

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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***Ball, James P. advs. Attorney Discipline Office - #13-008***

**REPRIMAND AND ORDER ON COSTS**

On July 21, 2015, the Professional Conduct Committee (the “Committee”) deliberated the Stipulation as to Facts, Violations and Sanction (the “Stipulation”), the Agreement to Pay Costs of Disciplinary Matter and supporting materials, including the audit report of Craig A. Calaman, CPA (collectively the “Record”). Members present included David M. Rothstein, Chair, Heather E. Krans, Vice Chair, Elaine Holden, Vice Chair, Peter G. Beeson, Susan R. Chollet, Richard H. Darling, Margaret R. Kerouac, Georges J. Roy, David W. Ruoff, Richard D. Sager and Martha Van Oot. Mona T. Movafaghi was absent.

Having reviewed the Record, the Committee unanimously voted to accept the facts as stipulated, by clear and convincing evidence. The Committee also unanimously voted to accept the violations of the New Hampshire Rules of Professional Conduct (the “Rules”) as stipulated and to recommend a reprimand for violation of Rules 1.4, 1.15, 8.4(a) and Supreme Court Rule 50<sup>1</sup> as well as reimbursement of the Committee for all costs of investigation and prosecution of this matter.

**I. FINDINGS OF FACT**

This case involves allegations that Mr. Ball violated Rule 1.4 (failure to keep a client reasonably informed and to promptly comply with reasonable requests for information); Rule 1.15 (failure to maintain proper trust accounting procedures and failure to timely deliver a full accounting of fees); Supreme Court Rule 50 (failure to properly maintain and reconcile client trust account); and Rule 8.4(a) (violation of the Rules).

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<sup>1</sup> The Committee determined that Mr. Ball violated Supreme Court Rule 50, a procedural rule. However, the discipline imposed herein is the result of three violations of New Hampshire’s substantive Rules and not the procedural rule.

The Committee unanimously voted that the Record supports the stipulated findings of fact by clear and convincing evidence. Specifically, the Committee finds:

1. James P. Ball is an attorney licensed to practice law in New Hampshire. He was admitted on April 14, 2009. He is also licensed as an attorney in Connecticut. He is currently administratively suspended in that jurisdiction for failure to pay the Client Security Fund fee in 2012, 2013, 2014, and 2015.
2. Mr. Ball was employed as an associate with the law firm of Hinckley, Allen and Snyder, LLP (the "Hinckley firm"), from his date of admission to practice law in New Hampshire through October 19, 2011.
3. Mr. Ball opened his own law practice after leaving the Hinckley firm, with an office at 58 Pleasant Street, Concord, New Hampshire, which was maintained from December 29, 2011, through April 23, 2012.
4. At all times material to his representation of the complainant, Mr. Ball was practicing from his home, and utilized a mailing address of P.O. Box 2993, Concord, NH 03302-2993.
5. Mr. Ball was hired by Sarra Dennehy on August 7, 2012, to represent her in a divorce proceeding against Michael Dennehy. She provided Mr. Ball with a \$7,500.00 retainer, paid in two installments, to represent her in the matter.
6. Initially, the matter proceeded smoothly. However, by mid-November 2012, Mr. Ball was not promptly responding to Ms. Dennehy's inquiries regarding her case. Her last communication with Mr. Ball was just before Christmas 2012.
7. Ms. Dennehy was concerned about the lack of communication and the lack of an accounting of the funds she had provided to Mr. Ball to handle the matter. She had not received contemporaneous bills showing the work performed or the earned fees transferred from the client trust account to the operating account.
8. Ms. Dennehy filed a grievance with the ADO on January 20, 2013. On or near that date, she hired another attorney to represent her in the divorce.
9. The ADO docketed the complaint on January 28, 2013.
10. On January 28, 2013, prior to receiving the docketing letter, Mr. Ball provided Ms. Dennehy's new counsel with a detailed explanation of the time he had spent working on Ms. Dennehy's divorce case. Although he had earned fees in excess of the retainer that had been paid, he refunded \$2,000.00 to Ms. Dennehy through her new attorney.

