

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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Martha Van Oot  
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Barbara J. Guay, Legal Assistant

*Morgan, Thomas R. advs. Attorney Discipline Office - #16-006*

**REPRIMAND AND ORDER ON COSTS**

On April 18, 2017, the Professional Conduct Committee (“the Committee”) deliberated the Stipulation as to Facts, Violations and Sanction (“the Stipulation,” attached as **Exhibit A**), and the Agreement to Pay Costs of Disciplinary Matter (attached as **Exhibit B**). Members present included David M. Rothstein, Chair; Heather E. Krans, Vice Chair; Elaine Holden, Vice Chair; Peter G. Beeson; Richard H. Darling; David W. McGrath; Mona T. Movafaghi; Georges J. Roy; and Martha Van Oot. Susan R. Chollet; Margaret R. Kerouac; and Caroline K. Leonard were absent.

The Committee approved the facts as stipulated by clear and convincing evidence. It further found that Thomas R. Morgan’s conduct violated Rules of Professional Conduct 1.1; 1.16, and 8.4(a), as stipulated.

The Committee also concluded that a reprimand is appropriate. Its sanction is in accord with the purposes of attorney discipline. *See e.g., Conner’s Case* 158 N.H. 299, 303 (2009); *Richmond’s Case*, 152 N.H. 155, 159-60 (2005). The sanction is also in accord with the *ABA Standards for Imposing Lawyer Sanctions* (2005) (“Standards”).

Having approved the stipulated sanction, the Committee approved the agreement that Mr. Morgan shall reimburse the Committee for all costs of investigation and prosecution of this matter.

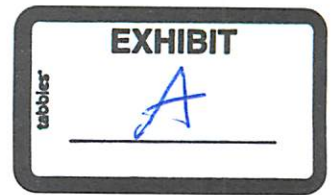
April 18, 2017



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David M. Rothstein  
Chair

cc: Sara S. Greene, Disciplinary Counsel  
Russell F. Hilliard, Esquire  
File



**NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE**

Morgan, Thomas, Jr.

advs.

Attorney Discipline Office

#16-006

**STIPULATION AS TO FACTS, VIOLATIONS,  
AND SANCTION (REPRIMAND)**

Respondent Thomas Morgan, Jr., Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

**A. Facts**

1. Thomas Morgan, Jr. is an attorney licensed to practice law in New Hampshire. Mr. Morgan was admitted to practice in 1978.
2. Mr. Morgan has also been admitted to practice law in Massachusetts. He was licensed there on June 7, 1079. He is currently on active status and has never been disciplined in Massachusetts.
3. At all times material to this proceeding, Mr. Morgan practiced law at the Law Offices of Thomas Morgan, PC, 369 Main Street, Salem, New Hampshire.
4. Mr. Morgan does not have a previous disciplinary history.

**1. Background of Ann Furino's Estate Matter**

5. This disciplinary matter was initiated by a grievance filed on July 22, 2015 by Mr. Morgan's clients, Ralph V. Furino, Jr., ("Ralph"),<sup>1</sup> Donna M. Furino ("Donna") and Anthony Furina ("Anthony") (collectively, the "Furinos").
6. Mr. Morgan represented the Furinos in matters involving Ann J. Furina's ("Ann") Estate. Ralph, Anthony and Donna were Ann's nephews and niece and, between 1979 and 2010, the primary beneficiaries of her Estate. As set forth further below, the Furinos became involved in probate litigation after Ann executed estate plans that removed them as beneficiaries of her estate.
7. Ann and her husband executed various Wills over the years. Pertinent to this matter, in 2000, Ann executed a new will (the "2000 Will") and the Ann J. Furina Trust Agreement (the "Trust"). Pursuant to the 2000 Will and the Trust, the Furinos were the primary beneficiaries of Ann's estate, property and assets.
8. In 2009, Ann approached her estate planning lawyer, Arthur Hoover, Esq., regarding the preparation of a new estate plan. She thereafter executed the Ann J. Furina Revocable Living Trust dated August 10, 2010 (the "2010 Trust"), which held Ann's home and all of the property within the home. Pursuant to the Trust, following Ann's death, the

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<sup>1</sup> Ralph Furino is a lawyer currently suspended in New Jersey. He has lengthy disciplinary history. *In re Furino*, Supreme Court of New Jersey, Docket No. DRB 14-033 (Aug. 27, 2014).

property in the Trust would be sold and the proceeds of the sale distributed to St. Jude's. On January 7, 2011, Ann executed a new will (the "2011 Will") which devised the remainder of Ann's property to various charities, her personal caretaker and two family friends. Thus, the 2010 Trust and the 2011 Will no longer provided that the Furinos would be beneficiaries.

