

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Coddington, Paul F., Jr. advs. Attorney Discipline Office #13-010

RECOMMENDATION
DISBARMENT WITH CONDITIONS FOR READMISSION

On January 20, 2015, the Professional Conduct Committee deliberated the above captioned 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 G. Beeson and Margaret R. Kerouac were absent

The Committee voted to accept the facts as stipulated and found by the Hearing Panel, by clear and convincing evidence.

I. FINDINGS OF FACT

1. Mr. Coddington was licensed to practice law in New Hampshire on October 30, 2000. Mr. Coddington was suspended from the practice of law for two years by Supreme Court Order dated March 3, 2007, for misconduct arising from breaches of his ethical duties under Rules of Professional Conduct 1.15(a)(1), 1.15(a)(2), 8.1(b), 8.4(a), and Supreme Court Rule 50.
2. Mr. Coddington had originally been disbarred on October 31, 2006, in part for failing to respond to or cooperate with the Attorney Discipline Office (ADO). He moved for reconsideration of the disbarment order on November 13, 2006, and the Supreme Court ultimately vacated the disbarment and imposed the suspension noted above.

3. Mr. Coddington has not been reinstated to the New Hampshire Bar and is still suspended.
4. Mr. Coddington has not been admitted to practice law in any other jurisdiction.
5. Mr. Coddington's current address is 34 Perley Street, Concord, New Hampshire.
6. Following his suspension, Mr. Coddington was employed by Linda L. Ashford, Esquire, as a paralegal at Ashford Law Office, PLLC.
7. Sometime in the fall of 2011, Mr. Coddington informed Ms. Ashford that he had filed a petition for reinstatement with the Supreme Court in September 2011.
8. Mr. Coddington further represented to Ms. Ashford that he had an agreement with the ADO regarding conditions he had to meet for reinstatement, that the Supreme Court had referred the matter to the Professional Conduct Committee ("PCC") with a request to clarify a point, that the PCC had sent the clarification to the Court, and that Mr. Coddington was simply awaiting the Supreme Court's decision about whether he could be reinstated.
9. Mr. Coddington further led Ms. Ashford to believe that his agreement with the PCC required that he maintain his skills in family law.
10. In fact, Mr. Coddington had never applied for reinstatement. None of his statements regarding his status were true.
11. Based on Mr. Coddington's representations, Ms. Ashford had agreed to let Mr. Coddington work as her paralegal, draft pleadings, and work closely with three of her clients, who would become Mr. Coddington's clients upon his reinstatement.
12. One of those clients was Todd Treadwell. Ms. Ashford had represented Mr. Treadwell during his divorce, which became final in June 2007.
13. Years later, in 2011, after Mr. Treadwell retired from the army, Ms. Ashford again represented Mr. Treadwell when his ex-wife, Theresa Upstill, sought to obtain a portion of Mr. Treadwell's military retirement.
14. A hearing was scheduled for December 20, 2011 in the Treadwell matter to address child support issues as well as Ms. Upstill's entitlement to any portion of Mr. Treadwell's military pension.
15. Because Ms. Ashford had knee surgery scheduled for December 14, 2011, she arranged for Mr. Coddington to accompany Mr. Treadwell to the December 20 hearing.

16. On November 7, 2011, Mr. Treadwell emailed Ms. Ashford. Having heard that Ms. Ashford could not be present due to her knee surgery, he asked: “will I be able to have representation for this [December 20] hearing?”
17. Ms. Ashford responded to Mr. Treadwell, copying Mr. Coddington, and set forth her theory regarding Ms. Upstill’s entitlement to Mr. Treadwell’s military pension. She added:

