

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. LD-2016-0018, Appeal of Craig N. Salomon, Esquire, the court on May 12, 2017, issued the following order:

Having considered the briefs and record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). On August 8, 2016, the Professional Conduct Committee (PCC) ordered that the respondent, Attorney Craig N. Salomon, be suspended from the practice of law in New Hampshire for six months. The PCC found, based upon a stipulation signed by the respondent and Disciplinary Counsel, that the respondent had violated New Hampshire Rules of Professional Conduct 3.4(c) and 8.4(a). In accordance with Supreme Court Rules 37(16)(a) and 37A, III(d)(4)(A), the respondent appealed the PCC order, and we accepted the appeal.

Under Rule 37(16)(i), an appeal of a PCC order shall be based on the PCC record. The court may affirm, reverse or modify the findings of the PCC. See Sup. Ct. R. 37(16)(a).

In this case, neither the respondent nor Disciplinary Counsel challenges the PCC's findings and rulings as to the rules violations. The sole issue before us is whether the six-month suspension ordered by the PCC is the proper sanction.

Relying upon the American Bar Association's Standards for Imposing Lawyer Sanctions (2005) (Standards), the PCC concluded that an immediate six-month suspension was the appropriate discipline in this case. The PCC stated that a six-month suspension was consistent with both the recommendation of the Hearing Panel and the purposes of attorney discipline. See Coddington's Case, 155 N.H. 66, 68 (2007) ("[T]he purpose of attorney discipline is . . . to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." (quotation omitted)).

Having considered the PCC's order, the record submitted on appeal, and the parties' briefs, we respectfully disagree with the PCC sanction. We conclude that, on balance, aggravating and mitigating factors warrant a downward deviation from the baseline sanction determined by the PCC of a suspension, especially considering the respondent's cooperation with the disciplinary process. Standards, supra § 9.32(e). The rules violations at issue involved the mismanagement of the respondent's personal finances, which

stemmed from his personal financial difficulties. See Standards, supra § 9.32(c). Additionally, although past violations are an aggravating factor, Standards, supra § 9.22(a), we do not give significant weight to this factor in the present case considering the timeframe and nature of the respondent's past violations. Because we conclude that immediate suspension is not necessary to protect the public and to preserve the integrity of the legal profession, see Sup. Ct. R. 37(16)(f), we suspend the respondent from the practice of law for six months and stay this suspension for six months.

The court orders that Attorney Craig N. Salomon be suspended from the practice of law in New Hampshire for a period of six months; imposition of this suspension is stayed for a period of six months. If the Attorney Discipline Office (ADO) or Screening Committee determines that any further grievances filed with the ADO against Attorney Salomon regarding past or future violations of the rules should be docketed as complaints, the PCC shall notify the court, and may request that the court impose any portion of the six-month suspension. At the conclusion of the six-month stay, either party may request that the stay of the suspension be made permanent.

Attorney Salomon is hereby assessed all expenses incurred by the PCC in the investigation and prosecution of this matter. See Sup. Ct. R. 37(19)(a).

Affirmed in part; and
modified in part.

DALIANIS, C.J., and HICKS, LYNN, and BASSETT, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:
Professional Conduct Committee, 13-011
Russell F. Hilliard, Esquire
Brooke Lovett Shilo, Esquire
Elizabeth M. Murphy, Esquire
Timothy Gudas, Supreme Court
Allison Cook, Supreme Court
Lorrie Platt, Supreme Court
Irene Dalbec, Supreme Court
File

New Hampshire Supreme Court
Professional Conduct Committee
a committee of the attorney discipline system

David M. Rothstein, Chair
Heather E. Krans, Vice Chair
Elaine Holden,* Vice Chair
Peter G. Beeson
Susan R. Chollet*
Richard H. Darling*
Scott H. Harris

4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
603-224-5828 ♦ Fax 228-9511

