

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Chrystal, Deanne M. advs. Attorney Discipline Office #12-032

PUBLIC CENSURE

On January 20, 2015, the Professional Conduct Committee (the “Committee”) deliberated the Stipulation as to Facts, Violations and Sanction (the “Stipulation”), 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 G. 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 Professional Conduct Committee has determined that the Record supports the following factual findings of the Hearing Panel by clear and convincing evidence:

1. Ms. Chrystal is an attorney licensed to practice law in New Hampshire. Ms. Chrystal was admitted to practice on May 22, 2006. At all times material to this proceeding, Ms. Chrystal operated her law office as Chrystal Law, PLLC, 18 Pleasant Street, Lincoln, New Hampshire 03251.
2. Ms. Chrystal was also admitted to practice law in Massachusetts on November 28, 2005. She is currently on active status in Massachusetts.
3. Ms. Chrystal has no previous disciplinary history.

4. This disciplinary matter arises from Ms. Chrystal's representation, from April 2011 to July 2012, of Joseph Clark, Jr. in his divorce from Susan Clark. The Attorney Discipline Office's (ADO) investigation in this matter was initiated upon receipt of a referral dated July 13, 2012 from Judge Thomas A. Rappa, Jr., who presided over a July 11, 2012 hearing in which Ms. Clark alleged that Ms. Chrystal and her client, Mr. Clark, were engaged in a sexual relationship and living together during the time that Ms. Chrystal was representing Mr. Clark.
5. On September 7, 2012, Ms. Clark filed a grievance with the ADO making essentially the same allegation. Ms. Clark also brought to the ADO's attention the fact that Ms. Chrystal and Mr. Clark had formed revocable trusts and had re-financed the former marital home with Ms. Chrystal as a co-borrower/co-signer.
6. Disciplinary Counsel has reviewed Ms. Chrystal's file in the underlying matter, interviewed the complainant (and her two adult daughters) multiple times, and listened to the audio of the July 11, 2012 court hearing in the underlying divorce matter. Disciplinary Counsel also took the depositions of Ms. Chrystal and her client, Mr. Clark, and interviewed John D. Cameron (now deceased), Ms. Chrystal's opposing counsel.

The Clark Divorce

7. Prior to entering into an attorney-client relationship, Ms. Chrystal and Mr. Clark were personal friends who first became acquainted in 2008 through the Owl's Nest Resort & Golf Club in Thornton, New Hampshire, where Mr. Clark's adult daughter worked. Ms. Chrystal was a volunteer for the Linwood Recreation Department coordinating the Junior Golf program, which operated out of the Owl's Nest club. Eventually Ms. Chrystal participated in golf clinics with Mr. Joseph Clark, Sr., Mr. Clark's father. Mr. Clark was one of the golf professionals who provided instruction to the participants of the Linwood Junior Golf program and occasionally provided instruction for his father's golf clinics.
8. In April 2011, Mr. Clark consulted with Ms. Chrystal about his divorce. He entered into a fee agreement with Ms. Chrystal on April 7, 2011. Ms. Chrystal billed Mr. Clark hourly for her services.
9. On May 18, 2011, Ms. Chrystal assisted Mr. Clark in preparing a Joint Petition for Legal Separation which was signed by both Mr. Clark and Ms. Clark. *ITMO Joseph Clark and Susan Clark*, Case No. 669-2011-DM-00096, 2nd Circuit Family Division, Plymouth.
10. On July 5, 2011, Ms. Chrystal filed a limited appearance. Later, on September 29, 2011, Ms. Chrystal filed a general appearance. On September 16 and October

18, 2011, the parties participated in mediation, but did not reach a settlement.

