

New Hampshire Supreme Court
Professional Conduct Committee

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Hynes, Daniel P. advs. Attorney Discipline Office # 07-001

**RECOMMENDATION OF A TWO YEAR SUSPENSION WITH
ONE YEAR STAYED FOR TWO YEARS**

On November 18, 2008, the Professional Conduct Committee heard Oral Argument in the above-referenced matter pursuant to New Hampshire Supreme Court Rule 37A(III)d(2)(B).

Landya B. McCafferty, Disciplinary Counsel, appeared for the Attorney Discipline Office.

Respondent, Daniel P. Hynes, appeared on his own behalf. Members present included Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling, Gretchen Rule Hamel, James R. Martin and Marilyn Billings McNamara.

At its October 21, 2008 meeting, the Committee, at the parties' request, voted to waive the evidentiary hearing process before a hearing panel and agreed to accept the submitted Stipulation to the Facts and the Stipulation as to Rules of Professional Conduct Violated. These Rules included Rule 8.4 (a) and (b). The Committee also approved the parties' agreement to dismiss the charge of a violation of Rule 8.4(c).

The Committee record in this case includes the Notice of Charges, Mr. Hynes' Answer, his Motion to Dismiss with its attachments, Disciplinary Counsel's Objection to the Motion to

Dismiss, the Stipulation to Facts, the Hearing Panel's Order recommending denial of the Motion to Dismiss, the Stipulation as to Rule Violations and Proposed Sanction, the Supplement to the Stipulation as to Rule Violations and Proposed Sanction and the transcript of the Oral Argument before the Professional Conduct Committee.

I. FACTUAL FINDINGS

The parties entered into a Stipulation to the Facts. The Committee, upon consideration and review of the Stipulation, determined that the record supports the following findings of fact by clear and convincing evidence:

1. Mr. Hynes was an attorney licensed to practice law in New Hampshire during the times referenced in this case. Mr. Hynes was admitted to practice on October 31, 2006. At all times material to this proceeding, Mr. Hynes' mailing address was 71D Wellington Terrace Drive, Manchester, New Hampshire 03104.
2. In a letter dated December 18, 2006, to Salon Aquavit, a hairdressing salon in Milford, Mr. Hynes wrote:

Cease and Desist/Demand Letter

FACTS

I am writing in regards to your company's policy of pricing for different types of haircuts. It has been brought to my attention that your business charges \$40-\$80 for shaping and design for Women but only \$30-\$50 for the same service for Men. Such a distinction in price based on gender is discrimination in violation of the law. Accordingly, I demand you immediately cease this unfair pricing and charge customers in a more appropriate manner, such as by the length of their hair or the amount of time it would take.

ARGUMENT

N.H. RSA 354-A: 17 Specifically holds: Unlawful

Discriminatory Practices in Public Accommodations. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, because of the age, sex, race, creed, color, marital status, physical or mental disability or national origin of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof; or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of age, sex, race, creed, color, marital status, physical or mental disability or national origin; or that the patronage or custom thereof of any person belonging to or purporting to be of any particular age, sex, race, creed, color, marital status, physical or mental disability or national origin is unwelcome, objectionable or acceptable, desired or solicited. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.

Your business is a place of public accommodation as defined in RSA 354-A:2. Further, charging one price for women and a different price for men is unlawful discrimination based upon sex. You are giving advantages, facilities, and privileges to men by giving them a discount that women can not receive. Accordingly, you are in violation of this statute.

By engaging in such illegal discrimination for a profit, you are further engaged in an unfair trade practice in violation of N.H. RSA 358-A. The remedy for a violation of an unfair trade practice includes \$1000 minimum as well as potential multiple damages and attorney fees and costs. (See N.H. RSA 358-A: 10).

DEMAND

Accordingly, I demand that you immediately cease your unlawful practice of charging for haircuts based on gender. Should you not comply I will be forced to file a complaint

with the State Commission for Human Rights while reserving all rights to remove and file in Superior Court. In addition, I demand payment in the amount of \$1000 in order to avoid litigation and a prompt resolution to this matter. I believe \$1000 is a fair amount as it is the minimum that would be awarded for an unfair trade practice alone. You have ten (10) days to comply with both the demand to cease and desist and for payment in the amount of \$1000. Should you fail to comply additional steps will be taken including filing with the State Commission for Human Rights and potential removal to Superior Court. If such action is necessary I will seek all remedies available including but not limited to an injunction, damages for the discrimination, damages for the unfair trade practice, punitive damages, attorney fees and costs. If you object or otherwise wish to discuss the above matter you may have your attorney contact me.

Sincerely,

Daniel P. Hynes, Esq.

3. In a letter dated December 27, 2006, to Bellaviso Salon & Spa in Dover, Mr. Hynes wrote an almost identical "cease and desist" letter.
4. Mr. Hynes wrote almost identical "cease and desist" letters to as many as 18 other hair salons in New Hampshire, with demands ranging from \$1,000.00 to \$2,000.00.
5. One of the 18 other letters was sent to Claudia's, a hair salon in Concord owned by Claudia Lambert. Mr. Hynes did not date the letter he sent to Claudia's.
6. Mr. Hynes does not dispute that, on December 20, 2006, former Attorney General's Office (AGO) Chief Investigator, G. Michael Bahan, received a phone call from Benjamin J. Nardi, Jr., Ms. Lambert's husband.
7. Mr. Hynes does not dispute that Mr. Nardi reported to Mr. Bahan the fact that his wife had received the "cease and desist" letter from Mr. Hynes.

