

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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St. Hilaire, Daniel I. advs. Attorney Discipline Office #12-034
St. Hilaire, Daniel I. advs. Attorney Discipline Office #12-035

REPRIMAND

On January 20, 2015, the Professional Conduct Committee (“the Committee”) deliberated the Stipulation as to Facts, Violations and Sanction, as well as the Agreement to Pay Costs of Disciplinary Matter. Members present included David M. Rothstein, Chair, Elaine Holden, Vice Chair, Susan R. Chollet, Richard H. Darling, Mona T. Movafaghi, Georges J. Roy, David W. Ruoff, Richard D. Sager and Martha Van Oot. Heather E. Krans, Vice Chair, Peter Beeson and Margaret R. Kerouac were absent.

Having reviewed the Record, the Committee voted to accept the facts as stipulated, by clear and convincing evidence. The Committee also voted to accept the Rule violations as stipulated.

I. FINDINGS OF FACT

The Committee determined that the Record supports the following factual findings of the Hearing Panel by clear and convincing evidence:

1. Mr. St. Hilaire is an attorney licensed to practice law in New Hampshire. He was admitted to practice on November 13, 1997.

2. At all times material to this proceeding, Mr. St. Hilaire was a solo practitioner practicing law at 10 Green Street, Concord, New Hampshire 03301.
3. Mr. St. Hilaire has not been admitted to practice law in any other jurisdiction.
4. The Attorney Discipline Office's ("ADO") investigation in these matters was initiated upon receipt of a joint grievance filed by Wayne G. Sargent and Donna R. Craig on July 2, 2012. The grievances were identical and signed by both grievants but given separate docket numbers.
5. This disciplinary matter arises out of Mr. St. Hilaire's representation of Mr. Sargent (#12-035) and Ms. Craig (#12-034) in small claims matters against William Cate (now deceased).
6. The disputes among the parties began when Mr. Cate filed a small claim against Mr. Sargent in Concord District Court on April 1, 2010. Mr. Sargent and Ms. Craig are "companions," and they hired Respondent on April 30, 2010.¹ They paid Mr. St. Hilaire a \$3,000 retainer against which he billed hourly.
7. On behalf of Mr. Sargent, Respondent filed an answer and brought a counterclaim against Mr. Cate. Respondent also brought a new action against Mr. Cate on behalf of Ms. Craig. Both claims were filed as small claims. Mr. Cate proceeded *pro se*.
8. Mr. Cate alleged in his complaint that Mr. Sargent owed him \$3,000 for a roofing job Mr. Cate had performed, and that Mr. Sargent "stole" Mr. Cate's trailer, which contained Mr. Cate's tools.² Mr. Sargent disputed this, claiming that in fact Mr. Cate owed Mr. Sargent \$7,500 for site and demolition work performed by Mr. Sargent, and for repayment of a loan.³
9. Ms. Craig's separate small claims action alleged that Mr. Cate failed to finish a roofing job for her and owed her approximately \$2,800.⁴ In response to Ms. Craig's complaint, Mr. Cate responded that he had been fired by Ms. Craig because of Mr. Cate's dispute with her boyfriend, Mr. Sargent, and that she owed him \$1,000 for work he had completed on her roof.

¹ Mr. Sargent and Ms. Craig both signed an "hourly fee agreement" with Mr. St. Hilaire.

² Concord District Court, Case No. 10-SC-256.

³ Concord District Court, Case No. 10-SC-359.

⁴ Concord District Court, Case No. 10-SC-360.

