

New Hampshire Supreme Court
Professional Conduct Committee

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Huntress, Karen E. advs. Attorney Discipline Office # 08-006

REPRIMAND

On January 29, 2009, the Professional Conduct Committee (“Committee”) heard Oral Argument in the above-captioned matter. Landya B. McCafferty, Disciplinary Counsel, represented the Attorney Discipline Office (“ADO”); Emily Gray Rice, Esquire, represented the Respondent, Karen E. Huntress, Esquire, who was present. Committee members present included Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, David N. Cole, Thomas P. Connair, Gerald A. Daley, Richard H. Darling, and Marilyn Billings McNamara. Susan R. Chollet was absent. Alan J. Cronheim and James R. Martin were recused.

1. FINDINGS OF FACT

The Respondent and the ADO have stipulated, and the Committee accepts the Stipulation, (“Stipulation”) as to the facts of this matter. Accordingly, the facts described below as set forth in the Stipulation are established by clear and convincing evidence:

1. Ms. Huntress is an attorney licensed to practice law in New Hampshire. Ms. Huntress was admitted to practice on May 29, 2002. At all times material to this proceeding, Ms. Huntress worked at the Attorney General's Office, 33 Capitol Street, Concord, New Hampshire 03301.
2. In 2002, the State of New Hampshire charged Vincent Schonarth with seventeen counts of theft by deception. The indictments charged that Mr. Schonarth obtained control over money belonging to Denley Emerson, an elderly resident of Sandwich, by deception and with a purpose to deprive Mr. Emerson of the funds.

3. During its investigation of Mr. Schonarth, in March 2002, the State executed a search warrant on Mr. Emerson's residence. Mr. Schonarth was residing there at the time.
4. The criminal case went to trial in April of 2003. Ms. Huntress represented the State.
5. After trial, Mr. Schonarth was convicted on all counts and sentenced to the New Hampshire State Prison and was ordered to pay restitution of almost \$300,000.00.
6. Mr. Schonarth appealed his conviction. Ms. Huntress successfully defended the appeal. See State v. Schonarth, 152 N.H. 560 (2005).
7. Once Mr. Schonarth's conviction was final, the State obtained a writ of execution to seize and sell Mr. Schonarth's possessions at auction to satisfy the restitution order.
8. The State's efforts to move forward on the auction were halted by litigation brought by Mr. Schonarth's wife, Noreen Langill-Schonarth, and her daughter, Amanda Langill (referred to collectively as the "Langills").
9. On November 26, 2006, the New Hampshire Supreme Court issued an Order remanding the Langills' claims to Superior Court for a determination of "whether the [Langills] have a sufficient interest in the property the State seeks to auction in State v. Vincent Schonarth to warrant their intervention and/or any other relief."
10. The Superior Court scheduled the matter to be heard on March 14, 2007.
11. At the hearing, the Langills asserted that they had purchased the items that the State sought to sell at auction.
12. Amanda Langill testified regarding her claim of interest in the property. The State asked Amanda where she had purchased the automobiles in which she claimed an interest, but she did not recall any relevant specifics, including the purchase price of the vehicles.
13. Near the end of the hearing, in response to a question from the State about the cost of certain vehicles, Noreen Langill-Schonarth asserted:

I don't know [how much the vehicles cost], ma'am. You have all this information, the Attorney General's Office, because all of our paperwork was taken from our lock box,

along with the five thousand dollars my daughter had to go on to go to school, and a fifty dollar bill that my grandfather gave me when I graduated in 1973.

All of the information was taken, ma'am, by the New Hampshire Attorney General's Office.

If I had this paperwork, I would be more than happy to give it to you.

14. In response, Ms. Huntress stated:

Just for the record, your Honor, the Attorney General's Office does not maintain paperwork that would support their claims, nor does the Attorney General's Office have five thousand dollars that was taken from a lock box. Five thousand dollars was not recovered from the property during any search conducted in the criminal case.

