

New Hampshire Supreme Court
Professional Conduct Committee

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Benette Pizzimenti, Vice Chair
Toni M. Gray,* Vice Chair
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Boehm, Lenora E. advs. Robin Marble #07-018

PUBLIC CENSURE WITH MANDATORY DIVERSION

On July 15, 2008, the Professional Conduct Committee deliberated the above-captioned matter. Members present included Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Gretchen Rule Hamel, Gerald A. Daley, and Richard H. Darling. David N. Cole and James R. Martin participated by telephone. James J. Tenn recused himself and was not present for the discussion or vote. Thomas P. Connair, Alan J. Cronheim, and David N. Page were absent. Oral argument was not requested.

The Attorney Discipline Office issued a Notice of Charges in the above-captioned matter on December 4, 2007, and Ms. Boehm submitted a response on January 4, 2007. The parties stipulated as to Facts, Rules Violated, and Costs on February 11, 2008, and a hearing on the question of an appropriate sanction only was held on March 18, 2008.

Having reviewed the record, including Disciplinary Counsel's memoranda and exhibits, stipulation of facts and rules violated, the transcript of the March 18, 2008 hearing, and the Hearing Panel reports, the Professional Conduct Committee makes findings of fact and rulings of law as detailed below:

I. FINDINGS OF FACT

The Professional Conduct Committee finds, by clear and convincing evidence, the facts

as agreed to in the Stipulation submitted on February 11, 2008. (See Attachment “PCC 1”).

II. RULINGS OF LAW

The Professional Conduct Committee finds, by clear and convincing evidence, that Ms. Boehm violated Rules of Professional Conduct 1.4: Communications; 8.1(b); Failure to Cooperate, and 8.4(a): Misconduct, as agreed to in the Stipulation submitted on February 11, 2008 (See Attachment “PCC 1”).

III. SANCTION

Having made the aforementioned findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is a public censure with mandatory diversion, the terms of which are set forth in the Final Hearing Panel Report of June 12, 2008 (See Attachment “PCC 2”).

The Committee agrees with Disciplinary Counsel’s assertion that both case law in New Hampshire and the American Bar Association’s Standards for Imposing Lawyer Sanctions (1992) (“Standards”) support the conclusion that Ms. Boehm should be publicly censured. 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.

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.

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.”).

The Standards assert that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. In New Hampshire the most analogous sanction to a reprimand is a public censure.

The Committee finds that Ms. Boehm negligently violated her obligations to communicate properly with her client. With respect to actual or potential injury to a client, while Ms. Boehm’s misconduct caused no apparent harm to the merits of her client’s case, her misconduct caused her client to suffer needless anxiety, a significant although unquantifiable injury. Under the circumstances of this case the Committee finds the baseline sanction is appropriately a public censure.

The final step in the analysis of an appropriate sanction is to determine whether there are any aggravating and/or mitigating factors that affect the baseline sanction. With respect to mitigation, while Ms. Boehm lacked a dishonest or selfish motive, Standard 9.32(b), the Committee finds this mitigating factor to be of little relevance, because matters involving

negligent failures of communication rarely involve a dishonest or selfish motive on the part of respondents.

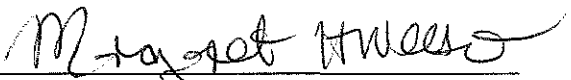
The Committee does find that there is a significant aggravating factor. Ms. Boehm has a lengthy disciplinary history. The Committee took note of Ms. Boehm's three prior Warnings and three prior Reprimands, and the Committee was especially troubled by the fact that two of the Reprimands (#95-140 and #98-002) and two of the Warnings (#99-028 and #99-030) involved issues of a similar nature to that present in this case. The ABA Standards make clear that a respondent's prior disciplinary history is an aggravating factor. Not only does Ms. Boehm have a prior record, but her record is lengthy. Ms. Boehm's disciplinary history involves repeated instances of failures to communicate with clients, as well as more serious infractions. The Committee finds a public censure is warranted due both to the number of prior discipline episodes and to their similarity to the misconduct in this case.

