

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Coughlin, Timothy C. advs. Attorney Discipline Office - #17-011

REPRIMAND AND ORDER ON COSTS

On September 19, 2017, the Professional Conduct Committee (“the Committee”) deliberated the Stipulation as to Facts, Violations and Sanction: Reprimand (“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; Susan R. Chollet; Richard H. Darling; Margaret R. Kerouac; Caroline K. Leonard; Edward D. Philpot, Jr.; Georges J. Roy; and Martha Van Oot. Mona T. Movafaghi was absent.

The Committee approved the facts as stipulated by clear and convincing evidence. It further found that Timothy C. Coughlin’s conduct violated Rules of Professional Conduct 1.3; 3.1; 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. Coughlin shall reimburse the Committee for all costs of investigation and prosecution of this matter.

September 19, 2017



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Timothy C. Coughlin, Esquire
File



NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Coughlin, Timothy C.

advs.

Attorney Discipline Office

#17-011

STIPULATION AS TO FACTS, VIOLATIONS,
AND SANCTION: REPRIMAND

Respondent Timothy C. Coughlin, Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

A. Facts

1. Mr. Coughlin is an attorney licensed to practice law in New Hampshire. Mr. Coughlin was admitted to practice in 1991.
2. Mr. Coughlin has also admitted to practice in Massachusetts and Maine. He was admitted in Massachusetts on December 18, 1989, and is currently on active status for the Massachusetts Bar. He was admitted to practice law in Maine on May 8, 1995, and is currently on active non-resident status for the Maine Bar.
3. At all times material to this proceeding, Mr. Coughlin practiced law at Coughlin, Rainboth, Murphy & Lown, PA, 439 Middle Street, Portsmouth, NH.
4. Mr. Coughlin does not have a previous disciplinary history.

5. This disciplinary matter was initiated by a grievance filed by John Liatsis (“Mr. Liatsis”) against Timothy C. Coughlin, Esquire, arising out of Mr. Coughlin’s representation of Elvira Dun (“Ms. Dun”) in the matter entitled *In the Matter of John Liatsis and Elvira Dun*. Case No. 670-2012-DM-39, Tenth Circuit, Family Division - Portsmouth (the “Court”). Ms. Dun is the mother of Mr. Liatsis’s two minor children. The parties were never married.
6. As set forth more fully herein, Mr. Coughlin filed a motion for contempt on behalf of Ms. Dun seeking enforcement of an order for attorneys’ fees that had actually been vacated.
7. On February 13, 2012, Mr. Liatsis and Ms. Dun filed a Joint Parenting Petition with the Court. On April 10, 2012, Mr. Coughlin, a partner at the law firm of Coughlin, Rainboth, Murphy and Lown, P.A., filed an appearance on behalf of Ms. Dun.
8. On October 18, 2012, Mr. Coughlin filed a Motion in Support of an Award of Attorney’s Fees on behalf of Ms. Dun against Mr. Liatsis. On October 29, 2012, the Court granted the Motion for Attorney’s Fees, awarding Ms. Dun \$2,500.00 in attorney’s fees (the “October 2012 Order”).
9. Mr. Liatsis subsequently filed a Motion for Reconsideration and, on December 11, 2012, the Court held that “[t]he award of attorney fees is VACATED, as there is no statutory or case law basis to make such an award.” (emphasis in original). The Notice of Decision of this Order

vacating the award of fees was dated January 4, 2013. On January 10, 2013, Mr. Coughlin filed a Motion to Reconsider, which the Court denied. The Court's order denying the Motion to Reconsider was forwarded to Mr. Coughlin at the Firm. The award of attorney's fees was not, thereafter, reinstated.

