

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

a committee of the attorney discipline system

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Saben, Lynne A. advs. Attorney Discipline Office - #20-012

Recommendation: One Year Suspension and Order on Costs

On November 17, 2020, the Professional Conduct Committee deliberated the Stipulation as to Facts, Violations, and Sanction: One Year Suspension, as well as the Agreement to Pay Costs in the above matter.

Having reviewed the Record, the Committee approved the Stipulation as to the facts by clear and convincing evidence. The Committee approved the findings of violations as Stipulated. The Committee approved the Stipulation to recommend a One Year Suspension for violations of Rules 3.3; 3.4;.5.5; 8.4(c); and 8.4(a). Finally, the Committee ordered that Ms. Saben reimburse of the Committee for all costs of investigation and prosecution of this matter.

November 18, 2020

/S/ David M. Rothstein
David M. Rothstein
Chair

cc: Sara S. Greene, Counsel
Lynne A. Saben
File

**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Saben, Lynne A.

advs.

Attorney Discipline Office

#20-012

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

Respondent Lynne A. Saben, Esq., and the Attorney Discipline Office
(ADO) stipulate as follows:

A. Facts

1. Ms. Saben is an attorney licensed to practice law in New Hampshire. Ms. Saben was admitted to practice on June 19, 2002.
2. Ms. Saben was suspended from the New Hampshire Bar on March 31, 2015 for failure to file trust accounting certificate and pay fines assessed. Docket No. ADM-2014-0152.
3. On June 22, 2015, Ms. Saben was suspended from the New Hampshire Bar for failing to file her certificate of compliance with minimum continuing legal education requirements. Docket No. ADM-2015-0019.
4. Ms. Saben was also admitted to practice law in Massachusetts on December 17, 1999. She is currently on active status for the Massachusetts Bar.

5. At all times material to this proceeding, Ms. Saben was employed by DiFruscia Law Offices, located at 302 Broadway, Methuen, Massachusetts. The DiFruscia Law Offices is comprised of husband and wife Kathleen and Anthony DiFruscia.
6. Ms. Saben does not have a previous disciplinary history.
7. This disciplinary matter was initiated by a Referral Pursuant to Rule 37A(II)(a)(2)(A) submitted by Timothy A. Gudas, as Clerk of the New Hampshire Supreme Court.
8. As set forth below, Ms. Saben represented a client in New Hampshire in a landlord-tenant proceeding knowing that she was administratively suspended.

B. Appearance and Representation in Landlord-Tenant Dispute While Administratively Suspended

9. Following her administrative suspension, Ms. Saben sought to be reinstated to the practice of law in New Hampshire.
10. On September 30, 2019, while employed by the DiFruscia Law Offices, Ms. Saben submitted a Petition for Reinstatement with the New Hampshire Supreme Court. She attributed her administrative suspension as having been the result of “personal issues and [she] did not have the physical or mental capacity to practice law and pay [dues].”
11. By Order dated October 21, 2019, the Court found that Ms. Saben’s petition did not adequately address her “continuing moral character and fitness” and directed her to complete the Petition and Questionnaire for

- Admission to the New Hampshire Bar and to submit the completed petition and questionnaire to the Office of Bar Admission (OBA).
12. Ms. Saben submitted the completed reinstatement petition to OBA on November 4, 2019.
 13. On January 30, 2020 the court concluded that the information provided in the petition and questionnaire was insufficient to determine Ms. Saben's continuing moral character and fitness. The petition for reinstatement was therefore referred to the Committee on Character and Fitness for its review.
 14. Despite knowing that she was not yet admitted to practice law in New Hampshire, on February 12, 2020, Ms. Saben filed an appearance in the 10th Circuit Court, District Division (Salem), on behalf of a client named Scott White, who was in eviction proceedings.
 15. Ms. Saben went on to represent Mr. White during a final hearing on March 11, 2020. The eviction was granted.
 16. The Committee on Character and Fitness thereafter requested information from Ms. Saben. She did not timely respond. The Committee so informed the Court.
 17. By Order dated June 30, 2020, the Court noted Ms. Saben's failure to respond and denied her petition for reinstatement.
 18. Ms. Saben submitted a response to the ADO wherein she accepted responsibility and admitted to representing Mr. White in court knowing she was administratively suspended.

C. Disciplinary Rules Violated

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

Rule 3.3: Candor Toward the Tribunal

20. The facts set forth at ¶¶ 1-18 above are incorporated by reference.
21. Rule 3.3 states in pertinent part as follows:
- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
22. Ms. Saben's appearance in the District Division - Salem violated Rule 3.3 because she failed to correct a false statement of material fact to the tribunal; specifically, that she was not authorized to practice law at the time of her appearance.

Rule 3.4: Fairness to Opposing Party and Counsel

23. The facts set forth at ¶¶ 1-18 above are incorporated by reference.
24. Rule 3.4 states in pertinent part as follows:
- A lawyer shall not:
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

25. Ms. Saben violated Rule 3.4(c) when she knowingly violated the Orders of the Supreme Court of New Hampshire administratively suspending her by appearing on behalf of a client in court in New Hampshire.