11. Beginning around September 2011, Ms. Chrystal and Mr. Clark began communicating daily using their cell phones as the primary point of contact. They often spoke to one another multiple times a day. They testified in their depositions that these calls involved discussions about the divorce matter, in addition to matters involving their work together at Owl's Nest and friendly conversations. In any event, Ms. Chrystal did not bill Mr. Clark for any of this time. Mr. Clark and Ms. Chrystal also testified that one of the reasons for the frequent calls was that Mr. Clark was suicidal at various points following the breakdown of his marriage, and that Ms. Chrystal became a "support system" for him.
12. Around January of 2012, Respondent added Mr. Clark to her Verizon cell phone plan. She also added Mr. Clark's daughters, Abby and Devon Clark, to the plan. While each person paid their share of the total cell phone bill based on minutes each respectively used, Ms. Chrystal admits that she added Mr. Clark to the plan so that all involved could save money on their phone bills.
13. By February 2012, Ms. Clark had hired John Cameron to represent her. Although he never filed an appearance, Mr. Cameron negotiated on Ms. Clark's behalf until such time as she terminated representation in or around June 2012.
14. On March 5, 2012, the parties and their counsel met in person to discuss settlement. During this meeting, the parties agreed to the essential terms of a property settlement. (There were no parenting issues, as both children of the marriage were of majority.) In essence, and regarding the primary assets of the marital estate, the parties agreed that Mr. Clark would keep the marital home, and Ms. Clark would keep her retirement funds. Ms. Chrystal and Mr. Cameron corresponded in the weeks that followed to finalize the details of a property settlement.
15. On May 17, 2012, Ms. Chrystal asked the court to remove a status conference from the calendar because "the parties have reached an agreement and originals are being circulated for signing."
16. Sometime after the settlement meeting, Ms. Chrystal learned that Mr. Clark, who worked as a full-time employee at the Owl's Nest Resort, could not qualify with Community Guaranty Savings Bank ("CGSB") to refinance the debt on the marital home on his own. He needed to refinance in order to remain in the home and honor those financial obligations set forth in the Proposed Final Decree, including removing Mrs. Clark from the note and mortgage on the home. Retaining the home was important to Mr. Clark because he wanted his college-

age daughters to be able to return to their childhood home during their breaks from school.

17. On May 8, 2012, Ms. Chrystal, on behalf of Mr. Clark, spoke with a loan officer from CGSB to determine whether and on what terms Mr. Clark could qualify for a refinancing of the marital home. The loan officer informed Ms. Chrystal that Mr. Clark's credit score would prevent him from refinancing unless someone was willing to co-sign on the loan.
18. Sometime in May 2012, Ms. Chrystal and Mr. Clark discussed possible co-signors for the loan. After considering the possibility of seeking help from other Clark family members, they discussed the possibility of Ms. Chrystal co-signing for the loan on the marital home so that it could be refinanced. They agreed in general terms that Ms. Chrystal would be a co-borrower and would co-sign, and upon refinancing, the legal fees Mr. Clark owed Ms. Chrystal could be paid, as there was substantial equity in the home. Mr. Clark also had other debts he wished to pay out of funds from the refinancing.
19. Ms. Chrystal and Mr. Clark believed that this arrangement was reasonable. It was beneficial to Ms. Chrystal because she could: (1) help Mr. Clark achieve a goal, i.e. he could continue to live in his home with affordable monthly payments and pay off outstanding debt; (2) be paid her legal fees from the equity upon refinancing, because Mr. Clark lacked the funds to pay them otherwise; and (3) invest in real property, enjoying future equity in the home without the necessity of investing significant funds to acquire and maintain such property on her own. It was beneficial to Mr. Clark because he could: (1) retain the family home for reasons set forth above, (2) satisfy a number of outstanding debts including property taxes, credit card debt, a loan from his mother, and an automobile loan, (3) fulfill his obligation under the Proposed Final Decree to remove Mrs. Clark as an obligor under the note and mortgage secured by the family home; and (4) have Ms. Chrystal contribute to an account for the maintenance and repair of the home.
20. Mr. Clark and Ms. Chrystal agreed that Ms. Chrystal would be a co-borrower. From May 15 through May 22, 2012, Ms. Chrystal filed documentation with CGSB to determine whether she would qualify as co-borrower for lender CGSB so that she and Mr. Clark could refinance the marital home.
21. By May 23, 2012, Ms. Chrystal had begun to draft a "Business Agreement between Joseph Clark, Jr. and Deanne Chrystal, Esq. for real estate interest in 51 Merrillwood Drive, Holderness, New Hampshire" (the "Business Agreement"). The Business Agreement states that "on this date, May 23, 2012, this agreement between [the parties] is to memorialize a business transaction" The

