

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
Eleanor Wm. Dahar

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

Gerald A. Daley*
Gretchen Rule Hamel
James R. Martin
David N. Page*
Stephen B. Stepanek*
* non attorney member

Holly B. Fazzino, Admin. Coordinator

Sheridan, William C. advs. Professional Conduct Committee # 02-070
and
Sheridan, William C. advs. Professional Conduct Committee # 02-073

**Six Month Suspension
and
Order on Motion to Permit Waiver of Hearings Committee Process**

On February 21, 2006, the Professional Conduct Committee considered the above-captioned matters. Members present included: Margaret H. Nelson, Chair; Toni Gray, Vice Chair and Reporter; Benette Pizzimenti, Vice Chair; Stephen B. Stepanek; James R. Martin; Gerald A. Daley; Thomas C. Connair; David Cole; Eleanor Wm. Dahar, and David Page. Alan Cronheim was recused and Gretchen Rule Hamel was absent.

The Committee voted to grant disciplinary counsel's Motion to Waive the Hearings Committee Process, pursuant to Sup. Ct. Rule 37A (III).

The Committee voted to approve the Stipulation and issue an Order of Sanction, in the form proposed by the parties, which contains the Respondent's admission to the facts and violation of the following Rules of Professional Conduct: 5.5(a), and 8.4(a), as charged in the Notice of Charges.

The Committee hereby orders William C. Sheridan suspended from the practice of law for a period of six months, retroactive to December 20, 2002, the effective date of his suspension in 00-N-099 (LD 2001-007), to run concurrently.

William C. Sheridan shall reimburse the Professional Conduct Committee for all expenses incurred in the investigation and prosecution of these matters.

March 10, 2006


Margaret H. Nelson, Chair

Distribution:

William C. Sheridan
Landya B. McCafferty, Disciplinary Counsel
File

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Sheridan, William C.

advs.

Professional Conduct Committee

#02-070

Sheridan, William C.

advs.

Professional Conduct Committee

#02-073

MOTION TO PERMIT
WAIVER OF HEARINGS COMMITTEE PROCESS

NOW COMES Landya B. McCafferty, Disciplinary Counsel, and respectfully requests that the Professional Conduct Committee permit all parties to waive the process before the Hearings Committee and seek a ruling from the Professional Conduct Committee in this matter.

In support, Disciplinary Counsel states as follows:

1. On October 7, 2005, Disciplinary Counsel issued Notices of Charges in these matters. (A copy of each Notice of Charges is attached hereto as Exhibit 1 and 2.)
2. On December 1, 2005, Mr. Sheridan filed Answers to the Notices of Charges in these matters. (A copy of each Answer is attached hereto as Exhibit 3 and 4).
3. Disciplinary Counsel and Mr. Sheridan have executed a "Stipulation" dated January 7 and 11, 2006. (A copy of the "Stipulation" is attached as Exhibit 5.)
4. In that "Stipulation," Mr. Sheridan conceded all allegations contained in the Notice of Charges and agreed that a six-month suspension (with retroactive credit for "time-served") was the appropriate sanction.
5. Disciplinary Counsel has discussed with Mr. Sheridan the possibility of waiving the hearing before the Hearings Committee and seeking a more expeditious result directly from the Professional Conduct Committee. All parties are in agreement to request this waiver.
6. Disciplinary Counsel finds support for the proposition that the parties can seek a waiver of the process before the Hearings Committee in the "Preface" to N.H. Sup. Ct. R. 37A(III). That Rule states: "As good cause appears and as justice may require, the

professional conduct committee may waive the application of any rule under this section.”

7. Where, as is the case here, the Respondent and Disciplinary Counsel have entered into a stipulation on both facts and sanction, there is “good cause” to permit the parties to waive the Hearings Committee process and seek the Committee’s ruling on the pleadings.
8. All parties agree that this request is made in an effort to seek a more expeditious result while preserving scarce judicial resources.
9. In the event the Committee grants this request, all parties agree to waive oral argument before the Committee.

WHEREFORE, Disciplinary Counsel respectfully requests that this Honorable Committee:

- (A) Grant this “Motion To Permit Waiver Of Hearings Committee Process”;
- (B) Issue a Ruling on the basis of the “Stipulation”; and
- (C) Grant such other relief as is fair and in the public interest.

Respectfully submitted,

New Hampshire Supreme Court
Attorney Discipline Office
4 Park Street, Suite 304
Concord, New Hampshire 03301
(603) 224-5828

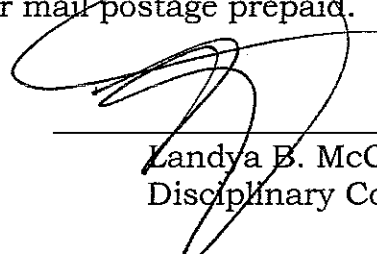
Dated: January 13, 2006

By: 

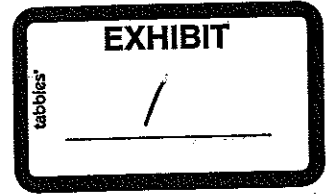
Landya B. McCafferty
Disciplinary Counsel

CERTIFICATION

I, Landya B. McCafferty, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that a copy aforesaid "Motion To Permit Waiver Of Hearings Committee Process" is being sent on this 13th day of January 2006, to William C. Sheridan, 84 Poor Street, Andover, Massachusetts 01810, by regular mail postage prepaid.



Landya B. McCafferty
Disciplinary Counsel



NEW HAMPSHIRE SUPREME COURT
ATTORNEY DISCIPLINE OFFICE

Sheridan, William C.

advs.

Professional Conduct Committee

#02-070

NOTICE OF CHARGES

1. This Notice of Charges is issued pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(2). In accordance with that Rule, this Notice of Charges sets forth both the allegations of misconduct against you, as well as the disciplinary rules alleged to have been violated.

Summary of Allegations

2. By Order dated April 24, 2002, the New Hampshire Supreme Court suspended you from the practice of law for failure to comply with Continuing Legal Education ("CLE") requirements. See Order dated April 24, 2002 (attached as Exhibit 1). On May 24, 2002, the Court lifted that suspension when the MCLE Board informed the Court that you had fulfilled your CLE requirements. See Order dated May 24, 2002 (attached as Exhibit 2).

3. Between April 24 through May 24, 2002, while you were under suspension, you engaged in the practice of law.
4. Specifically, you assisted Mr. John Hikel in drafting and serving on opposing counsel two pleadings dated May 17, 2003, in a case then pending before the Hillsborough County Superior Court-North. Copies of these two pleadings are attached hereto as Exhibit 3 and incorporated herein by reference.
5. Both pleadings contain the following "Certificate of Service":

I William C. Sheridan, hereby certify that I served the within Hikel's Affidavit on the defendant by delivering it in hand to defendant's counsel Stewart S. Richmond, Jr., at McLane, Graf, Raulerson & Middleton, 900 Elm Street, PO Box 326, Manchester, NH 03105-0326 this 17th day of May, 2002.

6. You signed each "Certificate of Service" as "William C. Sheridan, Esq."

Disciplinary Rules Violated

7. Your conduct in this case raises questions under New Hampshire Rules of Professional Conduct **5.5(a) and 8.4(a)**.

Rule 5.5(a): Unauthorized Practice of Law

8. By assisting Mr. Hikel in drafting and serving the two pleadings, and including therein the "Certificate of Service" which you signed on both, see Exhibit 3, you engaged in the unauthorized practice of law while under a suspension order.

9. New Hampshire law prohibits the unauthorized practice of law. See RSA 311. See also Tocci's Case, 140 N.H. 68, 70 (1995). As you were under suspension, you were prohibited from practicing law.
10. If proven by clear and convincing evidence, your conduct in this regard would constitute a violation of N.H. R. Prof. Conduct 5.5(a).

Rule 8.4(a): General Rule

11. In the event that any one of the above allegations is proven by clear and convincing evidence, this would necessarily constitute a violation of N.H. R. Prof. Conduct 8.4(a).

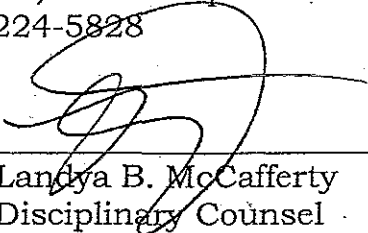
Conclusion

12. You are advised that you must answer this Notice of Charges within 30 days of the date of your receipt of this Notice of Charges. See Sup. Ct. R. 37A(III)(b)(3)(A). Your answer must be in writing, must respond specifically to each allegation of this Notice of Charges, and must assert all affirmative defenses. See Sup. Ct. R. 37A(III)(b)(3)(B).
13. **In the event you fail to file an answer, the allegations set forth in this Notice of Charges “shall be deemed to be admitted.”** See Sup. Ct. R. 37A(III)(b)(3)(A).
14. It is the duty of Disciplinary Counsel to request that the chair of the Hearings Committee appoint a hearing panel in this matter either upon receiving an answer from you, or upon the expiration of the 30-day period for you to file an answer. See Sup. Ct. R. 37A(III)(b)(4).

15. You are advised that you have the right to be represented by counsel, and to testify and present evidence on your own behalf. See Sup. Ct. R. 37A(III)(b)(2).
16. This Notice of Charges and the file of Disciplinary Counsel (other than work product and internal memoranda of the Attorney Discipline Office) is now a public file. Further, the proceedings related to this Notice of Charges that take place before the Hearings Committee and Professional Conduct Committee, as well as the written decisions (other than work product, internal memoranda, and deliberations) of both, shall be public. See Sup. Ct. R. 37(20)(b)(2).
17. Your attention is also directed to Supreme Court Rule 37A(III)(b)(5), which governs discovery in this matter, as well as subsection (6) of that Rule, which provides for a pre-hearing conference. In the absence of "good cause," such pre-hearing conference must be requested within 30 days of the appointment of a hearing panel in this matter. See Sup. Ct. R. 37A(III)(b)(6)(A).

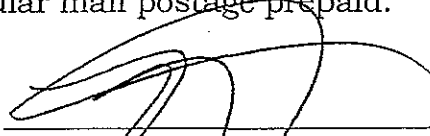
New Hampshire Supreme Court
Attorney Discipline Office
4 Park Street, Suite 304
Concord, New Hampshire 03301
(603) 224-5828

Date: October 7, 2005

By: 
Landya B. McCafferty
Disciplinary Counsel

CERTIFICATION

I, Landya B. McCafferty, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that the original of the aforesaid Notice of Charges is being sent on this 7th day of October 2005, to William C. Sheridan, 50 Nashua Road, Suite 102, Londonderry, New Hampshire 03053 by certified mail #7002 3150 0001 5385 6860, return receipt requested and a copy by regular mail postage prepaid.



Landya B. McCafferty
Disciplinary Counsel

EXHIBIT

tabbles

1

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. ADM-2002-0042, In the Matter of William C. Sheridan, the court on April 24, 2002, issued the following order:

On March 15, 2002, this court ordered William C. Sheridan to show cause why he should not be suspended from the practice of law in New Hampshire for failing to file his certificate of compliance with the minimum legal education requirements and to pay the fee of \$425 in late and delinquency fees.

William C. Sheridan has neither responded to the show cause order, nor brought himself into compliance with Supreme Court Rule 53.7(A) (3).

William C. Sheridan is hereby suspended from the practice of law in New Hampshire.

Brock, C.J., and Nadeau, Dalianis, and Duggan, JJ., concurred.

ATTEST:

Eileen Fox
Eileen Fox, Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

O R D E R

No. ADM-2002-0042, In the Matter of William C. Sheridan

On April 24, 2002, the court suspended William C. Sheridan, Esq. from the practice of law in New Hampshire for failing to file his certificate of compliance with the minimum legal education requirements and to pay the fee of \$425 in late and delinquency fees. See Rule 53.7(A) (3). On May 13, 2002, the New Hampshire Minimum Continuing Legal Education (MCLE) Board, moved for Attorney Sheridan's reinstatement. In its motion, the MCLE board informed the court that Attorney Sheridan is now in compliance with the minimum continuing legal education requirements for the reporting year ending June 30, 2001, and that he has paid the delinquency fees at issue. Accordingly, the MCLE board's motion to reinstate Attorney Sheridan is hereby granted.

Brock, C.J., and Nadeau, Dalianis and Duggan, JJ., concurred.

ATTEST:

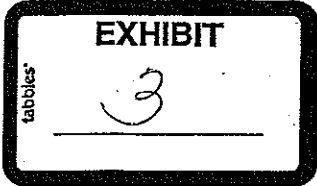
DATE: May 24, 2002

Eileen Fox

Eileen Fox, Clerk

Distribution:

- ✓ William C. Sheridan, Esquire
- ✓ Lee Jones, MCLE Board
- ✓ Anna O'Neill, NH Bar
- ✓ Deborah A. Bills, Supreme Court
- File



STATE OF NEW HAMPSHIRE

HILLSBOROUGH NORTH, SS

SUPERIOR COURT

02-E-0122

JOHN HIKEK, INDIVIDUALLY
JOHN HIKEK, D/B/A BOYNTON STREET MOBIL
AND
JOHN HIKEK, D/B/A BIRON'S MOBIL

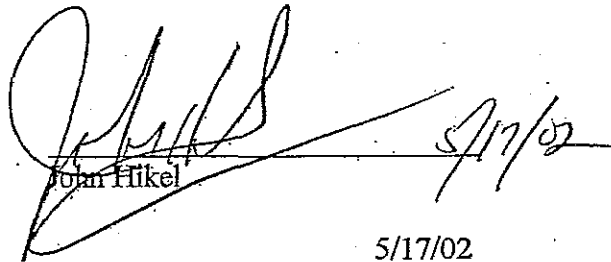
VS.

DRAPER ENERGY, INC.

HIKEK'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION TO RECONSIDER

I, John Hikel state the following under oath:


1. Hikel has spoken with the new tenants at 20 Boynton Street Mobil, John.
2. John told Hikel to wit, that the new tenants do not want to open the auto repair portion of the business without the phone number 623-9267 because that phone number brings the customers to the garage, and that the new tenants have not opened the auto repair portion of the business because they do not have that phone number.. Draper told the new tenants that it would get the telephone number for them.


John Hikel 5/17/02

State of New Hampshire
Hillsborough, SS

5/17/02

Then personally appeared the above named John Hikel and swore that the within was true and correct to the best of his knowledge and belief before me this 17th day of May, 2002,

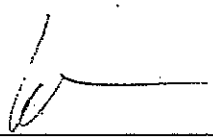

NOTARY PUBLIC/
JUSTICE OF PEACE
Comm EXPIRES 10-10-06

REC'D 02MAY17

MY COMMISSION EXPIRES:

CERTIFICATE OF SERVICE

I William C Sheridan, hereby certify that I served the within Hikel's Affidavit on the defendant by delivering it in hand to defendant's counsel Stewart S. Richmond, Jr., at McLane, Graf, Raulerson & Middleton, 900 Elm Street, PO Box 326, Manchester, NH 03105-0326 this 17th day of May, 2002.



William C. Sheridan, Esq.

STATE OF NEW HAMPSHIRE

HILLSBOROUGH NORTH, SS

SUPERIOR COURT

02-E-0122

JOHN HIKEL, INDIVIDUALLY
JOHN HIKEL, D/B/A BOYNTON STREET MOBIL
AND
JOHN HIKEL, D/B/A BIRON'S MOBIL

VS.

DRAPER ENERGY, INC.

MOTION TO RECONSIDER ORDER OF CLARIFICATION IN WHICH THIS
COURT ORDERED PLAINTIFF TO TRANSFER THE TELEPHONE NUMBER 623-
9267 TO DEFENDANT

NOW COMES, John Hikel, pro se, and moves this Court to reconsider it's order of clarification in which it ordered Plaintiff to transfer the telephone number 623-9267 to Draper Energy, Inc., for the following reasons:

1. This Court's Order was in reliance upon a false statement made by Draper to this Court. Draper told the Court Moore had filed a bankruptcy. By contrast, Moore never filed a bankruptcy. This was just one more falses self-serving statement made by Draper to obtain this Court's sympathy.
2. More than that, in order to sustain a request for injunctive relief the requesting party must demonstrate that it has a high likelihood of success on the merits.
3. The merits underlying Draper's case was that Draper Energy Inc is the owner of the telephone number 603-623-9267 or is the owner of the goodwill attached to that number.
4. Draper has failed to establish any facts or legal theory to show that it has an ownership interest in the phone number 623-9267. It is undisputed that Boynton Street

23 MAY 2006
DENIED
AA

004

Mobil LLC has been the owner of the number and has been legally responsible associated with the number and the yellow page advertising since 1999. That right of ownership and the legal obligations attached thereto was transferred to Hikel in March of 2002.

5. What facts or legal theory gives Draper an ownership right?

6. Is this not analogous to a lease interest? One has a leased car for a year or two. One transfers the lease and all of the obligations associated to the lease to an assignee. The assignee exercises ownership, pays for the lease and takes on all obligations. Later, the original owner pays a few of the lease payments. The assignee then transfers the lease to a third party. Clearly, the fact that the original owner made some payments on the lease, does not give them the right to require the third party to transfer the lease back into their name. There is no difference here.

7. Attached is an Affidavit of Gary Moore which documents the title to the telephone number and shows that the Draper again made a misrepresentation to this Court. As noted above, in contrast to Draper's sworn to statements to this Court, Moore never filed bankruptcy and Draper never operated the auto repair business.

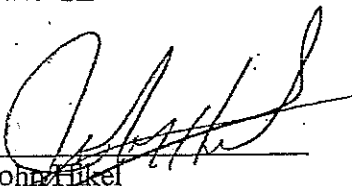
8. Hikel has spoken with the new tenants at 20 Boynton Street Mobil, John.

9. John told Hikel to wit, that the John, the new tenant, does not want to open the auto repair portion of the business without the phone number 623-9267 because that phone number brings the customers to the garage, and that the John has not opened the auto repair portion of the business because he do not have that phone number.. Draper told the John, the new tenant, that it would get the telephone number for him.