9. Ann thereafter became ill and on October 4, 2012, she executed a final Will (the "2012 Will"), pursuant to which the Furinos were not beneficiaries.
10. On October 5, 2012, Ann was diagnosed with pancreatic cancer. On October 6, 2012, Ralph met with Ann at the Hospital. Ralph brought with him estate planning documents that he drafted which would, in essence, revoke the 2010 Trust and Final Will. After Ann signed the "revocation" documents, Ralph forwarded them to Mr. Hoover and demanded that the 2010 Trust be terminated immediately.
11. Upon receipt of the "revocation" documents, Mr. Hoover filed a petition with the 7<sup>th</sup> Circuit-Probate Court-Dover (the "Dover Probate Court"), requesting that the Dover Probate Court invalidate the documents.
12. Ann passed away on November 22, 2012, without making any changes to the 2010 Trust and Final Will. On November 30, 2012, David Dupont (the named Executor) filed a petition for the administration of Ann's Estate with the Dover Probate Court (the "Estate Action"). Pursuant to

an order dated February 19, 2013, the 2012 Will was allowed and Mr. Dupont was appointed as the executor/administrator of the Estate.

**2. Mr. Morgan's Representation of the Furinos, Ann's Niece and Nephews**

13. In February 2013, the Furinos retained Mr. Morgan to file a petition with the Dover Probate Court challenging the 2010 Trust and 2012 Will (the "Equity Action"), alleging testamentary incapacity on Ann's part and undue influence, duress, and fraudulent conduct by Mr. Hoover and Mr. Dupont. The Furinos requested that the 2010 Trust and 2012 Will be revoked and the 2000 Will and 2000 Trust (pursuant to which the Furinos were the primary beneficiaries) be revived.
14. Throughout his representation of the Furinos, Mr. Morgan dealt primarily with Ralph. In December of 2013, Mr. Morgan voluntarily produced a significant number of documents to Mr. Hoover, believing (incorrectly) that the proportional discovery/automatic disclosure rules ("PAD" Rules), applicable in certain Superior Courts, were also applicable in probate court.<sup>2</sup> Mr. Morgan told the Furinos that these disclosures

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<sup>2</sup> Beginning on October 1, 2010, the PAD Rules (*i.e.*, Proportional Discovery/Automatic Disclosure Pilot Rules) were made applicable in the Carroll County and Strafford County Superior Courts. The PAD Rules were adopted in order to make New Hampshire's court procedures more in line with the Federal Rules of Civil Procedure. Pursuant to the PAD Rules, the parties were required to make "automatic disclosures," which included the disclosure of: (1) the names of potential witnesses and the information that such witnesses may testify to, (2) copies of all of the documents that the party intended to rely on in support of the party's claims, and (3) all damages sustained by the party (with supporting documentary evidence).

were required by rule and charged them for the cost of producing the documents.

15. When Mr. Morgan did not receive the opposing parties' PAD disclosures, he realized that the PAD Rules did not apply to Probate Court actions. As a result of Mr. Morgan's disclosures, the opposing parties received important information and documents from the Furinos earlier than the information would have otherwise been received, without having to undertake the effort and costs of propounding discovery requests.
16. On March 24, 2014, Mr. Morgan filed a Motion to Withdraw as counsel for the Furinos. The attorney-client relationship had deteriorated by this point, and Ralph had informed Mr. Morgan that he and his family would seek other counsel.
17. On the same day as filing his Motion to Withdraw, Mr. Morgan filed a Motion for Sanctions and a Motion to Compel Discovery ("the Motions"). The Furinos had previously requested that Mr. Morgan seek this relief, and Mr. Morgan felt obligated to complete this task, but the Furinos allege that they instructed Mr. Morgan to file the Motions months earlier. Given the inherently contentious nature of the Motions, the Furinos state that they certainly would not have wanted Mr. Morgan to file them contemporaneously with a Motion to Withdraw.
18. Ralph filed *pro se* a Motion to Stay Deadlines on March 25, 2014, and Paul B. Kleinmann, Esq., appeared as counsel for the Furinos on April 18, 2014. The Motions were withdrawn in May 2014.

