

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
Eleanor Wm. Dahar

4 Park Street, Suite 304
Concord, New Hampshire 03301
603-224-5828 ♦ Fax 228-9511

Nancy R. Hacking*
Gretchen Rule Hamel
James R. Martin
David N. Page*
Stephen B. Stepanek*
* non attorney member

Holly B. Fazzino, Admin. Coordinator

Wells, Jo-Ellen advs. Dina Paris
#03-057

Wells, Jo-Ellen advs. Robert C. Schneider
#03-090

Wells, Jo-Ellen advs. Matthew A. Whitney
#03-091

Wells, Jo-Ellen advs. Charlene Cote
#04-079

Wells, Jo-Ellen advs. Kathlene H. Caisse
#04-092

DISBARMENT

On September 20, 2005, the Professional Conduct Committee considered the above-referenced matter. Members present included: Margaret H. Nelson, Chair; Benette Pizzimenti, Vice Chair and Reporter; Toni M. Gray, Vice Chair; David N. Cole; Thomas P. Connair; Alan J. Cronheim; Eleanor Dahar; Nancy Hacking; Gretchen Rule Hamel; James R. Martin; and Stephen Stepanek. David N. Page was absent.

The Professional Conduct Committee thoroughly reviewed the record in these matters that included the following:

Notice of Charges
Motion to Consolidate
Proposed Findings of Fact, Rulings of Law and Request for Sanctions in All Five Cases
Notice of Hearing
Order on Procedure
Transcript of June 15, 2005
Hearing Panel Report

Attorney Jo-Ellen Wells did not file an Answer to the Notice of Charges. Disciplinary Counsel, Landya McCafferty, filed a Motion to Consolidate all five cases which was granted. Attorney Wells was given notice of the hearing, but she did not attend. Oral argument was not requested.

The Professional Conduct Committee makes factual findings and rulings as detailed below.

Wells, Jo-Ellen advs. Dina Paris
#03-057

I. FACTUAL FINDINGS

The Professional Conduct Committee has determined that the record supports the following factual findings of the Hearing Panel by clear and convincing evidence:

1. In a sworn complaint dated May 28, 2003, and in subsequent letters to the Committee, Dina M. Paris asserted allegations of professional misconduct against Ms. Wells.
2. Beginning in the Spring of 2002, and continuing through the Summer of 2003, Ms. Wells represented Ms. Paris on three separate legal matters. Ms. Wells represented her on a post-divorce matter, a matter involving the return of firearms from the Pelham Police Department, and a civil suit against her former in-laws. The Notice of Charges in this case deals only with the post-divorce matter and the civil suit.
3. Ms. Wells quoted Ms. Paris a fee of \$3,000.00 for the three cases. However, Ms. Wells also told Ms. Paris that Ms. Wells' hourly rate was \$95.00. Ms. Wells told Ms. Paris that the \$3,000.00 was a "flat-fee," but if the cases became "more involved" there would be additional legal charges. Ms. Paris paid Ms. Wells a total of \$2,000.00, in two separate installments.
4. Throughout Ms. Wells' representation of Ms. Paris, Ms. Wells never sent Ms. Paris a bill or invoice detailing Ms. Wells' time on the cases. Ms. Wells also failed to put her fee agreement in writing.
5. Throughout Ms. Wells' representation of Ms. Paris, Ms. Paris found it difficult to reach

Ms. Wells either in person or by telephone. The only place Ms. Wells met with Ms. Paris was at a Denny's Restaurant at the inception of her relationship with Ms. Paris.

Post-Divorce Case

6. On April 22, 2002, Ms. Wells filed a Motion to Modify on behalf of Ms. Paris in the Family Division at Derry ("Derry Family Court"). Ms. Paris' main concern was the failure on her ex-husband's part to pay child support on a regular basis. Ms. Paris' son had been recently diagnosed with cancer, and she was experiencing difficulty in obtaining her ex-husband's cooperation with child support and custody issues.
7. The hearing took place on October 28, 2002. Between the time Ms. Wells filed the Motion and the date of the hearing, Ms. Wells engaged in no discovery or other attempts to acquire documentary evidence supporting Ms. Paris' claim that her husband had made only sporadic child support payments.
8. Prior to the hearing, Ms. Paris made it clear to Ms. Wells that she had not kept records of the child support payments that Mr. Paris had made to her. From the beginning, Ms. Paris had urged Ms. Wells to seek the payment records from Mr. Paris.
9. At the hearing, the Court asked Ms. Paris to specify what amount in child support was due to her, but she could not do that as she had no proof or documentation of what Mr. Paris had paid her.
10. As a result of the hearing, the Court stated that "a wage assignment is the most effective method to insure that [Ms. Paris] receives her payment in a timely manner."
11. According to Ms. Paris, the original divorce decree had mandated wage assignment as the method for custody payments. Without proof that Mr. Paris had accrued a specific

arrearage in child support payments, a wage assignment would only provide her with regular current payments in the future, but not provide any payments toward the arrearage.

