

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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*Godin, Randy advs. Attorney Discipline Office - #14-012*

**REPRIMAND AND ORDER ON COSTS**

On July 19, 2016, 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, Elaine Holden, Vice Chair, Peter G. Beeson, Georges J. Roy, Scott H. Harris, and Martha Van Oot. Heather E. Krans, Vice Chair, Susan R. Chollet, Richard H. Darling, Margaret R. Kerouac, Mona T. Movafaghi, and Richard D. Sager were absent.

The Committee approved the facts as stipulated, by clear and convincing evidence. The Committee then approved the findings of violations of the New Hampshire Rules of Professional Conduct (the “Rules”) as stipulated, and approved the agreement to reimburse the Committee for all costs of investigation and prosecution.

**I. FINDINGS OF FACT**

1. Randy Godin is an attorney licensed to practice law in New Hampshire. Mr. Godin was admitted to practice on May 22, 2006.
2. Mr. Godin lives in California and was admitted to practice in California on December 12, 2005. He practices law almost exclusively in California, but occasionally helps friends and family in New Hampshire.

3. Mr. Godin law office in California is The Law Offices of Randy Godin located at 8383 Wilshire Blvd., Suite 830, Beverly Hills, CA 90211.
4. Mr. Godin's New Hampshire address is 58 Louis Street, Manchester, NH 03102.
5. Mr. Godin does not have a previous disciplinary history.
6. This disciplinary matter was initiated by a judicial referral submitted by Judge Patricia Quigley on March 24, 2014. On April 28, 2015, attorney Nicole Fortune filed a referral on behalf of her clients (daughters of the decedent in a probate matter before Judge Quigley). A grievance by one of the daughters, Kathleen Cline, was filed on May 7, 2015. The matters were referred for formal proceedings on February 25, 2016.
7. Mr. Godin represented Lloyd Dahlen in June of 2012. Mr. Dahlen was Mr. Godin's long-time family friend and a "grandfather-like" figure who had been friends with Mr. Godin's father since 1975. Mr. Godin drafted a Last Will and Testament (the Will), as well as the Lloyd F. Dahlen Trust (the Trust) for Mr. Dahlen.
8. The will was essentially a "pour-over" will funding Mr. Dahlen's Trust. Mr. Dahlen executed both instruments in New Hampshire on June 4, 2012. Mr. Godin signed as a witness, along with a family friend, Julie Pelopida. Mr. Godin also notarized the documents.
9. Mr. Dahlen died on June 24, 2013. Mr. Dahlen, long-since divorced at the time, had four daughters from his previous marriage. His Trust provided that \$5,000 be transferred to each of his daughters upon the death of their biological mother, if she survived Mr. Dahlen. All personal effects were left to Mr. Godin's parents (Dorian and Patricia Godin), as was any "remaining cash." Mr. Dahlen left his home to Mr. Godin pursuant to the terms of the Trust. By the date of his death, however, Mr. Dahlen had already separately deeded his house to Mr. Godin, pursuant to a deed prepared by Mr. Godin and executed by Mr. Dahlen on June 12, 2013.<sup>1</sup>
10. Dorian Godin, the named Executor, filed a Petition for Estate Administration on July 22, 2013.
11. On September 26, 2013, Kathleen Cline filed a Petition for Imposition of Constructive Trust. Ms. Cline argued that she and her sisters were "the

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<sup>1</sup> Mr. Dahlen resided at 236 Knowlton Street in Manchester, New Hampshire. The house is a two-bedroom, approximately 740 square foot home.

natural objects of their father's bounty," that Mr. Godin would be unjustly enriched by the transfer of their father's house to him, that such transfer was the result of undue influence, and that the court should impose a constructive trust on the property "for the benefit of Petitioner and her sisters."

12. After various hearings, the Court issued an Order dated January 15, 2015. The Court found that Mr. Godin, by notarizing his own signature on the will, violated RSA 455:2-a,<sup>2</sup> and that by witnessing the will while also being a beneficiary, he was an "interested witness" as defined by RSA 551:3,<sup>3</sup> thus disqualifying him from receiving any real or personal property.
13. However, because Mr. Dahlen transferred his home to Mr. Godin *before* passing away, the Court separately addressed whether a constructive trust should be imposed on that property based on Ms. Cline's claims of undue influence. As to this issue, the Court stated that there was:

uncontroverted testimony that Lloyd Dahlen was close to the Godin family and had a good relationship with Randy Godin and his family, and in fact had more frequent contact with them than with his biological children. At the evidentiary hearing in September, the petitioners did not provide any evidence that there was fraud or undue influence perpetrated on Lloyd Dahlen in the drafting and execution of the deed or his testamentary documents. The court finds that the intent in his will and trust was to primarily benefit the Godin family over his biological family. The deed transferring real estate was not the product of fraud, lack of capacity or undue influence.

14. The court thus declined to impose a constructive trust, found that it was "not unconscionable" that Mr. Godin received the real estate transferred to him by Mr. Dahlen, and "made no finding" as to whether Mr. Godin's

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<sup>2</sup> New Hampshire adopted the Uniform Law on Notarial Acts in 2005. RSA 455:2-a addresses "competency" and provides, *inter alia*, that "[n]o person acting in the capacity of notary public shall notarize his or her own signature."