8. After speaking with Mr. Bahan, Mr. Nardi spoke with Mr. Hynes. Mr. Hynes explained that he had found Claudia's Hair Salon on the internet and in the telephone book, and had obtained the salon's pricing information from the internet.
9. Mr. Nardi offered Mr. Hynes \$500.00 to settle the matter. Mr. Hynes agreed.
10. On January 5, 2007, Mr. Nardi and AGO Investigator Allison Vachon, who went undercover as a partner in Claudia's Hair Salon, met with Mr. Hynes to execute the settlement agreement. Ms. Vachon's undercover name was "Alyssa Morgan."
11. During that meeting, Mr. Hynes stated that he sent the letter on behalf of himself and that he did not represent any clients.
12. As part of the settlement, Mr. Hynes and Ms Vachon (undercover as Alyssa Morgan), signed a Release that Mr. Hynes had drafted. The Release stated, *inter alia*, that Claudia's Hair Salon "agrees to not engage in any discrimination practices in regards to services or prices offered by [Claudia's Hair Salon] . . . specifically including determining a price for a patron's haircut by the patron's gender. . .
13. After the settlement agreement was executed and \$500.00 in cash was given to Mr. Hynes, he was arrested for theft by extortion.
14. On May 2, 2007, the AGO issued an Information against Mr. Hynes on the basis of Mr. Hynes' letter to Claudia's Hair Salon, charging him with a violation of RSA 637:5, Theft by Extortion.
15. The Information alleged that, on the date in question, Mr. Hynes:

[D]id commit the crime of extortion in that Daniel P. Hynes obtained or exercised control over the property of another by

extortion and with the purpose to deprive him thereof, to wit, Daniel P. Hynes obtained control of \$500.00 by threatening to sue Claudia's Hair Salon of Concord, New Hampshire if it did not pay Hynes a specified amount of money and change its pricing structure. The threatened act would not in itself substantially benefit Hynes but would have harmed substantially the business, career, financial condition, and/or reputation of Claudia Lambert and/or Claudia's Hair Salon,...

16. A jury trial took place on March 18 and 19, 2008, in Hillsborough County Superior Court-North, after which Mr. Hynes was found guilty.
17. At the trial, the jury heard evidence from the following witnesses: Ms. Lambert; Mr. Nardi; Ms. Vachon; and the defendant. The defendant admitted that he sent the aforementioned letter and he subsequently accepted \$500.00 to settle the matter with Claudia's Hair Salon. The defendant testified that he sent the demand letter in his individual capacity and that he was not representing a client who had been adversely affected by the salon's pricing policy. He further testified that he was not a customer of the salon, admitting that he had obtained information about it, including its pricing structure, on the internet. Mr. Hynes asserts that, although he did not represent a client, he was himself adversely affected by the salon's pricing structure.
18. Ms. Lambert testified that a discrimination suit would have harmed her business, career, financial condition and reputation. Specifically, she testified that obtaining an attorney to defend a lawsuit would be costly. She further testified that she had worked hard to garner a strong reputation in the community, which provided a source of business for her. She testified that such a suit would have given her a

bad reputation in the community and thus would have adversely affected her business.

19. At the trial, Mr. Hynes conceded that, in addition to the letter to Claudia's Hair Salon, he had forwarded 18 other similar "cease and desist/demand" letters, with demands ranging from \$1,000.00 -\$2,500.00, to hair salons in New Hampshire. The aforementioned letters to Salon Aquavit and Bellaviso Salon and Spa are two such other letters.
20. At the close of the trial, the Court (Barry, J.) instructed the jury to accept as true that Mr. Hynes did not have standing to bring a lawsuit against Claudia's Hair Salon. Mr. Hynes contested and has appealed this ruling.
21. On April 30, 2008, the Court (Barry, J.) sentenced Mr. Hynes for the crime of Theft by Extortion to 12 months in jail, all suspended on Mr. Hynes' good behavior, and placed him on probation for one year.
22. Mr. Hynes has appealed his criminal conviction to the New Hampshire Supreme Court: *State v. Hynes*, New Hampshire Supreme Court No. 2008-0371. This matter is currently pending before the Supreme Court.

II. RULINGS OF LAW

The Committee, upon consideration and review of the Stipulation as to Rule Violations and Sanction and the Supplement to Stipulation as to Rule Violations and Sanction, concludes that the record supports the following Rulings of Law by clear and convincing evidence:

RULE 8.4(a): ATTEMPT TO COMMIT A CRIMINAL ACT

23. The facts as set forth in Paragraphs 1 through 22 are incorporated by reference.

24. RSA 637:5 provides in pertinent part, as follows:

637:5 Theft by Extortion. —

- I. A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.
- II. As used in this section, extortion occurs when a person threatens to:
 - (i) Do any other act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that persons health, safety, business, calling, career, financial condition, reputation, or personal relationships.

