

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Grodt, Thomas P. advs. Richard A. Newcomb #11-050

**ORDER ON FINDINGS OF FACT,
RULINGS OF LAW, SANCTION DEFERRED**

On February 21, 2012, the Professional Conduct Committee (the "Committee") deliberated the above captioned matter. Members present included Alan J. Cronheim, designated Chair of the meeting by Margaret H. Nelson who was unable to attend, Susan R. Chollet, David N. Cole, Gerald A. Daley, Richard H. Darling, Jaye L. Rancourt, and Richard D. Sager. Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Thomas P. Connair, and James R. Martin were absent.

The Committee voted to grant the Request to Permit Waiver of the Hearings Committee Process. Upon further deliberation, including consideration of the Assented-to Motion to Approve Stipulation and Stay Disciplinary Proceedings Relative to the Issue of Sanction (the "Stipulation"), the Committee makes the following factual findings and rulings.

I. FINDINGS OF FACT

The Committee accepts the Stipulation. This establishes the following facts by clear and convincing evidence.

1. Thomas P. Grodt was admitted to the practice of law in New Hampshire on May 27, 1997. He is also admitted to practice law in Massachusetts.
2. Mr. Grodt is currently subject to a three-year suspension from the practice of law in New Hampshire, effective December 6, 2010.

3. At all times relevant to this case, Mr. Grodt operated his law practice at 4 Peabody Road Annex, Derry, New Hampshire 03038.
4. On April 10, 2008, Richard A. Newcomb contacted Mr. Grodt requesting legal representation in a bankruptcy matter.
5. Later that day, Mr. Grodt sent a cover letter to Mr. Newcomb and included information about what documentation was needed for a Chapter 7 bankruptcy filing, a comparison of Chapter 7 and Chapter 13 bankruptcy, and a list of changes in bankruptcy laws as of 2005.
6. The letter also instructed Mr. Newcomb to call and arrange a time to meet Mr. Grodt in his office.
7. Shortly thereafter, Mr. Newcomb began making installment payments to Mr. Grodt towards a \$1,000.00 retainer for legal services.
8. Over the next year, the following payments were made by Mr. Newcomb:

Undated:	\$200.00
7/3/08:	\$150.00
10/3/08:	\$250.00
5/1/09:	\$200.00
6/19/09:	\$150.00
6/27/09:	\$50.00
9. There is no indication that Mr. Grodt placed funds received from Mr. Newcomb in a client trust account.
10. In or about July 2009, after the retainer payment was made in full, Mr. Newcomb began having difficulty reaching Mr. Grodt.
11. On October 29, 2010, Mr. Grodt finally sent a letter to Mr. Newcomb enclosing a coupon for a credit counseling service, and informing Mr. Newcomb that his indebtedness was approximately \$27,000.00. There were no instructions for Mr. Newcomb nor was there any information about the status of the bankruptcy filing.
12. Mr. Grodt never filed anything for Mr. Newcomb, nor did he tell Mr. Newcomb that there was any additional information or documents that Mr. Newcomb needed to produce in order for the petition to be completed and filed.

13. On December 6, 2010, Mr. Grodt was suspended from the practice of law on an interim basis, effective immediately.
14. On December 16, 2010, the New Hampshire Supreme Court appointed Attorney Marilyn Mahoney to take possession of Mr. Grodt's client files and trust and operating accounts.
15. The Attorney Discipline Office ("ADO") filed numerous motions with the Supreme Court between February 2011 and August 2011, attempting to secure Mr. Grodt's compliance with the Court's order of December 16, 2010.
16. In early May 2011, Mr. Newcomb was able to reach Mr. Grodt by phone. Mr. Grodt said he would call Mr. Newcomb back the next day, but he did not.
17. Mr. Newcomb filed a grievance dated May 27, 2011, with the ADO.
18. On June 7, 2011, Acting General Counsel Thomas V. Trevethick forwarded a copy of the complaint to Mr. Grodt requesting a reply pursuant to S. Ct. Rule 37A(ii)(a)(5)(C).
19. No reply was forthcoming and on July 15, 2011, Mr. Trevethick sent follow-up correspondence reminding Mr. Grodt that his reply had been due on July 7, 2011.
20. No reply to the complaint was ever filed by Mr. Grodt.
21. In speaking with Mr. Newcomb during the ADO's initial investigation of his complaint, the ADO informed Mr. Newcomb that Attorney Marilyn Mahoney had been appointed to take inventory of Mr. Grodt's files.
22. Mr. Newcomb contacted Attorney Mahoney and requested information as to the status of his case.
23. Attorney Mahoney did not have Mr. Newcomb's file at that time.
24. Mr. Newcomb provided receipts to Attorney Mahoney, alleging that he had paid a full retainer to Mr. Grodt for the filing of a bankruptcy petition.
25. Attorney Mahoney pursued production of the file by Mr. Grodt, ultimately requesting the Supreme Court to order Mr. Grodt to show cause why he should not be held in contempt for his failure to produce numerous records, including Mr. Newcomb's client file.

26. After having determined that Mr. Grodt was holding unidentified funds in his client trust account, Attorney Mahoney obtained permission from the Supreme Court to disburse \$1,000.00 of those funds to Mr. Newcomb so that he could retain new counsel.
27. On September 21, 2011, the Court found Mr. Grodt in contempt and again ordered Mr. Grodt to produce files and financial records for Attorney Mahoney.
28. When Mr. Grodt produced Mr. Newcomb's file on September 29, 2011, Attorney Mahoney found Mr. Grodt's copies of receipts, money orders and other paperwork relating to Mr. Newcomb's case. However, Mr. Grodt had no financial records to confirm where Mr. Newcomb's retainer funds were deposited, or their disposition.

Stipulation ¶¶ 1-28 at 1-4.

