

New Hampshire Supreme Court  
**Professional Conduct Committee**

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*Clark, Grenville advs. Epaminodas Tingas #03-062*

**Public Censure**

On December 13, 2005, the Professional Conduct Committee considered the above-referenced matter. The Committee members hearing the case included: Margaret H. Nelson, Chair; Toni M. Gray, Vice Chair; Benette Pizzimenti, Vice Chair; David N. Cole; Thomas P. Connair; Alan J. Cronheim, Reporter; Eleanor Wm. Dahar; James R. Martin; David N. Page; and Stephen B. Stepanek. David N. Page abstained. Gretchen Rule Hamel did not attend the meeting.

The parties waived oral argument. The Professional Conduct Committee thoroughly reviewed the record in this case, including the initial grievance filed by Epaminodas Tingas, the Notice of Charges, the Notice of Hearing, Disciplinary Counsel's proposed Findings of Fact and Rulings of Law, the Transcript of the hearing dated September 7, 2005, the Hearing Panel Report dated September 16, 2005, and Mr. Clark's prior disciplinary record.

Mr. Clark failed to respond to the Notice of Charges in this matter. As a result, the factual allegations in the Notice were deemed admitted. Therefore, the Professional Conduct Committee makes Factual Findings and Rulings as follows:

**I. FINDINGS OF FACT**

The Professional Conduct Committee finds the following facts by clear and convincing evidence:

1. In a letter of complaint dated May 19, 2003, Epaminondas Tingas asserted allegations of

professional misconduct against Mr. Clark.

2. On July 9, 2002, Mr. Tingas retained Mr. Clark to handle a tax matter for him and his partner, Renee Gelinas, with whom Mr. Tingas resided. On that date, Mr. Tingas paid Mr. Clark a \$500.00 retainer.
3. By way of background, the Internal Revenue Service ("IRS") had recently placed a lien on the home which Mr. Tingas and Ms. Gelinas jointly owned. The lien was for unpaid taxes owed by Mr. Tingas. Mr. Tingas and Ms. Gelinas retained Mr. Clark to negotiate a resolution with the IRS so that the lien could be lifted. At their meeting on July 9, 2002, Mr. Clark assured Mr. Tingas and Ms. Gelinas that this matter presented an "easy solution."
4. On July 11, 2002, Mr. Tingas and Ms. Gelinas received correspondence from Mr. Clark relative to a Power of Attorney. On July 18, 2002, they received a copy of a letter that Mr. Clark sent to the IRS. On August 8, 2002, they received an invoice summarizing Mr. Clark's work and the status of their retainer. The invoice indicated that, as of that date, Mr. Clark had used a total of \$192.50 of their retainer for legal bills and they had \$307.50 left in trust.
5. Between August 8, 2002, and January 6, 2003, Mr. Tingas and Ms. Gelinas had no contact with Mr. Clark. They telephoned Mr. Clark on numerous occasions during that time-period, but Mr. Clark did not return their calls.
6. On January 6, 2003, Ms. Gelinas was able to speak with Mr. Clark on the telephone. Mr. Clark stated that he had received the necessary paperwork from the IRS, and that he would be forwarding copies to them.
7. Having received no paperwork or correspondence from Mr. Clark, on February 12, 2003, Ms. Gelinas telephoned him again. On that date, Mr. Clark promised to forward the

paperwork to them within a week.

8. Having received no paperwork from Mr. Clark, on February 24, 2003, Ms. Gelinas telephoned him again. Mr. Clark stated that he had not yet mailed the paperwork but would mail it on that date (February 24).
9. Having received no paperwork from Mr. Clark, on February 28, 2003, Ms. Gelinas telephoned him again. Mr. Clark stated that he mailed the paperwork "today" (February 28).
10. On March 5, 2003, a similar conversation ensued, and Mr. Clark again stated that he would mail the paperwork "today" (March 5).
11. On March 11, 2003, a similar conversation ensued, and Mr. Clark promised to mail the paperwork "in a day or two." Ms. Gelinas asked if Mr. Clark was still interested in providing assistance to them. Mr. Clark assured her that he was still interested in helping them, and that Mr. Clark would get the paperwork to them within a day or two.
12. Having received nothing from Mr. Clark, on March 19, 2003, Ms. Gelinas telephoned his office. Mr. Clark's secretary stated that he was not in the office but would return the call. Mr. Clark did not return the call.
13. On or about April 22, 2003, Mr. Tingas and Ms. Gelinas terminated Mr. Clark's services and hired David J. T. Burns to represent them. Per Mr. Burns' request, on July 24, 2003, Mr. Clark forwarded a copy of Mr. Tingas' complete file to Mr. Burns.
14. Mr. Burns explained to Mr. Tingas and Ms. Gelinas that they could resolve the lien issue by using an accountant. Mr. Tingas and Ms. Gelinas then hired an accountant who resolved their lien issue with the IRS within approximately five weeks from the date they retained him.

