities of the legal profession. It is clear that Ms. Vanim-Botting violated these duties knowingly and with intent to mislead opposing counsel and the Attorney Discipline Office and to interfere with the proceedings in the New Hampshire Supreme Court. These multiple violations and acts of dishonesty and deceit caused injury to both clients and the disciplinary process.

The applicable standard for misconduct involving deceit is §5.1, entitled "Failure to Maintain Personal Integrity." *Standards* §5.1 provides:

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

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 and that seriously adversely reflects on the lawyer's fitness to practice.

5.13 Reprimand 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.

5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

Section 5.11(b) is the applicable standard for Ms. Vanim-Botting's course of conduct involving intentional deceit and dishonesty that seriously reflects on her fitness to practice law. This is true as it relates to her conduct with the trust accounts and her dealings with the Attorney Discipline Office. Her initial conduct which warranted a three year suspension must now be combined with her flagrant conduct in failing to address the Supreme Court proceedings and her failing to respond as required to an array of Supreme Court Orders.

Having determined that the appropriate sanction is disbarment, we also consider aggravating and mitigating circumstances in the case. We note that her conduct involved both dishonest and selfish motives, included a pattern of misconduct which constituted multiple offenses, involved her failure to comply with New Hampshire Supreme Court Orders and that once she was ordered to provide files to Attorney Froburg, she disregarded her clients' needs and failed to address the needed transfer of her client files. *See, Standards* §9.31(b), (c), (d), (e) and (f).

While having noted mitigating factors in our initial Order based on Ms. Vanim-Botting's admission of her deceit and her apparent remorse, we decline to note these as mitigators in light of Ms. Vanim-Botting's conduct following the filing of the Assented-to Petition for Three Year Suspension in the Supreme Court.

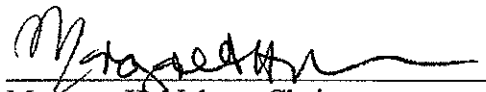
Taking into account all the facts and circumstances of this case, the Professional Conduct Committee concludes that the appropriate sanction in this case is disbarment.

IV. CONCLUSION

For the above reasons, the Professional Conduct Committee recommends to the New Hampshire Supreme Court that Jeanne M. Vanim-Botting be disbarred for violating New Hampshire Rules of Professional Conduct, Rule 1.15(a), Rule 1.15(b), Rule 3.4(c), Rule 4.1(a), Rule 8.1(a), Rule 8.4(c) and Rule 8.4(a). It is recommended that Ms. Vanim-Botting be ordered to pay the expenses of the Professional Conduct Committee related to the investigation and prosecution of this attorney discipline case. *See*, New Hampshire Supreme Court Rule 37(19).

Therefore, the Professional Conduct Committee directs Disciplinary Counsel to file a Petition for Disbarment of Jeanne M. Vanim-Botting in the New Hampshire Supreme Court.

June 25, 2011


Margaret H. Nelson, Chair

Distribution:
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Jeanne M. Vanim-Botting
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