

New Hampshire Supreme Court  
**Professional Conduct Committee**

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Benette Pizzimenti, Vice Chair  
Toni M. Gray, \* Vice Chair  
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*Kasmar, Stephen R. advs. Attorney Discipline Office # 07-037*

**ORDER ON SANCTION: SIX MONTH SUSPENSION**

On February 17, 2009, the Professional Conduct Committee deliberated the above captioned matter. Members present included Margaret Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, David N. Cole, Thomas P. Connair, Gerald A. Daley, Richard H. Darling, Gretchen Rule Hamel, James R. Martin, Marilyn Billings McNamara, and Susan R. Chollet. Alan J. Cronheim, was recused from the matter. In an Order issued dated February 24, 2009, the Committee made Findings of Fact and found violations of the Rules of Professional Conduct by clear and convincing evidence. The Committee deferred voting on the issue of sanction pending Oral Argument.

Oral Argument was heard on March 17, 2009, solely on the issue of sanction. Members present were the same members present for the February 17, 2009, deliberations, Stephen R. Kasmar, Esquire, presented on his own behalf and Landya B. McCafferty, Disciplinary Counsel, presented on behalf of the Attorney Discipline Office. Following Oral Argument and a review of the record below, including the Hearing Panel Report dated January 12, 2009, and the Stipulation of Facts dated October 31, 2008, the Committee deliberated and issued a six-month suspension to the Respondent, retroactive to March 1, 2009. This order on sanction supplements the

Committee's Order of February 24, 2009, on Findings of Fact and Rule Violations.

## ANALYSIS

Disciplinary action and sanctions are not intended as a mode of inflicting punishment. *Kersey's Case*, 150 N.H. 585, 586 (2004). Rather, the purpose of the Court's disciplinary power "is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *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.*

The New Hampshire Supreme Court and this Committee look to the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1992) ("*Standards*") for guidance to determine the baseline sanction. *Coffey's Case*, 152 N.H. at 513. The *Standards* set forth four factors to consider in imposing sanctions: "(a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury cause 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.

One of the main tenets of our judicial system is candor toward the tribunal. *See, e.g.*, *Kalil's Case*, 146 N.H. 466, 467 (2001) ("The confidence of judges to rely with certainty upon the word of attorneys forms the very bedrock of our judicial system."). The ABA *Standard* that addresses the baseline sanction for a lawyer's violation of his or her duty of candor is § 6.1, entitled "False Statements, Fraud, and Misrepresentation." That section provides in pertinent part:

- 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, 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.

Mr. Kasmar made a misrepresentation to the court and opposing counsel and then failed to correct it. This conduct was at the heart of all four rules violations found. The duty of candor to the tribunal and opposing counsel is a fundamental obligation of all attorneys to preserve the integrity of the judicial system. Although his anger at the court's grant of the state's expedited motion to continue without having provided Mr. Kasmar an opportunity to respond may have contributed to his exercise of poor judgment, such was certainly not a justifiable excuse for his misconduct. Based upon the Findings of Fact, the Committee concludes that the appropriate baseline sanction in this matter is suspension.

To determine the level of "injury" caused by Mr. Kasmar's misconduct, we look to *Kalil's Case, supra*, in which the New Hampshire Supreme Court stated:

As officers of the court, attorneys shall not knowingly make a false statement of material fact to a tribunal. The confidence of judges to rely with certainty upon the word of attorneys forms the very bedrock of our judicial system. Because no single transgression reflects more negatively on the legal profession than a lie, it is the responsibility of every attorney at all times to be truthful. Every attorney admitted to practice law in this State takes an oath required under RSA 311:6 in a public proceeding at the New Hampshire Supreme Court. This oath has been required of attorneys for over one hundred and fifty years. The oath begins: 'You solemnly swear or affirm that you will do no falsehood, nor consent that any be done in the court.'

146 N.H. at 467 (citations and quotations omitted).

The Committee concludes that there was injury to the legal system and to the profession, that there were no significant aggravating or mitigating factors, and that the Rule violations warrant a six-month suspension.

## **SANCTION**

It is the Committee's view that the public can be protected, public confidence in the Bar can be maintained, and the integrity of the legal profession can be preserved by imposing a six-month suspension.

## **CONCLUSION**

Based on the above reasons, having found violations of N.H. R. Prof. Conduct 3.3(a)(1), 4.1(a), 8.4(c) and 8.4(a) by clear and convincing evidence, the Professional Conduct Committee issues a six month suspension to the Respondent, retroactive to March 1, 2009. Mr. Kasmar is also assessed all costs associated with the investigation and prosecution of this matter.

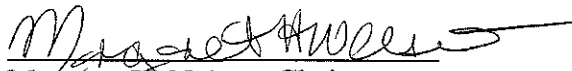
Mr. Kasmar is directed to comply with the provisions of Supreme Court Rule 37(13).

Mr. Kasmar shall be reinstated without further hearing before this Committee. Supreme Court Rule 37(14)(f).

## **RIGHT TO APPEAL**

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

April 15, 2009

  
Margaret H. Nelson, Chair

### **Distribution:**

Landya B. McCafferty, Disciplinary Counsel  
Stephen R. Kasmar, Esquire  
File

**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**In Case No. LD-2009-0007, In the Matter of Stephen R. Kasmar, the court on September 21, 2009, issued the following order:**

By order dated April 15, 2009, Stephen R. Kasmar was suspended by the Professional Conduct Committee for six months, retroactive to March 1, 2009. Attorney Kasmar has filed a motion and affidavit for reinstatement in which he states that he has fully complied with the requirements of the suspension order, has paid all required fees and costs, and has successfully completed the Multistate Professional Responsibility Examination. The Professional Conduct Committee assents to Attorney Kasmar's motion for reinstatement. In accordance with Rule 37(14)(f), Attorney Kasmar's motion for reinstatement to the practice of law is granted. Stephen R. Kasmar is hereby reinstated to the practice of law in New Hampshire.

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

**Eileen Fox,  
Clerk**

Distribution:

Stephen R. Kasmar, Esquire

Landya B. McCafferty, Esquire

File