12. As a result of Ms. Paris' dissatisfaction with the results at the first hearing, Ms. Wells filed a subsequent Motion to Modify in or around the Spring of 2003. A hearing on that second Motion to Modify was scheduled for August 11, 2003.
13. In a letter dated May 20, 2003, Ms. Wells informed Ms. Paris of the August 11, 2003, hearing date. In that letter, Ms. Wells also wrote, "As I have stated, you must be prepared to present your reasons as to why the contempt ihas [sic] occurred [sic]. Please contact my office if you have any questions." At some point shortly thereafter, Ms. Wells made a decision not to return any of Ms. Paris' telephone calls.
14. On July 23, 2003, Ms. Wells filed her withdrawal from the post-divorce matter pending in Derry Family Court. Ms. Paris received a copy of Ms. Wells' withdrawal on August 4, 2003. Ms. Wells gave Ms. Paris no instructions with respect to the upcoming August 11, 2003, hearing. Nor did Ms. Wells file a motion to continue that hearing in order to allow Ms. Paris time to employ other legal counsel.
15. Ms. Paris did not attend the August 11 hearing. Ms. Paris did not understand that she was required to attend that hearing. By Order dated August 22, 2003, the Court dismissed Ms. Paris' pending Motion to Modify as a result of Ms. Paris' failure to appear at the August 11 hearing.

Civil suit against former in-laws

16. Ms. Wells also handled a civil suit for Ms. Paris, in which she sought back rent and the

costs of repairing damages to an apartment from her former in-laws.

17. On March 17, 2003, Ms. Wells had the Writ of Summons in that matter served on the defendants. Ms. Wells also filed a copy of that Writ of Summons with the Salem District Court. Ms. Wells failed to date or endorse either Writ of Summons.
18. On April 4, 2003, the defendants filed a Motion to Dismiss the Writ of Summons on the grounds that it was not endorsed as is statutorily required.
19. On April 23, 2003, the Court granted that Motion to Dismiss. Ms. Wells filed nothing on Ms. Paris' behalf to reinstate her lawsuit or otherwise fix the problem. Ms. Wells also failed to notify Ms. Paris of the dismissal.
20. Ms. Paris found out that the case had been dismissed when she went to Court to check on the case.

II. RULINGS OF LAW

The above-listed facts having been found by clear and convincing evidence, the Professional Conduct Committee concludes that there is clear and convincing evidence that Jo-Ellen Wells has violated the following Rules of Professional Conduct:

Rule 1.1: Competence

21. Ms. Wells' failure to endorse the Writ of Summons in Ms. Paris' civil case against her former in-laws constitutes clear and convincing evidence of incompetence in violation of N.H. R. Prof. Conduct 1.1(a). *See also* N.H. R. Prof. Conduct 1.1(b)(2) & (5); 1.1(c)(4).
22. Ms. Wells' failure to file any corrective pleading after Ms. Paris' civil case against her former in-laws was dismissed constitutes clear and convincing evidence of incompetence in violation of N.H. R. Prof. Conduct 1.1(a). *See also* N.H. R. Prof. Conduct 1.1(b)(2) & (5); 1.1(c)(4).

Rule 1.3(a): Diligence

23. By failing to file the necessary paperwork to reinstate (or attempt to reinstate) Ms. Paris' civil suit against her former in-laws, Ms. Wells failed to act with reasonable promptness and diligence on Ms. Paris' behalf. Ms. Wells' failure in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3(a).

