

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
Mary Elizabeth Tenn
* non attorney member
Holly B. Fazzino, Administrator

LD-2013-0007, In the Matter of Scott A. Wanner

PUBLIC CENSURE

In accordance with Supreme Court Rule 37(12), on September 27, 2013, the New Hampshire Supreme Court ruled that the above captioned reciprocal discipline matter from the Grievance Commission of the Maine Board of Overseers of the Bar warrants the issuance of a public censure and remanded the matter to the Professional Conduct Committee for the issuance of a public censure.

I. FACTS

Scott A. Wanner, Esquire, of Portsmouth, New Hampshire is duly admitted to practice law in the State of Maine and subject to the Maine Bar Rules. He was admitted to the Maine Bar on May 14, 2002. He was suspended administratively on October 22, 2012 due to a failure to complete his annual registration requirements. Mr. Wanner was admitted to the New Hampshire Bar on February 2, 2006.

On March 18, 2011, Robert M.A. Nadeau, an attorney at Nadeau Legal, PLLC in Bedford, NH, submitted a complaint against Mr. Wanner to the Board of Overseers. In due course, the Board of Overseers, through counsel, filed a formal disciplinary petition dated November 26, 2012 alleging that Mr. Wanner engaged in misconduct in violation of Maine Bar Rule 3.4(a) through (f). Panel C of the Grievance Commission (the "Panel") was convened on April 30 and May 10, 2013, and made the following findings and rulings.

Mr. Wanner was hired as an associate in January 2007 by Nadeau Legal, PLLC.

Approximately one month later, Mr. Wanner had a sexual encounter with a woman, LF, who was Attorney Nadeau's on-again-off-again fiancé and who was also an on-again-off-again employee of the firm. Mr. Wanner was aware of Attorney Nadeau's lengthy and public relationship with LF. He described the February 2007 encounter as a one-time indiscretion that took place when he believed that the relationship between her and Attorney Nadeau had ended. Mr. Wanner left the firm in October 2007 without ever disclosing his encounter with LF to Attorney Nadeau.

The panel found that after Mr. Wanner had the encounter with LF, he established an attorney-client relationship with Attorney Nadeau when he was asked to gather evidence in connection with Attorney Nadeau's defense of a protection from abuse complaint filed against him by LF. Mr. Wanner also assisted as a witness at the hearing, although the case was settled after only brief testimony from him. Both the arc of events and Mr. Wanner's 2007 case status reports, admitted into evidence without objection, show that Mr. Wanner accounted for the time spent on behalf of Attorney Nadeau whom he described as his client.

II. RULINGS OF LAW

Maine Bar Rule 3.4(a)(1) requires a lawyer to disclose to a prospective client any relationship or interest of a lawyer that might reasonably give rise to a conflict of interest and impose a continuing duty to disclose to the client any information that might give rise to such a conflict of interest after commencement of representation. Maine Bar Rule 3.4(b)(1) prohibits a lawyer from commencing representation or continuing to represent a client if that representation would involve a conflict of interest. A "conflict of interest" during representation would arise if "there is a substantial risk that the lawyer's representation of one client would be materially and adversely affected by the lawyer's duty to another current client, to a former client, or to a third person, or by the lawyer's own interest." Maine Bar Rule 3.4(b)(1).

Maine Bar Rule 3.4(f)(1) prohibits a lawyer from commencing representation "if there is a substantial risk that a significant personal relationship of the lawyer will materially and adversely affect the lawyer's representation of [a] client."

This is the type of situation that Maine Bar Rules 3.4(a)(1), 3.4(b)(1) and 3.4(f)(1) were designed to avoid. Despite his brief tenure at Nadeau Legal, Mr. Wanner should have known that his involvement with LF was a "significant personal relationship" that could have compromised

his client's defense in the protection from abuse matter. Maine Bar Rule 3.4 requires an attorney to determine whether he or she should accept representation in the first place on behalf of a client and thereafter to reevaluate continuously whether a conflict of interest has emerged or evolved to the point where disclosure and withdrawal are required.

The panel found that Mr. Wanner had an obligation to disclose to Attorney Nadeau that he had a personal relationship with LF which might give rise to a conflict of interest; or, in the alternative, Mr. Wanner should have refused to become involved in the case if he chose not to disclose this information to Attorney Nadeau. Mr. Wanner's failure to do either violated Maine Bar Rule 3.4(a)(1), 3.4(b)(1) and 3.4(f)(1).

III. ANALYSIS

Maine Bar Rules 3.4(a)(1), 3.4(b)(1), and 3.4(f)(1) require that the client be informed of any and all conflicts, whenever they arise. Attorney Nadeau was the client. The impact on Attorney Nadeau's interests is irrelevant to Mr. Wanner's obligation to disclose his relationship with LF, so that his client could make his own decisions about the Respondent's representation. The Code of Professional Responsibility specifically requires attorneys to uphold their responsibilities to clients and the courts. The duty is on the lawyer to exercise punctilious care when complying with rules regarding disclosure. An attorney may explain to the client why he or she believes that no conflict exists. Without disclosure, however, the client has no opportunity to consider and decide for him or herself. The panel does not believe that Mr. Wanner acted with malice, but in attempting to prevent personal embarrassment or awkwardness, he deprived his client of information he was duty-bound to reveal. The panel found that a Public Reprimand is the appropriate sanction, which was issued on June 14, 2013.

IV. SANCTION

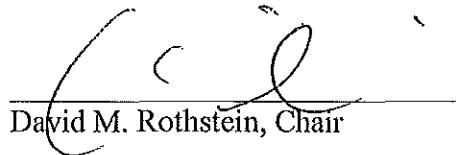
The Professional Conduct Committee deliberated the matter on August 20, 2013, and recommended to the Court that for purposes of reciprocal discipline, a sanction of public censure is the equivalent to a public reprimand imposed by the State of Maine Grievance Commission, Board of Overseers. The Court concluded that a public censure is warranted, and the Committee hereby issues a Public Censure.

V. COSTS

Mr. Wanner shall be responsible for the expenses incurred by the Committee in the investigation and enforcement of this disciplinary matter. *See* Sup. Ct. R. 37(19)(b). Costs can include, but are not limited to: copying and costs associated with the publication of the censure. The assessment of costs shall become final unless Mr. Wanner responds in writing, within thirty (30) days of receipt of the Committee's statement of expenses, listing each disputed expense and explaining the reasons for disagreement. Sup. Ct. R. 37(19)(b). The Committee may resolve the disagreement, or enforce the assessment of costs by petition to the superior court in any county in the state. Sup. Ct. R. 37(19)(b).

The Committee may file a copy of the final assessment of costs with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures. *See* Sup. Ct. R. 37(19)(c). Mr. Wanner shall be responsible for any costs incurred as a result of the Attorney Discipline Office's collection efforts.

October 7, 2013


David M. Rothstein, Chair

Distribution:

Scott A. Wanner, Esquire
Janet F. DeVito, General Counsel
File

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