

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  
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*Rutter, Rebecca J. advs. Patricia A. Doherty # 11-005*

**REPRIMAND**

On June 19, 2012, the Professional Conduct Committee (the "Committee") 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, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley and Richard H. Darling. James R. Martin, Jaye L. Rancourt and Richard D. Sager were absent.

**I. FINDINGS OF FACT**

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

1. Rebecca J. Rutter is an attorney licensed to practice law in New Hampshire. Ms. Rutter was admitted to practice on October 29, 2001.
2. Ms. Rutter has not been admitted to practice in any other state.
3. At all times material to this proceeding, Ms. Rutter operated her law office as Law Office of Rebecca J. Rutter, located at 52 Lane Road, Derry, New Hampshire. Her mailing address is P.O. Box 343, Derry, New Hampshire 03038-0343.
4. On November 23, 2010, Patricia Doherty and her husband, Sean Doherty, met with and retained Ms. Rutter to update their wills. They provided Ms. Rutter with their only copies of the wills for her to review.

5. During that same meeting, Ms. Rutter offered to complete a living will and medical power of attorney for each of the Dohertys. They agreed and asked her to go forward and prepare those documents as well.
6. In order to prepare the medical power of attorney documents, Ms. Rutter told the Dohertys that they would need to fill out an additional questionnaire which she promised to email to the Dohertys later that same day.
7. At the close of the meeting, Ms. Rutter told the Dohertys that they would likely receive a rough draft of the updated wills by the end of the following week, December 3, 2010.
8. There was no written fee agreement, but before leaving Ms. Rutter's office, Ms. Doherty paid, via credit card, a \$200 deposit toward the total fee of \$500 for the preparation of the wills and medical power of attorney paperwork.
9. Along with their only copies of the wills, Mr. and Ms. Doherty left a number of their financial records with Ms. Rutter.
10. On December 9, 2010, Ms. Doherty called Ms. Rutter's office and left a message on the answering machine stating that she never received the email questionnaire that Ms. Rutter said she would send on November 23, 2010.
11. Ms. Doherty also sent an email on December 9, 2010, reminding Ms. Rutter that she had told the Dohertys that they would have rough copies of the draft wills by December 3, 2010.
12. Ms. Rutter did not respond to or acknowledge receiving the phone call or email.
13. On Tuesday, December 21, 2010, Ms. Doherty called Ms. Rutter again. She left a voicemail message and sent a confirming email. The email was sent at 5:26 p.m. and stated:

I have called twice and this marks my second email to you regarding our meeting the week of Thanksgiving to get our wills updated. At this point I would like to stop by and pick up the copies of our wills that we left with you four weeks ago...

I also need for you to set a time-line that you are willing to stick to.... If

you are unable or unwilling to set a timeline to complete this work than I am asking for a complete refund of the \$200.00 we have paid you to date.

14. Ms. Rutter did not respond to or acknowledge receiving the phone call or email.
15. On December 31, 2010, Ms. Doherty made her third and final attempt to contact Ms. Rutter. Again, she left a voicemail message and sent an email asking for a full refund and for the return of all documents by January 4, 2011.
16. Ms. Rutter was out of the office for the New Year's holiday from Friday December 31, 2010 through the weekend, returning on Monday, January 3, 2011. When she returned to the office, she prepared a fed-ex package to the Dohertys containing a refund of their retainer (check # 819 dated January 3, 2012), and the materials they provided her during the November 23<sup>rd</sup> meeting.
17. Ms. Rutter delivered the package for the Dohertys to a Fed-ex drop location the following day, Tuesday January 4, 2011.
18. While still awaiting a response from Ms. Rutter, the Dohertys drove to her office on January 4, 2011, to retrieve their documents and request a refund.
19. When they arrived at Ms. Rutter's office, they saw a note on the door indicating that Ms. Rutter was in court.
20. The Dohertys left a note in her drop box informing Ms. Rutter that they were filing a complaint with the New Hampshire Bar Association.

That same day, Ms. Doherty filed her grievance with the Attorney Discipline Office ("ADO").

## **II. RULINGS OF LAW**

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

**Rule 1.4(a)(4): Client Communications**

21. Ms. Rutter breached her duty to her client under Rule 1.4(a)(4) by neglecting to respond to Ms. Doherty's inquiries via email and telephone from December 9 – 31, 2010.