The Committee further believes that public censure is not sufficient to assure that the public is appropriately protected from future violations. While a public censure is consistent with the purposes of attorney discipline in New Hampshire to the effect that the public would be alerted to the past misconduct, the Committee believes clients would be further protected if steps were taken to remedy Ms. Boehm's management of her professional skills and office practices in the future. The public should be able to have some assurance that in cases such as the instant case a sanction will alter future professional behavior. Accordingly, the Committee finds that, in addition to a public censure, a mandatory diversion program as proposed by Disciplinary Counsel be required of Ms. Boehm. Disciplinary Counsel's Proposed Terms of Mandatory Diversion are attached hereto as Attachment "PCC 2" and incorporated into this Order.

IV. COSTS

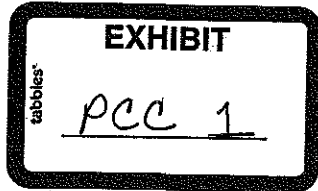
Ms. Boehm is assessed all costs and expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter. See, N.H. Sup. Ct. R. 37(19).

July 21, 2008


Margaret H. Nelson, Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
Lenora E. Boehm, Esquire
File



NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Boehm, Lenora E.

advs.

Robin Marble

#07-018

STIPULATION

Disciplinary Counsel, Landya B. McCafferty, and Respondent, Lenora E. Boehm, hereby submit this Stipulation in the above-referenced case.

I. Stipulation of Facts

1. Ms. Boehm is an attorney licensed to practice law in New Hampshire. Ms. Boehm was admitted to practice in 1990. At all times material to this proceeding, Ms. Boehm operated her law office as Barnes, Boehm & Wright, 8 Court Street, Concord, New Hampshire 03301.
2. On or about August 22, 2006, Robin Marble (the Complainant) retained Ms. Boehm to represent her in a divorce. The case was pending in Merrimack County Superior Court and was entitled: In the Matter of Robin Marble and Warren Marble, docket #04-M-0374.

3. On or about August 22, 2006, Ms. Marble paid Ms. Boehm \$3,000.00 as a retainer.
4. On or about September 7, 2006, Ms. Boehm filed an appearance on behalf of Ms. Marble in the case.
5. On or about September 11, 2006, Ms. Marble made a further payment to Ms. Boehm of \$50.00.
6. On or about October 2, 2006, Ms. Marble made a further payment to Ms. Boehm of \$50.00.
7. On October 23, 2006, Ms. Marble met with Ms. Boehm at her office to discuss the case. The meeting lasted approximately one hour.
8. On November 20, 2006, Ms. Marble made a further payment to Ms. Boehm of \$50.00.
9. Following Ms. Marble's October 23 meeting with Ms. Boehm, Ms. Marble did not have any further contact with Ms. Boehm, with the exception of an email regarding Ms. Marble's request for her file near the end of the representation.
10. Following that meeting, Ms. Marble made numerous phone calls to the office and sought to speak directly with Ms. Boehm.
11. Ms. Boehm did not return any of Ms. Marble's telephone calls, or otherwise communicate directly with Ms. Marble.
12. With the exception of the one email near the end of the representation, all contact between Ms. Marble and Ms. Boehm's firm after October 23, 2006, was between Ms. Marble and paralegals in Ms. Boehm's office.

13. In a letter to Ms. Boehm dated January 22, 2007, Ms. Marble included the following:

Hi Lenora,

....

You were highly recommended to me prior to my entering your office months ago. My question is, are you going to become actively involved in this case? If so when? What is the strategy? We have a hearing scheduled for Feb 20 assuming it doesn't get continued again. I don't even know who or why it was continued back in Nov. Then Jennifer continued the case because Warren is trying to use the unresolved custody issue as his defense in the rape case. His defense to my knowledge isn't that he didn't do it but [sic] questioning my motive. The prosecutor [sic] office last contact with me indicated that Warren's defense attorney told them and the court that they will probably be entering a plea, depending on what the judge says after reviewing the [REDACTED] counseling records in her chambers.

I need to know when and if you plan to become actively involved in this case. Perhaps you have been, but I have known [sic] way of knowing this, since I have not heard from you.

