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Michael and Elena Abbene # 03-034*

RECOMMENDATION FOR DISBARMENT AS TO WILLIAM E. CONNER

On January 15, 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, Esquire, Disciplinary Counsel appeared for the Attorney Discipline Office. Respondent, William C. Conner, Esquire, appeared on his own behalf. The Professional Conduct Committee Panel included: Margaret H. Nelson, Chair; Benette Pizzimenti, Vice Chair; Toni M. Gray, Vice Chair; Alan J. Cronheim; Gerald A. Daley; Richard H. Darling; Gretchen Rule Hamel; James R. Martin, and James J. Tenn, Jr. David N. Page was absent. Thomas P. Connair and David N. Cole abstained from the proceeding.

Having reviewed the record, including the Notice of Charges, Answer, Complaint History, Motions, the Stipulation as to William E. Conner, the Jointly Submitted Emails and Letters referenced in the Stipulation, the transcript of the hearing and Memoranda, the Professional Conduct Committee makes factual findings and rulings as detailed below:

I. FACTUAL FINDINGS

The parties entered into a Stipulation of Facts and Rules violated. The Professional Conduct

Committee, upon consideration and review of the Stipulation, determined that the record supports the following findings of fact by clear and convincing evidence:

1. In sworn complaints dated April 28, 2003, and two subsequent letters dated July 16, 2003, Complainants, Michael and Elena Abbene, of Bedford, New Hampshire, asserted allegations of professional misconduct against Mr. Conner and Mr. Young.
2. Mr. Conner is an attorney licensed to practice law in New Hampshire. Mr. Conner was admitted to practice on October 22, 1993. At times material to this proceeding, Mr. Conner has utilized the following addresses: (a) Conner Law Office, 1 Oak Ridge Drive, Suite 8B, West Lebanon, New Hampshire 03784-3121; (b) Attorney at Law, 85 Mechanic Street, Suite 260, Lebanon, New Hampshire 03766-1533; and (c) Attorney at Law, 30 Bank Street, Lebanon, New Hampshire 03766. Mr. Conner's current address is: 116 Newport Road, New London, New Hampshire 03257.

Abbenes file original lawsuit against general contractor

3. On August 31, 1993, after the construction of their custom home in Bedford, New Hampshire, the Abbenes received an occupancy permit. Shortly after occupancy, the Abbenes discovered a number of alleged defects in the construction.
4. The Abbenes sought the advice of Michael J. Scott, Esq., to assist them in pursuing recovery for the defects.
5. Mr. Scott brought suit on the Abbenes' behalf in Hillsborough County Superior Court - North ("HCSC") against the general contractor and the architect. The case was entitled, Abbene v. Cloutier, docket No. 94-C-177 (hereinafter referred to as the "Cloutier Case").

6. By stipulation dated November 11, 1996, the parties in the Cloutier Case agreed to submit the case to arbitration. The stipulation provided that the American Arbitration Association would coordinate the arbitration in two phases.
7. In Phase 1 of the arbitration, an engineer would examine the Abbenes' home and investigate each alleged defect and, if a defect existed, assess the cost of repair. The stipulation required that the Phase 1 arbitrator be a structural engineer. In Phase 2, a different arbitrator was to examine the Phase 1 arbitrator's findings and allocate liability between the defendants for any defects.
8. During Phase 1, the arbitrator confirmed the existence of certain defects and estimated a total of \$33,050.00 in repair costs. Mr. Scott appealed the Phase 1 arbitrator's award to the HCSC. Although the Phase 1 arbitrator was a mechanical rather than a structural engineer, Mr. Scott did not, at any time during the appeal, raise the issue of the Phase 1 arbitrator's qualifications.
9. By Order dated November 30, 1998, the HCSC denied the Abbenes' request to modify or vacate the Phase 1 award.
10. Phase 2 proceeded and the Abbenes were generally unsuccessful during that Phase.
11. On September 13, 2000, the HCSC granted the defendants' request to enter judgment and enforce the arbitration award.

Young and Conner solicit Abbenes

12. By early 2001, Mr. Young had convinced the Abbenes that, with Mr. Conner's assistance, he could successfully overturn the arbitration award and that it would cost them no more than \$7,500.00 to do it. (This litigation is hereinafter referred to as the "Arbitration Case.") Mr.

Young also discussed his plans to make the Abbenes whole by bringing suit against the subcontractors, none of whom Mr. Scott had named in the Cloutier Case. (The case eventually brought against multiple subcontractors is hereinafter referred to as the "Construction Case").

13. Messrs. Young and Conner also advised the Abbenes that, although more than 3 years had passed since they discovered the defects in their home, there was an 8-9 year statute of limitations and the Construction Case would not be time-barred. Mr. Young persuaded Mr. Conner, who did not research the issue further, that the statute of repose applied to the Construction Case.
14. Additionally, Messrs. Young and Conner advised the Abbenes with respect to malpractice claims they might have against Mr. Scott for his handling of the Cloutier Case. (The malpractice action eventually brought against Mr. Scott is hereinafter referred to as the "Malpractice Case.") Messrs. Young and Conner both believed the Abbenes had a strong malpractice claim against Mr. Scott.
15. Persuaded that Mr. Young, with Mr. Conner's assistance, could help them recover the damages they had incurred in the construction of their home, the Abbenes retained Mr. Young to represent them.
16. Mr. Young explained to the Abbenes that he would act as their primary lawyer, but that he had selected Mr. Conner to assist him.
17. The Abbenes prevailed upon Michael Abbene's mother to borrow sufficient funds to retain Mr. Young. Mr. Young instructed the Abbenes that Michael's mother should send a check directly to Mr. Conner to save time.

18. To that end, on or about January 18, 2001, Michael's mother, Patricia Daidone, wrote a check to Mr. Conner for \$7,500.00.
19. Mr. Young also learned from the Abbenes that they had a personal injury lawsuit pending in HCSC entitled, Abbene v. Manchester Run, LP, Petco Animal Supply, Docket No. 00-C-0027. (Hereinafter referred to as the "Petco Case.") The Petco Case related to a knee injury Michael had sustained on the premises of Petco. Jack S. White, Esq., had been representing the Abbenes in the Petco Case.
20. Mr. Young persuaded the Abbenes to allow him to represent them on the Petco Case as well.
21. On February 7, 2001, both Mr. Young and Mr. Conner filed Appearances in the Petco Case.
22. Thereafter, Mr. Young was able to negotiate a settlement in the Petco Case for the Abbenes in the amount of \$45,000.00.
23. By letter to the Abbenes dated May 10, 2001, Mr. Young memorialized the \$45,000.00 settlement in the Petco Case and the disbursement terms.
24. Per the terms of Mr. Young's May 10, 2001, disbursement letter, the Abbenes received \$5,067.19 in cash. While the Abbenes had originally hoped to pay expenses for the Construction Case on an "as needed" basis, Mr. Young persuaded the Abbenes to pay \$18,163.11 from the Petco Case settlement funds to fund the Construction Case litigation.

April 2001: Young and Conner file Motions
in the Arbitration Case

25. In April 2001, Messrs. Young and Conner filed a Motion to Bring Forward and Set Aside Arbitrator Award in HCSC. In that motion, Messrs. Young and Conner sought to reopen the judgments in the Cloutier Case and to overturn the arbitration awards that the HCSC had previously confirmed.