25. By sending the “cease and desist/demand” letters to hair salons in New Hampshire under the aforementioned circumstances, Mr. Hynes engaged in acts constituting a substantial step towards the completion of the crime of extortion.

26. Specifically, Mr. Hynes drafted these “cease and desist/demand” letters on behalf of no client, and Mr. Hynes stood to receive no substantial benefit himself from his demanded changes in hair-cutting price structures and his threatened lawsuits.

27. Further, Mr. Hynes sent the letters with a purpose to threaten the salons in order to gain leverage in his scheme to obtain money from these salons.

28. Mr. Hynes sent the letters with the knowledge that the threatened lawsuit against the hair salons would cause substantial harm to the business and financial condition and/or reputation of each of the hair salons, as well as harm to the careers of the salon’s principals.

29. Mr. Hynes sent the letters with the understanding that the hair salons might desire to avoid the harm to their business from a lawsuit by meeting his financial demands.
30. Mr. Hynes utilized his license as an attorney to carry out his extortionist scheme.
31. Mr. Hynes' extortionist scheme reflects adversely on his fitness as a lawyer.
32. Mr. Hynes' numerous attempts (at least 18 in number) to extort money from hair salons in New Hampshire, constitute clear and convincing evidence that he attempted to commit criminal acts thereby violating the Rules of Professional Conduct and N.H. R. Prof. Conduct 8.4(a).

RULE 8.4(b): COMMIT A CRIMINAL ACT

33. The facts as set forth in Paragraphs 1 through 22 are incorporated by reference.
34. By sending the "cease and desist/demand" letter to Claudia's Hair Salon and accepting \$500.00 as settlement of the demand, as described in more detail in the Stipulation to the Facts, Mr. Hynes engaged in conduct constituting a criminal act in violation of RSA 637:5(II)(i).
35. Specifically, Mr. Hynes drafted the "cease and desist/demand" letter to Claudia's on behalf of no client and Mr. Hynes stood to receive no substantial benefit himself from the demanded changes in Claudia's hair-cutting price structures and threatened lawsuit.
36. The threatened lawsuit against Claudia's Hair Salon, as described in Mr. Hynes' letter, would have caused substantial harm to Claudia's business, financial condition and/or reputation, as well as to the careers of Claudia's principals.
37. Mr. Hynes utilized his license as an attorney to carry out his extortionist scheme.
38. Mr. Hynes' extortionist scheme reflects adversely on his fitness as a lawyer.

39. Mr. Hynes' acceptance of \$500.00 to settle the demands and threats he asserted against Claudia's in the cease and desist/demand letter he wrote to Claudia's, constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(b).

RULE 8.4(a): GENERAL RULE

40. Because there exists clear and convincing evidence that Mr. Hynes violated the above Rules, there is necessarily clear and convincing evidence of a violation of New Hampshire Rule of Professional Conduct 8.4(a).

RESERVATION OF RIGHT TO REVIEW RULES VIOLATIONS AND SANCTION

41. Mr. Hynes, in the Supplement to Stipulation As To Rule Violations and Sanction, has agreed to waive any challenge to the terms and conditions of the initial Stipulation unless the New Hampshire Supreme Court vacates his criminal conviction based on RSA 637:5 being unconstitutional or ruling that RSA 637:5, II(i) did not prohibit his conduct in this case. The Committee accepts Mr. Hynes' reservation of his right to review the rule violations and sanctions under these two circumstances.

III. SANCTION

Having made the above-referenced findings and rulings, the Committee concludes that the appropriate discipline in this matter is a two year suspension with the second year of the suspension stayed for a period of two years based on certain conditions. The New Hampshire Supreme Court suspended Mr. Hynes as of July 1, 2008. The Committee recommends that Mr. Hynes' suspension run prospectively from July 1, 2008, the date of his suspension.

The Committee recognizes that "the purpose of attorney discipline is not to inflict

punishment, but rather to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future.” *Grew’s Case*, 156 N.H. 361, 365 (2007), quoting *Coddington’s Case*, 155 N.H. 66, 68 (2007).

In reaching this decision, the Committee refers to the American Bar Association’s *Standards for Imposing Lawyer Sanctions* (2005) (*Standards*) for guidance. *Grew’s Case*, *supra* at 365; *Coffey’s Case*, 152 N.H.503, 513 (2005).

Under the *Standards*, the Committee considered the following factors when imposing sanctions: “(a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual inquiry caused by the lawyer’s misconduct; (d) the existence of aggravating or mitigating factors.” *Standards*, §3.0.

In assessing the first prong, the Committee looks to violations of duties owed to the public, *Standards*, §5.0. In this particular case, Mr. Hynes violated his duty to maintain his personal integrity. *Standards*, §5.1, provides guidelines for sanctions in cases where a lawyer fails in his duty to maintain personal integrity and provides:

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in

criminal conduct which does not contain the elements listed in *Standard* 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

- 5.13 Reprimand¹ is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice.
- 5.14 Admonition² is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

The second prong focuses on a lawyer's state of mind. Here, Mr. Hynes was convicted of extortion, an element of which included a purposeful mental state.

