

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  
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Richard H. Darling\*  
Gretchen Rule Hamel  
James R. Martin  
Marilyn Billings McNamara  
David N. Page\*  
\* non attorney member  
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*Chisholm, Kevin P. advs. Lori Thibault # 07-032*

**PUBLIC CENSURE**

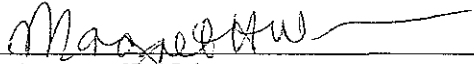
On August 19, 2008, the Professional Conduct Committee deliberated the above-captioned matter. Members present included Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, David N. Cole, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling, James R. Martin (via telephone conference), and David N. Page. Marilyn Billings McNamara abstained from the votes. Gretchen Rule Hamel was absent.

The Committee reviewed the record, including a Motion to Permit Waiver of Hearings Committee Process, Notice of Charges, Stipulation of facts, rules violated, and proposed sanction, letter of apology from Mr. Chisholm, and letter of response from Ms. Thibault.

The Committee granted Disciplinary Counsel's Motion to Permit Waiver of Hearings Committee Process. The Committee voted to accept the Stipulation as to the Facts, by clear and convincing evidence, attached hereto and made part hereof. The Committee voted to accept the Stipulation as to the Rules Violated, including Rule 1.3(a), 1.4 and 8.4(a).

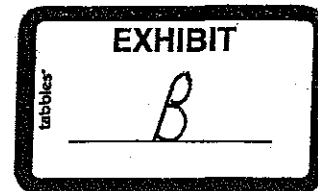
The Committee considered the Stipulation as to sanction. Ms. Chisholm was aware of the emotionally-charged nature of Ms. Thibault's legal claim, and her desire to have contact with her granddaughter. There was actual injury to the Complainant. The Committee did not find that the mitigating factors outweighed the aggravating factors. Therefore, the Committee voted to issue a Public Censure, consistent with American Bar Association Standards Section 4.4: Lack of Diligence, § 4.43. Mr. Chisholm is ordered to reimburse the Professional Conduct Committee for all expenses associated with the investigation and prosecution of this matter.

August 25, 2008

  
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Margaret H. Nelson  
Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel  
Kevin P. Chisholm, Esquire  
File



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

Chisholm, Kevin P.

advs.

Lori Thibault

#07-032

**STIPULATION**

Disciplinary Counsel, Landya B. McCafferty and Respondent, Kevin P.

Chisholm, hereby submit this Stipulation in the above-referenced case.

**I. Stipulation of Facts**

1. Mr. Chisholm is an attorney licensed to practice law in New Hampshire. Mr. Chisholm was admitted to practice on October 30, 1995. At all times material to this proceeding, Mr. Chisholm worked for the Runge Law Office, P.C. and Family Legal Services, 141 Airport Road, Concord, New Hampshire 03301.
2. On or about January 27, 2004, the parents of Mikaela Marie Harasko (d.o.b. 9/6/02) received an Order from Merrimack County Superior Court in the matter of Jessica Harasko and Jonathan Leach (docket #03-M-843), granting primary physical custody of Mikaela to her mother, Ms.

Harasko, and joint legal custody to both the father, Mr. Leach, and Ms. Harasko.

3. At some point, Ms. Harasko changed her name to Ms. Knowlton. For purposes of this Notice of Charges, however, she will be referred to as Ms. Harasko.
4. Lori A. Thibault, the Complainant in this attorney discipline matter, is Mikaela's paternal grandmother.
5. Following issuance of the custodial Order and by informal agreement with Ms. Harasko, Ms. Thibault was given physical custody of Mikaela on one Saturday of every month.
6. During the informal negotiations that led to the one-day per month visitation agreement, Mr. Chisholm represented Ms. Thibault and Suzanne L. Rock, Esq. represented Ms. Harasko.
7. In or about August 2006, Ms. Harasko prohibited Ms. Thibault from having any contact with Mikaela.
8. In or about September 2006, Ms. Thibault retained Mr. Chisholm to represent her in an action to establish grandparent visitation rights.
9. On or about September 20, 2006, Mr. Chisholm filed a pleading entitled, "Petition to Bring Forward and Modify for Grandparent's Rights," along with a data sheet and a \$72.00 filing fee.
10. In a letter to Ms. Rock dated September 20, 2006, Mr. Chisholm informed Ms. Rock that he was filing a petition for grandparent's rights and would notify her upon receipt of the orders of notice.

