

New Hampshire Supreme Court  
**Professional Conduct Committee**

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*Gosling, Tamblyn F. advs. Julie Simpson # 07-035*

**SIX MONTH SUSPENSION STAYED FOR TWO YEARS**

On May 19, 2009, the Professional Conduct Committee heard Oral Argument and deliberated the above-captioned matter. Landya B. McCafferty, Disciplinary Counsel appeared for the Attorney Discipline Office, and James W. Craig, Esquire, appeared for Tamlyn F. Gosling, Esquire, who was also present.

Members present included: Margaret H. Nelson, Chair; Benette Pizzimenti, Vice Chair; Toni M. Gray, Vice Chair; David N. Cole; Thomas P. Connair; Alan J. Cronheim; Gerald A. Daley; Richard H. Darling; Gretchen Rule Hamel and Marilyn Billings McNamara. Susan R. Chollet and James R. Martin were absent.

The Committee reviewed the Record, including: the Notice of Charges; Answer to Notice of Charges and Addendum; Jointly Submitted Exhibits; Disciplinary Counsel's Proposed Findings of Fact and Rulings of Law; Transcript of Hearing held on December 16, 2008 and Hearing Panel Report dated February 6, 2009. The Committee notes that the Report includes a minority opinion by James W. Squires, M.D., a lay member of the Hearing Panel.

**I. FINDINGS OF FACT**

The Committee voted to accept the Findings of Fact found by the Hearing Panel, by clear

and convincing evidence. The Hearing Panel granted the Proposed Findings of Fact, numbers 1 - 9 and 11 - 15, submitted by the Attorney Discipline Office, and made additional findings of fact numbered 16 - 19 as set forth below:

1. Ms. Gosling is an attorney licensed to practice law in New Hampshire. Ms. Gosling was admitted to practice on May 28, 1993. At all times material to this proceeding, Ms. Gosling operated her law office at 11 North Mast Street, P.O. Box 39, Goffstown, New Hampshire 03045. Answer at ¶ 1.<sup>1</sup>
2. This attorney discipline matter pertains to out-of-court events relating to a divorce proceeding between the complainant, Julie Simpson, and her ex-husband, Scott E. Simpson. Answer at ¶ 2.
3. At all relevant times, Mr. Simpson was represented by Ms. Gosling; Ms. Simpson was represented by Diane M. Puckhaber, Esq. Answer at ¶ 3.
4. During the pendency of the divorce case, Ms. Gosling expressed an interest in obtaining records from Ms. Simpson's physician and therapist. Answer at ¶ 4.
5. Ms. Gosling requested that Ms. Simpson provide her with signed medical releases so that Ms. Gosling could obtain the medical records. Answer at ¶ 5.
6. At all relevant times, Ms. Simpson's therapist was Kim Thurlow. Answer at ¶ 6.
7. In or about June 2006, Ms. Gosling forwarded a medical release form for Ms. Simpson to sign, authorizing disclosure of records maintained by Ms. Thurlow. Answer at ¶ 7; see also Exh. 1.<sup>2</sup>
8. The medical release form that Ms. Gosling forwarded had an expiration date of December 1, 2005. Answer at ¶ 8; see also Exh. 1.

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1 "Answer" signifies Attorney Tambllyn F. Gosling's Answer to the Notice of Charges dated October 9, 2008.

2 "Exh." signifies the previously filed "Jointly Submitted Exhibits," a booklet containing 9 exhibits submitted on 11/24/08 and exhibits 10 and 11, submitted on 12/10/08.

9. Ms. Simpson consulted with Ms. Thurlow regarding Ms. Gosling's request for a medical release. Ms. Thurlow provided Ms. Simpson with one of her own medical release forms. Ms. Thurlow reviewed the form with Ms. Simpson before completing it. See Answer at ¶ 9 (not denied).

10. **NOT RULED UPON. (Included to preserve numbering to correspond to proposed findings.)**

11. Upon receipt of the Original Release, Ms. Gosling altered the Original Release in the following ways:

Ms. Simpson had authorized the release of one type of medical record by checking, "Treatment Plan." Ms. Gosling added check marks next to seven additional types of medical records that Ms. Simpson had not authorized, including: Social History, Progress Notes, Medical History, Psychiatric/Psychological Evaluation, Intake Summary, Lab Reports, and Medication List.

(This release is hereinafter referred to as the "Altered Release"). Answer at ¶ 11; see also Exh. 4.

12. On the Altered Release, Ms. Gosling made her alterations in different ink than that used in the Original Release. Answer at ¶ 12.

