

New Hampshire Supreme Court
Professional Conduct Committee

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Conner, William E. advs. Sherry E. Rowell #03-104

**ORDER ON MOTION TO PERMIT WAIVER OF HEARINGS COMMITTEE
PROCESS
and
PUBLIC CENSURE**

On December 13, 2005, the Professional Conduct Committee considered the above-captioned matter. The matter was presented pursuant to NH Sup. Ct. R. 37(A)(111) by Landya B. McCafferty, Disciplinary Counsel, in a Motion to Permit Waiver of Hearings Committee, dated December 7, 2005.

Members present included: Margaret H. Nelson, Chair, Toni M. Gray, Vice Chair; Thomas P. Connair, Reporter; Alan Cronheim; Eleanor Wm. Dahar; James R. Martin; David N. Page and Stephen B. Stepanek.

After deliberation, the Committee voted to issue a Public Censure and grant Disciplinary Counsel's Motion to Permit Waiver of the Hearings Committee Process.

I. FACTUAL FINDINGS

The Professional Conduct Committee determined that the record supports the following Findings of Fact by clear and convincing evidence:

1. In a letter of complaint sworn to on September 16, 2003, Sherry E. Rowell made allegations of professional misconduct against William E. Conner.
2. From October 22, 2002, through July 22, 2003, Mr. Conner represented Ms. Rowell in a custody matter.
3. Ms. Rowell and her ex-husband, Alan T. Marsh, were divorced on April 1, 2002. They entered the divorce on a pro se basis. The Permanent Stipulation provided that they would share legal and physical custody of their three minor children. Although Ms. Rowell and Mr. Marsh shared custody, the children's primary residence was with Mr. Marsh.
4. On October 18, 2002, Mr. Marsh filed an ex parte petition to change the custody order. The petition alleged that Ms. Rowell abused alcohol in front of the children, allowed the children to consume alcohol, and was engaged in an automobile accident as a result of alcohol consumption. The Court issued an ex parte order granting the petition and giving Mr. Marsh temporary custody of the three children. The hearing on the petition was scheduled for October 22, 2002, the date on which Ms. Rowell retained Mr. Conner.
5. At the hearing, Mr. Marsh was pro se and Ms. Rowell was represented by Mr. Conner.
6. After the hearing on October 22, 2002, the Court (Cyr, J.) affirmed the ex parte orders and appointed Mary L. Wade, Esq., as Guardian ad Litem ("GAL"). The Court granted Ms. Rowell the right to visit with the children at a supervised visitation center with conditions regarding her alcohol consumption. The Court held that a further hearing on custody and visitation would be scheduled upon receipt of the GAL's report.
7. At some point after the hearing, Mr. Marsh retained Nancy S. Tierney, Esq. to represent him in the custody case.
8. After the October 22, 2002, hearing, the GAL began her investigation. During this time period, Ms. Tierney communicated to Mr. Conner that Mr. Marsh had strong concerns about Ms. Rowell's continued alcohol consumption and its effect on the children. During this time period, Ms. Rowell pled guilty to the DWI charge that resulted from the automobile accident referenced in the ex parte petition.
9. In early May, 2003, Mr. Conner became aware that the GAL had completed her investigation and was prepared to make recommendations to the Court. On May 8, 2003,

- Mr. Conner filed a "Partially Assented to Motion to Set Hearing," indicating that Ms. Rowell agreed with the GAL's proposed recommendations and requesting a hearing.
10. In early June, 2003, the parties negotiated a stipulation. Although Ms. Rowell agreed to the terms of the stipulation, she was not pleased with it.
 11. By letter dated June 4, 2003, Ms. Tierney informed the Court that a settlement had been reached.
 12. On June 17, 2003, Mr. Conner and Ms. Rowell signed the stipulation. The stipulation awarded Ms. Rowell limited visitation with the children in her home and included strict conditions relative to her alcohol consumption.
 13. On July 1, 2003, the Court approved the stipulation.
 14. By letter dated July 15, 2003, the GAL informed Mr. Conner of her suspicion that Ms. Rowell was again consuming alcohol in the presence of the children.
 15. By note dated July 18, 2003, Mr. Conner requested that Ms. Rowell telephone him upon her receipt of the note. Mr. Conner's note also indicated that a response to the GAL was necessary "ASAP."
 16. On July 22, 2003, Mr. Conner informed Ms. Rowell that he was involved in a relationship with Ms. Tierney and, as a result, he could no longer represent her.
 17. By letter to Ms. Rowell dated July 22, 2003, Mr. Conner enclosed a copy of his formal withdrawal and gave her instructions with respect to obtaining alternative counsel "quickly" to assist in the recent developments involving the July 15, 2003, letter from the GAL.
 18. Prior to Ms. Rowell hiring Mr. Conner, he and Ms. Tierney had been involved in a sexual relationship. The relationship was steady and lasted throughout Mr. Conner's representation of Ms. Rowell. Indeed, in mid-June, 2003, Mr. Conner and Ms. Tierney began living together.
 19. Prior to July 22, 2003, Mr. Conner did not inform Ms. Rowell of his relationship with Ms. Tierney.

