

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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PUBLIC CENSURE AND ORDER ON COSTS

On November 17, 2015, the Professional Conduct Committee (the “Committee”) deliberated the Stipulation as to Facts, Violations and Sanction (the “Stipulation”), and the Agreement to Pay Costs of Disciplinary Matter. 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, Mona T. Movafaghi, Georges J. Roy, Richard D. Sager and Martha Van Oot. Scott H. Harris was absent during the deliberations of this matter.

Having reviewed the Record, the Committee approved the facts as stipulated, by clear and convincing evidence. The Committee approved the findings of violations of the New Hampshire Rules of Professional Conduct (the “Rules”) as stipulated and to recommend a public censure for violation of Rules 1.1; 1.3; 1.4; and 8.4(a), as well as reimbursement of the Committee for all costs of investigation and prosecution of this matter.

I. FINDINGS OF FACT

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

A. Facts

1. Anthony V. Rozzi is an attorney licensed to practice law in New Hampshire. Mr. Rozzi was admitted to practice in 2005.

2. Mr. Rozzi was admitted to practice law in Massachusetts on June 16, 2004. He is currently on active status in Massachusetts.
3. Mr. Rozzi does not have a previous disciplinary history.
4. Mr. Rozzi practices law at the Law Offices of Anthony V. Rozzi, Esq., P.O. Box 1069, Haverhill, Massachusetts, 01832. He rents conference room space at 143 Essex St., Ste. 710, Haverhill, Massachusetts, 01832.
5. Mr. Rozzi is also a pharmacist licensed in Massachusetts. He is employed full-time as the Director of Pharmacy for a long-term care facility in Massachusetts. Mr. Rozzi has been a pharmacist since 1979 with no history of discipline as a pharmacist. He only has two active legal files at this time; one is a pro bono case.
6. This disciplinary matter arises from a complaint filed by Lori Quinlan dated March 13, 2014 and referred for formal proceedings on March 13, 2015.
7. Mr. Rozzi represented Ms. Quinlan in a sexual harassment and wrongful termination action against her former employer, Target Corporation (“Target”). Mr. Rozzi took the case on a contingency basis.
8. Ms. Quinlan alleged that while employed by Target, a Team Leader Executive at Target “made a sexual advance towards her in a parking lot after work” in December 2007, which Ms. Quinlan rejected. Ms. Quinlan stated that she reported the alleged harassment to Target in January 2008, and Target terminated her shortly thereafter, following its investigation into her allegations.
9. Target claimed that Ms. Quinlan was terminated because she knowingly gave false information during the course of Target’s investigation. Target also terminated the alleged perpetrator of the sexual harassment.
10. On or about May 14, 2008, Ms. Quinlan filed a Charge of Discrimination (the “Charge”) with New Hampshire Commission for Human Rights (the “Commission”), alleging sexual harassment and retaliation/wrongful termination.
11. By letter dated August 20, 2010, the Commission issued a finding of probable cause regarding Ms. Quinlan’s wrongful termination claim and a finding of no probable cause regarding Ms. Quinlan’s sexual harassment claim. Ms. Quinlan did not request reconsideration or appeal the Commission’s finding of no probable cause.
12. Pursuant to RSA 354-A:21-a, on September 21, 2010, Target removed the Charge to the Rockingham County Superior Court (the “State Court”), for a trial by jury. Pursuant to 28 U.S.C. §§1446(a) and 1331, on October 19, 2010, Target removed the Charge from the State Court to the Federal Court, initiating the matter *Lori*

Quinlan v. Target Corporation, Case No. 1:10-cv-00474-PB (the “Federal Action”).

