

New Hampshire Supreme Court
Professional Conduct Committee

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Anctil, Wallace J. advs. Jane Jordan # 05-087

REPRIMAND

On November 20, 2007, the Professional Conduct Committee, upon consideration, voted grant the Motion to Permit Waiver of Hearings Committee Process and to issue a Reprimand in the above-captioned matter on the basis of the Stipulation filed by the parties attached hereto and made part thereof.

November 20, 2007


Benette Pizzimenti, Vice Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
Wallace J. Anctil, Esquire
File

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Ancil, Wallace J.

advs.

Jane Jordan

#05-087

STIPULATION

Disciplinary Counsel, Landya B. McCafferty, and Respondent, Wallace J. Ancil, hereby submit this Stipulation in the above-referenced case.

I. Stipulation of Facts

1. Mr. Ancil is an attorney licensed to practice law in New Hampshire. Mr. Ancil was admitted to practice in 1969. At all times material to this proceeding, Mr. Ancil operated his law office as Dupont & Ancil, 258 School Street, Berlin, New Hampshire 03570.
2. In or about May 2004, Jane Jordan (the Complainant) retained Mr. Ancil to represent her in her divorce.
3. At one of their early meetings, Mr. Ancil requested a \$500 retainer. Ms. Jordan wrote Mr. Ancil a check on that date.

4. Mr. Anctil deposited the \$500 retainer in June 2004 in his office IOLTA account, where it remained at all times until it was refunded in full to the complainant, on or about November 15, 2005.
5. Due to Ms. Jordan's mother-in-law's death, Ms. Jordan and Mr. Anctil decided to hold off on filing any divorce paperwork to allow Ms. Jordan's husband time to grieve the loss of his mother.
6. Some additional delay was occasioned by Mr. Anctil's suggestion that some expenses for service of process could be minimized by having the service completed within New Hampshire and Ms. Jordan made some attempts to persuade her husband to return to this state for that purpose; however, he was ultimately uncooperative in that regard.
7. On or about August 26, 2004, Ms. Jordan wrote a letter to Mr. Anctil in which she expressed her interest in proceeding with the divorce.
8. After receiving no response to her letter, Ms. Jordan began telephoning Mr. Anctil's office. Ms. Jordan left several message but her calls were not always promptly returned.
9. In or about September 2004, Ms. Jordan left a final telephone message requesting that Mr. Anctil refund to her the \$500 retainer.
10. In a letter to Mr. Anctil dated October 19, 2004, Ms. Jordan again requested a refund of her \$500 retainer and informed Mr. Anctil that she had retained other counsel.

11. Ms. Jordan sent the October 19, 2004, letter to Mr. Anctil via certified mail return receipt requested. On October 28, 2004, Mr. Anctil signed for receipt of the October 19, 2004, letter.
12. In or about December 2004, Ms. Jordan happened to see Mr. Anctil in passing at the municipal building in Milan where Ms. Jordan works. At that time, Mr. Anctil told Ms. Jordan something to the effect that he knew he owed her money but had not gotten around to sending it to her yet.
13. Having heard nothing further from Mr. Anctil, on September 19, 2005, Ms. Jordan filed a letter of complaint to the Attorney Discipline Office about Mr. Anctil's failures both to communicate and to return her retainer.
14. In a letter to Mr. Anctil dated September 26, 2005, James L. DeHart informed Mr. Anctil of Ms. Jordan's complaint, enclosed a copy of her complaint, and requested Mr. Anctil's response thereto.
15. On November 15, 2005, Mr. Anctil wrote a \$500 check to Ms. Jordan out of his IOLTA trust account.
16. In a letter to Mr. DeHart dated November 15, 2005, Mr. Anctil responded to Ms. Jordan's professional conduct complaint.

II. Stipulation as to Rules Violated

Rules 1.15(b) and 1.16(d): Failure to Return Client Funds

17. Allegations set forth above are incorporated by reference.

18. In May 2004, Ms. Jordan paid Mr. Anctil \$500.00 in exchange for Mr. Anctil's agreement to represent Ms. Jordan in her divorce. Following their May 2004 meeting, Mr. Anctil did not file a divorce petition or take any other legal actions on Ms. Jordan's behalf (excepting only discussions and legal advice.)
19. As of Ms. Jordan's October 2004 letter to Mr. Anctil terminating his services, Mr. Anctil was on written notice that Ms. Jordan had hired substitute counsel and that she wanted her full retainer returned.
20. As of Ms. Jordan's October 2004 letter to Mr. Anctil, Mr. Anctil was also aware that he was holding an unearned portion of Ms. Jordan's retainer.
21. From September 2004 through November 15, 2005, Mr. Anctil did not return the unearned portion of Ms. Jordan's retainer to her, nor did he provide any accounting or other explanation to her with respect to the funds.
22. In so doing, Mr. Anctil knowingly failed to promptly deliver to Ms. Jordan funds she was entitled to receive.
23. Mr. Anctil's failure to promptly return the unearned portion of Ms. Jordan's retainer constitutes clear and convincing evidence of a violation of both N.H. R. Prof. Conduct 1.15(b) and 1.16(d).