15. The Court (Fitzgerald, J.) took the matter under advisement.
16. On or about March 14, 2007, the Court issued an order denying the Langills' petition. The Order held:

Petitioners Schonarth & Langill seek to intervene in the criminal case against the defendant solely for the purpose of preventing the State from seizing certain property of the defendant to satisfy substantial restitution orders which were part of the defendant's sentence. The court held a hearing on the claims on March 14, 2007. Petitioner Langill is unable to articulate any basis of a claim of interest in the property the State seeks to auction to satisfy the restitution. Her mother, Petitioner Schonarth (defendant's wife) tried to provide her with answers to the court's questions, but the court would not permit her to do so. Accordingly, all claims of Petitioner Langill are dismissed. Petitioner Schonarth claims to have bought many of the items which the state seeks to sieze (sic) and auction. Under questioning, petitioner Schonarth is unable to produce receipts for any of the items or verify that she had any income, much less sufficient income, to make such purchases. Further, she makes outrageous claims such as the State having seized \$5000.00 from a lockbox, which the State vigorously denies. The evidence supporting any claims by Petitioner Schonarth is not credible. The court finds that the State's assertion that the only income of the household to pay for the items seized

was the proceeds of the defendant's theft is correct based on the entire record of all proceedings presented by the State. Accordingly, all claimis (sic) of Pettioner (sic) Schonarth are dismissed.

So Ordered.

Dated: March 14, 2007

(Emphasis added).

17. On March 27, 2007, Ms. Huntress received an email from Noreen Langill-Schonarth. The email appeared to contain the text of a motion for reconsideration of the Court's March 14, 2007, Order, and it raised a myriad of issues for reconsideration.
18. Paragraph 1 of the email stated:

Mrs. Schonarth takes offence to the bias (sic) comments of Judge Edward J. Fitzgerald III when he stated "she makes outrageous claims" and "is not credible," which is basically calling her a "liar." The State committed perjury when they stated that "no money was taken from the lock boxes in the Dark Room of Ms. Langill in March 2002." See: Exhibit A: Inventory of N.H. Attorney Generals Office inventory of items taken from the property of the Schonarths. #1630 and #1633 proves Mrs. Schonarth was in fact telling the truth that money was taken from the lock boxes in the Dark Room. Amounts totaling \$4,018.36 is admitted to in the States document of which they tried to hide from this Honorable court for their own benefit. I feel Judge Fitzgerald owns (sic) me an apology for the false comments he made about me.
19. Before responding to the claims in Noreen Langill-Schonarth's March 27 email, Ms. Huntress wanted to research the issues with respect to each claim.
20. Since Noreen Langill-Schonarth had not attached exhibits to her March 27 email, Ms. Huntress emailed her on March 28, 2007, and requested them. Noreen Langill-Schonarth did not provide the exhibits to Ms. Huntress.
21. Ms. Huntress was struck by the specificity of Noreen Langill-Schonarth's claim that the State had seized \$4,018.36 during its search of the Emerson property in 2002. It seemed odd to Ms. Huntress that Noreen Langill-

Schonarth was now quoting \$4,018.36, as opposed to the \$5,000.00 that she had previously mentioned.

22. Ms. Huntress requested Attorney General Investigator Paul Brodeur to examine the Attorney General's evidence locker to determine whether there was any cash seized during the search of the Emerson property, and if so, whether it was still present in the evidence locker.
23. Investigator Brodeur reported back to Ms. Huntress that he had found money (\$4,019.36) in the evidence locker that had been seized during the search of the Emerson property. Ms. Huntress asked Investigator Brodeur to prepare a memorandum detailing his discovery; he did so on March 28, 2007.
24. On April 2, 2007, Ms. Huntress sent Noreen Langill-Schonarth a request to forward to Ms. Huntress a complete copy of any pleading(s) she filed in Superior Court. Noreen Langill-Schonarth did not do so.
25. On April 24, 2007, Ms. Huntress received an email from Noreen Langill-Schonarth that appeared to contain the text of a notice of appeal.
26. On June 11, 2007, the New Hampshire Supreme Court accepted the Langills' appeal and issued a briefing schedule. The Langills' brief was due on or before July 11, 2007, and the State's brief was due on or before August 10, 2007.
27. On August 9, 2007, one day before the State's brief was due in the Supreme Court, Ms. Huntress filed a pleading in Superior Court entitled, "State's Motion to Clarify and/or Correct the Record."
28. In Ms. Huntress' August 9 pleading, she explained that, on March 28, 2007, she had learned that, contrary to her assertions at the March 14, 2007, hearing, the State had seized cash from the Schonarths and continued to possess a total of \$4,019.36.
29. Ms. Huntress explained her belated effort to correct the record as follows:

The State had intended to correct the record as soon as possible, but wanted the opportunity to review all of Angie Schonarth's claims, to ensure that the State's representations to the Court during the hearing on March 14, 2007 were otherwise accurate. Unfortunately, despite repeated requests, Angie Schonarth refused to provide a copy of the entire document to the State, as filed with the Court. The State ultimately obtained a copy from the Court a number of weeks ago, and has now had a chance to review the

remaining issues raised in her motion to reconsider. The State submits that no other corrections to the record are necessary.

