

New Hampshire Supreme Court
Professional Conduct Committee

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Demmerle, Sharon L. advs. Joyce A Smith # 05-090

**RECOMMENDATION FOR PETITION TO SUPREME COURT
FOR IMMEDIATE INTERIM SUSPENSION AND DISBARMENT**

A hearing was held in this matter on November 21, 2006. James L. Kruse, Assistant Disciplinary Counsel, appeared on behalf of the Attorney Discipline Office (“ADO”). The Respondent did not appear. The following members of the Professional Conduct Committee (the “Committee”) were present: Margaret H. Nelson, Chair, Toni M. Gray, Vice Chair, Alan J. Cronheim, Gerald A. Daly, Thomas P. Connair, Ellen L. Arnold, James R. Martin, David N. Cole, Richard H. Darling, Gretchen Rule Hamel, and David N. Page. Benette Pizzimenti, Vice Chair, was absent. No member was recused from deliberation.

The Committee reviewed the record, including the Notice of Charges of May 24, 2006, the Hearing Panel Report following a Final Hearing on Issue of Sanction Only (held on July 28, 2006, and at which the Respondent did not appear), the ADO’s Proposed Findings of Fact and Rulings of Law and Request for Costs, and the ADO’s Memorandum on Sanction, both dated June 12, 2006, to all of which the Respondent failed to respond.

Ms. Demmerle had thirty days from the date of service (May 22, 2006) to file an Answer to the Notice of Charges. N.H. Sup. Ct. R. 37A(III)(b)(3)(A). Because she did not do so the allegations of the Notice of Charges were deemed admitted. *Id.* The allegations of the Notice of

Charges being admitted, the Committee makes the following findings of fact and rulings of law.

I. FINDINGS OF FACT

1. Ms. Demmerle is an attorney licensed to practice law in New Hampshire. Ms. Demmerle was admitted to practice on December 5, 1996. At times material to this proceeding, Ms. Demmerle has utilized the following addresses: (a) Demmerle Law Office, PLLC, Coldstream Park, 116G South River Road, Bedford, New Hampshire, 03110-6371; (b) Demmerle Law Office, PLLC, 816 Elm Street, No. 305, Manchester, New Hampshire, 03101-2105; and (c) Demmerle Law Office, PLLC, 10 Benning Street, PMB 259, West Lebanon, New Hampshire, 03784-3402. Ms. Demmerle has a current address of 15 Wheelock Street, Apt. 2, Manchester, New Hampshire, 03102.
2. In March 2004, Joyce A. Smith met with Ms. Demmerle at her law office in Bedford.
3. During that meeting, Ms. Smith signed a fee agreement with Ms. Demmerle in which Ms. Demmerle agreed to file and represent Ms. Smith on a bankruptcy petition, and Ms. Smith agreed to pay Ms. Demmerle a flat fee of \$500.00. The fee agreement permitted Ms. Smith to make payments in weekly installments.
4. Ms. Demmerle informed Ms. Smith that she would obtain the necessary paperwork from the bankruptcy court that week and telephone Ms. Smith to set up a time for Ms. Smith to complete the paperwork.
5. In or about May 2004, Ms. Smith had paid Ms. Demmerle the \$500.00 fee in full.
6. In July 2004, Ms. Demmerle contacted Ms. Smith and informed her that she had obtained the necessary bankruptcy paperwork from the court.

7. Ms. Demmerle made arrangements for Ms. Smith to complete the paperwork at Ms. Demmerle's then-residence in Manchester. In July, 2004, Ms. Smith went to Ms. Demmerle's residence and completed the paperwork.
8. After filling out the paperwork in July, 2004, Ms. Smith understood that Ms. Demmerle would be filing the bankruptcy petition shortly thereafter.
9. However, between July, 2004, and May 16, 2005, Ms. Smith heard nothing further from Ms. Demmerle.
10. On or about May 16, 2005, Ms. Demmerle mailed Ms. Smith a card informing Ms. Smith that Ms. Demmerle was on a "medical leave" effective May 23, 2005, through the Summer of 2005. The card contained new contact information including a phone number and mailing address in West Lebanon, New Hampshire. The card stated: "Please address any inquiries, etc. to the temporary address listed on this card until further notice."
11. On or about June 15, 2005, Ms. Smith received notice that one of her creditors had filed suit against her in Exeter District Court.
12. In a letter to Ms. Demmerle dated June 23, 2005, Ms. Smith informed Ms. Demmerle of the lawsuit, attached a copy of the court notice, and inquired as to how to handle the situation.
13. Having received no response from Ms. Demmerle, Ms. Smith began telephoning Ms. Demmerle in an effort to make contact with her. Ms. Demmerle did not respond to Ms. Smith's telephone calls.
14. In a letter to Ms. Demmerle dated July 13, 2005, Ms. Smith inquired about the status of her bankruptcy petition and again requested guidance with respect to the creditor lawsuit. In that letter, Ms. Smith requested that, in the event that Ms. Demmerle was not willing to

complete the work, Ms. Demmerle should return the case file and \$500.00 fee and refer her to another attorney.

