

New Hampshire Supreme Court  
**Professional Conduct Committee**

Margaret H. Nelson, Chair  
Benette Pizzimenti, Vice Chair  
Toni M. Gray,\* Vice Chair  
Ellen L. Arnold  
David N. Cole  
Thomas P. Connair  
Alan J. Cronheim

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*Ganz, Alan H. advs. Jennifer A. Lubeski # 05-072*

**ORDER TO STAY PROCEEDINGS**

On May 15, 2007, the Professional Conduct Committee deliberated the Attorney Discipline Office's Assented-To Motion to Permit Waiver of Hearings Committee Process, which incorporates a Stipulation As To Facts & Rules Violated and Agreement to Stay. The Motion is granted.

The Committee grants said Agreement to Stay, incorporating herein by reference and accepts the Stipulation As To Facts & Rules Violated (the "Stipulation"). The Committee finds, by clear and convincing evidence, the facts as stipulated and violation of N.H. Prof. Rules 4.4 and 8.4(a). Pursuant to Rule 37A(I)(g)(4), the Stipulation contains the Respondent's admission to the facts and rules violations charged in the Notice of Charges. The formal issuance of a Notice of Charges is stayed by Respondent's compliance with the terms and conditions of the Agreement, portions of which are incorporated herein by reference:

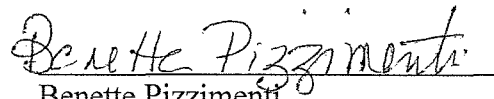
The Stipulation will act as Mr. Ganz's admission to the truth of the allegations and rules violations, and his acceptance of a finding of misconduct; and

If Mr. Ganz successfully complies with the terms and conditions of this Agreement, at the expiration of the 2 Year Time Period, the Attorney Discipline Office agrees to recommend that Mr. Ganz receive a Reprimand as a sanction in this matter and such a recommendation is not binding on the Professional Conduct Committee; and

In the event of termination of the Agreement to Stay for cause, the factual admissions contained in the Stipulation shall be deemed true, and the sole issue before the Hearings Committee and/or the Professional Conduct Committee will be the appropriate sanction for Mr. Ganz's misconduct as outlined in the Stipulation; and

Mr. Ganz shall bear all cost associated with compliance and enforcement of the terms and conditions of the Agreement.

May 21, 2007

  
Benette Pizzimenti  
Vice Chair

Distribution:

Richard Y. Uchida, Esquire  
H. Jon Meyer, Esquire  
Landy B. McCafferty, Disciplinary Counsel  
File

**NEW HAMPSHIRE SUPREME COURT**  
**PROFESSIONAL CONDUCT COMMITTEE**

Ganz, Alan H.

advs.

Jennifer A. Lubeski

#05-072

**STIPULATION AS TO FACTS & RULES VIOLATED**

Disciplinary Counsel, Landya B. McCafferty, and Respondent, Alan H.

Ganz, hereby submit this Stipulation as to Facts & Rules Violated in the above-referenced case.

**I. Stipulation of Facts**

1. Mr. Ganz is an attorney licensed to practice law in New Hampshire. Mr. Ganz was admitted to practice on November 4, 1991. At all times material to this proceeding, Mr. Ganz operated his law office as Ganz Law Office in Seabrook, New Hampshire.
2. On July 21, 2005, William and Sheila Lubeski went to Mr. Ganz's office to consult with him about their estate planning.
3. During the course of the meeting, Mr. Ganz learned that the Lubeskis had two children, one of whom, Jennifer (aged 22), was waiting in the car for them to complete the appointment.

