

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Carron, Patrick M. advs. Rejeanne M. Bitote #11-028

REPRIMAND

On May 21, 2013, the Professional Conduct Committee reviewed the Joint Motion to Permit Waiver of Formal Proceedings and for Final Ruling. The Professional Conduct Committee further reviewed the Stipulation as to Facts, Violations, and Recommended Sanction 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, Richard D. Sager, and Martha Van Oot. Heather E. Krans, and Lisa Wellman-Ally were absent.

The Professional Conduct Committee granted the Joint Motion to Permit Waiver of Formal Proceedings and for Final Ruling. 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 Stipulation supports the following factual findings by clear and convincing evidence:

1. Mr. Carron is an attorney licensed to practice law in New Hampshire. Mr. Carron was admitted to practice on May 30, 2001. At all times material to this proceeding,

Mr. Carron operated his law office at 13 Chapel Street, Concord, New Hampshire 03301.

2. Mr. Carron has not been admitted to practice law in any other jurisdiction.
3. Mr. Carron has no previous disciplinary history.
4. Rejeanne Bitote, the complainant in this matter, contacted Mr. Carron in October of 2010, and asked him to represent her in filing for an annulment of her marriage. Ms. Bitote stated that her husband married her solely for immigration benefits and that, unbeknownst to her, he was already married and had children with another woman.
5. Ms. Bitote and Mr. Carron met on two occasions to discuss her case. Ms. Bitote paid Mr. Carron \$220.00 in cash at their October 20, 2010 meeting. She paid him another \$210.00 in cash at their November 5, 2010 meeting to cover the legal fees and filing fee.
6. Mr. Carron placed these amounts in his locked, fireproof, secured cabinet in his law office for safe-keeping. He did not deposit the funds into his client trust account.
7. Among the documents Ms. Bitote provided to Mr. Carron were three documents in French. Ms. Bitote also provided what purported to be translations of those documents, which she claimed proved that her husband was already married, had children, and had lied to her at the time of their marriage.
8. The translations seemed incomplete to Mr. Carron, who wanted a full and accurate translation for purposes of determining whether to go forward with the annulment. On November 12, 2010, he contacted a friend who had helped Mr. Carron translate in the past. This friend informed Mr. Carron she could not do the work until mid-December 2010.
9. Mr. Carron called Ms. Bitote to inform her of where the matter stood. He left a voicemail. Ms. Bitote does not recall receiving any such voicemail.
10. Matters became slightly delayed because Mr. Carron's mother-in-law died on December 28, 2010, and he traveled to Vermont to attend the funeral and deal with family matters.
11. Mr. Carron returned to Concord around January 6, 2011, but shortly thereafter his back went out. He was bedridden for several weeks.
12. Mr. Carron recalls that he and Ms. Bitote played "phone tag" during December 2010 and January 2011. He believed that Ms. Bitote's voicemail messages sounded as though she was equivocating about the annulment. He wanted to meet with her in person to determine whether she intended to proceed with the annulment.

13. Ms. Bitote filed a grievance with the Attorney Discipline Office (“ADO”) on February 16, 2011, alleging that Mr. Carron accepted her money, did not file the annulment, and had not been responsive.
14. Mr. Carron received a copy of Ms. Bitote’s grievance and immediately called her. He left her a voicemail. Ms. Bitote never returned Mr. Carron’s call.
15. Having received no return call, Mr. Carron sent Ms. Bitote a letter on February 22, 2011, enclosing a check for the full \$430.00 that she had paid him. He sent it to Ms. Bitote’s post office box, which she had indicated was her mailing address, via first class mail.
16. The next day, February 23, 2011, Mr. Carron sent Ms. Bitote all of her documents via certified mail. He sent the documents to her post office box but they were never claimed. The Postal Service advised Mr. Carron to pick up the package. He picked it up from the Concord Post Office on March 14, 2011.
17. Ms. Bitote never closed her post office box.
18. Mr. Carron noted in correspondence to the ADO that as of March 23, 2011, Ms. Bitote had not cashed the check he had sent.
19. Mr. Carron then decided to send the documents and the check to Ms. Bitote’s home.
20. Ms. Bitote received her documents and the check at her home on March 25, 2011.

II. RULINGS OF LAW

The Professional Conduct Committee concludes that there is clear and convincing evidence that Mr. Carron has violated the following Rules of Professional Conduct by clear and convincing evidence:

21. Mr. Carron’s conduct as described herein raises questions under New Hampshire Rules of Professional Conduct 1.15(a) and 1.15(d).