Rule 1.4: Client Communications

24. By failing throughout Ms. Wells' representation of Ms. Paris to return her telephone calls in a timely manner, Ms. Wells failed to communicate with her in accordance with N.H. R. Prof. Conduct 1.4(a)-(c). Ms. Wells' failures in this regard constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a)-(c).
25. Ms. Wells' failure to explain to Ms. Paris the terms of her fee structure caused confusion on Ms. Paris' part about whether Ms. Wells was working on an hourly basis or on a "flat fee." Ms. Wells' failure to send Ms. Paris a bill or invoice only increased Ms. Paris' confusion. Ms. Wells' failure to explain Ms. Wells' fee structure to Ms. Paris constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(b) & (c).
26. Ms. Wells' failure to communicate with Ms. Paris about the dismissal of her civil suit against her former in-laws also constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a)-(c).

Rule 1.5(b): Failure to Explain Fee Structure

27. Ms. Wells' failure to explain to Ms. Paris the terms of Ms. Wells' fee structure caused confusion on Ms. Paris' part about whether Ms. Wells was working on an hourly basis or on a "flat fee." Ms. Wells' failure to send Ms. Paris a bill or invoice only increased Ms.

Paris' confusion. Ms. Paris was not a client Ms. Wells had regularly represented in the past. Ms. Wells' failure to explain Ms. Wells' fee structure to Ms. Paris constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.5(b).

Rule 1.16(d): Failure to protect client's interests after withdrawal

28. Prior to Ms. Wells' withdrawal from the post-divorce case, Ms. Wells failed to take steps to ensure that Ms. Paris understood what actions Ms. Paris needed to take with respect to the pending hearing on her Motion to Modify. Ms. Paris did not understand that she was required to attend the August 11, 2003, hearing.
29. By way of example, Ms. Wells could have filed on July 23, 2003, simultaneously with Ms. Wells' Withdrawal, a Motion to Continue the August 11 hearing so that Ms. Paris could obtain new counsel in advance of the hearing.
30. Ms. Wells' failures prior to her withdrawal to take any steps to protect Ms. Paris' interests or explain basic procedures to Ms. Paris constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.16(d).

Rule 8.4(a): Misconduct

31. Because there exists clear and convincing evidence of a violation of the aforementioned Rules, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

Wells, Jo-Ellen advs. Robert C. Schneider
#03-090

I. FACTUAL FINDINGS

The Professional Conduct Committee has determined that the record supports the following factual findings of the Hearing Panel by clear and convincing evidence:

32. In a sworn letter of complaint dated September 16, 2003, and in a subsequent letter dated

November 17, 2003, Robert C. Schneider asserted allegations of professional misconduct against Ms. Wells.

33. On or about the second week of February 2002, Mr. Schneider retained Ms. Wells to represent him in his divorce. Ms. Wells initially quoted him a fee of \$1,627.00 (including filing fees). Ms. Wells told him that this fee would cover everything only in the event that the divorce reached a settlement in a timely and uncomplicated manner. Mr. Schneider paid that amount on February 19, 2002.
34. Ms. Wells informed Mr. Schneider that she had two offices, one located in Salem and the other in Derry, New Hampshire. During the time Mr. Schneider was Ms. Wells' client (from February 2002 through part of 2003), Ms. Wells never met with Mr. Schneider in either of her offices. Ms. Wells' initial meeting with Mr. Schneider took place at the Barnes and Noble bookstore in Salem, New Hampshire. The only office in which Mr. Schneider ever met Ms. Wells was the office of opposing counsel, M. Kathryn McCarroll.
35. Throughout Ms. Wells' representation of Mr. Schneider, he had difficulty reaching her. He was never able to reach Ms. Wells directly by telephone; he always left her messages. If Ms. Wells returned his telephone calls, she did so several days or several weeks after he called her.
36. On one such occasion, Mr. Schneider was calling Ms. Wells in an effort to determine the date and time of an upcoming hearing in the Derry Family Court. As it turned out, there was a final pre-trial conference scheduled on September 9, 2002, at Derry Family Court. Ms. Wells had had notice of this hearing since May 2, 2002.
37. In advance of the September 9th hearing, Ms. Wells did not return any of Mr. Schneider's

phone calls or answer his questions. As a result, Mr. Schneider was not aware of and did not attend the September 9th hearing. He found out about that hearing after-the-fact from his ex-wife.