10. The matters of Ms. Craig and Mr. Sargent appeared to Mr. St. Hilaire to essentially arise from one incident. According to Mr. Sargent and Ms. Craig, Mr. Cate was working on Ms. Craig's roof based on an oral contract between Mr. Sargent and Mr. Cate. The roofing work was payment for what Mr. Sargent claimed Mr. Cate owed him for work Mr. Sargent had previously performed for Mr. Cate.⁵
11. The small claims matters were consolidated and eventually went to mediation on July 28, 2010.
12. After mediation, Ms. Craig agreed to settle her case for \$1,000 in her favor, payable by Mr. Cate in \$50 monthly installments starting on October 1, 2010. Mr. St. Hilaire told Ms. Craig that he would assist her in enforcing the judgment if that became necessary.
13. Mr. Sargent's claim did not settle in mediation, but the parties did agree to arrange for the return of Mr. Cate's tool trailer (which was on Mr. Sargent's property) on the day following mediation. Mr. St. Hilaire planned to communicate with Mr. Cate and arrange for a day and time for Mr. Sargent and Mr. Cate to be available, as well as a third party witness, to retrieve the trailer from Mr. Sargent's property.
14. During August of 2010, Mr. Sargent called Mr. St. Hilaire to ask about the status of the trailer pick-up. Respondent eventually returned the call on September 17, 2010. During this call, Mr. St. Hilaire informed Mr. Sargent that the retainer was exhausted. Mr. Sargent asked for an itemized statement of billed time.
15. Not receiving an itemized bill over the next 5 weeks, Mr. Sargent followed up with a certified letter to Mr. St. Hilaire dated October 29, 2010, again asking for an itemized bill and stating [presumably at Ms. Craig's request] that "Donna [Craig] is also interested [in the itemized statement]." Over the following four months, however, Mr. St. Hilaire did not provide an itemized bill to either client or effectively communicate with Mr. Sargent about the retrieval of the trailer.

⁵ It was only when Mr. Sargent allegedly kept "discounting" Mr. Cate's hours put into the roofing job that Mr. Cate filed his action against Mr. Sargent. In other words, Mr. Sargent wanted Mr. Cate to pay him back by performing work on Ms. Craig's roof; Ms. Craig would pay for materials, and Mr. Cate would furnish unpaid labor as a form of paying Mr. Sargent back.

16. Mr. St. Hilaire acknowledges that it was his responsibility in the first instance to arrange the transfer of the trailer as agreed to by the parties. He became extremely busy during this time campaigning for his seat on the New Hampshire Executive Council. Mr. St. Hilaire claims he had many conversations with Mr. Cate regarding the trailer, from approximately July 20, 2010 and in the months that followed, but admits that he did not keep Mr. Sargent informed of these efforts or the status of the matter. Mr. St. Hilaire also attempted to have a police officer present for the trailer retrieval, but that involved a fee that he did not believe Mr. Sargent would want to pay. Mr. St. Hilaire offered to act as a third party witness for Mr. Sargent to effectuate the removal of the trailer but Mr. Sargent did not agree to this.
17. Around January 5, 2011, Ms. Craig emailed Mr. St. Hilaire, informing him that Mr. Cate had stopped making his monthly payments to her in satisfaction of the \$,1,000 judgment. She asked that Mr. St. Hilaire “file the necessary paperwork” to enforce the settlement amount, as he had agreed during the mediation to assist her with enforcement of the judgment if necessary. Ms. Craig also reminded Mr. St. Hilaire that she and Mr. Sargent were still awaiting an itemized bill.
18. Sometime in mid-February 2011, Mr. St. Hilaire stopped by Ms. Craig’s house. He told her that he would not be able to enforce her judgment until Mr. Sargent settled the trailer issue with Mr. Cate.
19. Mr. St. Hilaire reiterated this position when he eventually submitted an itemized bill to Mr. Sargent⁶ on February 23, 2011. In that letter, Mr. St. Hilaire urged Mr. Sargent to agree to a mutual release of claims with Mr. Cate, which, according to Mr. St. Hilaire, is what Mr. Sargent had asked him to obtain in the first instance. Regarding Ms. Craig’s need to enforce the \$1,000 judgment, Mr. St. Hilaire wrote “I need to make sure that Bill [Cate] pays Donna. To that end, I need to arrange for Bill to pick up the trailer . . . I cannot file a motion to help Donna until we get the trailer to Bill so the sooner we do this, the sooner I can force Bill to start paying Donna.”
20. According to Mr. St. Hilaire, he did not want to be in the position of arguing to the judge that Mr. Cate needed to pay Ms. Craig, while her boyfriend, and his other client, Mr. Sargent, continued to hold Mr. Cate’s trailer, thereby hampering

⁶ Although Ms. Craig had also requested an itemized bill in her letter of January 2011, Mr. St. Hilaire sent the bill to Mr. Sargent only. Mr. St. Hilaire did not send a separate bill to Ms. Craig, though she had also requested one, because he knew the two were a couple and assumed Mr. Sargent would share the information with Ms. Craig. The billing statement showed hours billed, on behalf of both clients, against the \$3,000 retainer.