26. The theory underlying the motion was that the Phase 1 arbitrator was a mechanical and not a structural engineer, as required by the terms of the arbitration agreement.
27. Messrs. Young and Conner argued that, while the Phase 1 arbitrator correctly identified the defects, he underestimated the costs of repair. According to Messrs. Young and Conner, a structural engineer would have correctly assessed the costs of the defects and would have awarded the Abbenes a larger sum for repair.
28. Messrs. Young and Conner argued that the appointment of a mechanical rather than a structural engineer constituted a mutual mistake, justifying rescission of the arbitration agreement or a new arbitration proceeding.
29. After a hearing in December 2001, at which the Abbenes, Mr. Young, and Mr. Conner were present, the HCSC (Conboy, J.) denied the Motion to Bring Forward on all grounds, including that the motion was time-barred under RSA 542:8 (1997).
30. RSA 542:8 requires a party aggrieved by an arbitrator's award to apply to the superior court for review "within one year after the award is made." The Phase 1 award was made on January 15, 1998, and the original appeal of that award was denied on November 30, 1998. The Motion to Bring Forward was filed on April 26, 2001, more than 2½ years after HCSC had denied the Abbenes' prior appeal of the Phase 1 award.
31. In the Order, Judge Conboy held that the Motion to Bring Forward was filed well outside the one-year time limit.

June 2001: Young and Conner file the Construction Case

32. On June 18, 2001, Messrs. Young and Conner filed the Construction Case in Hillsborough County Superior Court-North. The Construction Case was entitled "Michael and Elena Abbene v. Stanley Stevens, et al., docket no. 01-C-551."
33. The Construction Case arose from the construction of the Abbenes' home, which had been completed in August 1993.
34. The writ of summons asserted claims grounded in contract and negligence against 19 named defendants, all of whom were alleged to have been subcontractors for the construction of the Abbenes' home.
35. Shortly thereafter, the defendants began filing motions to dismiss the Construction Case and requests for attorney's fees, raising as defenses the statute of limitations (RSA 508:4, I), statute of repose (RSA 508:4-b), and failure of the plaintiffs to adequately plead a cause of action.
36. By orders dated September 24, 2001, the Court (Brennan, J.) granted motions to dismiss and gave the Abbenes 30 days to amend the writ to allege facts sufficient to state a cause of action.
37. Thereafter, numerous defendants filed dispositive motions, including motions to dismiss and requests for attorney's fees.
38. Messrs. Young and Conner did not respond to any of these dispositive motions and did not forward copies of them to the Abbenes. On January 18, 2002, the Court granted the first in a series of defendants' dispositive motions and requests for attorney's fees.
39. On or about January 27, 2002, Mr. Conner filed a "Motion for Reconsideration and to Vacate Orders dated January 18, 2002, and to Enlarge the Time for Response."

40. In that motion, Mr. Conner asserted:

1. This Motion to Reconsider and to Vacate is filed in response to the Court's orders dated January 18, 2002 in which it grants various motions and requested relief filed by defendants, including for costs.
2. Numerous motions were filed by the defendants in this matter which were not responded to because of the failure of counsel to be notified of the existence of these motions over a period of more than a month.
3. This occurred due to the fact that the undersigned counsel is a sole practitioner [sic] aided only by a part time secretary, a part time high school student, and, until November of 2002, a paralegal.
4. Said paralegal was terminated late last year and previously had the responsibility within the law office for the management of paperwork associated with this case.
5. Because the method of routing the incoming paperwork on this case did not change, undersigned counsel was unaware that defendants had filed the various motions and that the clock was ticking on responses thereto.
6. Plaintiffs' counsel had asked to be notified only when a pre-trial hearing date was set on this case and none was ever received from the Court.
7. It appears the Court has dismissed the various defendants without further notice, hearing, or opportunity to be heard on what are essentially orders terminating this critical lawsuit. . . .

41. In an Order dated February 27, 2002, the Court denied the motion as follows:

Motion denied. No supporting affidavit filed. Taking the plaintiffs [sic] motion in the light most favorable to the plaintiffs, it is the plaintiffs [sic] negligence in litigating this case that led to the court's orders in this matter. So Ordered.

42. In an Order dated February 28, 2002, the Court scheduled a status conference for March 12, 2002.
43. Neither Mr. Conner nor Mr. Young had made the Abbenes aware of the defendants' motions to dismiss, their failure to respond to the motions, the Court's order granting the motions, and other problems with respect to the Construction Case.
44. A status conference in the Construction Case took place on March 12, 2002. Mr. Conner was present but the Abbenes were not present for that conference. After that conference, Messrs. Young and Conner wrote a letter to the Abbenes dated March 20, 2002:

Re: Construction Lawsuit

Dear Michael and Elena:

The time has come to discuss the future of this lawsuit and allow Bill and me to make some recommendations about it.

First, you will recall that this suit was begun when we still had a hope of reactivating the prior lawsuit. Frankly, when the motion to bring forward was lost, we believe it removed the basic legal underpinnings and a strong moral argument to continue with actions against the various builders.

Secondly, we have two basic issues to deal with regarding the multiple defendants. The most major issue are the legal concepts of collateral estoppel and res judicata. Without getting overly legalistic, both of these concepts will probably operate to bar recovery because they are predicated on the fact that actions against the subcontractors could, and should, have been brought when the initial lawsuit was filed. They were not, and we are concerned that a judge will simply not allow them to be taken to trial at this point because they were not brought during the original lawsuit. The second issue is the statute of limitations. We sued under a New Hampshire statute that allows actions against subcontractors, but coverage under this statute has already been raised as a defense against it and will continue to be raised, as we discussed with you at the beginning.

We also must consider the strong possibility that any recovery will be held to the Conboy ruling based on res judicata, therefore limiting all damages to the initial arbitrator's award. [sic] defendants is small, and, if successful, may only result in minimal recoveries, hardly justifying the ongoing time, expense, and emotional effort on your part to move the case along.

The bottom line is that success against the subcontractors was largely based on the success of the other case. We lost that case in a very well reasoned decision that you decided, we believe correctly, not to appeal primarily based on the fact that the rationale in that decision, if it went against us, would have a detrimental impact on any related lawsuits.

We believe that, at this point, especially given Judge Conboy's decision regarding the knowledge of Mike Scott, that your best chance of recovery is to proceed against Mike in a malpractice action. You will recall that we have all discussed this several times. Mike is a likeable young lawyer whom we believe made a mistake in handling the earlier case to your detriment with regard to the selection of an arbitrator. Please re-read Judge Conboy's decision if you would like to reinforce your thoughts in this area.

You will recall that when we were waiting for Judge Conboy's decision, we informed you that motions had come in from the defendants for dismissal of their individual cases and we agreed to hold off on responding until the decision was reached by the judge. A number of the actions have been dismissed and we are ready to consider appealing them if that seems the most appropriate action. However, our suggestion is that we stop the Hillsborough Superior Court action at this time and focus on getting you your best chance of relief and financial recovery: looking into a malpractice action against Mike Scott. We would like to terminate the case at this time by filing what is called a voluntary non-suit. This will cease the action immediately.

I have attached a draft of a letter we propose to send to Mike Scott this week and would welcome your comments.

We'll look forward to discussing our options with you shortly.

