

New Hampshire Supreme Court  
**Professional Conduct Committee**

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**REPRIMAND**

In this matter Landya B. McCafferty, Disciplinary Counsel, appeared for the Attorney Discipline Office, and Edward D. Philpot, Jr., Esq., appeared on behalf of the Respondent, Attorney Philip A. Brouillard. Having been advised by Attorneys McCafferty and Philpot by letter of October 27, 2004, that neither office requested oral argument in this matter, the Professional Conduct Committee (the "Committee") proceeded without hearing oral argument. No members of the Committee were recused from the matter. Members Toni Gray and James Martin were absent from the discussion and did not vote.

The Committee thoroughly reviewed the record in this matter. Having reviewed the record, including the Notice of Charges dated July 2, 2004, an Answer and Affirmative Defenses of Philip A. Brouillard and supplemental response thereto, jointly submitted Exhibit Nos. 1-21, inclusive, a Stipulation dated August 27, 2004 (the "Stipulation"), a Hearing Panel Report dated October 26, 2004, and a transcript of the August 27, 2004, hearing, the Committee makes factual findings and rulings as detailed below.

**I. FACTUAL FINDINGS**

In this matter Attorney Brouillard was charged with violations of Rules 1.1(c)(3), 1.3(a), 1.4(a), 1.4(b), 1.4(c), 3.2, and 8.4(a). On August 27, 2004, the day of the hearing, Attorney Brouillard and Attorney McCafferty, on behalf of the Committee, entered into a Stipulation as to a number of factual allegations and as to rulings of law that Attorney Brouillard had violated Rules 1.4(a), 1.4(b), 1.4(c), and 8.4(a). Following the entry of that Stipulation, the hearings Committee proceeded with a hearing on the other charges. The Hearing Panel determined that the charge violations of 1.1(c)(3) and 3.2 were *not* proved, but that the charged violation of 1.3(a) *was* proved.

The Committee has determined that the record supports the following factual findings

of the Hearing Panel by clear and convincing evidence. These findings are a reiteration of and based on the Stipulation, which was adopted by the Hearing Panel in its report dated October 22, 2004. That Stipulation states:

**Background: Mr. Lowe's dealings with Century 21**

1. Mr. Lowe owned property located at 256 Lake Shore Drive in Franklin, New Hampshire (hereinafter "the property"). Mr. Lowe wanted to sell the property. To accomplish this goal, he used the services of Century 21 Twin Rivers Realty (hereinafter "Century 21").
2. At some point in the summer of 1998, Mr. Lowe received an electric bill for the property, which indicated to him that someone was using the electricity on the property. Mr. Lowe telephoned Century 21 to inquire.
3. Mr. Lowe learned from Century 21 that a Susan Reese was occupying the property. Mr. Lowe further learned that Ms. Reese might have an interest in buying the property. Century 21 advised Mr. Lowe to forward a lease agreement to Ms. Reese in order to formalize her status as a tenant.
4. To that end, Mr. Lowe sent a letter to Ms. Reese dated August 14, 1998, in which he included two copies of a lease for her to sign and return to him. Ms. Reese did not respond to that letter. Mr. Brouillard did not see a copy of this letter until after this complaint was filed.
5. Subsequently, in a letter to Ms. Reese dated September 9, 1998, Mr. Lowe again forwarded copies of the leases and reiterated his request for her to sign and return the leases.
6. As of September 28, 1998, Ms. Reese had not responded to Mr. Lowe's letters. On that date, Mr. Lowe drafted a letter to Century 21 placing it on notice that he was holding Century 21 "professionally and personally responsible for the actions of [its] broker and any damage or loss of rent which occur as the result of Ms. Reese's occupancy of the property." In that letter, Mr. Lowe explained his belief that one of Century 21's brokers, Roland ("Pete") R. Dubois, Sr. had given Ms. Reese a key to Mr. Lowe's property and allowed her to enter and occupy the property without either Mr. Dubois' oversight or Mr. Lowe's authorization.

7. On September 30, 1998, Mr. Lowe received the signed lease agreements from Ms. Reese, and on October 20, 1998, Mr. Lowe received a bank check from her for one month's rent. Thereafter, Mr. Lowe received no other payment from Ms. Reese.