II. RULINGS OF LAW

The above-listed facts having been found by clear and convincing evidence, the Professional Conduct Committee concludes that there is clear and convincing evidence that William E. Conner has violated the following Rules of Professional Conduct:

Rule 1.7(b)

20. By engaging in a sexual relationship with opposing counsel without fully informing Ms. Rowell and seeking her consent to the continued representation under these circumstances, Mr. Conner engaged in a prohibited conflict of interest under Rule 1.7(b).
21. Because Mr. Conner had a sexual relationship with Ms. Tierney as of October 22, 2002, the date on which Ms. Rowell retained Mr. Conner, he should have obtained Ms. Rowell's consent as soon as he learned that Mr. Marsh retained Ms. Tierney. Mr. Conner failed to do so.
22. Mr. Conner failed to inform Ms. Rowell of the relationship from October 22, 2002, through July 22, 2003, the date of Mr. Conner's withdrawal.
23. Mr. Conner represented Ms. Rowell at a time when his representation of her might have been materially limited by Mr. Conner's own interests (i.e., Mr. Conner's relationship with Ms. Tierney). Once Mr. Conner learned that Mr. Marsh had retained Ms. Tierney, Mr. Conner was required to obtain Ms. Rowell's informed consent to further representation. This is true even though Mr. Conner reasonably believed that his representation of Ms. Rowell would not be adversely affected by his relationship with Ms. Tierney.
24. Mr. Conner's failures in this regard, as explained above, constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.7(b).

Rule 8.4(a): Misconduct

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

III. SANCTION

Having made the above findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is a Public Censure. This sanction is in accord with the purposed of attorney discipline as described by the New Hampshire Supreme Court. *See, e.g., Feld's Case*, 149 N.H. 19, 28 (2002). This sanction is also in accord with the ABA Center for Professional Responsibility, Standards for Imposing Lawyer Sanctions (1991). *See, e.g., Shillen's Case* 149 N.H. 132, 139 (2003) (noting that although the Court has never formally adopted these Standards, the Court has considered them when imposing sanctions).

IV. CONCLUSION

For the above reasons, the Professional Conduct Committee issued a Public Censure to William E. Conner for violating N.H. Prof. Conduct Rules 1.7(b) and 8.4(a).

V. RIGHT TO APPEAL

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

Date: January 17, 2006

By: 

Margaret H. Nelson
Chair

Distribution:

Landy B. McCafferty, Disciplinary Counsel
William E. Conner, Esquire
File

New Hampshire Supreme Court

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Public Censure Summary

The New Hampshire Supreme Court Professional Conduct Committee investigated the matter of *Conner, William E. advs. Sherry E. Rowell # 03-104* and issued a Public Censure on January 17, 2006.

Sherry E. Rowell hired William E. Conner, Esquire, on October 22, 2002, to represent her in a custody matter. Ms. Rowell's ex-husband, Alan T. Marsh, initially represented himself, but retained counsel after the first hearing. A Stipulation was signed in the matter on June 17, 2003. On July 22, 2003, Mr. Conner informed Ms. Rowell that he was involved in a sexual relationship with opposing counsel, and as a result, could no longer represent her. The Committee approved a Stipulation with the following facts:

- Mr. Conner was involved in this relationship throughout his representation of Ms. Rowell;
- Mr. Conner failed to inform Ms. Rowell of his relationship with opposing counsel at the onset of the identification of opposing counsel in the matter;
- Mr. Conner did not seek his client's informed consent, and
- Mr. Conner represented Ms. Rowell at a time when his representation of her might have been materially limited by Mr. Conner's own interests. Once Mr. Conner learned that Mr. Marsh had retained the opposing counsel, Mr. Conner was required to obtain Ms. Rowell's informed consent to further representation. This is true even though Mr. Conner reasonably believed that his representation would not be adversely affected by his relationship.

The Committee found by clear and convincing evidence that William E. Conner violated the following Rules of Professional Conduct: 1.7(b): Conflict of Interest: General Rule, and 8.4(a): Misconduct.

The matter is public record, and available for inspection at the new Hampshire Supreme Court Attorney Discipline Office, 4 Park Street, Suite 304, Concord, New Hampshire 03301.

Holly B. Fazzino
Administrative Coordinator