

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  
Gerald A. Daley\*

4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
603-224-5828 ♦ Fax 228-9511

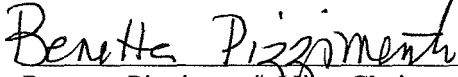
Richard H. Darling\*  
Gretchen Rule Hamel  
James R. Martin  
David N. Page\*  
James J. Tenn, Jr.  
\* non attorney member  
Holly B. Fazzino, Admin. Coordinator

*Witkus, Lanea A. advs. Christine M. Wrightington # 04-062*

**REPRIMAND**

On December 11, 2007, the Professional Conduct Committee, upon consideration, granted the parties' Motion to Permit Waiver of Hearings Committee Process. The Committee also voted to accept the Stipulation to a Reprimand and costs attached hereto and made part thereof.

December 18, 2007

  
Benette Pizzimenti, Vice Chair

**Distribution:**

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

**NEW HAMPSHIRE SUPREME COURT**

**ATTORNEY DISCIPLINE SYSTEM**

**MERRIMACK, SS**

**October, 2007**

**#04-062**

**Witkus, Lanea A.**

**advs.**

**Christine M. Wrightington**

**STIPULATION AS TO FACTS AND RULES VIOLATED**

NOW COME Lanea A. Witkus, Esquire, and Landya McCafferty, Esquire, Disciplinary Counsel for the New Hampshire Supreme Court Committee on Professional Conduct, and as parties in the above-captioned matter, hereby submit the following Stipulation of Facts, for review and consideration by the New Hampshire Supreme Court Professional Conduct Committee.

**I. STIPULATION OF FACTS**

1. Lanea A. Witkus (the "Respondent") is an attorney who has been licensed to practice law in New Hampshire since 1977. Her office is located at 34 Belknap Avenue, P.O. Box 5, Newport, New Hampshire 03773.

2. At all times pertinent to the facts giving rise to the Notice of Charges, the Respondent represented Mark Wrightington, Sr. in a post-divorce modification claim to change the custodial arrangements for his children.

3. The Complainant in this matter is Christine M. Wrightington, the ex-wife of Mark Wrightington, Sr.

4. Mr. and Mrs. Wrightington were divorced in 2000, by order of the Sullivan County Superior Court. The Respondent did not represent either of the parties in the original divorce. Pursuant to the terms of their divorce, the Complainant and Mr. Wrightington had joint legal custody of the parties' minor children, Mark (now age 16), Matthew (now age 13) and Aldon (now age 11). At all times pertinent to the events giving rise to the Notice of Charges, Matthew was age 10.

5. On or about July 12, 2004, Mark Wrightington contacted the Respondent to represent him in an action to modify custody of the minor children.

6. The Respondent met with Mark Wrightington at or about 4:00 p.m. on July 12, 2004 to discuss modifying the custody arrangement with regards to Mark's children.

7. Mark Wrightington related the following allegations to the Respondent:

- a. That he had physical custody of the children on the weekend of July 10 through July 11.
- b. That his custodial rights with the children ended at 5:00 pm on July 11.
- c. That during the afternoon of July 11, while the children were in Mark's custody, but at a time when Mark was not present, Matthew wrapped a rope noose around his neck and prepared to jump from the unfinished stairs of the house, saying he wanted to die.
- d. That one of Mark's relatives prevented Matthew from jumping, and removed the noose from his neck.

- e. That another family member present at the home called a local pediatrician for advice, and was told an immediate consultation should be arranged.
- f. That an emergency consultation was set up at Dartmouth Hitchcock Medical Center.
- g. That the Complainant arrived at Mark's house at 4:00 pm on July 11 to pick up the children.
- h. That Mark informed the Complainant about Matthew's suicide attempt, and told her he wanted to take the child to Dartmouth Hitchcock, and wanted the Complainant to accompany them.
- i. That the Complainant objected to taking Matthew to the session, and wanted, instead, to take him home and consult with his pediatrician prior to taking him anywhere else.
- j. That a physical and verbal altercation ensued between Mark and the Complainant, during which the Complainant left with the children, including Matthew. Mark and his fiancé, Deborah Hutchins, telephoned the Sunapee Police and reported that Matthew had attempted to commit suicide, and that the Complainant had left with the children, including Matthew. The police responded to Mark's call by stopping the Complainant in her car on the way home and investigating Mark's allegations. The police then went to Mark's house and spoke with him and other witnesses present. As a result of their investigation, the police arrested Mark for simple assault on that same evening.

