

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Glennon, Martin K. advs. Attorney Discipline Office - #17-006

Recommendation: Three Year Suspension and Order on Costs

On October 17, 2017, the Professional Conduct Committee (the “Committee”) deliberated the Stipulation as to Facts, Violations, and Sanction: “Three Year Suspension” (the “Stipulation”) and the Agreement to Pay Costs of Disciplinary Matter (collectively, the “Record”). On November 14, 2017, the Committee deliberated the Revised Stipulation.

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 that Martin K. Glennon be suspended for three years for violations of Rules 1.1; 1.3; 1.4, 8.4(c) and 8.4(a), as well as reimbursement of the Committee for all costs of investigation and prosecution of this matter.

November 14, 2017



David M. Rothstein, Chair

Distribution:

Sara S. Greene, Disciplinary Counsel
Martin K. Glennon, Esquire
File



NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Glennon, Martin K.

advs.

Attorney Discipline Office

#17-006

**STIPULATION AS TO FACTS, VIOLATIONS,
AND SANCTION: THREE YEAR SUSPENSION**

Respondent Martin K. Glennon, Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

A. Facts

1. Martin K. Glennon is an attorney licensed to practice law in New Hampshire. Mr. Glennon was admitted to practice in 1976.
2. Mr. Glennon has not been admitted to practice law in any other jurisdiction.
3. At all times material to this proceeding, Mr. Glennon operated his law office as Glennon Law Office located at 108 Bay Street, Manchester, NH.
4. Mr. Glennon's disciplinary history is listed below:
 - a. Three-Month suspension issued on December 14, 1993 (*Glennon, Martin K. advs. Douglas N. Steere - #92-076 and LD-1993-0002*), for violations of Rules 1.1, 1.2(a), 1.3(a), 1.4, 8.4(c) and 8.4(a).

- b. Six-Month suspension, stayed for two years, issued on March 26, 2007 (*Glennon, Martin K. advs. PCC - #03-065 and LD-2006-0001*), for violations of Rules 1.1, 1.3(a), 1.4, 1.16(a)(2), 3.4(c) and 8.4(a).
5. This matter arises from a grievance submitted by Barbara Mabie against Martin K. Glennon, Esquire, arising out of his failure to file the Last Will and Testament of his client Norman D. Mabie with the probate court following Norman's death, as well as Mr. Glennon's misrepresentations to Barbara, the primary beneficiary of Norman's Will, regarding the status of Norman's estate.
6. Norman and Barbara were married in 1984. They divorced in 1999. Despite the divorce, the two remained close, and Barbara eventually moved back into Norman's home, where she was living at the time of Norman's death. Norman and Barbara did not, however, remarry.
7. On December 19, 2008, Norman executed The Last Will and Testament of Norman D. Mabie. The Will was prepared by Mr. Glennon. The original Will was kept at Mr. Glennon's office.
8. Pursuant to the Will, upon Norman's death, Norman's brother, Richard Mabie, would inherit all of Norman's fishing equipment and firearms. Barbara would inherit "all of [Norman's] right, title and interest in [his] real estate located at Heights Road, Concord, New Hampshire...." Furthermore, Barbara would inherit "all the rest, residue and remainder of [Norman's] estate." Norman informed Barbara of the Will and its contents.

9. J. Quinn Hogan was named the Executor, and Mr. Glennon was named the Successor Executor in the Will. Mr. Hogan, a Wealth Management Advisor at Northwestern Mutual Life Insurance Company (“Northwestern”), was Norman’s friend and insurance agent.
10. On January 22, 2011, Norman died in a snowmobile accident. At the time of his death, Norman’s assets included, among other things, his home in Concord, firearms and outdoor equipment, a life insurance policy in the amount of \$40,000.00, a boat, two snowmobiles, a Corvette, and a trailer.
11. Two days after his Norman’s death, Mr. Glennon spoke at length with Mr. Hogan regarding the Northwestern life insurance policy and the steps that would be necessary to begin the probate process so that the death claim benefit could be paid out. The beneficiary of the policy was the Estate of Norman Mabie.
12. Mr. Hogan could not serve as Executor pursuant to Northwestern policies. Mr. Glennon also did not want to serve as Executor, and he so informed Mr. Hogan, representing to Mr. Hogan that Mr. Glennon would locate someone who could serve as Executor and request that the Probate Court appoint that person.
13. Shortly after Norman’s death, Barbara delivered the original titles to Norman’s assets to Mr. Glennon and regularly provided Mr. Glennon with Norman’s unopened mail. In addition, Barbara met with Mr. Glennon regarding the estate in June 2011, October 2011, and at

various other times. During these meetings, Barbara or her agents informed Mr. Glennon of these assets of the estate, including at least once in writing in a letter dated October 5, 2011.

