

New Hampshire Supreme Court  
**Professional Conduct Committee**

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**(REISSUED TO CLARIFY PARAGRAPH REFERENCES AND  
AFFIRMING LANGUAGE IN STIPULATED AGREEMENT)**

*Maynard, Steven L. advs. James A. Pierce # 03-096*

**Six Month Suspension, Stayed for Two Years  
Contingent on Compliance with Terms and Conditions of Stipulated Agreement**

On October 17, 2006, the Professional Conduct Committee heard oral argument in the above-referenced matter. Members present were Alan J. Cronheim, Acting Chair, Ellen L. Arnold, David N. Cole, Thomas P. Connair, Gerald A. Daley, Reporter, Richard H. Darling, Gretchen Rule Hamel and James R. Martin. Margaret H. Nelson and Benette Pizzimenti were recused. David N. Page and Toni M. Gray were absent. Landya B. McCafferty, Disciplinary Counsel, appeared for the Attorney Discipline Office. David A. Garfunkel, Esquire, appeared on behalf of the Respondent. Mr. Maynard was also present.

Having reviewed the record, including the Notice of Charges, Answer, Complaint History, Motions and Memoranda, the Professional Conduct Committee makes factual findings and rulings as detailed below:

**FACTUAL FINDINGS**

The parties entered into a Stipulation of Facts and Rules Violated. On October 17, 2006, the Professional Conduct Committee, upon consideration and review of the Stipulation, determined that the record supports the following findings of fact by clear and convincing evidence:

1. Mr. Maynard is an attorney licensed to practice law in New Hampshire. Mr. Maynard was admitted to practice in 1979. At all times material to this proceeding, Mr. Maynard operated

his law office as Jordan, Maynard & Parodi, PLLC, 40 East Pearl Street, Nashua, New Hampshire, 03060-3408.

2. On April 8, 2002, James A. Pierce filed a pro se civil rights complaint in the United States District Court for the District of New Hampshire (“federal district court”) alleging, inter alia, medical malpractice against a number of employees at the Rockingham County House of Corrections (“RCHC”). The action was entitled James A. Pierce v. Gene Charron, Superintendent, RCHC, et al. (docket #02-CV-164). [Doc. #1] At all times relevant to these proceedings, Mr. Pierce was incarcerated at the New Hampshire State Prison or at one of the county jails.
3. In an Order dated August 1, 2002, the federal district court granted Magistrate Judge James R. Muirhead’s Report and Recommendation that Mr. Pierce’s claims of medical negligence survived initial scrutiny and should be served on the defendants.
4. On August 2, 2002, Mr. Maynard filed an Appearance in that case on behalf of Mr. Pierce.
5. On or about August 20, 2002, Mr. Maynard received a set of interrogatories propounded of Mr. Pierce by one or more of the defendants.
6. Mr. Maynard forwarded the set of interrogatories to Mr. Pierce and, in or about September, 2002, Mr. Pierce forwarded to Mr. Maynard his hand-written answers to the interrogatories.
7. During the Fall of 2002, Mr. Maynard reviewed Mr. Pierce’s relevant medical records.
8. At some point in the late Fall, 2002, after receiving Mr. Pierce’s draft answers to the interrogatories and after reviewing the medical records, Mr. Maynard states that he became concerned about the strength of Mr. Pierce’s lawsuit and, more specifically, about the credibility of Mr. Pierce’s version of events.
9. Mr. Maynard did not prepare final answers to the August 20, 2002, interrogatories for Mr. Pierce’s review or tender any discovery materials to defendants’ counsel.
10. Meanwhile, throughout the Fall, 2002, the defendants propounded numerous additional discovery requests, including additional interrogatories and requests for medical records. Mr. Maynard did not respond to any of these requests, other than providing one defense attorney with medical releases, nor did he forward copies of these requests to Mr. Pierce.

