

In the Matter of Timothy J. Arel

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

ORDER

LD-2001-001, In the Matter of Timothy J. Arel

Having reviewed the petition for disbarment and for interim suspension filed by the Committee on Professional Conduct (PCC), respondent Timothy J. Arel's response to the petition, and the parties' stipulation, the court concludes that further proceedings are unnecessary for the disposition of this case. The respondent, Timothy J. Arel, does not contest the factual findings made by the committee or the discipline requested, and he has waived a hearing on the petition. Accordingly, the court finds that the respondent has violated the following rules of professional conduct:

- (a) Rule 1.1 (a), failing to provide competent representation to a client, Rule 1.1 (b)(5); failing to attend to details and schedules necessary to assure that a matter undertaken was completed with no avoidable harm to the client's interest; and Rule 1.1 (c)(4), failing to undertake action on a client's behalf in a timely and effective manner,
- (b) Rule 1.3(a), failing to act with reasonable promptness and diligence in representing a client;
- (c) Rule 1.5(a), attempting to charge a clearly excessive fee by submitting false entries on a bill;
- (d) Rule 1.15(a), failing to deposit a client's retainer in a clearly designated trust account separate from his own funds, and Rule 1.15(b), failing to maintain appropriate records concerning client funds in his possession;
- (e) Rule 1.16(d), failing to promptly return property, including funds, to a client upon the termination of representation;
- (f) Rule 8.1 (a), making false statements of material fact to the PCC, and Rule 8.1 (b), failing to respond to a lawful request for information from the PCC; and
- (g) Rule 8.4(a), engaging in conduct in violation of the Rules of Professional Conduct, and Rule 8.4(c), engaging in conduct involving dishonesty, deceit, and misrepresentation.

Timothy J. Arel is hereby disbarred for violating Professional Conduct Rules 1.1 (a), (b)(5), and (c)(4), 1.3(a), 1.5(a), 1.15(a) and (b), 1.16(d), 8.1 (a) and (b), and 8.4(a). He is ordered to notify the Committee on Professional Conduct of any other jurisdictions in which he is licensed to practice law of the issuance of the court's order.

Timothy J. Arel is hereby assessed all expenses incurred by the Committee on Professional Conduct in the investigation and prosecution of this matter.

Brock, CA., and Nadeau, and Duggan, JJ., concurred.

DATE: June 6, 2001

ATTEST:

Carol A Belmain, Deputy Clerk

Distribution:

Mr. Timothy J. Arel
NH Bar Association
James L. DeHart, Esquire
Anthony A. McManus, Esquire
File

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In the Matter of Timothy J. Arel, Esquire

PETITION FOR DISBARMENT AND FOR INTERIM SUSPENSION

NOW COMES your Petitioner, Robert C. Varney as Chair of the New Hampshire Supreme Court Committee on Professional Conduct, and brings this Petition under Supreme Court Rule 37(13) on the basis that the Committee has determined that Timothy J. Arel has violated certain and specific provisions of the Rules of Professional Conduct, with regard to three separate complaints filed with the Committee, and the Committee has determined that said violations bear upon Mr. Arel's fitness and qualification as a practicing attorney, and in support thereof respectfully states as follows:

1. That Timothy J. Arel was admitted to the practice of law in the State of New Hampshire in 1994.
2. That Mr. Arel's mailing address is [REDACTED].
3. That on May 17, 2000 and on December 20, 2000 hearings were held before a hearing panel on a complaint filed against Mr. Arel by Jessica J. O'Hanley.
4. That upon hearing and review of the complaint filed by Ms. O'Hanley and the testimony of witnesses and evidence presented, the hearing panel recommended and the Committee made the following findings:
 - a) that in August, 1997, Mr. Arel agreed to represent Jessica O'Hanley in connection with an immigration matter;
 - b) that Mr. Arel accepted a Fleet check # 1138, in the amount of \$1,000.00, made out to him by Ms. O'Hanley as payment for his services;
 - c) that Mr. Arel endorsed and cashed Ms. O'Hanley's check #1138;
 - d) that Mr. Arel changed his testimony between the first and the second hearings regarding the delivery of the \$1,000.00 to Gerard A. Palma, the owner of Palma Law Offices, his then employer;
 - e) that Mr. Arel first said that he handed over the check and later said he handed over the

cash;

f) that there is no credible evidence to support Mr. Arel's testimony that he provided Ms. O'Hanley's funds to Mr. Palma, in any form, or arranged for Ms. O'Hanley's case to be opened in accordance with the Palma Law Office's usual office procedures or transferred to the Immigration Law Center;

