

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Gosling, Tamblyn L. Fuller advs. Attorney Discipline Office - #17-030

Recommendation: Disbarment and Order on Costs

On February 20, 2018, the Professional Conduct Committee (the “Committee”) deliberated the Stipulation to Disbarment and the Agreement to Pay Costs of Disciplinary Matter (collectively, the “Record”).

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 Disbarment for violations of Rules 1.1; 1.3; 1.5; 1.15; 3.3; 4.1; 4.4; 8.4(c) and Sup. Ct. R. 50, as well as reimbursement of the Committee for all costs of investigation and prosecution of this matter.

February 20, 2018



David M. Rothstein, Chair

Distribution:
Sara S. Greene, Disciplinary Counsel
Tamblyn L. Fuller Gosling
File

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Gosling, Tamblyn Fuller

advs.

Attorney Discipline Office

#17-030

STIPULATION TO DISBARMENT

NOW COMES Sara S. Greene, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office (ADO), along with Tamblyn Fuller Gosling, Esquire (Ms. Gosling), and stipulate as follows:

A. Facts

1. Ms. Gosling was admitted to practice law in New Hampshire on May 28, 1993. She is currently suspended from the practice of law by order dated November 29, 2017.
2. Ms. Gosling was practicing law as a solo practitioner at Gosling Law and Mediation Center located at 11 North Mast Street, Goffstown, New Hampshire 03045.
3. Ms. Gosling has not been admitted to practice law in any other jurisdiction.
4. Ms. Gosling has a disciplinary history. A six-month stayed suspension was issued on July 21, 2009, in *Gosling, Tamblyn F. advs. Julie Simpson* - #07-035 for violations of Rules 4.1(a) and 4.4.

Overdraft Notification/ADO Investigation

5. On August 21, 2017, TD Bank notified the ADO that Ms. Gosling's client trust account (CTA) had been overdrawn on two separate dates.
6. The matter was forwarded to Disciplinary Counsel by letter dated October 13, 2017. Ms. Gosling had previously provided her CTA bank records from September 1, 2016 to October 31, 2017 as well as her CTA ledgers, client ledgers and invoices for the same period to General Counsel. After reviewing those records, additional issues arose regarding two estates filed in 9th Circuit-Probate Division-Nashua for which Ms. Gosling had served as Executor and Administrator; specifically, the Estate of Frederick Jache, Case No. 316-2016-ET-00302 ("Jache Estate") and the Estate of Real I. Martel, Case No. 316-2016-ET-00212 (Martel Estate").
7. Disciplinary Counsel subpoenaed bank records for the Martel and Jache estates, obtained pleadings from the Probate Court for these matters, and obtained Ms. Gosling's files for these two estate matters.
8. As set forth more fully below Ms. Gosling has:
 - a. Misappropriated funds from the Martel and Jache estates, and from client Gregg Lowden;
 - b. Filed false accountings and other pleadings with the Probate Court in the Martel and Jache estate matters;
 - c. Made misrepresentations to beneficiaries in the Martel and Jache estates;

- d. Charged excessive fees in the Jache matter;
- e. Committed myriad violations with regard to her client trust account, including commingling, record-keeping failures, taking cash withdrawals, and depositing unearned fees in an estate account;
- f. Filed false Trust Account Compliance Certificates for reporting periods covering June 1, 2015 to May 31, 2017;
- g. Threatened the Martel estate beneficiary who was inquiring into information regarding funds in Ms. Gosling's possession.

Client Trust Account Violations

- 9. Throughout September 1, 2016 to October 31, 2017, Ms. Gosling did not conduct monthly reconciliations or keep accurate client ledgers. Her client ledgers for that time period rarely matched bank statements for deposits into and disbursements out of the CTA.
- 10. Throughout September 1, 2016 to October 31, 2017, Ms. Gosling regularly failed to note the client matter to which disbursements from her CTA pertained. Almost none of the checks Ms. Gosling wrote from her CTA contained any identifying client information in the memo line.
- 11. Throughout September 1, 2016 to October 31, 2017, Ms. Gosling regularly made payments from her CTA for various personal expenses, including rent, nail and hair salons, Amazon purchases, cable television bills, grocery shopping, and payments to her family. Many of these payments were made electronically using a debit card for the CTA. Ms.

Gosling states that she often left earned fees in the CTA, constituting impermissible commingling.