- k. That the Complainant had taken Matthew to a day camp on July 12, and had failed to apprise the camp counselors that he had attempted suicide the day before.
- l. That Mark also learned on July 13, that on July 12, Matthew's pediatrician had suggested several counselors to the Complainant for Matthew, but that no referral had been made by the pediatrician's office, and that it did not appear Matthew was going to receive any treatment for his suicide attempt.
- m. That historically, the Complainant had failed to fully address Matthew's medical needs.

8. The next afternoon, July 13, less than 24 hours after the initial consultation with Mark, the Respondent filed a pleading on an *ex parte* basis, entitled "Petition to Bring Forward and Modify with Request for Ex Parte Orders and Motion for Contempt," (hereinafter "Ex Parte Petition") in the Sullivan County Superior Court.

9. The Ex Parte Petition made no mention of Mark's arrest for assault.

10. The Respondent also filed a Personal Data Sheet contemporaneously with the Ex Parte Petition. Under the section asking, "Are there any other pending domestic violence, divorce, legal separation, separate maintenance, domestic relations, or other court cases concerning you and your spouse or the other parent," the Respondent answered: "Yes. Assault case pending hearing on August 17, 2004 8:30 am at Newport District Court."

11. The Ex Parte Petition requested, *inter alia*, that Mark be granted physical custody of the three children and, for six months, the exclusive right to make medical decisions on behalf of the children.

12. In an order dated July 13, 2004, the Court (per Hon. Arthur D. Brennan, P.J.) granted the Ex Parte Petition, which included, among other things, an order granting Mark physical custody of the minor children and the exclusive right to make medical decisions for the children. The Court also set a hearing on the matter for July 22, 2004, nine days later.

13. The Complainant learned of the order on the evening of July 13, 2004, when the police removed the children from her custody.

14. On July 14, the Complainant filed a pleading entitled "Motion for Immediate Reversal of 7/13/04 ex-parte orders" (hereinafter "Motion for Reversal").

15. The Motion for Reversal described the July 11 incident, including the police investigation and arrest of Mark for simple assault, and included medical records pertaining to the Complainant's active pursuit of medical treatment for Matthew.

16. The Court granted the Motion for Reversal on July 14, and reversed the July 13 order. The order cited to the Complainant's pleadings and attached medical records as grounds for the necessity of conducting a hearing before any custody modification could occur.

17. Mark did not formally retain the Respondent on the assault charge until approximately two weeks after the filing of the Ex Parte Petition.

18. Under then-applicable New Hampshire law, RSA 458:17(V)(a)(3) provided that "... a trial court may modify a permanent custody order if it 'finds by clear

and convincing evidence that the child's present environment is detrimental to the child's physical, mental, or emotional health and that the advantage to the child of modifying a permanent custody order outweighs the harm likely to be caused by the change in environment'." See RSA 458:17 (V)(a)(3). See also *In the Matter of Choy*, 154 N.H. 707 (2007).

## II. STIPULATION AS TO RULES VIOLATED

### Rule 3.3(d): Failure to Inform Tribunal of Adverse Material Facts

19. The allegations set forth above are incorporated by reference.

20. New Hampshire Rule of Professional Conduct ("NHRPC") Rule 3.3(d) requires that "(i)n an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse."