Rule 1.15: Safekeeping Property

22. Factual findings set forth above are incorporated by reference.
23. Rule 1.15(a) and 1.15(d) state as follows:

- (a) Property of clients or third persons which a lawyer is holding in the lawyer's possession in connection with a representation shall be held separate from the lawyer's own property. Funds shall be deposited in one or more clearly designated trust accounts in accordance with the provisions of the New Hampshire Supreme Court Rules. All other property shall be identified as property of the client, promptly upon receipt, and safeguarded.
 - (b) 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.
24. Pursuant to Rule 1.15, Mr. Carron owed a duty to Ms. Bitote, for whose benefit he was holding funds in trust, to “deposit into a client trust account legal fees and expenses that have been paid in advance.”
25. Mr. Carron breached this duty by failing to deposit the funds he received from Ms. Bitote into his client trust account.
26. Upon notice that Ms. Bitote had filed a grievance, and upon learning for the first time that she wanted her money and documents returned to her, Mr. Carron promptly undertook to effectuate that return.

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., Coffey’s Case*, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). “The sanction must take into account the severity of the misconduct.” *Id.*

Although the Court has not adopted the American Bar Association’s *Standards for Imposing Lawyer Sanctions* (2005) (“*Standards*”), it looks to them for guidance. *Coffey’s Case*, 152 N.H. at 513. 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.” *Standard* § 3.0; *Coffey’s Case*, 152 N.H. at 513.

The first three steps create the framework for characterizing the misconduct and determining a baseline sanction. *See Wolterbeek's Case*, 152 N.H. 710, 714 (2005) (“In applying these factors, the first step is to categorize the respondent’s misconduct and identify the appropriate 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. *See id.* (“After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.”).

Under the first prong of the analysis, Mr. Carron violated a duty to his client to properly handle the funds entrusted to him. He failed to place the funds in a client trust account as required by Rule 1.15.

The second prong requires analysis of Mr. Carron’s state of mind. Mr. Carron’s mental state is best characterized as negligent. He stated to Disciplinary Counsel that at the time that he placed Ms. Bitote’s cash in a secure, fireproof cabinet, he failed to appreciate that the Rules mandate such funds be placed in a client trust account. Mr. Carron believed that all that was required was that Ms. Bitote’s funds be kept safe and be kept separate from his own.

Mr. Carron has reviewed Rule 1.15 carefully and now understands its requirements.

The third prong of the analysis requires an examination of the harm caused by Mr. Carron’s misconduct. Mr. Carron acknowledges and now understands that there was some potential harm associated with his handling of his client’s \$430 over a four-month period. However, no harm ensued as a result of Mr. Carron’s failure to place Ms. Bitote’s funds in a client trust account. He sent her the full amount of her payment within five days of first learning that Ms. Bitote desired a refund, and upon discovering that Ms. Bitote was apparently not picking up mail at her Post Office

Box, Mr. Carron sent the check to her home. Ms. Bitote received her full refund on March 25, 2011.

The applicable standard for a Rule 1.15 violation is § 4.1 of the *Standards*, entitled “Failure to Preserve the Client’s Property.” Section 4.1 provides, in pertinent part:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

Considering the facts in this case, § 4.14 of the *Standards* is the most applicable. The *Standards* use the term “admonition,” which in New Hampshire is the equivalent of a reprimand.

Based upon the first three prongs of the test, as well as the guidance provided by § 4.14, a reprimand appears to be the appropriate baseline sanction.

There are no aggravating factors in this case. *See Standards* § 9.22(a).

There are several mitigating factors in this case. Mr. Carron has no prior disciplinary history and had no dishonest or selfish motive. He made a good faith effort to make restitution and was cooperative with the ADO during the investigative process. He has expressed remorse for what appears to be a miscommunication with Ms. Bitote and attempted to refund the money promptly upon receiving notice that she wanted a refund.

IV. SANCTION

Having made the aforementioned findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is a reprimand, and voted to accept the stipulated sanction accordingly. The Committee's recommended sanction is in accord with the purposes of attorney discipline. *See, e.g., Conner's Case*, 158 N.H. 299, 303 (2009); *Richmond's Case*, 152 N.H. 155, 159-60 (2005). This sanction is also in accord with the *Sanctions*. 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 reprimands Patrick M. Carron for violating Rules of Professional Conduct 1.15(a) and 1.15(d).

VII. RIGHT TO APPEAL

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

June 27, 2013



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Patrick M. Carron, Esquire
Rejeanne M. Bitote
File