

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

ORDER

LD-2012-0010, In the Matter of Brian G. Doherty

In August 2012, the Attorney Discipline Office filed a certified copy of the January 17, 2012 order and March 29, 2012 opinion of the Supreme Court of Florida, disbaring Attorney Brian G. Doherty. The Supreme Court of Florida determined that Attorney Doherty violated the following *Rules Regulating the Florida Bar* in his dealings with a client:

1. Rule 4-1.7(a)(2), which prohibits a lawyer from representing a client if there is a substantial risk that the representation of the client will be materially limited by the lawyer's personal interests; and

2. Rule 4-1.8(a), which prohibits a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client, unless the transaction is fair and reasonable to the client, the client is advised in writing of the desirability of seeking independent legal counsel, and the client gives informed, written consent to the essential terms of the transaction.

The facts relating to Attorney Doherty's misconduct are described in detail in the opinion of the Supreme Court of Florida. In short, the court found that Attorney Doherty assumed multiple, conflicting roles when he provided both legal services and financial services to an elderly client. The court found that while Attorney Doherty provided estate planning advice to a client, he recommended that she make certain financial investments that would have benefitted him financially. The court found that Attorney Doherty failed to advise the client of his conflict of interest.

In discussing the appropriate sanction for this misconduct, the Supreme Court of Florida noted that Attorney Doherty's conduct "created a clear conflict of interest," that he acted purposefully to make his personal, pecuniary interests at least as important as those of his client, and that he failed to disclose his substantial interest in the transactions he recommended. It characterized Attorney Doherty's misconduct as "egregious" and noted that in similar cases the court had imposed lengthy suspensions. The court then

discussed a number of aggravating factors, including Attorney Doherty's prior two-year suspension by this court for misconduct. See In re Doherty's Case, 142 N.H. 446 (1997). After considering Attorney Doherty's misconduct, his disciplinary history, and the other aggravating factors, the court concluded that disbarment was the appropriate sanction.

New Hampshire Supreme Court Rule 37(12) governs reciprocal discipline. Upon receiving notice that an attorney has been disciplined in another jurisdiction, Rule 37(12)(b) requires the court to provide the attorney and the PCC with an opportunity to demonstrate that the imposition of identical or substantially similar discipline would be unwarranted. Rule 37(12)(d) of the rule then provides for the imposition of reciprocal discipline unless the respondent attorney or the PCC demonstrates, or the court finds, based on the face of the record from which the discipline is predicated, that:

- (1) the procedure followed by the jurisdiction imposing discipline was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (2) the imposition of the same or substantially similar discipline by the court would result in grave injustice; or
- (3) the misconduct established warrants substantially different discipline in New Hampshire.

In this matter, this court issued an order, in accordance with Rule 37(12)(b), giving Attorney Doherty and the Professional Conduct Committee an opportunity to advise the court if either contended that the imposition of "identical or substantially similar discipline" would be unwarranted. Attorney Doherty filed a pleading arguing that disbarment is unwarranted. The PCC notified the court that it believes that disbarment is warranted.

Having reviewed the order and opinion of the Supreme Court of Florida, the court does not find that any of the conditions set forth in Rule 37(12)(d) have been met. It appears from the order that Attorney Doherty participated fully in the Florida disciplinary proceeding. In light of the seriousness of Attorney Doherty's misconduct and of the aggravating factors that are present, the court does not find that disbarment would result in grave injustice or that his misconduct would warrant substantially different discipline in New Hampshire.

Therefore, the court orders that Attorney Brian G. Doherty be disbarred from the practice of law in New Hampshire. Attorney Doherty is hereby

assessed all expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter. See Rule 37(19).

Dalianis, C.J., and Hicks, Conboy, Lynn, and Bassett, JJ., concurred.

DATE: October 17, 2012

ATTEST:


Eileen Fox, Clerk

Distribution:
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File