22. Rule 1.4 states, in part:

(a) A lawyer shall:

(4) promptly comply with reasonable requests for information...

23. American Bar Association (ABA) Model Code Comment to Rule 1.4 states provides guidance to the application of this rule. It states:

[p]aragraph (a)(4) requires prompt compliance with (a client's) request, or if a prompt response is not feasible, that the lawyer...acknowledge receipt of the request and advise the client when a response can be expected. Client phone calls should be promptly returned or acknowledged.

24. Ms. Doherty attempted to follow-up on Ms. Rutter's representation that she would immediately e-mail a necessary form to Ms. Doherty. While requesting a response or acknowledgement of her inquiry, Ms. Doherty also suggested that Ms. Rutter provide a revised timeline for completion of the wills so that her expectations coincided with Ms. Rutter's abilities and intentions. These requests required simple responses but were ignored.

25. Ms. Rutter's failure to respond or acknowledge her client's reasonable requests for basic information constitutes a violation of N.H. R. Prof. Conduct 1.4(a)(4).

**Rule 8.4(a): General Rule**

26. In light of the fact that Rule 1.4(a)(4) was violated, it necessarily constitutes a violation of N.H. R. Prof. Conduct 8.4(a).

### III. 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 *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 steps create the framework for characterizing the misconduct and determining a baseline 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. *Grew's Case*, 156 N.H. 361, 365 (2007). The most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, Part II – Theoretical Framework. Under the first prong of the analysis, Ms. Rutter violated her duty of diligence in this case. *Id.* at (b). After having taken Ms. Doherty's initial payment, Ms. Rutter failed, without explanation, to meet deadlines she established by agreement with her client. Ms. Doherty became understandably concerned and made a number of attempts to get information from Ms. Rutter. Her failure to meet the expectations she had created was compounded by her neglect of her client's inquiries.

The second prong of the three-part test requires an assessment of Ms. Rutter's mental state. In this case, there is negligence.

The third prong requires an analysis of actual or potential injury caused by Ms. Rutter's misconduct. The Dohertys entrusted with Ms. Rutter with their retainer funds and important documents. They suffered no monetary loss or actual injury. However, the Dohertys' inconvenience, frustration, and loss of confidence in Ms. Rutter's reliability and professionalism caused nominal injury.

In determining a baseline sanction, the *Standards* provide additional guidance.

*Standards* § 4.4, relates to client communications, and provides in part:

- 4.41 Reprimand<sup>1</sup> 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.
- 4.11 Admonition<sup>2</sup> is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

The Committee agrees with the parties that the baseline sanction in this case is a Reprimand. Under the sanction analysis recommended by the *Standards*, the baseline sanction should be considered and/or adjusted in light of aggravating and mitigating factors. Under the *Standards*, the aggravating factor in this case is Ms. Rutter's prior Warning issued in *Rutter, Rebecca J. advs. Robert Lefavour # 09-040* on February 18, 2010, where she was warned of the necessity for following up with estate planning clients to ensure that all of the necessary estate planning information is obtained

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<sup>1</sup> Public Censure in New Hampshire.

<sup>2</sup> Reprimand in New Hampshire.

so that she can complete the drafting of documents in a timely manner. *See* N.H. Supreme Court Rule 37A(I)(e)(3)(f). (§ 9.22(d)).

The Committee determined that the mitigating factors include the following:

- a) Absence of a dishonest or selfish motive (§ 9.32(c));
- b) Willingness to make restitution (*see* § 9.31);
- c) Full and free disclosure to the ADO, a cooperative attitude toward the proceeding, and acceptance of responsibility for the misconduct (§ 9.32(e));
- d) Personal or emotional problems (§ 9.32(l)), and
- e) Remorse (§ 9.32(m)).

The Committee did not accept the Stipulated mitigating factor of the absence of a prior disciplinary record. *See* Supreme Court Rule 37A(I)(f).

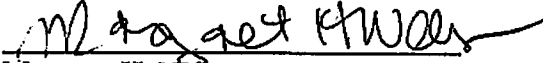
#### IV. SANCTION

For all of the above reasons, the Committee issues a Reprimand to Rebecca J. Rutter for violation of NH. R. Prof. Conduct 1.4(a)(4) and 8.4(a).

#### V. COSTS

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

August 2, 2012

  
Margaret H. Nelson  
Chair

#### Distribution:

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Rebecca J. Rutter, Esquire  
File