## II. RULINGS OF LAW

In light of the above-listed Findings of Fact, the Professional Conduct Committee concludes that there is clear and convincing evidence that the following violations occurred:

### **Rule 1.3(a): Diligence**

15. From July 8, 2002, through the date of Mr. Clark's termination on or about April 22, 2003, Mr. Clark accomplished nothing for Mr. Tingas and Ms. Gelinias in terms of resolving the IRS lien. By not resolving this matter with the IRS in a timely manner, Mr. Clark failed to act promptly and diligently on their behalf. Mr. Clark's failures in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3(a). *See also* N.H. R. Prof. Conduct 1.3(b).

### **Rule 1.4(a) & (b): Communication**

16. From January 6, 2003, through the termination of Mr. Clark's services on or about April 22, 2003, Mr. Clark failed to keep Mr. Tingas and Ms. Gelinias informed regarding the status of their matter.
17. Rather than tell them that Mr. Clark had done nothing on their case since the invoice they received on August 8, 2002, Mr. Clark repeatedly told them that he had received the necessary paperwork from the IRS, and that he would forward it to them. Mr. Clark led both of them to believe that filling out this paperwork would be the next step in the legal process.
18. Had Mr. Clark kept Mr. Tingas and Ms. Gelinias reasonably informed regarding the status of their case, they could have sought and found alternative assistance much sooner than they did.
19. Further, by not forwarding the IRS paperwork to them in a prompt manner, Mr. Clark failed to communicate in accord with Rule 1.4(a).

20. Mr. Clark's failures in these regards constitutes clear and convincing evidence violations of N.H. R. Prof. Conduct 1.4(a) & 1.4(b). *See also* N.H. R. Prof. Conduct 1.4(c).

**Rule 8.4(a): Misconduct**

21. 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. ANALYSIS**

In determining a sanction, the Committee reviewed Mr. Clark's conduct, its impact on his clients, his prior disciplinary record and his testimony at the September 7, 2005, hearing.

In this case, Mr. Clark requested that a reprimand be issued while Disciplinary Counsel suggested that a suspension was an appropriate sanction.

Having reviewed the record as well as the ABA Code for Professional Responsibility, Standards for Imposing Lawyer Sanctions (1991), the Committee believes that a Public Censure is the appropriate sanction in this matter.

Mr. Clark abdicated his responsibilities to his clients both by failing to deal with the tax issue, and then by failing to inform his clients of the status of their case. While Mr. Clark's clients were not significantly harmed by his representation, resolution of this matter was delayed by nearly a year due to his inattention.

Two further aggravating circumstances were considered by the Committee. *See*, Standards, Section 9.22.

Mr. Clark tried to characterize this case as a fee dispute rather than focusing on his failure to follow through with his responsibilities to his clients. His attitude, as shown by his own testimony at the hearing, demonstrated a continuing hesitation to accept responsibility in this

matter. Further, Mr. Clark has a prior disciplinary record. While these prior sanctions are more than ten years old, he received three prior reprimands in 1991, 1993 and 1994 as well as a public censure in 1992. *See, Clark's Case*, 136 N.H. 497 (1992).

#### IV. SANCTION

Having made the aforementioned Findings and Rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is a public censure. The Committee further directs Mr. Clark to complete six hours of continuing legal education programs focused on office management, and an additional two ethics credits, all programs to be completed by June 30, 2006. This further continuing legal education requirement is to be in addition to those which count toward the continuing legal education credits required annually by the Supreme Court. In addition, Mr. Clark shall reimburse the Professional Conduct Committee for all costs associated with the investigation and prosecution of this matter. This sanction is in accord with the purposes of attorney discipline as described by the New Hampshire Supreme Court, *see, Feld's Case*, 149 N.H. 19, 28 (2002) and is also in accord with the ABA Center for Professional Responsibility, *Standards for Imposing Lawyer Sanctions* (1991).

#### V. CONCLUSION

The Professional Conduct Committee finds that Mr. Clark violated Rule 1.3(a), Diligence; Rule 1.4(a) and (b), Communication and Rule 8.4(a), Misconduct for Violating the Rules of Professional Conduct. The Committee therefore imposes a Public Censure upon Mr. Clark for violation of these Rules along with the requirement that he complete supplemental continuing legal education programs and submit certificates of attendance to this Committee, and reimburse the Professional Conduct Committee for costs associated with the investigation and prosecution of this matter.

## VI. RIGHT TO APPEAL

Pursuant to Supreme Court Rule 37(A) (III) (d)(2)(D)(4)(A), Grenville Clark, III, has the right to appeal to the New Hampshire Supreme Court. See also, Supreme Court Rule 37(3)(c).

January 17, 2006

  
Margaret H. Nelson, Chair

### Distribution:

Grenville Clark, III, Esquire  
Landya B. McCafferty, Disciplinary Counsel  
File