The third factor addresses the potential or actual injury caused by the misconduct. Here, Mr. Hynes engaged in a course of conduct involving 19 different hair salons and actually obtained money from what he believed to be one salon owner. This conduct clearly impacted Claudia Lambert, owner of Claudia's Hair Salon in Concord, and created concern for her business and her reputation. No doubt Mr. Hynes' letter campaign created concern among a number of the individuals who received these threatening letters. Mr. Hynes' conduct not only impacted the salon owners, but damaged the reputation of the legal community as it fights to overcome the public's skepticism regarding lawyer ethics.

While *Standard* §5.11 addresses the issue of a lawyer engaging in serious criminal

¹ Section 5.13 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

² Section 5.14 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

conduct, which includes extortion, the Committee believes a more appropriate baseline standard in this case is that of a suspension. Mr. Hynes engaged in criminal conduct, however, it was done with the mistaken belief that he could pursue legal claims against the various salons. Although there can be disagreement as to whether the baseline sanction in this case should be disbarment or suspension, the Committee believes that after weighing the aggravating and mitigating factors in the case, a suspension is the most appropriate sanction under these circumstances.

In assessing the aggravating and mitigating factors, the Committee reviewed *Standard §9.0*.

Focusing first on the aggravating factors, there are three. Mr. Hynes acted with a dishonest and selfish motive, he engaged in a pattern of misconduct and he engaged in illegal conduct. *See, Standards §9.22(b), (c) and (k)*. In weighing these aggravating factors, the Committee agrees with Disciplinary Counsel's view that these factors are already incorporated in setting the baseline sanction and therefore should not be seen as independent serious aggravating factors.

Mr. Hynes' case includes numerous mitigating factors. By all accounts, Mr. Hynes was inexperienced in the practice of law. In writing these letters, he failed to properly assess the issue of standing to bring these legal cases. Mr. Hynes appears to have been confused by his prior efforts in bringing discrimination cases in Massachusetts. In New Hampshire, however, Mr. Hynes was not a victim of discrimination by the hair salons nor did he represent anyone who was a victim of a discriminatory practice. In Massachusetts, Mr. Hynes was arguably affected by the discriminatory practices he raised and therefore had standing to pursue these matters. Mr. Hynes'

failure to recognize this critical distinction formed the basis for his misconduct. The Committee believes that Mr. Hynes' limited experience in practicing law contributed to this mistaken judgment. Mr. Hynes has already suffered public humiliation, a criminal trial and a criminal conviction based on this same conduct. It should be noted, he has been thoroughly cooperative with Disciplinary Counsel. He has already enrolled in an ethics course at Franklin Pierce Law Center and has obtained a mentor to assist him when he resumes his practice. His remorse appears genuine and his desire to abide by the Rules of Professional Conduct appears sincere. He articulates a recognition of his responsibility as a lawyer to more carefully consider his legal strategies and his ethical obligations. *See, Standards*, §9.32 (e), (f), (k) and (l).

Under these circumstances, the Committee believes that a two year suspension with the second year of the suspension being stayed for two years is an appropriate sanction in this case. If the suspension period commences July 1, 2008, the date of the Supreme Court's Order of Suspension, Mr. Hynes will be eligible for reinstatement as of July 1, 2009. He will then have completed his one year term of criminal probation, completed his ethics course and served a significant period of suspension.

The parties, in submitting the Stipulations included an extensive set of conditions for Mr. Hynes to follow when he resumes the practice of law. The conditions were clearly the product of considerable thought. The Committee believes it is appropriate to fully adopt these conditions as part of a suspension order. The Committee adopts the conditions included in the Stipulation as to Rule Violations and Sanction submitted by the parties.

Therefore, the Committee recommends that Mr. Haynes be suspended from the practice of law for a two year period. One year of the suspension period should be imposed. Mr. Hynes

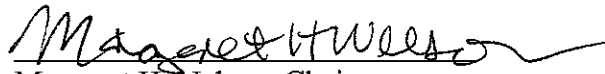
should be given credit for the time he has already served under the Supreme Court's temporary suspension in the LD-2008-0004. The remaining one year of the suspension period should be stayed for two years based on the conditions included in parties Stipulation as to Rule Violations and Sanction, paragraphs 22 to 34, a copy of which is appended to this Order.

IV. CONCLUSION

For the above reasons, the Professional Conduct Committee recommends to the New Hampshire Supreme Court that Daniel P. Hynes be suspended from the practice of law for a period of two years with the right to seek reinstatement after one year for violating New Hampshire Rules of Professional Conduct, Rules 8.4(a) and 8.4(b). It is further recommended that the suspension order commence July 1, 2008, the date of the Supreme Court's Order of Suspension in this case. Mr. Hynes has agreed to pay the expenses incurred by the Committee in the investigation and prosecution of this matter. It is therefore also recommended that he be assessed all such costs and expenses.

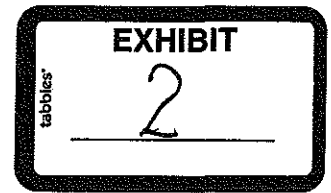
Therefore, the Committee directs Disciplinary Counsel to file a Petition for the suspension of Daniel P. Hynes in the New Hampshire Supreme Court as provided in this Order.

