

New Hampshire Supreme Court  
**Professional Conduct Committee**  
*a committee of the attorney discipline system*

David M. Rothstein, Chair  
Benette Pizzimenti, Vice Chair  
Toni M. Gray,\* Vice Chair  
Susan R. Chollet\*  
Thomas P. Connair  
Alan J. Cronheim  
Richard H. Darling\*

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

Elaine Holden\*  
Heather E. Krans  
Richard D. Sager  
Martha Van Oot  
Lisa Wellman-Ally  
\* non attorney member  
Holly B. Fazzino, Administrator

*Barrett, Timothy J.A. advs. Attorney Discipline Office # 12-028*

**PUBLIC CENSURE**

On April 16, 2013, the Professional Conduct Committee reviewed the record and deliberated the above-referenced matter. Members present were David M. Rothstein, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Thomas P. Connair, Susan R. Chollet, Alan J. Cronheim, Richard H. Darling, Elaine Holden, Heather E. Krans, Richard D. Sager, Martha Van Oot and Lisa Wellman-Ally. The Professional Conduct Committee makes factual findings and rulings of law as detailed below:

**I. FACTUAL FINDINGS**

The Professional Conduct Committee has determined that the Record supports the following factual findings by clear and convincing evidence:

1. Mr. Barrett is an attorney licensed to practice law in New Hampshire. Mr. Barrett was admitted to practice on November 15, 2011. At all times material to this proceeding, Mr. Barrett operated his law office as Barrett Law, PLLC, 2655 White Mountain Highway, PO Box 69, North Conway, New Hampshire 03860-0069.

2. Mr. Barrett has no history of any previous discipline in the State of New Hampshire. However, Mr. Barrett was administratively suspended by the New Hampshire Supreme Court on February 11, 2013, for failure to file his 2012 trust accounting certificate.

**Respondent's Conduct in the Underlying Family Court Matter**

3. On May 14, 2012, Maria Martin retained Mr. Barrett to represent her in Conway Family Court. Ms. Martin paid Mr. Barrett a \$2500 retainer.
4. Ms. Martin had been referred to Mr. Barrett by Barbara Reilly, who is a partner of Legal Eagles, LLC. Legal Eagles provides paralegal assistance to *pro se* litigants and to attorneys, on a contract basis, who require paralegal help but do not have a paralegal on staff.
5. Mr. Barrett had contracted with Legal Eagles to perform paralegal work in a few of his cases.
6. Ms. Martin was scheduled to appear at a June 18, 2012, hearing in Conway Family Court. The hearing was on the merits to address her Petition to adjust child support and dependent child tax exemptions and to modify the parenting plan.
7. During their early discussions, Ms. Martin made clear to Mr. Barrett that her ex-husband was a "serious bully," that being in the same room with him caused her extreme stress, and that she very much needed Mr. Barrett at the June 18, 2012, hearing to advocate for her and hopefully achieve a fair result.
8. Ms. Martin made an appointment to meet with Mr. Barrett on June 12, 2012, to discuss her case further and prepare for the upcoming hearing.

9. Mr. Barrett did not appear for the June 12, 2012, meeting. He never informed Ms. Martin that he would not be available for the meeting. Ms. Martin attempted to reach him by phone after he failed to be present for their meeting and continued to call the following week. Mr. Barrett never returned any of her calls.
10. On June 18, 2012, Ms. Martin appeared for the scheduled hearing. Mr. Barrett never appeared, and Ms. Martin represented herself. Mr. Barrett did not inform Ms. Martin that he could not attend the hearing.
11. Ms. Martin's ex-husband was represented by counsel during the June 18 hearing.
12. On the evening of June 18, 2012, Ms. Martin, frustrated by Mr. Barrett's failure to appear, sent him an email requesting that he return her retainer in full within seven days. She also left a telephone message for him the next day reiterating that request.
13. Ms. Martin did not hear further from Mr. Barrett until June 26, 2012, when she received a letter from Mr. Barrett. The letter informed her that Mr. Barrett was closing his practice and could no longer represent her. He enclosed a Notice of Withdrawal that he had just filed in her case and also enclosed the full amount of her retainer.
14. Mr. Barrett also stated in his June 26, 2012, letter: "[f]or your convenience, your files have been turned over to your paralegal at Legal Eagles."
15. In fact, Mr. Barrett had never given Ms. Martin's file to anyone at Legal Eagles. However, Ms. Martin stated to Disciplinary Counsel that her file did not have many materials in it, as she had just hired Mr. Barrett, and that she had copies of all necessary documents pertaining to her family court matter.