12. Ms. Gosling made unauthorized cash withdrawals from her CTA as follows, for a total of \$2,242.09:

12/8/16	\$ 700.00
1/8/17	\$ 100.00
7/28/17	\$ 10.09
7/28/17	\$ 200.00
7/28/17	\$ 250.00
8/3/17	\$ 20.00
8/8/17	\$ 512.00
10/11/17	\$ 400.00
10/12/17	<u>\$ 50.00</u>

Estate of Real Martel

13. Real L. Martel died on October 14, 2015. Mr. Martel had no living relatives. Ms. Gosling drafted Mr. Martel's Last Will and Testament. As is pertinent to this disciplinary matter, Mr. Martel bequeathed his home and five acres of land surrounding it to Sara Gorman, as well as all of his "bank accounts" to Sara Gorman. He left "the remainder and residue" of his property to The Society for Protection of New Hampshire Forests.
14. Ms. Gosling filed a Petition for Estate Administration in Nashua Probate Division on February 2, 2016. It was accepted by Judge Quigley on February 4, 2016, who required a \$100,000 bond. Ms. Gosling was named Executor on March 3, 2016.
15. Ms. Gosling opened an estate account for the Martel estate at Citizen's Bank on March 17, 2016 with an opening deposit of \$54,206.87. She immediately withdrew \$3,500 in cash for her own use. On November 18,

2016, Ms. Gosling deposited \$7,009.70 belonging to Mr. Martel into the estate account. On January 20, 2017, she deposited \$60,946.69 belonging to Mr. Martel into the estate account.

16. Ms. Gosling did not disclose the Martel estate account on her Trust Account Compliance Certificates (TAC) for the period June 1, 2015 to May 31, 2017.
17. Over the next 19 months, Ms. Gosling disbursed a total of \$32,090.00 from the Martel estate to herself, without disclosure to or authority from the Court and without informing Ms. Gorman, the beneficiary. Ms. Gosling had not earned this amount as attorney's fees for her work in the estate. Much later, on September 26, 2017, Ms. Gosling's attorney's fees of \$19,875 were approved by the Court.
18. Ms. Gosling also misappropriated Martel estate funds to pay some of her personal debt, owed to her son and her father, in the amount of \$500.00.
19. Ms. Gosling misappropriated Martel estate funds to reimburse funds she misappropriated from another estate, the Jache estate (*see infra*, ¶46). On January 24, 2017, Ms. Gosling wrote a check from the Martel estate for \$3,400 and deposited that amount into the Jache estate account.
20. Ms. Gosling later attempted to reimburse the Martel estate for some of her misappropriation. Between April 20, 2017 and October 12, 2017, she deposited \$16,409.21 of her own funds into the Martel estate.
21. However, at least \$500 of these funds represented unearned fees from a client named Gregg Lowden. Mr. Lowden hired Ms. Gosling to handle

his divorce. His mother, Gwen Denton, wrote a check to Ms. Gosling dated October 12, 2017. Ms. Gosling endorsed the check “payable to Estate of Real Martel” and deposited a total of \$400 into the Martel account on October 21, 2017. She kept \$100 in cash from this deposit. Ms. Gosling performed no work for Mr. Lowden and she was suspended from the practice of law by Order of the Supreme Court dated November 29, 2017.

22. Ms. Gosling disbursed a total of \$60,000 from the Martel estate to Sara Gorman, in \$20,000 increments, between October 2016 and March 2017. She informed Ms. Gorman on each occasion that these disbursements were legitimate and allowed by the Probate Court.
23. In fact, Ms. Gosling did not seek authority from the Probate Court for the \$60,000 in disbursements to Ms. Gorman until filing a Motion for Order of Distribution on May 31, 2017, after she had already disbursed the \$60,000 to Ms. Gorman.
24. Ms. Gosling’s filings with the Probate Court contained numerous misrepresentations as set forth below:
 - a. Inventory of Fiduciary filed June 24, 2016. Ms. Gosling disclosed that the Martel estate bank account held \$50,696.88. As of June 14, 2016 the bank account balance was \$48,723.49. Ms. Gosling had paid herself a total of \$1,500 on June 14 and June 20, 2016.
 - b. Executor’s Original Accounting filed May 31, 2017.