4. Mr. Ganz learned also from the Lubeskis that Jennifer had recently been taking certain medication but had stopped taking it. Mr. Ganz expressed personal knowledge of this medication and requested an opportunity to speak with Jennifer.
5. The Lubeskis asked Jennifer to join them in their meeting with Mr. Ganz. Jennifer thought that Mr. Ganz might have estate planning questions to ask her and perhaps have some paperwork that he needed her to sign.
6. Instead of engaging Jennifer in a conversation relevant to estate planning, Mr. Ganz began asking Jennifer very personal questions. Mr. Ganz first asked about the medication and recommended she see a psychiatrist before stopping the medication.
7. Mr. Ganz proceeded to ask Jennifer a series of personal questions, including the following:
  - Why are you on the medication?
  - Do you have a boyfriend or girlfriend?
  - What are your hobbies?
  - Are you interested in women?
  - Were you ever verbally or physically abused as a child?
  - Do you fantasize?
  - Do you masturbate?
8. Along with those questions, Mr. Ganz made comments to Jennifer, including the following:

- I think you are very attractive.
  - You can model.
  - You can tell you're very intelligent.
  - You are way above average.
9. After Mr. Ganz asked Jennifer if she masturbated, the meeting ended.
10. In a letter dated that same day, and sworn to on July 27, 2005, Jennifer complained to the Attorney Discipline Office about Mr. Ganz's conduct.

## **II. Stipulation as to Rules Violated**

### **Rule 4.4: Respect for Rights of Third Persons**

11. Allegations set forth above are incorporated by reference.
12. Rule 4.4 prohibits an attorney, in representing a client, from using "means that have no substantial purpose other than to embarrass, delay, or burden a third person. . . ."
13. By asking Jennifer inappropriate questions of a sexual nature and making inappropriate comments about her physical attributes, Mr. Ganz used means that had no substantial purpose other than to embarrass and burden Jennifer. Mr. Ganz was representing Jennifer's parents at the relevant time.
14. Mr. Ganz's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 4.4.

**Rule 8.4(a): General Rule**

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

**III. Stipulation as to Costs**

16. Mr. Ganz agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

**IV. Effect of Stipulation**

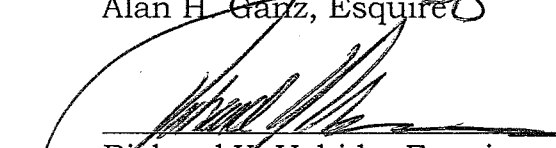
17. Respondent understands that by signing this Stipulation, he is hereby bound to the facts and rule violations as stipulated. In the event that the Professional Conduct Committee issues a sanction in this matter with which the Respondent disagrees, the Respondent is nonetheless hereafter bound to the facts and rule violations as stipulated.

Respectfully submitted


Dated: ~~March~~<sup>20</sup>, 2007

  
\_\_\_\_\_  
Alan H. Ganz, Esquire

Dated: ~~March~~<sup>April</sup> 10, 2007

  
\_\_\_\_\_  
Richard Y. Uchida, Esquire  
Counsel for Mr. Ganz

Dated: ~~March~~<sup>April</sup> 30, 2007

  
\_\_\_\_\_  
Landya B. McCafferty, Disciplinary Counsel

**NEW HAMPSHIRE SUPREME COURT**  
**PROFESSIONAL CONDUCT COMMITTEE**

Ganz, Alan H.

advs.

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#05-072

**AGREEMENT TO STAY**

Alan H. Ganz and Landya B. McCafferty, Disciplinary Counsel, on behalf of the Attorney Discipline Office, hereby enter into the following Agreement to Stay (hereinafter "Agreement"):

1. Alan H. Ganz was admitted to the Bar of the New Hampshire Supreme Court on November 4, 1991, and is registered as an attorney upon the official records of the Court, registration number 8783. Mr. Ganz is subject to the jurisdiction of the New Hampshire Supreme Court in these proceedings.
2. Mr. Ganz is familiar with the rules of the New Hampshire Supreme Court regarding the procedures for discipline of attorneys and with his rights under those rules. N.H. Sup. Ct. R. 37 & 37A.
3. The Notice of Charges in this matter alleges that Mr. Ganz engaged in professional misconduct by violating Rule 4.4 pertaining to

inappropriate comments Mr. Ganz made to a female daughter of his then clients, William and Sheila Lubeski.