13. Ms. Gosling forwarded the Altered Release to Ms. Thurlow with a cover letter dated June 30, 2006. The cover letter stated:

Dear Ms. Thurlow:

This is a request to forward to me the complete counseling records for Julie Simpson. I understand the enclosed release will satisfy your needs to do so. Please contact me immediately if there will be any delay in sending the complete records so as to avoid unnecessary court orders or future subpoenas/depositions. Thank you.

Best Regards,  
Tamblyn Gosling

Answer at ¶ 13; see also Exh. 3.

14. Ms. Gosling did not copy Ms. Puckhaber on her June 30 letter to Ms. Thurlow. See Exh. 3.

15. After receiving Ms. Gosling's June 30, 2006, letter, Ms. Thurlow spoke with Ms. Simpson on or about July 6, 2006. Ms. Thurlow learned from Ms. Simpson that Ms. Simpson had not altered or authorized any changes to the Original Release. See Answer at ¶ 15.

16. ***Proposed Finding of Fact, NOT RULED UPON. Number 16 below is an additional finding by the Hearing Panel.***
16. On June 7, 2006, after completing and signing Kim Thurlow's release form, a copy was faxed to Diane Puckhaber, Esquire (This release is hereinafter referred to as the "Original Release"). Attorney Puckhaber then forwarded the Original Release to Attorney Gosling. The original was kept by Kim Thurlow. Tr. at 22, 23, 35, Answer at 10, Exhibit 2.
17. On July 5, 2006, Kim Thurlow contacted Attorney Gosling and left a message informing her that the release had been altered. Attorney Gosling later returned that call and left a message that she did not expect Kim Thurlow would accept the release, but she thought she would try. Tr. at 37.
18. On July 22, 2006, in response to a letter from Kim Thurlow, Attorney Gosling left a detailed voicemail message for Kim Thurlow in which she apologized and acknowledged she made a mistake. She further indicates that she is a good person, and that she did not intentionally violate any Rules. Tr. at 40, 41, Exhibit 7.
19. The only records released to Attorney Gosling were the records authorized in the Original Release; a "treatment plan". Tr. at 77, Answer at 16.

## II. RULINGS OF LAW

Based on the Findings of Fact and the record in this case including the Hearing Panel Report,<sup>3</sup> the Professional Conduct Committee found that by clear and convincing evidence that Ms. Gosling violated the following Rules of Professional Conduct: Rule 4.1(a): Truthfulness in Statements to Others, and Rule 4.4: Respect for Rights of Third Persons, and Rule 8.4(a): Misconduct.

### **Rule 4.1(a): Truthfulness in Statements to Others**

1. The Findings of Fact set forth above are incorporated by reference.
2. With her cover letter of June 30, 2006, Attorney Gosling forwarded a Release that she had altered to Ms. Thurlow.

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<sup>3</sup> The Hearing Panel did not specifically rule on Attorney Discipline Office's Proposed Rulings of Law.

3. At all times, Ms. Gosling knew that Ms. Simpson had not consented to the Altered Release and that, therefore, it was not a valid or legal release.
4. Attorney Gosling's June 30, 2006, letter to Ms. Thurlow implied that the Altered Release was a legal and valid release that had been authorized by Ms. Simpson.
5. By writing the letter to Ms. Thurlow, and sending the Altered Release, Attorney Gosling intended to induce Ms. Thurlow into believing the Altered Release was a valid and legal release authorized by Ms. Simpson.
6. The legality and validity of the Release forwarded to Ms. Thurlow was a material fact in Ms. Thurlow's consideration of Attorney Gosling's June 30 request for therapy records.
7. By writing the June 30, 2006, letter to Kim Thurlow, and enclosing the Altered Release, Attorney Gosling made a false statement of material fact to a third person.
8. While Ms. Gosling alleges that she never intended to deceive anyone with the June 30, 2006, letter and enclosed Altered Release, the Panel did not find this allegation credible, as neither opposing counsel, nor the GAL were copied on the June 30, 2006, letter to Ms. Thurlow. Answer at 23.

**Rule 4.4: Respect for Rights of Third Persons**

1. The Findings of Fact set forth above are incorporated by reference.
2. In writing the June 30, 2006, cover letter and sending the Altered Release, Attorney Gosling was attempting to obtain evidence to use in the underlying divorce case on behalf of her client, Mr. Simpson. Answer at 28.
3. Attorney Gosling violated the legal rights of Ms. Simpson by attempting to obtain privileged information regarding Ms. Simpson's psychological care and condition without the necessary release and by altering the Original Release without any authority to do so: and by forwarding the Altered Release to Ms. Thurlow, along with a cover letter demanding that Ms. Thurlow provide Attorney Gosling with Ms. Simpson's complete counseling records.
4. In so doing, Ms. Gosling used a method of obtaining evidence that violated the legal rights of Ms. Simpson.

**Rule 8.4(a): General Rule**

In light of the above Rule violations, there is necessarily a violation of Rule 8.4(a).