14. During those meetings, Mr. Glennon gave Barbara legal advice, represented to Barbara that an executor was close to being appointed, and told Barbara that he would take steps to administer the probate and protect her interests as beneficiary. Mr. Glennon agrees that he entered into an attorney-client relationship with Barbara as of these early meetings shortly following the death of Norman Mabie.
15. During these meetings, Barbara repeatedly discussed with Mr. Glennon using the proceeds of the life insurance policy to pay Norman's funeral expenses, as well as other issues. Barbara further inquired about the status of the probate via letters dated August 2, 2011 and October 5, 2011, expressing frustration with the status of the matter.
16. In the thirteen months following Norman's death, Mr. Glennon took no action to file the necessary pleadings in probate court so that Norman's Will could be probated. He took no action to marshal any of the assets of Norman's estate noted *supra* ¶ 10, despite repeated letters and phone calls from individuals and entities in possession of such assets, including but not limited to:
 - a. Nine phone calls from representatives of Northwestern, seeking updates as to when an executor would be appointed so that the life insurance benefit could be paid out to the estate;

- b. Eight phone calls and three letters from Nationwide Insurance regarding a \$2,355 check which represented the payout for the value of the “totaled” snowmobile involved in Norman’s fatal accident. A letter dated September 16, 2011 enclosed the check, which Mr. Glennon never cashed. After no response from Mr. Glennon over a five-year period, Nationwide submitted the \$2,355 to the Abandoned Property Division of the New Hampshire State Treasury in April of 2017;
 - c. At least one phone call and one letter from Freedom Cycle in Concord, New Hampshire, regarding a 2008 Yamaha snowmobile in good condition (valued at around \$6,000), which Freedom Cycle had in its possession following a \$130 repair job completed shortly before Norman’s death. Freedom Cycle ultimately sold this snowmobile to pay for storage costs it had accrued in the years that it was attempting to reach Mr. Glennon.
17. Goodwin Funeral Home, which had handled Norman’s funeral and was seeking payment for same, also made repeated efforts to reach Mr. Glennon in 2011 and early 2012 to find out whether a probate had been opened and whether an executor had been appointed.
18. As to Norman’s other assets, Mr. Glennon took no action to locate and obtain possession of a 1995 Chevrolet Corvette Coupe owned by Norman, of which he was made aware by Barbara in early 2011. This vehicle was ultimately sold at auction for \$12,250.

19. Similarly, Mr. Glennon took no action to locate and obtain possession of a 26-foot boat owned by Norman at the time of death, of which he was made aware by Barbara in early 2011. The boat was a 1998 model. As of this date, neither Mr. Glennon nor Barbara have located this boat. Records subpoenaed by the ADO reveal that it was last registered in New Hampshire by Norman in 2010 and has not been re-registered by anyone since.
20. Despite this lack of diligence on his part, Mr. Glennon repeatedly assured Barbara during 2011 and 2012 that the probate was proceeding and an executor would be approved by the court soon.
21. After confirming with the probate court that no estate had been opened for Norman, Richard A. Meyer of the Goodwin Funeral Home filed Norman's death certificate, a life insurance policy, and a petition to open the estate in the 6th Circuit-Probate Division-Concord, on February 14, 2012.
22. Mr. Meyer was named the Administrator of the estate. According to the Inventory of the Fiduciary, completed and filed by Mr. Meyer, the value of Norman's personal estate totaled \$54,399.05. The majority of the foregoing consisted of the \$40,000.00 life insurance policy, made payable to the estate, and the Corvette. The Corvette had come to the attention of the Court because a creditor came forward seeking the costs of having stored the Corvette for an extended period.