Rule 8.4(a): General Rule

24. Because there exists clear and convincing evidence of violation of the aforementioned Rules, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

III. Stipulation as to Sanction

25. Disciplinary Counsel and Mr. Anctil jointly recommend a Reprimand as the appropriate sanction in this matter. A Reprimand would serve the purposes of attorney discipline.
26. Both case law in New Hampshire and the American Bar Association's Standards for Imposing Lawyer Sanctions (1992) ("Standards") support the conclusion that Mr. Anctil should receive a Reprimand. The purpose of the Court's disciplinary power "is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." E.g., Coffey's Case, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). "The sanction must take into account the severity of the misconduct." Id.
27. Although the Court has not adopted the Standards, it looks to them for guidance. Coffey's Case, 152 N.H. at 513. 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." Standards § 3.0; Coffey's Case, 152 N.H. at 513.
28. The first three steps create the framework for characterizing the misconduct and determining a baseline sanction. See Wolterbeek's Case, 152 N.H. 710, 714 (2005) ("In 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 step in the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. See id. (“After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.”).

29. Under the first prong of the analysis, Mr. Anctil violated his duty to his client to return promptly all funds belonging to her.
30. The section of the Standards that deals with a lawyer’s mishandling of client funds is Section 4.11, entitled “Failure to Preserve the Client’s Property.” Section 4.11 indicates that [d]isbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.” Standards § 4.11. This standard is clearly not applicable here.
31. Section 4.12 recommends suspension where “a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.” Standards § 4.12. The commentary to this section indicates that failing to promptly return funds to a client constitutes “dealing improperly with client money.” See Standards § 4.12 (Commentary) (“Suspension should be reserved for lawyers who engage in misconduct that does not amount to misappropriation or conversion. The most common involve lawyers who commingle client

funds with their own, or fail to remit client funds promptly."). (Emphasis added).

32. Section 4.13 recommends a Public Censure¹ “when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.”
33. Section 4.14 recommends a Reprimand² “when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.”
34. Negligence properly characterizes the behavior of Mr. Anctil in this matter. Mr. Anctil retained Ms. Jordan’s retainer because he believed he had earned a portion of it and was entitled to retain that portion. His intention was to discuss this issue with Ms. Jordan, finalize the fee issue and refund the balance to her, but he neglected to do so. Mr. Anctil attributes his neglect to the fact that he was in the process of closing his practice and was working without a secretary at the time. Upon speaking with Ms. Jordan about the matter, Mr. Anctil compromised any claim he had to the funds and returned Ms. Jordan’s retainer in full.

¹ Section 4.13 uses the term “Reprimand.” The most analogous sanction in New Hampshire is a Public Censure.

² Section 4.14 uses the term “Admonition.” The most analogous sanction in New Hampshire is a Reprimand.

35. To determine the baseline sanction, the Standards require analysis of both Mr. Anctil's state of mind and the injury caused by his misconduct.
36. With respect to Mr. Anctil's mental state, the evidence is clear that, as of Ms. Jordan's October 19, 2004 letter, Mr. Anctil knowingly retained funds belonging to Ms. Jordan. However, Mr. Anctil's mental state was not purposeful.
37. The third prong of the analysis requires consideration of the potential or actual injury caused by Mr. Anctil's misconduct. Here, Ms. Jordan was injured because Mr. Anctil deprived her for approximately one year of access to money that was rightfully hers. Not only was the client injured, but there is harm to the reputation of the bar whenever an attorney is not fastidious in his ethical obligations toward client funds.
38. In the end, however, Mr. Anctil returned Ms. Jordan's money in full, thereby reducing the quantifiable injury. Further, and most importantly, the case does not involve defalcation of client funds or commingling of money.
39. In light of section 4.11 of the Standards, as well as the analysis of the facts under the first three prongs of the test, an appropriate baseline sanction in this case is a Reprimand.
40. The final step in the analysis, however, is to determine whether there are any aggravating and/or mitigating factors that affect the baseline sanction.

