

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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White, Stephen A.S. advs. Richard Shaw and Susan Howarth-Shaw # 10-062
and
White, Stephen A.S. advs. Elaina Roberts # 07-044

ORDER

On October 18, 2011, The Professional Conduct Committee heard Oral Argument and deliberated the above captioned matter. Members present included: Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, David N. Cole, Richard H. Darling, James R. Martin, Jaye L. Rancourt, and Richard D. Sager. Alan J. Cronheim and Gerald A. Daley were recused. Thomas P. Connair was absent. Julie A. Introcaso, Disciplinary Counsel, represented the Attorney Discipline Office (ADO), Stephen A.S. White, Esquire, was *pro se*. The Committee voted to grant the Motion to Permit Waiver of the Hearings Committee Process.

I. PROCEDURAL BACKGROUND

Stephen A.S. White, Esquire, was issued a six month suspension, stayed for two years on May 29, 2009 in the matter of *White, Stephen A.S. advs. Elaina Roberts # 07-044* hereinafter "*Roberts case*," for violations of N.H. Rules Prof. Conduct 1.1 (a)-(c): Competence, Rule 1.2(a): Scope of Representation, Rule 1.3(a): Diligence, and Rule 8.4(a): Misconduct, subject to certain conditions. Those conditions included quarterly meetings with a law office management

consultant, with Mr. White reporting to the ADO as to his implementation of the consultant's recommendations. Mr. White was also to join one or more professional organizations that include New Hampshire defense attorneys and to regularly attend meetings. Mr. White was also assessed all costs, which have been paid in full.

On November 2, 2010, a grievance was filed by Richard Shaw and Susan Howarth-Shaw against Mr. White. The period covered by the stayed suspension in the *Roberts* case parallels the Respondent's representation in the matter of *White, Stephen A.S. advs. Richard Shaw and Susan Howarth-Shaw # 10-062* hereinafter "*Shaw* case." The misconduct identified in the *Shaw* case is similar in nature to that in the *Roberts* case, and the parties agree that the misconduct appears to be the result of a lack of training, law practice management skills or education.

II. FINDINGS OF FACT

The parties have stipulated, and the Committee accepts the Stipulation as to the facts in the *Shaw* case. The facts are as follows:

The Collection Case

1. On November 25, 2008, Mr. Richard Shaw and Ms. Susan Howarth-Shaw (hereinafter "the Shaws") appeared *pro se* at an attachment hearing as named defendants in a collection action filed in Strafford County Superior Court (*Wentworth-Douglass Hospital v. Richard P. Shaw, et al*, Docket #219-2008-CV-301).
2. Earlier that year, Wentworth-Douglass Hospital ("Wentworth-Douglass"), through its attorney Michael Fontaine, Esq., brought suit against the Shaws for unpaid medical bills in the amount of \$129,000.00.

3. Customarily, Mr. Shaw receives medical care through the Veterans' Administration ("the VA") in Manchester, but Wentworth-Douglass provided emergency care to Mr. Shaw when he suffered a heart attack in 2007.
4. At the time of the initial attachment hearing, the VA had already denied payment of the Wentworth-Douglass bills. However, the Shaws were appealing that decision within the VA bureaucracy, and for that reason, the Court (Brown, J.) denied the Petition to Attach and scheduled a further status conference for April 16, 2009.
5. While leaving the courtroom after the hearing, Mr. White approached the Shaws and told them that he might be able to help them. He gave the Shaws his business card and invited them to call if they were interested in hiring him.
6. Months later, on April 7, 2009, the Shaws met with Mr. White at his office in Dover.
7. After discussing the case, the Shaws decided to hire Mr. White. They told Mr. White that they had already spoken to a representative of the VA, and they asked him to contact the VA in Manchester to investigate the status of their claim prior to appearing at the next court hearing.
8. Mr. White requested a retainer of \$1,500.00, and said he would charge for his services against the retainer based upon an hourly rate of \$200.00.
9. Mr. White explained to the Shaws that he would request additional funds when the retainer was exhausted.
10. The Shaws paid the \$1,500.00, but never signed a written fee agreement.
11. Mr. White filed a written Appearance with the Court on April 9, 2009.

12. On April 16, 2009, Mr. White appeared for the Shaws at the status conference and the parties filed an agreement requesting that the Court reschedule the attachment hearing. The parties wanted an additional 90 days to work towards a settlement of the matter. The Court (Brown, J.) approved the agreement.
13. The next scheduled hearing took place on July 16, 2009. The case had not settled, but the Court (Tucker, J.) declined to issue an attachment because Wentworth-Douglass' demand had dropped from \$129,000.00 to \$9,000.00 as the VA had recently paid most of the claim.
14. The Court ordered that a further hearing on the Petition to Attach be scheduled and invited the parties to ask the Clerk to convert the hearing to a case structuring conference if they could, in the interim, agree on the attachment issue.
15. The Clerk scheduled a hearing on the Petition to Attach for August 3, 2009, and issued a Notice of Hearing to counsel.
16. On July 30, 2009, Mr. White drafted an Assented to Motion to Continue the hearing due to a scheduling conflict. In the Motion he asked that the matter be rescheduled promptly.
17. After some further rescheduling by the Court, the Court sent a Notice of Hearing for August 14, 2009.
18. At that hearing, the Court granted the Petition to Attach, but in an amount much reduced from what Wentworth-Douglass initially requested.
19. The Court also scheduled the final hearing for early December 2009.
20. As the date for the trial drew closer, Mr. White was negotiating a settlement of the matter for \$5,000.00, which would have resulted in "neither party" docket markings, but instead, on

December 21, 2009, the plaintiff filed an Assented to Motion for Voluntary Non-Suit without Prejudice.