Sincerely,

David A. Young

CC: Bill Conner

45. Mr. Conner typed the above March 20 letter in Mr. Young's presence. Messrs. Young and Conner jointly composed the letter as Mr. Conner typed it.
46. In the March 20 letter, Messrs. Young and Conner failed to inform the Abbenes that the Construction Case had essentially been dismissed by default and the Court was poised to assess attorney's fees against them.
47. In the March 20 letter, Messrs. Young and Conner falsely suggested that not responding to defendants' motions to dismiss the Construction Case was a strategy adopted by Messrs. Young and Conner that they had explained in advance to the Abbenes.
48. In the March 20 letter, Messrs. Young and Conner falsely suggested that Judge Conboy's denial of the Motion to Bring Forward in the Arbitration Case had a detrimental impact on the Construction Case.

April 2002: Mr. Conner files for non-suit
in the Construction Case

49. On or about April 18, 2002, Mr. Conner filed a "Motion for Voluntary Nonsuit," stating:

NOW COME plaintiffs in the above captioned matter, Michael Abbene and Elena Abbene, by and through their attorneys William E. Conner, Esq., and David A. Young, Esq., and file this Motion for Voluntary Nonsuit, stating in support thereof:

1. This motion is filed to dismiss this action in the Superior Court.
2. A number of defendants have already been dismissed in this matter and the clients have made the decision to pursue an alternative process for recovery of claims arising from the construction of their home.

3. Plaintiffs wish to not pursue the requested relief through Hillsborough Superior Court and request that the Court allow the case to be dismissed at this time, subject to any orders the Court may order regarding any outstanding motions on which the Court has not ruled.

WHEREFORE, your plaintiffs respectfully request this Honorable Court to:

- A. Grant plaintiffs' Motion for Voluntary Nonsuit.
- B. Grant such other relief as the interests of justice may require.

50. After the March 12, 2002, status conference, at which Mr. Conner was in attendance, on May 4, 2002, the Court issued a "Court Memorandum on Status Conference and Order for Hearing on Motion for Voluntary Nonsuit" as follows:

The court has considered the information it received from counsel at the Status Conference on March 12, 2002 and has today issued orders on a total of eleven motions from defendants in this matter ranging from requests for attorney's fees to motions for summary judgment and for final default. The court decided each party's motion and request individually and independently.

In about 60 days, a one-hour hearing shall be scheduled on the plaintiffs' motion for voluntary nonsuit. The court has decided not to take any further action at this time except in response to pleadings filed in the ordinary course.

So Ordered.

May 2002: Court awards fees in Construction Case

51. In a series of orders beginning on May 6, 2002, the Court assessed attorneys' fee awards for individual defendants against the Abbenes.
52. In a Memorandum to Mr. Young dated May 10, 2002, Mr. Conner wrote:

TO: David
FROM: Bill
DATE: May 10, 2002
SUBJECT: Abbene

Well, it looks like the damage is all in. There's good news and bad news.

The bad news is that the judge has granted all of the requests for fees in the Abbene's [sic] case as the last orders came in yesterday.

The total is very high.

Not Just Kitchens	\$5,177.20
ABD Woodworks	\$1,063.00
Miller Eng.	
John Manseau	
Southern Poured Con.	\$1,773.32
Vaillancourt Plum.	\$1,389.00
Jackson Lumber	\$1,064.25

The issue is simple: We need to pay these attorneys as soon as possible. One has already told the court that we have not paid yet. The biggest risk here is that, if the amounts remain outstanding, the Abbene's [sic] will find out and we'll have a nice malpractice suit against us.

We need to figure out how to cash flow these amounts. There is simply no way I can do it. My email to you last week, which you read in my office, expressed by [sic] feelings well regarding money and nothing has changed. Still, not another new client since then and I'm getting quite desperate for general operating expenses, let alone the luxury of discretionary funds.

I am fully aware of my responsibility in this matter. But I don't have the funds. What do you suggest? We cannot go to the Abbene's [sic] with a request for more moneys [sic] when the original amount you took for the case is in play.

The only good news in the Court order is that the judge has decided "not to take any further action" other than routine filings. This is code, I think, for his decision that the money is punishment enough and he will not make a referral to the PCC on

this case. . . .

53. On June 25, 2002, Mr. Young wrote the following email to Mr. Conner:

Bill

Abbenne [sic]-Have you discussed with the Abbenne's [sic] or drafted a fee agreement between you and them for the malpractice suit against Mike Scott?

If you could email me back on that process. Obviously my hope is that we can secure a large enough settlement from the insurance company to cover the attorney's fees on the construction case and determine the bottom line that [sic] the Abbenne's [sic] need to settle the claim. My hope is twenty or thirty thousand for the Abbenne's [sic] would put us in a position for us to resolve all matters.

Thanks

Dave

54. In a letter dated June 28, 2002, Mr. Conner wrote to Matthew R. Johnson, Esq., one of the attorneys representing a defendant in the Construction Case:

Re: *Abbene v. Stevens et al*

Dear Attorney Johnson:

I wanted to follow up on your letter of the 24th. Please be assured that David Young and I are attempting to structure the payment of court ordered fees to your firm and others pursuant to the orders in this matter.

Please know that the total amount of assessed fees was quite high. As I indicated in court at an earlier hearing, we will pay these fees ourselves, and are attempting to determine the best method of cash flowing them [sic], as we do not intend to burden our clients with them.

Understand that we are responsible for these fees and will pay them. Hopefully, we will be able to give you a date by July 15th on which payment to your firm will be made.

Please feel free to contact me if you have any questions regarding this letter.

Sincerely,

William E. Conner

cc: David A. Young, Esq.

55. On July 7, 2002, Mr. Young wrote to Mr. Conner in an email regarding the Abbene case:

Bill

Abbenne [sic] Was the Convoy [sic] decision forwarded to the insurance carrier? What is the next step to getting this case resolved? Also, has the carrier made any arrangements to have the file copied? Do we have any responsibilities to assist them which you have discussed with the carrier? Have you had an opportunity to draft a fee agreement specific to the malpractice case against Scott between you and the Abbennes' [sic]?

Thanks,

Dave

56. In response to that email, on July 8, 2002, Mr. Conner wrote to Mr. Young:

Abbene: Conboy decision mailed. Next step is to wait for the insurance carrier to contact us in a reasonable time, or we'll contact her. Have not heard from the carrier regarding the file issue, but expect to if they don't make an offer from the materials already sent. The bigger issue with Abbene is the upcoming court date of July 23rd for the motion for voluntary non-suit. If we walk into that hearing with no plan for payment of the attorney's fees, expect to get hammered. If we don't have a plan, as indicated in your recent email regarding no funds, we've got no choice but to bring in the Abbene's and let them know of the damage that is accruing [sic] in their name. Remember, we could get referred to the PCC both from an angry judge and angry clients. . . .

Bill

57. On July 9, 2002, Mr. Young wrote the following email to Mr. Conner:

Bill . . .

Abbene . . . Remember, I was not brought into the loop on this stuff until late, . . . If we need to talk with the Abennes, lets [sic] do that sooner rather than later, to try to work out a plan.

58. On July 17, 2002, Mr. Conner wrote the following email to Mr. Young:

Abbene: We have the hearing next week on the non-suit and no arrangements to offer other counsel re fees. We better plan to meet with Mike during the day soon to let him know what's going on and see if he can front us some money. I cannot walk into court with no plan in place and can not [sic] do so as the judge will likely make a PCC referral if this case doesn't get handled. You should plan on attending if free just so the judge can recognize you. It's the 23rd at 9, but I think you may not be available.

