

New Hampshire Supreme Court
Professional Conduct Committee

Margaret H. Nelson, Chair
Benette Pizzimenti, Vice Chair
Toni M. Gray,* Vice Chair
David N. Cole
Thomas P. Connair
Alan J. Cronheim
Nancy R. Hacking*

4 Park Street, Suite 304
Concord, New Hampshire 03301
603-224-5828 ♦ Fax 228-9511

Gretchen Rule Hamel
James R. Martin
Richard B. McNamara
David N. Page*
Stephen B. Stepanek*
* non attorney member

Holly B. Fazzino, Admin. Coordinator

Caradonna, Dawn E. advs. Keith R. Marsh #02-038

REPRIMAND

On January 18, 2005, the Professional Conduct Committee reviewed the record in the above referenced matter, including the Hearing Panel Report dated December 10, 2004, and the Stipulations As To Facts and Sanction dated November 22, 2004. Members present included: Margaret H. Nelson, chair, Benette Pizzimenti, Toni M. Gray; David N. Cole; Thomas P. Connair; Alan J. Cronheim; James R. Martin; Richard B. McNamara; David N. Page; Stephen B. Stepanek. Nancy R. Hacking and Gretchen Rule Hamel did not participate.

Having reviewed the record, the Professional Conduct Committee concluded that the factual findings contained in the Hearing Panel Report and the Stipulation As To Facts and Sanction attached hereto and made part thereof, are supported by clear and convincing evidence.

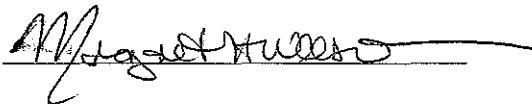
The Professional Conduct Committee concludes that the Rules of Professional Conduct have been violated, and the appropriate discipline in this matter is a Reprimand. This sanction is in accord with the purposes of attorney discipline. *See e.g., Feld's Case*, 149 N.H. 19, 28 (2002). This sanction is 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).

For all of the above reasons, the Professional Conduct Committee Reprimands Dawn E. Caradonna, Esquire, for violating the following Rules:

N.H. R. Prof. Conduct 1.3(a), 1.4(a), 1.4(b), 1.4(c), and 8.4(a).

Dawn E. Caradonna, Esquire, shall be entitled to appeal the findings or sanction in accordance with the Rules of the New Hampshire Supreme Court.

Date: 2/11/05

By: 

Margaret H. Nelson
Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
Dawn Caradonna, Esquire
File

New Hampshire Supreme Court

Hearings Committee

Robert C. Varney, Chair 4 Park Street, Suite 304 ♦ Concord, New Hampshire 03301

(603) 224-5828 ♦ Fax (603) 228-9511

Holly B. Fazzino,
Administrative Coordinator

Patrick F. Harrigan, Vice Chair

*CARADONNA, DAWN E. ADVS. KEITH R. MARSH
DOCKET #02-038*

Hearing Panel Report

A complaint was referred to this Panel pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(4) on October 26, 2004. The following Panel was appointed:

Kenneth M. Brown, Esquire, Chair
Patrick F. Harrigan, Esquire, Reporter
Nancy G. Spater
Alva L. Swanson
Henrietta W. Luneau, Esquire

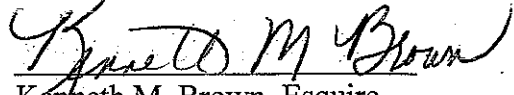
A pre-hearing conference was held on November 8, 2004. Prior to the Final Hearing, the Respondent Dawn E. Caradonna, entered into a Stipulation On Facts and Sanction, attached and incorporated by reference hereto.

The Hearing Panel having reviewed the Notice of Charges, Answer, and Stipulation On Facts and Sanction, unanimously agree that a Reprimand is an appropriate sanction for the reasons specified in the Stipulation.

In accordance with New Hampshire Supreme Court Rule 37(A) (III)(d)(1) the Hearing Panel recommends that the New Hampshire Supreme Court Professional Conduct Committee impose a Reprimand upon Dawn E. Caradonna for violating New Hampshire Rules of Professional Conduct 1.3(a), 1.4(a), 1.4(b), 1.4(c), and 8.4(a).

Respectfully Submitted,

Dated: Dec 10, 2004

By: 
Kenneth M. Brown, Esquire
Chair

NEW HAMPSHIRE SUPREME COURT

HEARINGS COMMITTEE

Caradonna, Dawn E.

advs.