[T]his is a legal argument, and yes, I have secured representation for you. My current paralegal will assist you and make the arguments. He is actually an attorney awaiting his license and may actually have it by then but either way, he can argue this matter Keep emailing if you have further questions. I’ll make sure Paul Coddington gets copies of all of them.
18. Mr. Coddington did not correct any of Ms. Ashford’s statements.
19. More email exchanges followed, and on November 17, 2011, Ms. Ashford wrote to Mr. Treadwell: “I have forwarded your email to Paul, I will go over your argument so he understands. It might just be a good thing that he is taking this forward, he may present it from a different side which will be better accepted by the Court.”
20. Mr. Treadwell thus reasonably believed that he would have legal representation during the hearing.
21. Mr. Coddington never offered any information to Mr. Treadwell regarding the fact that he had been suspended from the practice of law, nor did he correct Mr. Treadwell’s understanding that Mr. Coddington was “awaiting his license.” He never rectified his previous lie to his employer, Ms. Ashford, by admitting that he had never in fact applied for reinstatement.
22. Sometime in December 2011, Ms. Ashford inquired of Mr. Coddington how his process of reinstatement was going, and if he would be reinstated in time for the December 20, 2011 hearing. Mr. Coddington stated that he would not be admitted by December 20, 2011. Again, however, he did not admit to Ms. Ashford at that time that he had in fact never applied for reinstatement.
23. Mr. Coddington and Ms. Ashford informed Mr. Treadwell that Mr. Coddington would not have his license in time for the December 20, 2011 hearing. However, they continued to tell Mr. Treadwell that Mr. Coddington could accompany him to the hearing. Moreover, based on the November 2011 emails from Ms. Ashford (on which Mr. Coddington was copied), which assured Mr. Treadwell that he would have “representation” and that Mr. Coddington could “make the arguments,” Mr. Treadwell reasonably believed Mr. Coddington could act on and

Speak on his behalf at the hearing.

24. On the morning of December 20, 2011, Mr. Coddington met with Mr. Treadwell over coffee for approximately 30 to 45 minutes, during which time they discussed the upcoming hearing and what arguments were going to be made. During this meeting, Mr. Coddington did not tell Mr. Treadwell that Mr. Coddington could not in fact represent Mr. Treadwell in court or make arguments on his behalf. He did not discuss, in any way, any limitations that might bear on what he could or could not do on Mr. Treadwell's behalf during the hearing.
25. Immediately before the hearing on December 20, 2011, during a meeting in a conference room with a hearing officer, it came to light that Mr. Coddington was not an attorney in good standing.
26. The hearing officer halted the child support proceeding. She expressed concern about Mr. Coddington's status and indicated that she would need to check with Judge McLeod (who was to hear the pension issue on the same day) about how to proceed. Mr. Coddington represents that he told the hearing officer that he was not an attorney and could not act as such on behalf of Mr. Treadwell.
27. After the hearing officer halted the child support hearing, Mr. Treadwell and Mr. Coddington stepped outside to call Ms. Ashford and update her on the events. Even in the face of the hearing officer's serious doubts and concerns, which were sufficiently alarming for her to halt the proceeding, Mr. Coddington did not volunteer to Mr. Treadwell that he was a suspended attorney and that he had made no effort to become reinstated. He likewise failed at this juncture to take the opportunity to inform his employer that he had never applied for reinstatement.
28. When Judge McLeod began the hearing on the pension issue on December 20, 2011, he asked Mr. Treadwell where his attorney was. Mr. Treadwell responded that Ms. Ashford was recovering from surgery, then stated: "I was told that her assistant would be representing me, and now it's my understanding that he cannot represent me."
29. Judge McLeod noted that there were "fairly complicated issues" to be discussed at the hearing. He continued the child support issue, but did allow Ms. Upstill's counsel to argue Ms. Upstill's potential rights to Mr. Treadwell's military pension.
30. Judge McLeod then asked Mr. Treadwell if he wanted to be heard, and Mr. Treadwell did his best to represent himself and argue the merits. Mr. Treadwell mentioned two Supreme Court cases that (he presumed) supported his position but was unable to describe them fully, adding "that's why I need representation."
31. Judge McLeod decided that he would not have further hearings on the pension issue; rather, he allowed Ms. Ashford ten days to respond in writing to the issues

raised at the hearing, after which he would issue a decision.