16. As a result of the June 18, 2012, hearing, Ms. Martin received an increase in child support, but not the amount she requested. She felt, however, that the overall result was fair.

**Correspondence between Respondent and Attorney Discipline Office**

17. The Attorney Discipline Office (ADO) received Ms. Martin's written grievance on July 16, 2012.
18. The ADO issued three letters requesting information from Mr. Barrett, dated July 16, 2012, August 16, 2012, and September 17, 2012.
19. Mr. Barrett has submitted two letters to the ADO. Neither letter, however, responded to the actual substance of Ms. Martin's claim.
20. Mr. Barrett's letter dated August 14, 2012, requested an extension of time in which to respond.
21. Mr. Barrett's letter dated September 12, 2012, stated that Mr. Barrett had closed his practice and does not intend to practice law in the future. That letter does not conform to Supreme Court Rule 37(11) governing "Resignation By Attorney Under Disciplinary Investigation."
22. By letter dated October 15, 2012, the Complaint Screening Committee referred Mr. Barrett's matter to Disciplinary Counsel.
23. During November 2012, Disciplinary Counsel attempted to reach Mr. Barrett by phone, email, and via written correspondence to the current address on file with the New Hampshire Bar Association. Disciplinary Counsel also submitted a form to the North Conway Postmaster seeking any information such as a possible forwarding address on file with the Post Office.

24. Disciplinary Counsel ultimately determined that Mr. Barrett is currently living in Georgia, an independent state which was part of the former Soviet Union. He is teaching English there and living “in a small village in the Caucasus Mountains.”

25. In an email sent to colleagues on October 3, 2012, which was shared with the ADO by Ms. Reilly of Legal Eagles, Mr. Barrett asked forgiveness for his “sudden departure” from practice and stated in part:

I have had several posts that required me to take an oath to support and defend the Constitution . . . I began to feel that being an attorney I was unable to live up to my oath, and by continuing to practice law, I was part of the corrupt sham . . . . I may not be able to defend [the Constitution], but I can refuse to participate in its perversion. I could walk away. And I did. So I closed down my law office.

26. Having Mr. Barrett’s email for the first time as a result of Ms. Reilly’s information, Disciplinary Counsel sent an email to Mr. Barrett on November 27, 2012, stating in part:

As you know, our office has a complaint from Maria Martin that is pending against you. You sent us a letter indicating your desire to resign from the practice of law. However, not only does that letter not comply with the Supreme Court Rules governing resignation, you never responded to the substance of Ms. Martin’s complaint.

We have made every attempt to contact you and give you an opportunity to be heard. I do not have a physical address or phone number for you; only this email. Please get in touch with me immediately regarding your pending disciplinary matter.

27. On November 28, 2012, Disciplinary Counsel filed a Motion for Alternative Service requesting that the ADO be allowed to serve the Notice of Charges via email. The motion was granted on November 30, 2012.

28. On December 5, 2012, a Notice of Charges was issued. It was sent via certified mail to the last known address and also emailed to Mr. Barrett. The certified letter was never delivered and was returned to the ADO.

29. On December 9, 2012, Mr. Barrett responded to Disciplinary Counsel's email of November 28<sup>th</sup>. He stated as follows:

Ms. Greene,

I am sorry for the delay in responding. I am indeed currently living in the country of Georgia. Email is the best way to contact me.

I attempted to close down my office in an efficient and expeditious manner. Unfortunately, a court appearance was (allegedly) missed. For that I am sorry.

I do not intend on practicing law. I would respectfully request permission to resign, without formal disciplinary proceedings. Alternatively, what would you suggest? What would be the normal penalty for what is alleged? Obviously a period of probation or something similar would be inappropriate, since I am no longer practicing law. Is it possible to come to some sort of resolution, short of a formal hearing or admission of misconduct?

Thank you for your consideration.

Timothy Barrett

30. Disciplinary Counsel responded, asking that Mr. Barrett confirm receipt of the Notice of Charges.
31. On December 10<sup>th</sup>, Disciplinary Counsel again wrote to Mr. Barrett suggesting a telephone conference and further stating:

Resigning while a disciplinary matter is pending is not a straightforward process. I can explain that more to you when we (hopefully) talk.

The more efficient alternative is to consent to some form of discipline (short of a hearing), have that approved, and then you could resign without any active disciplinary matters.