Keith R. Marsh

#02-038

STIPULATION ON FACTS AND SANCTION

Disciplinary Counsel, Landya B. McCafferty, and Respondent, Dawn E. Caradonna, hereby submit this Stipulation in the above-referenced case.

I. Stipulation of Facts

1. In a letter dated March 11, 2002, and sworn to on March 21, 2002, and in a supplemental letter dated May 20, 2002, Keith R. Marsh made allegations of professional misconduct against Dawn E. Caradonna.
2. On November 1, 1997, Mr. Marsh began working as the Resident Horse Trainer for Pixel Acres Farm ("the Farm").
3. Donna Louzier-Helmets (hereinafter "Ms. Helmets") was the owner and operator of the Farm.
4. On June 30, 1999, Ms. Helmets terminated Mr. Marsh's employment at the Farm.

5. Mr. Marsh claimed that Ms. Helmers made unwanted sexual advances towards him in the workplace and ultimately retaliated against him for not responding to these advances by terminating his employment.
6. On November 16, 1999, Mr. Marsh hired Ms. Caradonna to represent him before the New Hampshire Human Rights Commission ("HRC") and federal court with respect to a claim of sexual harassment and retaliatory discharge against his former employer, Ms. Helmers, and the Farm.
7. Ms. Caradonna's fee agreement specifically provided that she would represent Mr. Marsh on this claim before the HRC as well as in federal court.
8. Ms. Caradonna represented Mr. Marsh for the entire time that his case was pending before the HRC.
9. On or about October 31, 2000, Mr. Marsh moved from New Hampshire to Colorado to take a new job.
10. On or about May 1, 2001, Ms. Caradonna and Mr. Marsh attended a nine hour "predetermination hearing" before the HRC. Following that hearing, Ms. Caradonna became concerned about the strength of Mr. Marsh's case and her ability to litigate the case by herself in federal court.
11. At some point after the HRC hearing, Ms. Caradonna communicated to Mr. Marsh that she intended to seek an attorney.

with experience in employment law to assist Ms. Caradonna with the federal court proceedings.

12. On August 20, 2001, Ms. Caradonna spoke with Attorney Robert Jauron at the McLane Law Firm about Mr. Marsh's case. Mr. Jauron did not "seem optimistic" about the case.
13. On September 4, 2001, Ms. Caradonna wrote a letter to Mr. Jauron, in which she sought his assessment of Mr. Marsh's case, and Ms. Caradonna enclosed for his review documentation from the file.
14. On September 12, 2001, at the end of the HRC investigation, the HRC dismissed Mr. Marsh's claim with a finding of "no probable cause."
15. Ms. Caradonna decided not to forward the HRC dismissal letter to Mr. Marsh until after she could speak to him about the letter on the telephone.
16. Ms. Caradonna does not recall when she spoke to Mr. Marsh about the HRC dismissal letter, but she mailed it to him on September 26, 2001.
17. Ms. Caradonna did not mail him any letter explaining the dismissal or her doubts about representing him in federal court.
18. At this point, Mr. Marsh understood that Ms. Caradonna was in the process of preparing the case for federal court, and finding an

attorney from another law firm to co-counsel the federal case with her.

19. Following the dismissal letter in September 2001, Mr. Marsh found it increasingly difficult to make contact with Ms. Caradonna on the telephone to discuss his case.
20. Ms. Caradonna telephoned Mr. Marsh in mid-December 2001 and informed him that she was not going to file his claim in federal court. Ms. Caradonna suggested that he file the claim *pro se* in federal court.
21. During this telephone call, he protested and explained that he did not know how to file a federal claim. Ms. Caradonna told him she would send him some "forms" that would help him file the federal complaint.
22. On December 27, 2001, Ms. Caradonna forwarded to Mr. Marsh a three-page telefax which she described as the "forms."
23. Ms. Caradonna gave Mr. Marsh no other instructions with respect to the forms.
24. Mr. Marsh found the forms very hard to read and understand. He did not understand how the forms would assist him in filing his federal case. He telephoned Ms. Caradonna to ask questions about the forms and to find out exactly what he should do with respect to the federal lawsuit. Ms. Caradonna did not return any of his calls.