g) that Mr. Arel's written submissions to the Committee and his testimony regarding his providing Ms. O'Hanley's funds to the Palma Law Office, in any form, and the transfer of the matter to the Immigration Law Center constituted misrepresentations and false statements of material fact to the Committee and to Ms. O'Hanley;

h) that Mr. Arel acknowledged that he himself undertook no activity on behalf of Ms. O'Hanley in connection with her immigration matter during the fall of 1997;

i) that Mr. Arel also acknowledged that he failed to communicate on a regular basis with Ms. O'Hanley regarding this matter during the fall of 1997;

j) that following his resignation from the Palma Law Office in November, 1997, Mr. Arel failed to i) advise Ms. O'Hanley that he would no longer be representing her or ii) take any other steps to protect her interests;

k) that even upon receipt of Ms. O'Hanley's letter dated January 12, 1998, inquiring about the status of her case, Mr. Arel did not communicate with her about this matter;

l) that while Mr. Arel maintains that he sent the letter to the Palma Law Office for response, he produced no correspondence specifically directed to the Palma Law Office and Mr. Palma denies any such contact;

m) that only following Ms. O'Hanley's complaint to the Committee did Mr. Arel undertake to return Ms. O'Hanley's \$1,000.00 payment;

n) that Mr. Arel's initial letter to the Committee, dated March 16, 1998, could reasonably be read to mean that he had received Ms. O'Hanley's "retainer" of \$1,000.00 from the Palma Law Office and placed it in an IOLTA account;

o) that, in fact, Mr. Arel acknowledged that he never received any funds directly attributed to Ms. O'Hanley;

p) that Mr. Arel's testimony that he and Mr. Palma agreed that Mr. Arel could use Mr. Palma's share of a settlement involving a client named Psomiades to fund Mr. Palma's share of a refund to Ms. O'Hanley is not supported by any documentation, is denied by Mr. Palma and is not credible;

q) that Mr. Arel was not authorized to use the designation "Palma Law Offices" on the personal money order he obtained to refund Ms. O'Hanley \$1,000.00;

r) that the use of the designation "Palma Law Offices" falsely implied that the funds, or part of the funds, were being refunded by Palma Law Offices which was not the case;

s) that Mr. Arel's correspondence to Ms. O'Hanley, his personal money order and written communications to the Committee and his testimony regarding the refund of the \$1,000.00 constituted misrepresentations and false statements of material fact, which misrepresented the facts both to the Committee and Ms. O'Hanley;

t) that Mr. Arel failed to respond diligently to reasonable requests for information by the Committee by failing to follow up on his May 24, 2000 letter or to respond to the Committee's correspondence dated October 17, 2000 and November 6, 2000; and

u) that Mr. Arel provided no adequate explanation for his failure to do so.

5. That with regard to the complaint filed by Jessica J. O'Hanley, the Committee has determined and therefore alleges that there is clear and convincing evidence that Mr. Arel has violated the following provisions of the Rules of Professional Conduct:

a) Rule 1.1(a) by failing to represent Ms. O'Hanley in a competent manner;

b) Rule 1.1(b)(5) by failing to pay attention to schedules and details with regard to Ms. O'Hanley's immigration matter, so as to assure that the legal matter undertaken by him would be completed with no avoidable harm to Ms. O'Hanley's interest;

c) Rule 1.1(c)(4) by failing to undertake actions with regard to Ms. O'Hanley's immigration matter in a timely and effective manner;

d) Rule 1.3(a) by failing to act with reasonable promptness and diligence on Ms. O'Hanley's behalf;

e) Rule 1.15(a) by failing to deposit Ms. O'Hanley's retainer in a clearly designated client trust account, separate from his own funds, in accordance with the Rules of the New Hampshire Supreme Court;

f) Rule 1.15(b) by failing to maintain appropriate records concerning the funds of Ms. O'Hanley that he was holding on her behalf as a retainer in the immigration matter;

g) Rule 1.16(d) by failing to promptly return property, including funds belonging to Ms. O'Hanley, when he ceased representing her;

h) Rule 8.1(a) by making false statements of material fact to the Professional Conduct Committee concerning a lawyer disciplinary matter;

i) Rule 8.1(b) by failing to respond to a lawful request for information from the Professional Conduct Committee concerning matters relating to the complaint filed by Ms. O'Hanley;

j) Rule 8.4(a) by engaging in conduct in violation of the Rules of Professional Conduct;

k) Rule 8.4(c) by engaging in conduct involving dishonesty, deceit and misrepresentation.

