

New Hampshire Supreme Court
Professional Conduct Committee

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Bennett, Robert R. advs. Donald McGrath # 01-027

REPRIMAND

On June 15, 2004, the Professional Conduct Committee reviewed the record in the above-referenced matter, including the Hearing Panel Report dated May 12, 2004 and Stipulation As To Facts and Sanction dated March 16, 2004.

Having reviewed the record, the Professional Conduct Committee concluded that the factual findings contained in the Hearing Panel Report and the Stipulation As To Facts and Sanction attached hereto and made part thereof, are supported by clear and convincing evidence.

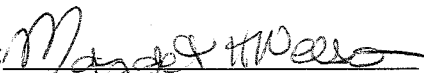
The Professional Conduct Committee concludes that the Rules of Professional Conduct have been violated, and the appropriate discipline in this matter is a Reprimand. This sanction is in accord with the purposes of attorney discipline. See e.g., Feld's Case, 149 NH 19,28 (2002). This sanction is also in accord with the ABA Center for Professional Responsibility, Standards for Imposing Lawyer Sanctions (1991). See e.g., Shillen's Case, 149 N.H. 132, 139 (2003) (noting that, although the Court has never formally adopted these Standards, the Court has "considered them when imposing sanctions").

For all of the above reasons, the Professional Conduct Committee Reprimands Robert R. Bennett, Esquire, for violating the following Rules:

N.H. R. Prof. Conduct 1.4(a), 1.4(c), 1.4(a), 1.4(c), 8.4(a).

Robert R. Bennett, Esquire shall be entitled to appeal the findings or sanction in accordance with the Rules of the New Hampshire Supreme Court.

July 6, 2004

By: 
Margaret H. Nelson
Chair

Distribution:
Landya B. McCafferty, Esquire
Robert R. Bennett, Esquire
Donald McGrath
File

NEW HAMPSHIRE SUPREME COURT
HEARINGS COMMITTEE

ROBERT R. BENNETT

advs.

DONALD McGRATH

#01-027

FINAL HEARING PANEL REPORT

A complaint was referred to this Panel pursuant to Supreme Court Rule 37A(III)(b)(4) on March 1, 2004. The following Panel was selected:

Robert C. Varney, Esquire, Chair
William E. Brennan, Esquire, Reporter
John C. Madden
William R. Drescher, Esquire
W. Wright Danenbarger, Esquire

Prior to hearing, the Respondent, ROBERT R. BENNETT entered into a Stipulation with Bar Disciplinary Counsel as to facts and sanctions which provided as follows:

Stipulation as to Facts

1. On September 12, 2000, Mr. McGRATH was incarcerated on a Burglary charge.
2. In October 2000, Mr. BENNETT was appointed to represent Mr. McGRATH on that charge. Mr. BENNETT represented him on that charge until April 3, 2001, the date on which Mr. BENNETT withdrew.
3. Shortly after the court appointed Mr. BENNETT to represent Mr. McGRATH, Mr. BENNETT met with him at the Rockingham County House of Corrections. Mr. BENNETT informed Mr. McGRATH of his appointment and explained that he had not yet received any paperwork on Mr. McGRATH's case. However, Mr. BENNETT told Mr. McGRATH that, upon receiving any paperwork, Mr. BENNETT would forward it to Mr. McGRATH.
4. Between that jail visit and Mr. BENNETT's withdrawal on April 3, 2001, Mr. McGRATH experienced difficulty communicating with Mr. BENNETT. Mr. McGRATH made "many attempt[s]" to contact Mr. BENNETT by telephone, but Mr. BENNETT did not respond to these attempts.
5. As a result of Mr. McGRATH's early difficulties communicating with Mr. BENNETT, on October 24, 2000, Mr. McGRATH filed a *pro se* motion for new counsel.