25. On or about February 7, 2002, the Equal Opportunity Commission mailed to Mr. Marsh (at Ms. Caradonna's office address) the "right to sue" letter, notifying Mr. Marsh that it had adopted the findings of the HRC and was dismissing the case.
26. The EEOC "right to sue" letter contains in bold print a notification that Mr. Marsh must file his federal lawsuit within 90 days from the date of his receipt of the "right to sue" letter or forfeit the right to sue in federal court.
27. After receiving the EEOC "right to sue" letter, Ms. Caradonna did not forward a copy of this important document to Mr. Marsh. Ms. Caradonna assumed that the EEOC sent Mr. Marsh a copy of the document. In Ms. Caradonna's reply to this professional conduct complaint, she wrote: "I assumed a copy was sent to Mr. Marsh and that I had also received a copy since it was addressed to him and these letters usually go to the complainant."
28. Not knowing that the EEOC had issued a "right to sue" letter in his case, on March 11, 2002, Mr. Marsh drafted this professional conduct complaint against Ms. Caradonna. In this complaint, Mr. Marsh expressed general concerns regarding "the statute of limitations" and the expiration of time-limits.
29. At the time he filed his PCC complaint, Mr. Marsh understood that there may have been applicable time-limits, but he did not understand any specifics with regard to such time-limits.

30. On April 2, 2002, after receiving a copy of Mr. Marsh's professional conduct complaint, Ms. Caradonna mailed Mr. Marsh a copy of the February 7, 2002, EEOC "right to sue" letter. This was the first time that Mr. Marsh had seen the document.
31. Upon learning that he had approximately one month to hire an attorney and file a timely federal action to preserve his claim, Mr. Marsh telephoned Ms. Caradonna's office in the hope that she would assist him in drafting the necessary federal pleading.
32. Ms. Caradonna declined to assist him in light of his professional conduct complaint.

II. Stipulation as to Rules Violated

Rule 1.3(a): Diligence

33. Ms. Caradonna failed to act with reasonable promptness and diligence on Mr. Marsh's behalf when she waited almost two months to forward to Mr. Marsh a copy of the February 7, 2002, EEOC "right to sue" letter in his case.
34. As Ms. Caradonna was aware, receipt of that document marked the beginning of a 90-day time limit to file a federal case. Yet Ms. Caradonna waited until April 2, 2002, to mail it to Mr. Marsh. Ms. Caradonna mailed it to him after he filed this professional conduct complaint against her.
35. Ms. Caradonna's failure in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3(a).

Rule 1.4: Communication

36. Ms. Caradonna's failure to forward the EEOC "right to sue" letter to Mr. Marsh in a timely manner also constitutes a communication failure. By waiting two months to forward to Mr. Marsh a copy of the EEOC "right to sue" letter, Ms. Caradonna failed to keep him reasonably informed regarding the status of his case. Ms. Caradonna's failure in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a).
37. Upon deciding that Ms. Caradonna did not want to represent Mr. Marsh in federal court, Ms. Caradonna gave him little advice or assistance with respect to the legal and practical aspects of his case. Ms. Caradonna advised him to represent himself on a *pro se* basis and forwarded to him "forms" which she told him would be helpful in that effort. As it turned out, these forms were neither clear nor applicable. Ms. Caradonna did not provide Mr. Marsh with an explanation of the legal and practical aspects of his case so that he could make informed decisions about the case. Ms. Caradonna's failure in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(b).
38. Ms. Caradonna's failures to provide Mr. Marsh both with a timely explanation of the legal and practical aspects of his case and with a timely copy of the EEOC "right to sue" letter, as discussed above,

constitute clear and convincing evidence of two distinct violations of N.H. R. Prof. Conduct 1.4(c).

Rule 8.4(a): Catch-all Rule

39. Because there exists clear and convincing evidence that Ms. Caradonna violated Rule 1.3(a) and Rule 1.4, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

III. SANCTION

40. Ms. Caradonna and Disciplinary Counsel jointly recommend a Reprimand as the appropriate sanction in this matter.
41. A Reprimand is appropriate both because of the nature of the violations (i.e., negligence rather than intentional misconduct) and because Ms. Caradonna has no prior disciplinary history.

Respectfully submitted,

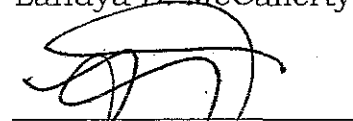
Dawn E. Caradonna, Esquire

Dated: November ~~20~~²⁹, 2004


Dawn E. Caradonna, Esquire

Landy B. McCafferty, Esquire

Dated: November ²⁹, 2004


Landy B. McCafferty
Disciplinary Counsel