10. This is in contrast to Draper's representations to the Court that the new tenants wanted to build their own customer base and that the phone was not tied to the goodwill of the old auto repair business.

WHEREFORE, Plaintiff prays that this Court reconsider its order and deny defendant's motion for preliminary equitable relief.

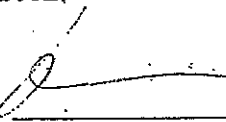
PLAINTIFF
PRO SE



John Hikel
6 Tamworth Place
Nashua, NH 03063
(603) 860-7891

CERTIFICATE OF SERVICE

I William C Sheridan, hereby certify that I served the within Hikel's Affidavit on the defendant by delivering it in hand to defendant's counsel Stewart S. Richmond, Jr., at McLane, Graf, Raulerson & Middleton, 900 Elm Street, PO Box 326, Manchester, NH 03105-0326 this 17th day of May, 2002.



William C. Sheridan, Esq.



NEW HAMPSHIRE SUPREME COURT
ATTORNEY DISCIPLINE OFFICE

Sheridan, William C.

advs.

Professional Conduct Committee

#02-073

NOTICE OF CHARGES

1. This Notice of Charges is issued pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(2). In accordance with that Rule, this Notice of Charges sets forth both the allegations of misconduct against you, as well as the disciplinary rules alleged to have been violated.

Summary of Allegations

2. By Order dated April 24, 2002, the New Hampshire Supreme Court suspended you from the practice of law for failure to comply with Continuing Legal Education ("CLE") requirements. See Order dated April 24, 2002 (attached as Exhibit 1). On May 24, 2002, the Court lifted that suspension when the MCLE Board informed the Court that you had fulfilled your CLE requirements. See Order dated May 24, 2002 (attached as Exhibit 2).

3. Between April 24 through May 24, 2002, while you were under suspension, you engaged in the practice of law.
4. Specifically, you assisted Paula Amirault in her appeal before the New Hampshire Supreme Court, case no. 2002-133, Alain Valles v. Paula Martin. You prepared a pleading for Ms. Amirault's signature, had a courier bring the pleading to Ms. Amirault for signing, and then you had the pleading delivered to the Court. The pleading was filed on May 9, 2002, and was entitled "Defendant's Motion For Reconsideration Of It's [sic] Order Denying Defendant's Notice Of Appeal Under Supreme Court Rule 7(1), Especially As To Federal Questions Expressly Raised Below And Preserved For Further Review." (A copy of this pleading and its attachments are attached hereto as Exhibit 3.)
5. Thereafter on May 14, 2002, you filed an affidavit on Ms. Amirault's behalf in the same case entitled, "Affidavit Of William C. Sheridan In Which He Seeks To Relay To The Court As An Individual The Fact This Morning Paula Martin Amirault Has Experienced A Severe Allergic Reaction That Made It Impossible For Her To Submit Her Supplemental Motion As Requested Yesterday And That She Has Asked Me To Relay To The Court Her Request That She Be Granted Additional Time To Supplement." (A copy of this Affidavit is attached hereto as Exhibit 4.)
6. Your affidavit contained the following "Certificate of Service":

I William C. Sheridan hereby certify that I served the within Motion to Supplement Motion for Reconsideration on the following in the above

referenced matter this 13th day of May, 2002 by mailing it as follows: . . .

You signed the "Certificate of Service" as "William C. Sheridan."

Disciplinary Rules Violated

7. Your conduct in this case raises questions under New Hampshire Rules of Professional Conduct **5.5(a) and 8.4(a)**.

Rule 5.5(a): Unauthorized Practice of Law

8. By assisting Ms. Amirault in drafting and filing the two pleadings referenced above, see Exhibits 3 and 4, you engaged in the unauthorized practice of law while under a suspension order.
9. New Hampshire law prohibits the unauthorized practice of law. See RSA 311. See also Tocci's Case, 140 N.H. 68, 70 (1995). As you were under suspension, you were prohibited from practicing law.
10. If proven by clear and convincing evidence, your conduct in this regard would constitute a violation of N.H. R. Prof. Conduct 5.5(a).

Rule 8.4(a): General Rule

11. In the event that any one of the above allegations is proven by clear and convincing evidence, this would necessarily constitute a violation of N.H. R. Prof. Conduct 8.4(a).

Conclusion

12. You are advised that you must answer this Notice of Charges within 30 days of the date of your receipt of this Notice of Charges. See Sup. Ct. R. 37A(III)(b)(3)(A). Your answer must be in writing, must respond

specifically to each allegation of this Notice of Charges, and must assert all affirmative defenses. See Sup. Ct. R. 37A(III)(b)(3)(B).

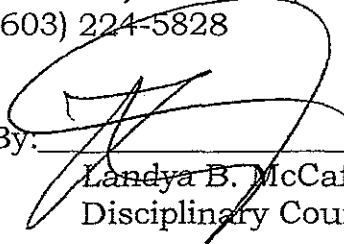
13. **In the event you fail to file an answer, the allegations set forth in this Notice of Charges “shall be deemed to be admitted.”** See Sup. Ct. R. 37A(III)(b)(3)(A).
14. It is the duty of Disciplinary Counsel to request that the chair of the Hearings Committee appoint a hearing panel in this matter either upon receiving an answer from you, or upon the expiration of the 30-day period for you to file an answer. See Sup. Ct. R. 37A(III)(b)(4).
15. You are advised that you have the right to be represented by counsel, and to testify and present evidence on your own behalf. See Sup. Ct. R. 37A(III)(b)(2).
16. This Notice of Charges and the file of Disciplinary Counsel (other than work product and internal memoranda of the Attorney Discipline Office) is now a public file. Further, the proceedings related to this Notice of Charges that take place before the Hearings Committee and Professional Conduct Committee, as well as the written decisions (other than work product, internal memoranda, and deliberations) of both, shall be public. See Sup. Ct. R. 37(20)(b)(2).
17. Your attention is also directed to Supreme Court Rule 37A(III)(b)(5), which governs discovery in this matter, as well as subsection (6) of that Rule, which provides for a pre-hearing conference. In the absence of “good cause,” such pre-hearing conference must be requested within 30

days of the appointment of a hearing panel in this matter. See Sup. Ct.

R. 37A(III)(b)(6)(A).

New Hampshire Supreme Court
Attorney Discipline Office
4 Park Street, Suite 304
Concord, New Hampshire 03301
(603) 224-5828

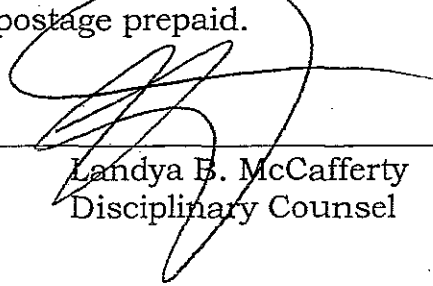
Date: October 7, 2005

By: 

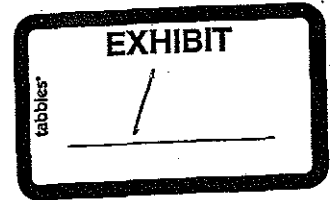
Landya B. McCafferty
Disciplinary Counsel

CERTIFICATION

I, Landya B. McCafferty, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that the original of the aforesaid Notice of Charges is being sent on this 7th day of October 2005, to William C. Sheridan, 50 Nashua Road, Suite 102, Londonderry, New Hampshire 03053 by certified mail #7002 3150 0001 5385 6877, return receipt requested and a copy by regular mail postage prepaid.



Landya B. McCafferty
Disciplinary Counsel



THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. ADM-2002-0042, In the Matter of William C. Sheridan, the court on April 24, 2002, issued the following order:

On March 15, 2002, this court ordered William C. Sheridan to show cause why he should not be suspended from the practice of law in New Hampshire for failing to file his certificate of compliance with the minimum legal education requirements and to pay the fee of \$425 in late and delinquency fees.

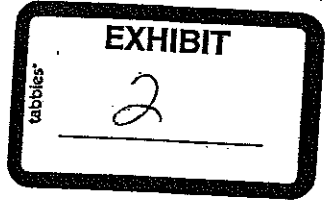
William C. Sheridan has neither responded to the show cause order, nor brought himself into compliance with Supreme Court Rule 53.7(A) (3).

William C. Sheridan is hereby suspended from the practice of law in New Hampshire.

Brock, C.J., and Nadeau, Dalianis, and Duggan, J.J., concurred.

ATTEST:

Eileen Fox
Eileen Fox, Clerk



THE STATE OF NEW HAMPSHIRE

SUPREME COURT

O R D E R

No. ADM-2002-0042, In the Matter of William C. Sheridan

On April 24, 2002, the court suspended William C. Sheridan, Esq. from the practice of law in New Hampshire for failing to file his certificate of compliance with the minimum legal education requirements and to pay the fee of \$425 in late and delinquency fees. See Rule 53.7(A) (3). On May 13, 2002, the New Hampshire Minimum Continuing Legal Education (MCLE) Board, moved for Attorney Sheridan's reinstatement. In its motion, the MCLE board informed the court that Attorney Sheridan is now in compliance with the minimum continuing legal education requirements for the reporting year ending June 30, 2001, and that he has paid the delinquency fees at issue. Accordingly, the MCLE board's motion to reinstate Attorney Sheridan is hereby granted.

Brock, C.J., and Nadeau, Dalianis and Duggan, JJ., concurred.

ATTEST:

DATE: May 24, 2002

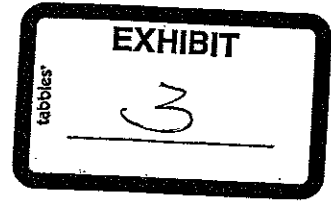
Handwritten signature of Eileen Fox in black ink, written over a horizontal line.

Eileen Fox, Clerk

Distribution:

- ✓ William C. Sheridan, Esquire
- ✓ Lee Jones, MCLE Board
- ✓ Anna O'Neill, NH Bar
- ✓ Deborah A. Bills, Supreme Court
- File

POSTED



SUPREME COURT
STATE OF NEW HAMPSHIRE

2002-133

Alain Valles

100 MAY09'02 PM 4:44

v.

Paula Martin

DEFENDANT'S MOTION FOR RECONSIDERATION OF IT'S ORDER DENYING
DEFENDANT'S NOTICE OF APPEAL UNDER SUPREME COURT RULE 7(1),
ESPECIALLY AS TO FEDERAL QUESTIONS EXPRESSLY RAISED BELOW AND
PRESERVED FOR FURTHER REVIEW

NOW COMES, Paula Martin Amirault, pro se, and hereby moves that this Honorable Court to reconsider its order in which it declined to accept her appeal under Supreme Court Rule 7(1), dated April 29, 2002, especially as to the federal questions raised below and preserved for further review, for the following reasons:

1. This is an appeal of a decision of the Nashua District Court in which, immediately before the properly scheduled hearing on the merits (at which defendant was present with counsel and ready to proceed on the merits after all continuances had been granted) the Nashua District Court entered a default judgment against her and issued an eviction order under District Court Rules 1.2, 1.8-A and 1.8-B for Amirault's failure to previously comply with the rules and her failure to negotiate in good faith with Plaintiff.

2. On March 1, 2002 Amirault filed her Notice of Appeal, amended March 4, 2002, raising several federal questions as the basis for her appeal,

AMIRAULT'S FEDERAL CLAIMS.

3. Her first federal claim was clearly framed throughout the case, to wit,

That the plaintiff is a predatory interstate money lender in which Plaintiff refinanced Amirault's existing mortgage through a, so-called reverse mortgage, in which Plaintiff took title to Amirault's home with over \$200,000.00 of equity in it, in lieu of direct mortgage financing (with the purchase price equaling just the existing mortgage payoff and not the property's FMV) in exchange for Plaintiff's promise that Amirault remain in the property rent free until her rancorous divorce with her husband (his income exceeds \$600,000.00) was finalized. In commencing this eviction proceeding, Plaintiff violated the Fair Debt Collection Practices Act when, among other things, he falsely stated, under oath, in his Affidavit of Ownership that Amirault has "paid" \$3,900.00 monthly rent.¹ He also falsely stated in the Landlord Tenant Writ that \$27,000.00 of rent was now due and unpaid.² Since Amirault had placed these false statements in dispute within 30 days of their being made (by her Statement of Defenses and Motion to Dismiss), federal law required that collection "cease," and that the eviction proceedings be summarily dismissed. See Question XI raised in Amirault's Notice of Appeal.³ Exhibits attached.

¹ The plaintiff claimed under oath in its Affidavit of Ownership that the defendant paid rent in the amount of \$3,900.00 monthly. (Appendix at page 12). This statement in direct contradiction with plaintiff's later statements in the record (where he acknowledges that defendant resides there "rent free"). It is also undisputed that the defendant is a multiply handicapped disabled mother who has a fixed income of child support in the amount of \$4,200.00 per month. It is incredible that defendant could ever have agreed to pay all of her monthly child support (less \$300.00) for rent.

² It is now undisputed that Amirault never paid rent to Plaintiff and that she lived there "rent free."

³ For a statement of the additional false statements made by Plaintiff in this case, see also Appellant's Motion to Strike Plaintiff's Motion to Dismiss Appeal, which was filed in this case, and is incorporated herein by reference.

4. The federal basis of this claim was also clearly asserted. Thus, in it's Amended Notice of Appeal, Amirault said

Question XI

The standard of review is de novo because it is a question of law that a creditor may not repossess property when there are "misrepresentations as to the existence, character and legal status of the debt" in violation of the Fair Debt Collection Act, 15 U.S.C. § 1692e(2)(A) and because the plaintiff seeks to repossess and collect a debt when it has "no present right to do so" in violation of 15 U.S.C. Section 1692f(1). In such instances, the plaintiff must "cease collection of the debt." 15 U.S.C. § 1692g(b). (See Appendix at pages 10 and 12).

5. Amirault's next federal claim was also framed below, to wit

The Nashua District Court's default judgment order was premised upon the fact that Amirault's counsel requested a continuance of a prior hearing on an emergency basis because Amirault, who has multiple disabilities, including a chronic life threatening bleeding disorder, cf. Thomas v. Davidson, 846 F. Supp. 611 (M.D. Tenn. 1994)(similar unpredictable bleeding disorder that interfered with regular attendance due to unforeseen emergency medical treatment found a "disability" under the ADA), was in the hospital for well over 12 hours on an emergency basis due, in part, due to concern of "intracranial hemorrhage." Amirault See Question V raised in Amirault's Notice of Appeal.

6. The federal basis of this claim was also clearly asserted. Thus, in it's Amended Notice of Appeal, Amirault said

Question V

The standard is de novo because this is a question of law enunciated in Thomas vs. Davidson Academy, 846 F. Supp. 611 (M.D. Tenn. 1994)(bleeding disorder, such as defendant's, causing unpredictable

attendance is a disability protected under the ADA): D'Amico v. New York Br of Law Examiners, 813 F. Supp. 217 (W.D.N.Y. 1993)(an individual with a protected disability cannot be denied the benefits of a state program unless there is no reasonable accommodation that can be made) and Ward vs. Massachusetts Health Research Institute, Inc., 209 F.3d 29 (1st Cir 2000)(entities governed by the ADA must alter their rules, etc, to make reasonable accommodations to disabled individuals)(Appendix at pages 71 thru 74 and pages 170 thru 173).⁴

7. Amirault's next federal claim was also framed below, to wit

The Nashua District Court heard argument on whether a default judgment should enter on the grounds that Amirault had failed to appear at the original hearing on the merits scheduled for December 5, 2001, and after the hearing ended, and after the Court left the Courtroom, without prior notice, issued an order on completely different grounds, i.e. that a default judgment entered because Amirault failed to comply with the Rules and failed to exhibit good faith to Plaintiff in pretrial negotiations. See Questions VIII and X raised in Amirault's Notice of Appeal.⁵

8. The federal basis of this claim was also clearly asserted. Thus, in it's

Amended Notice of Appeal, Amirault said

Question VII (sic) and X.

The standard of review is de novo because these are questions of law governed by the principals of due process and adequate notice as enunciated in Bodge v. Butler, 57 NH 204 (1876)(defendant does not default if his attorney substitutes the action); Appeal of Henry A. Plantier,

⁴ For a more complete enunciation of Amirault's federal ADA claim see Defendant's Objection to Motion for Summary Affirmance filed in this case and the Exhibit attached thereto, which are incorporated herein by reference.

⁵ For a more complete enunciation of Amirault's federal due process claim see Defendant's Objection to Motion for Summary Affirmance filed in this case and the Exhibit attached thereto which are incorporated herein by reference.

M.D. (New Hampshire Board of Registration in Medicine), 126 N.H. 500, 506, 494 A.2d 270 (1985); and Town of Nottingham v. Cedar Waters Village, Inc., 118 N.H. 282, 385 A.2d 851 (1978) ("the State must provide notice reasonably calculated to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"); and Appendix at page 165 thru 168).

9. Amirault's next federal claim was also framed below, to wit

The Nashua District Court entered default judgment against Amirault, in part, for her failure to file an affidavit with her Motion to Continue under District Court Rule 1.2, 1.8-A and 1.8-B. By contrast, the Nashua District Court, over Amirault's objections, relied on Plaintiff's unsworn to statements in his Motion for Default Judgment. In doing so, the Nashua District Court applied a criteria to Amirault, a disabled person, in denying her right to a hearing that it did not apply to Plaintiff, a nondisabled person. See Question VIII raised in Amirault's Notice of Appeal.