59. On that same date, Mr. Young informed Mr. Conner via email that he was unavailable for the hearing on the 23rd.

60. Late that same date, Mr. Conner wrote the following in an email to Mr. Young:

David . . .

Abbene - Fine, I'll talk to Mike and ask him to loan funds to cover the penalties. I expect that, when he tells Elana, [sic] they'll go to the PCC on us both. . .

-If I or we get stung from Abbene, and I have to pay them back, I need to maximize my time. That means billing and collecting at my regular rate, not a one half rate. It's a lot of money.

61. On July 20, 2002, Mr. Young wrote the following email to Mr. Conner:

Good Morning Bill,

Abbene -- When do you or we call the abbenes [sic] to start this process, [sic] If you want me on the line ,you [sic] have to give me a brief description of what happened. Everytime [sic] we start to talk about it you say sindy [sic] didn't file something and the Judge was pissed. Please give me a better idea before you or i [sic] talk to the abbenes [sic] so i [sic] don't look like an idiot. What was

late? Was there more than one motion or filing that was late? Did the late filings deal with more than one defendant? [sic] If there was a critical event that the judge is mad about could you fax the order or motion to me? What is the exact monies owed and to who? We have previously explored a structured payment with the defendant, could you fax me any coorespondance [sic] to or from them. I will be leaving 10 or 11am this morning-sat. If you are around maybe you could get me the info this morning and we can call the abbenes [sic] today. You need to do a new fee agreement on the Scott malpractice claim with the Abbene. [sic] All previous funds have been used [sic] [W]e have agreed to use any attorney proceeds to pay the liabilities first on the above construction matter.

July - November 2002: Hearings on motion for non-suit and Young and Conner correspond about liability for attorney's fees

62. The hearing on the Motion for Voluntary Nonsuit occurred on July 23, 2002. Mr. Conner was present.
63. Mr. Conner began the hearing as follows:

... Our interest is in having the suit dismissed, but I have to be perfectly candid with the court, the court has assessed a total or granted a request for a total of over \$15,700 in attorney's fees.

I've had some communication with some people that are interested in getting those fees, the difficulty is at the last hearing we had indicated that we would, David Young and myself, the other attorney on this matter, would hold our clients harmless from this. Neither of us has had a decent run of cash flow in the last couple of months. We understand the court may not choose to dismiss this case because of that. We're in the process of trying to figure out how we could come up with it. We have a half million dollar case that is under appeal to the Supreme Court with briefs due from the appellant's side this coming Friday. It will be a number of months before that gets heard. David Young has

another matter that is going to produce substantial income probably within the next 60 to 90 days. In the meantime, both of us are relying on our small practice routine cash flow, and since we have worked it out with our clients we will hold them harmless from any claim they are on. What we would like to do is ask the court guidance on how best to do this.

Theoretically, our clients could advance us the money. We told them they shouldn't have to do that, and we would like not to do that, and there is another matter relating to this whole constitution issue which is being dealt with in another venue which also could come to fruition in 90 to 120 days and that, we believe, will also generate some additional fees.

I guess my request at this point is to have guidance from the court as to what the court wants us to do, and to request if the court keeps this matter open because of the unpaid award of legal fees and costs on this matter to give us a window of say a maximum of 180 days and schedule a status at that time. If we get everything taken care of by that time then I presume I'll do a notice to the court indicating that all outstanding awards have been satisfied.

64. After several defense counsel spoke, the Court asked Mr. Conner:

THE COURT: You know more about your financial situation than I do at this point, Mr. Conner, when do you think you could pay? What was the total?

MR. CONNER: Fifteen thousand seven thirty-eight zero nine.

THE COURT: When can you pay by?

MR. CONNER: That's still a work in progress. David and I are both still trying to figure out how we could maximize our cash flow to satisfy this without the necessity to come before the court.

We would respectfully request 180 days be the drop dead date. David Young is going to be gone a while for a couple of months, he's a major in the army reserve serving as a Green Beret and he's going to be activated sometime during the month of August to spend a three month tour in Afghanistan. We hope to put enough in place so that when he returns we will have the cash flow in hand to resolve all these issues.

I just want to point out, Your Honor, under no circumstances were we attempting clever use of a nonsuit to avoid these fees. Certainly that was understood that they would survive any dismissal.

Secondly, the final amount wasn't arrived at until five weeks or so ago when a request for supplemental fees was granted, so we have the total now. Certainly we could start making some partial payments by agreement, but two of the ones are quite large, Your Honor. One is \$5100 and the one that was just recently amended is now \$3300, and I think we've had kind of a normality about not wanting to partially pay one to the detriment of another.

Perhaps I could correspond with all the attorneys involved and see if we could agree to some type of a prorated payment on each account, but certainly no later than 180 days to resolve it.

65. In an "Order On Plaintiffs' Motion for Voluntary Nonsuit" dated July 23, 2002, the Court held:

The decision on this motion is held in abeyance until the plaintiff's attorneys have paid the costs and fees awarded in this case. All costs and fees ordered in this matter shall be paid on or before Monday, November 4, 2002. Any party may request a show cause hearing if they have not been paid their fees and costs by that date.

A status conference is scheduled for 9:00 a.m. Monday, October 28, 2002, to ensure that this order is being complied with.

So Ordered.

66. On July 31, 2002, Mr. Conner wrote in an email to Mr. Young:

David . . .

Abbene -- On monday [sic] you told me that the issues that incurred the costs on this case were more than missing the deadline on the motions to dismiss. The judge was also unhappy about the complaints being incomplete in some fashion. I have not discussed this with the abbene's [sic]. /Do we have an ethical responsibility to do so?/

Yes and no. If we can pay the fees, this case just goes away and I don't think that we need to tell them any more than they know already, but I wouldn't bet the ticket on it. . . .

I'd rather fess up now and see if we can raise the money some other way - but no one has paid any actual cash out on this liability
.....

Bill

67. On August 1, 2002, Mr. Young wrote the following in an email to Mr. Conner:

Bill, . . .

Abbene -- The rate was 33.3 % minus the flat rate monies on the construction case, this should be modified to reflect the Conboy decision and that it is the fault of Scott, perhaps the \$15,000 can be incorporated as an expense on that case i [sic] don't know. You have the abbene [sic] accounting from the personal injury case we included the flat fee on that accounting.

Dave

68. On August 6, 2002, Mr. Young wrote the following in an email to Mr. Conner:

Bill, . . .

Abbene - Did you send a new fee agreement to the abbenes? [sic] Also do we have a plan or schedule for payment is the plan to hold and pay with DSSC or Scott monies?

69. On August 19, 2002, Mr. Young wrote the following in an email to Mr. Conner:

Good morning Bill, . . .

Abbene . . . We need to discuss a payment schedule with the Defendants or a lien on the DSSC case as a pay out provision.

70. On September 24, 2002, Mr. Conner wrote the following in an email to Mr. Young:

David . . .

And, I'm apparently stuck with Abbene and Corey's penalties. . . .

I just want to remind you that the outstanding liabilities are our clients', not ours. We have the moral obligation to pay them, but any direct action to collect would fall on them.

Bill

71. On October 15, 2002, Mr. Young wrote in an email to Mr. Conner:

Good Morning Bill,

I hope your weekend went well.