Mr. Cate's ability to work and get paid.

21. Mr. St. Hilaire never perceived any potential conflict of interest associated with his efforts to pursue his clients' claims, and in particular, his decision not to enforce judgment against Mr. Cate for one client until his other client's dispute with Mr. Cate was resolved. Not perceiving any such possibility, he did not have any discussion with his clients about the potential conflict in representing them jointly or seek any kind of conflict waiver.
22. In retrospect, Mr. St. Hilaire appreciates that the decision to represent both Mr. Sargent and Ms. Craig presented a risk that his representation of one of them could be materially limited by his responsibilities to the other. He acknowledges that he should have, at a minimum, sought informed consent in writing from both clients if he reasonably believed he could provide competent representation to both.
23. Although the total bill for both clients as of February 23, 2011 was \$4,571.30, Mr. St. Hilaire wrote off the amount over the \$3,000 retainer. Thus Mr. Sargent and Ms. Craig did not pay any additional attorneys' fees.
24. Mr. Sargent terminated Mr. St. Hilaire in March of 2011, and he withdrew once Mr. Sargent obtained new counsel.
25. In June of 2011, Mr. Cate's son retrieved the trailer from Mr. Sargent's property without incident. Mr. Sargent eventually pursued his claim against Mr. Cate *pro se*. At a merits hearing on September 29, 2011, Mr. Sargent was awarded a \$6,450 judgment against Mr. Cate. Mr. Cate filed for bankruptcy in December 2011, and Mr. Sargent's and Ms. Craig's claims against him were discharged.
26. Mr. Sargent and Ms. Craig filed a grievance with the ADO on July 2, 2012.

Stipulation at ¶¶ 1-26.

II. RULINGS OF LAW

The Committee concludes that there is clear and convincing evidence that Daniel I. St. Hilaire has violated the following Rules of Professional Conduct by clear and convincing evidence:

Rule 1.3: Diligence

27. Pursuant to N.H. R. Prof. Conduct 1.3, Mr. St. Hilaire had a duty to act with reasonable diligence and promptness in representing Mr. Sargent and Ms. Craig.
28. Mr. St. Hilaire breached this duty by failing to take action to enforce the judgment in favor of Ms. Craig, failing to provide, in a timely manner, an itemized statement of work performed as requested by the clients, and failing to keep Mr. Sargent apprised of Mr. St. Hilaire's progress with regard to return of the trailer to Mr. Cate.
29. Under these circumstances, there is clear and convincing evidence of N.H. R. Prof. Conduct 1.3.

Stipulation at ¶¶ 29-31.

Rule 1.4: Communication

30. Mr. St. Hilaire had a duty to keep his clients reasonably informed about the status of their matter and to promptly comply with reasonable requests for information.
31. Mr. St. Hilaire breached that duty when he did not provide an itemized statement of work performed, as requested by his clients, until five months after such request was made. He further breached his duty of communication by failing to keep Mr. Sargent informed of his efforts to secure transfer of Mr. Cate's trailer from Mr. Sargent's property.
32. Under these circumstances, there is clear and convincing evidence of N.H. R. Prof. Conduct 1.4.

Stipulation at ¶¶ 33-35.

Rule 1.7: Conflict of Interest

33. Mr. St. Hilaire had a duty to avoid conflicts of interest in representation of his clients.
34. Mr. St. Hilaire breached that duty when he undertook to represent two people having separate claims against Mr. Cate without undertaking an analysis of whether there was a risk that his duty to one client would be materially limited by his responsibilities to the other client, and to the extent he reasonably believed he could represent both clients, by failing to obtain written informed consent from

them.

35. Under these circumstances, there is clear and convincing evidence of N.H. R. Prof. Conduct 1.7.

Stipulation at ¶¶ 37-39.

Rule 8.4(a): General Rule

36. Having found the foregoing violations, there is clear and convincing evidence that Mr. St. Hilaire's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

Stipulation at ¶ 40.