21. In the eight months that Mr. White worked on this case, he never sent any bill to the Shaws itemizing the legal work he had done, despite having kept a record of his time spent. Nor did he provide any type of accounting of the retainer funds the Shaws had given to him.

The Negligence Case

22. In September 2009, while the collection case was pending, Ms. Howarth-Shaw hit a large pothole while riding her motorcycle in Northwood, New Hampshire. She fractured her ankle, which required surgery and the placement of plates and screws.
23. Prior to final hearing in the collection case, the Shaws met with Mr. White to discuss a possible settlement. During their meeting, the Shaws also talked briefly with Mr. White regarding a potential lawsuit against the Town of Northwood for failure to maintain the road where Ms. Howarth-Shaw was injured.
24. On December 29, 2009, after the collection case was resolved, Mr. White sent a letter to Ms. Howarth-Shaw inviting her to schedule an appointment to discuss the possibility of a negligence suit. Shortly thereafter, Ms. Howarth-Shaw gave Mr. White a file of materials, including medical records, relating to the accident.
25. Mr. White told the Shaws that he would discuss the case with another lawyer, who would work along with him on the case. After consulting with another attorney, Mr. White determined that Ms. Howarth-Shaw did not have a strong case against the Town.
26. In August 2010, having heard nothing from Mr. White, the Shaws scheduled a meeting at Mr. White's office to discuss the potential motorcycle accident case.

27. Mr. White had to cancel the meeting at the last moment because he was involved in a family emergency.

The Shaws file a Complaint

28. In mid-October 2010, the Shaws hired Attorney Steve Canders of Kennebunk, Maine.

29. On October 15, 2010, Mr. Canders faxed a letter to Mr. White requesting an accounting of the Shaws retainer funds from the collection case and the return of the Shaws' documents relative to the motorcycle accident.

30. Mr. White did not respond. Mr. White contends that he never received the fax from Mr. Canders.

31. On November 2, 2010, the Shaws filed a grievance with the ADO.

32. On November 3, 2010, the ADO forwarded a copy of the Shaws' grievance to Mr. White.

The complaint clearly stated:

Our current attorney has written to Mr. White and demanded:

1. An immediate accounting for all funds delivered to Attorney White by us.
2. A complete, detailed statement, clearly identifying the time and task, of all services he has performed for us and for which he expected to be paid and/or have removed money from his trust account to pay himself.
3. Immediate confirmation that our file and all property turned over to Attorney White by us is available for pick up at our convenience not later than three business days from the date of that letter [the letter was dated October 15, 2010 and faxed to Attorney White].

To date, neither we nor our counsel have heard anything from Attorney White or anyone from his office.

33. On December 26, 2010, Mr. White filed his response to the Shaws' complaint. In his response he stated, "I am very nervous about contacting Mrs. Shaw at this time since she has filed a complaint."

34. When interviewed by Acting General Counsel, Thomas Treveathick, Mr. White indicated that he intended to package Ms. Howarth-Shaw's medical records and return them to the Shaws, along with an accounting for the time he spent on the collection case.

Stipulation As To Facts, Rule Violations And Sanction, pp. 1-6.

III. RULINGS OF LAW

The parties have stipulated, and the Committee accepts the Stipulation as to the N.H. Rules of Professional Conduct that were violated. The Stipulation establishes the following violations by clear and convincing evidence:

Rule 1.15 (f) Safekeeping Property:

35. In exchange for payment of a \$1,500.00 retainer, Mr. White told the Shaws that they would receive statements regarding the fees incurred as their collection case progressed and that a request would be made for additional funds if the retainer was exhausted.
36. Although Mr. White kept accurate notes regarding the time spent on the case, Mr. White did not reduce those notes to a billing statement, nor did he provide an accounting of the status of the Shaws' retainer funds at any time during the case.
37. After the case was completed, Mr. White had knowledge that the complainants were demanding an accounting of their retainer funds. He failed to provide such an accounting until well after the Shaws filed a misconduct complaint.
38. Mr. White's failure to provide his clients with an accounting of the usage of client trust funds provided to him constitutes a violation of N.H. R. Prof. Conduct 1.15(f).