Abbene -- I spoke with the abbenes [sic] last friday, [sic] they understand that attorneys fees for the opposing side was awarded i [sic] did not discuss amounts except to say it was thousands and we were hoping to pay it out of Scott settlement funds. Have you heard back from Scott? From the carrier? Did you send the Abbenes a fee agreement [sic] modeled after the construction agreement.

72. On October 28, 2002, the HCSC held a status conference, at which Mr. Conner was in attendance. Mr. Conner began the hearing with the following remarks:

MR. CONNER: Thank you, Your Honor.

We're here on a status based on the court's order several months ago, the end of July, July 23rd, I believe, which gave an order for status conference today and a payment being made to the defendants on or before the 4th of November.

The status report is not that good at this point, Your Honor. We've had difficulty in coming up with a structure method. When I say we, I mean David Young and myself. Attorney Young and myself have had difficulty in coming up with an effective plan based on our own cash flow here.

Our clients are well aware of what is going on and they have provided stimulus for us to come up with the monies ourselves, but we may end up having to go to them to arrange transactions with them to pay this off on or before the date in question or seek other relief. I don't know what else is available at

this point other than asking the court for a reasonable extension of another 60 days to see if we could put something together that will hold what will be a flurry of show cause motions to be filed on the 5th of November at this point.

There is no denial of the awards, there's no attempt on our part to avoid payment, simply a cash flow issue. With Attorney Young being called up at Fort Bragg it becomes even a bit more problematic. He will be in the country for, he thinks, something around six weeks, then he will go to Afghanistan for probably four months and then a period when he gets back out of Bragg and then will be home again, in terms of all candor to the court. . . .

THE COURT: Thank you.

73. After Mr. Conner's opening statements, counsel for each defendant addressed the Court. Each expressed a similar concern about resolving the matter with a final judgment and without further expense to their clients.

December 2002: Court enters judgment against Abbenes
for Defendants' attorney's fees

74. In an Order dated December 12, 2002, the Court denied the Motion for Voluntary Nonsuit and issued a judgment as follows:

The plaintiff's [sic] motion for voluntary nonsuit . . . is denied. The plaintiffs have defaulted and final judgment is for the defendants. The defendants are authorized by this judgment to recover from the plaintiffs and/or their counsel all costs and attorney's fees awarded by this court in this case.

So Ordered.

75. On December 17, 2002, Mr. Conner wrote in an email to Mr. Young:

. . . The Abbene thing was simply the final judgment
. . . it means the other lawyers will start going after Abbene [sic]. . .

76. On or about December 18, 2002, two named defendants in the Construction Case filed a "Motion to Show Cause," seeking an order that the Abbenes make a personal appearance and show cause why they should not be ordered to pay the attorney's fees obligation. In the prayer for relief, the defendants requested that the Clerk of Court issue a notice of hearing "directly to Michael Abbene and Elena Abbene"

January 2003: Young and Conner correspond with Abbenes about award of fees; negotiations with Defendants in Construction Case

77. On January 15, 2003, Mr. Conner spoke on the telephone with the Abbenes about the Construction Case litigation.
78. In a letter dated that same date, the Abbenes wrote to Mr. Conner:

Dear Bill,

Per our telephone conversation today, Michael and I would like a full breakdown of the costs associated with our construction case. We want a complete list of defendants and their attorneys and the costs for each. You stated that the judge assessed amounts. We want to know what part of the fees are those assessed by the court because of inappropriate attorney conduct because of late filings. We would like copies of the court documents along with the correspondence from the attorneys for the contractors.

Also, as discussed we want you to present to the attorneys about rolling over the costs onto the Scott case and of course attaching a copy of the Conboy decision. You said they might not be agreeable to this. We also mentioned about setting up a structured payment with the attorneys. We spoke with David and he will front the money for this if need be and deduct it from your winnings.

We would like to have the information on a breakdown by Thursday PM as from my original phone call but the other additional info is ok by Friday.

David is going out of town and will be in Colorado but will be available for the next week. We want to set up a conference call

that we all can be on - you, David Young, Michael and me.

In the meantime, while David is away, we want you to continue with the malpractice case against Mike Scott and keep us updated regularly as you promised in November. We want the case to be moving along and perform all the filings etc. that are supposed to be filed in the time frame they are supposed to be filed. We do not want any late filings of any kind or to miss any deadlines.

We will be expecting the first fax from you by tomorrow 5PM and the others no later than Friday, Jan. 17, 2003.

Please contact us to let us know when you are available to set up the conference call.

Sincerely,

Elena & Michael Abbene

79. In a letter dated January 17, 2003, Mr. Conner wrote to Andrew D. Dunn, Esq., and included an offer of settlement "intended for all attorneys representing clients who have received an award of fees" Mr. Conner's settlement proposal was for Messrs. Conner and Young to assign the attorney's fees from the pending Malpractice Case and other small personal injury cases pending in Mr. Conner's office to the payment of the attorney's fees in the Construction Case.
80. In his January 17, 2003, letter to Mr. Dunn, Mr. Conner explained that the Abbenes did not have sufficient funds to pay the attorney's fees:

. . . David and I have spoken with Michael and Elena Abbene regarding this matter, as recently as two days ago. . . .

Consider this letter my plea for relief short of taking direct action against the Abbenes

81. On that same date, Mr. Conner forwarded the Abbenes, via telefax, a spreadsheet summarizing the attorney's fees obligation in the Construction Case. The spreadsheet indicated a total obligation of \$16,964.49.
82. In his cover letter accompanying the spreadsheet, Mr. Conner wrote to the Abbenes:
- . . . As indicated in the letter [to Mr. Dunn], I will take care of this as soon as I can and my prime goal is to provide that you two suffer no harm because of this. . . .
83. In a telefax dated January 17, 2003, but received by the Abbenes on January 29, 2003, Mr. Conner informed them that he and Mr. Young were no longer working together. In that telefax, Mr. Conner indicated that he had not had time to copy the documents in the Construction Case but promised that he would "arrange to have copied all of the copies of the court's orders regarding the judgments" and would forward them to the Abbenes.
84. In an Order dated January 21, 2003, the Court granted the defendants' Motion to Show Cause and ordered that notice of the show cause hearing (as yet unscheduled) be "sent directly to the plaintiffs themselves, Michael Abbene and Elena Abbene."
85. In an Order dated January 24, 2003, the Court scheduled the show cause hearing for February 19, 2003.
86. In a letter to Mr. Conner dated January 25, 2003, the Abbenes expressed concern regarding the show cause hearing and Mr. Conner's failure to forward relevant documents to them. The Abbenes indicated that they were going to Court to review their file themselves.
87. In a letter to Mr. Conner dated January 28, 2003, Mr. Dunn responded to Mr. Conner's January 17, 2003, settlement proposal. Mr. Dunn wrote:

Dear Mr. Conner:

Thank you for your letter of January 17.

I sympathize with your personal plight. I would like to accommodate you if I could. Honestly, I do not believe that you are likely to get much of a recovery out of your reopened arbitration proceeding. I have my doubts as to the sustainability of a malpractice action against the Abbenes' prior counsel, as I suspect that would be barred by the statute of limitations as well. Moreover, I believe that the Abbenes were sophisticated and have enough experience in litigation to know that the claims that they brought against my clients at least were without merit because they were barred by the statute of limitations and in some cases had actually been paid and released. I will, however, pass your propositions on to my clients and to the other counsel involved in the case.