10. This failure to apply the same criteria to both the disabled and the nondisabled is critical here. The failure to apply the criteria used by the Court against the Defendant, a disabled person, such as Amirault, especially on matters that arise out of her disability,⁶ (i.e. the disabled person must have sworn to affidavit to request a continuance when the party is in the hospital), against the nondisabled Plaintiff (i.e. by contrast, for the nondisabled Plaintiff, unsworn to statements of it's counsel may be relied upon by the Court) supports a valid inference (that must be addressed by the appellate court) that the reason for the Court's failure to apply this criteria equally to all evidences that the reason cited by the Court was just a "pretext," for knowing or unconscious prejudice against that

⁶ Given the emergency medical condition arising out of the disability that required over 12 hours of emergency hospital care, and Amirault is now a patient of the Dana Farber Cancer Center in Boston, Massachusetts.

disabled person. Garcia v. US, Docket No. 00-09223 (2nd Cir. 9/26/01); and McDonnell Douglas v Green, 411 US 729, 802-805 (1973).

11. This issue is squarely before this Court and should be addressed as an exercise of this Court obligation to enforce federal law..

THIS COURT'S DECLINATION OF THE APPEAL

12. On April 29, 2002, this Court declined to accept Amirault's appeal under Rule 7(1) without providing any basis, directly or by reference, by the Court's decision. In doing so, the Court expressly declined to summarily affirm the decision below under Supreme Court Rule 25.

AMIRAULT'S BASIS FOR RECONSIDERATION

13. First, Amirault submits that declination of an appeal on the basis of Supreme Court Rule 7(1) violates due process under the Federal Constitution because it vitiates completely any check and balance placed upon the New Hampshire Supreme Court to insure that federal claims are addressed. Checks and balances goes to the very heart of our constitutional system. As Madison states in Federalist Paper LI

You must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control of the government; but experience has taught mankind the necessity of auxiliary precautions.. This policy of supplying, by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public. We see, it particularly displayed in all the subordinate distributions of power, where the constant aim is to divide and arrange the several offices *in such a manner as that each may be a check on the other-*"

It is the duty of the New Hampshire Supreme Court to enforce federal claims of it's citizenry and for this reason is given deference at the first instance by the federal judiciary. New Orleans Public Service v. City of New Orleans, 491 U.S. 350 (1989). As

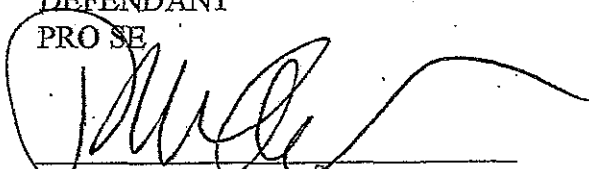
the highest Court in New Hampshire, unelected for lifetime tenure, independent from legislative control, the only check that exists as to this Court on federal issues is the ability of the federal judiciary to review its decisions on appeal. However, by refusing to apply any standard for the basis of refusal to accept the appeal under Rule 7(1) this Court has avoided the only check left against it, i.e. informed federal review. By doing so, it has denied Amirault due process. It cannot shy away from this duty. It must, at a minimum provide some basis for its decision. The failure to exercise discretion is itself an abuse of discretion and denial of substantive due process under federal law.

11. Second, Amirault submits that this Court's decision to decline the acceptance of her appeal was improper because it completely avoided this Court obligation to enforce federal law, to provide an inadequate record for appeal to the federal courts, and to exercise discretion when discretion is mandated.

12. Third, this appeal should be accepted.

WHEREFORE, Defendant prays that this Court reconsider its refusal to accept the appeal, but rather to accept the appeal.

RESPECTFULLY SUBMITTED
DEFENDANT
PRO SE



PAULA AMIRAULT
36 BERKELEY STREET
NASHUA, NH
603-930-7946

CERTIFICATE OF SERVICE

⁷ Amirault did receive the aide of William C Sheridan who has been temporarily suspended from the practice of law before the New Hampshire Bar because he failed to timely comply with his CLE requirements. At this point he has complied and is awaiting the lifting of the suspension.

I Paula Amirault hereby certify that I served the within Motion for Reconsideration on the following in the above referenced matter this 9th day of May, 2002 by mailing it as follows:

John Gallant, Esq.
Gallant & Ervin
1 Olde North Road
Suite 103
Chelmsford, MA 01824



PAULA AMIRAULT

Defendant reserves the right to amend this Motion within 2 business days.



Tel: 701 878 0411 (5620)
Fax: 701 878 2379
Pager: 701 848 6377

ALEX H. VARIES
President

200 Edgewood Place, Ste 101 • Rockland • MA 02370

Mortgage SOS

Residential Mortgage Consultant • Commercial Mortgage Consultant
Loan Workouts & Restructures

RUSSELL J. DANILETT

174 Main Street, Suite 10 • Nashua, NH 03060

Phone: 603-880-6916 • Fax: 603-577-0760

www.mortgage-sos.com

SERVED BY CONSTABLE

July 12, 2001

2631 ... 11 11 3 5

Paula Martin
36 Berkeley Street
Nashua, NH 03063

Re: 36 Berkeley Street, Nashua, New Hampshire

Notice to Terminate Tenancy

Dear Paula Martin:

This firm represents Allain Valles as the owner of 36 Berkeley Street. Please be advised that Mr. Valles hereby terminates your tenancy or rights to possession of the premises held by you as their tenant at will, namely the property commonly known and numbered as 36 Berkeley Street, Nashua, New Hampshire.

Mr. Valles hereby terminates your tenancy. The following is among the reasons for said termination:

1. Failure to quit and surrender up the premises;
2. Failure to vacate the premises after sale;
3. Failure to reach an agreement for the renewal or use and occupancy of the premises;
4. failure to pay amounts for use and occupancy of the premises.

The above is not meant to be, and should not be considered as, an all-inclusive list of the basis for this Notice.

You are hereby notified to quit and deliver up on or before August 31, 2001, the end of the next month of your tenancy beginning after this notice, the premises or any portion thereof which may held by you as tenants of my client at 36 Berkeley Street, Nashua, New Hampshire.

Further, the payment of any monies, whether in part or in whole, (including in response to any Notice to Quit) shall not reinstate your tenancy or preclude the termination thereof as set forth in this Notice to Terminate.

NASHUA DISTRICT
COURT

2001 OCT 19 A 10:11

6

RECEIVED

2001 OCT 19 11 33

Hereof fail not, or I shall bring due process of law to evict you.

Sincerely,

Allan Valles
By his Attorney,

John E. Callant

cc: Ellen

NASHUA DISTRICT
COURT

2001 OCT 19 AM 47

The State of New Hampshire

Hillsborough

COUNTY

Nashua District

COURT

2001

01-007024

NO.

LANDLORD AND TENANT WRIT

Alain Valles

Paula Martin

PLAINTIFF

DEFENDANT

145 Old Schoolhouse Lane

36 Berkeley Street

ADDRESS: "PO BOX"

ADDRESS

HANOVER, MA 02339

Nashua, NH 03063

In using a P.O. Box instead of an address I hereby certify that this action is brought in the jurisdiction where either the Plaintiff or Defendant resides or the real property is located.

SIGNATURE

The Sheriff of any County or to his Deputy or to any Law Enforcement Officer:

WE COMMAND YOU TO SUMMON: Paula Martin

of 36 Berkeley Street, Nashua in the county of Hillsborough

If found in your precinct, to file an appearance form at the Nashua District

court at Nashua in said county of Hillsborough

on or before the RETURN DAY: August 1, 2001 to answer Plaintiff(s).

In a plea wherein the Plaintiff(s) complain that on the date of this Writ they are entitled to possession of premises situated at: 36 Berkeley Street, Nashua, NH

with the appurtenances, now occupied by the Defendant(s), and that the said Defendant(s) on the

31st day of July, 2001, were duly notified in writing by the said Plaintiff(s) to quit and deliver up possession of the same on the 3rd day of August, 2001, yet said

Defendant(s) have continued and still are in possession of said premises without right.

This is also a claim for unpaid rent in the amount of \$ 27,300.00. If making a claim for unpaid rent, statement of claim and affidavit of damages must accompany this writ. Claims for unpaid rent may be governed by the Federal Fair Debt Collection Act (15 U.S.C. sec. 1691 et seq.) requiring that this writ be filed in the jurisdiction where the defendant resides or where the contract was signed. Any decision rendered by the court related to a money judgment, shall be limited to a maximum of \$1,500.00 and shall not preclude either party from making a subsequent claim in a court of competent jurisdiction to recover any additional amounts not covered by the \$1,500.00 judgement.

WITNESS, HONORABLE EDWIN W. KELLY, Administrative Justice of the District and Municipal Courts.

this 24th day of September, 2001

IMPORTANT NOTICE

If you desire to be heard on the matters raised in these papers, you must notify the Court by filing an appearance form with the Clerk of Court on or before the date specified on this writ next to the words "RETURN DAY". (These forms are available at the Clerk's Office.) Once you have filed your appearance, a date for a hearing will be set by the Court and you will be notified by mail. You do not have to physically appear in court on the RETURN DAY since there will be no hearing on that day. If a landlord claims unpaid rent and if the tenant has a claim or counterclaim which offsets or reduces the amount owed to the landlord, such claim or counterclaim must be filed on or before the RETURN DAY set forth in this Landlord and Tenant Writ. Space is provided on the appearance form for setting forth any such claim or counterclaim. If you fail to file an appearance form, it will be assumed that you do not wish to contest the action, a default judgement will be entered against you and a writ of possession may be issued.

ENDORSED BY

SIGNATURE

JOHN GALLANT

NAME

GALLANT & EVEN, LLC.

ADDRESS

ONE N. ST., CHELMSFORD 1 978-252-6041

MA PHONE



Edwin W. Kelly

Clerk of Court

INFORMATION FOR TENANT

If the tenant wishes to contest the eviction, an appearance must be filed by the tenant in the district court no later than the RETURN DAY appearing on this LANDLORD AND TENANT WRIT.

The tenant shall not be evicted unless the court so orders; however, such an order may be granted if the tenant does not file an appearance.

At the time the tenant files an appearance, a request may be made that the court make a sound recording of the eviction hearing by checking the appropriate box on the appearance form.

If the tenant wishes to appeal the district court's decision to the supreme court, the following procedure must be followed:

(1) Notice of intent to appeal must be filed with the district court within 7 days of the notice of the district court's decision; and

(2) Notice of appeal in the supreme court must be filed within 30 days of the notice of the court's decision; and

(3) Pay all rent, as it comes due, between the date of the notice of intent to appeal the district court's decision and the final disposition of the appeal.

RETURN OF SERVICE

(FOR OFFICIAL USE ONLY)

_____ county _____ DATE _____, 19 _____

I summoned the within named _____

by

() in hand service

() by a service of _____

() at _____

an attested copy of this Writ.

SIGNATURE

TITLE

AGENCY

FEES: Service: \$ _____
Travel: _____
Other: _____
Total: \$ _____

The State of New Hampshire

AFFIDAVIT OF OWNERSHIP/TENANCY

Alain Valles V. Paula Martin

Docket Number: _____

A. I HEREBY CERTIFY THAT THE OWNER OF THE PROPERTY IN THE ABOVE ENTITLED ACTION IS:

Alain Valles Name

145 Old Schoolhouse Lane Address

Hanover, MA 02339 City/State/Zip

B. THE REAL ESTATE WHICH IS THE SUBJECT OF THIS EVICTION IS RENTED FOR: (Check one box below) (See RSA 540:1-a).

- Non-residential purposes
Residential purposes and consists of one of the following kinds of real estate:
A single family house where the owner of such house does not own more than three single family houses at any one time.
A rental unit in an owner-occupied building, containing a total of four dwelling units or fewer.
A rental unit in a vacation or recreational building, not rented for vacation or recreational purposes.
A single-family house acquired by banks or other mortgagees through foreclosure.
Other residential purposes.

C. PLEASE PROVIDE RENTAL AMOUNT PAID:

\$ _____ WEEKLY OR \$ 3,900.00 MONTHLY

I UNDERSTAND THAT IF THIS CERTIFICATE IS INCORRECT, THIS CASE MAY BE SUMMARY DISMISSED BY THE COURT.

9/5/01 Date

Owner/Employee of Owner/Attorney

HASHUA DISTRICT COURT 2001 OCT 19 A 10:47

CHECK ONE BOX BELOW:

- I am the actual owner of the real estate in question.
I am an employee of the actual owner of the real estate in question.
I am an employee of a corporation that is the actual owner of the real estate in question.
I am the attorney for the owner of the real estate in question.

TRUE COPI ATTES

Paula A. Perkins

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

HASHUA DISTRICT
COURT
SUPERIOR COURT

ALLEN VALLAISE

2001 OCT 19 P 3:21

VS.

PAULA MARTIN AMIRAULT

*MOTION TO ~~ABJECT~~ DISMISS FOR REASONS SET FORTH
IN BRIEF STATEMENT OF DEFENSES. FILED Herein by*

Defendant is not a tenant in the property. Rather, defendant's occupancy of the premises is part of a complex business arrangement between the parties, involving issues of title to the property. Defendant is not in breach of that agreement.

The Landlord Tenant notice to quit and demand for rent were improperly drafted and served on defendant.

The Landlord Tenant Writ was improperly served on the defendant.

Defendant requires discovery through depositions and document production prior to trial on the merits.

Defendant claims that this case is in violation of the fair credit reporting act and likewise concerns issues that are outside of the jurisdiction of this court.

No affidavit of damages was attached to the Writ as required by law.

The Notice to Quit fails to refer to proper statutory authority.

The contract will be the subject of a breach of contract claim in Superior Court for the Commonwealth of Massachusetts and to IRS tax claims going back 12 years.

The Landlord is barred by estoppel and fraud from pursuing this matter.

This case has been brought by the landlord because of the refusal of the New Hampshire Superior Court to hear jury trials in November and December.

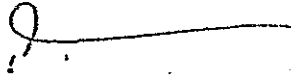
RESPECTFULLY SUBMITTED

020

NASHUA DISTRICT
COURT

2001 OCT 19 P 3:21

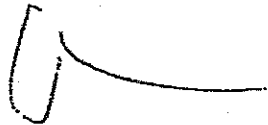
PAULA MARTIN AMIRAULT
BY HER ATTORNEY
LAW OFFICES OF WILLIAM C
SHERIDAN, PA



William C. Sheridan, Esq.
50 Nashua Road
Suite 102
Londonderry, NH 03053
603) 437-0345

CERTIFICATE OF SERVICE

I, William C Sheridan, hereby certify that I served the within Objection on the plaintiff by mailing it postage prepaid first class mail addressed to his counsel of record John Gallant
Gallant & Ervin, LLC
One North Road
Chelmsford, MA.



William C. Sheridan, Esq.

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

HASHUA DISTRICT
COURT
SUPERIOR COURT

2001 OCT 19 P 3:21

ALLEN VALLAISE ^{ES} ~~ES~~

VS.

PAULA MARTIN AMIRAULT

*MOTION TO ~~OBJECT~~ DISMISS FOR REASONS SET FORTH
IN BRIEF STATEMENT OF DEFENSES FILED HEREWITH.*

Defendant is not a tenant in the property. Rather, defendant's occupancy of the premises is part of a complex business arrangement between the parties, involving issues of title to the property. Defendant is not in breach of that agreement.

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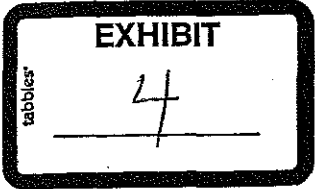
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The Landlord is barred by estoppel and fraud from pursuing this matter.

This case has been brought by the landlord because of the refusal of the New Hampshire Superior Court to hear jury trials in November and December.

RESPECTFULLY SUBMITTED

Handwritten notes:
Motion to Dismiss
for reasons set forth
in brief statement of
defenses filed herewith



SUPREME COURT
STATE OF NEW HAMPSHIRE

2002-133

Alain Valles

100 MAY 14 '02 PM 4:32

v.

Paula Martin

AFFIDAVIT OF WILLIAM C. SHERIDAN IN WHICH HE SEEKS TO RELAY TO THE COURT AS AN INDIVIDUAL THE FACT THAT THIS MORNING PAULA MARTIN AMIRAULT HAS EXPERIENCED A SEVERE ALLERGIC REACTION THAT MADE IT IMPOSSIBLE FOR HER TO SUBMIT HER SUPPLEMENTAL MOTION AS REQUESTED YESTERDAY AND THAT SHE HAS ASKED ME TO RELAY TO THE COURT HER REQUEST THAT SHE BE GRANTED ADDITIONAL TIME TO SUPPLEMENT

I William C. Sheridan state the following under oath:

1. Paula Martin Amirault, who is acting pro se herein, telephoned me around 1:30 PM today and told me the following:


A. While receiving treatment at her doctor's office early this morning, Paula Martin Amirault, received an accidental exposure to latex, to which she is violently allergic. The exposure was directly on her face and in her mouth.

B. As a result of this exposure, she immediately had, and is still having, a serious potentially life threatening allergic reaction in which, among other things, her tongue, mouth and throat have swollen, making it extremely difficult for her to breath. Additionally, she is covered with hives and her eyes are just about swollen shut.

C. She remained at the doctor's office for the next two hours and then she, pursuant to her doctor's instruction, went straight home¹, where she is attempting to control the allergic reaction with doctor prescribed medications and strict medical protocol.

2. During Amirault's phone call to me, I could hear how much effort she was placing into simply breathing. I could also hear her wheezing while breathing, as well as having repeated sprees of deep asthma like coughing.

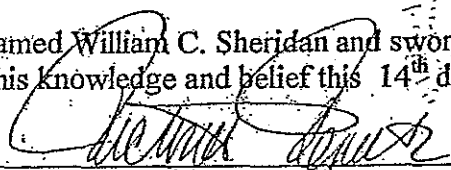
3. She asked me to relay to the Court her request that this Court grant her an additional day to supplement her Motion to Reconsider. I told her that I could not act as her attorney at this time and that she should get up to Concord and file the request herself. However, it soon became obvious that travel by her to Concord, NH was not possible. For this reason, and this reason alone, I am using this format, not as her counsel, but simply as a fact witness to relay to this Court her situation and her request for an extension.