11. Mr. Ball filed a timely response to the complaint on February 28, 2013. As part of his response, Mr. Ball agreed to an audit of his client trust accounting records by the ADO.
12. Craig A. Calaman, CPA, conducted the audit. His report is dated October 29, 2013.
13. Mr. Calaman's report, with client names redacted, was incorporated into the Stipulation.
14. In addition to his failure to account to Ms. Dennehy for her funds, Mr. Ball failed to properly account for the funds of three other clients, as set forth in Mr. Calaman's report.
15. Mr. Ball also did not perform monthly reconciliations of his client trust account in the manner required by Supreme Court Rule 50.
16. Mr. Ball has been an associate attorney with the firm of Lawson, Persson & Weldon-Francke, PC since January 2014.
17. Mr. Ball has been working with the New Hampshire Lawyer Assistance Program (NH LAP) since January of 2013 and has been complying with the conditions of their program.
18. No grievances have been filed against Mr. Ball since Ms. Dennehy filed the instant complaint.

## **II. RULINGS OF LAW**

The Committee unanimously concludes that there is clear and convincing evidence that Mr. Ball violated the following Rules by clear and convincing evidence, including:

### Rule 1.4: Communication

19. The findings of fact set forth in paragraphs 1-18 above are incorporated herein by reference.
20. In pertinent part, Rule 1.4 states:
  - (a) A lawyer shall:
    - ....
    - (3) keep the client reasonably informed about the status of the matter.
    - (4) promptly comply with reasonable requests for information
21. Pursuant to Rule 1.4, Mr. Ball had a duty to keep his client reasonably informed about the status of her matter and to promptly comply with reasonable requests for information.
22. Mr. Ball breached that duty when he did not reliably communicate with Ms. Dennehy

from mid-November 2012 to mid-January 2013, when she terminated his representation.

23. Mr. Ball breached that duty when he did not provide an itemized statement of work performed, as requested by his client, until after she hired new counsel.
24. Mr. Ball's aforementioned conduct constitutes clear and convincing evidence of a violation of Rule 1.4.

Rule 1.15: Safekeeping Property

25. The findings of fact set forth in paragraphs 1-18 above are incorporated herein by reference.
26. In pertinent part, Rule 1.15 states:
  - (a) The lawyer shall maintain the minimum financial records with respect to the client and third party funds as may be required by the New Hampshire Supreme Court Rules and shall comply with every other aspect of those Rules.  
...
  - (e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and upon request by the client or third person, shall promptly render a full accounting regarding such property.
27. Mr. Ball did not promptly deliver to Ms. Dennehy a full accounting of her client funds contemporaneously with earning his fees.
28. In addition to his failure to account to Ms. Dennehy, Mr. Ball did not maintain proper trust accounting procedures for three other clients, as set forth in the audit report.
29. Mr. Ball did not perform monthly reconciliations of his client trust account, thereby failing to comply with the financial requirements of New Hampshire Supreme Court Rule 50.
30. Mr. Ball's aforementioned conduct constitutes clear and convincing evidence of a violation of Rule 1.15.

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31. Paragraphs 1-18 above are incorporated herein by reference.

32. Mr. Ball did not follow the procedures set forth in New Hampshire Supreme Court Rule 50 in the maintenance of his client trust account. For example, he did not perform monthly reconciliations to ascertain when it was appropriate to disburse earned fees.
33. Mr. Ball's aforementioned conduct constitutes clear and convincing evidence of a violation of New Hampshire Supreme Court Rule 50.

Rule 8.4(a): General Rule

34. Paragraphs 1-33 above are incorporated herein by reference
35. In pertinent part, Rule 8.4(a) provides: "It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct."
36. Having found the foregoing violations of Rules 1.4 and 1.15, there is clear and convincing evidence that Mr. Ball's conduct, as described herein, violated Rule 8.4(a).

### III. ANALYSIS

The Stipulation included an agreement on recommended sanctions based on the violations of Rules 1.4, 1.15 and 8.4(a). For the reasons set forth below, the Committee agrees with and accepts the recommended sanctions of a reprimand and an order to pay costs of investigation and prosecution.

In determining the appropriate sanction, the New Hampshire Supreme Court has instructed that the purpose of attorney discipline 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); *Richmond's Case*, 152 N.H. 155, 159-60 (2005).

Although not formally adopted in New Hampshire, the Court looks to the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") in determining appropriate sanctions. *Conner's Case*, 158 N.H. 299, 303 (2009). The Standards set forth a four-part analysis as a framework for determining the proper sanction: "(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)). The analysis of the first three factors results in the establishment of a baseline sanction. Aggravating and mitigating factors then determine whether an upward or downward departure from the baseline sanction is warranted.