8. At some point in early December 1998, Mr. Lowe decided to pursue a lawsuit against Century 21. Mr. Lowe hired Mr. Brouillard to bring suit against Century 21.

9. In a letter dated December 10, 1998, Mr. Lowe confirmed that he was retaining Mr. Brouillard to bring a lawsuit against Century 21 Twin Rivers Realty and two of its brokers. With that letter, Mr. Lowe included a \$500 check for Mr. Brouillard's retainer, along with copies of his prior correspondence with Century 21 and Ms. Reese. Mr. Brouillard did not receive a copy of the August 14, 1998 letter at this time.

10. Mr. Lowe believed that Century 21 and two of its brokers were responsible for providing a key to his property to a tenant, Ms. Reese, who had been residing in the premises without Mr. Lowe's authorization since sometime in late June or early July of 1998.

11. Mr. Lowe indicated in this December 10 letter that he wanted "your initial efforts to go" toward forcing Century 21 to evict Ms. Reese. He instructed Mr. Brouillard to obtain a transcript from Public Service Company of New Hampshire of all conversations between Ms. Reese and the electric company. He informed Mr. Brouillard that the transcript would reveal that Ms. Reese made her first request for electricity to Public Service on July 2, 1998. Thereafter, he wanted Mr. Brouillard to file a lawsuit against Century 21 and the two brokers.

**The breakdown in communication and Mr. Brouillard's failure to file suit**

12. On February 19, 1999, Mr. Brouillard forwarded to Mr. Lowe a Demand for Rent and Notice to Quit regarding Ms. Reese, and Mr. Brouillard requested that he sign these and return them to Mr. Brouillard's office. Through Mr. Brouillard's efforts, on May 28, 1999, Ms. Reese was evicted from the property, and Mr. Brouillard and Mr. Lowe were able to enter the property and examine it.

13. Mr. Lowe was still interested in pursuing a lawsuit against Century 21, and Mr. Brouillard continued to agree to represent him in that pursuit.

14. On September 8 and, again on December 6, 1999, Mr. Brouillard spoke with Mr. Lowe on the telephone and assured him that Mr. Brouillard spoke with Mr. Lowe on the telephone and assured him that Mr. Brouillard was in the process of preparing the complaint against Century 21 and that Mr. Brouillard would be filing it soon.

15. On or about January 6, 2000, Mr. Lowe sold the property.

16. On February 16, 2000, Mr. Lowe wrote the following letter to Mr. Brouillard:

It is with great concern that I am now writing. I expressed a desire to bring suit against Century 21 Twin Rivers Realty, Mr. Doug Embree and Mr. Peter Dubois, while Miss Reese still occupied the property at 256 Lake Shore Drive in Franklin, New Hampshire. I believe had we brought suit at that time Mr. Brouillard could have called Miss Reese as a witness and proved beyond a shadow of a doubt negligence on the part of the above mentioned parties. Yet, I took your advice and waited to file suit until after Ms. Reese was evicted.

It has now been approximately 8 months since she has been evicted, the property has been sold, and upon numerous phone conversations Mr. Brouillard have stated that filing of the suit was imminent. I would like to see it moved forward. Please note, in addition to the issues we have already discussed, I have been told the wood stove has been severely damaged and should be added to the list of claims as part of the suit. To replace the stove today it would cost approximately \$5,000.00.

It is not that I am looking for an immediate settlement, but I would like to at least have it on record that they are responsible for their actions. And, it caused me severe economic hardships to which I plan to recover same.

Please let me know how we may proceed.

17. On April 7, 2000, Mr. Brouillard spoke with Mr. Lowe on the telephone and again assured him that Mr. Brouillard had been working on the complaint against Century 21 and it would be filed forthwith. Mr. Brouillard explained that he had not yet filed the lawsuit because Mr. Brouillard wanted to wait until after the property was sold so that he could determine Mr. Lowe's total damages.

18. On June 1, 2000, Mr. Lowe telefaxed Mr. Brouillard the following letter:

As per our conversation on Tuesday, May 30th, I expected to receive a fax outlining my case against Twin Rivers Realty and Roland Dubois. I continue to look forward to receiving the case outline.

In the meantime, I believe Mr. Roland Dubois's home address is 73 Baldwin Street, Laconia, New Hampshire (telephone (603) 524-8262). You may also discover that a Stephen Dubois is residing at this address.