Very truly yours,

Andrew D. Dunn

88. On January 28, 2003, Mr. Abbene went to the HCSC and reviewed his file. For the first time, he learned the extent of his attorneys' neglect in the Construction Case litigation.
89. During this time-frame, Mr. Young attempted to distance himself from Mr. Conner and to ingratiate himself to the Abbenes. To that end, Mr. Young told the Abbenes that he was unaware of the problems with the Construction Case, and he laid the blame for the default judgment and attorney's fees entirely on Mr. Conner. Mr. Young falsely informed the Abbenes that Mr. Conner concealed the problems with the Construction Case from him as well. Early on during this time-frame, the Abbenes believed Mr. Young.

February 2003: Abbenes terminate Conner

90. In a letter to Mr. Conner dated February 11, 2003, the Abbenes terminated his services and requested that he bring both the Construction Case and Malpractice Case files with him to Court for the February 19, 2003, show cause hearing.

91. In a telefax to the Abbenes dated February 12, 2003, Mr. Conner acknowledged that he received their letter terminating his services. Mr. Conner expressed his regret at terminating his services on the Malpractice Case as follows:

. . . As you might expect, I was quite disappointed that you decided to remove me from the Scott case. I assume this was done in consultation with David. You should know that I was particularly disappointed because I saw this case as a great one to settle early and at a level which would allow me to repay (or pay, as the case may be) the liabilities on the construction suit. Now I won't have that cash flow, and David says he will assign a new counsel to it, I assume for a fee which he will now earn instead of me. Understand that this case was a primary basis for repayment on my end. Now it's gone. I'm saddened, but your wishes are what I must follow at this point. . . ."

February 19, 2003: Show Cause Hearing

92. The show cause hearing took place on February 19, 2003, in Judge Brennan's chambers. Mr. Conner, Mr. Lynch, the Abbenes and defense counsel were present. Mr. Young participated via telephone.
93. During the hearing, Mr. Young repeatedly expressed the Abbenes' lack of knowledge about the matter and their inability to take action to mitigate the damages. Mr. Young requested that the Court structure an Order such that his "clients," the Abbenes, would be held harmless in the matter. The Court expressed reluctance to so order and advised the Abbenes to hire independent counsel.

March 2003: Court makes PCC referral against Conner

94. In a letter dated March 4, 2003, Judge Brennan referred Mr. Conner's conduct in the Construction Case to the Professional Conduct Committee.
95. In an Order dated March 5, 2003, Judge Brennan ruled as follows:

In this case it appears that the plaintiff's [sic] attorney, William Conner, was negligent in representing his clients, Michael and Elena Abbene. Attorney Conner's failure to respond to the defendants' numerous dispositive motions, and his failure to reasonably consider the legal foundation for the plaintiffs' suit against nineteen defendants resulted in substantial attorney's fees and costs being awarded to the defendants.

The court finds that the plaintiffs are liable for the consequences of their attorney's negligent acts or his failure to act. Attorney Conner's "actions and omissions within the scope of his authority are in essence the acts and omissions of his client." Cass v. Ray, 131 N.H. 550, 554. The plaintiffs', [sic] if they are unable to recover from their attorney outside of court, may file an appropriate action to recover damages resulting from their attorney's neglect or malpractice.

The plaintiffs shall pay the ordered costs and fees to the defendants.

So ordered.

April - July 2003: Abbenes file PCC complaints against Conner and Young

96. In a letter to the Professional Conduct Committee dated April 28, 2003, the Abbenes lodged a formal grievance against Mr. Conner.
97. In a letter to the Professional Conduct Committee dated July 16, 2003, the Abbenes requested that Mr. Young be added to their pending Professional Conduct Committee complaint against Mr. Conner.

II RULINGS OF LAW

The Professional Conduct Committee, upon consideration and review of the Stipulation, concludes that the record supports the following Rulings of Law by clear and convincing evidence:

RULE 1.1(a): COMPETENCE

Arbitration Case: Barred by Statute of Limitations

98. Allegations set forth above are incorporated by reference.
99. Messrs. Young and Conner advised the Abbenes to file the Arbitration Case without regard to the provisions of RSA 542:8, which imposes a one year time period within which to file such an action.
100. As of April 26, 2001, the date that Messrs. Young and Conner filed the Arbitration Case on the Abbenes' behalf, the Phase 1 award was over two years old and the Court order declining to vacate or modify that award was approximately 2½ years old.
101. Thus, as of the date of filing the Arbitration Case, it was time-barred.
102. By counseling the Abbenes to file the Arbitration Case under these circumstances, Messrs. Young and Conner failed to provide competent representation to the Abbenes.
103. There is clear and convincing evidence that the conduct of Mr. Conner in this regard constitutes a violation of N.H. R. Prof. Conduct 1.1(a).

Arbitration Case: Unworthy on the Merits

104. Allegations set forth above are incorporated by reference.
105. Messrs. Young and Conner advised the Abbenes to file the Arbitration Case despite the fact that they knew or should have known that Mr. Scott had received a copy of the Phase 1 arbitrator's resumé and, by failing to object to the arbitrator's background as a mechanical engineer, Mr. Scott had waived (on behalf of the Abbenes) any challenge to the arbitrator's credentials.

106. By counseling the Abbenes to file the Arbitration Case under these circumstances, Messrs. Young and Conner failed to provide competent representation to the Abbenes.
107. There is clear and convincing evidence that the conduct of Mr. Conner in this regard constitutes a violation of N.H. R. Prof. Conduct 1.1(a).

Construction Case: Barred as a Matter of Law

108. Allegations set forth above are incorporated by reference.
109. Messrs. Young and Conner advised the Abbenes to file the Construction Case despite the res judicata effect of the prior judgment in the Cloutier Case.
110. By counseling the Abbenes to file the Construction Case under these circumstances, Messrs. Young and Conner failed to provide competent representation to the Abbenes.
111. There is clear and convincing evidence that the conduct of Mr. Conner in this regard constitutes a violation of N.H. R. Prof. Conduct 1.1(a).

Construction Case: Barred by Statute of Limitations

112. Allegations set forth above are incorporated by reference.
113. Messrs. Young and Conner advised the Abbenes to file the Construction Case without regard to the provisions of RSA 508:4, which requires that a cause of action for known defects be filed within three years from the date of discovery of the defects.
114. The construction of the Abbenes' home was completed on or about August 31, 1993. The Abbenes discovered the defects immediately thereafter. Thus, RSA 508:4 required the Abbenes to file their cause of action on or before approximately August 31, 1996.

115. Messrs. Young and Conner filed the Construction Case on June 18, 2001, almost eight years after the Abbenes had discovered the defects and almost five years after the statute of limitations had expired.
116. By counseling the Abbenes to file the Construction Case under these circumstances, Messrs. Young and Conner failed to provide competent representation to the Abbenes.
117. There is clear and convincing evidence that the conduct of Mr. Conner in this regard constitutes a violation of N.H. R. Prof. Conduct 1.1(a).

Construction Case: Default by Failure to Prosecute

118. Allegations set forth above are incorporated by reference.
119. Messrs. Young and Conner failed to respond to dispositive defense motions, discovery requests, and motions for approval of attorney's fees, thereby exposing their clients to a default and to substantial liabilities.
120. Further, once it became apparent to Messrs. Young and Conner that the Construction Case had no merit, Messrs. Young and Conner failed to take timely steps to limit defendants' claims for attorney's fees (e.g., immediately seeking a voluntary dismissal), thereby minimizing the Abbenes' potential liability for those fees.
121. By failing to prosecute the Abbenes' Construction Case as set forth herein, Messrs. Young and Conner failed to provide competent representation to the Abbenes.
122. There is clear and convincing evidence that the conduct of Mr. Conner in this regard constitutes a violation of N.H. R. Prof. Conduct 1.1(a).