document was not actually executed, however, until July 25, 2012.

22. On May 29, 2012, Ms. Chrystal transmitted the Proposed Final Decree, signed by both parties and their counsel, to the Plymouth Family Division.
23. On June 11, 2012, Ms. Clark, with both of her daughters present, visited the marital home. During that visit, she took various photos that she believed proved that Ms. Chrystal was living in the marital home. On June 15, 2012, Ms. Clark filed an *ex parte* motion¹ alleging “an affair” between Ms. Chrystal and Mr. Clark and seeking to delay any ruling on the proposed final decree until such time as her motion was heard.
24. On June 20, 2012, Ms. Chrystal drafted two revocable trusts – one for herself (Deanne Chrystal, Trustee) and one for Mr. Clark (Joseph Clark, Jr., Trustee) (the “Chrystal Trust” and the “Clark Trust”). The purpose of the trusts was to eventually hold all property transferred to the Trustees (i.e. the trust estate), which would include the marital home once Ms. Clark signed a quitclaim deed and the refinance closed.
25. On June 21, 2012, Ms. Chrystal filed a motion to withdraw.
26. The Court held a hearing on Ms. Clark’s motion on July 11, 2012. Mr. and Ms. Clark were *pro se*. Ms. Chrystal attended the hearing. Although *pro se*, Mr. Clark conferred with Ms. Chrystal so frequently during the hearing that Judge Rappa indicated some discomfort with Ms. Chrystal’s precise role in the proceeding. She thus entered a general appearance on behalf of Mr. Clark at the July 11 hearing.
27. Judge Rappa heard the evidence and admitted into evidence the photos taken by Ms. Clark in the marital home. Ms. Chrystal testified that she and Mr. Clark were not engaged in a sexual relationship and that she was not and had not been living with him in the marital home.
28. Judge Rappa inquired of Ms. Clark whether she wished to withdraw the proposed final decree given the issues raised in her motion. After considering the issue, Ms. Clark ultimately determined that she wanted the Court to approve the parties’ proposed decree. The final decree was entered on July 11, 2012, and “in light of the parties’ agreement,” Ms. Clark’s motion was deemed moot. At the close of the July 11 hearing, Judge Rappa suggested that he believed he had an obligation to report the matter “to the PCC.”

¹ Attorney Cameron had ceased representing Ms. Clark by this time.

29. After the hearing, while still at the courthouse, Ms. Clark signed a quitclaim deed granting all of her interest in the marital home to Mr. Clark, consistent with the settlement agreement reached in March 2012 and the negotiated terms of the final decree.