II. RULINGS OF LAW

The Committee accepts the Stipulation and accordingly finds clear and convincing evidence that the Respondent violated the following Rules of Professional Conduct.

Rule 1.3: Diligence

29. Rule 1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client." N.H. R. Prof. Conduct Rule 1.3.
30. Between June 2009 and December 2010, Mr. Grodt failed to file a bankruptcy petition on behalf of Mr. Newcomb despite having agreed to do so, accepting a full retainer for legal fees, and taking possession of a number of Mr. Newcomb's financial records.
31. Similarly, Mr. Grodt never informed the client of any cause for delay.
32. Mr. Grodt's failure to carry out his representation of Richard Newcomb in the manner agreed and within a reasonable period of time represents clear and convincing evidence of a violation of Rule 1.3.

Rule 1.4: Client Communications

33. Rule 1.4 requires a lawyer to reasonably consult with the client about the means by which the client's objectives are to be accomplished and keep the

client reasonably informed about the status of the matter. N.H. R. Prof. Conduct 1.4(a)(2).

34. Mr. Grodt's failure to take reasonable steps to keep Mr. Newcomb informed about the status of his case represents clear and convincing evidence of a violation of Rule 1.4.

Rule 1.15(a) and 1.15(b) and Supreme Court Rule 50(2)(B):
Failure to Safeguard Client Property

35. N.H. R. Prof. Conduct Rule 1.15 states:

(a) ... (Client) funds shall be deposited in one or more clearly designated trust accounts in accordance with the provisions of the New Hampshire Supreme Court Rules

(b) Records shall be maintained by the lawyer of the handling, maintenance and disposition of all funds and other property of the client at any time in the lawyer's possession from the time of receipt to the time of final distribution and shall be preserved for a period of six years after final distribution of such funds or other property or any portion thereof N.H. R. Prof. Conduct 1.15.

36. N.H. Sup. Ct. R. 50(2)(B) states:

All cash property of clients received by attorneys shall be deposited in one or more clearly designated trust accounts (separate from the attorney's own funds) in financial institutions. N.H. Sup. Ct. R. 50(2)(B).

37. There is no indication that Mr. Grodt ever deposited Mr. Newcomb's funds into a clearly designated client trust account.
38. Mr. Grodt's failure to maintain a client trust account specific to Mr. Newcomb's funds resulted in Attorney Mahoney having to seek leave of the Supreme Court to release otherwise unidentified funds from Mr. Grodt's account in order to reimburse Mr. Newcomb for the loss of the retainer he gave to Mr. Grodt.
39. Mr. Grodt's failure to safeguard Mr. Newcomb's retainer funds by placing them in a clearly designated trust account, with accompanying records in accordance with the provisions of the New Hampshire Supreme Court

Rules represents clear and convincing evidence of a violation of N.H. R. Prof. Conduct Rule 1.15, and N.H. Sup. Ct. R. 50(2)(B).

Rule 1.16(d): Declining or Terminating Representation

40. Rule 1.16 states that a lawyer, as a condition of termination of representation "...shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice of (sic) the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred." N.H. R. Prof. Conduct 1.16(d).
41. Mr. Grodt's lack of attention to Mr. Newcomb's case, including his lack of communication, amounted to abandonment of the bankruptcy case and resulted in the filing of a grievance about Mr. Grodt's misconduct with the ADO.
42. Although the Supreme Court appointed Attorney Mahoney to take possession of Mr. Grodt's files and operating and trust accounts, and ordered her to notify Mr. Grodt's clients of his suspension, Mr. Grodt's failure to turn over to Attorney Mahoney all of his client files and banking records delayed the return of Mr. Newcomb's financial documents and retainer funds.
43. Mr. Grodt's failure to take reasonably practicable steps to protect Mr. Newcomb's interests, his failure to give reasonable notice to the client about his abandonment of the case, and his failure to return promptly financial documents and retainer funds that had not been earned represents clear and convincing evidence of a violation of Rule 1.16.

Rule 8.1(b): Disciplinary Matters

44. N.H. R. Prof. Conduct 8.1(b) prohibits a lawyer from knowingly failing to respond to a lawful demand for information from a disciplinary authority.
45. In his June 7, 2011, letter, Mr. Trevethick informed Mr. Grodt that the ADO had docketed a complaint against him based upon Mr. Newcomb's grievance.
46. This letter informed Mr. Grodt that N.H. Sup. Ct. R. 37A(II)(a)(5)(C), required him to respond to the docketed complaint, and gave him 20 days to do so.

47. The ADO again wrote to Mr. Grodt on July 15, 2011, reminding him of the docketed complaint, of his obligation to respond, and the potential consequences of his failure to cooperate.
48. To date, Mr. Grodt has not responded.
49. Mr. Grodt's failure to respond to the June 7, 2011, and July 15, 2011, letters from the ADO represents clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.1(b).

Rule 8.4(a): General Rule

53. Because there is clear and convincing evidence that Mr. Grodt violated the above Rules, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

Stipulation ¶¶ 29-55 at 4-9.

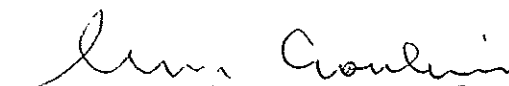
III. COSTS

The Committee accepts the Stipulation that Mr. Grodt shall pay all costs associated with the investigation and prosecution of this matter.

IV. CONCLUSION

The Committee voted to stay the imposition of a sanction to the extent that the sanction in this matter will be addressed prior to or in conjunction with Mr. Grodt's request for reinstatement.

March 9, 2012



Alan J. Cronheim
Professional Conduct Committee

Distribution:

Julie A. Introcaso, Disciplinary Counsel

Thomas P. Grodt

File