RULE 1.3(a): DILIGENCE

Construction Case: Failure to Prosecute

123. Allegations set forth above are incorporated by reference.
124. Messrs. Young and Conner failed to respond to critical defense motions, discovery requests, and motions for approval and awards of attorney's fees, thereby subjecting their clients to a default and to substantial liabilities.
125. Further, once it became apparent to Messrs. Young and Conner that the Construction Case had no merit, Messrs. Young and Conner failed to take timely steps to limit defendants' claims for attorney's fees (e.g., immediately seeking a voluntary dismissal), and thereby minimize the Abbenes' potential liability for those fees.
126. By failing to prosecute the Abbenes' Construction Case, Messrs. Young's and Conner's representation of the Abbenes was neither reasonably prompt nor diligent.
127. There is clear and convincing evidence that the conduct of Mr. Conner constitutes a violation of N.H. R. Prof. Conduct 1.3(a).

RULES 1.4(a)-(c): COMMUNICATION

128. Allegations set forth above are incorporated by reference.
129. Messrs. Young and Conner failed to inform the Abbenes about the dispositive motions and requests for attorney's fees filed by defendants in the Construction Case.
130. Messrs. Young and Conner also failed to inform the Abbenes in a timely manner that the Court had granted the defendants' dispositive motions and requests for attorney's fees.

131. In Messrs. Young's and Conner's March 20, 2002, letter to the Abbenes, purporting to offer their assessment of the case and recommendation for further action, Messrs. Young and Conner did not inform the Abbenes that the case had effectively been dismissed and that attorney's fees were being assessed against them.
132. As of March 2002, attorney's fees of approximately \$15,000 had been awarded to the defendants.
133. The Abbenes did not learn of the actual status of the Construction Case and the full extent of their liability for attorney's fees until the February 19, 2003, show cause hearing.
134. By failing to inform the Abbenes of the status of the Construction Case, Messrs. Young and Conner failed to keep the Abbenes reasonably informed regarding the status of that lawsuit.
135. By failing to inform the Abbenes of the status of the lawsuit and their mounting liability for attorney's fees, the Abbenes were unable to take timely action to mitigate their liability and/or to make other informed decisions regarding their representation.
136. There is clear and convincing evidence that the conduct of Mr. Conner constitutes a violation of N.H. R. Prof. Conduct 1.4(a), 1.4(b), and 1.4(c).

RULE 1.7(b): CONFLICT OF INTEREST

137. Allegations set forth above are incorporated by reference.
138. Messrs. Young and Conner communicated to one another as early as May 10, 2002, about the fact that the Abbenes would have a legal malpractice suit against them in the event that Messrs. Young and Conner failed to pay the attorney's fees awarded to the defendants in the Construction Case. [198]

139. Subsequent email communication between Messrs. Young and Conner indicate similar concerns with respect to the possibility of the Abbenes filing a Professional Conduct Committee complaint against them as soon as the Abbenes learned about their liabilities for defendants' attorney's fees in the Construction Case.
140. Messrs. Young and Conner also realized and were concerned that the Abbenes might have a cause of action against them for negligence in their handling of the Construction Case.
141. Messrs. Young and Conner knew or should have known that their interest in avoiding disciplinary action and/or liability to the Abbenes was directly adverse to the interests of the Abbenes and their duty of loyalty owed to the Abbenes.
142. Accordingly, Messrs. Young and Conner were operating under a conflict of interest in connection with the Construction Case, causing them not to communicate with and not to be candid with the Abbenes about the case.
143. Joint representation of the Abbenes by Messrs. Young and Conner in connection with all pending matters was materially limited by their own interests in avoiding liability and disciplinary action.
144. There is clear and convincing evidence that Mr. Conner's continued representation of the Abbenes under these circumstances constitutes a violation of N.H. R. Prof. Conduct 1.7(b).

RULE 8.4(c): DECEIT AND COVER-UP

145. Allegations set forth above are incorporated by reference.
146. When the Construction Case was dismissed and the defendants' attorney's fees were being awarded, Messrs. Young and Conner were operating under a clear and irreconcilable conflict of interest.

147. As a consequence of the aforementioned conflict of interest and in an effort to avoid professional liability, Messrs. Young and Conner concealed from the Abbenes material facts relating to the status of the Construction Case and diverted their attention to the prospect of recovering damages in the Malpractice Case.
148. Messrs. Young's and Conner's letter of March 20, 2002, to the Abbenes and various email messages between Messrs. Young and Conner, as summarized above, illustrate their intent to conceal from the Abbenes material facts relating to their performance and to avoid professional liability.
149. The aforementioned cover-up and deceit on the part of Messrs. Young and Conner continued until January, 2003, when the Court issued (and mailed directly to the Abbenes) its show cause order requiring the Abbenes to explain why they had not paid the attorneys fee's awarded in the Construction Case.
150. Mr. Young's and Mr. Conner's efforts to cover-up and conceal from the Abbenes the true status of the Construction Case and the failures of Messrs. Young and Conner to protect the interests of their clients constitute conduct involving dishonesty, fraud, deceit or misrepresentation.
151. There is clear and convincing evidence that Mr. Conner's conduct constitutes a violation of N.H. R. Prof. Conduct 8.4(c).

RULE 8.4(c): DECEIT IN MARCH 20 LETTER

152. Allegations set forth above are incorporated by reference.

153. In their March 20 letter, Messrs. Young and Conner falsely suggested that not responding to defendants' motions to dismiss the Construction Case was a strategy adopted by Messrs. Young and Conner that they had explained in advance to the Abbenes.
154. In the March 20 letter, Messrs. Young and Conner falsely suggested that Judge Conboy's denial of the Motion to Bring Forward in the Arbitration Case had a detrimental impact on the Construction Case.
155. Further, in the above letter, Messrs. Young and Conner falsely stated that they had warned the Abbenes about problems regarding the Construction Case and the statute of limitations.
156. Messrs. Young and Conner wrote the March 20 letter with the intent to deceive the Abbenes about the true status of the Construction Case.
157. The writing of the March 20 letter constitutes conduct involving dishonesty, fraud, deceit or misrepresentation.
158. There is clear and convincing evidence that Mr. Conner's conduct in this regard constitutes a violation of N.H. R. Prof. Conduct 8.4(c).

RULE 8.4(a): GENERAL RULE

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

III SANCTION

Having made the above-referenced findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is disbarment.

We recognize 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 making the recommendation for disbarment, we focus in this case on the severity of Mr. Conner’s conduct, a factor that is most critical in a case such as this where an attorney is involved with the fundamental abdication of his responsibility to his client and commits a pattern of serious violations of the Rules of Professional Conduct.

In reaching this decision, we use 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, we are to consider the following factors when imposing sanctions: “(a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by the lawyer’s misconduct; (d) the existence of aggravating or mitigating factors.” Standards, supra, §3.0. In instances of multiple charges of misconduct, “the ABA recommends that the sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct.” Douglas’ Case, 156 N.H. 613, 621 (2007) quoting Richmond’s Case, 152 N.H. 155, 160 (2005).

