

[REDACTED]

this matter. Accordingly, we remand to the referee for an allocation of such expenses.

*So ordered.*

THAYER, HORTON, and BRODERICK, JJ., did not sit; BATCHELDER, J., retired, participated by special assignment under RSA 490:3; all who participated concurred.

[REDACTED]

Original  
No. LD-97-008

ROBERGE'S CASE

August 30, 1999

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Griffith & Associates, PLLC*, of Wilton (*John P. Griffith* on the brief and orally), for the committee on professional conduct.

*Shaines & McEachern, P.A.*, of Portsmouth (*Paul McEachern* on the brief and orally), for the respondent, Carolyn Roberge.

MEMORANDUM OPINION

PER CURIAM. The Supreme Court Committee on Professional Conduct (committee) petitioned this court for a six-month suspension of the respondent, Carolyn Roberge. This court referred the matter to a Judicial Referee (*Temple, J.*). After a hearing, the referee recommended that the petition against the respondent be dismissed. The committee objects to the referee's recommendation. We agree with the referee and dismiss the petition.

█ In professional conduct matters, although we defer to the referee's factual findings if supported by the record, *see Wehringer's Case*, 130 N.H. 707, 716, 547 A.2d 252, 257 (1988), we retain the ultimate authority to determine whether, on the facts found, a violation of the rules governing attorney conduct has occurred and, if so, the appropriate sanction. *See Wood's Case*, 137 N.H. 698, 701, 634 A.2d 1340, 1342 (1993).

█ The record in this case supports the findings of the referee that the respondent was acting in an individual capacity rather than in a lawyer-client relationship and that she did not engage in any intentional misrepresentation which would subject an attorney to discipline when acting in a personal capacity. We uphold the referee's determination that no violation of New Hampshire Rule of Professional Conduct (Rule) 3.4 occurred in this case.

█ The referee's finding, by clear and convincing evidence, that the respondent, under the unique circumstances of this case, did not violate Rule 8.4(c) by recording a telephone conversation is also supported in the record. Therefore, we adopt the referee's findings and dismiss the petition.

*Petition dismissed.*

THAYER, HORTON, and BRODERICK, JJ., did not sit; BATCHELDER, J., retired, participated by special assignment under RSA 490:3; all who participated concurred.

Hillsborough County Probate Court  
No. 97-515

IN RE BRITTANY L.

August 30, 1999

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