11. At some point in the late Fall, 2002, Mr. Maynard visited Mr. Pierce at the prison and communicated his concerns about Mr. Pierce's credibility and the overall weakness of Mr. Pierce's claim. This meeting is hereinafter referred to as "the Fall, 2002, meeting."
12. During the Fall, 2002, meeting, Mr. Maynard states that he explained to Mr. Pierce that, in view of his assessment of the case and Mr. Pierce's credibility, he was disinclined to take any further action in the case on Mr. Pierce's behalf. Mr. Maynard states that he told Mr. Pierce that he would not respond to defendants' discovery requests out of concern that, if he assisted Mr. Pierce in this manner, Mr. Maynard would be committing a fraud on the Court. Mr. Maynard states that he explained that the case would likely be dismissed for failure to respond to discovery requests or on the grounds that Mr. Pierce had failed to exhaust his administrative remedies at the RCHC before filing his lawsuit.
13. Mr. Maynard states that he advised Mr. Pierce during the Fall, 2002, meeting to seek a new lawyer. Mr. Maynard explained that he would file a withdrawal from the case only after Mr. Pierce had secured a new lawyer. In the meantime, Mr. Maynard would not, as he explained to Mr. Pierce, take any actions either to harm or to help his case.
14. Mr. Maynard did not explain to Mr. Pierce that one option available to him was for Mr. Maynard to withdraw from the case so that Mr. Pierce could represent himself on a pro se basis until he could secure new counsel.
15. One practical effect of Mr. Maynard's withdrawal (if the court permitted withdrawal) and Mr. Pierce's appearance pro se would have been that the defendants and the federal district court would have then forwarded pleadings and other mail directly to Mr. Pierce.
16. Mr. Pierce did not agree with Mr. Maynard's assessment of the case. Their conversation during the Fall, 2002, meeting was heated, as Mr. Pierce was not satisfied with Mr. Maynard's decision.
17. On December 5, 2002, several defendants filed a motion to dismiss Mr. Pierce's lawsuit on grounds that Mr. Pierce had failed to exhaust his administrative remedies. Thereafter, the remaining defendants filed motions to dismiss on the same grounds. (These motions are hereinafter referred to collectively as the "motions to dismiss.")

18. Mr. Maynard did not respond to these motions to dismiss; nor did he forward copies of the motions to dismiss to Mr. Pierce or otherwise communicate with Mr. Pierce about them.
19. On December 10, 2002, one of the defendants filed the first of a series of defense motions to compel and for sanctions as a result of Mr. Pierce's failure to comply with discovery requests.
20. Similar defense motions to compel were filed on December 31, 2002, and April 15, 2003. (These motions are hereinafter referred to collectively as the "motions to compel.")
21. Mr. Maynard did not respond to the motions to compel; nor did he forward copies of the motions to compel to Mr. Pierce or otherwise communicate with Mr. Pierce about them.
22. On May 14, 2003, Honorable Steven J. McAuliffe granted the motions to dismiss Mr. Pierce's lawsuit for failure to exhaust administrative remedies. As a result of his Order granting the motions to dismiss, Judge McAuliffe dismissed the motions to compel on mootness grounds.
23. Mr. Maynard did not forward a copy of Judge McAuliffe's May 14 Orders to Mr. Pierce or otherwise communicate with Mr. Pierce about the Orders.
24. Judgment in favor of the defendants was entered on May 15, 2003.
25. Mr. Maynard did not forward a copy of the May 15 judgment to Mr. Pierce or otherwise communicate with Mr. Pierce about the judgment.
26. From the time of their meeting at the prison in the late Fall, of 2002 through early July of 2003, Mr. Maynard did not communicate with Mr. Pierce.
27. On July 2, 2003, in response to a request from Mr. Pierce, Mr. Maynard visited Mr. Pierce, who was at that time incarcerated at the Hillsborough County House of Corrections ("HCHOC").
28. During the July 2, 2003, visit, in response to a question from Mr. Pierce about the status of his lawsuit, Mr. Maynard informed Mr. Pierce that his federal lawsuit had been dismissed.
29. On or about September 20, 2003, Mr. Pierce filed in federal district court a pro se request to reopen his federal lawsuit. Mr. Pierce had learned of this entry of judgment sometime before June 30, 2003, after writing to the Clerk of the district court. Mr. Pierce argued that fairness required the reopening of his federal lawsuit as he had never received any notice or other communication from his attorney about either the pending discovery deadlines or the motions to dismiss.

30. By Order dated October 7, 2003, Judge McAuliffe denied Mr. Pierce's request but noted that his prior dismissal of Mr. Pierce's case was "without prejudice . . . plaintiff remains free to exhaust available remedies (and must do so) before pursuing his claims in this court."
31. Mr. Pierce filed a pro se notice of appeal of Judge McAuliffe's October 7 Order but neglected to take any further action with respect thereto, and the First Circuit Court of Appeals dismissed the appeal for lack of prosecution.

