

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Richey, Danielle L.

advs.

Attorney Discipline Office

#18-017

RECOMMENDATION: TWO-YEAR SUSPENSION

On September 17, 2019, the Professional Conduct Committee (the "Committee") considered the above-captioned matter. Present were David M. Rothstein, Chair, Elaine Holden, Vice Chair, Heather E. Krans, Vice Chair, Ronald K. Ace, Kathleen M. Ames, Caroline K. Leonard, Mona T. Movafaghi, Margaret R. Kerouac, Georges J. Roy, and Martha Van Oot. Peter G. Beeson abstained from participation. Richard C. Guerriero, Jr. was absent.

Following deliberation, the Committee voted to reject the Hearing Panel's sanction of a one-year suspension from the practice of law and recommend a two-year suspension.

PROCEDURAL HISTORY

Danielle L. Richey (formerly Santuccio) is licensed to practice law in New Hampshire. Ms. Richey was admitted to the New Hampshire Bar on October 31, 2006. She has not been admitted to practice in any other jurisdiction. As of March 6, 2018, Ms. Richey practiced at Richey & Greenlee, PLLC, in Laconia. From October 24, 2017 to March 6, 2018, she practiced at Ekberg, Richey & Greenlee in North Conway. Ms. Richey has a disciplinary history that includes a public censure and a six-month stayed suspension. She is currently under suspension for failing to respond to four docketed matters, including this one.

This matter arises out of an April 17, 2018 referral by the Honorable Charles J. Greenhalgh, Presiding Judge for the 3rd Circuit-Family Division-Ossipee. Judge Greenhalgh stated that Ms. Richey had taken almost seventy-five days after her services were terminated in the divorce proceedings in In the Matter of Sarah Kendall and Scott Kendall to produce her complete file to successor counsel. The matter was referred to Disciplinary Counsel on May 7, 2018.

**FACTS DEEMED ADMITTED PURSUANT TO
SUPREME COURT RULE 37A(III)(b)(3)(A)**

Ms. Richey represented the Petitioner, Sarah Kendall. The Petition for Divorce was filed in August 2016. A Final Pretrial Conference was initially scheduled for January 23, 2018, and the Final Hearing was scheduled for March 2, 2018.

In January of 2018, the Petitioner terminated Ms. Richey's representation and hired Kurt D. DeVlyder, Esquire. On January 22, 2018, Mr. DeVlyder filed an Emergency Motion to Continue the Pretrial Conference and Final Hearing. Mr. DeVlyder stated that he had been retained on January 16, 2018, and that, despite his request, he had not received the Petitioner's file from Ms. Richey.

On January 23, 2018, the Court held a telephonic status conference. Mr. DeVlyder, Ms. Richey, and Respondent's counsel, Christine A. Tebbetts, participated. Ms. Richey agreed to forward a copy of her complete file to Mr. DeVlyder. The Court rescheduled the pretrial conference for March 30, 2018.

On January 23, 2018, Ms. Richey filed her Withdrawal. On March 5, 2018, Mr. DeVlyder filed a "Motion to Join Danielle Ritchey (sic), Esquire, as a Party, to Compel Her to Release the Petitioner's file to Petitioner's Present Counsel, and to Have Her Reimburse the Petitioner for Attorney's Fees and Costs." Mr. DeVlyder represented that he forwarded correspondence, along with a release signed by the Petitioner, to Ms. Richey on January 16, 2018. He further represented that he followed up with Ms. Richey by emails dated February 9, 2018, February 21, 2018, and February 28, 2018, requesting a copy of the Petitioner's file. Ms. Richey did not respond.

On March 1, 2018, Mr. DeVlyder called Ms. Richey's former office, Ekberg, Richey & Greenlee, PLLC, and learned that Ms. Richey no longer worked there. Mr. DeVlyder was provided with Ms. Richey's cell phone number. He subsequently left a message on Ms. Richey's cell phone, again requesting a copy of the file.