23. No further assets were part of the Estate because Mr. Meyer was not aware of any other assets.
24. Barbara was not informed by Mr. Glennon or anyone else that the estate had been opened. Mr. Glennon claims he was not aware of Mr. Meyer's probate filing.
25. In correspondence dated May 22, 2012, Barbara (through her brother-in-law, who had stepped in to help her deal with Mr. Glennon), once again requested that Mr. Glennon update her regarding Norman's estate. In this correspondence, Mr. Thomas stated:

It has been 8 months since our last meeting with you and Barbara on October 18, 2011 and close to a year since our first meeting with you in June of 2011. Both times you assured us that an executor to Norman's Estate was close to being appointed by the court. Barbara called you again on February 8, 2012 and again you assured her that an executor was close to being appointed. Why do you keep stonewalling Barbara in this way? What is the hold up? Norman passed away on January 22, 2011. It shouldn't take a year and a half for the court to appoint an executor to "protect" and liquidate the assets of the Estate in a timely manner.... Please contact Barbara and let her know that you have her interests in mind as it relates to Norman's Estate and it's [sic] settlement and closure. This has dragged on way too long and we see no excuse for it. Barbara needs assurances and answers and for some reason she is not getting them. We will await your reply.

26. Despite repeated communications and questions from Barbara, Mr. Glennon did not contact the Probate Court to determine whether a probate had been opened for Norman, did not file the Will with the probate court, or do anything else to notify the probate court of the Will.

Rather, Mr. Glennon continued to represent to Barbara that he was working on the estate.

27. In 2014, contrary to the wishes formalized in Norman's Will, the assets of Norman's estate were distributed pursuant to the intestacy statute to his three estranged siblings, rather than to Barbara. Norman's estate was closed on March 25, 2015.
28. On June 18, 2015, Barbara met with Mr. Glennon at his office. When Barbara asked if the funeral home had been paid, Mr. Glennon responded that it had.
29. On June 22, 2015, Barbara met with Mr. Meyer at the Goodwin Funeral Home to confirm that Norman's funeral related expenses had, in fact, been paid. During the meeting, Mr. Meyer stated to Barbara that an estate had been opened (and by then closed) in order to distribute the proceeds of Norman's life insurance policy and that the funeral home had been paid with the proceeds.
30. In December 2016, Barbara hired Patricia M. Panciocco, Esq. to address the issues with Norman's estate. Ms. Panciocco requested all of Mr. Glennon's files regarding the estate. Mr. Glennon subsequently produced a large box of documents and some unopened mail intended for Norman and/or his estate.
31. On March 2, 2017, Ms. Panciocco file a grievance against Mr. Glennon on behalf of Barbara.

B. Disciplinary Rules Violated

32. Mr. Glennon's conduct in this case implicates the following New Hampshire Rules of Professional Conduct.

Rule 1.1: Competence

33. Allegations set forth above are incorporated by reference.
34. 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.
35. Mr. Glennon's failure to properly prepare, to undertake actions on Ms. Mabie's behalf in a timely and effective manner, and to attend to the

details of her case to assure no avoidable harm to her interests, violates Rule 1.1.

Rule 1.3: Diligence

36. Allegations set forth above are incorporated by reference.

37. Rule 1.3 states as follows:

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

38. Mr. Glennon's failure to take any action towards probating Mr. Mabie's estate and his failure to respond to the various individuals seeking to provide Mr. Mabie's assets to Mr. Glennon violates Rule 1.3.

Rule 1.4: Communication

39. Allegations set forth above are incorporated by reference.

40. Rule 1.4 states 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.
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain the legal and practical aspects of a matter and alternative courses of action to the extent that such explanation is reasonably necessary to permit the client to make informed decisions regarding the representation.

41. Mr. Glennon violated Rule 1.4 by failing to keep Ms. Mabie reasonably and accurately informed regarding the status of her matter over a period of more than four years.

Rule 8.4(c): Deceit

42. Allegations set forth above are incorporated by reference.
43. Rule 8.4(c) states as follows:

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

44. Mr. Glennon violated Rule 8.4(c) when he repeatedly assured Ms. Mabie that he was working on Norman Mabie's estate, that the matter was appropriately proceeding, and that an Executor would be appointed soon.

Rule 8.4(a): General Rule

45. In the event that any one of the above alleged rule violations is proven by clear and convincing evidence, this would necessarily constitute a violation of N.H. R. Prof. Conduct 8.4(a).

C. Recommended Sanction

46. The Attorney Discipline Office and Mr. Glennon jointly agree that a three-year suspension is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
47. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.

48. 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).
49. 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.
50. 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").