Margaret R. Kerouac
Mona T. Movafaghi
Georges J. Roy*
Richard D. Sager
Martha Van Oot
* non attorney member
Barbara J. Guay, Legal Assistant

Salomon, Craig N. advs. Attorney Discipline Office - #13-011

SIX-MONTH SUSPENSION AND ORDER ON COSTS

On June 21, 2016, the Professional Conduct Committee (the “Committee”) deliberated the Oral Argument, Hearing Panel Report (the “Report”), Stipulation as to Facts and Rule Violation (the “Stipulation”), and the Agreement to Pay Costs of Disciplinary Matter (collectively, the “Record”). Members present included David M. Rothstein, Chair, Heather E. Krans, Vice Chair, Elaine Holden, Vice Chair, Susan R. Chollet, Richard H. Darling, Scott H. Harris, Margaret R. Kerouac, Mona T. Movafaghi, Georges J. Roy, Richard D. Sager and Martha Van Oot. Peter G. Beeson was recused.

Having reviewed the Record, 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 voted to approve the agreement to reimburse the Committee for all costs of investigation and prosecution of this matter. Finally, the Committee agreed that the Hearing Panel’s recommendation of a six-month suspension was an appropriate sanction.

I. FINDINGS OF FACT

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

A. Facts

Mr. Salomon's violations arose out of his repeated failure to abide by orders of the Rockingham Superior Court that he repay a personal loan he received from a former client, Robert Meaney. These failures resulted in the entry of a contempt finding against Mr. Salomon on February 11, 2013. Mr. Salomon admits that if he was unable to meet the repayment obligation due to his personal financial situation or other debts, he should have sought to amend the Court's prior order requiring him to pay Mr. Meaney a fixed amount on a monthly basis until the loan was paid off. He further admits that he failed to comply with the Court's orders because he repaid other creditors and personal debts ahead of his court-imposed obligations.

Mr. Salomon has a prior disciplinary record, including three separate public censures arising on different dates. His disciplinary record is described in greater detail below and in exhibits admitted into the record before the Hearing Panel.

II. RULINGS OF LAW

The parties stipulated that Mr. Salomon knowingly violated New Hampshire Rules of Professional Conduct 3.4(c) and 8.4(a). Rule 3.4(c) provides that a lawyer "shall not . . . knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. . . ." Rule 8.4(a) provides that it is professional misconduct for a lawyer to violate the Rules of Professional Conduct and, in this case, is derivative of Respondent's Rule 3.4(c) violation.

The Committee concludes that there is clear and convincing evidence that Mr. Salomon violated Rules of Professional Conduct 3.4(c) and 8.4(a).

III. ANALYSIS

Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support the sanction of a six-month suspension.

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).

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.

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. 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.*

Prong I: Duty Violated

Under the first prong of the analysis, the duty at issue, the knowing failure to comply with a court order by an attorney who is an officer of the Court, is a serious violation.

Prong II: Mental State: Intent/ Knowing or Negligent

With respect to Mr. Salomon’s mental state under the second prong of the sanction analysis, it was knowing.

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. Salomon’s misconduct.

The violation caused substantial injury, depriving Mr. Salomon’s creditor of thousands of dollars and causing him to incur losses of both money and time in pursuing a remedy through the judicial system.

IV. SANCTION

In determining a baseline sanction, *Standards* § 6.2 addresses the failure to obey any obligation under the rules of a tribunal except for an open refusal

based on the assertion that no valid obligation exists. *Standards* § 6.22 states that “[s]uspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or party. . . .” The Committee finds that the baseline sanction in this case is suspension.

Having determined the baseline sanction, the Committee must consider aggravating and mitigating factors. The Committee finds three aggravating factors:

1. Mr. Salomon’s selfish motive, because he chose to pay personal bills rather than satisfy his court-ordered obligations to Mr. Meaney;
2. Mr. Salomon’s substantial experience in the law (over forty years in practice); and
3. Mr. Salomon’s previous disciplinary record. His record includes three prior public censures in three separate cases: a 2005 censure based on his failure to include adverse material facts in a petition for ex parte attachment; a 2007 censure for failure to safeguard client property; and a 2007 censure for improperly implying that he was practicing in a partnership with two other attorneys.