March 12, 2009


Margaret H. Nelson, Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
Daniel P. Hynes
File



NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Hynes, Daniel P.

advs.

Attorney Discipline Office

#07-001

STIPULATION AS TO RULE VIOLATIONS
AND SANCTION

Respondent, Daniel P. Hynes, Esq., and the Attorney Discipline Office, by and through Disciplinary Counsel, Landya McCafferty, Esq., hereby submit this Stipulation as to Rule Violations and Sanctions in the above captioned case.

1. The parties filed a Stipulation to the Facts with this Committee on August 1, 2008, wherein Mr. Hynes admitted to the material facts in this matter. At the time that Stipulation was filed, the parties had not reached an agreement with respect to rule violations and sanction. The Stipulation of the Facts is incorporated herein and attached as Exhibit A.
2. The parties have now reached agreement with respect to the appropriate rule violations and sanction and respectfully request that the Committee approve and adopt the rule violations and proposed sanction.

I. Stipulation as to Rules Violated

Rule 8.4(a): Attempt to Commit a Criminal Act

3. The facts as set forth in Exhibit A are incorporated by reference.

4. RSA 637:5 provides in pertinent part, as follows:

637:5 Theft by Extortion. –

I. A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.

II. As used in this section, extortion occurs when a person threatens to: . . .

(i) Do any other act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

5. By sending the “cease and desist/demand” letters to hair salons in New Hampshire under the aforementioned circumstances, Mr. Hynes engaged in acts constituting a substantial step towards the completion of the crime of extortion.

6. Specifically, Mr. Hynes drafted these “cease and desist/demand” letters on behalf of no client, and Mr. Hynes stood to receive no substantial benefit himself from his demanded changes in hair-cutting price structures and his threatened lawsuits.

7. Further, Mr. Hynes sent the letters with a purpose to threaten the salons in order to gain leverage in his scheme to obtain money from these salons.

8. Mr. Hynes sent the letters with the knowledge that the threatened lawsuit against the hair salons would cause substantial harm to the business and financial condition and/or reputation of each of the hair salons, as well as harm to the careers of the salon's principals.
9. Mr. Hynes sent the letters with the understanding that the hair salons might desire to avoid the harm to their business from a lawsuit by meeting his financial demands.
10. Mr. Hynes utilized his license as an attorney to carry out his extortionist scheme.
11. Mr. Hynes' extortionist scheme, as outlined in more detail in the Stipulation to the Facts, reflects adversely on his fitness as a lawyer.
12. Mr. Hynes' numerous attempts (at least 18 in number) to extort money from hair salons in New Hampshire, constitute clear and convincing evidence that he attempted to commit criminal acts in violation of N.H. R. Prof. Conduct 8.4(a).

Rule 8.4(b): Commit a Criminal Act

13. The facts as set forth in Exhibit A are incorporated by reference.
14. By sending the "cease and desist/demand" letter to Claudia's Hair Salon and accepting \$500.00 as settlement of the demand, as described in more detail in the Stipulation to the Facts, Mr. Hynes engaged in conduct constituting a criminal act, in violation of RSA 637:5(II)(i).
15. Specifically, Mr. Hynes drafted the "cease and desist/demand" letter to Claudia's on behalf of no client and Mr. Hynes stood to receive no

substantial benefit himself from the demanded changes in Claudia's hair-cutting price structures and threatened lawsuit.

16. The threatened lawsuit against Claudia's Hair Salon, as described in Mr. Hynes' letter, would have caused substantial harm to Claudia's business, financial condition and/or reputation, as well as to the careers of Claudia's principals.
17. Mr. Hynes utilized his license as an attorney to carry out his extortionist scheme.
18. Mr. Hynes' extortionist scheme, as outlined in more detail in the Stipulation to the Facts, reflects adversely on his fitness as a lawyer.
19. Mr. Hynes' acceptance of \$500.00 to settle the demands and threats he asserted against Claudia's in the cease and desist/demand letter he wrote to Claudia's, constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(b).

Rule 8.4(a): General Rule

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

Rule 8.4(c): Fraud and Deceit

21. As part of this stipulated agreement, Disciplinary Counsel recommends to the Professional Conduct Committee that it dismiss the Rule 8.4(c) charge currently pending in the Notice of Charges.

II. Stipulation as to Sanction

22. The term of the sanction agreed to under this Stipulation shall be for two (2) years and shall begin to run upon the entry of an order of the Professional Conduct Committee adopting this Stipulation.
23. Mr. Hynes enters into this Stipulation freely, intelligently and voluntarily, and he understands the consequences of this Stipulation.
24. In entering into this Stipulation, Mr. Hynes has sought and received the advice of counsel.
25. The parties jointly propose that Mr. Hynes be suspended from the practice of law for twelve months. Six months of the twelve month suspension shall be imposed, and Mr. Hynes shall be given retroactive credit for the time he has already served under the Court's temporary suspension in LD 2008-0004. The remaining six months of the twelve month suspension shall be stayed for two years on the following terms and conditions:
 - (a) Mr. Hynes shall comply with the terms of this Stipulation, as described below.
 - (b) Mr. Hynes agrees to take and successfully complete Russell F. Hilliard's professional responsibility class at Franklin Pierce Law Center in the Fall of 2008.
 - (c) Mr. Hynes must show proof to Disciplinary Counsel that he has successfully completed Mr. Hilliard's class on or before January 1, 2009.