41. There are several mitigating factors in this case: Mr. Anctil lacked a dishonest or selfish motive, see Standards § 9.32(b); Mr. Anctil has cooperated with the disciplinary process, id. § 9.32(e); and Mr. Anctil has expressed genuine remorse for his misconduct, id. § 9.32(l).
42. There is only one aggravating factor in this case. Mr. Anctil has a disciplinary history, see id. § 9.22(a): a Private Reprimand dated March 6, 1990 (a copy is attached as Exhibit 1).
43. Although the prior Reprimand involves similar misconduct to that committed in this case, the underlying events in the prior matter occurred in 1988-89, approximately 18 years ago.
44. As of June 1, 2007, Mr. Anctil's bar status changed from active to "inactive retired." However, Mr. Anctil continues to serve as a part-time District Court Justice.
45. In light of the age of the prior discipline, the mitigating factors involved, as well as Mr. Anctil's recent retirement from the Bar, a Reprimand is an appropriate sanction in this case.
46. In sum, taking into consideration both the four part analysis recommended by the Standards, as well as the purposes of attorney discipline in New Hampshire, the appropriate sanction in this matter is a Reprimand.

IV. Stipulation as to Costs

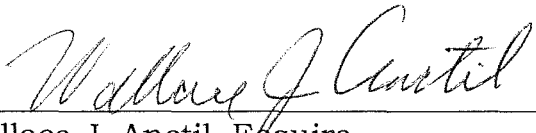
47. Mr. Anctil agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

V. Effect of Stipulation

48. Respondent understands that by signing this Stipulation, he is hereby bound to the facts as stipulated. In the event that the Professional Conduct Committee does not agree with the Stipulation as to Rules Violated and/or the Stipulation as to Sanction, the Respondent is nonetheless hereafter bound to the facts as stipulated.

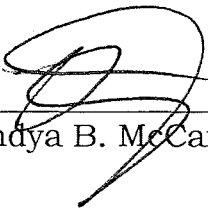
Respectfully submitted

Dated: Oct 18, 2007

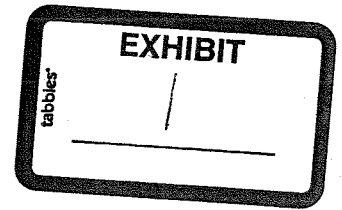
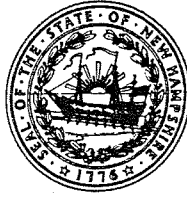


Wallace J. Anctil, Esquire

Dated: Oct 22, 2007



Landya B. McCafferty, Disciplinary Counsel



The State of New Hampshire Supreme Court

*Professional Conduct Committee • 18 North Main Street, Suite 205 • Concord, New Hampshire 03301
(603) 224-5828*

March 6, 1990

Wallace J. Anctil, Esquire
Dupont & Anctil
258 School Street
Berlin, New Hampshire 03570

Re: Anctil, Wallace J. advs. Diane Buda - #893975

REPRIMAND

Dear Mr. Anctil:

At its regular meeting held on Wednesday, February 21, 1990, the Professional Conduct Committee thoroughly reviewed the entire record of the above entitled matter.

After giving due consideration to this record the Committee finds that in May of 1988, Diane Buda retained you to handle a matter on behalf of her mother and she paid you a \$200 retainer at that time; that for the next eight to ten months she repeatedly called you and attempted to contact you to find out the status of the case; that you failed to return her telephone calls and failed to advise her in any fashion as to what was happening with the case; that Mrs. Buda was finally forced to retain new counsel, who secured her file from you and the return of the \$200 retainer in April of 1989; that you failed to promptly and timely respond to client inquiries; that you failed to promptly and diligently represent your client's interests; that you failed to keep your client reasonably informed; that you failed to undertake action on behalf of your client in a timely and effective manner; and that you failed to promptly turn the file over to your client when requested.

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Wallace J. Anctil, Esquire
Re: #893975

The Committee finds that because of the above conduct you are guilty of professional misconduct and in violation of Rules 1.1(c)(4), 1.3(a) 1.4(a), 1.16(d) and 8.4(a) of the Rules of Professional Conduct.

This letter of Reprimand is issued because of this misconduct and a copy will be placed in your permanent file. The findings in this matter may be considered in determining the severity of discipline imposed for any further violation.

You are entitled to appeal a Reprimand by filing a written notice of appeal in accordance with the Rules of the New Hampshire Supreme Court. The appeal, including the pleadings, all information admitted at the proceeding itself, and the decision, would remain private and would be subject to the confidentiality requirements noticed in § 4.1 of the Committee's Rules and Procedures.

The Professional Conduct Committee

By: _____
Peter H. Fauver, Chairman

PHF/bjl