The Committee finds two mitigating factors:

1. Mr. Salomon was cooperative during the investigative process; and
2. The court imposed other penalties on Mr. Salomon in the contempt proceeding.

Mr. Salomon argued that the harm wrought upon him by a six-month suspension should itself be taken into consideration, because given his age, it might cause him to have to close his practice permanently. The Committee was not swayed by this argument. A suspension does harm to any attorney; that harm is not, in itself, a factor the Committee can reasonably consider in fashioning a sanction.

Mr. Salomon also argued that any suspension should be stayed. In light of his prior disciplinary history, the Committee disagrees.

Accordingly, the aggravating and mitigating factors do not justify an upward departure from the baseline sanction to disbarment, do not justify a downward departure to public censure, and do not justify staying the suspension. The Committee concludes that the appropriate discipline is a six-month suspension, as recommended by the Hearing Panel.

This sanction is in accord with the purposes of attorney discipline. See *e.g.*, *Conner's Case* 158 N.H. at 303; *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 in accord with the *Standards*.

V. EFFECTIVE DATE

This order shall take effect on September 7, 2016 or thirty days after it becomes final, whichever is later, unless timely appealed.

In connection with his suspension, Mr. Salomon shall take the following actions:

- a. Mr. Salomon shall cease all practice of law on or before September 7, 2016. Mr. Salomon shall not take on any new matters for new or existing clients.
- b. Mr. Salomon shall comply with the provisions of Supreme Court Rule 37(13)(a). In his written notice to clients, Mr. Salomon shall apprise his clients of their need to obtain new counsel, which may include other attorneys from his firm, instruct them regarding the handling and transfer of their files, and make available to all clients being represented in pending matters all original file contents and other property to which they are entitled, calling attention to any urgency for obtaining the files or property.
- c. Mr. Salomon shall provide written notification of his suspension to all appropriate courts, agencies, and tribunals in which proceedings are pending, and to opposing counsel in all pending matters, withdraw from all pending proceedings, and resign effective September 7, 2016, from all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary.
- d. Mr. Salomon shall provide the Committee with a copy of the affidavit filed with the Court pursuant to Supreme Court Rule 37(13)(d) within thirty (30) days after the effective date of the suspension order.
- e. Mr. Salomon shall retain copies of all notice letters issued to clients, opposing counsel, courts, and others, and maintain complete and organized records of the steps taken to comply with the above

requirements.

f. Mr. Salomon shall comply with Rule of Professional Conduct 7.5(c).

g. Mr. Salomon shall pay all costs associated with the investigation and prosecution of this matter.

h. Provided that Mr. Salomon has timely complied with each of the above requirements and paid all of the above referenced costs, Mr. Salomon may apply for reinstatement pursuant to Supreme Court Rule 37(14)(f) without further hearing before this Committee.

VI. RIGHT TO APPEAL

Pursuant to Supreme Court Rule 37(A)(III)(d)(2)(D)(4)(A), the parties have the right to appeal this decision to the New Hampshire Supreme Court. *See also* Sup. Ct. R. 37(16)(a).

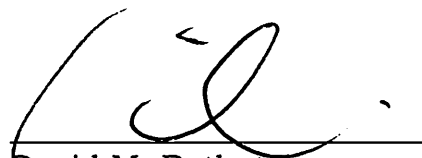
VII. COSTS

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

VIII. CONCLUSION

For all of the above reasons, the Professional Conduct Committee recommends a six-month suspension for violating N.H. Rules of Professional Conduct 3.4(c) and 8.4(a).

August 8, 2016



David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Russell F. Hilliard, Esquire
File