10. Mr. Coughlin's client thereafter contacted him stating she had not received \$2,500 in attorney's fees from Mr. Liatsis. On August 20, 2014, Mr. Coughlin wrote a letter to Mr. Liatsis demanding payment. Mr. Liatsis responded via email to Mr. Coughlin, stating that "you should actually take the time to research the facts before you make baseless accusations and threats."
11. Mr. Coughlin again wrote to Mr. Liatsis on November 5, 2014, demanding payment and threatening to file a motion for contempt in the absence of such payment. He did not at this time investigate the status of the October 2012 Order to determine whether it was still in effect, evidently having forgotten that it was vacated.
12. On December 11, 2014, at the request of his client, Mr. Coughlin filed a Motion for Contempt and Request for the Award of Further Attorney's Fees (the "Motion for Contempt") based on Mr. Liatsis's purported failure to make the \$2,500 payment owed to Ms. Dun pursuant to the October 2012 Order.
13. The motion was not verified by affidavit of Ms. Dun as required by Rule 1.26(B), Rules of the Circuit Court, Family Division.

14. Mr. Coughlin maintains that he did not remember that the October 2012 Order awarding fees had been vacated at the time he filed the Motion for Contempt roughly two years later. He states that he has a very busy practice and relied on his client's memory of events.
15. Mr. Coughlin acknowledges, however, that he should have known the status of the October 2012 Order that he sought to enforce in 2014. He further acknowledges that absent an independent recollection of the status of the October 2012 Order, he should have confirmed it by reviewing his file or the Court's docket before filing anything, rather than rely on his client's memory of events.
16. The Court scheduled a hearing on the Motion for Contempt for April 23, 2015. James Coughenour, Jr., Esquire, an associate at the Firm, was scheduled to cover the April 23, 2015 hearing for Mr. Coughlin. At the April 23, 2015 hearing on the Motion for Contempt, Mr. Liatsis appeared *pro se* and Ms. Dun appeared with Mr. Coughenour. Following the hearing, the Court issued an order denying the Motion for Contempt. In doing so, the Court stated that "the present Motion for Contempt . . . was filed completely without basis or merit." The Court further stated:

The present Motion...lacks any basis either factually or legally for relief. The Order [Ms. Dun] alleges therein that [Mr. Liatsis] has willfully [dis]regarded without good cause had been vacated by the Court two (2) years earlier. Nevertheless, [Ms. Dun] alleges that [Mr. Liatsis] 'is clearly in contempt' because he failed to pay her the \$2,500 awarded per the Court's Order dated October 29, 2012. This is a serious charge. [Ms. Dun] knew or should have known when this pleading was filed that these allegations were not true.

The Motion was not verified by [Ms. Dun]; however the author was her attorney and agent acting on her behalf....

17. Based on the foregoing, the Court denied the Motion for Contempt. In addition, the Court held that, “[d]ue to the unreasonableness and meritless nature of Respondent’s Motion which served to bring forward, reopen and unnecessarily prolong this litigation, the Court grants [Mr. Liatsis’s] request for sanctions,” and ordered Ms. Dun to pay Mr. Liatsis \$500.00 within thirty (30) days.
18. Mr. Coughlin paid Mr. Liatsis \$500.00 on or around May 20, 2015.

B. Disciplinary Rules Violated

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

Rule 1.3: Diligence

20. The facts set forth at ¶¶ 1-19 above are incorporated by reference.
21. Rule 1.3 states as follows:

A lawyer shall act with reasonable diligence and promptness in representing a client.
22. Mr. Coughlin violated Rule 1.3 when he failed to undertake an appropriate inquiry into whether the October 2012 Order was a valid order before filing a Motion for Contempt seeking enforcement of that Order, and by submitting such Motion when it was not verified by affidavit as required by Rule 1.26(B).

Rule 3.1: Meritorious Claims and Contentions

23. The facts set forth at ¶¶1-22 above are incorporated by reference.

24. Rule 3.1 states as follows:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration or institutionalization, may nevertheless so defend the proceeding as to require that every element of the case be established.

25. Mr. Coughlin violated Rule 3.1 when he filed a Motion for Contempt to enforce an Order that had been vacated, and thus the Motion had no basis in law and fact.

Rule 8.4(a): General Rule

26. Having found the foregoing violation, there is clear and convincing evidence that Mr. Coughlin's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

C. Recommended Sanction

27. The Attorney Discipline Office and Mr. Coughlin jointly agree that a reprimand is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.

28. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.

29. 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).