William C. Sheridan

STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS

MAY 14, 2002

Then personally appeared the above-named William C. Sheridan and swore that the within was true and correct to the best of his knowledge and belief this 14th day of May, 2002, before me,


NOTARY PUBLIC/JUSTICE OF PEACE
MY COMMISSION EXPIRE:

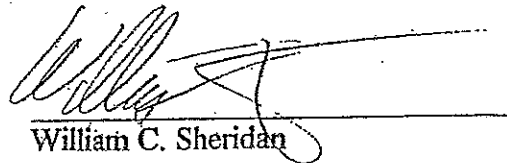
VICTORIA H. VENUTI, Notary Public
My Commission Expires 6/18/04

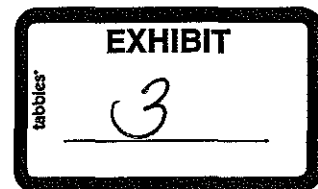
CERTIFICATE OF SERVICE

¹ Amirault indicated that she could not go to the hospital because once the latex allergic reaction started, treatment at a hospital, where latex is prevalent in the air, is likely to make the allergic reaction worse.

I William C. Sheridan hereby certify that I served the within Motion to Supplement Motion for Reconsideration on the following in the above referenced matter this 13th day of May, 2002 by mailing it as follows:

John Gallant, Esq.
Gallant & Ervin
1 Olde North Road
Suite 103
Chelmsford, MA 01824


William C. Sheridan



NEW HAMPSHIRE SUPREME COURT
ATTORNEY DISCIPLINE OFFICE

SHERIDAN, WILLIAM C

ADVS.

PROFESSIONAL CONDUCT COMMITTEE

#02-070

ANSWER TO NOTICE OF CHARGES

NOW COMES, William C Sheridan, pro se, and hereby answers the Notice of Charges of the Professional Conduct Committee, as follows:

1. William C Sheridan is without information to either admit or deny the allegations contained in paragraph 1 of the NOC, and therefore denies the same. Supreme Court Rule 37A(III)(b)(2) and the NOC speak for themselves.
2. Sheridan denies the allegations contained in paragraph 2 and further states that the Supreme Court Orders speak for themselves. See Sheridan's Declaration which attached hereto as Exhibit A and incorporated herein by reference.
3. Sheridan denies paragraph 3, 7, 8, 9, 10, and 11, and further states that Sheridan admits that New Hampshire law prohibits the unauthorized practice of law. See Exhibit A for a discussion of New Hampshire law on this point. See also, RSA 311:1; and RSA 311: 7. Tocci's Case, 140 N.H. 68, 70 (1995) speaks for itself and its holding is expressly limited to a situation, not present here, where Tocci was "filing" pleadings for others in Court and "commonly" holding himself out to the public and the Court as one

who could act as a lawyer on the behalf of third parties. Sheridan submits that, by his conduct here, though he would never repeat it, he was neither violating the New Hampshire Supreme Court Order, nor engaging in the unlawful practice of law.

4 Sheridan admits paragraphs 5 and 6 as the documents speak for themselves, but further states that this language was accidentally carried over by default on Sheridan's word processor and is inaccurate. Sheridan did not serve defendant's counsel in hand. Rather, Sheridan mailed the pleading. Sheridan was on his way out the door to visit with his 86 year old mother out of state and spent a very short time with John, mailed the document for John, and left. Likewise, neither Sheridan nor John noticed that the title "Esq." was next to his name. Hikel has testified that he was very aware that Sheridan was suspended and could not represent him and was not influenced by this clerical mistake. See Exhibit A.

5. Sheridan is without sufficient information to either admit or deny paragraphs 12 thru 17 and therefore denies the same. The Rules and documents speak for themselves.

6. Sheridan further states that due to laches and estoppel this matter should be dismissed insofar it has remained dormant for 3 years during which Sheridan has been unduly prejudiced by the delay. It was commenced one day after the Professional Conduct Committee rendered its decision in 2001-007 concerning Sheridan's reinstatement. Sheridan also states that there was inadequate notice in New Hampshire law to notify Sheridan whether his conduct was indeed prohibited and as such to impose sanctions would be a denial of due process under the NH and US constitutions. Next, this

matter is mute and discipline would serve no additional purpose insofar as Sheridan is presently suspended from the practice of law and has learned his lesson not to engage in this conduct again if faced with the same situation

WHEREFORE, Sheridan prays that the Hearings Panel dismiss the Committee's Notice of Charges and find no violation of ethical conduct or the Rules of Professional Conduct, and such other relief as is right and just.

William C Sheridan
Pro se
50 Nashua Road
Suite 102
Londonderry, NH 03053
603-661-4488

William C. Sheridan
Pro se

CERTIFICATE OF SERVICE

I, William C Sheridan, hereby certify that I served the within Answer by mailing it this 1st day of December, 2005 to

Landya B. McCafferty
New Hampshire Supreme Court
Disciplinary Counsel
4 Park Street
Suite 304
Concord, NH 03301
(603).228 9511

William C Sheridan

DECLARATION OF WILLIAM C. SHERIDAN IN RESPONSE TO THE
ALLEGATIONS CONTAINED IN THE NOTICE OF CHARGES AGAINST
WILLIAM C SHERIDAN BY THE PROFESSIONAL CONDUCT COMMITTEE
DATED OCTOBER 7, 2005

In March of 2002, due to my failure to timely respond to an order to show cause why I should not be suspended from the practice of law insofar as I had failed to comply with my CLE requirements timely, I was summarily suspended from the practice of law in New Hampshire.¹ I immediately and timely filed a motion to reconsider, completed my CLE requirements and moved for reinstatement. The New Hampshire Supreme Court expressly accepted my motion for reconsideration and formally requested that the CLE Committee respond to it if they desired. I was reinstated on May 24, 2002. No decision was ever made on my motion to reconsider.²

Other than notice that I had been suspended from the practice of law in New Hampshire, and the consequences necessary flowing therefrom, no further order of the court was issued prohibiting me from engaging in any act that I, as a normal citizen, had a right to engage in.³

As to John Hikel's case specifically, I notified the court and Hikel of my suspension, withdrew from the case, and told Hikel that I could not act as an attorney for him, which he understood. Hikel filed a pro se appearance.

Hikel later informed me that he had been unable to obtain alternative counsel, due to the short time frame involved, and asked if I could help type and edit his dictation on three documents. John was a close friend of mine (he remains my friend to this day) and I agreed to so long as he was aware that I could not represent him and the bulk of what was said must be his ideas etc.

¹ What is critical here are two facts. First, unlike most suspensions, this administrative suspension was not carried out under RSA 311:8. Second, the administrative suspension was not premised upon any finding of a defect in my moral character and thus, unlike other suspension orders, did not affect my qualifications to act as a citizen under RSA 311:1.

² In March 2002 an order to show cause was issued. Thereafter my home had a serious fire on April 7, 2002. I did not return to practice until about April 22, 2002. On April 24, 2002, due to my failure to respond to the order to show cause, a suspension order was summarily issued. I immediately moved to have that order reconsidered due to the fire in my home. My motion for reconsideration remains outstanding to this day. (Query: did the suspension order go in effect on April 24, 2002 or, given my motion for reconsideration, did it remain interlocutory or subject to this day to retraction). Nonetheless, I immediately shut my office down and stopped practicing law.

³ Remember the April 2002 administrative suspension was not for cause under RSA 311:8, but was merely an administrative order deleting me from the privileges of membership in the bar, and contained no language prohibiting me from refraining from engaging in "any legal matter," as my present suspension order does. I submit that the April, 2002 administrative order left me with all of the rights and privileges of any citizen of good character within the state.

I presumed that I retained all of the rights as a citizen that I had prior to my admission to the bar.

I typed as he dictated; I made stylistic changes to his language and added one boilerplate paragraph to a Motion to reconsider, and affidavit and one idea.

The first issue is did my conduct violate a rule of law or constitute the unauthorized practice of law?

My Conduct did not violate a rule of law nor did it constitute the unauthorized practice of law in New Hampshire.

There is a paucity of law on what constitutes the unauthorized practice of law by a layperson in New Hampshire. This is especially the case since the definition of what constitutes the practice of law was repealed in New Hampshire in 1967. *New Hampshire Bar Journal, Impersonating a Lawyer, History of New Hampshire's Unauthorized Practice of Law Statute* (June 2002).⁴ In place of the repealed definition of the practice of law, were 2 loosely worded interconnected statutes. RSA 311:1; and RSA 311:7.

Under these statutes a citizen of good character may represent another before the courts⁵. However no person shall be permitted to commonly to practice as an attorney unless he has been admitted by the court and taken the oath as prescribed in RSA 311:6.”

RSA 311:1 provides that,

311:1 Right to Appear, etc. – A party in any cause or proceeding may appear, plead, prosecute or defend in his or her proper person, that is, pro se, or may be represented by any citizen of good character. For the purposes of this section, a citizen shall be presumed to be of good character unless demonstrated otherwise.

RSA 3311:6 provides that,

⁴ These statutes have created much confusion in New Hampshire as to what constitutes the unauthorized practice of law. There are several instances where courts or distinguished counsel have also been confused by the uncertain state of law in New Hampshire concerning the definition of the unlawful practice of law in New Hampshire.

See, Bilodeau v. Antal, 123 N.H. 39, 41 (1983) in which a very distinguished member of the New Hampshire bar in good faith also misconstrued the definition of the unauthorized practice of law, given the paucity of law on the matter, and given the repeal of the statutory definition of unlawful practice of law in New Hampshire in 1967. See also, State v. Settles, 129 NH 171 (1987) in which Justice DeClerico, when a Justice of the Superior Court, incorrectly granted a non-lawyer the power to represent a non-profit organization in all facets of a court proceedings so long as that non lawyer was a member or shareholder of the non profit organization, although this ruling was later reversed by the NH Supreme Court on appeal.

Finally, see, Thayer v. Thayer, New Hampshire Supreme Court, NO 99-805 (decided April 25, 2001)(in which a non-lawyer, Theodore Kamasinski, was allowed by the New Hampshire Supreme Court to represent the Petitioner before the New Hampshire Supreme Court in every facet of the appeal under S. Ct R. 33(2), even though the following year the State of New Hampshire successfully charged Kamasinski with the unauthorized practice of law.

⁵ This is fundamentally different from federal court and other states, where non-lawyers can never represent parties before it in any capacity. Holmes, et al v. Lynn, United States District for the District of New Hampshire, Docket No. 02-227-M, (Order dated June 14, 2002).

311:7 Prohibition. – No person shall be permitted commonly to practice as an attorney in court unless he has been admitted by the court and taken the oath prescribed in RSA 311:6.

As such under New Hampshire law a layperson, of good moral character, who is not otherwise authorized to practice law, may still represent another in court in the capacity of their attorney so long as he does not do so **“commonly.”**

In Holmes v. Holmes, Hillsborough County North Superior Court, Docket No. 00-M-815, Judge Lynn had the occasion to discuss what this term **“commonly”** meant in this context. Judge Lynn said,

“The key concept behind the term **“commonly”** is the notion that something occurs with a degree of regularity, in the ordinary course of events, and not as an isolated or unusual happening. This construction of the term commonly is completely consistent with the Supreme Court’s analysis in Bilodeau. There the court cited approvingly cases from other jurisdictions, which had held that statutes similar to RSA 311:1 were intended to allow **“only isolated instances of legal representation** by non-lawyers. 123 NH at 44. See also State v. Settle, 129 NH 171, 180 (1987)(RSA 311:1 merely provides an opportunity for lay counsel to appear in an individual case.” (Emphasis added). Holmes vs. Holmes, Judge Lynn decision, Hillsborough County North Superior Court Docket No. 00-M-815, October 15, 2001 at pg 19-20.

Judge Lynn went on to define when a layperson could represent another lawfully under the statute. Judge Lynn said,

“the statute was designed primarily to cover the situation, for example, of a person involved in litigation and unable to afford the cost of an attorney, who turns to a trusted friend or colleague for help in negotiating the legal system.” Holmes vs. Holmes, Judge Lynn decision, Hillsborough County North Superior Court Docket No. 00-M-815, October 15, 2001 at Pg 21

These statutes, along with Judge Lynn’s interpretation, are right on point. Here, I **was not acting commonly**. Not only did I not appear for Mr. Hikel, which I arguably had a right to do as a citizen under RSA 311:1, regardless of my suspension,⁶ but I did not go anywhere near that far. All I did was type Mr. Hikel’s dictation, make stylistic edits and add one boilerplate paragraph and one general idea. **Mr. Hikel remained pro se and filed the pleading himself. In fact, I had no control if or when he was to file the pleadings.** Except for this matter, I had no idea if, when or what Mr. Hikel filed with the court.⁷

⁶ Again, my suspension was not for cause and the order did not prohibit me from engaging in any legal matter for another, as my present suspension order did. Rather, it merely took away all of the rights associated with my membership in the bar. It did not add any other limitations.

⁷ To this day I do not know if he had signed or filed the Affidavit of Gary Moore.

Applying this precedent to the facts at bar, my conduct did not violate these statutes or rules of law concerning the unauthorized practice of law because (1) I did not file, plead or appear before the court, and (2) my conduct was only isolated, and non-reoccurring, at the request of a trusted friend. Indeed, it was arguably less than one instance of representation, involving just typing dictation, and certainly was not "where a person [held] himself out as being available to provide legal representation, where he appears in court with some regularity representing different clients, and where he charges for his services." Holmes vs. Holmes, Judge Lynn decision, Hillsborough County North Superior Court Docket No. 00-M-815, October 15, 2001 at Pg 21 Rather, I simply typed dictation of another, edited it for style and added on boilerplate paragraph and one idea for a close friend for free.

The next issue is whether my conduct violated or attempted to circumvent the Supreme Court's suspension order and the Supreme Court's power to regulate its bar.

I submit that by my conduct I was not attempting to circumvent the Supreme Court's suspension order and the Supreme Court's power to regulate the bar.

First and foremost, I did not intend to circumvent or violate the Supreme Court suspension order. Rather, **I shut my office down**, informed those clients who had pending matters in need of immediate attention that I was suspended from the practice of law, and was for all practical purposes out of business during the term of suspension, despite the loss of quite a bit of potential income.

Next, I did not believe nor do I believe now that by typing Hikel's Motion and affidavits that I was violating the Supreme Court's order.

I submit that the New Hampshire Supreme Court's order prohibited me from doing anything that a non-lawyer layperson is prohibited from doing. I still retained all of the rights of a non-lawyer citizen of good character.⁸

There are only three cases which state what a non-lawyer citizen of good character is prohibited from doing in New Hampshire, that is (1) State v. Settle, 129 NH 171 (1987)(non lawyer preparing and filing pleadings for clients in several cases throughout New Hampshire for compensation as his livelihood constitutes the unlawful practice of law); (2) Bilodeau v. Antal, 123 N.H. 39, 41 (1983)(non lawyer medical expert appearing as counsel in medical malpractice case for compensation, filing pleadings and conducting depositions with the intent of doing so in several other cases in the future constitutes the unlawful practice of law); (3) Tocci's Case, 140 NH 68 (1995)(suspended lawyer holding himself out to the public as an attorney, engaging in negotiations for clients, filing appearances and other pleadings for clients in court, etc constitutes the unlawful practice of law).

There are also 2 Superior Court cases that describe what is prohibited for a non-lawyer layperson, that is Holmes v. Holmes, supra. and Kamisinski v. State of New Hampshire, et al, Merrimack Superior Court, Docket No. 2001-E-0386 (decided January

⁸ For example, it is without question that, as a citizen, I could still represent myself pro se in any matter before any court within the State of New Hampshire regardless of my suspension under RSA 311:1. Is it thus not also true that I also retained the right under RSA 311:1 to represent a friend in an isolated instance?

30, 2002)(non lawyer filing of appearances and pleadings, conducts depositions and discovery for clients, "as a matter of course," throughout New Hampshire constitutes the unlawful practice of law in New Hampshire with the following active cases: Andrew M Hay, Rebecca Carroll, JoAnn Quinn Foster, Walter H Foster III, Judith O'Brien Thayer, Lisa Amy Holmes, Gary and Kim Scott, George LaBrie, and Cecilia de La Rossa).

In all of these cases the individual charged with unlawful practice of law (1) had a client with which he had only a professional relationship; and not a personal friendship; (2) filed pleadings with the court on behalf of the client; (3) charged clients for his services; and (4) did so as a matter of course and not as an isolated and unusual instance.

None of these cases are even remotely similar to the facts here. Rather, here

(1) **I did not hold myself out as an attorney** and Mr. Hikel knew that I was suspended,

(2) **I had a personal friendship with Hikel** that continues until this day;

(3) **I did not file the pleadings with the court; had no control over the filing** and indeed, one was not filed;

(4) **I did not charge for the services;** and

(5) **I acted under an isolated unusual circumstance (I had shut my office down for all other work and helped here only to help a friend in need⁹).**

This analysis is not contradicted by the court's rulings in Tocci's Case, 140 NH 68 (1995). In that case, the Court made it clear that **it was Tocci filing pleadings in court for clients as a matter of course that constitutes the practice of law**. By contrast here, **I did not file any pleading, had no control over the filing of pleadings**. Also here it was an isolated instance of helping a friend in need for free.

I am not arguing for an expansion of present law, nor am I arguing that I would follow the same course if placed in the same situation in the future

In conclusion, I am not arguing for an expansion of what is allowed for a suspended attorney. When one is suspended for cause an order is issued that allows for a 30-day period within which one is allowed to wind down their practice and insure that their clients found alternative counsel. In that instance, I wound down my business with clients, closed my doors and never did anything else for clients. However, in this instance, that was not possible because the order was issued summarily. I tried my best to help those in need within the parameters that I thought was allowed, while at the same time trying to comply with the court order. I believe that I did balance these two competing issues properly.

Other New Hampshire Superior Court Judges have implicitly accepted my arguments here that I could act in an isolated instance for another under RSA 311:1 to help a friend during my administrative suspension

⁹ But see, companion Professional Conduct Complaint involving Paula Amirault.