I look forward to hearing from Mr. Brouillard.

19. On June 9, 2000, Mr. Brouillard spoke with Mr. Lowe on the telephone and again assured him that Mr. Brouillard would "get to it" and "fax [it] sometime today or Monday."

20. In a letter to Mr. Lowe dated June 26, 2000, Mr. Brouillard wrote the following:

Enclosed herewith please find all original documentary evidence, along with a check in the amount of \$327.85, which is the balance of your retainer.

I have determined that I cannot take this case for personal reasons which are unrelated to you.

21. In response to Mr. Brouillard's abrupt withdrawal, on August 4, 2000, Mr. Lowe wrote Mr. Brouillard the following letter:

In response to your letter dated June 26, 2000, let me refresh your memory. On December 10, 1998, I sent you a

letter outlining my case which you agreed to represent and accepted a retainer. As I recall, you were happy to accept my case and proudly pointed out that you had previously sued and won judgment and damages against Century 21 Twin Rivers Realty, its owner and an individual broker.

Then, against my wishes, and only through your sheer determination to establish damages through the eviction of "the squatter Miss Susan Reese," did you convince me to proceed on her eviction. There were several times during the initiation of that eviction, and your June 26th letter, wherein you represented a filing against Century 21 Twin Rivers Realty was imminent. Your "personal reasons," as expressed during one of our last conversations, reflected a desire to not appear as to have a "personal vendetta against that company." This should have been thought through long before your acceptance of my case.

Your actions have directly, and, I believe, intentionally subverted the strength of my case. You have continually and consistently misrepresented yourself and your intent with respect to all aspects of my case against Century 21 Twin Rivers Realty. Therefore, I expect to receive a full accounting of all monies spent. In addition, I expect to receive a copy of all your notes and drafts, as you had represented they were all but completed with respect to filing a suit against Century 21 Twin Rivers Realty.

Finally, I plan to pursue your conduct with the New Hampshire Professional Conduct Committee, and expect them to review your lack of professionalism.

## **II. RULINGS OF LAW**

The above-listed facts having been found by clear and convincing evidence and the parties having stipulated that Attorney Brouillard violated Rules 1.4(a), 1.4(b), 1.4(c), and 8.4(a) of the Rules of Professional Conduct, the Committee finds clear and convincing evidence that said rules have been violated, as explicated below.

**Rule 1.4(a), 1.4(b), and 1.4(c): Client Communications  
(Stipulated Ruling)**

By failing to file suit against Century 21 while repeatedly assuring Mr. Lowe that Mr. Brouillard was in the process of preparing such a lawsuit, Mr. Brouillard did not keep Mr. Lowe “reasonably informed” regarding the status of his lawsuit. In so doing, Mr. Brouillard also neglected his duty to communicate the legal and practical aspects of the case such that Mr. Lowe could make informed decisions regarding the representation. The evidence is clear and convincing evidence that Mr. Brouillard’s failure in this regard constitutes a violation of N.H.R. Prof. Conduct 1.4(a), 1.4(b), and 1.4(c).

Additionally, Mr. Brouillard failed to explain to Mr. Lowe the reason(s) why Mr. Brouillard abruptly decided, after the passage of approximately 18 months, not to file a lawsuit against Century 21 on his behalf. The evidence is clear and convincing evidence that Mr. Brouillard’s failure in this regard constitutes a separate violation of N.H.R. Prof. Conduct 1.4(a)-(c).

**Rule 8.4(a): Omnibus Rule (Stipulated Ruling)**

Because there exists clear and convincing evidence that Mr. Brouillard violated the above rules, there is necessarily clear and convincing evidence of a violation of N.H.R. Prof. Conduct 8.4(a).

**Rule 1.3(a): Diligence (Contested Charge)**

The Hearing Panel determined that the charged violation of Professional Conduct Rule 1.3(a), relating to the Respondent’s failure to act diligently to commence litigation against Century 21, was proved.

Rule 1.3(a) requires that a lawyer act “with reasonable promptness and diligence in representing a client.” Rule 1.3(b) provides that performance by a lawyer is prompt and diligent if, *inter alia*, matters are “carried out with no avoidable harm to the attorney-client relationship.

