

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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

4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
603-224-5828 • Fax 228-9511

Gerald A. Daley\*  
Richard H. Darling\*  
James R. Martin  
Jaye L. Rancourt  
Richard D. Sager  
\* non attorney member  
Holly B. Fazzino, Administrator

*Grodt, Thomas P. advs. Raymond A. and Pamela F. Gerrior #10-040*

**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, 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 September 6, 2009, Raymond A. Gerrior, Sr. and Pamela F. Gerrior ("the Gerriors") contacted Mr. Grodt requesting legal representation for their son, Raymond A. Gerrior, II ("Raymond"). Raymond wanted to file a Chapter 7 bankruptcy petition.
5. The Gerriors gave Mr. Grodt a check (#1044) in the amount of \$300.00 for payment of the bankruptcy filing fee.
6. Later, Mr. Grodt's paralegal, James DiSalvo, informed the Gerriors that the bankruptcy paperwork could not be filed until the retainer for legal fees was paid in full.
7. On September 24, 2009, the Gerriors gave Mr. Grodt a Bank of America cashier's check (#0202279) in the amount of \$1,101.00 for the retainer.
8. The Gerriors provided Mr. Grodt with documents including Raymond's past tax returns, recent pay stubs and unpaid bills.
9. Thereafter, the Gerriors tried on a number of occasions to get in touch with Mr. Grodt and, for the most part, were unsuccessful. They were able to speak with Mr. DiSalvo at one point and were assured that the bankruptcy paperwork would be filed.
10. Mr. DiSalvo also instructed the Gerriors to refer any of Raymond's creditors to Mr. Grodt's office.
11. In January of 2010, the Gerriors finally spoke with Mr. Grodt. Mr. Grodt told them that nothing had been done on Raymond's bankruptcy petition because Mr. DiSalvo had passed away. Mr. Grodt assured the Gerriors that he would move quickly to get the case back on track.
12. Thereafter, the Gerriors were unsuccessful in their attempts to contact Mr. Grodt.
13. The bankruptcy petition for Raymond was never filed.
14. The Gerriors sent the Attorney Discipline Office ("ADO") a grievance dated July 29, 2010.

15. In their letter, the Gerriors stated that they wanted Mr. Grodt to return their \$1,401.00 so that they could hire new counsel.
16. They also wanted Mr. Grodt to return all of the documents that were given to him, as some of them were their only copies.
17. The ADO docketed this matter as a complaint on August 2, 2010.
18. A copy of the Gerriors's complaint was forward to Mr. Grodt on August 2, 2010, along with a cover letter from Deputy General Counsel Thomas V. Trevethick. The cover letter informed Mr. Grodt that he was required to reply to the complaint within 10 days.
19. Mr. Grodt's reply was due on August 12, 2010.
20. Having received no response, General Counsel James L. DeHart sent Mr. Grodt a second letter on August 17, 2010, asking that he give the Gerriors's complaint his immediate attention.
21. On September 7, 2010, Mr. DeHart received a faxed response from Mr. Grodt. It reads as follows:

Dear Attorney (sic) DeHart:

Thank you for your letter regarding Raymond Gerrior's complaint. I was retained by Mr. Gerrior to file a Chapter 7 bankruptcy and received \$1000.00 for my fee and \$300.00 for the filing fee. As I am sure you are aware, among the necessary paperwork to file a bankruptcy are the most recent tax returns and a certificate of completion of a certified credit counseling course. During the course of my representation of Mr. Gerrior, I only received his 2009 tax returns in July 2010 and I have still not received a certificate of completion of credit counseling.

Given the conflict that has arisen, I am returning his \$1,300.00 and any and all records in my possession. Enclosed, please find a copy of the check I am sending him and a copy of a termination of representation letter I am sending him as well.

22. There is no indication that Mr. Grodt provided a copy of this reply to the Gerriors, however he did produce for Mr. DeHart a copy of a letter addressed to Raymond and a check, both dated September 6, 2010.

23. Mr. Grodt's letter to Raymond stated:

Dear Mr. Gerrior:

Given the conflict that has developed it is obviously best if we end our professional relationship. To this end, please find enclosed this firm's check for \$1300.00 which represents your payment of \$1000.00 for my fee and \$300.00 for the filing fee. I will be returning your financial records under separate mailing. This terminates our attorney client relationship.

24. The envelope in which the letter and check were sent was postmarked September 22, 2010, suggesting that Mr. Grodt dated the letter and the check on or about September 7, 2010 (the date of the faxed response to Mr. DeHart), but did not forward them to Raymond until September 22, 2010.
25. The Citizens Bank check (#1343) that was enclosed with this letter was drawn on the account of "Thomas P. Grodt Attorney at Law," Mr. Grodt's law firm operating account (Citizens Bank of NH #3308877793).
26. It appears that the filing fee initially paid by the Gerriors on September 6, 2009, was deposited into this same operating account (Citizens Bank of NH #3308877793), rather than a client trust account, where the funds should have been kept.
27. On September 23, 2010, Mr. Grodt issued a second check. The cover letter sent to Raymond stated:

Dear Mr. Gerrior:

Upon further review of your file, I see that you paid \$1100.00 plus the filing fee of \$300.00. Accordingly, please find enclosed a check for \$100.00 so that the total amount I have now returned to you is \$1400.00.