At the March 30 telephonic pretrial conference, Mr. DeVlyder informed the Court "that he had not received sufficient file materials from Atty. Richey to

be prepared for trial.” Mr. DeVyllder “had received a copy of pleadings [from Ms. Richey] and little else.” After the hearing, Judge Greenhalgh entered an order that Ms. Richey transfer the file to Mr. DeVyllder “within 24 hours of the receipt of this Order.”

On or about April 4, 2018, Ms. Richey filed a Motion to Reconsider the Circuit’s Court Order. Petitioner filed an objection and indicated that on April 5, 2018, Mr. DeVyllder received “a package of paper nearly 1.5 inches thick from Attorney Richey. It contained copies of text messages between the parties, email correspondence between the Petitioner and Attorney Richey’s office, attorney notes, a financial affidavit and some other evidentiary materials....”

The objection stated that on April 6, 2018, Mr. DeVyllder received additional materials from Attorney Richey, including records from criminal matters, a stipulation, and other documents. The Objection also provided:

Attorney Richey disputes that she withheld the file and claims that [she] had forwarded all materials. This is untrue. After multiple requests from undersigned counsel with no response, undersigned counsel had to get a Court order to prompt Attorney Richey to disclose anything. Then, she did not disclose her whole file. Only after a second Court order and a referral to the Professional Conduct Committee did she provide her notes, the text conversations, correspondence, some Rule 1.25A materials, interrogatories from the Respondent and miscellaneous other items. This is hardly sufficient.

At the telephonic status hearing on April 17, 2018, Ms. Richey contended that she was unaware that Mr. DeVyllder was seeking additional documentation from her file before receiving the Court’s order. However, once Ms. Richey received the Order, she went through her files and provided Mr. DeVyllder with additional documentation. Ms. Richey explained that she had moved her home and office at the same time.

Judge Greenhalgh denied the Motion for Reconsideration. In his referral, Judge Greenhalgh stated:

On April 5 and 6, Atty. Richey produced additional materials which had not been included in the first production. The Court held a status conference on April 17, 2018, at which Attys. Richey, DeVyllder and Tebbetts appeared. Atty. DeVyllder reported that the production of additional materials at such a late date put him in the position of seeking an additional continuance. A Final Hearing has

been continued indefinitely, while Atty. DeVylder evaluates the file materials and determines what work needs to be done to prepare for the Final Hearing.

In correspondence dated April 23, 2018, the ADO notified Ms. Richey that this matter had been docketed as a complaint. Ms. Richey was required to file a response on or before May 2, 2018. She did not file a response. Assistant Disciplinary Counsel wrote to Ms. Richey on October 17, 2018 and December 11, 2018 requesting that Ms. Richey call the ADO to schedule a meeting. She did not.

Disciplinary Rules Violated

Ms. Richey's conduct implicates Rules of Professional Conduct 1.16 and 8.1.

Rule 1.16: Declining or Terminating Representation

Rule 1.16(d), in relevant part, states 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 to 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.

Ms. Richey violated Rule 1.16(d) when she failed to promptly provide a complete copy of Petitioner's file to successor counsel. Her failure caused unnecessary delay and additional attorney's fees.

Rule 8.1: Bar Admission and Disciplinary Matters

Rule 8.1(b) states as follows:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not

require disclosure of information otherwise protected by Rule 1.6. . . .

Ms. Richey violated Rule 8.1(b) when she failed to respond to correspondence from the ADO requesting a response to the docketed complaint, and subsequent correspondence requesting her to schedule a meeting with the ADO.

Rule 8.4(a): General Rule

As the rule violations are admitted by default, this necessarily constitutes a violation of Rule of Professional Conduct 8.4(a).

SANCTION ANALYSIS

Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support the Committee's recommended sanction. The purpose of the 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 (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 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").

Under the first prong, Ms. Richey failed to promptly provide a complete copy of her former client's file to successor counsel despite having assured the Court and Mr. DeVylder that she would promptly do so. See *Standard* § 7.0. Ms. Richey also violated duties owed to the public, to the legal system and to the legal profession by her failure to respond to lawful demands for information from a disciplinary authority. See *Standards* §§ 5.1 and 7.0.