32. Mr. Treadwell had flown in to New Hampshire from Georgia to attend the December 20 hearing. As a result of Mr. Coddington having appeared at the hearing, Mr. Treadwell was deprived of representation at the December 20 hearing and was forced to incur more expense and fly back to New Hampshire at a later date.
33. At the end of the hearing on December 20, 2011, Judge McLeod stated that he found it “disturbing” that Ms. Ashford would send as her replacement a suspended attorney. He added that he would be issuing an order that Ms. Ashford pay Ms. Upstill’s attorney’s fees.
34. By order dated January 18, 2012, Judge McLeod awarded Ms. Upstill her attorney’s fees “incurred as a result of the petitioner’s counsel’s failure to appear for the hearing without giving notice to the court.”
35. Ms. Ashford and Mr. Coddington continued to work on Mr. Treadwell’s matter. Ultimately, on February 3, 2012, the Court found that Ms. Upstill was entitled to a portion of Mr. Treadwell’s U.S. military retired pay.
36. Mr. Coddington no longer works as a paralegal for Ms. Ashford or any other attorney.

Hearing Panel Report at pp. 4-8; Stipulation at ¶¶ 1-36.

The Committee voted to accept the Rules violations as stipulated and found by the Hearing Panel, by clear and convincing evidence.

II. RULINGS OF LAW

Rule 4.1: Truthfulness in Statements to Others

37. Rule of Professional Conduct 4.1 states, in pertinent part, as follows:
In the course of representing a client a lawyer shall not knowingly:
(a) make a false statement of material fact or law to a third person;
38. Mr. Coddington’s representations to Ms. Ashford that he had applied for reinstatement to the New Hampshire Bar, including his detailed account of the procedural posture of his application, constitute a violation of Rule 4.1.
39. Mr. Coddington’s status was a material fact because Ms. Ashford was relying on his anticipated reinstatement as the basis for allowing him to accompany Mr.

Treadwell to court and to begin to allow Mr. Coddington to handle client's matters with the goal of Mr. Coddington eventually taking over those client matters.

40. Mr. Coddington's conduct constitutes clear and convincing evidence of a violation of Rule 4.1.

Stipulation at ¶¶ 39-42.

Rule 8.4(c): Deceit

41. Rule of Professional Conduct 8.4(c) states, in pertinent part, as follows:

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
42. Mr. Coddington's representations to Ms. Ashford that he had applied for reinstatement, including his detailed account of the procedural posture of his application, constitute a violation of Rule 8.4(c).
43. Mr. Coddington further violated this rule by failing to correct Ms. Ashford's representations to her client, Mr. Treadwell, regarding Mr. Coddington's status and his ability to "make the arguments" in court, "argue the matter," and "tak[e] this [matter] forward."
44. Mr. Coddington further violated this rule by failing to correct Ms. Ashford's statement to Mr. Treadwell that Mr. Coddington was "an attorney awaiting his license" and by failing to ever affirmatively state to Mr. Treadwell that Mr. Coddington had been suspended from the practice of law due to misconduct.
45. Mr. Coddington's conduct constitutes clear and convincing evidence of a violation of Rule 8.4(c).

Stipulation at ¶¶ 44-48.

Rule 8.4(a): General Rule

46. Because there exists clear and convincing evidence that Mr. Coddington violated Rules 4.1, and 8.4(c), there is necessarily clear and convincing evidence that he violated Rule 8.4(a).

Stipulation at ¶ 49.

III. ANALYSIS

47. The parties do not appear to dispute that the *Standards* provide guidance in determining the appropriate sanction. Although the Supreme Court has not adopted the *Standards*, it looks to them for guidance. *Conner's Case*, 158 N.H. 299, 303 (2009).
48. 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." *Id.* "The sanction ... must take into account the severity of the misconduct." *Coffey's Case*, 152 N.H. 503, 513 (2005).
49. 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.
50. 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.*
51. In the case of more than one finding of misconduct, the ABA recommends that the sanction imposed "should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct." *Id.* (citing *Richmond's Case*, 152 N.H. 155, 160 (2005)).
52. After the July 18, 2014 hearing on sanctions, the Hearings Panel recommended Disbarment with Conditions. At the hearing, the respondent had argued for a reprimand.¹
53. The Hearings Panel found that with respect to the first prong, the duty owed, that the Respondent violated duties owed to the client, to the public, and to the legal system. It found those duties "to be at the heart of what it means to be an attorney and what is expected of all members of the bar." The Committee agrees. The misstatements at issue in this case – those made to clients in the course of litigation matters – are the kind of misstatements that strike at the core of the profession.