4. Mr. Ganz has entered into a Stipulation as to Facts & Rules Violated dated March 30, 2007, admitting the central facts and rule violations alleged in the Notice of Charges. (A copy of the Stipulation is attached hereto.)
5. Mr. Ganz agrees that, in the event he fails to comply with the terms of this Agreement, the factual admissions contained in the Stipulation shall be deemed true in any subsequent disciplinary proceedings.
6. Mr. Ganz enters into this Agreement freely, intelligently and voluntarily, and understands the consequences of this Agreement.
7. This Agreement is a product of Mr. Ganz's personal decision, and Mr. Ganz affirms that he has been subjected to no coercion or other intimidating acts by any person or agency concerning this matter. Mr. Ganz has had the assistance of competent counsel in connection with this matter.
8. Mr. Ganz understands that, if he successfully performs the obligations imposed upon him under this Agreement, there will be a delay of at least two years from the date of the Agreement before the Notice of Charges is finally brought to either the Hearings Committee or the Professional Conduct Committee under Rule 37A(III) for final disposition. Mr. Ganz understands that, by

entering into this Agreement, he is waiving any right to challenge prosecution of this Notice of Charges on grounds that the matter has not received the “expeditious” resolution envisioned either by Rule 37A(III)(a)(3) or principles of due process.

### **TERMS AND CONDITIONS**

9. Mr. Ganz agrees to the following terms and conditions:
  - (a) This Agreement applies for a two year period that begins to run on the date the Agreement is fully executed or approval of the Agreement by the Professional Conduct Committee, whichever occurs later (the 2 Year Time Period).
  - (b) The parties agree, subject to the provisions of this Agreement, set forth below, that this disciplinary matter shall be held in abeyance for the 2 Year Time Period.
  - (c) Mr. Ganz agrees that he will not engage in any conduct that involves inappropriate comments or conduct toward a client and/or third party during the 2 Year Time Period.
  - (d) Mr. Ganz agrees that he is currently taking medication for anxiety and depression, which is being monitored by one of his physicians. Mr. Ganz states that the medications that he is taking are extremely effective and have been successful in eliminating the symptoms of anxiety and depression that he experienced. Mr. Ganz agrees to (i) continue having his physician oversee and monitor his medication to continue

properly treating his anxiety and depression, and (ii) comply with all treatment recommendations requested by that physician, including the taking of any prescribed medication in such amounts and with such frequency as recommended by the physician, throughout the 2 Year Time Period.

- (e) Mr. Ganz agrees that his physician, Dr. Manuel Sanchez, will send a letter to the Attorney Discipline Office every six months (within the 2 Year Time Period) in which Dr. Sanchez will inform the Attorney Discipline Office of Mr. Ganz's participation and progress in such treatment. The letters shall address issues including whether Mr. Ganz is meaningfully participating in the treatment, and complying with all of the doctor's treatment recommendations. Mr. Ganz further agrees to sign a release to (i) permit the Attorney Discipline Office to communicate with Dr. Sanchez and/or examine records pertaining to medical treatment, and (ii) to confirm Mr. Ganz's ongoing and meaningful participation in the recommended medical treatment. Should Mr. Ganz change his physician during the term of this Agreement, Mr. Ganz shall immediately sign a new release so that the Attorney Discipline Office shall have the same access to any new medical records and/or treatment plans.