### **Factor I: Duties Violated**

Mr. Ball violated various duties imposed by the Rules, including: (1) his duty to his client to keep the client reasonably informed, (2) his duty to his client to promptly comply with reasonable requests for information, (3) his duty to his client to maintain proper trust accounting records and procedures, and (4) his duty to his client to timely deliver a full accounting of client funds and fees earned. *See Rules 1.4, 1.15 and 8.4(a); Standards §§ 4.1 and 4.4.*

### **Factor II: Mental State**

Sanctions vary under the *Standards* depending on whether the Record establishes negligent, knowing, or intentional conduct in connection with proven violations. “Negligent” conduct is defined as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. In the present case, General Counsel and Mr. Ball stipulated that Mr. Ball’s mental state was negligent with respect to all Rule violations. *Stipulation ¶ 40.* The Committee agrees that the Record establishes by clear and convincing evidence that Mr. Ball’s conduct in the present case was negligent.

### **Factor III: Injury or Potential Injury**

“Injury” is defined as the harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. The level of injury can range from serious injury to minimal or no injury. “Potential injury” is defined as the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct.

The Stipulation characterizes Mr. Ball’s conduct as causing potential injury or no injury. The Committee accepts this characterization. Mr. Ball’s conduct caused potential injury to his client because, for a relatively brief period of time, the client was unable to proceed with her divorce case while he was not communicating with her. *Stipulation ¶ 42.* The client ultimately retained new counsel. *Id.* Similarly, Mr. Ball did not respond promptly to the client’s request for information and an accounting of her trust account. *Stipulation ¶ 43.* Notably, Mr. Ball earned the entire amount of the retainer that the client paid, yet he refunded a substantial portion of the retainer to the client after she terminated his services. *Id.* Mr. Ball’s negligent trust accounting procedures did not harm the other three clients, as described in the audit report, and the potential for harm to those three clients was negligible. *Stipulation ¶ 44.*

### **Factor IV: Aggravating and Mitigating Factors**

Several mitigating factors are delineated in the Stipulation and accepted by the Committee. These mitigating factors include: absence of a prior disciplinary record; lack of a dishonest or

selfish motive; remorse; a cooperative attitude during disciplinary proceedings and full and free disclosure to the Attorney Discipline Office; and cooperation with New Hampshire Lawyer's Assistance Program. The Stipulation also revealed that "Mr. Ball was experiencing health issues during the time period material to this complaint, and did not knowingly fail to comply with the Rules." *Stipulation* ¶ 40. There were no aggravating factors.

#### **IV. SANCTION**

Mr. Ball's failure to properly and promptly communicate with his client implicates section 4.4 of the *Standards*, which addresses lack of diligence in communications with a client. In pertinent part, section 4.4 of the *Standards* provides:

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.

Mr. Ball's failure to properly maintain his trust account and provide information relating thereto implicates Section 4.1 of the *Standards* relative to the handling of client property. In pertinent part, section 4.1 of the *Standards* provides:

Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

Having made the aforementioned findings and rulings, the Committee unanimously concludes that the appropriate discipline in this matter is a sanction as well as an order to pay costs of investigation and prosecution. The Committee's recommended sanction is in accord with the purposes of attorney discipline. *See e.g., Conner's Case* 158 N.H. 303 (2009); *Richmond's Case*, 152 N.H. 155, 159-60 (2005). 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 sanction is also consistent with the *ABA Standards for Imposing Lawyer Sanctions*.

#### **V. COSTS**

Mr. Ball has signed an agreement to pay costs of the investigation and prosecution of this disciplinary matter. The Committee unanimously approves this agreement. Mr. Ball shall be responsible for all costs associated with the investigation and prosecution of this matter.

#### **VI CONCLUSION**

For all of the above reasons, the Committee Reprimands Mr. Ball for violating Rules 1.4, 1.15; 8.4(a) and New Hampshire Supreme Court Rule 50.

**VII. RIGHT TO APPEAL**

Pursuant to Supreme Court Rule 37A(III)(d)(2)(D)(4)(A), Mr. Ball has the right to appeal to the New Hampshire Supreme Court. See also Supreme Court Rule 37(3)(c).

August 24, 2015



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David M. Rothstein  
Chair

cc: James F. DeVito, General Counsel  
James P. Ball, Esquire  
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