13. In October 2010, after the case had been removed to the Federal Court, Mr. Rozzi filed an appearance on behalf of Ms. Quinlan.
14. On May 18, 2012, following the deposition of Ms. Quinlan, Target filed a Motion for Summary Judgment. Specifically, Target asserted that Ms. Quinlan failed to establish a *prima facie* claim for sexual harassment pursuant to Title VII of the Civil Rights Act or for wrongful termination.
15. Ms. Quinlan’s objection to the Motion for Summary Judgment was due on or before June 18, 2012. However, Mr. Rozzi did not file an objection.
16. On July 5, 2012, the Federal Court (Barbadoro, J.) entered an order granting the Motion for Summary Judgment, stating: “No objection has been filed. Accepting the facts properly pleaded in support of the motion as true, I determine that the defendant is entitled to judgment for the reasons set forth in the motion. Motion granted.”
17. On July 6, 2012, the Federal Court entered judgment in favor of Target.
18. Mr. Rozzi did not file an objection on behalf of Ms. Quinlan because he negligently failed to calendar the deadline. At the time, Mr. Rozzi employed one part-time paralegal and no other staff. He was also in the middle of switching calendaring systems, from “Bill4Time” to Clio Practice Management system. He admits that this deadline “fell through the cracks.”
19. Mr. Rozzi was also dealing with a variety of personal and health issues, including struggling with diabetes. Most relevant for the time frame pertinent to this disciplinary matter, however, he was attending to his wife’s health. Mrs. Rozzi was first diagnosed with Fibromyalgia, then later was diagnosed with lupus, an autoimmune disorder. Due to the lupus, Mr. Rozzi’s wife manifests stress with severe papura hives and flare ups can result in weeks or months in a debilitated state. During the time frame pertinent to this disciplinary matter, Ms. Rozzi was in the midst of a severe lupus flare up, which left Mr. Rozzi to care for their children, then aged 8 and 13.
20. When Mr. Rozzi received the order granting judgment to Target, he did not immediately inform his client. He was embarrassed and horrified that he had failed to calendar the deadline for the objection. He determined to do his best to persuade the court to reconsider, after which he intended to inform his client of the court’s order on reconsideration.

21. On July 17, 2012, Mr. Rozzi filed a Motion for Reconsideration of the order granting summary judgment for Target. In the Motion, Mr. Rozzi represented that, over the previous seven months, he, his wife, and his sister suffered serious illnesses. Mr. Rozzi stated that these significant personal preoccupations resulted in his failing to file an objection on time. Mr. Rozzi therefore requested that the Federal Court reconsider its order on the Motion for Summary Judgment and reopen the Federal Action.
22. In an order dated August 6, 2012, the Federal Court denied the Motion for Reconsideration. Shortly thereafter, Mr. Rozzi met with his client, informed her of his mistake and apologized.

Stipulation ¶¶ 1-22.

II. RULINGS OF LAW

The Committee concludes that there is clear and convincing evidence that Anthony V. Rozzi has violated the following Rules of Professional Conduct by clear and convincing evidence:

Rule 1.1: Competence

23. Rule 1.1 states as follows:
 - (a) A lawyer shall provide competent representation to a client.
 - (b) Legal competence requires at a minimum:
 - (1) specific knowledge about the fields of law in which the lawyer practices;
 - (2) performance of the techniques of practice with skill;
 - (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;
 - (4) proper preparation; and
 - (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.
 - (c) In the performance of client service, a lawyer shall at a minimum:
 - (1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;
 - (2) formulate the material issues raised, determine applicable law and identify alternative legal responses;

- (3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and
 - (4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.
24. Mr. Rozzi violated Rule 1.1 when he failed to properly attend to the details and schedules of the litigation and failed to undertake action on his client's behalf in a timely and effective matter by failing to calendar the deadline for the objection to the motion for summary judgment filed by Target, which resulted in his client's claim being dismissed.

Stipulation ¶¶ 25-27.

Rule 1.3: Competence

25. Rule 1.3 states as follows:

A lawyer shall act with reasonable diligence and promptness in representing a client.

26. Mr. Rozzi violated Rule 1.3 when he failed to properly attend to the details and schedules of the litigation and failed to undertake action on his client's behalf in a timely and effective matter by failing to calendar the deadline for the objection to the motion for summary judgment filed by Target.

Stipulation ¶¶ 28-29.

Rule 1.4: Communication

27. Rule 1.4 states, in pertinent part, as follows:

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter.