21. In filing the Ex Parte Petition on Mark's behalf in this case, the Respondent failed to include adverse material facts known to her in that Petition. Specifically, she failed to inform the court about the police investigation of the July 11 incident and the decision to arrest Mark for his alleged assault of the Complainant in the Ex Parte Petition. However, she did disclose the existence of a pending assault action in the contemporaneously filed Personal Data Sheet, but did not identify her client as the criminal defendant in the assault case.

22. The police investigation and Mark's subsequent arrest for assault were material to the issue of immediate care and protection of the children and could have influenced Judge Brennan's decision on the need for the emergency relief requested in the Ex Parte Petition.

23. The Respondent's failure to adequately inform the tribunal of the material facts concerning the Respondent's arrest for simple assault constitutes a violation of NHRPC Rule 3.3(d).

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

24. In light of the Rule 3.3(d) violation, there is necessarily clear and convincing evidence of a violation of NHRPC 8.4(a).

**III. STIPULATION AS TO SANCTION**

25. Disciplinary Counsel and the Respondent jointly recommend a Reprimand, as the appropriate sanction in this matter. A Reprimand would serve the purposes of attorney discipline.

26. Both case law in New Hampshire and the American Bar Association's Standards for Imposing Lawyer Sanctions (1992) (the "Standards") support the conclusion that the Respondent should be Reprimanded. 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." *E.g., Coffey's Case*, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). "The sanction must take into account the severity of the misconduct." *Id.*

27. Although the Court has not adopted the Standards, it looks to them for guidance. *Coffey's Case*, 152 N.H. at 513. The Standards set forth a four part analysis for courts to consider 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." Standards § 3.0; *Coffey's Case*, 152 N.H. at 513.

28. The first three steps create the framework for characterizing the misconduct and determining a baseline sanction. See *Wolterbeek's Case*, 152 N.H. 710, 714 (2005) ("In applying these factors, the first step is to categorize the respondent's misconduct and identify the appropriate sanction"). Once the baseline sanction is determined, the Court then looks to the fourth and final step in the analysis: The existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *Id.* ("After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.").

29. Under the first prong of the analysis, the Respondent violated her duty of candor to the Court through her failure to adequately disclose the existence of her client's arrest in the Ex Parte Petition and accompanying pleadings.

30. The Standards next require analysis of both the Respondent's state of mind and the injury caused by her misconduct.

31. With respect to her mental state, the evidence is clear that the Respondent did not act with a purposeful or knowing mental state. Rather, her mental state was one that can best be characterized as neglectful.<sup>1</sup> This is not a case where a lawyer purposefully omitted and/or deliberately concealed material from the purview of the Court. Had she intended to deliberately conceal the arrest, it is likely that no mention of an arrest would have appeared in any of the pleadings, including the Personal Data Sheet. Nonetheless, the Respondent was neglectful in not making clear to the Court in either her

---

<sup>1</sup> The Respondent intended to offer expert testimony in the disciplinary hearing demonstrating that in cases following a serious suicide attempt by a young child, coupled with an apparent failure to obtain treatment for the child, the Respondent's focus should have been on the immediate welfare of the child. The conclusion from such testimony is that the omission of the police investigation and arrest for assault was not purposeful or deliberate.

Ex Parte Petition or the Personal Data Sheet that accompanied the Ex Parte Petition that her client was actually the subject of the referenced assault case.

32. The third prong of the analysis requires consideration of the potential or actual injury caused by the Respondent's misconduct. Here, it is not clear whether Judge Brennan's decision to reverse the July 13, 2004 *Ex Parte* Order was based on the fact that (a) the Complainant had sought and obtained medical advice with respect to Matthew (contrary to Mr. Wrightington's allegations); or (b) Mr. Wrightington stood criminally charged with assault as a result of the incident on July 11, 2004.<sup>2</sup> Based on the controlling legal standard, it is likely that Judge Brennan was more influenced by the former. As such, it is difficult to assess whether the Respondent's misconduct caused harm to the Complainant.

33. However, whenever a lawyer engages in a violation of her duty of candor, the injury to the integrity of the bar is substantial.