## **RULINGS OF LAW**

The parties had entered into a Stipulation of facts and rules violated. On October 17, 2006, the Professional Conduct Committee, upon consideration and review of the Stipulation, determined that the record supports the following rulings of law by clear and convincing evidence:

### **Rule 1.4(a)-(c): Communication**

32. As explained in more detail above, Mr. Maynard failed to communicate in that he did not timely communicate with Mr. Pierce about the existence of various discovery requests and motions to dismiss; he did not timely communicate with Mr. Pierce about the dismissal of his case; and he did not inform Mr. Pierce that he could withdraw from the case. In so doing, Mr. Maynard failed to keep Mr. Pierce reasonably informed about the status of his case and also failed to explain to Mr. Pierce the legal and practical aspects of Mr. Pierce's case to the extent that such explanation was reasonably necessary to permit Mr. Pierce to make informed decisions about his case.
33. Mr. Maynard's failure of communication as described above constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a)-(c).

### **Rule 1.16(a)(1): Withdrawal**

34. As of the date of the Fall, 2002, meeting, Mr. Maynard states that he did not believe Mr. Pierce's version of events and was not comfortable forwarding to the defendants Mr. Pierce's answers to interrogatories and other discovery (including Mr. Pierce's medical records) out of concern that, if he assisted Mr. Pierce in this manner, Mr. Maynard would be committing a fraud on the Court.

35. Further, as of the date of the Fall, 2002, meeting, Mr. Maynard states that he explained to Mr. Pierce that he would not take further action on Mr. Pierce's case and the case would likely be dismissed on that basis or on grounds of Mr. Pierce's failure to exhaust administrative remedies. As of that date, Mr. Maynard was also aware that he had not yet responded to legally proper defense requests for discovery, including requests for Mr. Pierce's answers to interrogatories.
36. Because at the time of the Fall, 2002, meeting Mr. Maynard's continued representation of Mr. Pierce would result in a violation of the rules of professional conduct (i.e., Rule 3.4(d)), Mr. Maynard was required to withdraw from representation at that time.
37. Mr. Maynard's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.16(a)(1).

**Rule 8.4(a): General Rule**

38. Because there exists clear and convincing evidence of violation of the aforementioned Rules, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

**ANALYSIS**

An aggravating factor in this case is the Respondent's history, which includes several complaints to the Attorney Discipline Office, resulting in a reprimand, public censures, and warnings. Also to be considered, however, are the mitigating factors of the Respondent's remorse and the fact that his actions resulted in no fraud, deceit, or personal gain. Given the Respondent's recurring complaints, a straightforward suspension might be an appropriate sanction. Conversely, a stayed suspension with a tightly controlled system of monitoring by a committed mentor could better serve both the public and the Respondent by recognizing the seriousness of the violations, yet providing for remediation.

**SANCTION**

The parties, in their Stipulation, agreed on a sanction which would include a six month suspension stayed for two years under a series of terms and conditions designed to closely monitor

Mr. Maynard's practice of law. The Professional Conduct Committee recognized that the violations of rules by Mr. Maynard were part of a pattern and that suspension was an appropriate sanction in this case. The Committee also recognized that the public would be protected, public confidence in the Bar would be maintained, the integrity of the legal profession would be preserved, and similar future conduct would be prevented by the terms and conditions of the creative sanction stipulated by the parties. The Committee further took note of the level of interest and commitment shown by Mr. Maynard's law firm in agreeing to monitor and supervise Mr. Maynard's practice. Accordingly, the Committee concluded that the appropriate discipline in this matter is a six month suspension to be stayed for two years contingent on compliance with the following stipulated terms and conditions:

1. Mr. Maynard agrees to comply with the terms of this Stipulation, including the monitoring of his practice of law, as described herein.
  - (a) Robert M. Parodi, Esq., the managing partner of Jordan, Maynard and Parodi (Mr. Maynard's law firm) and a signatory to this agreement, agrees to monitor Mr. Maynard's compliance with the terms and conditions of this Stipulation and also agrees to report to Disciplinary Counsel regarding Mr. Maynard's compliance as provided in subparagraph (m) below.<sup>1</sup>
  - (b) Jordan, Maynard and Parodi (Mr. Maynard's law office) will assign a fulltime secretary to provide Mr. Maynard with secretarial support. (Currently, the secretary supporting Mr. Maynard works only four days a week). The secretary assigned to support Mr. Maynard may also support other attorneys in the office, depending upon workload and availability.
  - (c) All prospective civil cases will be screened by Robert Parodi, Esq. who will decide whether the firm will undertake representation. Mr. Maynard will not have authority to make that determination. Mr.