19. Pursuant to an Order dated October 16, 2013, the Dover Probate Court transferred the Equity Action to the 10<sup>th</sup> Circuit-Probate Division-Brentwood (the "Probate Court") and consolidated the Estate and Equity Actions for purposes of discovery, but not for trial.
20. The trial in the Equity Action was conducted over 10 days commencing on July 16, 2014, and completed on March 26, 2015. The Probate Court entered an order denying the Furinos' requests for relief in the Equity Action. The Furinos appealed the Probate Court's decision to the New Hampshire Supreme Court, which, on May 26, 2016, affirmed the Probate Court's decision.
21. Mr. Morgan wrote off \$16,537.75 in legal fees.

## **B. Disciplinary Rules Violated**

22. The parties agree that Mr. Morgan's conduct in this case involves violations of the New Hampshire Rules of Professional Conduct, as follows:

### **Rule 1.1: Competence**

23. The facts set forth at ¶¶ 1 - 22 above are incorporated by reference.
24. Rule 1.1 states in pertinent part 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.

25. Mr. Morgan violated Rule 1.1 when he concluded, without sufficient research into the issue, that the PAD Rules applied to the Probate Court, and disclosed material information and documents to the opposing parties without opposing counsel's need to propound discovery requests.

**Rule 1.16: Declining or Terminating Representation**

26. The facts set forth at ¶¶ 1-25 above are incorporated by reference.

27. Rule 1.16 states in pertinent part as follows:

- (d) As a condition to termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice of the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by law.

28. Mr. Morgan violated Rule 1.16(d) when he filed, simultaneous with his Motion to Withdraw, a Motion for Sanctions and a Motion to Compel Discovery. These filings set fairly tight deadlines in motion (i.e. for responses to the Motions and possible replies) that could have adversely affected the Furinos. As such, Mr. Morgan failed to withdraw in a manner that reasonably protected the Furino's interests.

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

29. Having found the foregoing violation, there is clear and convincing

evidence that Mr. Morgan's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

### **C. Recommended Sanction**

30. The Attorney Discipline Office and Mr. Morgan jointly agree that a Reprimand is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
31. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
32. 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).
33. 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.
34. 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”).

35. Under the first prong of the analysis, Mr. Morgan violated duties owed to his clients.
36. With respect to Mr. Morgan’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Morgan’s mental state was negligent.
37. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Morgan’s misconduct.
38. Mr. Morgan’s conduct injured the Furinos in that they were charged for automatic disclosures they were not in fact required to make. Mr. Morgan’s filing of the Motions created potential injury in that he filed them at the same time he sought to withdraw, leaving the Furinos without representation regarding these Motions. Successor counsel had to work with counsel for Ann to ensure the motions were ultimately withdrawn.

39. The parties agree that the baseline sanction in this matter is a Public Censure. *See Standards* §§ 4.53, 7.3.

40. Mr. Morgan's violation of Rule 1.1 implicates Section 4.5 of the *Standards*. That Section provides:

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 failure to provide competent representation to a client:

4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

**4.53 Reprimand is generally appropriate when a lawyer:**

**(a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or**

**(b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.**

4.54 Admonition<sup>3</sup> is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

(emphasis added).

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<sup>3</sup> The term "admonition," as used in the *ABA Standards*, is analogous to a reprimand in New Hampshire. The term "reprimand," as used in the *ABA Standards*, is analogous to a public censure in New Hampshire.

41. Mr. Morgan's violation of Rule 1.16 implicates Section 7.0 of the *Standards*. That Section provides:

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 . . . improper withdrawal from representation, or failure to report professional misconduct.

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.**
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

(emphasis added).

42. Mr. Morgan's conduct in this matter, when considered under *Standards* 4.53 and 7.3, would call for a baseline sanction of Public Censure.
43. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
44. In this case there is one aggravating factor present: Mr. Morgan's substantial experience on the practice of law. *See Standards* § 9.22.

45. Mitigating factors include the absence of a prior disciplinary record (in nearly 40 years of practicing law), absence of a dishonest or selfish motive, a cooperative attitude during the disciplinary process, and remorse. *See Standards* § 9.32.
46. 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.

#### **D. Costs**

47. Subject to the PCC's approval of Mr. Morgan's Stipulation, Mr. Morgan agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. *See Supreme Court Rule 37(19)*. His agreement to pay the costs incurred by the ADO is the subject of a separate agreement signed by Mr. Morgan.