38. Mr. Schneider also learned from his ex-wife that Ms. Wells had failed to appear for the September 9th hearing. The Court fined Ms. Wells for her failure to appear.
39. On September 17, 2002, Mr. Schneider paid Ms. Wells an additional \$1,500.00. Ms. Wells requested this additional retainer because, at that point, she expected the case to involve litigation.
40. In or around mid-October of that year, Mr. Schneider was able to reach a settlement of the case without the anticipated litigation. Ms. Wells informed Mr. Schneider at that time that he was entitled to a refund of a portion of his retainer as a result of the timely settlement.
41. After the settlement of the divorce case, Mr. Schneider spoke to Ms. Wells about filing the necessary paperwork to have a Qualified Domestic Relations Order (“QDRO”) prepared for him. At that time, Ms. Wells advised Mr. Schneider that she would handle the necessary legal work for the QDRO, and that he would receive a refund of a significant portion of his retainer.
42. Ms. Wells informed Mr. Schneider that the QDRO would be settled shortly after the divorce was final. The Derry Family Court granted the decree of divorce on December 2, 2002. Thereafter, Mr. Schneider telephoned Ms. Wells repeatedly to find out about the status of the QDRO. Ms. Wells never returned any of his calls.
43. In March of 2003, Mr. Schneider telephoned the New Hampshire Bar Association to assist him. In an undated letter to the Bar Association, Ms. Wells conceded that she was

in possession of an unused portion of Mr. Schneider's retainer (approximately \$900.00).

44. With some assistance from the Bar Association, on June 13, 2003, Mr. Schneider was able to speak with Ms. Wells. At that time, Ms. Wells assured Mr. Schneider that she would return \$1,000.00 to him (as a refund) and file all the necessary paperwork regarding his QDRO. Mr. Schneider waited approximately six weeks without any communication from Ms. Wells, despite repeated telephone calls to her office.
45. Having not heard from Ms. Wells, Mr. Schneider decided to hire a new attorney to file the necessary paperwork for the QDRO. Mr. Schneider retained Catherine P. McKay, who filed an appearance in Derry Family Court on November 19, 2003, along with the necessary QDRO paperwork. The Court approved the QDRO on January 7, 2004. Ms. McKay charged Mr. Schneider \$600.00 to file the QDRO.

As of Ms. Wells' letter to the Professional Conduct Committee dated November 2, 2003, Ms. Wells agreed that Mr. Schneider was entitled to a refund of \$1,000.00. To date, Ms. Wells has made no such refund to Mr. Schneider, nor has Ms. Wells communicated further with him about his unused retainer.

II. RULINGS OF LAW

The above-listed facts having been found by clear and convincing evidence, the Professional Conduct Committee concludes that there is clear and convincing evidence that Jo-Ellen Wells has violated the following Rules of Professional Conduct:

Rule 1.3(a): Diligence

46. By failing to file the necessary paperwork to have Mr. Schneider's QDRO approved, Ms. Wells failed to act with reasonable promptness and diligence on Mr. Schneider's behalf. Ms. Wells' failure in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3(a).

Rule 1.4: Client Communications

47. By failing to return Mr. Schneider's telephone calls in a timely manner throughout Ms. Wells' representation of Mr. Schneider, Ms. Wells failed to communicate with him in accordance with N.H. R. Prof. Conduct 1.4(a)-(c). Ms. Wells' failures in this regard constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a)-(c).
48. Ms. Wells' failure to tell Mr. Schneider about the September 9, 2002, hearing, despite having had notice of it for four months, constitutes a failure of communication of the most basic nature. Ms. Wells' failure to inform Mr. Schneider of this hearing constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a)-(c).
49. Ms. Wells' failure to communicate with Mr. Schneider about the filing of the necessary paperwork for the QDRO constitutes a further violation of Rule 1.4. Ms. Wells' failure in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a)-(c).

Rule 1.15(b) & 1.16(d): Failure to Promptly Deliver Funds to Client

50. Ms. Wells' has retained control over funds to which Mr. Schneider was entitled for an excessive amount of time. Since Mr. Schneider's letter to the Professional Conduct Committee dated November 17, 2003, Ms. Wells has been aware that Mr. Schneider hired new counsel to file the QDRO paperwork. Ms. Wells should have refunded to Mr. Schneider the money to which he was entitled immediately thereafter. Instead, Ms. Wells has retained Mr. Schneider's unused retainer, and Ms. Wells has done so without any communication or justification.
51. Ms. Wells' failure to deliver promptly to Mr. Schneider the funds to which he was

entitled constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.15(b) and 1.16(d).