11. Mr. Chisholm informed Ms. Thibault that it would likely take the Court four to six weeks before scheduling a hearing.
12. In a letter to Mr. Chisholm dated September 22, 2006, the clerk's office returned the petition to Mr. Chisholm and informed Mr. Chisholm he needed to correct the caption and re-file the pleading as a "petition to intervene" for grandparent's rights.
13. Mr. Chisholm did not inform Ms. Thibault that the pleading needed to be re-filed, nor did he re-file the pleading.
14. After the passage of approximately two months, and having heard nothing further from Mr. Chisholm about the case, Ms. Thibault telephoned Mr. Chisholm to ask for a status update. Mr. Chisholm told Ms. Thibault that he had not yet heard anything from the Court but would check with the Court and get back to her.
15. Having heard nothing further from Mr. Chisholm, in or about March 2007, Ms. Thibault telephoned him. Mr. Chisholm informed Ms. Thibault that he would write a letter to the Court and ask the Court to move things along.
16. Having heard nothing further from Mr. Chisholm, in May and June 2007, Ms. Thibault telephoned Mr. Chisholm's office at least once per week, left numerous voicemail messages for him, and visited his office in an attempt to speak with him in person. Mr. Chisholm did not respond to Ms. Thibault's numerous inquiries and attempts to speak with him.

17. On or about July 2, 2007, Ms. Thibault filed a grievance with the Attorney Discipline Office complaining about Mr. Chisholm's failures to communicate with her.
18. Because Mr. Chisholm did not re-file the petition, the Court took no further action with respect to the matter.

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

19. Mr. Chisholm's conduct in this case raises questions under the New Hampshire Rules of Professional Conduct **1.3(a); 1.4; and 8.4(a)**.

### **Rule 1.3(a): Diligence**

20. At all relevant times, Mr. Chisholm had an attorney-client relationship with Ms. Thibault.
21. Upon agreeing to pursue Ms. Thibault's grandparent visitation rights, Mr. Chisholm owed Ms. Thibault a duty to proceed with the filing and pursuit of her case with reasonable promptness and diligence.
22. Mr. Chisholm breached said duty owed to Ms. Thibault by failing to file appropriate pleadings and pursue litigation to establish her grandparent visitation rights.
23. Mr. Chisholm's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3(a).

### **Rule 1.4: Communications**

24. Mr. Chisholm owed Ms. Thibault a duty to keep Ms. Thibault reasonably informed regarding the status of her petition to establish grandparent

visitation rights and to comply promptly with Ms. Thibault's reasonable requests for information about her case.

25. Mr. Chisholm breached the foregoing duty by failing accurately to inform Ms. Thibault of the procedural status of her petition when it was rejected by the clerk of court.
26. Mr. Chisholm further breached the foregoing duty by neglecting to respond to Ms. Thibault's numerous inquiries in May and June 2007, during which time Ms. Thibault was seeking information about the status of her case.
27. Mr. Chisholm's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a)-(c).

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

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

**III. Stipulation as to Sanction**

29. Disciplinary Counsel and Mr. Chisholm jointly recommend a reprimand as the appropriate sanction in this matter. A reprimand would serve the purposes of attorney discipline.
30. Both case law in New Hampshire and the American Bar Association's Standards for Imposing Lawyer Sanctions (1992) ("Standards") support the conclusion that Mr. Chisholm 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.

31. 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.
32. 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. See id. (“After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.”).