### **TERMINATION FOR CAUSE**

10. Mr. Ganz understands and agrees that, in the event he fails to comply with any term or condition of this Agreement, the Agreement may, at the option of the Professional Conduct Committee, be terminated for cause. Likewise, the Committee may terminate this Agreement for cause should the Attorney Discipline Office learn of inappropriate behavior on Mr. Ganz's part that raises concerns that he is engaging in conduct similar to that giving rise to the underlying matter. The "inappropriate behavior" referred to above may or may not constitute a violation of the Rules of Professional Conduct.
11. If an issue or concern regarding Mr. Ganz's behavior is brought to the attention of the Attorney Discipline Office, Disciplinary Counsel shall review the matter and shall determine whether, in her opinion, the reported event constitutes a material violation of the Agreement. In making that determination, Disciplinary Counsel may conduct such further investigation, if any, that she deems appropriate. Mr. Ganz shall have the right to provide Disciplinary Counsel with any additional information regarding the reported event. If Disciplinary Counsel concludes that, in her opinion, the reported event is a material violation, she may file a motion with the Professional Conduct Committee requesting that the Committee terminate the Agreement. Mr. Ganz shall have the right

to respond in writing to Disciplinary Counsel's motion, to request an evidentiary hearing thereon, and to request oral argument before the Committee. The Committee shall rule upon any request for an evidentiary hearing and for oral argument. Following an evidentiary hearing (if requested), or the denial of a request for such hearing, the Committee shall determine whether the motion requesting termination should be granted or denied. Disciplinary Counsel shall have the burden of proof by a preponderance of the evidence to establish that termination of the Agreement is warranted. The Committee's decision shall be final.

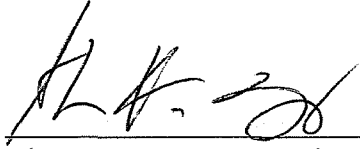
12. This Agreement shall also be terminated in the event Mr. Ganz engages in professional misconduct during the 2 Year Time Period:
  - (a) The timing of any finding of such misconduct is not dispositive on the question of termination of this Agreement. Rather, so long as a complaint is filed within the 2 Year Time Period, this Agreement is subject to termination at such time as there is a finding of misconduct, even if such finding occurs outside the 2 Year Time Period referenced above.
  - (b) The Attorney Discipline Office agrees to give any such complaint top priority in terms of the processing and investigation necessary to present such complaint to the Complaint Screening Committee, and to adjudicate such

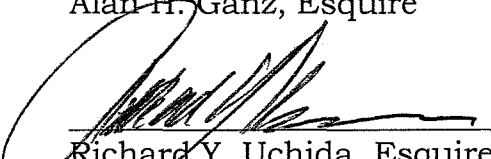
complaint before a panel appointed by the Hearings Committee in a timely manner.


(c) Pending the final adjudication of such complaint, the 2 Year Time Period shall be stayed.

13. Nothing herein shall be construed to limit prosecution of any new complaint involving the conduct of Mr. Ganz occurring during the 2 Year Time Period.
14. In the event of termination of the Agreement for cause, the factual admissions contained in the Stipulation shall be deemed true, and the sole issue before the Hearings Committee and/or the Professional Conduct Committee will be the appropriate sanction for Mr. Ganz's misconduct as outlined in the Stipulation.
15. Mr. Ganz shall bear all costs associated with compliance and enforcement of the terms and conditions of this Agreement.
16. If the Attorney Discipline Office verifies at the expiration the 2 Year Time Period that Mr. Ganz has successfully complied with the terms and conditions of this Agreement, the Attorney Discipline Office agrees to recommend that Mr. Ganz receive a Reprimand as a sanction for the misconduct in this matter. Mr. Ganz understands that the Attorney Discipline Office's recommendation as to sanction is just that, a recommendation; such a recommendation is not binding on the Professional Conduct Committee.

Alan H. Ganz acknowledges by signing this Agreement that he understands and accepts all of the terms and conditions of this Agreement.

Dated: March 30, 2007   
Alan H. Ganz, Esquire

Dated: April 10, 2007   
Richard Y. Uchida, Esquire  
Counsel for Mr. Ganz

Dated: April 30, 2007   
Landya B. McCafferty  
Disciplinary Counsel

New Hampshire Supreme Court  
**Professional Conduct Committee**

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*Ganz, Alan H. advs. Jennifer A. Lubeski #05-072*

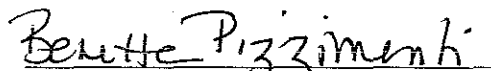
**REPRIMAND**

On June 16, 2009, the Professional Conduct Committee reviewed and considered an Assented to Motion for Imposition of Reprimand filed on June 1, 2009 by the parties in this matter. Member present included: Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, David N. Cole (via telephone), Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, Gretchen Rule Hamel, James R. Martin and Marilyn Billings McNamara. Margaret H. Nelson, Chair, was recused and Richard H. Darling was absent.