If you have any questions regarding this matter, please do not hesitate to contact me.

28. Then, on October 11, 2010, Mr. Grodt returned the financial records that he had been given via priority mail.
29. The records Mr. Grodt returned included tax returns for 2007, 2008 and 2009.

Stipulation ¶¶ 1-29 at 1-5.

## **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**

30. 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.
31. Between September 2009 and July 2010, Mr. Grodt failed to represent Raymond Gerrior diligently, in that he never filed a bankruptcy petition on behalf of the client despite having been paid both a legal fee and a filing fee.
32. Similarly, Mr. Grodt never informed the client that a Certificate of Counseling was needed nor of any other cause for delay.
33. Mr. Grodt’s failure to carry out his representation of Raymond Gerrior 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**

34. 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 Rule 1.4(a)(3).
35. Mr. Grodt failed to respond to a number of the Gerriors’s telephone calls, essentially keeping them unaware of the status of Raymond’s case.
36. Mr. Grodt took no affirmative steps to notify the Gerriors of the status of Raymond’s bankruptcy petition. Further, when the clients were able to ask Mr. Grodt about the status of the matter directly, Mr. Grodt was non-responsive or provided misleading information.
37. Mr. Grodt’s failure to take reasonable steps to keep his clients informed about the status of the bankruptcy petition and the means by which he would accomplish their objectives represents clear and convincing evidence of a violation of Rule 1.4.

### **Rule 1.15(d): Safekeeping Property**

38. Rule 1.15 states:

(d) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

N.H. R. Prof. Conduct Rule 1.15(d).

39. Mr. Grodt deposited the Gerriors's retainer funds and pre-paid filing fees into his law firm's operating account at Citizens Bank and not into a client trust account as required by the New Hampshire Supreme Court Rules.

40. When these monies were returned, the checks were issued from the law firm's operating account.

41. Mr. Grodt's failure to deposit into a client trust account the legal fees and expenses that the Gerriors had paid in advance of those fees being earned or the expenses being incurred represents clear and convincing evidence of a violation of Rule 1.15.

### **Rule 1.16: Declining or Terminating Representation**

42. 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 Rule 1.16(d).

43. Mr. Grodt's lack of attention to Raymond's case, along with his lack of communication with the Gerriors, amounted to abandonment of the case and resulted in the Gerriors' filing of a grievance about Mr. Grodt's misconduct with the Attorney Discipline Office.

44. Nearly four weeks beyond the deadline for a reply to the ADO-docketed complaint, Mr. Grodt drafted a check payable to Raymond in the amount of \$1,300.00, and prepared a cover letter to Raymond indicating that he would be returning his financial records "under separate mailing."

45. On September 22, 2010, Mr. Grodt mailed the check and the cover letter, but no financial records.
46. On or about September 23, 2010, Mr. Grodt sent a check for an additional \$100.00 after having determined the actual amount of money the Gerriors had given him.
47. On October 11, 2009, more than two months after having been given a copy of the Gerriors's grievance, Mr. Grodt returned Raymond's financial records.
48. Mr. Grodt's failure to take reasonably practicable steps to protect Raymond Gerrior's interests, along with 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(a): Disciplinary Matters**

49. N.H. R. Prof. Conduct 8.1(a) prohibits a lawyer from knowingly making a false statement of fact to a disciplinary authority.
50. In his faxed reply to Mr. DeHart on September 7, 2010, Mr. Grodt provided an excuse for his lack of diligence, claiming that he was not provided with any of Raymond Gerrior's tax returns, other than his 2009 tax returns, nor was he given a copy of Raymond's Certificate of Counseling. Mr. Grodt also indicated in his reply that he would be sending a termination letter and a check to Raymond, and offered to Mr. DeHart proof of his intent to forward promptly these items by providing Mr. DeHart copies of them, both dated September 6, 2010. However, Mr. Grodt then delayed mailing these documents to Raymond Gerrior for more than two weeks.
51. When Mr. Grodt finally returned Raymond's financial records to him, the records included tax returns for three years, 2007, 2008 and 2009.
52. Mr. Grodt's false statements of fact to Mr. DeHart represent clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.1(a).

**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 ¶¶ 31-58 at 5-10.


**III. COSTS**

The Committee accepts the Stipulation that Mr. Grodt shall pay all costs associated with the investigation and prosecution of this matter. All costs are to be paid prior to Mr. Grodt's request for reinstatement.

**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 13, 2012

  
Alan J. Cronheim  
Professional Conduct Committee

Distribution:  
Julie A. Introcaso, Disciplinary Counsel  
Thomas P. Grodt  
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