Rule 8.4(a): Misconduct

Because there exists clear and convincing evidence of a violation of the aforementioned Rules, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

*Wells, Jo-Ellen advs. Matthew A. Whitney
#03-091*

I. FACTUAL FINDINGS

The Professional Conduct Committee has determined that the record supports the following factual findings of the Hearing Panel by clear and convincing evidence:

52. In a letter of complaint dated November 6, 2003, which was sworn to on November 11, 2003, Matthew A. Whitney asserted allegations of professional misconduct against Ms. Wells.
53. On September 18, 2003, Mr. Whitney retained Ms. Wells to represent him on pending criminal charges, (docket #'s 03-Cr-7492 & 7493) and a related domestic violence petition (docket #03-DV-347) in Nashua District Court.
54. Ms. Wells first and only meeting with Mr. Whitney took place on that date at the Starbucks coffee shop in the Barnes & Noble Store in Salem, New Hampshire. Also present at that meeting was Mr. Whitney's mother, Patricia A. Whitney.
55. Ms. Wells requested \$1,500.00 as a retainer to represent Mr. Whitney on these matters. Mr. Whitney paid Ms. Wells that amount in full during their first meeting.
56. Prior to retaining Ms. Wells, Mr. Whitney had been represented on these matters by Attorney Ray Raimo.
57. During that first meeting, Ms. Wells told Mr. Whitney that he could call Ms. Wells

anytime. Ms. Wells gave him her office and cell phone numbers. Mr. Whitney asked Ms. Wells where her office was located, and Ms. Wells told him "behind the Salem Mall." Ms. Wells assured Mr. Whitney that she would contact Mr. Raimo, gather all of the necessary paperwork and discovery, copy Mr. Whitney on all information received by the Court, and forward to him a receipt for his retainer.

58. At the time of Ms. Wells' first meeting with Mr. Whitney, a hearing on the criminal charges was scheduled to occur on October 9, 2003. Ms. Wells assured Mr. Whitney that she would take care of everything that needed to be done on his cases, including filing an appearance in both cases and communicating regularly with him.
59. Between the September 18 meeting, and the October 9, 2003, court date, Mr. Whitney did not hear from Ms. Wells. Mr. Whitney telephoned Ms. Wells and left messages, but Ms. Wells did not return his calls. During that time-frame, Mr. Whitney spoke several times with Mr. Raimo. Mr. Raimo told Mr. Whitney that Ms. Wells had not yet filed an Appearance and, as a result, Mr. Raimo would not file a Withdrawal. Mr. Raimo told Mr. Whitney that Mr. Whitney would have to appear for the October 9 hearing.
60. Because Mr. Whitney was unable to reach Ms. Wells, he asked his mother to attempt to reach Ms. Wells. Shortly before the hearing, Ms. Whitney was able to reach Ms. Wells. Ms. Wells informed Ms. Whitney that Ms. Wells had filed an Appearance and obtained a continuance of the October 9 hearing. Ms. Wells did not inform Ms. Whitney that she had filed her Appearance and continuance on October 9, the date of the scheduled hearing. Ms. Wells told Ms. Whitney that the new court date was November 20, 2003. Ms. Wells did not send Mr. Whitney a copy of either her Appearance or the Notice of Hearing in

that matter.

61. The week of October 13 Mr. Raimo telephoned Mr. Whitney to inform him that the final hearing on the restraining order was scheduled for October 24, 2003. Mr. Whitney immediately called Ms. Wells and left a message requesting a return call about that court date. Ms. Wells did not return his call.
62. Mr. Whitney asked his mother to attempt to reach Ms. Wells during working hours that day. Ms. Whitney spoke with Ms. Wells on the telephone. Ms. Wells told Ms. Whitney that Ms. Wells had taken care of everything, and that Mr. Whitney did not have to attend court on October 24. Ms. Wells told Ms. Whitney to have Mr. Whitney call Ms. Wells that evening so she could explain the details.
63. Mr. Whitney telephoned Ms. Wells that evening, as she had instructed. He was unable to reach Ms. Wells; he left a message. Ms. Wells did not return his call.
64. On Monday, October 20, 2004, Mr. Raimo again telephoned Mr. Whitney about the hearing on the 24th. Mr. Raimo indicated that he had sent Ms. Wells copies of the Hearing Notice as well as the discovery. Mr. Raimo told Mr. Whitney that Ms. Wells had not returned his calls.
65. Mr. Whitney telephoned Ms. Wells again on October 21 and October 22, and Ms. Wells did not return his calls.
66. On October 23, 2004, the day before the hearing, Mr. Whitney asked his mother to go to Ms. Wells' office and speak with Ms. Wells. Ms. Whitney could find no office listing for Ms. Wells in the phone book. Ms. Whitney was able to locate Ms. Wells' home address. On October 23, Ms. Whitney went to Ms. Wells' home. Ms. Whitney brought a friend,

Nanette Langone, with her to Ms. Wells' house.