Events Following Entry of Final Decree

30. On July 25, 2012, Ms. Chrystal and Mr. Clark executed the Business Agreement. The Business Agreement provided that Mr. Clark would pay Ms. Chrystal's attorney's fees from the "equity in the property upon refinance, and in addition, split any future equity in the property in exchange for Deanne co-signing the mortgage." The Business Agreement noted that the property had been appraised in June 2012, and that "future equity" meant "any equity in the home moving forward from this appraisal." The Business Agreement obligated Mr. Clark to pay mortgage payments, town taxes, house insurance, and general maintenance for as long as he occupied the property. Ms. Chrystal agreed to allow Mr. Clark to "use her credit score to help refinance the home for \$125,000 which allows Joe [Clark] to pay off the current mortgage . . . and other individual debt and closing costs held by Joe at his discretion." The parties agreed that the \$36,000 obtained from the refinance was "considered Joe's equity individually."
31. The Business Agreement also provided that: "Joe is advised to have this agreement reviewed by an independent attorney to ensure this transaction and agreement is a fair agreement for Joe. Joe is not acting under undue influence, or duress and that [sic] Joe is knowingly and intelligently entering into an attorney/client business transaction." Ms. Chrystal included this language in the Business Agreement because she believed that such language would meet the protective requirements set forth in Rule 1.8 governing attorney/client transactions.
32. Ms. Chrystal did not obtain, however, Mr. Clark's "informed consent" to the Business Agreement as that term is defined in Rule 1.8(a)(3) and Rule 1.0(e), including the requirement that she state explicitly in writing to Mr. Clark that Ms. Chrystal did *not* represent Mr. Clark with regard to the Business Agreement. While testifying in his deposition that he believed that the Business Agreement was fair, Mr. Clark also testified that he did not know whether Ms. Chrystal represented him with regard to the transaction.
33. Also on July 25, 2012, Mr. Clark executed a warranty deed conveying the marital property from himself (individually) to "Joseph L. Clark, Jr., Trustee of the Joseph L. Clark, Jr. Revocable Trust of 2012," and "Deanne M. Chrystal, Trustee of the Deanne M. Chrystal Revocable Trust of 2012." The warranty deed was

recorded with the Grafton County Registry of Deeds on July 27, 2012.

34. The refinance closed on or around July 25, 2012. The borrowers on the loan and the mortgagors pursuant to the mortgage were Mr. Clark as Trustee of his Trust and Ms. Chrystal as Trustee of her Trust.
35. On August 2, 2012, CGSB recorded the mortgage on the former marital home with the Grafton County Registry of Deeds.
36. Phone records produced by Ms. Chrystal indicate that from September 2011 through the end of the representation, she and Mr. Clark spoke with one another practically every day, often many times a day. Frequently, Ms. Chrystal's last call of the night and first call of the next morning would be to Mr. Clark. Despite such communications, Mr. Clark and Ms. Chrystal have both testified that during all times that Ms. Chrystal represented Mr. Clark, their relationship became personal – but not romantic or physical -- and that because of his mental state, Mr. Clark came to rely on Ms. Chrystal for emotional support.
37. Mr. Clark's feelings for Ms. Chrystal eventually became romantic, as evidenced by a June 2012 birthday card to Ms. Chrystal expressing his love for her. Mr. Clark testified in his deposition that this card was the first time he had expressed romantic feelings for Ms. Chrystal. Both parties testified that upon receiving the card, Ms. Chrystal informed her client that she could neither reciprocate any such feelings, nor enter into a romantic or sexual relationship, while she was representing Mr. Clark. Mr. Clark testified that he understood, and he did not engage in similar behavior for the remainder of the representation.
38. Ms. Chrystal and Mr. Clark are currently living together as a couple in the former marital home. Ms. Chrystal produced evidence demonstrating to the satisfaction of the ADO that she did not move in with Mr. Clark until approximately late September 2012, after the representation was concluded on July 11, 2012.
39. Mr. Clark has maintained throughout this investigation that Ms. Chrystal's legal representation was excellent and that she was extremely diligent in navigating his divorce from Ms. Clark. He maintains that the Business Agreement is fair and allowed him to do something crucial that he could not have done on his own, i.e. qualify for refinancing, which in turn allowed him to access the equity, pay off debts, and stay in the home in which he raised his family. The ADO's review of the underlying divorce matter does not reveal any information which demonstrates that Ms. Chrystal failed in her duties of competence, diligence, or confidentiality to Mr. Clark.

Stipulation at ¶¶ 1-39.

II. RULINGS OF LAW

40. After investigating this matter, the ADO has concluded there is not clear and convincing evidence that Ms. Chrystal and Mr. Clark were engaged in a “sexual relationship” during the time of the representation as prohibited by Rule 1.8(j).