Pursuant to a Committee Order to Stay Proceedings dated May 21, 2007, the matter had been stayed for a two year period from the time the Committee initially reviewed this matter. Upon consideration of the Record and the parties Stipulation as to Facts and Rules Violated, the Committee voted to grant the Motion and to issue a reprimand to Mr. Ganz. Mr. Ganz has complied with all conditions of the Stay. He has adhered to treatment recommendations of his physician and has taken medications as prescribed by his physician. Mr. Ganz's physician has submitted the required periodic reports to the Attorney Discipline Office during the two year period as contemplated by the Order staying these proceedings. Disciplinary Counsel has not submitted any evidence that Mr. Ganz has engaged in inappropriate behavior that would give rise to a disciplinary complaint nor has the Committee been apprised of any action or omission on Mr. Ganz's part during the period of the Stay which would give rise to a complaint of professional misconduct.

Therefore, the Committee issues a Reprimand in this matter based on Mr. Ganz's violation of New Hampshire Rules of Professional Conduct, Rules 4.4 and 8.4(a).

July 9, 2009

  
Benette Pizzimenti, Vice Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel  
Richard Y. Uchida, Esquire  
H. Jon Meyer, Esquire  
File

**NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE**

**#05-072**

**Alan H. Ganz, Esquire**

**advs.**

**Jennifer A. Lubeski**

**ASSENTED-TO MOTION FOR IMPOSITION OF REPRIMAND**

NOW COMES Alan H. Ganz, Esquire, by and through his attorneys, Orr & Reno, P.A., and pursuant to the Order of the New Hampshire Supreme Court Professional Conduct Committee dated May 21, 2007, hereby submits the following Assented-To Motion for Imposition of Reprimand, and in support thereof, says as follows:

1. In early 2007, the New Hampshire Supreme Court Attorney Discipline Office issued a notice of charges against Attorney Alan H. Ganz, relating to his conduct and actions arising out of a July, 2005 incident between Attorney Ganz and Jennifer A. Lubeski, the complainant.

2. On May 15, 2007, the matter came before the New Hampshire Supreme Court Professional Conduct Committee (the "PCC") pursuant to an Agreement to Stay and a Stipulation As To Facts & Rules Violated (the "Stipulation"), and an Assented-To Motion to Permit Waiver of Hearings Committee Process, all of which are incorporated by reference in this Motion.

3. Pursuant to an Order dated May 21, 2007, the PCC issued a ruling which:

- a. Found by clear and convincing evidence, based on the Stipulation, that Attorney Ganz had violated Rules 4.4 and 8.4(c) of the then-applicable version of the New Hampshire Supreme Court Rules of Professional Conduct.
  - b. Accepted the Stipulation as Attorney Ganz' admission to the truth of the allegations contained in that Stipulation.
  - c. Approved the Agreement to Stay, the contents of which are incorporated by reference into this Motion.
  - d. Ruled that "if Mr. Ganz successfully complies with the terms and conditions of this Agreement (to Stay), at the expiration of the 2-Year Time Period, the Attorney Discipline Office agrees to recommend that Mr. Ganz receive a Reprimand as a sanction in this matter and such a recommendation is not binding on the Professional Conduct Committee." (Parenthetical supplied)  
The 2-Year Time Period, as defined in the Agreement to Stay, was a two year period following the approval of the Agreement to Stay by the PCC.
  - e. Held the underlying disciplinary matter in abeyance for the 2-Year Time Period.
4. The Agreement to Stay required that:
    - a. Attorney Ganz continue to have his physician oversee and monitor certain medication prescribed to Attorney Ganz for anxiety and depression.
    - b. Attorney Ganz comply with all treatment recommendations requested by his treating physician, including the taking of any prescribed medication in such amount and with such frequency as recommended by the physician, throughout the 2-Year Time Period.