30. The remaining thrust of Ms. Huntress's August 9 pleading was an effort to persuade the Superior Court that her inaccurate statements during the March 14, 2007, hearing regarding the State's seizure of cash were not material to the Court's decision and should not alter the result.

31. In an Order dated August 27, 2007, the Court held:

Petitioners Schonarth & Langill sought to intervene in the criminal case against the defendant solely for the purpose of preventing the State from seizing certain property of the defendant to satisfy substantial restitution orders which were part of the defendant's sentence. The court held a hearing on the claims on March 14, 2007 and issued an order denying Petitioners' claims on the same day. Central to the court's rulings was a finding of a lack of credibility on the part of Petitioner Schonarth based on her claim of seized cash which the State represented to the court had not been seized. As early as March 27, 2007 the State knew its representations were false but took no action to notify the Court of its error until August 9, 2007. The Court is concerned that remedial action is required under such circumstances. The State shall within 10 days of the clerk's notice of this order show good cause in writing why remedial actions including, but not limited to the following, should not be taken:

- A) The Order of 3/14/2007 be vacated; and
- B) The Court appoint counsel to represent the Petitioners' interests to be paid for by the Office of the Attorney General; and
- C) The Attorney General's Office be sanctioned in an appropriate amount; and
- D) Present counsel for the State be removed from the case; and
- E) At any future hearing, the burden be on the State to prove that Petitioners do not have an interest in the property.

The Clerk of the Carroll County Superior Court shall notify the Clerk of the Supreme Court that there is pending before this court the court's *sua sponte* consideration of vacating its prior order and that the Supreme Court may wish to stay any consideration of the appeal pending in Supreme Court Docket No. 2007-0319.

So Ordered.

Dated: August 27, 2007

(Emphasis in original).

32. In a subsequent order dated December 31, 2007, the Superior Court held:

Following a review of the State's response to the court order of 8/27/07, the Court rules as follows:

1. The Court's order of March 14, 2007, was predicated on the State's erroneous assertion that no cash had been seized from the defendant. While the fact of the existence of the currency might not have changed the underlying order, it was a material fact in the court's determination that petitioners Angie Schonarth and Amanda Langill were not credible.

2. Inasmuch as the erroneous assertion was material to the court's findings, justice requires that the order be set aside and it is hereby vacated.

3. In order to assure that such carelessness on the part of the State does not again prejudice the petitioners, counsel is to be appointed to represent the petitioners. The clerk of Court is directed to secure such counsel. The office of the Attorney General shall be responsible for payment of all fees incurred by counsel in representing the petitioners.

4. After the appointment of counsel, a status conference shall be held to determine a schedule for discovery and hearing on the petition.

5. The undersigned justice recuses himself from further participation in the petition of Angie Schonarth and Amanda Langill.

UNDERLYING CRIMINAL CASE:

Defendant's Motion to Vacate Guilty Finding is denied. The findings concerning the above referenced petition are unrelated to any issue concerning defendant's trial.

Dated: December 31, 2007

33. In a letter dated January 8, 2008, the Court referred the matter to the Attorney Discipline Office.

Stipulation ¶¶ 1-33, at 1-9.

II. RULINGS OF LAW

The Respondent and the ADO have stipulated, and the Committee accepts the Stipulation, as to the Rules of Professional Conduct that were violated. The Stipulation establishes these violations by clear and convincing evidence:

Rule 3.3(a)(3): Failure to Take Reasonable Remedial Measures

34. Allegations set forth above are incorporated by reference.
35. As explained in more detail above, Ms. Huntress became aware on or about March 28, 2007, that certain statements she made during a March 14, 2007, hearing were false.
36. Specifically, Ms. Huntress learned on March 28, 2007, that contrary to her assertions at the March 14 hearing, the State had seized cash from the Schonarth's during a search of the Emerson residence in 2002.
37. Ms. Huntress became aware of her misstatements approximately 14 days after the Court Order in the case.
38. Ms. Huntress was aware on or about March 28, 2007, that her factual misstatements were material to the Court's decision regarding Noreen Langill-Schonarth's credibility.