In reviewing the first factor, the duty violated, we conclude that Mr. Conner failed in his most basic responsibilities to his client. He was involved with misleading the Abbenes in filing a meritless lawsuit barred by law and barred by the statute of limitations. In pursuing these cases, Mr.

Conner failed to respond to discovery requests, dispositive motions and motions for attorneys fees. He not only failed to inform his clients of the merits and status of these cases, he affirmatively mislead the Abbenes as to his claimed legal strategy. This led Mr. Conner into creating a clear conflict of interest between he and the Abbenes, a conflict he hid and did not disclose to his clients. In choosing between informing his clients of the state of these cases or protecting himself, he chose his own self interest at the expense of his clients. See Standards, §4.3-5.1.

As the Hearing Panel noted:

It is in the nature of a profession built on trust that choices between truth and temporary advantage will be frequent. Attorneys, mindful of their oath, must choose the former not sometimes, but always.

The duties that Mr. Conner violated were central to an attorney's responsibility in representing a client. Mr. Conner failed in making proper choices, not once, but repeatedly through his extended representation of the Abbenes.

We next consider Mr. Conner's mental state throughout the period he represented the Abbenes. Mr. Conner, in his own words, realized "early on... that the case should never have been filed" and that "it was clear that (he) had made a substantial mistake." Transcript, Oral Argument before the Professional Conduct Committee, January 15, 2008, page 9, hereinafter Tr __. Yet in reaching this obvious conclusion, Mr. Conner did not take the required and necessary step to address the circumstances. Rather, he commenced a conscious, intentional and systematic plan of deceit. As Mr. Conner candidly acknowledged:

I can't deny that I did not -- that I intentionally did not tell -- did not tell the Abbenes that the case was going down the tubes and that it never should have been filed in the beginning until sometime after the knowledge became clear. That meets the definition of deceit. I was deceitful and cannot deny it. Tr 13.

Not only did Mr. Conner engage in this acknowledged deceit but it continued until the filing of the Professional Conduct complaint with this Committee. As a result, Mr. Conner was forthright with the Abbenes only after he was confronted with his own misconduct.

As Mr. Conner acknowledged, again, candidly to the Committee:

Once the PCC filing was made and I saw the claims against me supported by Mr. Young's e-mails, I realized at that point that there was no value to be gained, no help to myself, no help to the Abbenes in any way, and answered the complaint in such a manner as to – I guess fully incriminate myself in everything that went on... Tr. 11.

We conclude that Mr. Conner's conduct was intentional, involved repeated omissions or misrepresentations to his clients and continued until the time this complaint was filed.

We next address the harm to the Abbenes caused by Mr. Conner's conduct. In this case, the Abbenes were led by counsel into filing what only can be characterized as frivolous litigation – litigation that cost the Abbenes their time and their money. The result was not only the dismissal of these cases but also the need to respond to multiple counterclaims. Ultimately, it led to an award of attorneys fees against the Abbenes. The harm to the Abbenes is both clear and substantial.

In reaching our conclusion regarding sanctions, we have also considered a number of both aggravating and mitigating factors included in the ABA Standards.

Mr. Conner, in making the calculations that he did during the period he represented the Abbenes, acted dishonestly and for the purpose of protecting himself. He engaged in a pattern of misconduct that resulted in the commission of multiple offenses. See, Standards, §9.32(b),(c),(d). Wolterbeek's case, 152 N.H. 710, 717 (2005). A further aggravating factor in this case includes Mr. Conner's prior disciplinary record which includes a prior public censure. See, Conner, William E. advs. Sherry E. Rowell, Professional Conduct Committee, #03-104.

While these aggravating factors are to be considered, important mitigating factors are also presented by Mr. Conner.

In reviewing the record as a whole, Mr. Conner's conduct must be placed in the context of a series of personal problems that he faced, not only during the time of his representation of the Abbenes, but also from the time of the filing of the complaint with the Committee to the present.

It would appear that once Mr. Conner fully realized his circumstances and the impact that his representation had on the Abbenes, he has done everything in his power to deal with significant personal issues and has been fully forthcoming in acknowledging the breadth of his misconduct.

Mr. Conner, in his presentation both to the Hearing Panel and to this Committee expressed sincere remorse for his conduct. He placed in context the decisions that he made in representing the Abbenes. He was clearly impacted by the unfortunate influence of David Young, a lawyer who is now disbarred. Further, he represented the Abbenes during a tumultuous period in his personal life, a period where he slowly realized that he suffered from depression and alcoholism.

Following the receipt of the complaint, Mr. Conner has candidly acknowledged what he did and has addressed certain personal difficulties. He has been sober for five years and has consistently participated in AA meetings to support his recovery. He has seen an alcohol counselor and credibly recognizes the importance of continuing his course of recovery. These difficulties create a context for Mr. Conner's circumstances at the time he represented the Abbenes, however, they do not create an excuse or a cause for his decisions.

The Committee therefore notes as mitigators that Mr. Conner had significant personal issues at the time of these events, Standards, §9.32(c), was impacted by issues related to depression and alcoholism, Standards, §9.32(h) and has persuasively demonstrated remorse in regard to his

representations of the Abbenes, Standards, §9.32(l). In addition, Mr. Conner has taken and continues to take important steps toward his own rehabilitation by dealing with his substance abuse issues. Standards, §9.32(j).

Mr. Conner recognizes that significant discipline will be imposed as a consequence of his representation of the Abbenes. Both before the Hearing Panel and this Committee, he spoke with emotion about his desire to practice law in the future. He therefore requested that if an Order of disbarment is to be imposed, that the Order include guidelines as to when he may seek to begin the process of reinstatement.

While the Professional Conduct Committee has not previously included this kind of guidance in its decisions recommending disbarment, we are persuaded to include such a provision in this case. Mr. Conner seems to genuinely appreciate the severity of his conduct and the impact it had on the Abbenes. He has taken significant steps to address his personal issues. Disciplinary Counsel does not object to the inclusion of a time frame in an Order of disbarment.

As a result, the Committee respectfully recommends that the Supreme Court issue an Order disbarring Mr. Conner in this case and allow him, if he chooses, to start the process of reinstatement no earlier than three years following the date of the final Order of the Supreme Court. Mr. Conner would need to comply with the reinstatement requirements of New Hampshire Supreme Court Rule 37(2)(d). Should Mr. Conner seek re-admission, consideration should be given to his participation in the New Hampshire Lawyers Assistance Program as a condition of his readmission.

IV CONCLUSION

For the above reasons, the Professional Conduct Committee recommends to the New

Hampshire Supreme Court that William E. Conner be disbarred for violating New Hampshire Rules of Professional Conduct, Rules 1.1(a), Rule 1.3(a), Rule 1.4(a)-1(c), Rule 1.7(b), Rule 8.4(c) and Rule 8.4(a). Mr. Conner has agreed in the stipulation to pay the expenses attributable to him and incurred by the Professional Conduct Committee in the investigation and prosecution of this attorney discipline case. See, New Hampshire Supreme Court Rule 37(19). It is therefore also recommended that he be assessed all such costs and expenses.

Therefore, the Professional Conduct Committee directs Disciplinary Counsel to file a petition for disbarment of William E. Conner in the New Hampshire Supreme Court.

May 20, 2006
Date

Margaret H. Nelson
Margaret H. Nelson, Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
William E. Conner, Esquire
David A. Young
File