- (d) Mr. Hynes understands that he must take and pass the Multistate Professional Responsibility Examination before he can be reinstated to the practice of law.
- (e) Mr. Hynes agrees to find an experienced member of the Bar to act as a mentor to Mr. Hynes during the two-year term of this stay. Disciplinary Counsel must first approve Mr. Hynes's selection of a mentor.
- (f) Mr. Hynes agrees to consult with his mentor on at least a monthly basis about his case load and any contemplated lawsuits.
- (g) Mr. Hynes will not file lawsuits or threaten to file lawsuits on behalf of his clients (or participate as counsel in any other litigated matter) unless Mr. Hynes: (a) has first discussed the lawsuit or other litigated matter with his mentor; and (b) received an informal opinion from his mentor that the mentor believes the lawsuit(s) or other litigated matter is not frivolous.
- (h) Mr. Hynes agrees that, in the event his mentor believes the contemplated lawsuit(s) or other litigated matter is or may be frivolous, Mr. Hynes will not pursue that lawsuit(s) or participate in such litigated matter.
- (i) Mr. Hynes shall provide to Disciplinary Counsel every six months an affidavit attesting to the following:
 - (1) Mr. Hynes has consulted with his mentor on a monthly basis;

- (2) Mr. Hynes has filed no lawsuit(s) and has not participated as counsel in any other litigated matter that his mentor believes is, or may be, frivolous;
 - (3) Mr. Hynes has complied with the Rules of Professional Conduct, including Rule 1.17 (if applicable), and all conditions of this Stipulation during the preceding six months;
- (j) The affidavit shall also include notification to Disciplinary Counsel of:
- (1) any address change;
 - (2) any civil claim asserted against Mr. Hynes; and
 - (3) any civil judgment entered against Mr. Hynes.
26. Disciplinary Counsel shall monitor Mr. Hynes's compliance with the terms of this stipulation and shall be authorized at any time to communicate with Mr. Hynes's mentor regarding Mr. Hynes's performance.
27. In the event that Disciplinary Counsel determines that, in her opinion, Mr. Hynes may have violated a term or condition of this Stipulation, Disciplinary Counsel may conduct such further investigation that she deems appropriate. Mr. Hynes shall have the right to provide Disciplinary Counsel with any additional information regarding the alleged violation.

28. If Disciplinary Counsel concludes that, in her opinion, the alleged violation is a material violation, she may file a motion with the Professional Conduct Committee requesting that the Committee impose the stayed six-month suspension. Mr. Hynes shall have the right to respond in writing to Disciplinary Counsel's motion, to request an evidentiary hearing thereon, and to request oral argument before the Committee. The Committee shall rule upon any request for an evidentiary hearing and for oral argument. Following an evidentiary hearing (if requested), or the denial of a request for such hearing, the Committee shall determine whether the motion requesting imposition of the stayed six-month suspension should be granted or denied. Unless waived, oral arguments will be conducted to allow Disciplinary Counsel and Mr. Hynes ten (10) minutes to address the issue of imposition of the stayed suspension. The Committee's decision shall be final.
29. In any proceeding under paragraph 28 of this Stipulation to impose the stayed six month suspension based upon information reported by Disciplinary Counsel, the burden of proof that Disciplinary Counsel must meet is as follows: Disciplinary Counsel must establish by a preponderance of the evidence that Mr. Hynes's alleged conduct is either a material breach of the terms of this stipulation or constitutes a violation of the N.H. Rules of Professional Conduct.
30. If the Attorney Discipline Office receives a complaint against Mr. Hynes that arises out of events that pre-date adoption of this Stipulation by the

Professional Conduct Committee, that complaint will be processed in the ordinary course of business. Any finding of a violation of the Rules of Professional Conduct that may result from that complaint will not be a basis for imposition of the stayed six-month suspension in this case, but the existence of this stipulation, as approved by the Professional Conduct Committee, may be considered by the Hearings Committee and Professional Conduct Committee in disposing of such other complaint.

31. If the Attorney Discipline Office receives a complaint against Mr. Hynes during the period of the two year stay that arises out of events post-dating adoption of this Stipulation by the Professional Conduct Committee, but occurring within the period of the two year stay, that complaint will be processed by the Attorney Discipline Office on an expedited basis. Any final adjudication of a violation of the Rules of Professional Conduct that may result from that complaint may provide a basis for a request by Disciplinary Counsel that the Professional Conduct Committee impose the stayed six month suspension in this case. If Disciplinary Counsel makes such a request, Mr. Hynes shall be entitled to an evidentiary hearing and review by the Professional Conduct Committee.
32. At the conclusion of the two-year period described in paragraph 25 hereof, the stayed six-month suspension shall be permanently stayed, provided that there are no complaints or motions pending pursuant to paragraphs 28 or 31 of this Stipulation. If such complaints or motions

are filed during the two year period, they can provide a basis for seeking imposition of the stayed six month suspension even if the proceedings on such complaints or motions are concluded after the expiration of the two year period of the stay. Any request for imposition of the stayed suspension that is based upon a complaint under paragraph 31 hereof must be initiated within 30 days of final disposition of that complaint.