34. The section of the Standards that deals with a lawyer's duty of candor to the Court is Standard 6.1.

35. Pursuant to Standard 6.1, the Respondent's misconduct warrants a sanction that falls between a Public Censure and Reprimand.

---

<sup>2</sup> The parties went to the length of obtaining a full transcript of the hearing which occurred following Judge Brennan's decision to reverse his Order on Mr. Wrightington's Ex Parte Petition. Nowhere in the transcript does Judge Brennan explain why he reversed the Order. Counsel for the Complainant surmises, at one point, that the judge was influenced by the evidence that the Complainant had, in fact, sought and obtained medical advice for Matthew. However, the Court never responds to that statement. The Respondent acknowledges, however, that the question of what facts were dispositive on the underlying legal question is different than what facts were capable of influencing the judge, and were therefore material under Rule 3.3(d).

36. Under Standards 6.11 and 6.12, a respondent who acts with a purposeful and/or knowing intent to deceive is subject to disbarment and/or suspension. Here, the Respondent's mental state can best be characterized as neglectful, rather than purposeful or knowing.<sup>3</sup> Standards 6.13 and 6.14 are thus more applicable to the Respondent's case.

37. Pursuant to Standard 6.13,

Reprimand<sup>4</sup> is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

38. Pursuant to Standard 6.14,

Admonition<sup>5</sup> is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

39. Under New Hampshire case law, public censure has generally followed a higher level of misconduct than negligence alone. See *e.g. Daly, John V. advs. John Leggett*, No. 04-041 (2007) (actively lying to client concerning the status of the case); *O'Meara's Case*, 150 N.H. 157 (2003) (actively lying to the Court concerning the date of a subpoena); *Shillen's Case*, 149 N.H. 132 (2003) (negligently failing to notice a conflict

---

<sup>3</sup> See Footnote 1, above.

<sup>4</sup> Section 6.13 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

<sup>5</sup> Section 6.14 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

of interest and causing injury to the client); and *Welts' Case*, 136 N.H. 588 (1993) (actively lying to client concerning the status of a case that had not been filed).

40. It appears, therefore, under the Standards, and New Hampshire case law, that the Respondent's baseline sanction falls between a Reprimand and Public Censure. A Reprimand is the more appropriate baseline sanction where the Respondent has engaged in an isolated act of misrepresentation by omission that caused little discernable harm to a party or to the legal proceeding.

41. Based on the evidence that would have been presented to a hearing panel had this matter been fully litigated, the evidence tends to show that the Respondent was deeply concerned over the safety and well-being of Matthew, and the apparent lack of treatment following not only the threat of suicide, but an actual attempt; and was not as careful as she should have been in clearly disclosing the arrest of her client for assault, as she rapidly assembled the necessary pleadings and affidavits, as well as a proposed order and the Personal Data Sheet to obtain the emergency order.

42. Having characterized the misconduct and analyzed the facts under the first three prongs of the test, the appropriate baseline sanction in this case is a Reprimand.

43. The final step in the analysis, however, is to determine whether there are any aggravating and/or mitigating factors that affect the baseline sanction.

44. There are four mitigating factors in this case: The Respondent lacked a selfish motive, *see Standard 9.32(b)*; the Respondent made a full and free disclosure to the disciplinary board and displayed a cooperative attitude throughout, *see Standard 9.32(e)*; and a substantial period of time between the Respondent's last involvement with the Professional Conduct Committee (resulting in a warning in 2000) – and the facts

giving rise to this complaint. See Standard 9.32 (m). Further, under New Hampshire case law, historically the court has found an isolated incidence of unprofessional conduct rather than a repeated pattern of misconduct has been considered a mitigating factor. See *Welt's Case*, 136 N.H. at 592. In this case, the Respondent engaged in an isolated instance of misconduct. She has not engaged in a pattern of repeated misconduct in her many years of practice.