Please contact me at 603-548-4920

Robin Marble

14. Ms. Boehm did not directly respond to Ms. Marble's January 22, 2007, letter, although she may have asked one of her paralegals to respond.
15. In an email to Ms. Boehm dated February 21, 2007, Ms. Marble wrote:

Ms. Boehm

Given [] I have had no response to any of my concerns regarding my case and the welfare of [REDACTED], I am retaining new counsel.

Please have my records, evidence and any remaining funds from my account ready for me to pick up by noon on Friday, Feb 23, 2007.

A certified copy and an email copy of this letter will be sent to you on this date.

Sincerely
Robin Marble

16. On that same date, Ms. Marble wrote the following email to Ms. Boehm:

Hi Lenora,

I also require an itemized invoice of my account along with remaining funds.

Robin Marble

17. Ms. Boehm did not respond to either of Ms. Marble's February 21 emails.

18. In an email to Ms. Boehm dated March 16, 2007, Ms. Marble wrote:

Hello Lenora, I am writing to again to request a copy of itemized invoice. You returned my copy of the case records. However, you did not give me your copy of records. Please have these records ready for next week. I will make arraignments with you, and new counsel to get them to her. Sincerely, Robin Marble

19. In an email to Ms. Boehm on March 20, 2007, Ms. Marble wrote:

Hello Lenora,

After reviewing the case records and work done by you on behalf of my case with both new attorneys, and speaking to the New Hampshire Bar. [sic] I herby [sic] request a full refund of all money given to you from Aug 2006 to the present. I would expect a full refund by April.

Sincerely,
Robin Marble

20. In an email to Ms. Boehm on April 1, 2007, Ms. Marble wrote:

Hello Lenora,

This is my fourth request for itemized bill and refund.
Please send me the bill and refund by April 9, 2007.

Robin Marble

21. Ms. Boehm did not respond to Ms. Marble's requests for a full refund of her retainer, to her request for a refund of the balance of funds in her retainer, or to Ms. Marble's request for an itemized bill for legal services.
22. Ms. Boehm's paralegal did, however, arrange for Ms. Marble to retrieve her file from Ms. Boehm's office.
23. On or about March 14, 2007, Ms. Marble retained Sandra A. Kuhn, Esq., to represent her in the domestic relations case.
24. In a letter dated March 20, 2007, Ms. Marble filed a grievance against Ms. Boehm with the Attorney Discipline Office alleging, inter alia, Ms. Boehm's failures to communicate.
25. On or about March 26, 2007, Ms. Kuhn filed an appearance in the case on behalf of Ms. Marble.
26. On or about that same time, Ms. Boehm filed a withdrawal from the domestic relations case.

II. Stipulation as to Rules Violated

Rule 1.4: Communications

27. Allegations set forth above are incorporated by reference.

28. Ms. Boehm owed Ms. Marble a duty to keep Ms. Marble reasonably informed regarding the status of the subject marital matter and to comply promptly with Ms. Marble's reasonable requests for information about the case.
29. Ms. Boehm breached the foregoing duty by neglecting to respond to Ms. Marble's inquiries via email and telephone seeking information about the status of her case.
30. Mr. Boehm further breached the foregoing duty by failing to communicate with Ms. Marble about her legal bill. Ms. Marble had sent written requests to Ms. Boehm for information about her legal bill on at least four separate occasions; all of which went unanswered by Ms. Boehm. At the time Ms. Marble terminated Ms. Boehm and hired Ms. Kuhn, Ms. Marble did not know any details about her legal bill with Ms. Boehm as Ms. Boehm had never forwarded to Ms. Marble a bill, invoice or any other accounting.
31. Ms. Boehm's conduct as detailed above constitutes clear and convincing evidence of a breach of N.H. R. Prof. Conduct 1.4(a)-(c).

Rule 8.1(b): Failure to Cooperate

32. The factual allegations underlying the Rule 8.1(b) charge, as well as the charge itself, have been withdrawn as a part of this stipulation.

Rule 8.4(a): General Rule

33. Because there exists clear and convincing evidence that Ms. Boehm 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 Costs

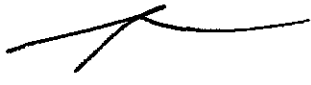
34. Ms. Boehm agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

IV. Effect of Stipulation

35. Respondent understands that by signing this Stipulation, she is hereby bound to the facts as stipulated, no matter what sanction the Professional Conduct Committee determines is appropriate in this case.