39. Specifically, with respect to Ms. Huntress's statements, the Court had written in its March 14, 2007, order:

Further, [Noreen Langill- Schonarth] makes outrageous claims such as the State having seized \$5000.00 from a lockbox, which the State vigorously denies. The evidence supporting any claims by [Noreen Langill-Schonarth] is not credible.

40. Ms. Huntress had a duty to take reasonable remedial measures and to correct the record immediately after her discovery on or about March 28, 2007, of her inaccurate statements (or as soon as practicable thereafter).
41. Instead, Ms. Huntress waited until August 9, 2007, the day before her Supreme Court brief was due on the Langills' appeal, to notify Judge Fitzgerald of her misstatements.
42. Ms. Huntress's delay in excess of four months before correcting the record was not reasonable.
43. Ms. Huntress' conduct in this regard constitutes a violation of N.H. R. Prof. Conduct 3.3(a)(3).

Rule 8.4(a): General Rule

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

Id. ¶¶ 34-44 at 9 to 10.

III. ANALYSIS

Although New Hampshire has not adopted the *American Bar Association's Standards for Imposing Lawyer Sanctions* (2005) (*Standards*), the Committee looks to them for guidance. *See, e.g., Shillen's Case*, 149 N.H. 132, 139 (2003) (noting that although the Court has never formally adopted the *Standards* the Court has considered them when imposing sanctions). The *Standards* list the following factors to be considered in imposing sanctions: (a) the duty violated; (b) the lawyer's mental state; (c) the actual or potential injury caused by the lawyer's misconduct; and

(d) the existence of aggravating or mitigating factors. *Standards, supra* § 3.0; *Coffey's Case*, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). In applying these factors the Committee first categorizes the respondent's misconduct, then identifies the appropriate sanction. *Coddington's Case*, 155 N.H. 66, 71 (2007). The Committee then considers the effect of any aggravating or mitigating factors on the ultimate sanction. *Id.*

Ms. Huntress violated a fundamental obligation as an officer of the Court by failing to immediately correct a material misstatement of fact to a court in a timely manner. Ms. Huntress' mental state was effected by a very demanding caseload at the Attorney General's Office, which led to her failure to appropriately prioritize the urgency of the need to correct the record in the underlying matter. This had an impact on the injury to Ms. Langill-Schonarth, whose credibility had been falsely impugned to the Court. The legal profession also suffered harm based on Respondent's failure to pay attention to her obligation of candor to the tribunal. The Committee identified the baseline sanction as a public censure. *Standards* § 6.13. Ms. Huntress acknowledged her failure to take immediate action to correct the record.

Ms. Huntress did not have any aggravating factors in this matter. In mitigation, Ms. Huntress had no prior disciplinary record, lacked a dishonest or selfish motive, and has an excellent reputation in the community. Ms. Huntress made a "full and free disclosure" to the ADO and has expressed sincere remorse, and has fully cooperated with the ADO throughout the pendency of this matter.

IV. SANCTION

Having made the above findings and rulings, the Committee concludes that the appropriate discipline in this matter is a Reprimand. This sanction is in accord with the purposes

of attorney discipline as described by the New Hampshire Supreme Court. *See, e.g., Feld's Case, 149 N.H. 19, 28 (2002).* This sanction is also in accord with the *Standards*.

V. COSTS

The Respondent and the ADO have stipulated, and the Committee accepts, that the Respondent will pay all costs associated with the investigation and prosecution of this matter.

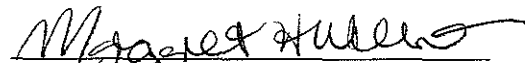
VI. CONCLUSION

For the above reasons the Committee issues a Reprimand to the Respondent for violating N.H. R. Prof. Conduct 3.3(a)(3): Failure To Take Reasonable Remedial Measures, and 8.4(a): Misconduct.

VII. RIGHT TO APPEAL

Pursuant to Supreme Court Rule 37(A)(III)(d)(2)(D)(4)(A), the parties have the right to appeal this decision to the New Hampshire Supreme Court. *See also* Supreme Court Rule 37(3)(c).

February 20, 2009


Margaret H. Nelson
Chair

Distribution:

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