33. In any proceeding to impose the stayed six-month suspension, the Professional Conduct Committee has the discretion to impose a suspension of less than six months if it finds that such lesser suspension is appropriate under the facts presented.
34. If the approved mentor elects to terminate his mentor relationship with Mr. Hynes, Mr. Hynes shall notify Disciplinary Counsel immediately. In the event of such termination, Mr. Hynes shall be responsible for finding a new mentor, subject to Disciplinary Counsel approval, within 30 days of such termination. If no mentor is selected within that 30-day time-frame, Disciplinary Counsel shall notify the Professional Conduct Committee and Mr. Hynes's failure in this regard shall be treated as a material violation and grounds for imposition of the stayed suspension.

III. Stipulation as to Costs

35. Mr. Hynes agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter, as well as in connection with any process required to implement and enforce the conditions of this stipulation.

IV. Effect of Stipulation

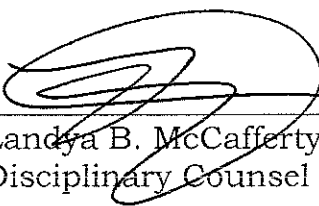
36. Mr. Hynes understands that by signing this Stipulation, he is hereby bound to the facts as stipulated. In the event that the Professional Conduct Committee does not agree with the Stipulation as to Rule Violations and Sanction, Mr. Hynes is nonetheless hereafter bound to the facts and rule violations as stipulated.

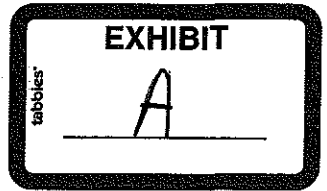
Respectfully submitted,

Dated: September 25, 2008

By:  _____
Daniel P. Hynes, Esquire

Dated: September 25, 2008

By:  _____
Landya B. McCafferty
Disciplinary Counsel



NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Hynes, Daniel P.

advs.

Attorney Discipline Office

#07-001

STIPULATION TO THE FACTS

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

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

I. Stipulation of Facts

1. Mr. Hynes is an attorney licensed to practice law in New Hampshire. Mr. Hynes was admitted to practice on October 31, 2006. At all times material to this proceeding, Mr. Hynes' mailing address was 71D Wellington Terrace Drive, Manchester, New Hampshire 03104.
2. In a letter dated December 18, 2006, to Salon Aquavit, a hairdressing salon in Milford, Mr. Hynes wrote:

Cease and Desist/Demand Letter

FACTS

I am writing in regards to your company's policy of pricing for different types of haircuts. It has been brought to my attention that your business charges

\$40-\$80 for shaping and design for Women but only \$30-\$50 for the same service for Men. Such a distinction in price based on gender is discrimination in violation of the law. Accordingly, I demand you immediately cease this unfair pricing and charge customers in a more appropriate manner, such as by the length of their hair or the amount of time it would take.

ARGUMENT

N.H. RSA 354-A:17 Specifically holds: Unlawful Discriminatory Practices in Public Accommodations. – It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, because of the age, sex, race, creed, color, marital status, physical or mental disability or national origin of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof; or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of age, sex, race, creed, color, marital status, physical or mental disability or national origin; or that the patronage or custom thereof of any person belonging to or purporting to be of any particular age, sex, race, creed, color, marital status, physical or mental disability or national origin is unwelcome, objectionable or acceptable, desired or solicited. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.

Your business is a place of public accommodation as defined in RSA 354-A:2. Further, charging one price for women and a different price for men is unlawful discrimination based upon sex. You are giving advantages, facilities, and privileges to men by giving them a discount that women can not receive. Accordingly, you are in violation of this statute.

By engaging in such illegal discrimination for a profit, you are further engaged in an unfair trade practice in violation of N.H. RSA 358-A. The remedy for a violation of an unfair trade practice includes \$1000 minimum as well as potential multiple damages and attorney fees and costs. (See N.H. RSA 358-A:10).

DEMAND

Accordingly, I demand that you immediately cease your unlawful practice of charging for haircuts based on gender. Should you not comply I will be forced to file a complaint with the State Commission for Human Rights while reserving all rights to remove and file in Superior Court. In addition, I demand payment in the amount of \$1000 in order to avoid litigation and a prompt resolution to this matter. I believe \$1000 is a fair amount as it is the minimum that would be awarded for an unfair trade practice alone. You have ten (10) days to comply with both the demand to cease and desist and for payment in the amount of \$1000. Should you fail to comply additional steps will be taken including filing with the State Commission for Human Rights and potential removal to Superior Court. If such action is necessary I will seek all remedies available including but not limited to an injunction, damages for the discrimination, damages for the unfair trade practice, punitive damages, attorney fees and costs. If you object or otherwise wish to discuss the above matter you may have your attorney contact me.

Sincerely,

Daniel P. Hynes, Esq.

3. In a letter dated December 27, 2006, to Bellaviso Salon & Spa in Dover, Mr. Hynes wrote an almost identical "cease and desist" letter.
4. Mr. Hynes wrote almost identical "cease and desist" letters to as many as 18 other hair salons in New Hampshire, with demands ranging from \$1,000.00 to \$2,000.00.