#### **E. Effect of Stipulation**

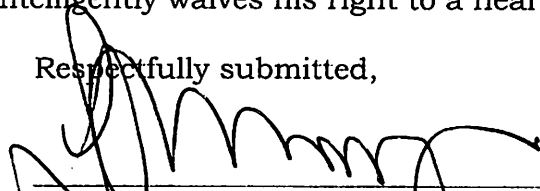
48. Mr. Morgan understands that this Stipulation represents a recommended disposition, and that the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).
49. Mr. Morgan acknowledges that the admissions of misconduct and the proposed disposition contained in this Stipulation are freely, knowingly, and voluntarily submitted; that he is not entering this Stipulation as a result of any threats, coercion, or duress, or of any promises or inducements not set forth in the Stipulation; that he understands that

he has a right to obtain counsel regarding this Stipulation and, that he is fully aware of the consequences of the Stipulation.


50. Mr. Morgan knowingly and intelligently waives his right to a hearing.

Respectfully submitted,

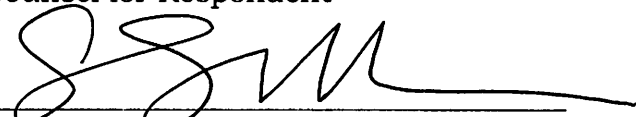
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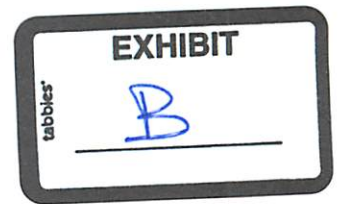
  
\_\_\_\_\_  
Thomas Morgan, Jr., Esquire  
Respondent

Dated: 4/3 2017

  
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Russell F. Hilliard, Esquire  
Counsel for Respondent

Dated: 4-5 2017

  
\_\_\_\_\_  
Sara S. Greene, Esquire  
Disciplinary Counsel



**NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE**

Morgan, Thomas, Jr.

advs.

Attorney Discipline Office

#16-006

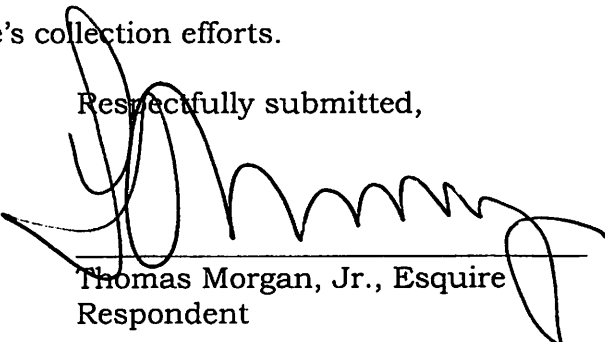
**AGREEMENT TO PAY COSTS  
OF DISCIPLINARY MATTER**

1. Subject to the Professional Conduct Committee's approval of the Stipulation as to Facts, Violations, and Sanction in the above matter, I agree to pay the expenses incurred by the Committee in the investigation and enforcement of this disciplinary matter. *See* Sup. Ct. R. 37(19)(b). Costs can include, but are not limited to: mileage, stenographers, transcripts, copying, inventory, audit expenses and publication.
2. As of March 7, 2017, I have been informed that the costs are approximately \$172.50. I agree to pay this sum within ninety (90) days after receipt of a bill.
3. I waive the provisions of Supreme Court Rule 37(19)(b) regarding any further detail of the nature and amount of each expense, and I also waive formal demand for payment.

4. I understand and agree that the assessment of costs is deemed final and shall have the full force and effect of a civil judgment. As a result, it may be enforced in any Superior Court in New Hampshire.
5. I agree to pay these costs, and should further costs accrue in this disposition of this matter, the committee will bill me for these costs. If I dispute the bill, I shall notify the committee of the specific nature of the dispute in writing within thirty days of my receipt of the bill. The committee will consider the disputed item and issue a written decision in writing. If I do not notify the committee that I dispute the bill, payment will be due upon its receipt.
6. The Committee may file a copy of the final assessment with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures. See Sup. Ct. R. 37(19)(c).
7. I also agree to be responsible for all reasonable costs incurred as a result of the Attorney Discipline Office's collection efforts.

Respectfully submitted,

Dated: 3-31, 2017

  
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Thomas Morgan, Jr., Esquire  
Respondent