**III. SANCTION**

Having made the above findings and rulings, and for the reasons stated below, the Professional Conduct Committee concludes that the appropriate discipline in this matter is a six (6) month suspension with the suspension being stayed for a period of two (2) years. 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). Disciplinary action and sanctions are not intended as a mode of inflicting punishment. *Kersey's Case*, 150 N.H. 585, 585 (2004). Rather, the purpose of the Court's disciplinary power "is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *E.g., Coffey's Case*, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). "The sanction must take into account the severity of the misconduct." *Id.*

The New Hampshire Supreme Court and this Committee look to the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1992) ("*Standards*") for guidance to determine the baseline sanction. *Coffey's Case*, 152 N.H. at 513; *see also, 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 four factors to consider in imposing sanctions: "(a) 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* Sec. 3.0; *Coffey's Case*, 152 N.H. at 513. The *Standards* are useful as guidelines but their application is not mandatory.

The relevant ABA *Standard* for Ms. Gosling's violation is 5.1 which is entitled "Failure to Maintain Personal Integrity," Section 5.1 provides:

5.11 Disbarment is generally appropriate when:

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

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard* 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

5.13 Reprimand<sup>4</sup> is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

5.14 Admonition<sup>5</sup> is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

Disciplinary Counsel suggested that this case falls in the range of either a suspension or a public censure but ultimately recommended a suspension. Both the Committee and the Hearing Panel considered sanctions within the same parameters. The Committee recognized that the gravamen of the violations involve truthfulness and candor. Truthfulness and candor in the practice of law are critical to public confidence in the profession and central to public protection.

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<sup>4</sup> Section 5.13 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

<sup>5</sup> Section 5.14 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

The Committee assessed the aggravating and mitigation factors as set forth in *Standards*, Sec. 9.0. Disciplinary Counsel suggested that lack of remorse and refusal to accept responsibility for her actions as aggravating factors. The Hearing Panel does not specifically identify the aggravating factors, and there was competing evidence on the issue of remorse. This case does not fall neatly into any of the aggravating factors – there is no aggravating factor listed for lack of “remorse,” although Sec. 9.22 (g) involves a “refusal to acknowledge wrongful nature of conduct.” While the underlying litigation was pending, Ms. Gosling apologized to Attorney Puckhaber and revoked any request for information related to the altered release. (See, Hearing Panel Tr. at 76.)

There are several mitigating factors: absence of a prior disciplinary record; absence of a dishonest or selfish motive; personal or emotional problems, and cooperative attitude toward the proceedings. See, *Standards*, Sec. 9.32 (a), (b), (c) and (e). Although remorse is not on the list of aggravating factors, it is included as a possible mitigating factor. In determining the sanction in this case and given the other mitigating factors, the issue of remorse would not affect the outcome.

It is undisputed that the divorce litigation in this case was highly contentious and acrimonious. The divorce was brought on “fault” grounds and was granted on that basis. It is unclear from the record as to the specific grounds. Attorney Puckhaber testified that the grounds was not adultery. Attorney Puckhaber described the case as unusual and very hard. Tr. at 58. The Committee also gave consideration to the minority report and its assessment of the impact of Ms. Gosling’s mental health issues. The Committee recognizes that Ms. Gosling sought help from appropriate professionals including a counselor and her pastor. The Committee also notes

with approval that she has also actively participated in the New Hampshire Lawyers Assistance Program since September 2007. (See, Addendum to Answer). Given her mental health issues and the stress of divorce litigation, Ms. Gosling is no longer taking divorce cases but has limited her professional career to work as a mediator and as a guardian ad litem. The alteration of the release was a one time act that is unlikely to be repeated.

The Committee hereby issues a six month suspension stayed for two years. This decision is consistent with the purpose of the Court's disciplinary power, the goals of the Rules of Professional Conduct, and this Committee's discretion.

#### **V. CONCLUSION**

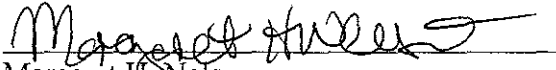
Ms. Gosling is suspended for a period of six (6) months, however, this suspension is stayed for a period of two (2) years from the date of this Order. If Ms. Gosling does not violate the Rules of Professional Conduct during this two year period, the suspension shall not be imposed. If Ms. Gosling violates the Rules during this time, the Committee shall schedule a further hearing to determine whether a portion or all of the 6 month suspension shall be imposed. If a grievance is filed but remains unresolved during this two year period, the stay of the suspension shall be extended until such time as the grievance is resolved.

Ms. Gosling shall pay all costs associated with the investigation and prosecution of this matter.

**VI. APPEAL**

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

July 21, 2009

  
Margaret H. Nelson  
Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel  
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