c. His physician send a letter every six months during the 2-Year Time Period to the Attorney Discipline Office, informing it of Attorney Ganz's participation and progress in such treatment, including whether Attorney Ganz was meaningfully participating in the treatment and complying with all of the physician's treatment recommendations.

d. Barred Attorney Ganz from engaging in any inappropriate behavior similar to that which gave rise to the Notice of Charges in this matter.

e. Provided for the termination of the Agreement to Stay if Attorney Ganz engaged in professional misconduct during the 2-Year Time Period, so long as a complaint was filed within the 2-Year Time Period, even if a finding of misconduct occurred on such complaint outside of the 2-Year Time Period.

f. Assessed costs upon Attorney Ganz for the prosecution of the matter, as well as compliance and enforcement of the Agreement to Stay.

5. Attorney Ganz has complied in all respects with this order. Specifically, he has adhered to the treatment recommendations of his physician and taken such medication as recommended by his physician. Through counsel, his physician has submitted the required periodic reports to the Attorney Discipline Office during the 2-Year Time Period. Attorney Ganz has not engaged in any inappropriate behavior similar to that which gave rise to the Notice of Charges in this matter. Likewise, he has not engaged in any conduct which has resulted in a complaint against him in the 2-Year Period, nor is he aware of any action or omission on his part during the 2-Year Time Period which, but for the passage of time, would give rise to a complaint of professional misconduct.

6. As a result of the above, the Attorney Discipline Office assents to the imposition of a reprimand as an appropriate sanction to resolve the above-captioned matter.

WHEREFORE, Attorney Ganz respectfully prays that:

A. The Professional Conduct Committee issue a reprimand as its final order in this matter; and

B. For such other and further relief as the Professional Conduct Committee deems just and proper.

Respectfully submitted,

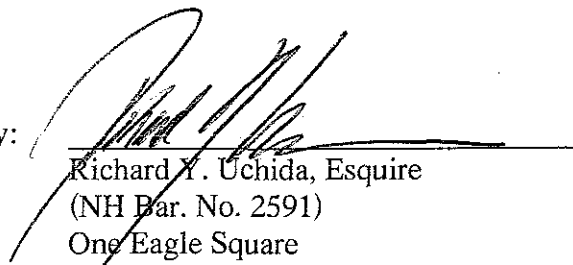
ALAN H. GANZ, ESQUIRE



And By His Attorneys

ORR & RENO, P.A.

By:



Richard Y. Uchida, Esquire  
(NH Bar. No. 2591)

One Eagle Square

P.O. Box 3550

Concord, New Hampshire 03301

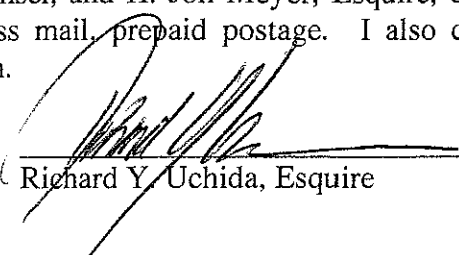
(603) 224-2381

(603) 223-9027 (fax)

Date: May 29, 2009

CERTIFICATE

I hereby certify that on this 29<sup>th</sup> day of May, 2009, I caused a copy of the foregoing Assented-To Motion for Imposition of Reprimand to be forwarded to Landya B. McCafferty, Esquire, Disciplinary Counsel, and H. Jon Meyer, Esquire, counsel for Jennifer A. Lubeski, by way of first class mail, prepaid postage. I also certify that Attorney McCafferty assents to this Motion.

  
Richard Y. Uchida, Esquire