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<sup>1</sup> When Mr. Parodi is unavailable because of vacations, trial schedule or other professional or personal reasons, Alexander S. Buchanan, Esq. will assume Mr. Parodi's responsibilities

Maynard, however, may provide representation in civil cases that have been screened and accepted by Mr. Parodi.

- (d) Mr. Parodi will meet with Mr. Maynard on a weekly basis to review/discuss Mr. Maynard's civil cases.
- (e) Diarizing and docketing for all personal injury cases will be performed by a secretary/paralegal with personal injury litigation experience. That paralegal will report to and be supervised by Mr. Parodi.
- (f) All incoming calls for Mr. Maynard will be routed first to the secretary assigned to support Mr. Maynard (or her designated substitute) who will log in the calls by caller name, date and time. If Mr. Maynard is not available, the caller will be asked if he/she prefers to leave a message with the secretary or to be put into Mr. Maynard's voicemail. If the caller selects voicemail, Mr. Maynard's secretary will make a notation to that effect on the log. If the caller elects to leave a message, a copy of that message will be attached to the log.
- (g) All incoming client correspondence to Mr. Maynard (whether by mail or fax) will be logged in by the paralegal responsible for personal injury cases (if the correspondence relates to a personal injury file for which the paralegal is responsible) or by Mr. Maynard's secretary (or her designated substitute) by client name with appropriate file references. The log entries will include the name of the client, the date of the correspondence, and a brief description of the contents of the correspondence.
- (h) On a weekly basis, Mr. Parodi will review the mail and telephone logs:
  - (i) If any of the logged-in individuals do not appear in the firm's active case files, Mr. Parodi will inquire further about the identity of the caller and the reason for the call and will follow up with Mr. Maynard. If Mr. Parodi determines that a further

response to the caller is appropriate, he will discuss the matter with Mr. Maynard and Mr. Parodi will be copied on any response Mr. Maynard sends to the individual.

- (ii) If the logged-in individuals do appear in the firm's active case files, Mr. Parodi will determine if a further response to the client is appropriate. If he determines that a further response is appropriate, he will discuss the matter with Mr. Maynard and will be copied on any response Mr. Maynard sends to the individual.
- (i) Mr. Maynard will continue to have independent responsibility for deciding whether to undertake representation in criminal cases. However, the mail and call logs described above will be kept for all of his cases, including the criminal cases.
- (j) With respect to Mr. Maynard's cases, all orders received from the court, all pleadings filed by opposing counsel, all discovery requests, and all pleadings filed by Mr. Maynard will be copied and provided to Mr. Maynard's clients. Mr. Maynard's secretary will be informed of this policy and Mr. Parodi will confer with her on a weekly basis to ensure that this procedure is being followed.
- (k) The firm's engagement/fee letter for criminal cases will be modified to make clear that representation in such cases does not include representation in any other case, including any civil cases that may be related in any way to the criminal case.
- (l) Mr. Maynard will provide an engagement/fee letter to every client who retains his services which will include a description of the fee arrangement (hourly with rate, contingent, flat fee, etc.).
- (m) Mr. Parodi will report to the Attorney Discipline Office on a monthly basis whether there are issues or concerns regarding Mr. Maynard's diligence and/or communication with his clients in accordance with

the terms of the Stipulation.

