

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Hassan, Susan H. advs. Attorney Discipline Office # 13-015*

REPRIMAND

On October 15, 2013, the Professional Conduct Committee (the “Committee”) deliberated the above-captioned matters. Members present included David M. Rothstein, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, Thomas P. Connair, Alan J. Cronheim, Elaine Holden, Heather E. Krans, Richard D. Sager, Martha Van Oot and Mary Elizabeth Tenn. Richard H. Darling was absent.

The Committee reviewed the record, including the Assented-To Motion to Permit Waiver of Formal Proceedings and for Final Ruling, and the Stipulation as to Facts, Violations and Sanction. Upon consideration, the Committee voted to grant the Assented-To Motion to Permit Waiver of Formal Proceedings.

The Committee determined that the record supports the issuance of a Reprimand in this matter.

1. STIPULATION AS TO FINDINGS OF FACT

The Committee voted to accept the Stipulation as to the Facts dated September 18, 2013, by clear and convincing evidence, as follows:

1. Susan H. Hassan is an attorney licensed to practice law in New Hampshire. Ms. Hassan was admitted to practice on October 30, 2000.
2. Ms. Hassan was admitted to practice law in Massachusetts on June 11, 2001.
3. At all times material to this proceeding, Ms. Hassan operated her law office as Hassan Law Firm, PLLC, 17 S. State Street, Unit 1, Concord, New Hampshire 03301.

Kula Matter (#11-051)

4. Ms. Hassan represented David Kula in probate court in 2006. Mr. Kula was executor of his father's estate.
5. Mr. Kula's wife, Mary Kula, filed a grievance with the Attorney Discipline Office (the "ADO") dated April 7, 2011. Ms. Kula alleged that Ms. Hassan had filed an IRS Form 1099 on the Kulas' behalf in which she mistakenly reported as interest income approximately \$9,000 in life insurance proceeds. The IRS deemed that this amount was under-reported income, and, in July 2010, sought \$2,572.01 in taxes from the Kulas.
6. Ms. Kula believed the \$9,000 mistakenly reported by Ms. Hassan as interest income was from her father-in-law's life insurance proceeds, of which Mr. Kula was a beneficiary. Life insurance proceeds are generally not taxable as income.
7. In April 2012, Ms. Kula discovered that it was her accountant, and not Ms. Hassan who had filed the 1099 at issue. Ms. Kula updated the ADO in a letter dated April 7, 2012, stating: "[T]he reported 'income' was actually not life insurance proceeds at all, but deductible mortgage interest on a jointly-owned residence that had been reported in my late father-in-law's name and was supposed to be a 'wash' on our return. Our former accountant is going to correct that mistake. I am terribly embarrassed by this turn of events and apologize to Attorney Hassan for essentially having accused her of making an error she did not make."
8. While eager to correct the previous misstatement to the ADO that Ms. Hassan had filed the 1099 at issue, Mr. and Mrs. Kula maintained that Ms. Hassan never returned their many calls regarding the tax issue and never followed up on it as they requested. This lack of communication began in the summer of 2010 and continued for approximately nine months thereafter.
9. Ms. Hassan admits that although she at some point told the Kulas she would investigate and report back on the 1099 at issue, she never did. She also failed to return her clients' phone calls.
10. Ms. Hassan expressed remorse in her July 5, 2011 response to the ADO. In that letter, she stated that "it is with great embarrassment and regret that I did not follow through on this issue with the insurance company as I had indicated originally for my client. I do apologize for any grief or aggravation I may have caused them and do not blame them for feeling this way."

11. Ms. Hassan states that the matter simply slipped her mind at a time when her practice was very busy.

Carlucci Matter (#13-015)

12. In 2008, Ms. Hassan represented Donna Carlucci in litigation involving Ms. Carlucci and her (now ex) husband's sale of real property. Merrimack Superior Court Case No. 08-C-443 (originally Carroll Superior Court Case No. 04-C-079). The lawsuit against Ms. Carlucci was filed on July 7, 2004.
13. In November 2012, Ms. Carlucci sued Ms. Hassan for malpractice.
14. Pursuant to RSA 311, the Merrimack County Superior Court Clerk informed the ADO on December 11, 2012 of the malpractice lawsuit against Ms. Hassan.
15. General Counsel ultimately determined that the underlying conduct by Ms. Hassan occurred more than two years before the ADO received the referral from the Superior Court, and thus, any disciplinary action was barred by the limitations period in Supreme Court Rule 37A(I)(i).
16. As set forth more fully below, although any disciplinary action as to Ms. Hassan's conduct in the Carlucci matter was time-barred, General Counsel forwarded the matter to the Complaint Screening Committee (the "CSC") because Ms. Hassan failed to timely respond to the ADO's requests for information.
17. The matter was ultimately docketed,¹ and the ADO sent Ms. Hassan a letter dated March 18, 2013, which informed her that the matter had been docketed, and as such, she was "required to submit" her response within 30 days of the letter pursuant to Supreme Court Rule 37A(II)(a)(5)(C). The March 18, 2013 letter also warned her that a failure to cooperate with the ADO could result in a Rule 8.1(b) violation.
18. Ms. Hassan did not respond to the March 18, 2013 letter within 30 days as required.
19. On April 18, 2013, General Counsel sent Ms. Hassan an "immediate reply" letter, requesting that she give the matter her "immediate attention," and warning her that if she failed to respond, General Counsel's recommendation would be to forward the matter to Disciplinary Counsel for a possible Rule 8.1(b) violation.