With respect to the second prong, Ms. Richey's mental state was knowing. She failed to promptly provide a complete copy of her former client's file to Mr. DeVylder, after stating she would do so, and she did not do so until after the Court's order. See *Averill v. Cox*, 145 N.H. 328, 339 (2000) ("a client's file belongs to the client, and upon request, an attorney must provide the client with the file."). In addition, Ms. Richey knowingly ignored requests for information by the ADO and failed to cooperate with General Counsel and Disciplinary Counsel.

The third prong requires an assessment of injury. Ms. Richey's conduct caused both actual and potential injury. Her conduct inconvenienced the Court, the parties, and their counsel because Judge Greenhalgh had to continue the Final Pretrial Conference and Final Hearing on two occasions. Ms. Richey further caused injury to the profession because her failure to cooperate undermined the disciplinary process.

Ms. Richey's conduct implicates Section 7.1 of the *Standards*, which provides, in relevant part:

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 Admonition¹ 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.

Ms. Richey's conduct calls for a baseline sanction of a suspension. The

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.

baseline sanction must be considered in light of any aggravating and mitigating factors. *Conner's Case*, 158 N.H. at 303.

The following aggravating factors are present:

- A. Substantial experience in the practice of law: Ms. Richey had practiced law for approximately 12 years at the time Judge Greenhalgh referred this matter to the ADO.
- B. Obstruction of disciplinary proceedings by failure to respond to the ADO's requests.
- C. Pattern of misconduct. In failing to respond to the ADO's formal requests, Ms. Richey has ignored the disciplinary process for over a year.
- D. Refusal to acknowledge the wrongful nature of the conduct.
- E. Previous discipline history for similar violations. In 2015, Ms. Richey received a Public Censure in *Santuccio, Danielle Richey advs. ADO*, #12-042 for violations of Rules 1.1, 1.3, 1.4, and 8.4(a). Her lengthy delay in filing a lawsuit and preparing a litigation strategy led to her client's loss of a potential cause of action. In 2016, Ms. Richey received a Six-Month Suspension Stayed for One Year in *Santuccio, Danielle L. Richey advs. ADO*, #13-043, for violations of Rules 1.1, 1.3, 3.2, 3.4(c), and 8.4(a). Again, Ms. Richey's inaction led to injury to her client.
- F. Additional matters pending at the ADO of a similar nature. In *Danielle L. Richey (formerly Danielle L. Santuccio) advs. Attorney Discipline Office*, #17-025, Ms. Richey stipulated to violations of Rules 1.15 and 1.6. On June 18, 2019, the Hearing Panel recommended a reprimand. The Panel noted a "troubling weakness in Ms. Richey's legal practice, namely, a tendency to avoid dealing with difficult issues or clients." Although not a recognized aggravating factor under the *Standards*, Ms. Richey has also failed to respond to four docketed matters between February 14, 2019 and May 28, 2019, resulting in the Court issuing an order for interim suspension. See *In the Matter of Danielle L. Richey, Esquire*, LD-2019-0008 (June 17, 2019).

The only mitigating factor is an absence of a dishonest or selfish motive. See *Standards* § 9.32.

Ms. Richey's pattern of ignoring the requests of counsel and the


disciplinary authority raises serious doubts about her current fitness to practice law. She has already faced a public censure, a reprimand, and a stayed suspension, and is under suspension for ignoring a spate of recent complaints. While there may be some mitigating explanation for these issues, Ms. Richey has not provided one. The Court did not appear to credit her representation that she was unaware of Mr. DeVylder's request for her former client's file.

The Hearing Panel recommended a one-year suspension. For two reasons, a longer term of suspension is necessary to protect the public. First, the comparison cases cited by the Hearing Panel, Roulston and Michalik, each involved the imposition of a two-year period of suspension. Second, Ms. Richey has demonstrated a pattern of neglect warranting the need for substantial corrective measures.

CONCLUSION

Taking into account the duties violated, the mental state associated with those violations, the actual injury and potential injury inflicted as well as the aggravating and mitigating circumstances, it is recommended that Attorney Danielle L. Richey be suspended for a period of two-years and be ordered to pay the costs of investigation and prosecution.

Dated: November 18, 2019



David M. Rothstein, Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Danielle L. Richey