- i. Ms. Gosling disclosed that the balance held by executor was \$63,962.39 for the accounting period, which ended on May 24, 2017. As of May 22, 2017, the balance in the Martel estate account as actually \$1,373.78.
- ii. Schedule 5 disclosed that Ms. Gosling had disbursed a total of \$15,307 to Meridian Land Surveyors, for surveying all of Mr. Martel's acreage.¹ Ms. Gosling disclosed that she paid Meridian \$10,000 as a "deposit for job," paid \$4,609 on August 22, 2016, and a final payment of \$698 on January 27, 2017. Ms. Gosling had in fact paid Meridian a total of \$10,148 by check dated August 22, 2016 for \$8,250, and check dated January 27, 2017 for \$1,898.
- c. Motion for Order of Distribution, filed on May 31, 2017. Ms. Gosling requested authority to distribute \$60,000 to Ms. Gorman after she had already done so. She represented that the estate account held \$63,962.39 as of the date of filing. The balance in the estate account as of that date was \$1,038.02.
- d. Executor's Amended Accounting filed on August 4, 2017. Ms. Gosling disclosed that as the end of the accounting period, August 4, 2017, she held \$70,971.60 in the estate account. The actual balance in the estate account as of that date was \$178.96.

¹ The Martel estate is still open. The new Executor is Attorney is Benjamin Siracusa Hillman.

(Thereafter, Ms. Gosling deposited some of her own funds into the estate account. On August 9, 2017, she deposited \$10,009.21).

Ms. Gosling also repeated her misrepresentations regarding payment to Meridian Land Surveyors in Schedule 5 to the Amended Accounting.

25. In August of 2017, prior to Ms. Gosling filing the Amended Accounting, Ms. Gorman, the beneficiary of the Martel estate, began questioning Ms. Gosling as to account balances. On August 2, 2017, Ms. Gorman emailed Ms. Gosling and ask her for bank statements for the estate account from the date Ms. Gosling opened it, as well as a copy of paperwork regarding payments to Meridian Land Surveyors.

26. Ms. Gosling responded the same day, stating:

“Sara, there is nothing in my files that you need. You got all the inventories and accountings . . . You do not get the file I am charged with confidentiality. Sara I think you are looking for more \$ and there is none. I put myself on the line for you and it sounds like you are accusing me of stealing. Real gave you a 200,000 home and 60,0000 dollars. THAT is unheard of for caregiving!!! ENOUGH. Do we have a problem? Do you think I stole money? I am pretty upset right now. You got everything YOU were entitled to get now either be happy with it or we go to court and I will have to disclose that I gave you too much money. I simply won't tolerate you adding that kind of stress on my shoulders.” (emphasis in original)

27. Ms. Gosling wrote again to Ms. Gorman later the same day, adding:

“And you do not get his file. I wish you had not taken this step. It has changed things. We are now adversaries, not a team. I will watch my back from you now [sic]. There is NO MORE MONEY!!!” (emphasis in original)

28. That same day, Ms. Gorman accidentally sent Ms. Gosling an email meant for Mr. Gorman's mother which stated that Ms. Gorman no longer trusted Ms. Gosling and that she might contact another lawyer.
29. Ms. Gosling's tone thereafter improved. She offered to sit down with Ms. Gorman and review "the inventory and account," but never agreed to provide bank statements and bank information. On August 2, 2017, Ms. Gosling wrote to Ms. Gorman: "I'm trying to please the judge, the Dept. of Justice is helping me. Please be careful about opening up a can of worms. Remember, you got too much money. Don't start a problem please. We will both lose. Come talk to me."
30. Ms. Gorman had no idea what any reference to DOJ involved, nor had Ms. Gosling ever suggested any of the payments she made to Ms. Gorman were anything but legitimate, authorized payments from the estate.
31. The next day, August 3, 2017, Ms. Gosling emailed Ms. Gorman and told her she would provide "100% of the court file for you." She added "sit tight before you end up in trouble with the DOJ and your assets and I end up losing my license ok."
32. There was no matter pending with the U.S. Department of Justice regarding the Martel estate and Ms. Gosling had had no such conversations with any agents of the DOJ.
33. Ms. Gorman recalled that Mr. Martel had funds at Citizens Bank and asked Ms. Gosling about whether she had located any funds there. Ms.

Gosling replied via email on the morning of August 4, 2017 (the date her Amended Accounting was due), and stated “Sara, good news. With your tip I did find another small savings account at Citizens. I’ve been there what, 6 times, and I have received no paperwork on it either. It is a savings for \$7,009.21 . . . Today I want to amend the accounting”

34. Ms. Gosling misrepresented to Ms. Gorman when she discovered the funds held at Citizens Bank. She discovered the existence of the funds, and deposited them in the estate account, on November 18, 2016, months earlier. By the time she was emailing Ms. Gorman on August 4, 2017, the balance in the Martel estate account was \$178.96.
35. The next day, Mr. Gosling filed the Amended Accounting, *supra* ¶23(d).