In a companion case, Judge Hampsey implicitly agreed with this analysis that during my administrative suspension I could act for another under RSA 311:1 even to the extent of filing an appearance individually for a single court event.

On May 24, 2002, I filed an appearance, individually, under RSA 311:1 for an arbitration hearing for another friend at the time¹⁰ and for that hearing only with the Clerk of the Hillsborough South Superior Court. My friend likewise filed her pro se appearance. The Clerk told my client and I that this appearance would have to be reviewed and accepted by the Court before we could go forward. Likewise, the arbitrator and opposing counsel, who were aware of my administrative suspension, did not want to proceed without the Court's blessing. After a while, the clerk came into the arbitration room and said that the Court had approved my appearance. During the arbitration, Judge Hampsey, who I believe knows me by sight, came into the arbitration room, as I sat there, personally and asked if everything was going well.

I submit that if Judge Hampsey believed, in good faith, that I could act under RSA 311:1 for another friend in an isolated instance (the appearance was expressly for the arbitration hearing alone and not for any other hearing or matter), I could likewise, in good faith, believe that I could help Hikel as I did.

This Declaration was signed by William C Sheridan this 1st day of December, 2005 and is intended to be and shall be a part of his Answer to #02-070 Professional Conduct Committee v. William C. Sheridan as if fully set forth therein signed under pains and penalty of perjury.

William C Sheridan

¹⁰ Unlike John Hikel, this friend, Paula Amirault and I, are no longer friends. However, during this time she was a very good personal friend of the family. For instance, she and her daughter had Christmas dinner with my wife and her daughter and I put the ornaments on our Christmas tree that year. Also, she stepped in to help my wife and I when we had the fire within our home in April of 2002.



NEW HAMPSHIRE SUPREME COURT
ATTORNEY DISCIPLINE OFFICE

SHERIDAN, WILLIAM C

ADVS.

PROFESSIONAL CONDUCT COMMITTEE

#02-073

ANSWER TO NOTICE OF CHARGES

NOW COMES, William C Sheridan, pro se, and hereby answers the Notice of Charges of the Professional Conduct Committee, as follows:

1. William C Sheridan is without information to either admit or deny the allegations contained in paragraph 1 of the NOC, and therefore denies the same. Supreme Court Rule 37A(III)(b)(2) and the NOC speak for themselves.
2. Sheridan denies the allegations contained in paragraph 2 and further states that the Supreme Court Orders speak for themselves. See Sheridan's Declaration which attached hereto as Exhibit A and incorporated herein by reference.
3. Sheridan denies paragraph 3, 4, 5, 7, 8, 9, 10, and 11, and further states that Sheridan admits that New Hampshire law prohibits the unauthorized practice of law. See Exhibit A for a discussion of New Hampshire law on this point. See also, RSA 311:1; and RSA 311: 7. Tocci's Case, 140 N.H. 68, 70 (1995) speaks for itself and its holding is expressly limited to a situation, not present here, where Tocci was "filing" pleadings for others in Court and "commonly" holding himself out to the public and the Court as one

who could act as a lawyer on the behalf of third parties. Sheridan submits that, by his conduct here, though he would never repeat it, he was neither violating the New Hampshire Supreme Court Order, nor engaging in the unlawful practice of law. Sheridan specifically denies that he "prepared" a pleading for Amirault's signature had a courier bring the pleading to Ms Amirault for signing, nor that I then had the pleading delivered to Court. Rather, Ms. Amirault, who is extremely smart and sophisticated, was told that I had been suspended and that I could not act as her attorney. At her request, and given the time restraints, I did help her draft a pleading (but she remained in control of its content) with her sitting right next to me, she signed the document in front of me and she was in control of its filing with the Court. Exhibit 4 speaks for itself and it contains my signature, is accurate, was prepared by me, and was delivered to Ms Amirault after it was filed. All of this was fully disclosed to the Court in the pleadings.

4 Sheridan admits paragraph 6 as the documents speak for themselves

5. Sheridan is without sufficient information to either admit or deny paragraphs 12 thru 17 and therefore denies the same. The Rules and documents speak for themselves.

6. Sheridan further states that due to laches and estoppel this matter should be dismissed insofar it has remained dormant for 3 years during which Sheridan has been unduly prejudiced by the delay. It was commenced one day after the Professional Conduct Committee rendered its decision in 2001-007 concerning Sheridan's reinstatement. Sheridan also states that there was inadequate notice in New Hampshire law to notify Sheridan whether his conduct was indeed prohibited and as such to impose

sanctions would be a denial of due process under the NH and US constitutions. Next, this matter is mute and discipline would serve no additional purpose insofar as Sheridan is presently suspended from the practice of law and has learned his lesson not to engage in this conduct again if faced with the same situation

WHEREFORE, Sheridan prays that the Hearings Panel dismiss the Committee's Notice of Charges and find no violation of ethical conduct or the Rules of Professional Conduct, and such other relief as is right and just.

William C Sheridan
Pro se
50 Nashua Road
Suite 102
Londonderry, NH 03053
603-661-4488

William C. Sheridan
Pro se

CERTIFICATE OF SERVICE

I, William C Sheridan, hereby certify that I served the within Answer by mailing it this 1st day of December, 2005 to

Landya B. McCafferty
New Hampshire Supreme Court
Disciplinary Counsel
4 Park Street
Suite 304
Concord, NH 03301
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William C Sheridan

DECLARATION OF WILLIAM C. SHERIDAN IN RESPONSE TO THE
ALLEGATIONS CONTAINED IN THE NOTICE OF CHARGES AGAINST
WILLIAM C SHERIDAN BY THE PROFESSIONAL CONDUCT COMMITTEE
DATED OCTOBER 7, 2005

In March of 2002, due to my failure to timely respond to an order to show cause why I should not be suspended from the practice of law insofar as I had failed to comply with my CLE requirements timely, I was summarily suspended from the practice of law in New Hampshire.¹ I immediately and timely filed a motion to reconsider, completed my CLE requirements and moved for reinstatement. The New Hampshire Supreme Court expressly accepted my motion for reconsideration and formally requested that the CLE Committee respond to it if they desired. I was reinstated on May 24, 2002. No decision was ever made on my motion to reconsider.²

Other than notice that I had been suspended from the practice of law in New Hampshire, and the consequences necessary flowing therefrom, no further order of the court was issued prohibiting me from engaging in any act that I, as a normal citizen, had a right to engage in.³

As to Paula Amirault's case specifically, I notified the court and Paula of my suspension, withdrew from the case, and told Paula that I could not act as an attorney for her, which she understood. Paula filed a pro se appearance.

Paula later informed me that she had been unable to obtain alternative counsel, due to the short time frame involved, and asked if I could help her. She was a close friend of mine (she is no longer a friend of mine) and I agreed to so long as she was aware that I could not represent her and the bulk of what was said must be hers etc. She had helped me work on my case which involved many issues similar to hers and was very familiar with the law. She told me what she wanted said, but I did frame how it was presented.

¹ What is critical here are two facts. First, unlike most suspensions, this administrative suspension was not carried out under RSA 311:8. Second, the administrative suspension was not premised upon any finding of a defect in my moral character and thus, unlike other suspension orders, did not affect my qualifications to act as a citizen under RSA 311:1.

² In March 2002 an order to show cause was issued. Thereafter my home had a serious fire on April 7, 2002. I did not return to practice until about April 22, 2002. On April 24, 2002, due to my failure to respond to the order to show cause, a suspension order was summarily issued. I immediately moved to have that order reconsidered due to the fire in my home. My motion for reconsideration remains outstanding to this day. (Query: did the suspension order go in effect on April 24, 2002 or, given my motion for reconsideration, did it remain interlocutory or subject to this day to retraction). Nonetheless, I immediately shut my office down and stopped practicing law.

³ Remember the April 2002 administrative suspension was not for cause under RSA 311:8, but was merely an administrative order deleting me from the privileges of membership in the bar, and contained no language prohibiting me from refraining from engaging in "any legal matter," as my present suspension order does. I submit that the April, 2002 administrative order left me with all of the rights and privileges of any citizen of good character within the state.

I presumed that I retained all of the rights as a citizen that I had prior to my admission to the bar.

She was aware of virtually all of the cases cited, except my citation of the Federalist Papers which was my idea.

The first issue is did my conduct violate a rule of law or constitute the unauthorized practice of law?

My Conduct did not violate a rule of law nor did it constitute the unauthorized practice of law in New Hampshire.

There is a paucity of law on what constitutes the unauthorized practice of law by a layperson in New Hampshire. This is especially the case since the definition of what constitutes the practice of law was repealed in New Hampshire in 1967. *New Hampshire Bar Journal, Impersonating a Lawyer, History of New Hampshire's Unauthorized Practice of Law Statute* (June 2002).⁴ In place of the repealed definition of the practice of law, were 2 loosely worded interconnected statutes. RSA 311:1; and RSA 311:7.

Under these statutes a citizen of good character may represent another before the courts⁵. However no person shall be permitted to commonly to practice as an attorney unless he has been admitted by the court and taken the oath as prescribed in RSA 311:6.”

RSA 311:1 provides that,

311:1 Right to Appear, etc. – A party in any cause or proceeding may appear, plead, prosecute or defend in his or her proper person, that is, pro se, or may be represented by any citizen of good character. For the purposes of this section, a citizen shall be presumed to be of good character unless demonstrated otherwise.

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⁴ These statutes have created much confusion in New Hampshire as to what constitutes the unauthorized practice of law. There are several instances where courts or distinguished counsel have also been confused by the uncertain state of law in New Hampshire concerning the definition of the unlawful practice of law in New Hampshire.

See, Bilodeau v. Antal, 123 N.H. 39, 41 (1983) in which a very distinguished member of the New Hampshire bar in good faith also misconstrued the definition of the unauthorized practice of law, given the paucity of law on the matter, and given the repeal of the statutory definition of unlawful practice of law in New Hampshire in 1967. See also, State v. Settles, 129 NH 171 (1987) in which Justice DeClerico, when a Justice of the Superior Court, incorrectly granted a non-lawyer the power to represent a non-profit organization in all facets of a court proceedings so long as that non lawyer was a member or shareholder of the non profit organization, although this ruling was later reversed by the NH Supreme Court on appeal.

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⁵ This is fundamentally different from federal court and other states, where non-lawyers can never represent parties before it in any capacity. Holmes, et al v. Lynn, United States District for the District of New Hampshire, Docket No. 02-227-M, (Order dated June 14, 2002).

311:7 Prohibition. – No person shall be permitted commonly to practice as an attorney in court unless he has been admitted by the court and taken the oath prescribed in RSA 311:6.

As such under New Hampshire law a layperson, of good moral character, who is not otherwise authorized to practice law, may still represent another in court in the capacity of their attorney so long as he does not do so “**commonly.**”

In Holmes v. Holmes, Hillsborough County North Superior Court, Docket No. 00-M-815, Judge Lynn had the occasion to discuss what this term “**commonly**” meant in this context. Judge Lynn said,

“The key concept behind the term “**commonly**” is the notion that something occurs with a degree of regularity, in the ordinary course of events, and not as an isolated or unusual happening. This construction of the term commonly is completely consistent with the Supreme Court’s analysis in Bilodeau. There the court cited approvingly cases from other jurisdictions, which had held that statutes similar to RSA 311:1 were intended to allow “**only isolated instances of legal representation** by non-lawyers. 123 NH at 44. See also State v. Settle, 129 NH 171, 180 (1987)(RSA 311:1 merely provides an opportunity for lay counsel to appear in an individual case.” (Emphasis added). Holmes vs. Holmes, Judge Lynn decision, Hillsborough County North Superior Court Docket No. 00-M-815, October 15, 2001 at pg 19-20.

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“**the statute was designed primarily to cover the situation, for example, of a person involved in litigation and unable to afford the cost of an attorney, who turns to a trusted friend or colleague for help** in negotiating the legal system.” Holmes vs. Holmes, Judge Lynn decision, Hillsborough County North Superior Court Docket No. 00-M-815, October 15, 2001 at Pg 21

These statutes, along with Judge Lynn’s interpretation, are right on point. Here, I **was not acting commonly**. Not only did I not appear for Mr. Paula, which I arguably had a right to do as a citizen under RSA 311:1, regardless of my suspension,⁶ but I did not go anywhere near that far. All I did was type Mr. Paula’s dictation, make stylistic edits and add one boilerplate paragraph and one general idea. **Mr. Paula remained pro se and filed the pleading himself. In fact, I had no control if or when she was to file some of the pleadings.**

Applying this precedent to the facts at bar, my conduct did not violate these statutes or rules of law concerning the unauthorized practice of law because (1) I did not

⁶ Again, my suspension was not for cause and the order did not prohibit me from engaging in any legal matter for another, as my present suspension order did. Rather, it merely took away all of the rights associated with my membership in the bar. It did not add any other limitations. -

file, plead or appear before the court, and (2) my conduct was only isolated, and non-reoccurring, at the request of a trusted friend. Indeed, it was arguably less than one instance of representation, involving just typing dictation, and certainly was not “where a person [held] himself out as being available to provide legal representation, where he appears in court with some regularity representing different clients, and where he charges for his services.” Holmes vs. Holmes, Judge Lynn decision, Hillsborough County North Superior Court Docket No. 00-M-815, October 15, 2001 at Pg 21 Rather, I simply typed dictation of another, edited it for style and added on boilerplate paragraph and one idea for a close friend for free.

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First and foremost, I did not intend to circumvent or violate the Supreme Court suspension order. Rather, **I shut my office down**, informed those clients who had pending matters in need of immediate attention that I was suspended from the practice of law, and was for all practical purposes out of business during the term of suspension, despite the loss of quite a bit of potential income.

Next, I did not believe nor do I believe now that by typing Paula’s Motion that I was violating the Supreme Court’s order.

I submit that the New Hampshire Supreme Court’s order prohibited me from doing anything that a non-lawyer layperson is prohibited from doing. I still retained all of the rights of a non-lawyer citizen of good character.⁷

There are only three cases which state what a non-lawyer citizen of good character is prohibited from doing in New Hampshire, that is (1) State v. Settle, 129 NH 171 (1987)(non lawyer preparing and filing pleadings for clients in several cases throughout New Hampshire for compensation as his livelihood constitutes the unlawful practice of law); (2) Bilodeau v. Antal, 123 N.H. 39, 41 (1983)(non lawyer medical expert appearing as counsel in medical malpractice case for compensation, filing pleadings and conducting depositions with the intent of doing so in several other cases in the future constitutes the unlawful practice of law); (3) Tocci’s Case, 140 NH 68 (1995)(suspended lawyer holding himself out to the public as an attorney, engaging in negotiations for clients, filing appearances and other pleadings for clients in court, etc constitutes the unlawful practice of law).

There are also 2 Superior Court cases that describe what is prohibited for a non-lawyer layperson, that is Holmes v. Holmes, supra. and Kamisinski v. State of New Hampshire, et al, Merrimack Superior Court, Docket No. 2001-E-0386 (decided January 30, 2002)(non lawyer filing of appearances and pleadings, conducts depositions and discovery for clients, “as a matter of course,” throughout New Hampshire constitutes the

⁷ For example, it is without question that, as a citizen, I could still represent myself pro se in any matter before any court within the State of New Hampshire regardless of my suspension under RSA 311:1. Is it thus not also true that I also retained the right under RSA 311:1 to represent a friend in an isolated instance?

unlawful practice of law in New Hampshire with the following active cases: Andrew M Hay, Rebecca Carroll, JoAnn Quinn Foster, Walter H Foster III, Judith O'Brien Thayer, Lisa Amy Holmes, Gary and Kim Scott, George LaBrie, and Cecilia de La Rossa).

In all of these cases the individual charged with unlawful practice of law (1) had a client with which he had only a professional relationship; and not a personal friendship; (2) filed pleadings with the court on behalf of the client; (3) charged clients for his services; and (4) did so as a matter of course and not as an isolated and unusual instance.

None of these cases are even remotely similar to the facts here. Rather, here

- (1) **I did not hold myself out as an attorney** and Mr. Paula knew that I was suspended,
- (2) **I had a personal friendship with Paula;**
- (3) **Paula filed the pleadings with the court;**
- (4) **I did not charge for the services; and**
- (5) **I acted under *an isolated unusual circumstance* (I had shut my office down for all other work and helped here only to help a friend in need⁸).**

This analysis is not contradicted by the court's rulings in Tocci's Case, 140 NH 68 (1995). In that case, the Court made it clear that **it was Tocci filing pleadings in court for clients as a matter of course that constitutes the practice of law**. By contrast here, **I did not file any pleading**. Also here it was an isolated instance of helping a friend in need for free.

I am not arguing for an expansion of present law, nor am I arguing that I would follow the same course if placed in the same situation in the future

In conclusion, I am not arguing for an expansion of what is allowed for a suspended attorney. I would never do this again. When one is suspended for cause an order is issued that allows for a 30-day period within which one is allowed to wind down their practice and insure that their clients found alternative counsel. In that instance, I wound down my business with clients, closed my doors and never did anything else for clients. However, in this instance, that was not possible because the order was issued summarily. I tried my best to help those in need within the parameters that I thought was allowed, while at the same time trying to comply with the court order.

Other New Hampshire Superior Court Judges have implicitly accepted my arguments here that I could act in an isolated instance for another under RSA 311:1 to help a friend during my administrative suspension

Judge Hampsey implicitly agreed with this analysis that during my administrative suspension I could act for Paula under RSA 311:1 even to the extent of filing an appearance individually for a single court event.

On May 24, 2002, I filed an appearance, individually, under RSA 311:1 for an arbitration hearing for Paula at the time⁹ and for that hearing only with the Clerk of the

⁸ But see, companion Professional Conduct Complaint involving Paula Amirault.