Stipulation at ¶ 40.

41. The parties agree, however, that Ms. Chrystal’s conduct in this case involves violations of the New Hampshire Rules of Professional Conduct, as set forth in detail below.

Stipulation at ¶ 41.

42. In light of the above stipulated facts, and based upon its own examination of the facts and stipulation of the parties, the Committee concludes that there is clear and convincing evidence that Deanne M. Chrystal has violated the following Rules of Professional Conduct by clear and convincing evidence:

Rule 1.7(a)(2): Conflicts of Interest

43. Pursuant to Rule of Professional Conduct 1.7(a)(2), Ms. Chrystal had a duty not to represent Mr. Clark under circumstances involving a concurrent conflict of interest. Specifically, she could not represent Mr. Clark if there was a significant risk that her representation of Mr. Clark would be materially limited by Ms. Chrystal’s personal interests.
44. Ms. Chrystal breached that duty when her own personal interests created a significant risk that her representation of Mr. Clark would be materially limited by her personal interests. Those interests included her financial interest in the marital home, which she and Mr. Clark negotiated before the representation ended and before the divorce was final, as well as her intensely personal relationship with Mr. Clark. These personal interests created a significant risk that could reasonably have affected her ability to provide truly independent counsel, and thus, constituted a conflict of interest under Rule 1.7(a)(2).
45. Although there was no conflict of interest at the inception of representation, Ms. Chrystal failed to evaluate the Rule 1.7 conflict of interest as it emerged during the representation. For that reason, she did not seek to withdraw or undertake an analysis of whether the conflict of interest was waivable.

46. Under these circumstances, there is clear and convincing evidence of a violation of Rule of Professional Conduct 1.7(a)(2).

Stipulation at ¶¶ 43-46.

Rule 1.8(a), (e), (i): Conflict of Interest;
Current Clients; Specific Rules

47. Ms. Chrystal had a duty to avoid any business transactions with her client, Mr. Clark, unless all conditions set forth under Rule 1.8(a)(1)-(3) were met.
48. Ms. Chrystal breached that duty when she failed to obtain informed consent from Mr. Clark as to her role in the transaction, including whether she represented Mr. Clark in the transaction, as required under Rule 1.8(a)(3).
49. Under these circumstances, there is clear and convincing evidence of a violation of Rule of Professional Conduct 1.8(a).
50. Ms. Chrystal had a further duty to avoid providing any financial assistance to Mr. Clark in connection with the litigation, other than to advance court costs and expenses as set forth in Rule 1.8(e)(1) & (2).
51. Ms. Chrystal breached that duty when she added Mr. Clark to her cell phone plan and when she agreed, in May of 2012, to be a co-signer on Mr. Clark's loan in the refinancing of the marital home. Ms. Chrystal is a guarantor on the note, which obligates her to pay the note if Mr. Clark does not.
52. Under these circumstances, there is clear and convincing evidence of a violation of Rule of Professional Conduct 1.8(e).
53. Ms. Chrystal further had a duty to avoid acquiring any proprietary interest in Mr. Clark's cause of action or in the subject matter of the divorce litigation.
54. Ms. Chrystal breached that duty when she and Mr. Clark agreed that she would obtain an interest in the marital home as early as May 2012, before the divorce was final, an "interest" which culminated in the Business Agreement her and Mr. Clark executed and pursuant to which she gained future equity rights in the home.
55. Under these circumstances, there is clear and convincing evidence of a violation of Rule of Professional Conduct 1.8(i).

Stipulation at ¶¶ 48-56.

Rule 8.4(a): General Rule

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

Stipulation at ¶ 57.