2. If Mr. Parodi reports issues or concerns in accordance with paragraph 1(m), Disciplinary Counsel shall review that report and shall determine whether, in her opinion, the reported event is a material violation of the terms of this Stipulation. In making that determination, Disciplinary Counsel may conduct such further investigation, if any, that she deems appropriate. Mr. Maynard shall have the right to provide Disciplinary Counsel with any additional information regarding the reported event. If Disciplinary Counsel concludes that, in her opinion, the reported event is a material violation, she may file a motion with the Professional Conduct Committee requesting that the Committee impose the stayed six month suspension. Mr. Maynard shall have the right to respond in writing to Disciplinary Counsel's motion, to request an evidentiary hearing thereon, and to request oral argument before the Committee. The Committee shall rule upon any request for an evidentiary hearing and for oral argument. Following an evidentiary hearing (if requested), or the denial of a request for such hearing, the Committee shall determine whether the motion requesting imposition of the six month suspension should be granted or denied. Unless waived, oral arguments will be conducted to allow Disciplinary Counsel and Mr. Maynard ten (10) minutes to address the issue of imposition of the stayed suspension. The Committee's decision shall be final. Disciplinary Counsel shall have the burden of proof by a preponderance of the evidence to establish that imposition of the stayed suspension is warranted.
3. In any proceeding under paragraph 2 of this Stipulation to impose the stayed six month suspension based upon information reported by Mr. Parodi, the burden of proof that Disciplinary Counsel must meet is as follows: Disciplinary Counsel must establish by a preponderance of the evidence that Mr. Maynard's reported conduct is either a material breach of the terms of the Stipulation or constitutes a violation of the N.H. Rules of Professional Conduct.
4. If the Attorney Discipline Office receives a complaint against Mr. Maynard that arises out of events that predate adoption of this Stipulation by the Professional

Conduct Committee, that complaint will be processed in the ordinary course of business. Any finding of a violation of the Rules of Professional Conduct that may result from that complaint will not be a basis for imposition of the six month suspension in this case.

5. If the Attorney Discipline Office receives a complaint against Mr. Maynard during the period of the two year stay that arises out of events that post date adoption of this Stipulation by the Professional Conduct Committee and are within the period of the two year stay, that complaint will be processed by the Attorney Discipline Office on an expedited basis. Any final adjudication of a violation of the Rules of Professional Conduct that may result from that complaint may provide a basis for a request by Disciplinary Counsel that the Professional Conduct Committee impose the stayed six month suspension in this case. If Disciplinary Counsel makes such a request, Mr. Maynard shall be entitled to an evidentiary hearing and review by the Professional Conduct Committee.
6. At the conclusion of the two year period described herein, the six month suspension shall be permanently stayed provided that there are no complaints or motions pending pursuant to paragraphs 2 or 5 of this Stipulation. If such complaints or motions are filed during the two year period, they can provide a basis for seeking imposition of the stayed six month suspension even if the proceedings on such complaints or motions are concluded after the expiration of the two year period of the stay. Any request for imposition of the stayed suspension that is based upon a complaint under paragraph 5 hereof must be initiated within 30 days of final disposition of that complaint.
7. In any proceeding to impose the six month stayed suspension, if the Professional Conduct Committee finds that a basis for imposition of the stayed suspension has been proven in accordance with the applicable provisions of this Stipulation, it shall have the discretion to impose a suspension of less than six months if it finds that such lesser suspension is appropriate under the facts presented.
8. If the law firm of Jordan, Parodi and Maynard should dissolve, or if Mr. Maynard or

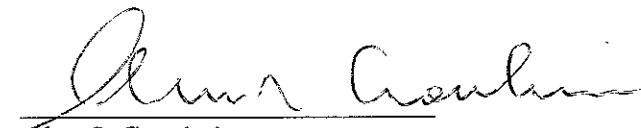
Mr. Parodi should separate from the firm, Disciplinary Counsel shall be notified immediately. This Stipulation shall be renegotiated within 60 days of such event and shall thereafter be presented to the Professional Conduct Committee for its review. If the new Stipulation is rejected by the Committee, the Committee shall specify those provisions of the Stipulation that are not acceptable and Mr. Maynard shall be given 30 days to cure.

The Committee also accepts the Respondent's stipulated assent to pay costs incurred in the investigation and prosecution of this matter.

## CONCLUSION

For all of the above reasons, the Professional Conduct Committee hereby orders that Steven L. Maynard be suspended for six months, suspension to be stayed for two years contingent on compliance with the stipulated agreement above, for violating N.H. R. Prof. Conduct Rule 1.3(a) and 1.3(b)(2): Diligence, Rule 1.4 (a)-(c): Communication, Rule 1.16(a)(1): Withdrawal, Rule 3.4(d): Fairness to Opposing Party and Counsel, and Rule 8.4(a): Misconduct. This order shall take effect on November 10, 2006.

October 30, 2006

  
Alan J. Cronheim  
Acting Chair

c.c. Landya B. McCafferty, Disciplinary Counsel  
David A. Garfunkel, Esquire  
Robert Parodi, Esquire  
File