- 51. Under the first prong of the analysis, Mr. Glennon violated duties owed to his client.
- 52. With respect to Mr. Glennon's mental state under the second prong of the sanction analysis, the parties agree that Mr. Glennon's mental state was knowing.
- 53. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Glennon's misconduct. Mr. Glennon's conduct injured his client Barbara Mabie, who lost all of her interest under Norman's Will as a result of his inaction.
- 54. The parties agree that the baseline sanction in this matter is a suspension. *See Standards* §§ 4.42, 4.62.
- 55. Mr. Glennon's 1.3 and 1.4 rule violations implicate Section 4.4 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 a failure to act with reasonable diligence and promptness in representing a client:

- 4.41 Disbarment is generally appropriate when:
 - (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.42 **Suspension is generally appropriate when:**

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or**
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.**

4.43 Reprimand 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.

4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

(Emphasis added).

56. Mr. Glennon's 8.4(c) rule violation implicates Section 4.6 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 where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

4.64 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

(Emphasis added).

57. Mr. Glennon's conduct in this matter, when considered under *Standards* 4.42 and 4.62, would call for a baseline sanction of a suspension.
58. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
59. In this case there are three aggravating factors present, including prior disciplinary offenses and substantial experience in the practice of law. *See Standards* § 9.22.
60. Mitigating factors include personal or emotional problems (including anxiety and depression with which Mr. Glennon has struggled for years), full and free disclosure to the ADO, a cooperative attitude towards proceedings, and remorse. *See Standards* § 9.32.
61. The parties agree that given the baseline sanction, and consideration of aggravating and mitigating circumstances, a three-year suspension serves the purposes of discipline and is an appropriate sanction in this case.¹

D. Costs

62. Subject to the PCC's approval of Mr. Glennon's Stipulation, Mr. Glennon agrees to pay the costs incurred by the ADO in the investigation and

¹This sanction will trigger reinstatement requirements pursuant to Rule 37(14) which will require that Mr. Glennon demonstrate to a Hearing Panel, by clear and convincing evidence, that he has the moral qualifications, competency and learning in the law required for admission to practice, and that his reinstatement would not be detrimental to the integrity and standing of the bar.

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. Glennon.

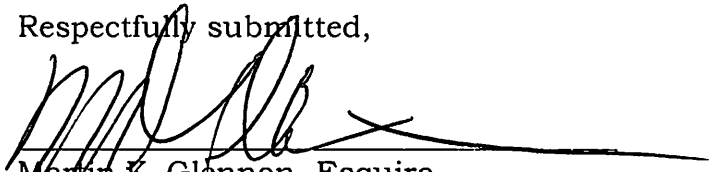
E. Effect of Stipulation

- 63. Mr. Glennon 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).
- 64. Mr. Glennon 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
- 65. Mr. Glennon understands that he has a right to obtain counsel regarding this Stipulation and, that he is fully aware of the consequences of the Stipulation.
- 66. Mr. Glennon knowingly and intelligently waives his right to a hearing.

Dated: Oct. 24, 2017

Dated: Oct. 26 2017

Respectfully submitted,


Martin K. Glennon, Esquire
Respondent


Sara S. Greene, Esquire
Disciplinary Counsel



**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Glennon, Martin K.

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#17-006

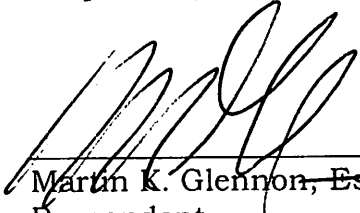
**AGREEMENT TO PAY COSTS
OF DISCIPLINARY MATTER**

1. Subject to the Professional Conduct Committee's approval of the Stipulation of Facts, Rule 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 August 31, 2017, I have been informed that the costs are approximately \$90.25. Should further costs accrue in this disposition of this matter, I understand that the Committee will bill me for these costs. If I dispute the bill, I will notify the Committee of the specific nature of the dispute in writing within thirty days of my receipt of the bill. I understand that the Committee will consider the disputed item and issue a written decision. If I do not notify the committee that I dispute the bill, payment will be due upon its receipt.

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. 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).
6. I also agree to be responsible for all costs incurred as a result of the Attorney Discipline Office's collection efforts.

Respectfully submitted,

Dated: Sept 7 2017



Martin K. Glennon, Esquire
Respondent