67. Ms. Wells answered the door and spoke with Ms. Whitney and Ms. Langone outside. Ms. Wells immediately told Ms. Whitney that Ms. Wells had been trying to reach Mr. Whitney, but she had misplaced his phone number. Ms. Wells told Ms. Whitney that Ms. Wells had received no paperwork from Mr. Raimo. Upon hearing that, Ms. Langone telephoned Mr. Raimo on her cell phone. Mr. Raimo indicated that he had sent all of the paperwork to Ms. Wells. Ms. Langone handed her cell phone to Ms. Wells and Ms. Wells spoke with Mr. Raimo.
68. After Ms. Wells finished speaking with Mr. Raimo, Ms. Wells went inside her house. Ms. Wells returned with Mr. Whitney's file. The file had paperwork from Mr. Raimo, and Ms. Whitney noticed Mr. Whitney's telephone number in the file.
69. At this point, Ms. Wells told Ms. Whitney and Ms. Langone that Ms. Wells could not attend the October 24 hearing for Mr. Whitney in Nashua District Court because Ms. Wells had a court date at 10:00 a.m. in Derry District Court. Ms. Whitney then asked if Ms. Wells could possibly meet Mr. Whitney at Nashua District Court at 8:30 a.m. that morning before going to Derry District Court. Ms. Wells told Ms. Whitney that Ms. Wells could not do that because she had to meet with her "other client" at 9 a.m. in Derry District Court before the trial.
70. Before leaving Ms. Wells' house, Ms. Whitney asked if Ms. Wells would speak to Mr. Whitney on the cell phone and explain what to expect in Nashua District Court the next morning. Ms. Wells spoke with Mr. Whitney and explained the conflict that prevented Ms. Wells from attending Court with him the next day. Ms. Wells told Mr. Whitney that

she would call him that night. Ms. Wells did not call him that night.

71. Before Ms. Whitney left Ms. Wells' house that day, Ms. Wells agreed to draft an Appearance and a Motion to Continue for Mr. Whitney to take to Court the next day. Ms. Wells gave Ms. Whitney paperwork from a former client, with his name, court and docket number crossed out and replaced with Mr. Whitney's information.
72. The next morning, Mr. Whitney went to Nashua District Court and filed the paperwork Ms. Wells gave his mother. Mr. Raimo was in Court and assisted Mr. Whitney. Nashua District Court continued Mr. Whitney's hearing.
73. After he was finished in Nashua District Court, Mr. Whitney went to Derry District Court to see if he could find Ms. Wells. The clerk of Derry District Court informed Mr. Whitney that there was no trial scheduled at 10:00 a.m. that day, and that no criminal trials were ever scheduled on Fridays.
74. Upon returning to his home that day, Mr. Whitney telephoned Ms. Wells and left a message asking for Ms. Wells to return his \$1,500.00 retainer. Ms. Wells did not return his call.
75. The next day, October 25, Mr. Whitney wrote Ms. Wells a letter asking again for Ms. Wells to return his retainer and asking Ms. Wells to file a Withdrawal. He also asked for Ms. Wells to telephone him that evening. Ms. Wells did not call him.
76. On October 27, 2003, Mr. Whitney telephoned Ms. Wells' cell phone number, and Ms. Wells answered the phone. Mr. Whitney asked for his retainer. Ms. Wells told him Ms. Wells would deduct two hours of work for the time she claimed she had spent on his case.

To date, Ms. Wells has not returned any portion of his retainer.

II. RULINGS OF LAW

The above-listed facts having been found by clear and convincing evidence, the Professional Conduct Committee concludes that there is clear and convincing evidence that Jo-Ellen Wells has violated the following Rules of Professional Conduct:

Rule 1.4: Client Communications

77. By failing to return Mr. Whitney's telephone calls in a timely manner throughout Ms. Wells' representation of Mr. Whitney, Ms. Wells failed to communicate with him in accordance with N.H. R. Prof. Conduct 1.4(a)-(c). Ms. Wells' failures in this regard constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.4(a)-(c).