6. That on December 20, 2000 a hearing was held before a hearing panel on a complaint filed against Mr. Arel by Sherry Smythe-Green.

7. That upon hearing and review of the complaint filed by Ms. Smythe-Green and the testimony of witnesses and evidence presented, the hearing panel recommended and the Committee made the following findings:

a) that Sherry Smythe-Green was a client of the Flood Professional Association from 1997 through mid 1999;

b) that during the time Ms. Smythe-Green was represented by the Flood Professional Association, several attorneys, including Timothy J. Arel, performed legal services on her behalf;

c) that on May 15, 1999, Flood Professional Association sent a bill to Ms. Smythe-Green for legal services rendered from May 3, 1999 through May 15, 1999;

d) that the bill included an entry for May 3, 1999 which included a telephone call with Steve Fiott;

- e) that the entire entry from May 3, 1999 was in the amount of 2.9 hours and Ms. Smythe-Green was billed the amount of \$435.00 for the professional services performed on May 3, 1999;
 - f) that the entry of May 3, 1999 was for services performed on Ms. Smythe-Green's behalf by Mr. Arel;
 - g) that the Flood Professional Association employed, during the period in question, a billing system entitled "TimeSlips;"
 - h) that the entries into the billing system were made by the individual attorneys who performed the services directly into the system;
 - i) that Steve Fiott died on June 6, 1995 in Burbank, California;
 - j) that the entry into the billing system for May 3, 1999 was made by Mr. Arel;
 - k) that the entry of May 3, 1999 which was billed to Ms. Smythe-Green and allegedly performed by Mr. Arel was a false entry; and
 - l) that the entry of May 3, 1999 for legal services allegedly performed by Mr. Arel was dishonest and deceitful in that Mr. Arel could not have spoken with an individual who had been dead for four years prior to the conversation.
8. That with regard to the complaint filed by Sherry Smythe-Green the Committee has determined and therefore alleges that there is clear and convincing evidence that Mr. Arel has violated the following provisions of the Rules of Professional Conduct:
- a) Rule 1.5(a) by attempting to charge a clearly excessive fee by submitting false entries on a bill;
 - b) Rule 8.4(a) by engaging in conduct in violation of the Rules of Professional Conduct; and
 - c) Rule 8.4(c) by engaging in conduct involving dishonesty, deceit and misrepresentation.
9. That on August 16, 2000 and on October 18, 2000 hearings were held before a hearing panel on a complaint filed against Mr. Arel by Benning M. Tierney.
10. That upon hearing and review of the complaint filed by Mr. Tierney and the testimony of witnesses and evidence presented, the hearing panel recommended and the Committee made the following findings:
- a) that in November, 1998 Benning M. Tierney contacted Flood Professional Association for legal representation after his wife had disappeared with his two children;
 - b) that Mr. Tierney met with Kimberly M. Marchand and Timothy J. Arel on November 12, 1998 at the Flood Law Office in Manchester;
 - c) that Mr. Tierney signed an hourly fee agreement identifying "missing children and child custody issues" as the reason for the representation;
 - d) that it was initially understood that Ms. Marchand would be primarily responsible for the case with supervisory assistance from Mr. Arel;
 - e) that this decision was made because Ms. Marchand had just been admitted to practice three weeks earlier;

- f) that after the initial consultation Ms. Marchand and Mr. Arel teamed together to prepare and file a Petition for Divorce and Ex Parte Motion for Temporary Custody;
- g) that the litigation quickly spiraled out of control;
- h) that Mr. Tierney's wife was represented by her own sister, Sharon Demmerle;
- i) that by November 17, 1998, four days after the litigation started, Mr. Arel was claiming in court pleadings that Ms. Demmerle was assisting Mrs. Tierney in hiding the children so that Mrs. Tierney did not have to comply with the then existing Ex Parte Order granting custody of the children to Mr. Tierney;
- j) that over the next four weeks the case became increasingly bitter with personal charges filed by Mr. Tierney's lawyers against Ms. Demmerle;
- k) that on November 23, 1998 Mr. Tierney prevailed at a temporary hearing with regard to custody and support issues when his wife arrived too late for the hearing;
- l) that this prompted Ms. Demmerle to file for reconsideration and a further hearing;
- m) that Mr. Arel responded with a Motion to Strike the Request for Reconsideration along with one of many requests for attorney's fees;
- n) that as part of the temporary order, Mrs. Tierney was directed to pay support in the amount of \$50.00 per month, the minimum amount allowed by the Child Support Guidelines;
- o) that on December 8, 1998 Mrs. Tierney failed to make her first payment and Mr. Arel filed a Motion for Contempt;
- p) that the contempt motion included another request for an award of attorney's fees;
- q) that on December 10, 1998 the parties reconciled;
- r) that Flood Professional Association sent monthly bills to Mr. Tierney in November, 1998 and in December, 1998;
- s) that by the time the case was completed, these bills reflected a legal fee totaling \$20,504.68;
- t) that the legal fees included 97.83 hours claimed to have been spent by Mr. Arel, 34.23 hours attributed to Ms. Marchand and 7.05 attributed to Mr. Flood;
- u) that after receiving these bills, Mr. Tierney believed that he was being charged an excessive fee;
- v) that Mr. Tierney felt that there was a duplication of time when Mr. Arel and Ms. Marchand worked on the same issue and he felt that other charges were unfair;
- w) that Mr. Tierney met with Mr. Arel and Ms. Marchand and after this discussion he was given a credit of \$2,969.63 which represented 14.75 hours of Ms. Marchand's time and 5.05 of Mr. Arel's time;
- x) that after the adjustment, it left a bill containing 92.78 hours of Mr. Arel's time and 19.48 hours of Ms. Marchand's time;
- y) that when this complaint was filed, Mr. Arel responded to the Committee indicating that "(t)hroughout a majority of this matter, Attorney Marchand was the primary attorney on this case with assistance from Attorney Flood and myself;"