<sup>3</sup>RSA 551:3 provides: [a]ny beneficial device or legacy made or given in a will to a subscribing witness thereto or to the wife or husband of such a witness shall be void unless there be 2 other subscribing witnesses, and such subscribing witness shall be a competent witness thereto; but a provision therein for the payment of a debt shall not be void nor disqualify the creditor as a witness thereto."

conduct violated the New Hampshire Rules of Professional Conduct.<sup>4</sup>

15. One of the Rules implicated by Mr. Godin's conduct is Rule 1.8(c). That rule prohibits a lawyer from preparing on behalf of a client an instrument giving the lawyer, or a person related to the lawyer, any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of being "related" to the client, the rule states that related individuals include a "spouse, child, grandchild, parent, grandparent, or other relative *or individual with whom the lawyer or other person maintains a close, familial relationship.*" (Emphasis added).
16. Mr. Godin and his parents were extremely close to Mr. Dahlen and enjoyed a familial relationship with him for nearly forty years. Mr. Godin referred to him throughout his life as "grandpa Lloyd" and considered him a "patriarch figure." Mr. Dahlen spent time at the Godin family home nearly every day, spending holidays there and attending Mr. Godin's graduations and most birthday parties. The Court's Order of January 2015 recognizes this close relationship which was "uncontroverted" by Mr. Dahlen's daughters. The ADO does not believe there is clear and convincing evidence of a Rule 1.8(c) violation.
17. At the time of the events giving rise to this disciplinary matter, Mr. Godin was living in California and practicing law almost exclusively there. He returned to New Hampshire in May of 2012 because his brother had committed suicide. Mr. Dahlen's Will and Trust were executed in the immediate aftermath of that tragic event and all the attendant arrangements (Mr. Godin's brother died without a will), which left Mr. Godin in a scattered frame of mind. Mr. Godin admits that he did not research New Hampshire law to confirm the requirements for a "self-proving" will,<sup>5</sup> nor did he realize at the time of executed the documents that by notarizing his own signature he was violating RSA 455:2-a.

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<sup>4</sup> Judge Quigley's referral to the ADO was in March 2014, prior to making her findings in the January 2015 Order.

<sup>5</sup> To be self-proving, signatures of the two witnesses and the notary public must be properly effectuated pursuant to RSA 551:2-a. Following a hearing, in an Order dated February 25, 2014, the Court found that because Mr. Godin was both witness and notary, the Will was not self-proving. The Court further found, however, that the Will had been proven in "common form," i.e. there was sufficient proof that the testator signed under no undue influence in the presence of witnesses. The same Order found that Mr. Dahlen's four daughters were not pretermitted heirs.

## **II. RULINGS OF LAW**

The Committee concludes that there is clear and convincing evidence that Randy Godin has violated the following Rules of Professional Conduct by clear and convincing evidence:

### **Rule 1.1: Competence**

Mr. Godin violated Rule 1.1 when he failed to properly prepare and attend to the details of the drafting and execution of Mr. Dahlen's Will and Trust by researching New Hampshire's specific requirements for a self-proving will and valid notarization.

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

Having found the foregoing violation, there is clear and convincing evidence that Mr. Godin's conduct violated Rule 8.4(a).

## **III. ANALYSIS**

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

### **Prong I: Duty Violated**

Under the first prong of the analysis, Mr. Godin violated duties owed to his client, Mr. Dahlen. *See Standards* § 4.4.

### **Prong II: Mental State: Knowing or Negligent**

With respect to Mr. Godin's mental state under the second prong of the sanction analysis, the parties agree that Mr. Godin's mental state was negligent.

### **Prong III: Injury or Potential Injury**

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Godin's misconduct.

Mr. Godin's conduct did not injure Mr. Dahlen directly, though it contributed to injury to the estate of Mr. Dahlen in that litigation ensued based

on avoidable irregularities in the execution and notarization of the Will and Trust. However, the parties agree that Mr. Dahlen's daughters would likely have contested aspects of the Will and Trust in any event, given that they did not inherit as they had hoped. Mr. Godin represented his father in his capacity as Executor and did not charge fees related to defending the validity of the Will and Trust.

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

The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g.*, *Conner's Case*, 158 N.H. 299, 303 (2009). The parties agree that the baseline sanction in this matter is a reprimand. *See Standards* § 4.43.

In this case, no aggravating factors are present. *See Standards* § 9.22. Mitigating factors include absence of a prior disciplinary record, personal problems (*i.e.*, his brother's suicide just weeks prior to his work for Mr. Dahlen), and full and free disclosure to the ADO. *See Standards* § 9.32.

The parties agree that given the baseline sanction, and consideration of aggravating and mitigating circumstances, a reprimand serves the purposes of discipline and is an appropriate sanction in this case.

#### **IV. SANCTION**

The Committee concludes that the appropriate discipline in this matter is a reprimand. 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).


## **VI. COSTS**

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

## **VII. CONCLUSION**

For all of the above reasons, the Committee approves the stipulation and conditions in its entirety and issues this reprimand.

August 8, 2016



David M. Rothstein  
Chair

cc: Sara S. Greene, Disciplinary Counsel  
Randy Godin, Esquire  
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