32. From approximately December 14, 2012, through December 16, 2012, Disciplinary Counsel and Mr. Barrett emailed back and forth regarding when to speak by phone. Mr. Barrett did not respond to Disciplinary Counsel's last email, which was sent on December 16, 2012.

33. Disciplinary Counsel has continued to keep Mr. Barrett apprised of the status of this matter via email. A copy of the January 14, 2013, letter requesting that a hearing panel be appointed was forwarded to him on the same date.
34. Disciplinary Counsel also forwarded a copy of the suspension order issued by the Supreme Court on February 11, 2013.

## II. RULINGS OF LAW

The Professional Conduct Committee concludes that there is clear and convincing evidence that Mr. Barrett has violated the following Rules of Professional Conduct: New Hampshire Rules of Professional Conduct 1.3, 1.4, 1.16(d), and 8.1.<sup>1</sup> This conclusion is consistent with the findings of the Hearing Panel Report.

### **Rule 1.3: Diligence**

35. Factual findings set forth above are incorporated by reference.
36. Rule 1.3 states as follows:

A lawyer shall act with reasonable diligence and promptness in representing a client.
37. Mr. Barrett breached his duty under Rule 1.3 by failing to undertake any work on Ms. Martin's matter, by failing to appear at his scheduled June 12, 2012, meeting with her, and by failing to appear at the hearing in family court scheduled for June 18, 2012.
38. There is clear and convincing evidence that Mr. Barrett's conduct in this respect constitutes a violation of Rule 1.3.

---

<sup>1</sup> Rule 8.4(c) states that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." A knowing or intentional state of mind is a factual predicate for a Rule 8.4(c) violation. *See, e.g., In re Clark*, 207 Ariz. 414, 417 (2004); *see also* Rule 1.0(d) (defining fraud as requiring a "purpose to deceive.") Upon further review and investigation, Disciplinary Counsel has determined that there is not clear and convincing evidence that Mr. Barrett's conduct violated Rule 8.4(c), as originally charged.

**Rule 1.4: Communication**

39. Factual findings set forth above are incorporated by reference.

Rule 1.4 states as follows:

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

40. Mr. Barrett breached his duty under Rule 1.4 by failing to appear for his June 12, 2012, meeting with Ms. Martin; failing to appear at the June 18, 2012, hearing; and failing in both instances to inform Ms. Martin of his inability (or unwillingness) to appear.

41. Mr. Barrett further breached his duty under Rule 1.4 by failing to respond to Ms. Martin's email and many phone calls following the June 18 hearing.

42. There is clear and convincing evidence that Mr. Barrett's conduct in this respect constitutes a violation of Rule 1.4.

**Rule 1.16(d): Declining or Terminating Representation**

43. Factual findings set forth above are incorporated by reference.

44. Rule 1.16(d) states as follows:

- (d) As a condition to termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice of 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. The lawyer may retain papers relating to the client to the extent permitted by law.

45. Mr. Barrett breached his duty under Rule 1.16(d) by failing to give Ms. Martin any notice of his intent to withdraw in advance of the June 18, 2012, hearing, thus leaving her without representation at that hearing.
46. Mr. Barrett also breached his duty under Rule 1.16(d) by failing to return Ms. Martin's file to her.
47. There is clear and convincing evidence that Mr. Barrett's conduct in this respect constitutes a violation of Rule 1.16(d).

**Rule 8.1: Bar Admission and Disciplinary Matters**

48. Allegations set forth above are incorporated by reference.
49. Rule 8.1 states as follows:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
  - (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or
  - (c) fail to attend a hearing when ordered to do so by a disciplinary authority.
50. Mr. Barrett has breached his duty to cooperate with the ADO by failing to respond to its lawful requests for information.
  51. There is clear and convincing evidence that Mr. Barrett's conduct in this respect constitutes a violation of Rule 8.1.

### III. SANCTION ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* (1992) ("*Standards*") support the conclusion that Mr. Barrett should receive a public censure. Under the circumstances, this sanction would serve the purposes of attorney discipline. 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*, 156 N.H. 613, 621 (2007)); *Standards* § 3.0. The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner's Case*, 158 N.H. at 303. Once the baseline sanction is determined, the Court then looks to the fourth and final part of the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *Id.*

Under the first prong of the analysis, Mr. Barrett violated his duty to act diligently and promptly with respect to Ms. Martin, and he failed to communicate with her regarding the status of her matter and his availability to represent her interests. Mr. Barrett also failed to properly withdraw from his representation of Ms. Martin, and he misrepresented that Legal Eagles held her client file when in fact Mr. Barrett had not delivered her file to that entity.