z) that although Mr. Arel's answer acknowledged that he assumed "a more active role" after the litigation became highly adversarial, he also minimized his role by stating that the numerous Ex parte motions were neither "drafted or filed by myself but by Attorney Marchand;"

aa) that Mr. Arel claimed that he properly billed for his time and that Mr. Flood was responsible for generating the actual bills and that, as an associate, he was not permitted to review billing prior to the time they were sent out;

bb) that in his initial answer to the complaint, Mr. Arel misstated his role in the case and unfairly tried to shift the blame or focus to Ms. Marchand;

cc) that Mr. Arel falsely claimed that Ms. Marchand was lead counsel throughout a majority of the case;

dd) that Mr. Arel charged an excessive fee during the four weeks the case was pending in court; and

ee) that Mr. Arel did not expend the time claimed and charged to Mr. Tierney.

11. That with regard to the complaint filed by Benning M. Tierney the Committee has determined and therefore alleges that there is clear and convincing evidence that Mr. Arel has violated the following provisions of the. Rules of Professional Conduct:

a) Rule 1.5(a) by charging a client a clearly excessive fee;

b) Rule 8.1(a) by making a false statement of material fact to the Professional Conduct Committee concerning his role in the litigation that gave rise to this complaint; and

c) Rule 8.4(a) by engaging in conduct that violates the Rules of Professional Conduct.

12. That the Committee has determined that the aforesaid conduct of Mr. Arel and the aforesaid violations of the Rules of Professional Conduct by Mr. Arel warrant formal disciplinary proceedings in this Court and the Committee has authorized the filing of this Petition and has voted to recommend to this Court that Mr. Arel be disbarred.

13. That because the conduct of Mr. Arel involves serious acts of dishonesty, the Committee believes that his continuing practice of law presents a danger to the public and requests that this Court issue an interim order suspending him from the practice of law until such time as this matter may be heard on its merits.

WHEREFORE, the Committee on Professional Conduct respectfully prays:

A. That upon hearing, this Honorable Court find and rule that Timothy J. Arel has violated certain provisions of the Rules of Professional Conduct as alleged by the Committee;

B. That pursuant to the authority conferred by New Hampshire Supreme Court Rule 37(13)(f), Timothy I Arel be disbarred;

C. That, in the interim, Timothy J. Arel be suspended from the practice of law until such time as this matter is heard on the merits;

D. That Timothy J. Arel be assessed all expenses that may be incurred by the Committee in the investigation and prosecution of this matter;

D. Order such service of this Petition upon Timothy J. Are] as this Court deems reasonable and appropriate pursuant to New Hampshire Supreme Court Rule 37(13)(b); and

E. For such other and further relief as may be necessary to protect the public and be just.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

4 Park Street, Suite 304
Concord, New Hampshire 03301
(603) 224-5828

Dated: March 12, 2001

By: _____
Robert C. Varney

STATE OF NEW HAMPSHIRE
County of Carroll, ss.

On this 12th day of March, 2001, personally appeared the above named Robert C. Varney in his capacity as Chair of the New Hampshire Supreme Court Professional Conduct Committee and acknowledged that he executed this Petition for the purposes contained therein.

Notary Public

Please direct all questions to webmaster@massbbo.org.
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