Rule 1.15(b) & 1.16(d): Failure to Promptly Deliver Funds to Client

78. Ms. Wells has retained control over funds to which Mr. Whitney was entitled for an excessive amount of time. As of October 27, 2003, Ms. Wells knew that Mr. Whitney requested a refund of his retainer. Ms. Wells agreed to refund his retainer after deducting payment for two hours of legal work.
79. To date, Ms. Wells has not refunded Mr. Whitney any of his unused retainer. Instead, Ms. Wells has retained Mr. Whitney's unused retainer, and Ms. Wells has done so without any communication or justification.
80. Ms. Wells' failure to return Mr. Whitney's unused retainer upon his request, as discussed above, constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.15(b) and 1.16(d).

Rule 8.4(c): Misconduct involving Dishonesty, Fraud, Deceit or Misrepresentation

81. When asked separately by Mr. Whitney and his mother, Ms. Whitney, about why Ms. Wells could not attend the October 24, 2003, hearing in Nashua District Court, Ms. Wells told them both that Ms. Wells had a conflicting court date with another client in Derry District Court that morning. Ms. Wells also stated that she could not meet Mr. Whitney earlier in the morning on October 24 because Ms. Wells already had an early morning appointment with the "other client."
82. Ms. Wells had no such conflict, court date or "other client." Ms. Wells misrepresented the facts to Mr. Whitney and his mother in an effort to persuade them that Ms. Wells was unavailable for Mr. Whitney on October 24 and to induce them to cease insisting on Ms. Wells' help. Ms. Wells knew at the time she made these statements that they were false.
83. Ms. Wells' misrepresentations in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(c).

Rule 8.4(a): Misconduct

84. Because there exists clear and convincing evidence of a violation of the aforementioned Rules, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

Wells, Jo-Ellen advs. Charlene Cote
#04-079

The Professional Conduct Committee adopted the finding of the Hearings Panel that Disciplinary Counsel did not meet her burden of proof by clear and convincing evidence that Jo-Ellen Wells violated any Rule of Professional Conduct, in this case.

Wells, Jo-Ellen advs. Kathlene H. Caisse
#04-092

I. FACTUAL FINDINGS

The Professional Conduct Committee has determined that the record supports the following factual findings of the Hearing Panel by clear and convincing evidence:

85. In a letter of complaint dated October 18, 2004, and sworn to on November 9, 2004, Kathlene H. Caisse asserted allegations of professional misconduct against Ms. Wells.
86. On April 27, 2004, Ms. Caisse met with Ms. Wells at the Howie Law Office in Salem, New Hampshire, to discuss the possibility of Ms. Wells representing her in an uncontested divorce.
87. On May 17, 2004, Ms. Caisse and her then-husband, Ray Caisse, met with Ms. Wells to discuss the possibility of handling their divorce. Ms. Wells agreed to draft their joint petition for divorce.
88. Ms. Wells requested a fee of \$700.00. Ms. Caisse wrote Ms. Wells a check for that amount on May 17, 2004. Ms. Caisse also wrote Ms. Wells a check for the filing fees on that date. The check to Ms. Wells for legal fees cleared Ms. Caisse's account on May 21, 2004.
89. Ms. Wells informed Mr. and Mrs. Caisse that the case would be finalized quickly as it was a joint petition involving no children or property issues.
90. Mr. and Mrs. Caisse completed, signed and delivered to Ms. Wells all the necessary documents by June 11, 2004.
91. On June 25, 2004, Ms. Caisse's check to the Salem Family Court cleared her account.
92. On August 10, 2004, Ms. Caisse called the Salem Family Court to check on the status of her divorce. The clerk informed Ms. Caisse that the Court had mailed the Vital Statistics form to Ms. Wells on July 16, 2004.