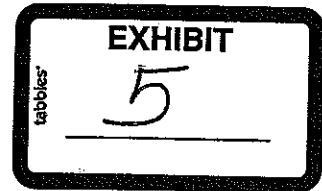
Hillsborough South Superior Court. Paula likewise filed her pro se appearance. The Clerk told my client and I that this appearance would have to be reviewed and accepted by the Court before we could go forward. Likewise, the arbitrator and opposing counsel, who were aware of my administrative suspension, did not want to proceed without the Court's blessing. After a while, the clerk came into the arbitration room and said that the Court had approved my appearance. During the arbitration, Judge Hampsey, who I believe knows me by sight, came into the arbitration room, as I sat there, personally and asked if everything was going well.

I submit that if Judge Hampsey believed, in good faith, that I could act under RSA 311:1 for Paula in an isolated instance (the appearance was expressly for the arbitration hearing alone and not for any other hearing or matter), I could likewise, in good faith, believe that I could help Paula as I did.

This Declaration was signed by William C Sheridan this 1st day of December, 2005 and is intended to be and shall be a part of his Answer to #02-073 Professional Conduct Committee v. William C. Sheridan as if fully set forth therein signed under pains and penalty of perjury.

William C Sheridan

⁹ Unlike John Paula, this friend, Paula Amirault and I, are no longer friends. However, during this time she was a very good personal friend of the family. For instance, she and her daughter had Christmas dinner with my wife and her daughter and I put the ornaments on our Christmas tree that year. Also, she stepped in to help my wife and I when we had the fire within our home in April of 2002.



NEW HAMPSHIRE SUPREME COURT
HEARINGS COMMITTEE

Sheridan, William C.

advs.

Professional Conduct Committee

#02-070

Sheridan, William C.

advs.

Professional Conduct Committee

#02-073

STIPULATION

Disciplinary Counsel, Landya B. McCafferty, and Respondent, William C.

Sheridan, hereby submit this Stipulation in the above-referenced cases.

I. Stipulation of Facts

CASE #02-070

1. By Order dated April 24, 2002, the New Hampshire Supreme Court suspended Mr. Sheridan from the practice of law for failure to comply with Continuing Legal Education ("CLE") requirements. On May 24,

2002, the Court lifted that suspension when the MCLE Board informed the Court that Mr. Sheridan had fulfilled his CLE requirements.

2. Between April 24 through May 24, 2002, while Mr. Sheridan was under suspension, Mr. Sheridan nonetheless continued to provide legal representation to two clients.
3. Specifically, Mr. Sheridan assisted John Hikel in drafting and serving on opposing counsel two pleadings dated May 17, 2003, in a case then-pending before the Hillsborough County Superior Court-North.
4. Both pleadings contain the following "Certificate of Service":

I William C. Sheridan, hereby certify that I served the within Hikel's Affidavit on the defendant by delivering it in hand to defendant's counsel Stewart S. Richmond, Jr., at McLane, Graf, Raulerson & Middleton, 900 Elm Street, PO Box 326, Manchester, NH 03105-0326 this 17th day of May, 2002.

5. Mr. Sheridan signed each "Certificate of Service" as "William C. Sheridan, Esq." Mr. Hikel filed the pleadings on a pro se basis.

CASE #02-073

6. By Order dated April 24, 2002, the New Hampshire Supreme Court suspended Mr. Sheridan from the practice of law for failure to comply with Continuing Legal Education ("CLE") requirements. On May 24, 2002, the Court lifted that suspension when the MCLE Board informed the Court that Mr. Sheridan had fulfilled his CLE requirements.
7. Between April 24 through May 24, 2002, while Mr. Sheridan was under suspension, he continued to represent Ms. Amirault.

8. Specifically, Mr. Sheridan drafted one pleading and assisted Paula Amirault in drafting another pleading in her appeal before the New Hampshire Supreme Court, case no. 2002-133, Alain Valles v. Paula Martin.
9. The first pleading was filed on a pro se basis on May 9, 2002, and was entitled "Defendant's Motion For Reconsideration Of It's [sic] Order Denying Defendant's Notice Of Appeal Under Supreme Court Rule 7(1), Especially As To Federal Questions Expressly Raised Below And Preserved For Further Review."
10. Thereafter, on May 14, 2002, Mr. Sheridan filed the second pleading, an affidavit on Ms. Amirault's behalf in the same case entitled, "Affidavit Of William C. Sheridan In Which He Seeks To Relay To The Court As An Individual The Fact This Morning Paula Martin Amirault Has Experienced A Severe Allergic Reaction That Made It Impossible For Her To Submit Her Supplemental Motion As Requested Yesterday And That She Has Asked Me To Relay To The Court Her Request That She Be Granted Additional Time To Supplement."
11. Mr. Sheridan's affidavit contained the following "Certificate of Service":

I William C. Sheridan hereby certify that I served the within Motion to Supplement Motion for Reconsideration on the following in the above referenced matter this 13th day of May, 2002 by mailing it as follows: . . .

Mr. Sheridan signed the "Certificate of Service" as "William C. Sheridan."

II. Stipulation as to Rules Violated

CASE #02-070

Rule 1.16(a)(1): Terminating Representation

12. Upon his April 24, 2002, suspension from the practice of law, Mr. Sheridan should have withdrawn from the representation of Mr. Hikel, and halted any further work as Mr. Hikel's attorney.
13. While under suspension, however, Mr. Sheridan continued to provide legal representation to Mr. Hikel by assisting Mr. Hikel in drafting and serving the two pleadings discussed above, and including therein the "Certificate of Service" which Mr. Sheridan signed on both.
14. As Mr. Sheridan was under suspension at this time, he was prohibited from providing any further legal representation to Mr. Hikel. See RSA 311. See also Tocci's Case, 140 N.H. 68, 70 (1995).
15. By continuing to represent Mr. Hikel while under suspension, Mr. Sheridan violated RSA 311:10.
16. Mr. Sheridan's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.16(a)(1).

Rule 8.4(a): General Rule

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

CASE #02-073

Rule 1.16(a)(1): Terminating Representation

18. Upon his April 24, 2002, suspension from the practice of law, Mr. Sheridan should have withdrawn from the representation of Ms. Amirault and halted any further work as Ms. Amirault's attorney.
19. While under suspension, however, Mr. Sheridan continued to provide legal representation to Ms. Amirault. As discussed in more detail above, Mr. Sheridan drafted an affidavit and assisted Ms. Amirault in drafting a motion for reconsideration.
20. As Mr. Sheridan was under suspension at this time, he was prohibited from providing any further legal representation to Ms. Amirault. See RSA 311. See also Tocci's Case, 140 N.H. 68, 70 (1995).
21. By continuing to represent Ms. Amirault while under suspension, Mr. Sheridan violated RSA 311:10.
22. Mr. Sheridan's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.16(a)(1).

Rule 8.4(a): General Rule

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

III. Stipulation as to Sanction

24. Disciplinary Counsel and Mr. Sheridan jointly recommend a six-month suspension (with retroactive credit for "time-served") as the appropriate

sanction in this matter. Specifically, Disciplinary Counsel and Mr. Sheridan recommend that the Committee impose a six month suspension with an effective date of December 12, 2002, to run concurrently with Mr. Sheridan's suspension in #00-N-099 (LD-2001-007). A six month retroactive suspension would serve the purposes of attorney discipline.

25. Lawyer discipline is not intended to be punishment. See Coffey's Case, 880 A.2d 403, 412 (N.H. 2005). Rather, 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." Id. at 412-13 (internal quotation marks omitted).
26. "The sanction . . . must be sufficient to satisfy those goals. . . . It must take into account both the severity of the misconduct and the mitigating circumstances disclosed by the record." Basbanes' Case, 141 N.H. 1, 6 (1996) (internal quotations and citations omitted).
27. Every case is to be judged "on its own facts and circumstances." See Wolterbeek's Case, No. LD-2005-002, slip op. at 2 (N.H., October 31, 2005) (citing Flint's Case, 133 N.H. 685, 689 (1990)). See also ABA Center for Professional Responsibility, Standards for Imposing Lawyer Sanctions § 9.1 (1992) (hereinafter "Standards") ("Each disciplinary case involves unique facts and circumstances. In striving for fair disciplinary sanctions, consideration must necessarily be given to the facts pertaining to the professional misconduct and to any aggravating or mitigating

factors”). In imposing sanctions in attorney discipline matters, the Court looks to the Standards “for guidance.” Wolterbeek’s Case, No. LD-2005-002, slip op. at 2.

28. The Standards “list the following facts for consideration in imposing sanctions: ‘(a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by the lawyer’s misconduct; and (d) the existence of aggravating or mitigating factors.’ ” Wolterbeek’s Case, No. LD-2005-002, slip op. at 2 (quoting Standards § 3.0).
29. “In applying these factors, the first step is to categorize the respondent’s misconduct and identify the appropriate sanction. After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.” See Wolterbeek’s Case, No. LD-2005-002, slip op. at 2.
30. Section 8.1 of the Standards generally addresses appropriate sanctions to be imposed when a lawyer continues to represent clients while under suspension. “The presumptive sanction for practicing law while suspended is disbarment.” Tocci’s Case, 140 N.H. 68, 71 (1995) (citing Standards § 8.1 comment at 47 (1991)).
31. In Tocci’s Case, however, the Court recognized that a lesser sanction was appropriate where the underlying suspension was administrative and where the conduct caused no harm to the clients. See id. Both of these mitigating factors are present here. Mr. Sheridan’s underlying

suspension was administrative and of short duration, and his conduct caused no harm to his clients.

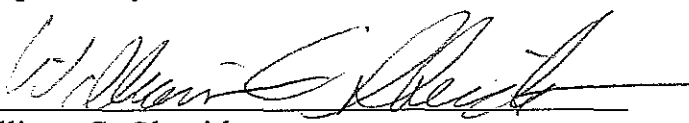
32. Perhaps most importantly, however, Mr. Sheridan's motive in both instances, while misguided, was well-intentioned. Mr. Sheridan neither sought nor received compensation from either Mr. Hikel or Ms. Amirault.
33. The aggravating factor in this case is Mr. Sheridan's lengthy disciplinary record. See Standards § 9.22(a). A complete copy of Mr. Sheridan's record is attached hereto as Exhibit A.
34. Indeed, Mr. Sheridan is currently under suspension for misconduct in #00-N-099 (LD-2001-007).
35. In light of the facts of these two particular cases as well as the aggravating and mitigating factors, a six month suspension retroactive to December 20, 2002, the effective date of his suspension in #00-N-099 (LD-2001-007), and to run concurrently with that suspension, would serve the goals of attorney discipline.

IV. Stipulation as to Costs

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

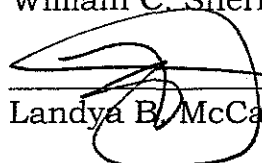
Respectfully submitted

Dated: January 7, 2006

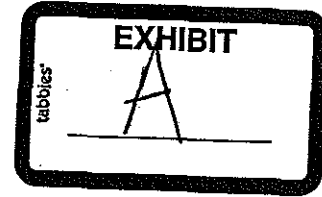


William C. Sheridan

Dated: January 11, 2006



Landya B. McCafferty, Disciplinary Counsel



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Supreme Court of New Hampshire.
SHERIDAN'S CASE.
No. LD-2001-007.

Argued Sept. 19, 2002.
Opinion Issued Dec. 6, 2002.

Committee on Professional Conduct filed petition against attorney requesting that he be suspended for one year from practice. After hearing, judicial referee, Dunn, J., recommended that attorney be suspended for one year. The Supreme Court, Broderick, J., adopted committee's recommendation, and held that: (1) attorney's conduct in failing to promptly incorporate client's business, and misrepresenting to client that business had been properly incorporated warranted one year suspension; (2) ambiguity in forms regarding whether incorporation had been rejected was not mitigating factor; (3) evidence that attorney had a mental disorder did not justify lenient sanction; and (4) evidence was insufficient to establish that attorney's mental disorder was disability under ADA.

Ordered accordingly.

West Headnotes

[1] Attorney and Client ↪58
45k58 Most Cited Cases

Attorney's conduct in failing to promptly incorporate client's business, failing to provide case file as requested by clients, failing to promptly return funds held in escrow, and failing to return sums received for legal services, warranted one year suspension, where attorney's apparent mental health problems were not factor in mitigation, and attorney had prior disciplinary record. Rules of Prof. Conduct, Rules 1.1(a), 1.1(b)(5), 1.1(c)(4), 1.3(a), 1.4(a), 1.16(d), 8.4(a).

[2] Attorney and Client ↪57
45k57 Most Cited Cases

The Supreme Court retains the ultimate authority to

determine the appropriate sanction for a violation of the rules governing attorney conduct.

[3] Attorney and Client ↪58
45k58 Most Cited Cases

In attorney discipline matters, the Supreme Court judges each case on its own facts and circumstances.

[4] Attorney and Client ↪58
45k58 Most Cited Cases

In attorney discipline actions, the Supreme Court's ultimate aim in fashioning a sanction is not to inflict punishment on the offending attorney; rather, the Court seeks to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future.

[5] Attorney and Client ↪58
45k58 Most Cited Cases

Question of whether or not returned articles of incorporation lacked clarity in communicating to attorney their rejected status was not factor to be considered in mitigation in attorney discipline proceeding, where attorney received uncashed filing fee check and that should have been an obvious indicator that his effort to incorporate failed.

[6] Attorney and Client ↪58
45k58 Most Cited Cases

Evidence that attorney had a mental disorder with a probable biological basis, while offering some explanation for his ethical lapses, did not justify lenient sanction, where mental disorder did not account for much of misconduct underlying ethical violations; attorney told clients that their business had been incorporated one week before he had even filed any documents with the Secretary of State, attorney never noticed that uncashed filing fee check was returned to him, or if he did, he failed to understand its significance, and once attorney finally discovered incorporation documents had been rejected, he failed to appreciate urgency of situation and made no attempt to immediately notify clients or remedy his mistake.

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[7] Attorney and Client ~~53~~53(2)

45k53(2) Most Cited Cases

Independent psychiatric evaluation submitted in attorney discipline proceeding, which stated that attorney suffered from mental disorder with probable biological basis that could benefit from psychiatric treatment, but did not provide definitive diagnosis of attorney's apparent mental disorder, was insufficient to establish existence of a disability under Americans with Disabilities Act (ADA), Americans with Disabilities Act of 1990, § 2(2), 42 U.S.C.A. § 12102(2).

**450 *596 McNeill, Taylor & Gallo, P.A., of Dover (Robert J. Gallo on the brief and orally), for the professional conduct committee.

William C. Sheridan, of Londonderry, by brief and orally, pro se.

BRODERICK, J.

In August 2001, the Supreme Court Committee on Professional Conduct (Committee) filed a petition with this court against the respondent, William C. Sheridan, requesting that he be suspended for one year from the practice of law. We referred the petition to a Judicial Referee (*Dunn, J.*) for hearing and recommendation. Thereafter, the Committee served a request for numerous factual admissions upon the respondent. When he failed to respond, the referee issued, upon motion, an order declaring the requests admitted, which we subsequently approved. In sum, the admitted facts constituted violations of Rules 1.1(a), 1.1(b)(5), 1.1(c)(4), 1.3(a), 1.4(a), 1.16(d) and 8.4(a) of the New Hampshire Rules of Professional Conduct (the Rules). After a hearing on sanctions, the referee recommended that the respondent be suspended from the practice of law in New Hampshire for one year. We adopt the referee's recommendation.

[1] The admitted facts are as follows. In the spring of 1999, two individuals sought the respondent's legal services to incorporate their business. The respondent, who was admitted to practice law in New Hampshire and Massachusetts, agreed to incorporate the business in Massachusetts. The respondent generated Articles of Incorporation from his computer, and on May 6, 1999, the incorporators signed the Articles and paid the respondent \$1,300.00 for legal services and

filing fees. He informed them that he would file the Articles in Massachusetts and obtain a corporate minute book and seal. On May 20, he provided the corporate minute book and seal to the *597 incorporators and told them that they were incorporated. They then began to operate their business. The respondent, however, did not deliver the original signed Articles to the Massachusetts Secretary of State until May 28.

Massachusetts rejected the corporate filing, and returned the Articles as well as the filing fee check to the respondent. The respondent's second attempt to incorporate the business also met with rejection. However, he did not realize that his second attempt had not been successful until ten or eleven months later. He never contacted the incorporators to notify them that the corporation was not properly formed.

The incorporators operated their business for nearly a year before learning that their incorporation papers had been rejected when Massachusetts refused to accept their 1999 corporate tax return. In May 2000, they confronted the respondent with their problem, and it took him approximately ten days to prepare new incorporation **451 documents. In the meantime, the incorporators retained another lawyer to complete the incorporation process and requested the respondent to provide their case file to new counsel. He failed to do so because he could not find it.

In July 2000, the incorporators filed a professional conduct complaint against the respondent with the Committee. More than eight months later, the respondent supplied the case file to the Committee but still failed to provide the file to his former clients or their new counsel. Further, sometime after the complaint was filed, the respondent discovered \$200.00 in his escrow account representing the original filing fee rejected by Massachusetts, which he returned to his former clients. The Committee conducted a hearing in May 2001, but the respondent failed to bring any files or bank records with him. At the hearing, the incorporators identified approximately \$5,000 in damages caused by the respondent's failure to properly incorporate their business. Beyond returning the \$200.00 filing fee, however, the respondent has not returned any of the sums

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received for legal services, nor has he made any payments toward the damages caused by his misconduct.

The respondent neither disputes the truth of the facts deemed admitted, nor does he challenge the referee's conclusion that the admitted facts constitute violations of the following Rules:

- *598 1.1(a)--failing to represent clients in a competent manner;
- 1.1(b)(5)--failing to pay attention to schedules and details in incorporating the client's business, so as to assure that the legal matters undertaken would be completed with no avoidable harm to the client's interest;
- 1.1(c)(4)--failing to undertake actions with regard to the incorporation in a timely and effective manner;
- 1.3(a)--failing to act with reasonable promptness and diligence;
- 1.4(a)--failing to keep the clients reasonably informed regarding the status of the matter;
- 1.16(d)--failing to return the clients' file at the termination of the representation; and
- 8.4(a)--engaging in conduct in violation of the Rules of Professional Conduct.