III. ANALYSIS

57. 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).
58. 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.
59. 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.* (stating that "[a]fter determining the sanction, [the Court] consider[s] the effect of any aggravating or mitigating factors on the ultimate sanction").
60. Under the first prong of the analysis, Ms. Chrystal violated duties of loyalty owed to her client, Mr. Clark. *See Standards* § 4.3.
61. With respect to Ms. Chrystal's mental state under the second prong of the sanction analysis, the parties agree that Ms. Chrystal's mental state was negligent with respect to the rule violations. For example, the initial representation of Mr. Clark presented no conflict of interest under Rule 1.7. Later, Ms. Chrystal failed to heed the substantial risk that a conflict of interest had emerged. Her personal relationship with Mr. Clark eventually precipitated Ms. Chrystal assisting him in matters outside the usual attorney-client relationship, which assistance in turn

violated Rule 1.8 as set forth above.

62. As to the Rule 1.8 violations, Ms. Chrystal attempted to comply with Rule 1.8(a) in her Business Agreement, but was negligent in failing to comply with all of its formalities. The Committee finds that Ms. Chrystal, in good faith, attempted to comply with those formalities governing attorney-client business transactions through the language she drafted (Ex. A, page 2, “Joe is advised to have this agreement reviewed . . .”), but negligently failed to adequately provide all of the disclosures required under Rule 1.8(a)(1)-(3). When she agreed to add Mr. Clark and his daughters to a cell phone plan through her service provider, Ms. Chrystal believed at the time that such assistance was not “in connection with pending litigation,” as it related to a personal expense of Mr. Clark and he remained responsible for this “share” of minutes used on the plan. See Rule 1.8(e). Ms. Chrystal understands now that such assistance is prohibited by Rule 1.8(e), which only allows lawyers to advance court costs and expenses or, for indigent clients, pay costs and expenses on their behalf. Ms. Chrystal also incorrectly believed that Mr. and Mrs. Clark had reached a final and binding agreement on the disposition of the marital home, and that as a result, the home was, as a practical matter, no longer the “subject matter of litigation.” She also incorrectly believed that her acquisition of an interest in the marital home was chiefly done to protect the payment of her fees akin to Rule 1.8(i)(1). However, Ms. Chrystal realizes that over a period of years, it is possible she will obtain more than just her fees from this Business Agreement. She may also obtain 50% of any increase in equity in the home from the date of the Business Agreement with no concomitant obligation to pay any mortgage, taxes, etc., except contributions for a major repair or emergency.
63. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Ms. Chrystal’s misconduct.
64. Ms. Chrystal’s conduct caused potential injury to Mr. Clark. For example, although Susan Clark agreed Mr. Clark could keep the marital home in exchange for Mr. Clark not seeking any portion of her retirement, circumstances could have changed between the date that Mr. and Mrs. Clark reached agreement on the disposition of the home (March 2012) and the date that the Proposed Final Decree was approved (July 2012), such that it was in Mr. Clark’s best interest to forego a full interest in the marital home in exchange for some portion of his ex-wife’s retirement. In this respect, there was a significant risk that Ms. Chrystal could not give truly independent advice, because if Mr. Clark surrendered interests in the marital home, Ms. Chrystal herself stood to lose the benefits to her in the Business Agreement as well as payment of her attorney’s fees.
65. As noted above, Mr. Clark would testify there has been no actual injury to him.

He states he would have received far less in his divorce without Ms. Chrystal's representation and that the Business Agreement was fair to him.

66. Ms. Chrystal's failure to avoid conflicts of interest implicates Section 4.3 of the *Standards*, entitled "Failure to Avoid Conflicts of Interest," which provides:

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
- (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

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 Reprimand² 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.

67. The baseline sanction must be considered in light of any aggravating and

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

mitigating factors. *Conner's Case*, 158 N.H. at 303.