15. Still having heard nothing from Ms. Demmerle, Ms. Smith began making daily phone calls to the contact numbers that she had for Ms. Demmerle.
16. On August 16, 2005, Ms. Smith wrote yet another letter to Ms. Demmerle requesting assistance with the creditor lawsuit and information about the bankruptcy.
17. In late August 2005, Ms. Smith spoke with Ms. Demmerle on the telephone. During that phone call, Ms. Demmerle assured Ms. Smith that she would "take care of it" and Ms. Smith would not have to go to court as that was "part of the bankruptcy."
18. In a letter dated September 9, 2005, Ms. Smith referenced the late August telephone conversation in which Ms. Demmerle promised to help her. In the letter, Ms. Smith noted that Ms. Demmerle still had done nothing to help her. Ms. Smith informed Ms. Demmerle that she needed to speak with Ms. Demmerle "right away."
19. In September, 2005, Ms. Smith telephoned Ms. Demmerle on a daily basis from September 11 through September 17. Ms. Demmerle did not return any of her phone calls.
20. Having not heard from Ms. Demmerle, Ms. Smith called the bankruptcy court and learned that nothing had been filed on her behalf.
21. In a letter to the Attorney Discipline Office dated September 26, 2005, and sworn to on September 29, 2005, Ms. Smith asserted allegations of professional misconduct against Ms. Demmerle.

22. In a letter to Ms. Demmerle dated September 28, 2005, Ms. Smith asked Ms. Demmerle to return her file (which contained original bills and financial documents) and the \$500.00 fee. In that letter, Ms. Smith also requested a copy of the fee agreement.
23. In a letter dated October 3, 2005, James L. DeHart, General Counsel to the New Hampshire Supreme Court Attorney Discipline Office, informed Ms. Demmerle that the Attorney Discipline Office had docketed a complaint against her on the basis of Ms. Smith's allegations (the "October 3, 2005, complaint.>").
24. The October 3, 2005, complaint was mailed to Ms. Demmerle's last known address (Demmerle Law Office, PLLC, 10 Benning Street, PMB 259, West Lebanon, New Hampshire, 03784-3402) on file with the New Hampshire Bar Association.
25. Ms. Demmerle did not respond to the October 3, 2005, complaint.
26. In October 2005, Ms. Smith retained a new attorney, Bradley M. Lown, Esq., to assist her. Mr. Lown filed a bankruptcy petition on Ms. Smith's behalf and is currently representing her in that action.
27. In a letter to Ms. Demmerle dated November 10, 2005, Mr. Lown requested that Ms. Demmerle return the \$500.00 fee to Ms. Smith.
28. To date, Ms. Demmerle has neither returned Ms. Smith's file nor returned any portion of the \$500.00 fee.
29. On March 22, 2006, the Attorney Discipline Office issued a Notice of Charges in this matter.
30. On April 11, 2006, the certified mailing was returned by the Post Office "unclaimed."
31. On April 19, 2006, the Notice of Charges was sent to the Hillsborough County Sheriff's Office for in hand service.

32. On April 21, 2006, Sharon L. Demmerle was served the Notice of Charges in hand by Deputy Daniel Grant.

II. RULINGS OF LAW

Based on the above Findings of Fact, the Committee makes the following Rulings of Law:

Rule 1.3(a): Diligence

33. As described above, Ms. Demmerle failed to file a bankruptcy petition on Ms. Smith's behalf.
34. In July, 2004, Ms. Smith had completed the necessary paperwork for Ms. Demmerle to file a petition. Ms. Smith understood Ms. Demmerle would file a petition shortly thereafter.
35. In September, 2005, after Ms. Smith had placed Ms. Demmerle on notice a creditor had filed suit against her, Ms. Demmerle assured Ms. Smith that she would "take care of it," but failed thereafter to take any action on Ms. Smith's part.
36. In October, 2005, approximately eighteen months after retaining Ms. Demmerle, Ms. Smith had to retain a different attorney to file a bankruptcy petition.
37. Ms. Demmerle failed to act with reasonable promptness and diligence in representing Ms. Smith.
38. Ms. Demmerle's failures in this regard constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3(a).

Rule 1.4: Client Communication

39. Between the date in July, 2004, when Ms. Smith completed the paperwork for the bankruptcy petition and May 16, 2005, the date on which Ms. Demmerle informed Ms.

Smith she was taking a “medical leave” for the summer, Ms. Demmerle made no effort to inform Ms. Smith as to the status of her bankruptcy case.