93. On August 10, 2004, after speaking with the clerk, Ms. Caisse telephoned Ms. Wells. Ms. Wells informed Ms. Caisse that Ms. Wells would file the Vital Statistics form and the matter would be finalized within 7-10 days.
94. On August 31, 2004, Ms. Caisse telephoned the Salem Family Court. The Court had received no further paperwork from Ms. Wells. The clerk informed Ms. Caisse that the Court would again send the Vital Statistics form with a copy of the Divorce Decree to Ms. Wells. The clerk told Ms. Caisse that the Court would forward the paperwork to Ms. Wells on September 1, 2004.
95. On September 10, 2004, Ms. Caisse again telephoned the Salem Family Court. The Court had received nothing from Ms. Wells.
96. On September 16, 2004, Ms. Caisse again telephoned the Court. The Court still had received nothing from Ms. Wells. It was on that date that Ms. Caisse learned from the clerk that the Court had granted her Petition for Divorce.
97. On that date, Ms. Caisse telephoned Ms. Wells. Ms. Wells' cell phone number was no longer in service. Ms. Caisse then left a message at Ms. Wells' home number. Ms. Caisse wanted Ms. Wells to take immediate action to file the Vital Statistics form so that the Court would issue her Divorce Decree.
98. On September 21, 2004, Ms. Caisse again telephoned the Salem Family Court. The Court still had not received anything from Ms. Wells.

To date, Ms. Wells has not filed the Vital Statistics form, and Ms. Caisse has had no communication from Ms. Wells on this issue.

II. RULINGS OF LAW

The above-listed facts having been found by clear and convincing evidence, the Professional

Conduct Committee concludes that there is clear and convincing evidence that Jo-Ellen Wells has violated the following Rules of Professional Conduct:

Rule 1.3(a): Diligence

99. Ms. Wells' failure to file the Vital Statistics form on Ms. Caisse's behalf constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3(a).

Rule 1.4: Communication

100. Ms. Wells has not communicated with Ms. Caisse since August 10, 2004, the date Ms. Wells assured Ms. Caisse that the matter would be taken care of within 7-10 days. Ms. Wells has not explained to Ms. Caisse why Ms. Wells has failed to file the necessary forms, nor has Ms. Wells explained to Ms. Caisse how to file the forms herself.
101. Ms. Wells' failures 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): Misconduct

Because there exists clear and convincing evidence of a violation of the aforementioned Rules, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

III. SANCTION

Having made the aforementioned findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is disbarment. 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 ABA Center for Professional Responsibility, *Standards for Imposing Lawyer Sanctions* (1991). *See, e.g., Shillen's Case*, 149 N.H. 132, 139 (2003) (noting that, although the Court has never formally adopted these Standards, the Court has "considered them when imposing sanctions").

The Standards set forth the following factors pertinent to the imposition of 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.

The record demonstrates a pervasive and consistent pattern of violations of duties owed to clients. See generally, Standards § 4.0 and Standard §4.1 (Failure to Preserve Client's Property), Standard §4.4 (Lack of Diligence), Standard §4.5 (Lack of Competence), Standard §4.6 (Lack of

Candor). "After misconduct has been established, aggravating or mitigating circumstances may be considered in deciding what sanction to impose." Standards §9.1. While disbarment may not have been the appropriate sanction in just one of these matters, the pattern of conduct warrants the strongest sanction. The Professional Conduct Committee is not aware of any mitigating factors that should be considered, due primarily to Attorney Wells' lack of participation in this process. Under §9.22, aggravating factors include: (c) a pattern of misconduct; (d) multiple offenses; (g) refusal to acknowledge wrongful nature of conduct; and (j) indifference to making restitution by failing to return the balance of retainers. All these aggravating facts are present in these cases. Due to the serious, harmful and repetitive nature of Attorney Wells' conduct, disbarment is the appropriate sanction.

It is further recommended that Attorney Wells be ordered to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of these matters. See, N. H. Sup. Ct. R. 37 (19).

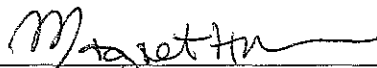
IV. CONCLUSION

Based on its findings of violations of the following Rules of Professional Conduct:

- Rule 1.1
- Rule 1.3 (three violations)
- Rule 1.4 (four violations)
- Rule 1.5 (b)
- Rule 1.15 (b) (two violations)
- Rule 1.16 (d) (two violations)
- Rule 8.4 (a) (four violations)
- Rule 8.4 (c) (one violation)

After consideration of the appropriate sanction, the Professional Conduct Committee hereby directs Disciplinary Counsel to file a Petition with the New Hampshire Supreme Court seeking the disbarment of Attorney Jo-Ellen Wells.

October 5, 2005

By: 
Margaret H. Nelson
Chair

c.c. Landya B. McCafferty, Disciplinary Counsel
Jo-Ellen Wells
File