¹ The Respondent filed an untimely request for oral argument before the Committee. After discussion, the Committee denied the request. The Respondent submitted no additional information.

54. The second prong of the analysis, the Respondent's mental state during the commission of the rule violation, also weighs against the Respondent.² Like the Hearing Panel, this Committee concludes that the Respondent's conduct was intentional. He made material misrepresentations to Attorney Ashford as well as the client in order to obtain a particular result: to "placate" Attorney Ashford and to appear in court with the client. He then allowed the client to make important decisions while under the misimpression that he was "an attorney awaiting his license" as opposed to an attorney that had been suspended from the practice of law because of his misconduct.
55. Before the Hearings Panel, the Respondent argued that his state of mind was "negligent." However, the facts of this case vitiate the Respondent's argument. The Respondent has stipulated to the rule violations, and the evidence demonstrates that he was a party to email correspondence that identified him as a lawyer who was going to act as "representation" for a client at a court hearing in Attorney Ashford's absence. That was his ultimate objective, and his misrepresentations were made in furtherance of that objective. Such is the definition of "intentional" or "knowing" conduct under *Standards* § 4.61 (lack of candor with client) and 5.11(b) (failure to maintain personal integrity). The Committee notes that the baseline sanction under both those sections is disbarment.³
56. In this case, the potential for injury was significant. The Respondent's client travelled from Georgia to attend the hearing. The hearing required a complicated legal argument in the course of a contested marital case. But for the Court's concern about the client's status of counsel, and subsequent postponement of the trial, the client could have been irreparably harmed. Moreover, when the client learned that the Respondent was not merely a "lawyer awaiting his license" but one who had been suspended because of misconduct, the client's perception of the legal profession dropped significantly.
57. The Committee considers the following factors to be aggravating: that the respondent has a prior disciplinary case that resulted in a suspension; that the Respondent allowed Attorney Ashford and the client to rely on his misrepresentation for a significant period of time, to their ultimate detriment; that the Respondent has not complied with any of the conditions outlined in his prior suspension; that the Respondent does not appear to understand the severity of his rule violations; that the Respondent, based on the record before the Committee,

² The *Standards* provide the following definitions: "Intent" is the conscious objective or purpose to accomplish a particular result. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." *Standards*, III Definitions.

³ *Standards* § 4.61 provides: "Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client." *Standards* § 5.11(b) provides that Disbarment is generally appropriate when: "a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."

does not demonstrate contrition; and that the Respondent attempted to minimize is conduct. Sanction Hearing at 39, 43, 44-45, 46.

58. The Committee, upon review of the record, finds that there are no meritorious mitigating factors present in this case.

IV. SANCTION

The Committee accepts the Hearing Panel's Recommendation of Disbarment with Conditions for Readmission. However, the Committee finds that a longer re-application prohibition period is required. The Conditions are that no application or readmission may be made sooner than **five** years following a final order in this matter. As a condition of such application for readmission, Mr. Coddington shall pay all costs associated with this proceeding and his previous disciplinary matter (PCC 04-095/LD-2005-009). At the time of an application for readmission, Mr. Coddington shall present an affidavit certifying that since the time of the final order in this matter, he did not engage in any work in the legal field in any capacity.


V. COSTS

Mr. Coddington stipulated, and the Committee voted to assess all costs associated with the investigation and prosecution of this matter.

VI CONCLUSION

For all of the above reasons, the Professional Conduct Committee Recommends the Respondent's disbarment from the practice of law for violating Rules of Professional Conduct 4.1; 8.4(a) and 8.4(c).

March 5, 2015



David M. Rothstein, Esquire
Chair

cc: Sara S. Greene, Disciplinary Counsel
Paul F. Coddington, Jr.
File