Estate of Frederick Jache

36. Frederick Jache (“Frederick”) died on November 3, 2015. Frederick died intestate. His closest living relative was his brother, Donald Jache (“Donald”), a resident of South Carolina. Donald was named Administrator of his brother’s estate on April 6, 2016. However, Donald died on April 20, 2016. Ms. Gosling thereafter petitioned the Probate Court to serve as Administrator. Ms. Gosling’s request was granted, upon the filing of a \$100,000 bond, on April 25, 2016.
37. Upon Donald’s death, the beneficiary of Frederick’s estate was Donald’s estate. Donald’s wife, Donna Jache (“Donna”), was the beneficiary of Donald’s estate.

38. Donna was Ms. Gosling's primary contact throughout her work as Administrator of the Frederick Jache estate.
39. The primary asset of the Jache estate was Frederick Jache's home. It closed on May 23, 2016. On that date, Ms. Gosling opened an estate account for the Jache estate with an initial deposit of \$70,047.88, the net proceeds from the sale of Frederick's home.
40. Immediately thereafter, between May 24, 2016 and June 3, 2016, she disbursed a total of \$6,800 to herself from the Jache account. These disbursements were not authorized by the Probate Court nor disclosed to Donna Jache, and did not represent fees earned by that date in time.
41. Ms. Gosling did not disclose the Jache estate account on her Trust Account Compliance Certificates (TAC) for the period June 1, 2015 to May 31, 2017.
42. On June 29, 2016, Ms. Gosling deposited \$7,695.45 of Mr. Jache's funds into the estate account.
43. From May 2016 through March of 2017, Ms. Gosling disbursed a total of \$22,189.00 from the Jache estate to herself, without disclosure to or authority from the Court and without informing Donna Jache, the beneficiary. Ms. Gosling had not earned this amount as attorney's fees for her work in the estate.

44. On April 19, 2017, Ms. Gosling's attorney's fees in the amount of \$3,675 were approved by the Court, as well as \$6,171.49 in "caretaker" fees.² Ms. Gosling and Donna had agreed that Ms. Gosling would charge \$150 an hour for all of her work, a reduced rate that recognized some of Ms. Gosling's work was not legal work requiring an attorney's expertise.
45. Ms. Gosling later attempted to reimburse the Jache estate for some of her misappropriation. Between November 30, 2016 through August 8, 2017, she deposited \$4,686.50 of her own funds into the Jache estate.
46. Ms. Gosling also misappropriated Jache estate funds to pay some of her personal debt, owed to her ex-husband, in the amount of \$285.00 by check dated January 3, 2017.
47. On January 24, 2017, Ms. Gosling wrote a check from the Martel estate for \$3,400 and deposited that amount into the Jache estate account. These funds were not Ms. Gosling's but were misappropriated by her from the Martel estate to reimburse the Jache estate for amounts misappropriated by her from the Jache estate.
48. Ms. Gosling disbursed a total of \$20,000 from the Jache estate to Donna in \$10,000 increments, paid on September 20, 2016 and December 1, 2016. She informed Donna on each occasion that these disbursements were legitimate and allowed by the Probate Court. In fact, Ms. Gosling

² Frederick Jache died in his home and was not discovered for weeks. His home was badly in disrepair and required some professional services to clean it and remove odors. Ms. Gosling assisted with this effort in her role as "caretaker."

did not seek authority from the Probate Court for the \$20,000 in disbursements to Donna.

49. Ms. Gosling's Final Accounting, filed with the Probate Court on March 2, 2017, contained numerous misrepresentations as set forth below:
- a. On Section 4, Ms. Gosling represented that the balance she held as Executor as of the ending date of the accounting period (November 8, 2016) was \$49,303.21. In fact, as of that date the Jache estate account held \$39,100.56.
 - b. Under Section 7 (Disbursements), Schedule 8 ("Other Disbursements"), Ms. Gosling failed to disclose her two payments of \$10,000 to Donna Jache.
 - c. Schedule 5 to the Final Accounting attached what purported to be Ms. Gosling's "caretaker" fees charged at \$150/hour for work related to cleaning up Mr. Jache's home, emptying it, selling personal items, and working with a realtor to prepare the house for sale. By April 1, 2016, Ms. Gosling had been paid a total of \$1,000 by Donna directly as a "retainer" for work on the Jache estate, covering 6.6 hours of work at \$150/hour. Ms. Gosling nonetheless included in her request for fees from the Court time spent on "caretaker" duties for which she had already been paid by Donna, essentially being paid twice for the same work.