6. On November 29, 2000, at the hearing on the motion, Mr. McGRATH withdrew his request for new counsel because Mr. BENNETT assured Mr. McGRATH that he "would represent" him and "keep [him] more informed."
7. On December 5, 2000, the Rockingham Grand Jury indicted Mr. McGRATH on the Burglary charge. The Rockingham County Superior Court docketed that matter as #00-S-2360.
8. On December 14, 2000, the corrections officer on duty at the Rockingham County House of Corrections informed Mr. McGRATH that he had a court appearance on that date. Mr. McGRATH was not otherwise aware that he had a court appearance scheduled for that date.
9. When he arrived in court on December 14, 2000, Mr. McGRATH learned that the purpose of his appearance was an arraignment on the Burglary indictment. On that date, Mr. BENNETT informed Mr. McGRATH that he was going to be charged with additional crime. At that point, Mr. BENNETT was unable to tell Mr. McGRATH any information about the uncharged crime, but Mr. BENNETT assured Mr. McGRATH that he would find out further information and keep Mr. McGRATH informed.
10. On January 31, 2001, Mr. McGRATH filed in the Rockingham County Superior Court another Motion for New Counsel. This Motion will hereinafter be referred to as "the second motion."
11. In the second motion, Mr. McGRATH again complained about an inability to communicate with Mr. BENNETT. Mr. McGRATH further complained that Mr. BENNETT sent him no paperwork on his pending Burglary charge.
12. Between December 4, 2000 (the date of Mr. McGRATH's arraignment) and April 3, 2001 (the date of Mr. BENNETT's withdrawal), Mr. McGRATH did not hear from Mr. BENNETT.
13. It was not until the date of Mr. BENNETT's withdrawal, April 3, 2001, that Mr. BENNETT gave Mr. McGRATH paperwork related to his Burglary charge. That paperwork did not contain any information related to the uncharged crime Mr. BENNETT mentioned at Mr. McGRATH's arraignment.
14. The final pretrial conference in Mr. McGRATH's case was scheduled for April 13, 2001, and the jury trial was scheduled for the week of April 23, 2001.

The Respondent ROBERT R. BENNETT and Bar Disciplinary Counsel also stipulated that the following rule violations could be shown by clear and convincing evidence:

- A. Mr. BENNETT's failure to respond to Mr. McGRATH's "many attempts" to reach him by telephone between the October 2000 appointment and the April 2001 withdrawal, as discussed above, constitutes a violation of N.H. R. Prof. Conduct 1.4(a) and 1.4(c).
- B. Mr. BENNETT's failure, as discussed above, to send Mr. McGRATH paperwork related to

his case constitutes a violation of N.H. R. Prof. Conduct 1.4(a) and 1.4(c).

- C. In light of the aforementioned Rules violations, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

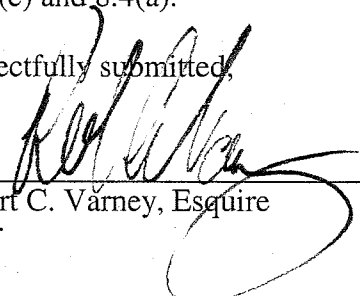
The Hearing Panel having reviewed the Notice of Charges, Answer and Stipulation agrees that a Reprimand would be an appropriate sanction based upon the following factors:

- (a) Mr. BENNETT has no prior record of misconduct aside from Case #00-N-112 which has been contemporaneously referred to the Committee. In 1998, however, Mr. BENNETT received a warning related to his office calendaring procedures.
- (b) Mr. BENNETT acted negligently in this matter, but he did not act dishonestly or with a selfish motive.
- (c) Mr. BENNETT has accepted responsibility for his conduct.
- (d) In Mr. BENNETT's discussions with Disciplinary Counsel about this matter, he has exhibited an extremely cooperative attitude.
- (e) Mr. BENNETT is currently on inactive status for medical reasons.
- (f) A reprimand in this matter would be consistent with the ABA Center for Professional Responsibility Standards for Imposing Lawyer Sanctions § 9.0 (1991).

The Hearing Panel therefore recommends that the Committee impose a Reprimand upon ROBERT R. BENNETT for violation of Rules 1.4(a), 1.4(c) and 8.4(a).

Respectfully submitted,

Dated: May 12, 2004



Robert C. Varney, Esquire
Chair

THE NEW HAMPSHIRE SUPREME COURT

ATTORNEY DISCIPLINE OFFICE

ROBERT R. BENNETT

ADVS.

DONALD MCGRATH

#01-027

STIPULATION AS TO FACTS AND SANCTION

NOW COMES Landya B. McCafferty, Disciplinary Counsel, and Robert R. Bennett, Respondent, and respectfully submit this Stipulation as to Facts and Sanction:

Stipulation as to Facts

1. On September 12, 2000, Mr. McGrath was incarcerated on a Burglary charge.
2. In October 2000, Mr. Bennett was appointed to represent Mr. McGrath on that charge. Mr. Bennett represented him on that charge until April 3, 2001, the date on which Mr. Bennett withdrew.
3. Shortly after the court appointed Mr. Bennett to represent Mr. McGrath, Mr. Bennett met with him at the Rockingham County House of Corrections. Mr. Bennett informed Mr. McGrath of his appointment and explained that he had not yet received any paperwork on Mr. McGrath's case. However, Mr. Bennett told Mr. McGrath that, upon receiving any paperwork, Mr. Bennett would forward it to Mr. McGrath.
4. Between that jail visit and Mr. Bennett's withdrawal on April 3, 2001, Mr. McGrath experienced difficulty communicating with Mr. Bennett. Mr. McGrath made "many

attempt[s]” to contact Mr. Bennett by telephone, but Mr. Bennett did not respond to these attempts.