¹ Then-General Counsel Thomas Trevethick docketed the matter, likely not having noticed that it was barred by the limitations period in Rule 37A(I)(i)(1)(B).

20. On April 22, 2013, Disciplinary Counsel corresponded with Ms. Hassan concerning the Kula matter (#11-051), and Ms. Hassan replied via email later that day. Ms. Hassan stated that she “plan[ned] on responding” to the Carlucci matter but was dealing with a “family issue.”
21. Disciplinary Counsel shared the substance of this communication with General Counsel.
22. The May 3, 2013 CSC Meeting was cancelled for reasons unrelated to Ms. Hassan and rescheduled for June 14, 2013.
23. On May 9, 2013, Ms. Hassan emailed General Counsel and stated that she had her response ready in the Carlucci matter but wanted to “talk with [General Counsel] about it.”
24. General Counsel responded the same day.
25. The ADO did not receive Ms. Hassan’s response to the ADO’s “immediate reply” letter dated April 18, 2013 until she submitted her written response on May 20, 2013 concerning the Carlucci matter.
26. The CSC convened for its June 14, 2013 meeting.
27. During the rescheduled CSC meeting, General Counsel recommended that the Carlucci matter be dismissed with a warning because: (1) the underlying acts by Ms. Hassan in the Carlucci matter were barred by the limitations period, and (2) though untimely, Ms. Hassan eventually responded to the ADO’s requests for information, via email and in her letter of May 20, 2013.
28. The CSC voted to forward the Carlucci matter to Disciplinary Counsel for a possible Rule 8.1(b) violation.
29. Since receiving the file, Disciplinary Counsel has learned that the “family issue” with which Ms. Hassan was dealing during the period her responses were due to the ADO was her father’s terminal illness. Ms. Hassan’s father is terminally ill and battling cancer.
30. Since January 2013, Ms. Hassan has travelled several times to Virginia to care for her father. Her failure to respond in a timely matter to the ADO was in part due to her anxiety concerning her father and her choice to prioritize seeing him during this period.

II. STIPULATION AS TO RULINGS OF LAW

The Committee voted to accept the Stipulation that Ms. Hassan violated Rule of Professional Conduct 1.4: Client Communication; Rule 8.1(b): Failure to Cooperate, and Rule

8.4(a): General Rule, by clear and convincing evidence.

Rule of Professional Conduct 1.4: Client Communication

31. The facts set forth above are incorporated by reference.
32. Ms. Hassan owed David Kula a duty to keep him reasonably informed about the status of his matter and to promptly comply with reasonable requests for information. N.H. R. Prof. Conduct 1.4(a).
33. Ms. Hassan breached that duty by: (1) failing to investigate the 1099/tax issue per Mr. Kula's request, despite Ms. Hassan's statement to him that she would do so; and (2) by failing to communicate with the Kulas in any form, over a period of about nine months, regarding the tax issue.
34. Ms. Hassan's conduct in this regard constitutes clear and convincing evidence of a violation of Rule of Professional Conduct 1.4.

Rule of Professional Conduct 8.1(b): Failure to Cooperate

35. The facts set forth above are incorporated by reference.
36. Rule of Professional Conduct 8.1(b) prohibits a lawyer in connection with a disciplinary matter from knowingly failing to respond to a lawful demand for information from a disciplinary authority.
37. Ms. Hassan eventually responded to the ADO's letters dated March 18, 2013 and April 18, 2013, but her responses via email and via her May 20, 2013 letter were not timely. Ms. Hassan's untimely responses to the ADO's requests for information constitute clear and convincing evidence of a violation of Rule of Professional Conduct 8.1(b).

Rule of Professional Conduct 8.4(a)

38. Having found the foregoing violations, there is clear and convincing evidence that Ms. Hassan's conduct, as described herein, violated Rule of Professional Conduct 8.4(a).

III. ANALYSIS

The purpose of the Court's disciplinary power is "protecting the public, maintaining public confidence in the bar, preserving the integrity of the legal profession, and preventing similar conduct in the future." *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 (stating that "[i]n 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 part of the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *See id.*

Under the first prong of the analysis, Ms. Hassan violated duties owed to her client, to the legal system, and to the profession by the lack of communication with her client and by her failure to timely respond to the ADO's letters. *See Standards* §§ 4.0, 6.0, and 7.0.