5. One of the 18 other letters was sent to Claudia's, a hair salon in Concord owned by Claudia Lambert. Mr. Hynes did not date the letter he sent to Claudia's.
6. Mr. Hynes does not dispute that, on December 20, 2006, former Attorney General's Office (AGO) Chief Investigator, G. Michael Bahan, received a phone call from Benjamin J. Nardi, Jr., Ms. Lambert's husband.
7. Mr. Hynes does not dispute that Mr. Nardi reported to Mr. Bahan the fact that his wife had received the "cease and desist" letter from Mr. Hynes.
8. After speaking with Mr. Bahan, Mr. Nardi spoke with Mr. Hynes. Mr. Hynes explained that he had found Claudia's Hair Salon on the internet and in the telephone book, and had obtained the salon's pricing information from the internet.
9. Mr. Nardi offered Mr. Hynes \$500.00 to settle the matter. Mr. Hynes agreed.
10. On January 5, 2007, Mr. Nardi and AGO Investigator Allison Vachon, who went undercover as a partner in Claudia's Hair Salon, met with Mr. Hynes to execute the settlement agreement. Ms. Vachon's undercover name was "Alyssa Morgan."
11. During that meeting, Mr. Hynes stated that he sent the letter on behalf of himself and that he did not represent any clients.
12. As part of the settlement, Mr. Hynes and Ms Vachon (undercover as Alyssa Morgan), signed a Release that Mr. Hynes had drafted. The Release stated, inter alia, that Claudia's Hair Salon "agrees to not engage

in any discrimination practices in regards to services or prices offered by [Claudia's Hair Salon] . . . specifically including determining a price for a patron's haircut by the patron's gender. . . ."

13. After the settlement agreement was executed and \$500.00 in cash was given to Mr. Hynes, he was arrested for theft by extortion.
14. On May 2, 2007, the AGO issued an Information against Mr. Hynes on the basis of Mr. Hynes' letter to Claudia's Hair Salon, charging him with a violation of RSA 637:5, Theft by Extortion.
15. The Information alleged that, on the date in question, Mr. Hynes:

[D]id commit the crime of extortion in that Daniel P. Hynes obtained or exercised control over the property of another by extortion and with the purpose to deprive him thereof, to wit, Daniel P. Hynes obtained control of \$500.00 by threatening to sue Claudia's Hair Salon of Concord, New Hampshire if it did not pay Hynes a specified amount of money and change its pricing structure. The threatened act would not in itself substantially benefit Hynes but would have harmed substantially the business, career, financial condition, and/or reputation of Claudia Lambert and/or Claudia's Hair Salon,

16. A jury trial took place on March 18 and 19, 2008, in Hillsborough County Superior Court-North, after which Mr. Hynes was found guilty.
17. At the trial, the jury heard evidence from the following witnesses: Ms. Lambert; Mr. Nardi; Ms. Vachon; and the defendant. The defendant admitted that he sent the aforementioned letter and he subsequently accepted \$500.00 to settle the matter with Claudia's Hair Salon. The defendant testified that he sent the demand letter in his individual capacity and that he was not representing a client who had been

adversely affected by the salon's pricing policy. He further testified that he was not a customer of the salon, admitting that he had obtained information about it, including its pricing structure, on the internet. Mr. Hynes asserts that, although he did not represent a client, he was himself adversely affected by the salon's pricing structure.

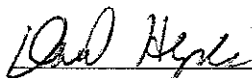
18. Ms. Lambert testified that a discrimination suit would have harmed her business, career, financial condition and reputation. Specifically, she testified that obtaining an attorney to defend a lawsuit would be costly. She further testified that she had worked hard to garner a strong reputation in the community, which provided a source of business for her. She testified that such a suit would have given her a bad reputation in the community and thus would have adversely affected her business.
19. At the trial, Mr. Hynes conceded that, in addition to the letter to Claudia's Hair Salon, he had forwarded 18 other similar "cease and desist/demand" letters, with demands ranging from \$1,000.00 - \$2,500.00, to hair salons in New Hampshire. The aforementioned letters to Salon Aquavit and Bellaviso Salon and Spa are two such other letters.
20. At the close of the trial, the Court (Barry, J.) instructed the jury to accept as true that Mr. Hynes did not have standing to bring a lawsuit against Claudia's Hair Salon. Mr. Hynes contests and has appealed this ruling.
21. On April 30, 2008, the Court (Barry, J.) sentenced Mr. Hynes for the crime of Theft by Extortion to 12 months in jail, all suspended on Mr. Hynes' good behavior, and placed him on probation for one year.

II. Effect of Stipulation

22. Respondent understands that by signing this Stipulation, he is hereby bound to the facts as stipulated.

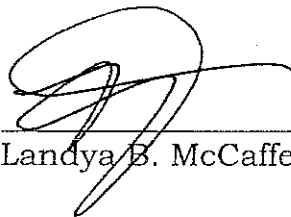
Respectfully submitted

Dated: 8-1, 2008



Daniel P. Hynes, Esquire

Dated: 8-1, 2008



Landya B. McCafferty, Disciplinary Counsel