5. As a result of Mr. McGrath’s early difficulties communicating with Mr. Bennett, on October 24, 2000, Mr. McGrath filed a *pro se* motion for new counsel.
6. On November 29, 2000, at the hearing on the motion, Mr. McGrath withdrew his request for new counsel because Mr. Bennett assured Mr. McGrath that he “would represent” him and “keep [him] more informed.”
7. On December 5, 2000, the Rockingham Grand Jury indicted Mr. McGrath on the Burglary charge. The Rockingham County Superior Court docketed that matter as #00-S-2360.
8. On December 14, 2000, the corrections officer on duty at the Rockingham County House of Corrections informed Mr. McGrath that he had a court appearance on that date. Mr. McGrath was not otherwise aware that he had a court appearance scheduled for that date.
9. When he arrived in court on December 14, 2000, Mr. McGrath learned that the purpose of his appearance was an arraignment on the Burglary indictment. On that date, Mr. Bennett informed Mr. McGrath that he was going to be charged with an additional crime. At that point, Mr. Bennett was unable to tell Mr. McGrath any information about the uncharged crime, but Mr. Bennett assured Mr. McGrath that he would find out further information and keep Mr. McGrath informed.
10. On January 31, 2001, Mr. McGrath filed in the Rockingham County Superior Court another Motion for New Counsel. This Motion will hereinafter be referred to as “the second motion.”

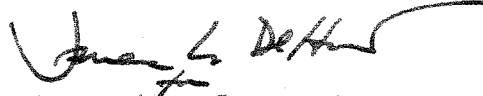
11. In the second motion, Mr. McGrath again complained about an inability to communicate with Mr. Bennett. Mr. McGrath further complained that Mr. Bennett sent him no paperwork on his pending Burglary charge.
12. Between December 14, 2000 (the date of Mr. McGrath's arraignment), and April 3, 2001 (the date of Mr. Bennett's withdrawal), Mr. McGrath did not hear from Mr. Bennett.
13. It was not until the date of Mr. Bennett's withdrawal, April 3, 2001, that Mr. Bennett gave Mr. McGrath paperwork related to his Burglary charge. That paperwork did not contain any information related to the uncharged crime Mr. Bennett mentioned at Mr. McGrath's arraignment.
14. The final pretrial conference in Mr. McGrath's case was scheduled for April 13, 2001, and the jury trial was scheduled for the week of April 23, 2001.
15. Mr. Bennett's failure to respond to Mr. McGrath's "many attempts" to reach him by telephone between the October 2000 appointment and the April 2001 withdrawal, as discussed above, constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a) and 1.4(c).
16. Mr. Bennett's failure, as discussed above, to send Mr. McGrath paperwork related to his case constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a) and 1.4(c).
17. In light of the aforementioned Rules violations, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

Stipulation as to Sanction: Reprimand

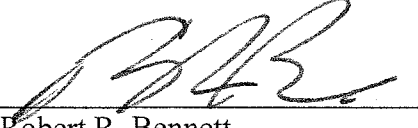
18. In this Stipulation, Mr. Bennett has admitted every material allegation contained in the Notice of Charges. Additionally, Mr. Bennett has admitted each of the alleged violations of the Rules of Professional Conduct contained in the Notice of Charges.
19. Mr. Bennett has agreed to accept a Reprimand for his conduct in this matter.
20. A Reprimand is the appropriate sanction in this case for the following reasons.
 - (a) Mr. Bennett has no prior record of misconduct. In 1998, however, Mr. Bennett received a warning related to his office calendaring procedures,
 - (b) Mr. Bennett acted negligently in this matter, but he did not act dishonestly or with a selfish motive;
 - (c) Mr. Bennett has accepted responsibility for his conduct;
 - (d) In Mr. Bennett's discussions with Disciplinary Counsel about this matter, he has exhibited an extremely cooperative attitude;
 - (e) Mr. Bennett is currently on inactive status for medical reasons.
21. A Reprimand in this matter would be consistent with the ABA Center for Professional Responsibility Standards for Imposing Lawyer Sanctions § 9.0 (1991). See, e.g., Shillen's Case, No. LD-2000-004, ___ N.H. ___ (February 18, 2003) (noting that, although the Court has never formally adopted these Standards, the Court has "considered them when imposing sanctions").

New Hampshire Supreme Court
Attorney Discipline Office
4 Park Street, Suite 304
Concord, New Hampshire 03301
(603) 224-5828

Dated: 3/16/04


By: Landya B. McCafferty
Landya B. McCafferty
Disciplinary Counsel

Dated: 06/16/04


By: Robert R. Bennett
Robert R. Bennett
Respondent