The respondent contends that the referee's recommended sanction of a one-year suspension is unduly harsh. He argues that the referee erroneously deprived him of his right to offer evidence to supplement or explain the admitted facts in order to mitigate his misconduct. In addition, based upon the results of an independent psychiatric evaluation which he presented to the referee, the respondent asserts that he has a mental disorder that serves as a mitigating factor and entitles him to reasonable accommodation under the Americans with Disabilities Act (ADA). See 42 U.S.C. §§ 12101 *et seq.* (2000). He asserts that the most appropriate sanction would be some form of probation during which he would be required to limit the number of cases he handles in order to provide him "an opportunity to develop his practice, get secretarial help and prove that he [can] perform with attention to detail."

[2][3][4] "We retain the ultimate authority to determine the appropriate sanction for a violation of the rules governing attorney conduct." *Morgan's Case*, 143 N.H. 475, 476-77, 727 A.2d 985 (1999).

We judge each case on its own facts and circumstances. *Id.* at 477, 727 A.2d 985. Our ultimate aim in fashioning a sanction is not to inflict punishment on the offending attorney; rather, we seek "to protect the public, maintain public confidence in the bar, preserve the integrity of the legal **452 profession, and prevent similar conduct in the future." *Id.* (quotation omitted).

[5] We first address the respondent's contention that the referee erroneously denied him the right to present evidence supplementing and explaining the admitted facts in order to demonstrate relevant mitigating circumstances. Assuming, without deciding, that he had such a right and that he properly preserved it for our review, we conclude that none of the additional evidence described by the respondent mitigates his misconduct.

Specifically, the respondent asserts that the Articles returned to him by Massachusetts bore notations on the first and last pages reflecting initial approval. He contends that "[l]ater, Massachusetts revoked its acceptance of the Articles [by] whit[ing] out [the] acceptance on the last page" but that "acceptance remained noted on the first page." According to the *599 respondent, the Articles were returned to him without a cover page and, because he did not have a secretary, he noticed only the acceptance on the first page and not the rejection on the last page. He claims that in late April or early May 2000, because he had hired a secretary, he discovered that the Articles had actually been rejected. The incorporators soon thereafter confronted him with the defective incorporation, and, he contends, within the next ten days, he spoke with them on several occasions, providing them with new incorporation documents on the tenth day.

The relevance of much of this evidence to the issue of sanctions is questionable. The respondent's initial misperception of the status of the Articles, given the apparent discrepant notations on the first and last pages, bears more on the issue of whether he is culpable in the first instance for failing to pay attention to detail (Rule 1.1(b)(5)). Likewise, his discovery of the defective incorporation shortly before the incorporators confronted him relates to whether he failed to act with reasonable promptness and diligence (Rule 1.3(a)), or failed to keep his clients reasonably informed (Rule 1.4(a)). These

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issues are probative of whether the respondent violated the Rules of Professional Conduct.

In any event, none of the evidence mitigates the respondent's misconduct. Whether or not the returned incorporation documents lacked clarity in communicating their rejected status, his receipt of the uncashed filing fee check should have been an obvious indicator that his effort to incorporate failed. The respondent, however, did not even notice that the check had been returned because he only first discovered the \$200 in his escrow account after the incorporators filed an ethical complaint against him. Further, regarding his late discovery of the failed incorporation, the respondent admitted that he "has no explanation for his failure to notify the incorporators immediately upon his discovery that [the corporation] had not been properly incorporated." Indeed, since it was the incorporators who first confronted him on his failed incorporation effort, we have no way of knowing just how long the respondent would have waited before contacting them or taking steps to remedy his mistake. The delay was unacceptable given the incorporators' continued exposure to personal liability with each passing day.

We do not consider the evidence the respondent sought to introduce regarding his contact with the incorporators during the ten-day period following their phone call to him in May 2000. Any evidence tending to demonstrate his attempt to take immediate steps to remedy his mistake contradicts two admissions of fact: (1) "After the incorporators notified [the respondent] that their corporate tax return had been rejected because [their business] was not a corporation, [the respondent] did not **453 take *600 immediate action to rectify the situation"; and (2) "When contacted by the incorporators in May of 2000 concerning the fact that [the business] was not incorporated, [the respondent] became aware of the urgency of the situation, but failed to take immediate action to rectify the situation."

The respondent also seeks to explain his admission that he has made no payment to the incorporators, excluding the \$200.00 filing fee. He asserts that he has always been willing to reimburse the incorporators and the corporation for damages caused by his conduct but that they have failed to

provide him with an itemized list of actual out-of-pocket expenses. The admitted facts belie this claim.

At a May 2001 hearing before the Committee, the incorporators identified approximately \$5,000 in damages caused by the respondent's failure to incorporate their business. These damages were attributed to additional accounting and legal expenses relating to incorporation services provided by new counsel and to the state and federal tax returns filed for 1999. The only unknown damages presented at the May 2001 hearing were: (1) any interest and penalties Massachusetts might assess for filing the 1999 corporate tax return before incorporation; and (2) any personal liability for claims that may be incurred by the incorporators which otherwise would have been incurred by the corporation. The estimated \$5,000 in damages was sufficiently precise for the respondent to have made some payment. To date, more than one and one-half years later, no payment in any amount has been made.

[6] As a final mitigator, the respondent claims that he has "a mental disorder with a probable biological basis" and that psychiatric medication and use of a secretary would "ameliorate the problem." He claimed to be taking the appropriate medication and blames his lack of a secretary on the Committee for taking past action against him which "wrongfully chilled his ability to advertise [for Bankruptcy clients, his primary area of practice], obtain income and thus obtain a secretary." We conclude that while his apparent mental disorder may offer some explanation for his ethical lapses, it does not justify a lenient sanction.

During the sanctions hearing, the respondent submitted an independent psychiatric evaluation to establish the existence of his apparent mental disorder and explain its effect on his behavior. In November 2001, Dr. Albert Drukteinis conducted the evaluation pursuant to our order in another matter, and opined that the respondent had "a mental disorder with a probable biological basis which [could] benefit from psychiatric treatment." He described the respondent as apparently suffering spells of fatigue and poor mental functioning alternating with periods of high energy and "physical disorder." The doctor did not provide a

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definitive *601 diagnosis of the respondent's apparent mental disorder, but noted that the respondent's "presentation is characteristic of hypomania seen in Bipolar Disorder (formerly known as Manic Depressive Illness)." He outlined general characteristics of individuals who suffer from Bipolar Disorder to include a tendency to be distracted and disorganized, failing to prioritize or balance their activities appropriately, and intensely pursuing certain objectives at the cost of other obligations. With respect to the respondent in particular, the doctor stated that his "tendency for distractibility and disorganization could easily lead him to miss deadlines as he is hyperfocusing on a project," and that his "mental state deficits are subtle; but, with the high standard of performance that an attorney must **454 maintain, those deficits could be devastating."

The respondent claims that he can overcome his lawyering deficiencies caused by his mental disorder through the structure and organization provided by a secretary. He contends that the Committee engaged in wrongful action against him in the past, which curtailed his primary source of income and forced him to discharge his secretary. Assuming, without deciding, however, that the respondent suffered a mental disorder during the time frame at issue, the mental disorder did not account for much of the misconduct underlying the ethical violations.

The respondent failed to obtain or prepare the proper documents for the Massachusetts incorporation. He told the incorporators that their business had been incorporated a week before he had even filed any documents with the Secretary of State. He never noticed that the uncashed filing fee check was returned to him, or if he did, he failed to understand its significance. Moreover, once he finally discovered the incorporation documents had been rejected, (through, he contends, the aid of a secretary), he failed to appreciate the urgency of the situation and made no attempt to immediately notify the incorporators or remedy his mistake. All of these actions demonstrate grave errors in his professional judgment, which administrative support cannot ameliorate.

[7] The respondent also claims that his apparent mental disorder constitutes a disability under the

ADA, and thus requires us to provide him with "reasonable accommodation." He seeks a more lenient sanction of probation to give him an opportunity to financially restore his practice, obtain a secretary and "prove that he could perform with attention to detail." We assume, for the sake of argument, that his ADA claim is properly preserved in the record before us and that we have jurisdiction to adjudicate an ADA claim in the first instance. The evidence presented to the referee, however, is inconclusive as to whether the respondent suffered a "disability" recognized under the ADA.

*602. Dr. Drukteinis made no definitive diagnosis of the respondent's apparent mental disorder. He concluded only that the respondent has a "mental disorder with a probable biological basis which can benefit from psychiatric treatment," incurs alternating fatigued and high energy periods and has a tendency for distractibility, disorganization and hyperfocusing on a project to the detriment of other priorities. While the doctor suggested that he may suffer from "hypomania seen in Bipolar Disorder," he offered no definitive diagnosis and deferred the prescription of appropriate medication to the respondent's treating physician. Accordingly, we conclude that Dr. Drukteinis' report is insufficient to establish the existence of a disability under the ADA. See 42 U.S.C. § 12102(2) (disability defined as a physical or mental impairment that substantially limits one or more of an individual's major life activities; a record of such an impairment; or being regarded as having such an impairment); *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 196-98, 122 S.Ct. 681, 151 L.Ed.2d 615 (2002) (claimant must establish that the extent of the limitation caused by the impairment in terms of claimant's own experience is substantial; mere evidence of medical diagnosis of an impairment is not enough).

The respondent identifies no viable mitigators convincing us to impose a sanction less harsh than suspension. His misconduct demonstrates grave errors in professional judgment in his failure to obtain or prepare updated incorporation documents, misrepresentation of the status of the corporation before he filed incorporation documents, **455 and patent neglect and lack of diligence in apprising his clients of their lack of corporate status, further

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exposing them to potential liability.

In addition, the respondent has a prior disciplinary record. In the last four years of his fifteen-year law career, we have sanctioned him on three occasions. In 1998, he was publicly censured twice, once for admittedly commingling trust and operating accounts, and again for allowing a civil matter to default. In 2001, he was publicly censured for his lack of diligence and competence in his handling of the probate of a decedent's estate. See *Sheridan's Case*, 146 N.H. 736, 739, 781 A.2d 7 (2001).

We are mindful that suspension is a severe disciplinary measure for any attorney, and do not undertake this sanction lightly. Furthermore, we are sympathetic to the fact that the respondent has suffered various misfortunes in his personal life over the past several years, as revealed in the record. Certainly, these circumstances compounded his apparent mental condition and complicated his ability to remain focused, organized and attentive to detail. Attorneys, however, must maintain a competent level of performance even while suffering trying times in their personal lives. They must be sensitive to the impact external pressures have on *603 their ability to sustain their professional obligations to their clients, and should step aside from their legal representation before their professional obligations are compromised. See *Farley's Case*, 147 N.H. 476, 478, 794 A.2d 116 (2002); *Welt's Case*, 136 N.H. 588, 593-94, 620 A.2d 1017 (1993).

After reviewing the admitted facts and considering the respondent's prior discipline, we conclude that suspending the respondent's license to practice law is necessary to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future. Accordingly, we order the respondent suspended from the practice of law in New Hampshire for one year, and direct him to reimburse the Committee for all expenses incurred in the investigation and prosecution of this matter. See *Sup.Ct. R. 37(16)*.

So ordered.

BROCK, C.J., and NADEAU, DALIANIS and
DUGGAN, JJ., concurred.

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END OF DOCUMENT

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. LD-2001-007, In the Matter of William C. Sheridan, the court on December 9, 2002, issued the following order:

In an opinion dated December 6, 2002, the court suspended William C. Sheridan from the practice of law in New Hampshire for a period of one year. The suspension shall take effect on December 20, 2002, and, absent further order of this court, shall not be stayed by the filing of a motion for reconsideration or rehearing.

In accordance with Supreme Court Rule 37(14), the court orders as follows:

1. Attorney Sheridan shall not accept any new retainer or engage as lawyer for another in any new case or legal matter of any nature after receipt of this order. During the period between his receipt of this order and the effective date of the suspension, Attorney Sheridan may wind up and complete, on behalf of any client, any matter that was pending prior to receipt of the order.

2. Attorney Corey Belobrow of Devine & Nyquist is appointed to take possession of Attorney Sheridan's client files and trust accounts, to make an inventory of such files and trust accounts, and to take such action as is necessary to protect the interests of Attorney Sheridan's clients. Attorney Belobrow shall take possession of Attorney Sheridan's client files and trust accounts no later than December 20, 2002, and shall take the following actions:

a. review Attorney Sheridan's client files and trust accounts and take such actions as he deems necessary to protect the interests of the clients as well as the interest of Attorney Sheridan;

b. notify the clients by certified mail, return receipt requested, of Attorney Sheridan's suspension, informing them of any action which appears to be required in the immediate future in order to preserve their legal rights and advising them that they should obtain the services of other lawyers of their choice; and

In Case No. LD-2001-007, In the Matter of William C. Sheridan, the court on December 9, 2002, issued the following order:

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c. make an inventory of Attorney Sheridan's client files and trust accounts and file a copy of the inventory with the supreme court on or before January 20, 2003, together with a report of his actions taken under this order and a recommendation as to what further actions should be taken to protect the interests of Attorney Sheridan's clients.

3. The fees of Attorney Belobrow shall be paid in the first instance by the Committee of Professional Conduct, to be reimbursed by Attorney Sheridan unless otherwise ordered by the court.

4. A copy of this order shall be served on Attorney Sheridan by first class and certified mail, return receipt requested, restricted delivery;

Brock, C.J., and Broderick, Nadeau, Dalianis, and Duggan, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:

✓ James L. DeHart, Esquire
Margaret H. Nelson, Chair
Robert J. Gallo, Esquire
William C. Sheridan, Esquire
Corey Belobrow, Esquire
Richard Y. Uchida, Esquire
Gretchen Leah Witt, Esquire
File

Westlaw.

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H

Supreme Court of New Hampshire.
SHERIDAN'S CASE.
No. LD-99-004.

Sept. 6, 2001.

Rehearing Denied Oct. 12, 2001.

Attorney disciplinary proceeding was initiated. The Supreme Court, Broderick, J., held that public censure was appropriate sanction for attorney's negligence and lack of diligence over an extended period of time in failing to timely discharge his duties as counsel for and commissioner of an estate.

Public censure ordered.

West Headnotes

[1] Attorney and Client ↪57

45k57 Most Cited Cases

The standard of review for findings made by a judicial referee in attorney discipline proceedings is whether a reasonable person could reach the same conclusion as the referee based upon the evidence presented.

[2] Attorney and Client ↪57

45k57 Most Cited Cases

When reviewing findings made by a judicial referee in attorney discipline proceedings, it is not the Supreme Court's role to make independent findings and substitute them for the judgment of the referee.

[3] Attorney and Client ↪58

45k58 Most Cited Cases

The Supreme Court has the ultimate authority to determine what sanctions, if any, to impose on members of the bar whose conduct does not comport with the professional standards outlined in the rules of professional conduct for the protection of the public and preservation of the integrity of the legal profession.

[4] Attorney and Client ↪58

45k58 Most Cited Cases

In determining the appropriate discipline for an attorney's misconduct, every case must be judged on its own facts and circumstances.

[5] Attorney and Client ↪58

45k58 Most Cited Cases

Public censure was appropriate sanction for attorney's professional negligence and lack of diligence over an extended period of time in failing to timely discharge his duties as counsel for and commissioner of an estate, though attorney had suffered serious injuries, and though he delegated oversight of estate to an associate, where attorney remained responsible to ensure that filings were made and duties discharged in proper and timely fashion, and attorney had prior disciplinary record. Rules of Prof. Conduct, Rules 1.1, 1.3(a), 8.4(a).

[6] Attorney and Client ↪58

45k58 Most Cited Cases

In assessing the appropriateness of a referee's recommended sanction for attorney's misconduct, the Supreme Court must consider whether such a sanction, under the facts and circumstances of the case, is necessary to protect the public, maintain public confidence in the bar, and preserve the integrity of the legal profession; the Court must also assess what sanction is likely to prevent similar misconduct in the future.

[7] Attorney and Client ↪49

45k49 Most Cited Cases

Discipline for an attorney's misconduct is not imposed as punishment.

[8] Attorney and Client ↪58

45k58 Most Cited Cases

Relevant mitigating factors should be considered when determining appropriate sanction for attorney's misconduct.

**8 *736 McNeill, Taylor & Gallo, P.A., of Dover (Robert J. Gallo on the brief and orally), for the professional conduct committee.

William C. Sheridan, by brief and orally, pro se.

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BRODERICK, J.

In August 1999, the Supreme Court Committee on Professional Conduct (Committee) filed a petition with this court seeking a public censure against the respondent, William C. Sheridan. The petition was referred to a Judicial Referee (*O'Neil, J.*) for hearing and recommendation. By agreement, the matter was submitted to the referee on the pleadings, an agreed statement of facts and memoranda of law. The respondent did not contest that his conduct in the handling of a probate estate violated various rules of professional conduct, but argued that a public censure was not justified and that the complaint against him was barred by the statute of limitations and laches.

The referee found by clear and convincing evidence that the respondent had violated New Hampshire Rules of Professional Conduct (Rules) 1.1(a), 1.1(b)(1), 1.1(b)(5), 1.1(c)(4), 1.3(a) and 8.4(a), and that the applicable statute of limitations had not expired. He recommended that the respondent be publicly censured, assessed all expenses incurred by the Committee and required to complete the practical skills course within twelve months. We adopt the referee's recommendations.

The record reveals the following undisputed facts. In June 1992, Gene Levigne III died, and in August of the same year, his widow, Norma Levigne, was appointed executrix of his estate. The respondent *737 was retained by the executrix as counsel for the estate. On June 30, 1993, the Hillsborough County Probate Court appointed him to serve as Commissioner of the then insolvent estate. See RSA 557:1 (1997). Thereafter, the respondent failed **9 to file any accounts on behalf of the executrix, the first of which was due in 1993, and neglected to perform any of his duties as Commissioner between June 30, 1993, and June 30, 1994.