In this instance, the Panel found, by clear and convincing evidence, and the Committee agrees, that the Respondent’s repeated failure to convey problems associated with his representation and aspects of the lease issue to the client demonstrated a failure to act with appropriate diligence and ultimately harmed the attorney-client relationship. As the comments to the Rule note, “perhaps no professional shortcoming is more widely resented than procrastination.” The Panel found, and the Committee agrees, that the

procrastination in this case (manifested in the form of a repeated failure to return telephone calls), constituted a course of conduct that frustrated the client and profoundly undermined his confidence in Attorney Brouillard. At the same time, however, the Panel determined that this procrastination did not result in any obvious or evident injury to the client or his interests, but instead harmed the attorney-client relationship. The Panel also noted that the Respondent appeared genuinely remorseful for the course of conduct, and earnestly apologized for his failure to return calls and meet the client's need for communication. The Committee adopts these findings and observations.

### III. SANCTION

Having made the above findings and rulings, the Committee concludes that the appropriate discipline in this matter is a **Reprimand** for the violations of Rule 1.3(a), 1.4(a), 1.4(b), 1.4(c), and Rule 8.4(a):

a. The Hearing Panel recommended that the Respondent receive the sanction of Reprimand for his violation of Rule 1.3(a). The Hearing Panel made its recommendation after reviewing the *ABA Standards for Imposing Lawyer Sanctions*<sup>1</sup> § 4.4 (relating to "diligence," the ABA equivalent to Rule 1.3), following which the Panel noted: (1) that the ABA standard for a "Reprimand" (a sanction listed and defined in Rule 37A(I)(c)) provides that a Reprimand is 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** (emphasis added);" and (2) that the ABA standard for an "Admonition" provides that an admonition is appropriate "when a lawyer is negligent and does not act with reasonable diligence in representing a client, and **causes little or no injury or potential injury to a client** (emphasis added)."

The Committee agrees with the Hearing Panel and finds the sanction of Reprimand, as defined in our Supreme Court Rule and clarified in New Hampshire Attorney Discipline Office's Hearings Committee Manual, the appropriate sanction in view of the fact that there was little or no injury or potential injury to the client. This finding would result in an admonition under the ABA standards, a sanction our Court now calls a "Reprimand".

b. **Rules 1.4(a), 1.4(b), 1.4(c).** The Hearing Panel recommended a sanction of

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<sup>1</sup>Although the New Hampshire Supreme Court has not formally adopted the ABA Standards for Imposing Lawyer Sanctions, the Court has considered those standards when imposing sanctions.

“Reprimand” for the Respondent’s violation of Rules 1.4(a), 1.4(b) and 1.4(c). The Panel again looked to the *ABA Standards for Imposing Lawyer Sanctions*, § 4.6 (relating to “lack of candor”). ABA Standard § 4.64 notes that Admonition is 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.”

The Hearing Panel found, and the Committee agrees, that there was no evidence in this matter of actual deceit or intention to deceive the client, nor any injury or potential injury arising from the Respondent’s failure to keep the client reasonably informed about the lawyer’s actions on his behalf at appropriate times and in an appropriate manner. Accordingly, the Committee finds the sanction of Reprimand, as defined in our Supreme Court Rule and clarified in New Hampshire Attorney Discipline Office’s Hearings Committee Manual, the appropriate sanction.

c. **Rule 8.4(a)**. The Panel does not recommend any additional or other sanction due to the violation of Rule of Professional Conduct 8.4(a).

#### **IV. CONCLUSION**

In summary, in accordance with New Hampshire Supreme Court Rule 37(A) (III)(d)(1) the Hearing Panel recommended, and the Committee agrees, that it is appropriate for the Committee to impose a Reprimand upon Attorney Brouillard for his violation of the New Hampshire Rules of Professional Conduct: Rules 1.3, 1.4(a), 1.4(b), 1.4(c), and 8.4(a).

Attorney Brouillard shall be entitled to appeal the findings or sanction in accordance with the Rules of the New Hampshire Supreme Court.

Date: 12/14/04

By: Margaret H. Nelson  
Margaret H. Nelson, Esq.  
Chair

cc: Disciplinary Counsel  
Edward D. Philpot, Jr., Esq.

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