33. Under the first prong of the analysis, Mr. Chisholm violated his fundamental obligations to act diligently and communicate effectively with his client.
34. To determine the baseline sanction, the Standards next require analysis of both Mr. Chisholm's state of mind and the injury caused by his/her misconduct.
35. With respect to Mr. Chisholm's mental state, the evidence is clear that he acted knowingly in failing to comply with his duties to Ms. Thibault.
36. With respect to the injury caused by his misconduct, Mr. Chisholm concedes that his failure to act diligently and to communicate effectively with Ms. Thibault caused her real harm. Ms. Thibault relied upon Mr. Chisholm to help her gain custody of her granddaughter, a matter of extreme importance to Ms. Thibault. As a result of Mr. Chisholm's failure to pursue her case, Ms. Thibault has lost valuable custodial time with her granddaughter, a harm that is not quantifiable and cannot be recompensed. Not surprisingly, as a result of her experience with Mr. Chisholm, Ms. Thibault has lost faith in the legal system. The legal profession has thereby suffered harm to its reputation from Mr. Chisholm's misconduct.
37. Further guidance in determining the baseline sanction can be found in the language of the applicable section of the Standards. The section of the Standards that deals with a lawyer's failure to act diligently and to communicate effectively is Section 4.4:

#### **Section 4.4: Lack of Diligence.**

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 Reprimand<sup>1</sup> is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.44 Admonition<sup>2</sup> is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

38. Having characterized the misconduct and analyzed the facts under the first three prongs of the test, the appropriate baseline sanction in this case appears to be public censure. One of the central differences between a reprimand and a public censure under Standard 4.4 is the amount of injury caused by the misconduct.

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<sup>1</sup> Section 4.43 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

<sup>2</sup> Section 4.43 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

39. In this case, the injury to Ms. Thibault was substantial and it was foreseeable to Mr. Chisholm. That is, Mr. Chisholm was aware of the emotionally-charged nature of Ms. Thibault's legal claim, and her desire to have contact with her granddaughter. As a result, a public censure is a more appropriate baseline sanction.
40. The final step in the analysis, however, is to determine whether there are any aggravating and/or mitigating factors that affect the baseline sanction.
41. There are no aggravating factors in this case. There are, however, several compelling mitigating factors. First, Mr. Chisholm has no prior disciplinary history. See Standards 9.3(a). Second, Mr. Chisholm lacked a dishonest and selfish motive. See Standard 9.3(b). Third, and perhaps most important, Mr. Chisholm has experienced genuine remorse for his misconduct and for the harm he has caused Ms. Thibault. See Standard 9.4(l). See Exhibit 1 (a copy of a letter of apology dated July 21, 2008 from Mr. Chisholm to Ms. Thibault).
42. As a result of the mitigating factors, the baseline sanction should properly be reduced to a reprimand. A reprimand would address the goals of attorney discipline in New Hampshire and is consistent with the American Bar Association Standards.
43. In sum, taking into consideration both the four part analysis recommended by the Standards, 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**

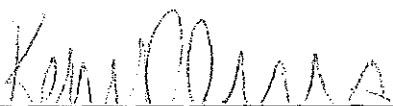
44. Mr. Chisholm agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

**V. Effect of Stipulation**

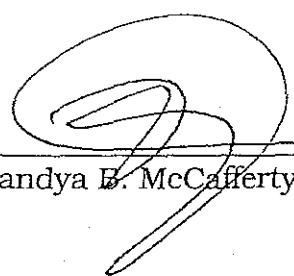
45. Respondent understands that by signing this Stipulation, he is hereby bound to the facts as stipulated. In the event that the Professional Conduct Committee does not agree with the Stipulation as to Rules Violated and/or the Stipulation as to Sanction, the Respondent is nonetheless hereafter bound to the facts as stipulated.

Respectfully submitted

Dated: 7/30, 2008

  
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Kevin P. Chisholm, Esquire

Dated: 7/30, 2008

  
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Landya E. McCafferty, Disciplinary Counsel