40. As of May 16, 2005, the date of Ms. Demmerle’s “medical leave,” Ms. Demmerle had neither made alternative arrangements for Ms. Smith to receive representation in the bankruptcy case nor discussed the legal and practical aspects of her situation or alternative courses of action available to Ms. Smith. Rather, the May 16, 2005, card instructed Ms. Smith to communicate with Ms. Demmerle via the newly provided address on the card.
41. Approximately one month after receiving this card, Ms. Smith received notice that a creditor had filed suit against her. Ms. Smith promptly notified Ms. Demmerle of this lawsuit and requested assistance, and thereafter made numerous phone calls and wrote letters, but received no response from Ms. Demmerle until a telephone call in late August.
42. During that phone call Ms. Demmerle again failed to discuss the legal and practical aspects of her situation and alternative courses of action then available to Ms. Smith. Rather, Ms. Demmerle assured Ms. Smith that Ms. Demmerle would “take care of it.”
43. After the phone conversation in late August, 2005, Ms. Smith attempted through September 17, 2005, to make further contact with Ms. Demmerle via letters and phone calls. Ms. Demmerle failed to respond to these attempts.
44. Ms. Smith made several requests for her file and a refund of her money. Ms. Demmerle never responded to these requests.
45. Ms. Demmerle’s failure to respond to Ms. Smith’s repeated inquiries for information about her case constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a) - (c).

46. Ms. Demmerle failed to explain to Ms. Smith the legal and practical aspects of her situation and alternative courses of action available to Ms. Smith in a manner that would permit Ms. Smith to make informed decisions regarding the representation. Ms. Demmerle's failures in this regard constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a) - (c).

Rule 1.15(b): Safekeeping Property

47. In 2004, Ms. Smith paid Ms. Demmerle \$500.00 in exchange for Ms. Demmerle's agreement to file a bankruptcy petition on Ms. Smith's behalf. Ms. Demmerle never filed a bankruptcy petition on Ms. Smith's behalf.
48. As of Ms. Smith's September 28, 2005, letter to Ms. Demmerle, and Mr. Lown's November 10, 2005, letter to Ms. Demmerle, Ms. Demmerle was on notice that Ms. Smith had hired substitute counsel and wanted her file and money returned.
49. Ms. Demmerle never returned any portion of Ms. Smith's money or file.
50. Ms. Demmerle failed to promptly deliver to Ms. Smith funds and other property Ms. Smith is entitled to receive.
51. Ms. Demmerle's failures in this regard constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.15(b).

Rule 8.1(b): Failure to Cooperate

52. As described in detail above, the Attorney Discipline Office informed Ms. Demmerle in the October 3, 2005, complaint that it had docketed a complaint against her based upon Ms. Smith's allegations.
53. The October 3, 2005, complaint informed Ms. Demmerle that, pursuant to N.H. Sup. Ct. R. 37A(2)(a)(5)(C), Ms. Demmerle was required to respond within 30 days.

54. The October 3, 2005, complaint was a lawful demand for information from a disciplinary authority.
55. Ms. Demmerle did not respond to the complaint, subsequent pleadings, or the Notices of Hearing, and appeared at neither the July 28, nor the November 21, 2006, hearing.
56. Ms. Demmerle's failure to respond to the above pleadings and to appear at either hearing constitute a failure to cooperate with the Committee and clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.1(b).

Rule 8.4(a): General Rule

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

III. SANCTION

The New Hampshire Supreme Court has noted that a professional conduct sanction "must take into account the severity of the misconduct." *Coffey's Case*, 152 N.H. 503, 513 (2005). Case law in New Hampshire and the American Bar Association's *Standards For Imposing Sanctions* (1992) ("*Standards*"), to which our Supreme Court has looked for guidance, support the conclusion that Ms. Demmerle should be disbarred from the practice of law for her conduct.

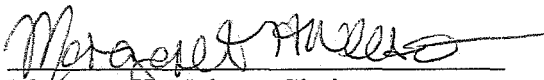
The purpose of the Court's disciplinary power "is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *Coffey's Case*, 152 N.H. at 513 (quotation omitted). Ms. Demmerle committed multiple offenses, including, but not limited to, accepting a retainer and undertaking representation, then doing nothing to assist her client in connection with that representation, failing to communicate with her client despite numerous attempts at contact by her client, and

failing to return her client's money or file. *Standards* § 9.22(d). In addition, Ms. Demmerle failed to respond to communications from the ADO, file an Answer to the Notice of Charges, or appear at either hearing held in this matter. A lack of cooperation in the attorney disciplinary process is an aggravating factor. No mitigating factors have been presented for the Hearing Panel's or the Committee's consideration. *See Standards* § 9.32(a).

IV. CONCLUSION

Pursuant to Supreme Court Rule 37(A)(III)(d)(1), based on the undisputed facts of this matter and violations of Rules of Professional Conduct 1.3(a), Diligence; 1.4, Client Communication; 1.15(b), Safekeeping Client Property; 8.1(b), Failure to Cooperate; and 8.4(a), Misconduct, the Committee recommends that Disciplinary Counsel petition the Supreme Court for Ms. Demmerle's immediate interim suspension and unconditional disbarment and assess Ms. Demmerle the Committee's expenses of investigating and prosecuting this matter. N.H. Sup. Ct. R. 37(19).

January 2, 2007


Margaret H. Nelson, Chair

Distribution:

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File