28. Mr. Rozzi violated Rule 1.4 when he failed to inform Ms. Quinlan that the motion for summary judgment had been filed by Target, and that an objection was due by

a date certain.

29. Mr. Rozzi violated Rule 1.4 when he failed to inform Ms. Quinlan that he did not timely object to the motion for summary judgment and that the motion by Target had been granted.

Stipulation ¶¶ 31-33.

Rule 8.4(a): General Rule

30. Having found the foregoing violations, there is clear and convincing evidence that Mr. Rozzi's conduct, as described herein, violated Rule 8.4(a).

Stipulation ¶ 34.

III. ANALYSIS

The Stipulation included an agreement on recommended sanctions based on the violations of Rules 1.1; 1.3; 1.4; and 8.4(a). For the reasons set forth below, the Committee agrees with and accepts the recommended sanction of a public censure and an order to pay the costs of investigation and prosecution.

Although the Court has not adopted the ABA *Standards for Imposing Lawyer Sanctions*, it looks to them for guidance. *Conner's Case*, 158 N.H. 299, 303 (2009). 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.

Prong I: Duty Violated

Under the first prong of the analysis, Mr. Rozzi violated duties owed to his client.

Prong II: Mental State: Knowing or Negligent

With respect to Mr. Rozzi's mental state under the second prong of the sanction analysis, the parties agree mental state was negligent. Mr. Rozzi was dealing with a host of difficult personal issues at the time of Target's motion, as well as changing calendaring systems at his office which resulted in this mistake. No evidence suggests that he knowingly failed to respond to Target's motion for summary judgment.

As for his failure to inform Ms. Quinlan promptly that the Court had dismissed her case, Mr. Rozzi admits that he knowingly failed to inform her. He did so in the hope that he could cure the damage caused by his mistake. Once he attempted to do so, and his motion for

reconsideration was denied, he promptly met with his client and updated her. Mr. Rozzi deeply regrets this choice and understands that a client must be kept apprised of all significant developments, however negative or unwelcome the news may be.

Prong III: Injury or Potential Injury

Mr. Rozzi's conduct caused injury to Ms. Quinlan, who did not have a chance to properly controvert Target's motion, and thus had her matter dismissed by the federal court.

Prong IV: Aggravating and Mitigating Factors

The baseline sanction must be considered in light of any aggravating and mitigating factors. *Conner's Case*, 158 N.H. at 303.

Mr. Rozzi's lack of diligence implicates Section 4.4 of the *Standards*.

Absent aggravating or mitigating circumstances, upon application of the factors set out in *Standard* 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.43 Reprimand (in New Hampshire - Public Censure) 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. Rozzi's conduct in this matter, when considered under *Standard* § 4.43, calls for a baseline sanction of public censure. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g.*, *Conner's Case*, 158 N.H. at 303. In this case, one aggravating factor is present: Mr. Rozzi's substantial experience in the practice of law. See *Standards* § 9.22. Mitigating factors include no prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to the ADO, remorse, and personal and emotional problems. Mr. Rozzi is embarrassed by this oversight on his part and has fully cooperated with the ADO and readily admitted his mistake. See *Standards* § 9.32.

In light of the *Standards* and the factors noted above, a public censure is the appropriate sanction in this matter. This sanction serves the purposes of attorney discipline. Both case law and the *Standards* support this sanction.

IV. SANCTION

Having made the findings and rulings, the Committee concludes that the appropriate discipline in this matter is a public censure. The Committee's recommended sanction is in accord with the purposes of attorney discipline. *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 *Standards*. The purpose of the Court's disciplinary power "is not to inflict punishment but rather to protect the

public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future.” *Grew’s Case*, 156 N.H. 361, 365 (2007) (quotation and citation omitted).

V. COSTS

Mr. Rozzi has signed an agreement to pay costs of the investigation and prosecution of this disciplinary matter. The Committee approves this agreement. Mr. Rozzi 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 issues this public censure to Mr. Rozzi for violating Rules of Professional Conduct 1.1; 1.3; 1.4; and 8.4(a).

December 1, 2015



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Anthony V. Rozzi, Esquire
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