Under the second prong of the sanction analysis, Ms. Hassan's mental state was negligent in her failure to communicate with the Kulas regarding the status of their tax issue. Although Ms. Hassan failed to respond to the ADO's letters regarding the Carlucci matter within the deadlines set, she ultimately responded in time for the rescheduled CSC meeting and was in contact with the ADO via email prior to that point. During the relevant time frame, Ms. Hassan was also dealing with her father's terminal cancer and travelling extensively to his home in Virginia.

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Ms. Hassan's misconduct. Ms. Hassan's failure to maintain proper communication with the Kulas caused them slight harm because, had Ms. Hassan communicated with them sooner, the Kulas would have been able to correct the problem with their tax form sooner. However, Ms. Hassan did not cause the incorrect 1099 form to be filed, contrary to her clients' initial belief at the time the grievance was filed. Ms. Hassan additionally caused minor harm to the legal system and profession by failing to timely provide information as requested by the ADO. Her delayed responses required the ADO to send multiple requests for information and to proceed in its investigation without the benefit of Ms. Hassan's version of events until she finally submitted her response. However, she eventually did respond to the ADO's requests via email and by letter, in time for the CSC meeting on June 14, 2013.

Having set forth the first three prongs, the *Standards* provide material guidance for determining a baseline sanction. Ms. Hassan's failure to communicate properly with her clients involved breaches of Ms. Hassan's duty to act with reasonable diligence and promptness in representing a client. Section 4.4 of the *Standards* provides, in pertinent part, as follows:

- 4.42 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.
- 4.43 Reprimand 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.
- 4.44 **Admonition² 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. (Emphasis added.)**

Ms. Hassan's failure to comply in a timely manner with the ADO's requests for information involved breaches of her duties owed as a professional. Section 7.0 of the *Standards* provides, in pertinent part:

- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 **Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system. (Emphasis added.)**

Next, the baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303. In this case, several aggravating factors are present, including Ms. Hassan's substantial experience in the practice of law, her multiple offenses, and her prior disciplinary record, which consists of a warning from the CSC on June 13, 2012 for similar Rule 1.4 concerns. *See Standards* § 9.22.

²The term "admonition," as used in the *ABA Standards*, is analogous to a reprimand in New Hampshire.

However, several mitigating factors are also present, including an absence of a dishonest or selfish motive, her personal/emotional problems, her character/reputation, and her remorse. *See Standards* § 9.32.

Such mitigating factors offset the aggravating factors present in this case. Thus, the circumstances in this case do not warrant departing from the baseline sanction of a reprimand.

A reprimand is proportional to the discipline imposed in other cases involving breaches of Rule 1.4 and Rule 8.1(b). *See Cox's Case*, 148 N.H. 559, 562-65 (2002) (reprimanding an attorney, in part, for a Rule 1.4 violation where the attorney failed to respond to the client's reasonable requests for information, mitigated by the attorney's reputation and a lack of dishonesty and deceit); *see also In re Schlemmer*, 870 A.2d 76, 77-82 (D.C. 2005) (reprimanding an attorney who violated Rules 1.3 and 1.4 when he failed to file an appeal and failed to inform his client of such, and also noting that a reprimand in that jurisdiction is a less severe disciplinary measure than a public censure but more severe than an informal admonition); *see also In re Panel Case. No. 19453*, 690 N.W.2d 716, 719-21 (Minn. 2005) (admonishing an attorney for violating Rules 1.3 and 1.4 by failing to keep her client reasonably informed about the case and noting that an admonition is the "least severe disciplinary sanction available" in that state); *see also Shah v. Miss. Bar*, 962 So. 2d 514, 520 (Miss. 2007) (noting that the attorney had previously received an admonition for violating Rules 1.4 and 8.1(b)); *see also Lawyer Disciplinary Bd. v. Beveridge*, 459 S.E.2d 542, 547-50 (W. Va. 1995) (admonishing an attorney for his violations of several rules, including Rules 1.4 and 8.1(b), all of which stemmed from the attorney's lack of organization and management).

IV. SANCTION


Accordingly, taking into consideration the four-part analysis set forth in the Standards and the purposes of attorney discipline in New Hampshire, the Committee hereby issues a Reprimand to Susan H. Hassan.

V. COSTS

The Committee accepts the Stipulation that Ms. Hassan agrees to pay 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 postage expenses. The assessment shall become final unless Ms. Hassan 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 matter, or enforce the assessment 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 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). Ms. Hassan shall be responsible for all costs incurred as a result of the Attorney Discipline Office's collection efforts.

November 1, 2013



David M. Rothstein, Chair

Distribution:

Sara S. Greene, Disciplinary Counsel
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File