Rule Violations

50. Ms. Gosling agrees that the following Rule violations could be proven by clear and convincing evidence based on the facts stipulated to herein:
51. Rules 1.1 and 1.3 (competence and diligence), by failing to abide with her basic duties of competence and diligence in her handling of the Jache and Martel estates, in that she failed to maintain ledgers for the estate matters, failed to maintain an appropriate file for the estate matters containing invoices and receipts for disbursements on behalf of the estate, filed false pleadings, and made misrepresentations to the beneficiaries of both estates.
52. Rule 1.5 (excessive fee), by seeking partial fees from the Probate Court in the Jache estate that she had already been paid by the beneficiary.
53. Rule 1.15 (safekeeping property) and Sup. Ct. Rule 50 (record-keeping requirements) with regard to her client trust account:
- a. by commingling her own funds with client funds;
 - b. by failing to maintain accurate client ledgers;
 - c. by taking multiple cash withdrawals;
 - d. by failing to identify the client matter to which deposits and disbursements pertained;
 - e. by depositing unearned fees into Martel account (Lowdon matter) rather than her client trust account.
54. Rule 3.3 (Candor to the Tribunal):

- a. By knowingly filing false pleadings with the Probate Court in the Martel and Jache estates as set forth herein;
 - b. By submitting knowingly false Trust Accounting Certificates covering periods June 1, 2015 to May 31, 2017 which failed to identify the Martel and Jache estate accounts, falsely represented that Ms. Gosling conducted monthly reconciliations, and falsely represented that she was not out of trust in the accounting periods.
55. Rule 4.1 (truthfulness in statements to others):
- a. By lying to Sara Gorman that disbursements made to her from the Martel estate were legitimate and made with authority from the Probate Court;
 - b. By lying to Sara Gorman regarding total funds in Ms. Gosling's possession and representing that "there is no money" (i.e. none left), when Ms. Gosling had misappropriated sums from the Martel estate;
 - c. By lying to Sara Gorman regarding the threat of a DOJ investigation into Ms. Gorman's receipt of funds;
 - d. By lying to Donna Jache that disbursements made to her from the Jache estate were legitimate and made with authority from the Probate Court.
56. Rule 4.4 (Respect for Rights of Third Persons):

- a. By threatening Ms. Gorman via email regarding a DOJ investigation as set forth herein with the primary purpose to embarrass, delay or burden Ms. Gorman.
57. Rule 8.4(c) (conduct involving dishonesty, deceit, fraud, or misrepresentation):
- a. By misappropriating funds of the Martel and Jache estates;
 - b. By lying to Donna Jache and Sara Gorman regarding payments made to them from the Jache and Martel estates;
 - c. By lying to Sara Gorman upon her request for bank account information that the threat of a DOJ investigation into Ms. Gorman existed;
 - d. By lying to Sara Gorman regarding when Ms. Gosling discovered additional funds of \$7,009.21;
 - e. By filing false pleadings with the Probate Court as set forth herein;
 - f. By filing false Trust Account Compliance Certificates as set forth herein.

Waiver of Formal Proceedings

58. Ms. Gosling understands that she will be bound by her representations and admissions as contained in this Stipulation for purposes of any disciplinary matter, including any application for readmission, in which case this matter may be presented to the Committee on Character and Fitness.

59. Ms. Gosling agrees to pay the costs incurred by the ADO in the investigation and pursuit of this disciplinary matter. Her agreement to pay costs is the subject of a separate agreement with the ADO.
60. In so doing, Ms. Gosling waives any and all of her due process rights under both the state and federal constitutions on the matters pending against her.
61. Ms. Gosling further waives any and all of her procedural rights under N.H. Sup. Ct. R. 37 and 37A, **including the procedures under Rule 37(16)**.
62. In deciding both to sign this Stipulation to Disbarment, and to waive these rights, Ms. Gosling has been informed that she may seek the advice of counsel. She signs this Stipulation knowingly and intelligently, without coercion or inducement of any kind.
63. Ms. Gosling consents to disbarment, concedes that disbarment is the appropriate sanction for her intentional misconduct, and asks the Committee to recommend to the New Hampshire Supreme Court that the Supreme Court impose an Order of Disbarment in this attorney discipline matter.

Respectfully submitted,

Dated: 2/14, 2018

By: 

Sara S. Greene
Disciplinary Counsel

Dated: 2/14, 2018

By: 
Tambllyn Fuller Gosling, Esquire
Respondent