Rule 1.16 (d) Declining or Terminating Representation:

39. The stipulated facts set forth above are incorporated by reference.

40. After soliciting Ms. Howarth-Shaws' business regarding the negligence case, Mr. White was obligated to take steps to the extent reasonably practicable to protect his client's interest.
41. Mr. White failed to inform Ms. Howarth-Shaw promptly that he was declining representation in her case.
42. Mr. White also failed to surrender promptly documents owned by Ms. Howarth-Shaw after learning that she was demanding their return.
43. Mr. White's failure to give reasonable notice to the Shaws that he would be declining representation of Ms. Howarth-Shaw, along with his failure to surrender promptly Ms. Howarth-Shaw's documents upon request, constitutes a violation of N.H. R. Prof. Conduct 1.16(d).

Rule 8.4(a): General Rule

44. As Mr. White has stipulated to violations of Rules 1.15 and 1.16 above, there is clear and convincing evidence that he is in violation of N.H. R. Prof. Conduct 8.4(a).

Stipulation As To Facts, Rule Violations and Sanction, pp. 6-8.

IV. ANALYSIS

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 *ABA Standards for Imposing Lawyer Sanctions* ("*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. 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. *Id.*

Under the first prong of the analysis, Mr. White violated the duty of loyalty owed to the Shaws, as that duty required careful handling and preservation of client property, including funds. Mr. White also violated his duty to the legal profession when he mishandled the accepting, declining or terminating of representation of Ms. Howarth-Shaw.

Under the second prong of the analysis, the Committee agrees with the parties that Mr. White's misconduct was the result of negligence.

Under the third prong of the analysis, Mr. White's negligence and lack of communication resulted in a deterioration of attorney-client relationship and trust that led to the Shaws enlisting the assistance of subsequent counsel to obtain an accounting of their retainer funds and the return of their property.

Under the fourth prong of the analysis, the Committee notes a long history of disciplinary offenses related to his negligence, coupled with his substantial experience in the practice of law. The Committee was deeply concerned with Mr. White's disciplinary record and urges him to take extraordinary steps to avoid future complaints. Mr. White's mitigating factors include an

absence of a dishonest or selfish motive, full and free disclosure to disciplinary counsel and a cooperative attitude toward these proceedings, remorse, and acceptance of responsibility for the misconduct.

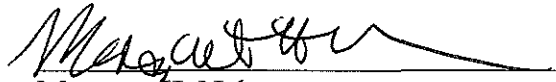
V. SANCTION

For all the reasons stated above, including the fact that the above rule violations occurred during the period of the stayed suspension, the Committee hereby extends the stayed suspension in the *Roberts* case through December 31, 2013, with continued quarterly reports from Arthur Greene, Esquire, or other qualified law practice management consultant approved by Disciplinary Counsel. Any future grievance filed against the Respondent during the period of the stayed suspension shall be processed by the ADO on an expedited basis and Disciplinary Counsel shall be alerted. The ADO shall notify the Committee as to the existence of any docketed complaint, and the Committee shall schedule a hearing for Mr. White to show cause why the suspension should not be imposed. All other portions of the Agreement to Extend not specifically modified by this Order shall remain in full force and effect.

VI. COSTS

The parties have stipulated, and the Committee accepts the Stipulation that the Respondent shall pay all costs of the investigation and prosecution of this matter.

November 8, 2011


Margaret H. Nelson
Chair

Distribution:

Julie A. Introcaso, Disciplinary Counsel
Stephen A.S. White, Esquire
File

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EXTENSION OF STAYED SUSPENSION

On December 10, 2013, the Professional Conduct Committee deliberated Disciplinary Counsel's Assented-to Motion to Extend the Stay. Members present included David M. Rothstein, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, Thomas P. Connair, Richard H. Darling, Elaine Holden, Heather E. Krans Sager and Martha Van Oot. Alan J. Cronheim was recused and not present. Richard D. Sager and Mary Elizabeth Tenn were absent.

Attorney White is presently under the conditions of a stayed suspension which is set to expire on December 31, 2013. There is a new matter currently under investigation ([REDACTED]) that will require more time to process than the current December 31, 2013 expiration of the stay. Upon consideration, the Committee voted to extend the stayed suspension until such time as the new matter is resolved. All conditions currently in place shall continue during this extension.

December 11, 2013



David M. Rothstein, Chair

Distribution:

Sara S. Greene, Disciplinary Counsel
Stephen A.S. White, Esquire
File

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White, Stephen A.S. advs. Richard Shaw & Susan Howarth-Shaw - #10-062
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CLOSED

The Committee met on April 21, 2015, to consider Assistant Disciplinary Counsel's letter to close the above matters. Members present included David M. Rothstein, Chair, Heather E. Krans, Vice Chair, Elaine Holden, Vice Chair, Peter G. Beeson, Richard H. Darling, Margaret R. Kerouac, Mona T. Movafaghi, David W. Ruoff, Richard D. Sager, and Martha Van Oot. Susan R. Chollet and Georges J. Roy were absent.

Upon consideration, the Committee voted to close the matters.

April 23, 2015



David M. Rothstein, Chair

Distribution:

Elizabeth M. Murphy, Assistant Disciplinary Counsel
Stephen A.S. White, Esquire
File