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." *Conner's Case*, 158 N.H. 299, 303 (2009). *The American Bar Association's Standards for Imposing Lawyer Sanctions* (1992) ("Standards") provide guidance when establishing an appropriate sanction for the practice of law. Although the Court has not adopted the *Standards*, it looks to them for guidance. *Id.* at 303. The *Standards* set forth a four part analysis for courts to consider in imposing sanctions for any act of attorney misconduct: "(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's Case*, 155 N.H. 613, 621 (2007)); *Standards* §3.0.

The first three steps create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner's Case*, 158 N.H. at 303 ("In applying these factors, the first step is to categorize the respondent's misconduct and identify the appropriate sanction.").

Prong I: Duty Violated

The Committee concludes that Mr. St Hilaire violated his duty towards his clients.

Prong II: Mental State

The Committee concludes that Mr. St. Hilaire was negligent.

Prong III: Injury or Potential Injury

The Committee agrees that Mr. St. Hilaire's conduct caused injury to his clients because, due to his conflict of interest, he declined to pursue certain avenues for one client (Craig) until another client (Sargent) took action (in this case, returning the trailer to Mr. Cate.) Specifically, Mr. St. Hilaire declined to take action to enforce the judgment in Ms. Craig's favor after Mr. Cate breached the payment plan because Mr. St. Hilaire believed that he could not persuade a judge to enforce the payment plan if his other client, Mr. Sargent, still had possession of Mr. Cate's trailer. Eleven months after Ms. Craig first asked Mr. St. Hilaire to assist her in enforcing the judgment, Mr. Cate declared bankruptcy and further relief for Ms. Craig was barred. Had Mr. St. Hilaire promptly pursued enforcement efforts on her behalf, unrestricted by any concern for what Mr. Sargent was or was not doing, Ms. Craig may have obtained more money from Mr. Cate. Mr. St. Hilaire's conduct caused additional injury in that his clients lacked information concerning their legal matter during the period that Mr. St. Hilaire was not adequately communicating them.

Prong IV: Aggravating and Mitigating Factors

In this case there is only one aggravating factor: Mr. Hilaire's extensive experience in the practice of law.

Mitigating factors include the absence of a prior disciplinary record; Mr. St. Hilaire's good character and reputation; his lack of a dishonest or selfish motive; his remorse; and his cooperative attitude during disciplinary proceedings

The Committee agrees that the mitigating factors outweigh the aggravating factors.

Mr. St. Hilaire's violations of Rules 1.3 and 1.4 implicate Section 4.43 of the *Standards* which provides in pertinent part:

§ 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: Reprimand⁷ 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: Admonition⁸ 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.

Mr. St. Hilaire's Rule 1.7 violation implicates Section 4.3 of the *Standards*, addressing Failure to Avoid Conflicts of Interest. That Section provides, in pertinent part:

§ 4.32: Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

§ 4.33: Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

§ 4.34: Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

Under the foregoing circumstances, the Committee agrees that the baseline sanction for Mr. Hilaire's conduct is a Public Censure. *See Standard* § 4.43. Taking into consideration the

⁷ Section 4.43 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

⁸ Section 4.44 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

many mitigating factors in this case, the Committee agrees with the parties that it is appropriate to depart downward from the baseline sanction to a Reprimand.

IV. SANCTION

The Committee concludes that the appropriate discipline in this matter is a reprimand. The Committee's recommended sanction is in accord with the purposes of attorney discipline. *See e.g., Conner's Case*, 158 N.H. at 303; *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 Committee accepts Mr. St. Hilaire's Agreement to Pay Costs with regard to the investigation and prosecution of this matter.

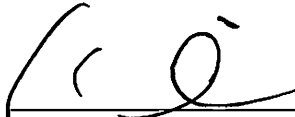
VI. CONCLUSION

For all of the above reasons, the Professional Conduct Committee issues this Reprimand to Daniel I. St. Hilaire for violating N.H. Rules of Professional Conduct 1.3; 1.4; 1.7 and 8.4(a).

VII. RIGHT TO APPEAL

Pursuant to Supreme Court Rule 37(A)(III)(d)(2)(D)(4)(A), Mr. St. Hilaire has the right to appeal to the New Hampshire Supreme Court.

February 3, 2015



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Daniel I. St. Hilaire, Esquire
File