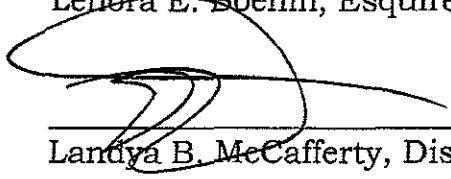
Respectfully submitted,

Dated: 2/11/08
January __, 2008



Lenora E. Boehm, Esquire

Dated: Feb 11
January __, 2008



Landya B. McCafferty, Disciplinary Counsel

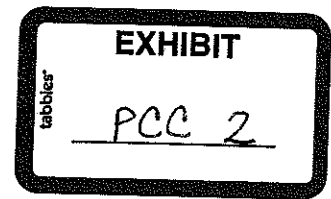
New Hampshire Supreme Court

Hearings Committee

Robert C. Varney, Chair
Patrick F. Harrigan, Vice Chair

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Holly B. Fazzino,
Administrative Coordinator



Boehm, Lenora E. advs. Robin Marble # 07-018

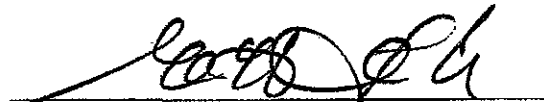
Final Hearing Panel Report

This Final Report of the Hearing Panel is a follow up to a Report issued on March 24, 2008. The following hearing panel members participated in deliberations: George H. Thompson Jr., Esquire, Chair, Paul S. Moore, Esquire, Reporter, Richard E. Fradette, Esquire, Craig F. Evans and Vahrij Manoukian. By Order dated May 13, 2008, the parties were ordered to submit proposed mandatory diversion plans no later than May 23, 2008. Disciplinary Counsel submitted a proposal on May 14, 2008, the Respondent, Lenora E. Boehm, Esquire, did not submit a plan.

Upon consideration, the Hearing Panel hereby adopts Disciplinary Counsel's Proposed Terms of Mandatory Diversion, attached hereto and made part thereof.

Therefore, pursuant to Supreme Court Rule 37A(I)(g)(4)-(8), the Hearing Panel recommends a Public Censure with Mandatory Diversion, and an assessment of all costs associated with the investigation and prosecution of this matter.

June 12, 2008


George H. Thompson, Jr., Esquire
Hearing Panel Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
Lenora E. Boehm, Esquire
File

NEW HAMPSHIRE SUPREME COURT

HEARINGS COMMITTEE

Boehm, Lenora E.

advs.

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#07-018

PROPOSED TERMS OF MANDATORY DIVERSION

1. The sanction imposed on Ms. Boehm in connection with this proceeding shall be accompanied by a mandatory diversion program under Rule 37A(I)(g)(1)(4)-(8).
2. Pursuant to this mandatory diversion program, Ms. Boehm shall arrange for and undergo, at her own expense, a formal audit of her office management practices by a professional consultant skilled in office management. Ms. Boehm shall implement any and all recommendations of the consultant. The consultant must be approved by the Attorney Discipline Office (ADO) before the audit is undertaken.
3. The focus of such audit shall be on Ms. Boehm's office practices, systems, and resources relating to: a) client communications in general; and b) receipt and filing of, and timely responses to, all

other forms of communications from the court, opposing counsel, and any other individuals involved in her cases.

4. Ms. Boehm shall undergo the audit within three months of the date of the sanction order issued by the Professional Conduct Committee in this proceeding. The ADO shall have the authority to contact the consultant to determine whether and to what extent the audit has been completed and whether and to what extent Ms. Boehm has implemented the consultant's recommendations. Ms. Boehm shall fully implement the consultant's recommendations and show proof of same to the ADO, in the form of a written report, within six months of the order issued by the Professional Conduct Committee in this matter.
5. In the event that Ms. Boehm is unable or unwilling to comply with the terms of the mandatory diversion, and/or fails to allow the ADO to oversee her compliance therewith, Ms. Boehm shall be brought before the Professional Conduct Committee on a petition to show cause why she should not be held in contempt and subject to further orders of the Committee.

Dated: _____, 2008

George H. Thompson, Jr., Esquire
Chair