In January 1996, the probate court notified the respondent of his numerous defaults, and he subsequently sought and was granted an extension of time to satisfy his obligations. Although the respondent had secured an extension of time to meet his obligations to the estate, he nonetheless neglected to meet those obligations. In February 1997, not having cured the defaults, the respondent

was removed as counsel to the estate and a new Commissioner was appointed. The probate judge subsequently filed a professional conduct complaint with the Committee against the respondent.

The respondent admits that between June 30, 1993, and June 30, 1994, he failed to file any accounts for the estate in his capacity as counsel, and did not, as Commissioner, post and send notices to the creditors, receive claims from creditors, or file a report detailing which claims he believed should be allowed or disallowed. To explain his lapses, he contends that until June 1993 his associate was handling the representation of the estate. He alleges that he was not informed of the various defaults until January 1996, after the dissolution of his law partnership and after he sustained debilitating injuries in August 1994 and in March 1995. He further contends that his representation of the estate, while admittedly deficient, was due in part to the illness and subsequent death of the executrix in August 1996.

The respondent argues that his failure to make timely filings in the probate court prior to 1996 is insufficient misconduct, by itself, to warrant public censure. He contends that only his failure to file accounts after receiving an extension of time coupled with his failure to file those accounts previously would justify such a sanction. He asserts, however, that because he was recovering from serious injury during the period of the extension, which he believes offers him some protection under the Americans with Disabilities Act (ADA), see 42 U.S.C. § 12131, a public censure would be inappropriate. He also asserts that because he was previously sanctioned by this court for unrelated conduct occurring during the period of his disability, a new sanction would be duplicative. Finally, in his brief, the respondent makes a fleeting and totally underdeveloped *738 contention that the present complaint is barred by the doctrine of laches or by the statute of limitations.

[1][2] "The standard of review for findings made by a judicial referee in attorney discipline proceedings is whether a reasonable person could reach the same conclusion as the referee based upon the evidence presented..." *Whelan's Case*, 136 N.H. 559, 561, 619 A.2d 571 (1992) (quotation omitted). "It is not our role to [make independent findings

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and] substitute [them] for the judgment of the referee." *Robertson's Case*, 137 N.H. 113, 116, 626 A.2d 397 (1993) (quotation omitted).

In this case, the referee found that the ADA was not applicable to the respondent's case, that the respondent had "violated all the Rules of Professional Conduct alleged by the Committee without valid excuse or justification," and that the six-year statute of limitations codified in Rule 1.10(a) was applicable and had not expired. The referee also concluded that the respondent's prior public censure was for conduct unrelated to the facts and circumstances of this case.

[3][4] We first address the respondent's argument that his challenged conduct in 1993 and 1994 does not support a **10 public censure. In doing so, we are mindful of our "ultimate authority to determine what sanctions, if any, to impose on members of the ... bar whose conduct does not comport with the professional standards outlined in the Rules ... for the protection of the public and preservation of the integrity of the legal profession." *Wood's Case*, 137 N.H. 698, 701, 634 A.2d 1340 (1993) (quotation and citation omitted). We are mindful that in determining discipline every case must be judged on its own facts and circumstances. *See Welts' Case*, 136 N.H. 588, 592, 620 A.2d 1017 (1993).

In his brief, the respondent admits that the "failure to file the requisite probate documents between August of 1992 and June of 1994 ... [was] prior to [his eye and hip] injuries and thus clearly not governed by the ADA." It is this conduct that serves as the primary source of his ethical violations. The conduct occurred primarily and substantially before the respondent was injured in August 1994 and it was exacerbated by his failure to seek further extension of the filing deadline after the original extension expired. His professional negligence and lack of diligence was, therefore, unrelated to any disability. Accordingly, we need not reach the respondent's argument that the ADA affords him some protection for his ethical lapses.

[5][6][7][8] The remaining issue is the determination of the proper sanction. In assessing the appropriateness of the referee's recommendation of *739 public censure, we must consider whether such a sanction, under the facts and circumstances

of this case, is necessary "to protect the public, maintain public confidence in the bar, and preserve the integrity of the legal profession." *Henderson's Case*, 130 N.H. 313, 315, 538 A.2d 1222 (1988).

We must also assess what sanction is likely to prevent similar misconduct in the future. *See Astiles' Case*, 134 N.H. 602, 605, 594 A.2d 167 (1991). In calculating the proper remedy, we are mindful that discipline is not imposed as punishment, *Silverstein's Case*, 108 N.H. 400, 401, 236 A.2d 488 (1967), and that relevant mitigating factors should be considered, *Flint's Case*, 133 N.H. 685, 690, 582 A.2d 291 (1990).

In this case, the respondent identifies no viable mitigators. His injuries, although serious and unfortunate, were not the cause of his misconduct. Accordingly, they cannot afford him any protection. Further, although the respondent may have delegated the oversight of the estate to an associate, he remained counsel and Commissioner of record and thus responsible to ensure that the filings were made and duties discharged in a proper and timely fashion. By his own admission, he failed to do so. In addition, the respondent, who has been a member of the New Hampshire bar since 1987, has a prior disciplinary record. He was publicly censured in 1998 for allowing a civil case to default and in an unrelated disciplinary action, also in 1998, he received a public censure for admittedly co-mingling trust and operating accounts.

The respondent's lack of diligence and competence in his handling of the Levigne estate over an extended period of time falls well below his ethical obligations and evidences a significant breach of professional responsibility. To suggest that prior sanctions on unrelated matters occurring in the same general time frame as the case before us render any further sanction unnecessary misses the mark. Sanctions relate to conduct, not to time periods. Independent violations warrant discrete sanctions.

We conclude that public censure will satisfy the stated purpose of protecting the public, maintaining public confidence in the bar, preserving the integrity of the legal profession, and deterring future misconduct. **11 *See Wood's Case*, 137 N.H. at 701, 634 A.2d 1340. Accordingly, we order public censure on all the violations charged and further

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order that the respondent reimburse the Committee for all of its expenses, including legal fees, incurred in investigating and prosecuting this matter, and complete the practical skills course within twelve months. *See Sup. Ct. R. 37(16)*.

*740 The respondent's remaining arguments lack merit and warrant no further discussion. *See Vogel v. Vogel*, 137 N.H. 321, 322, 627 A.2d 595 (1993).

So ordered.

BROCK, C.J., and NADEAU, DALIANIS and DUGGAN, JJ., concurred.

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END OF DOCUMENT

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case Nos. LD-97-006 & LD-97-010, In the Matter of William C. Sheridan, the court upon November 19, 1998, made the following order:

Motion to allow late filing of second appendix to brief of William C. Sheridan is denied. Motion of William C. Sheridan to allow him to make factual responses to his oral argument is denied.

Having considered the briefs and oral arguments of the parties, the court concludes that a formal written opinion is not necessary for the disposition of this appeal. The respondent, William C. Sheridan, has admitted to the following violations of the Rules of Professional Conduct (Rules).

In docket number LD-97-006, the respondent violated:

1. Rule 1.1(a) in that he handled a client's case incompetently.
2. Rule 1.1(b)(5) in that he failed to pay attention to details and schedules to avoid harm to said client's interest.
3. Rule 1.1(c)(4) in that he failed to take actions on said client's behalf in a timely and effective manner.
4. Rule 1.3(a) in that he failed to act with reasonable promptness and diligence in representing said client.
5. Rule 8.4(a) by violating provisions of the Rules of Professional Conduct.

In docket number LD-97-010, the respondent violated:

1. Rule 1.15(a)(1) by failing to hold property of clients or third persons in his possession separate from his own property.
2. Supreme Court Rule 50(2)(B) by failing to hold case property of clients in clearly designated client trust accounts separate from his own funds.

3. Rule 8.4(a) by violating provisions of the Rules of Professional Conduct.

The judicial referee found mitigating circumstances, including the absence of a prior disciplinary record, the fact that the respondent's behavior was apparently not deceitful or dishonest, and that the respondent did not appropriate clients' funds to his own use. We have further noted that the respondent was assaulted in August 1994 and run over by an automobile in March 1995, resulting in injuries described by the judicial referee as "disastrous and serious." Mindful that in determining discipline every case must be judged on its own facts and circumstances, see Welts' Case, 136 N.H. 588, 592 (1993), we conclude from our review of the record that public censure will satisfy the purposes of protecting the public, maintaining public confidence in the bar, preserving the integrity of the legal profession, and deterring future misconduct, see id. at 593. Accordingly, we order public censure on all the violations set forth above and order the respondent to reimburse the committee on professional conduct for the costs of investigating and prosecuting these matters. See Sup. Ct. R. 37(16).

So ordered.

Broderick, J., did not participate.

Distribution:

Jean K. Burling, Chair
James L. DeHart, Esquire
William C. Sheridan, Esquire
Robert J. Gallo, Esquire
Honorable William J. O'Neil
Bar News
Aggie Pelletier, N.H. Bar Association
Donna Nadeau, Supreme Court
Union Leader
File

Howard J. Zibel,
Clerk

New Hampshire Supreme Court
Complaint Screening Committee

Martha Van Oot, Chair
Marthe F. Dynen, Vice Chair*
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Jules J. Brayman*
Richard J. Daschbach

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Concord, New Hampshire 03301
(603) 224 - 5828 + Fax (603) 228 - 9511

Michael P. Hall
William F. Lynch*
David M. Rothstein
Ronna F. Wise
* non attorney-member

November 9, 2004

Mr. William C. Sheridan
50 Nashua Road
Suite 102
Londonderry, New Hampshire 03053

Re: Sheridan, William C. advs. Ken Pacunas - #02-024

Dear Mr. Sheridan:

The Complaint Screening Committee has recently made a thorough review of all of the information it has received as to the above entitled matter, which is now public pursuant to New Hampshire Supreme Court Rule 37(20)(b)(1).

After discussion, deliberation and due consideration, it has dismissed this matter with a finding of no professional misconduct on your part. However, the Committee warns you that in the future, you must be more attentive to returning your clients' calls and to their requests for information, and must especially let your clients know if there has been a change in a scheduled court hearing.

The warning contained in this letter does not constitute discipline by this Committee. Pursuant to the provisions of New Hampshire Supreme Court Rule 37A(II)(b)(1), you may submit a written response to this letter and such response would be maintained with the file relative to this matter. Pursuant to provisions of Rule 37A(I)(f) the fact that you have been issued this warning may, together with the basis of this warning, be considered in determining whether to impose discipline and the extent of discipline to be imposed, in the event that additional charges of misconduct are brought against you.

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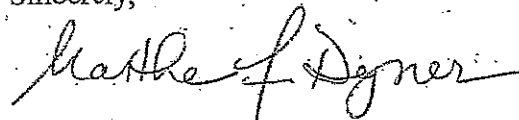
Mr. William C. Sheridan

Re: #02-024

November 9, 2004

The following Committee member were absent: Martha Van Oot, Chair, Stephen A. Bartlett, and Michael P. Hall, Esquire.

Sincerely,



Marthe F. Dyner
Vice Chair

MFD/ksc

cc: Ken Pacunas

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The State of New Hampshire Supreme Court

*Professional Conduct Committee • 4 Park Street, Suite 304 • Concord, New Hampshire 03301
(603) 224-5828 • fax (603) 228-9511*

July 1, 2002

William C. Sheridan, Esquire
50 Nashua Road, Suite 102
Londonderry, New Hampshire 03053

Re: Sheridan, William C. advs. Professional Conduct Committee - #00-N-147

Dear Mr. Sheridan:

The Professional Conduct Committee has recently made a thorough review of all of the information it has received as to the above entitled matter, which is now public pursuant to New Hampshire Supreme Court Rule 37(17)(b)(1).

After discussion, deliberation and due consideration it has dismissed this matter with a finding of no professional misconduct on your part. However, the Committee warns you that in the future you should pay more attention to notices of hearings received from the court and be more attentive to your obligation, unless excused, to attend those hearings.

The warning contained in this letter does not constitute discipline by this Committee. Pursuant to the provisions of New Hampshire Supreme Court Rule 37A(2)(b)(1), you may submit a written response to this letter and such response would be maintained with the file relative to this matter. Pursuant to provisions of Rule 37A(1)(f), the fact that you have been issued this warning may, together with the basis of this warning, be considered in determining whether to impose discipline and the extent of discipline to be imposed, in the event that additional charges of misconduct are brought against you.

Sincerely,

Robert C. Varney
Chair

RCV/bg

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The State of New Hampshire Supreme Court

*Professional Conduct Committee • 4 Park Street, Suite 304 • Concord, New Hampshire 03301
(603) 224-5828*

June 23, 1999

William C. Sheridan, Esquire
50 Nashua Road, Suite 102
Londonderry, New Hampshire 03053

Re: Sheridan, William C. advs. Professional Conduct Committee - #97-072

Dear Mr. Sheridan:

The Professional Conduct Committee has recently made a thorough review of all of the information it has received as to the above entitled matter.

After discussion, deliberation and due consideration it has dismissed this matter with a finding of no professional misconduct on your part. However, the Committee warns you that although there was no clear and convincing evidence of a violation of the Rules of Professional Conduct, part of the reason that this matter was brought to the Committee's attention was that you failed to attend a hearing in the matter of In re: James and Susan Kisiel although you had an active appearance in that matter. You are warned that when you have an appearance filed with a Court, you should attend scheduled hearings unless you are excused by the Court from attending.

The warning contained in this letter does not constitute discipline by this Committee. Pursuant to the provisions of § 2.8 of the Rules and Procedures of the Professional Conduct Committee, you may submit a written response to this letter and such response would be maintained with the file relative to this matter. Pursuant to provisions of § 1.8 the fact that you have been issued this warning may, together with the basis of this warning, be considered in determining whether to impose discipline and the extent of discipline to be imposed, in the event that additional charges of misconduct are brought against you.

Sincerely,

Jean K. Burling
Chairperson

JKB/bg

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. LD-2001-0007, In the Matter of William C. Sheridan's Case, the court on December 18, 2007, issued the following order:

On December 6, 2002, Attorney William C. Sheridan was suspended from the practice of law for a one year period for violations of several rules of professional conduct. In July 2004, Attorney Sheridan filed a motion for reinstatement. In accordance with Rule 37(14), the motion was referred to the Professional Conduct Committee (PCC). In December 2005, the PCC filed a report with the court recommending that the motion for reinstatement be denied. Both the PCC, through disciplinary counsel, and Attorney Sheridan filed briefs. Thereafter, Attorney Sheridan filed additional pleadings addressing the concerns identified by the PCC in its recommendation and brief. After reviewing the parties' briefs and other pleadings, the court remanded the case to the PCC for further proceedings.

On May 4, 2007, the PCC filed a revised recommendation on Attorney Sheridan's motion for reinstatement. It found that Attorney Sheridan had taken the necessary steps to rehabilitate himself, and recommended that his motion for reinstatement be granted conditionally. Noting that Attorney Sheridan was not in private practice, the PCC recommended that Attorney Sheridan be required to enter into a mentoring agreement for a period of two years if he decided to return to private practice.

After the PCC filed its revised recommendation, a briefing order was issued, providing Attorney Sheridan and disciplinary counsel with the opportunity to set forth their positions on the revised recommendation. In his brief, Attorney Sheridan agreed to the conditions proposed by the PCC. The PCC, through disciplinary counsel, elected not to file a brief.

Oral argument took place before the court on November 8, 2007. On November 14, 2007, the parties filed a mentoring agreement in which Attorney Sheridan agreed to monitoring by the Attorney Discipline Office (ADO) for a period of two years. The agreement provided for the appointment of a mentor to assist the ADO in monitoring Attorney Sheridan, and for the filing of regular reports by Attorney Sheridan and the mentor. The agreement includes provisions addressing the termination of the conditional nature of Attorney Sheridan's reinstatement upon successful completion of the monitoring period, and the consequences of a breach of the agreement.

The parties' mentoring agreement is hereby approved. Attorney Sheridan is reinstated to the practice of law conditioned upon his compliance with the terms of the mentoring agreement. In accordance with the terms of the mentoring agreement, upon successful completion of the monitoring period, Attorney Sheridan may file an application with the court for an order terminating the monitoring period and making his reinstatement unconditional.

Broderick, C.J., and Dalianis, Duggan, Galway and Hicks, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:

James L. DeHart, Esquire

✓ Landya B. McCafferty, Esquire

William C. Sheridan, Esquire

Daniel S. Coolidge, Esquire

Craig A. Calaman, C.P.A.

NH Bar Association

Sherri Kluesener, Supreme Court

File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. LD-2007-0007, In the Matter of William C. Sheridan, the court on January 16, 2008, issued the following order:

In March 2006, Attorney Sheridan was suspended from the practice of law for a period of six months by the Professional Conduct Committee (PCC) based on complaints in two separate matters. On June 20, 2007, William C. Sheridan filed a motion for reinstatement, noting that the six-month suspension period had expired and stating that he had complied with the other requirements for reinstatement. On June 28, 2007, the court issued an order deferring action on Attorney Sheridan's motion for reinstatement because he remained suspended from the practice of law as a result of the court's decision in LD-2001-007, Sheridan's Case.

On December 18, 2007, the court issued an order in LD-2001-007, Sheridan's Case, reinstating Attorney Sheridan to the practice of law on the condition that he comply with the terms of a mentoring agreement between himself and the Attorney Discipline Office. In light of the court's December 18, 2007 order, Attorney Sheridan's motion for reinstatement, which seeks termination of the six-month suspension imposed by the PCC, is granted on the condition that Attorney Sheridan comply with the terms of the mentoring agreement between himself and the Attorney Discipline Office. As provided in the December 18, 2007 order issued in LD-2001-007, upon successful completion of the monitoring period, Attorney Sheridan may file an application with the court for an order terminating the monitoring period and making his reinstatement unconditional.

Broderick, C.J., and Dalianis, Duggan, Galway and Hicks, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:

William C. Sheridan

✓Landya B. McCafferty, Disciplinary Counsel

Margaret H. Nelson, Chair

File