With respect to the second prong of the sanction analysis, the bulk of Mr. Barrett's misconduct appears to be the product of negligence. As he states in his email dated December 9, 2012, he attempted to wind down his practice and withdraw properly, but missed Ms. Martin's June 18 hearing through error. Mr. Barrett's statement that he had delivered Ms. Martin's file to Legal Eagles may have reflected his original intention at the time he wrote the letter dated June 26, 2012, but it was at the very least a negligent misrepresentation.

As to the third prong of the analysis, Mr. Barrett's conduct caused some actual and potential injury to Ms. Martin. Ms. Martin was stressed and anxious during the June 18, 2012, hearing as a result of having to appear *pro se*. As an unrepresented litigant, she was at serious risk of an adverse ruling. Ms. Martin received less than the child support she requested, but, overall, found that the judge treated her fairly.

In conjunction with the foregoing assessment, the *Standards* offer material guidance in determining a baseline sanction. Relevant provisions set forth below appear at *Standards* § 4.4,

Lack of Diligence:

- 4.41 Suspension is generally appropriate when:
  - (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
  - (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
- 4.42 Reprimand<sup>2</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.
- 4.43 Admonition<sup>3</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.

---

<sup>2</sup> Section 4.43 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

In this case, Mr. Barrett's misconduct did not involve a pattern of neglect nor, taken in its totality, did it appear to be knowing or intentional. It was negligent conduct that caused actual and potential harm to Ms. Martin. Accordingly, the baseline sanction in this case should be a public censure. *Standards*, § 4.42. Having determined a baseline sanction, the remaining question is whether there are aggravating or mitigating circumstances that might affect the ultimate sanction.

The only aggravating factor in this case is Mr. Barrett's failure to comply with the ADO's requests for information. *Standards*, § 9.22. Although he sporadically communicated with the ADO, he left the jurisdiction without informing the New Hampshire Bar Association of his whereabouts and has never responded to the substance of Ms. Martin's complaint.

Mitigating factors in this case include absence of a dishonest motive, absence of a prior disciplinary record, and inexperience in the practice of law. While not "restitution," *per se*, Mr. Barrett did return to Ms. Martin her entire retainer. *Standards*, § 9.32.

In short, it appears that Mr. Barrett, newly admitted to the Bar, made a sudden, and rather drastic, life decision to stop practicing law and leave the country. (By the tone of his October 12, 2012, email to colleagues, and his later emails to Disciplinary Counsel, his move and cessation of practice may be permanent.) He attempted to wind down his practice, but missed Ms. Martin's June 18 hearing, negligently violated other duties owed to her, and caused actual and potential harm. Under such circumstances, a public censure would serve the purposes of attorney discipline. In issuing a public censure, the Committee notes and is especially mindful of the fact that Mr. Barrett is no longer practicing law in this State.

---

<sup>3</sup> Section 4.44 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

#### **IV. SANCTION**

Having made the aforementioned findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is a public censure. The Committee's recommended sanction is in accord with the purposes of attorney discipline. *See, e.g., Conner's Case*, 158 N.H. 303 (2009); *Richmond's Case*, 152 N.H. 155, 159-60 (2005). This sanction is also in accord with the *ABA Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*"). The purpose of the Court's disciplinary power is "not to inflict punishment but rather to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *Grew's Case*, 156 N.H. 361, 365 (2007) (quotation and citation omitted).

#### **V. COSTS**

The Respondent shall pay all costs associated with the investigation and prosecution of this matter.

#### **VI. CONCLUSION**

For all of the above reasons, the Professional Conduct Committee sanctions Mr. Barrett with a public censure for violating New Hampshire Rules of Professional Conduct 1.3, 1.4, 1.16(d), 8.1.

**VII. RIGHT TO APPEAL**

Pursuant to Supreme Court Rule 37(A)(III)(d)(2)(D)(4)(A), Mr. Barrett has the right to appeal to the New Hampshire Supreme Court. *See also* Supreme Court Rule 37(3)(c), last paragraph.

May 1, 2013

  
\_\_\_\_\_  
David M. Rothstein  
Chair

Distribution:

Sara S. Greene, Disciplinary Counsel  
Timothy J.A. Barrett, (via email)  
File