30. 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.
31. 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.*
32. Under the first prong of the analysis, Mr. Coughlin violated duties owed to his client and the legal system. *See Standards* II (theoretical framework).

33. With respect to Mr. Coughlin's mental state under the second prong of the sanction analysis, the parties agree that Mr. Coughlin's mental state was negligent.
34. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Coughlin's misconduct. Mr. Coughlin's conduct injured his client in that the court imposed a \$500 sanction on her (which Mr. Coughlin paid himself). His conduct also caused injury to the legal system in that it wasted judicial resources; specifically, the Court held a hearing on a meritless motion and the Dun/Liatsis litigation was unnecessarily prolonged.
35. The parties agree that under these circumstances the baseline sanction in this matter is a public censure pursuant to *Standards* §§ 4.43 and 6.23.
36. Mr. Coughlin's 1.3 rule violation implicates 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 **Reprimand¹ 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).

37. Mr. Coughlin's 3.1 rule violation implicates Section 6.2 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 expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

6.22 Suspension 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 a party, or causes interference or potential interference with a legal proceeding.

¹ 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.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

(emphasis added).

38. Mr. Coughlin's conduct in this matter, when considered under *Standards* 4.23 and 6.23, would call for a baseline sanction of public censure. This baseline sanction, however, must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
39. In this case the only aggravating factor is Mr. Coughlin's substantial experience in the practice of law. *See Standards* § 9.22. Mitigating factors include no prior disciplinary history during 28 years of practice, no selfish or dishonest motive, free and full disclosure to the ADO, and remorse. *See Standards* § 9.32.
40. The parties agree that given the circumstances of the case, and the mitigating circumstances presented herein, a reprimand serves the purposes of discipline and is an appropriate sanction in this case.

D. Costs

41. Subject to the PCC's approval of Mr. Coughlin's Stipulation, Mr. Coughlin 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. Coughlin.

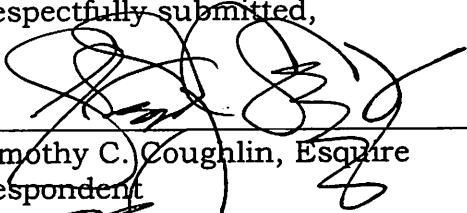
E. Effect of Stipulation

- 42. Mr. Coughlin 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).
- 43. Mr. Coughlin 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
- 44. Mr. Coughlin understands that he has a right to obtain counsel regarding this Stipulation and, that he is fully aware of the consequences of the Stipulation.
- 45. Mr. Coughlin knowingly and intelligently waives his right to a hearing.

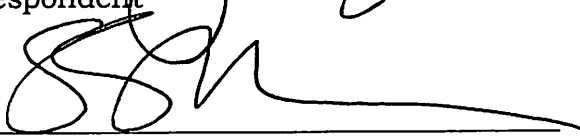
Dated: August 16, 2017

Dated: 8-22 2017

Respectfully submitted,



Timothy C. Coughlin, Esquire
Respondent



Sara S. Greene, Esquire
Disciplinary Counsel



**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Coughlin, Timothy C.

advs.

Attorney Discipline Office

#17-011

**AGREEMENT TO PAY COSTS
OF DISCIPLINARY MATTER**

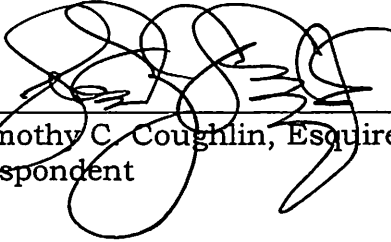
1. Subject to the Professional Conduct Committee's approval of the Stipulation of Facts, Rule Violations, and Sanction in the above matter, I agree to pay the expenses incurred by the Committee in the investigation and enforcement of this disciplinary matter. *See* Sup. Ct. R. 37(19)(b). Costs can include, but are not limited to: mileage, stenographers, transcripts, copying, inventory, audit expenses and publication.
2. As of July 14, 2017, I have been informed that the costs are approximately \$43.25. 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: August 16, 2017



Timothy C. Coughlin, Esquire
Respondent