Rule 5.5: Unauthorized Practice of Law;
Multijurisdictional Practice of Law

26. The facts set forth at ¶¶ 1-18 above are incorporated by reference.

27. Rule 5.5 states as follows:

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
 - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
 - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
 - (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
 - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
 - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

- (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
 - (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:
 - (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or
 - (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.
28. Ms. Saben violated Rule 5.5 when she practiced law in New Hampshire in violation of the regulation of the legal profession; specifically, by representing a client in court despite being under administrative suspension by Order of the Supreme Court.

Rule 8.4(c): Deceit

29. The facts set forth at ¶¶ 1-18 above are incorporated by reference.
30. 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;

31. Ms. Saben's failure to inform her client Mr. White that she was not authorized to practice law in New Hampshire violated 8.4(c).

Rule 8.4(a): General Rule

32. Having found the foregoing violations, there is clear and convincing evidence that Ms. Saben's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

D. Recommended Sanction

33. The Attorney Discipline Office and Ms. Saben jointly agree that a one-year suspension is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
34. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
35. 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).
36. 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.
37. 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 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”).

38. Under the first prong of the analysis, Ms. Saben violated duties owed to her client, to the court and to the legal system.

39. With respect to Ms. Saben’s mental state under the second prong of the sanction analysis, the parties agree that Ms. Saben’s mental state was knowing. Ms. Saben knew she was administratively suspended, and therefore prohibited from representing any New Hampshire client, at the time she appeared on behalf of Mr. White.

40. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Ms. Saben’s misconduct.

41. Ms. Saben’s conduct injured Mr. White in that he did not receive representation by an attorney authorized to practice law in New Hampshire. Ms. Saben had not actively practiced in New Hampshire since 2015, nor maintained her continuing legal education minimum requirements. Ms. Saben’s conduct also injured the profession and the public’s confidence in the Bar, in that her conduct involved dishonesty by omission regarding her status and authorization to appear in a New Hampshire Court.

42. The parties agree that the baseline sanction in this matter is a suspension. *See Standards*, Sec. 4.62, 5.13, 6.12, 6.22 and 7.2.
43. Ms. Saben'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).

44. Ms. Saben's 8.4(c) rule violation also implicates Section 5.1 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 commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

- 5.11 Disbarment is generally appropriate when:
- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional

interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

5.13 Reprimand¹ is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

(emphasis added).

45. Ms. Saben's 3.3 rule violation implicates Section 6.1 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 conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury

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.

to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

(emphasis added).

46. Ms. Saben's 3.4 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.

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).

47. Ms. Saben's 5.5 rule violation implicates Section 7.0 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 false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

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 Admonition 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.

(emphasis added).

48. Taken together, the *Standards* set forth suspension as the baseline sanction in this matter.
49. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g.*, *Conner's Case*, 158 N.H. at 303.
50. In this case there are several aggravating factors present, including multiple offenses, dishonest motive, and vulnerability of victim. *See Standards* § 9.22. Ms. Saben did not reveal to Mr. White that she was administratively suspended, at a time when he was in a vulnerable state and facing eviction.
51. Mitigating factors include full and free disclosure to the ADO, and no prior disciplinary history (as opposed to an administrative suspension). *See Standards* § 9.32.
52. The parties agree that the mitigating factors do not outweigh aggravating factors sufficiently to justify a downward departure from the baseline sanction of suspension, and that a one-year suspension serves the purposes of discipline and is an appropriate sanction in this case.
53. The parties further agree that a suspension of over six months is appropriate in order to trigger reinstatement requirements pursuant to Rule 37(14)(b), given the Supreme Court's previous Orders referring the

matter to Character and Fitness to determine Ms. Saben's moral character.

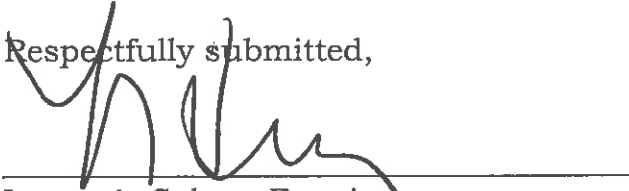
E. Costs

54. Subject to the PCC's approval of Ms. Saben's Stipulation, Ms. Saben agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. See Supreme Court Rule 37(19). Her agreement to pay the costs incurred by the ADO is the subject of a separate agreement signed by Ms. Saben.

F. Effect of Stipulation

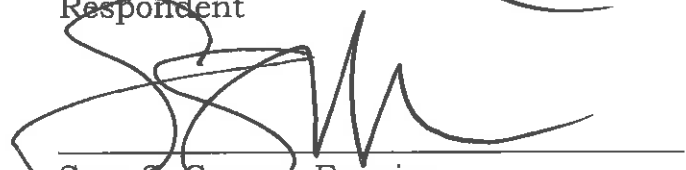
55. Ms. Saben understands that this Stipulation represents a recommended disposition, and that the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).
56. Ms. Saben acknowledges that the admissions of misconduct and the proposed disposition contained in this Stipulation are freely, knowingly, and voluntarily submitted; that she 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
57. Ms. Saben understands that she has a right to obtain counsel regarding this Stipulation and, that she is fully aware of the consequences of the Stipulation.

58. Ms. Saben knowingly and intelligently waives her right to a hearing.

Respectfully submitted,


Lynne A. Saben, Esquire
Respondent

Dated: 10-26, 2020



Sara S. Greene, Esquire
Disciplinary Counsel

Dated: 10/29, 2020