68. In this case, the following aggravating factors are present: Ms. Chrystal's selfish motive in seeking to benefit personally from the subject matter of litigation, *i.e.* the marital home. Although the Business Agreement was not objectively unfair to Mr. Clark, Ms. Chrystal inserted her personal financial interest into the litigation without complying with the ethical rules designed to protect clients in such situations. *See Standards* § 9.22. In addition, Mr. Clark was a vulnerable client, who battled suicidal thoughts during the period of representation and came to rely on Ms. Chrystal not only as an attorney but also as an emotional support system.
69. Mitigating factors are also present, including an absence of a prior disciplinary record, remorse, a cooperative attitude during disciplinary proceedings, and full and free disclosure to the ADO. *See Standards* § 9.32. Ms. Chrystal has also offered to rescind the Business Agreement if Mr. Clark deems it can be accomplished without prejudice or adverse consequences to Mr. Clark, and in any event, to surrender her right under the Business Agreement to any future equity in the home. Mr. Clark has retained counsel to consider the proposal.
70. The Committee finds that the aggravating and mitigating factors evident in this case do not merit any deviation from the baseline sanction of public censure.
71. A public censure is proportional to discipline imposed in other cases involving breaches of the conflict of interest rules. New Hampshire cases have recognized that a public censure is the baseline sanction where a Respondent negligently fails to appreciate the risk of a conflict of interest and causes injury or potential injury to a client. *See Shillen's Case*, 149 N.H. 132, 140 (2003) (imposing public censure as baseline sanction for negligently violating conflict rules where Respondent represented husband and wife against auto insurer where husband's speeding could have contributed to wife's injuries).³
72. Orders issued by the Committee have likewise imposed public censures in various cases presenting Rule 1.7 violations. For example, the Committee has imposed public censures for Rule 1.7 violations where the lawyer: (1) represented both husband and wife in a divorce (*Hogan v. ADO*, #09-016, Order dated April 25, 2010); (2) represented his girlfriend in her contentious divorce matter, resulting in abusive pleadings being filed by the lawyer (*Brouillard v. Moynihan*, #10-003, Order dated March 16, 2011); and (3) represented the guardian of an incapacitated person (deemed by court order to lack capacity to make a will) and also represented the incapacitated person in drafting two wills (*Howie v. ADO*, #07-034, Order dated April 27, 2009).

³ *Shillen's Case* was decided under a prior version of Rule 1.7.

73. The Supreme Court has imposed suspensions for violating the conflict rules, although only where serious aggravators are present. For example, in *Clauson's Case*, 165 N.H. 183 (2012), Mr. Clauson represented both the alleged victim in a domestic simple assault case as well as the defendant (the victim's husband). The matter merited a suspension for several reasons. First, it was an obvious conflict of interest in which Mr. Clauson represented adverse parties in the same matter. Second, Mr. Clauson continued to represent the two clients even after a judge at the arraignment specifically brought the conflict to his attention. Finally, Mr. Clauson had previously been disciplined for the exact same misconduct, *i.e.* failing to avoid conflicts of interest.
74. None of these factors are present in Ms. Chrystal's matter. In light of the ABA Standards and the mitigating factors and case law noted above, the Committee finds by clear and convincing evidence that a public censure is the appropriate sanction in this matter.

IV. SANCTION

75. Having made the aforementioned findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is a Public Censure. 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). 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*").

V. COSTS

76. The Committee accepts Ms. Chrystal's Agreement to Pay Costs of Disciplinary Matter with regard to the investigation and prosecution of this matter.

VI. CONCLUSION

77. For all of the above reasons, the Professional Conduct Committee issues this Public Censure to Deanne Chrystal for violating Rules of Professional Conduct 1.7(a)(2), 1.8(a), (e), and (i), and 8.4(a).

VI. RIGHT TO APPEAL

78. Pursuant to Supreme Court Rule 37(A)(III)(d)(2)(D)(4)(A), Ms. Chrystal has the right to appeal to the New Hampshire Supreme Court.

March 20, 2015



David M. Rothstein, Chair

cc: Sara S. Greene, Disciplinary Counsel
Richard Y. Uchida, Esquire
File