45. There is one aggravating factor. As noted above, the Respondent received a Warning dated August 28, 2000 (a copy is attached hereto). However, the Warning in that matter dealt with an issue under NHRPC Rule 1.9 (Former Clients), rather than an issue of candor. Because the Warning in that case involved dissimilar conduct, it is not of such a nature that it should increase the baseline sanction in this matter from a Reprimand to a Public Censure.

46. Furthermore, under New Hampshire case law, where an attorney faces a professional conduct violation for the first time in a lengthy career, the length of the legal career prior to the misconduct is considered when taking into account the weight of the aggravating factor. See e.g. *In Re Kalil's Case*, 146 N.H. 466, 467 (2001); and *Bruzga's Case*, 145 N.H. 62, 72 (2000). The Respondent has practiced in New Hampshire for 30 years, and in that time, has incurred only a Warning involving conduct unrelated to the disciplinary rules implicated in this matter.

47. Moreover, in cases in which either the Court or this Committee has seen fit to issue a Public Censure for misconduct involving deceit, the respondent has engaged in behavior far more egregious than is present here. See cases cited in Section 39 of this Stipulation, above.

48. In sum, taking into consideration both the four part analysis recommended by the Standards, the case law developed by the New Hampshire Supreme Court on appropriate sanctions, as well as the purposes of attorney discipline in New Hampshire, the appropriate sanction in this matter is a Reprimand.

**IV. STIPULATION AS TO COSTS**

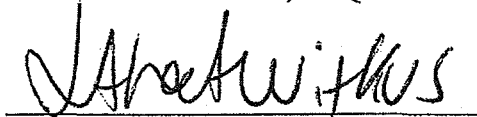
49. The Respondent agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

**V. EFFECT OF STIPULATION**

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

Respectfully submitted

LANEA A. WITKUS, ESQUIRE

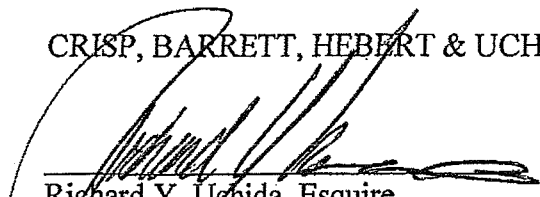


And

By Her Attorneys

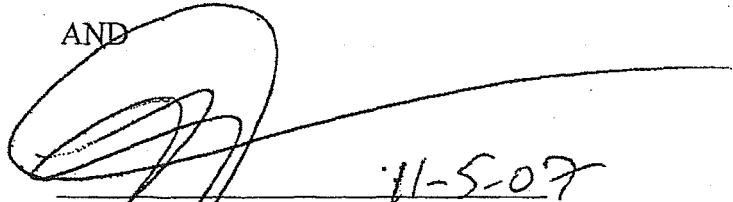
CRISP, BARRETT, HEBERT & UCHIDA, PLLC

By:



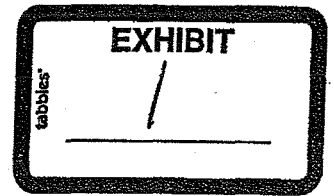
Richard Y. Uchida, Esquire  
2 Pillsbury Street, Suite 502  
Concord, New Hampshire 03301  
(603) 224-5004

AND

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

11-5-07

Landya B. McCafferty, Esquire, Disciplinary Counsel  
New Hampshire Supreme Court Committee on Professional  
Conduct, Attorney Discipline Office



*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*

August 28, 2000

Lanea A. Witkus, Esquire  
Witkus & Wilson, P.C.  
34 Belknap Avenue  
P.O. Box 5  
Newport, New Hampshire 03773

Re: Witkus, Lanea A. advs. Professional Conduct Committee - #00-046

Dear Ms. Witkus:

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 to be sensitive to the limitations imposed on an attorney by Rule 1.9 and *Sullivan County Regional Refuse Disposal v. Town of Acworth*, 141 N.H. 479 (1996).

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 (in effect at the time this matter was received), 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,

Robert C. Varney  
Chair

RCV/bg