

New Hampshire Supreme Court
Professional Conduct Committee

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Morse, Lynn D. advs. Ruth Ann Mize # 04 - 067

**RECOMMENDATION FOR TWO YEAR SUSPENSION
WITH CONDITIONS FOR REINSTATEMENT**

This matter arose from a complaint filed by Ruth Ann Mize against Lynn D. Morse relative to Mr. Morse's handling of an estate for which Ms. Mize had been named the executrix. Prior to a hearing, Mr. Morse and Disciplinary Counsel executed a stipulation as to facts and costs. A Hearing Panel was convened to consider the issues of rules violations and sanctions. After the Hearing Panel report was issued, the parties requested oral argument before the Professional Conduct Committee ("Committee"). The Committee heard argument, considered the record, and deliberated at its meeting on October 21, 2008.

Benette Pizzimenti, Vice Chair, presided at the oral argument. Margaret Nelson, Committee Chair, participated by telephone. Committee members Toni Gray, David Cole, Thomas Connair, Alan Cronheim, Gerald Daley, Richard Darling, Gretchen Rule Hamel, James Martin, and Marilyn Billings McNamara were present.

Having heard from the parties and considered the record, the Committee reached the decision detailed below.

I. FINDINGS OF FACT

The Committee found, by clear and convincing evidence, the facts as agreed to in the Stipulation and as found by the Hearing Panel, as reflected in the Hearing Panel Report (attached).

II. RULINGS OF LAW

The Committee found, by clear and convincing evidence, violations of the following Rules, as reflected in the Hearing Panel Report (attached):

Rule 1.1, relative to competence, and Rule 1.3,¹ relative to diligence, in that Mr. Morse repeatedly failed to file timely estate administration documents for the estate and failed to take the necessary steps to finalize and close out the estate administration.

Rule 1.16(d), relative to termination of representation, in that Mr. Morse failed to provide a copy of the estate's file to new counsel for over three months, despite repeated requests and his own repeated assurances that the file would be provided.

Rule 3.3(a)(1), relative to candor toward the tribunal, in that Mr. Morse made false factual statements to the Court that the estate's tax returns had been filed, which he knew to be false and which was material to the proceeding.

Rule 8.4(c), relative to dishonesty, in that Mr. Morse engaged in deceit and misrepresentation when he led Ms. Mize to believe that the tax returns had been filed.

The Committee also found, by clear and convincing evidence, a violation of Rule 8.4(a), in that Mr. Morse violated the Rules of Professional Conduct.

¹ The Hearing Panel Report erroneously identifies this as "Rule 3(1)".

III. ANALYSIS

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.* Attorney discipline "is not intended as a mode of inflicting punishment for an offense." *Id.* at 512-13.

Although the Court has not adopted the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1992) ("*Standards*"), it looks to them for guidance. *Coffey's Case*, 152 N.H. at 513. The *Standards* set forth a four-part analysis for courts to consider in imposing 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; *Coffey's Case*, 152 N.H. at 513.

The first three factors create the framework for characterizing the misconduct and determining a baseline sanction. *See Wolterbeek's Case*, 152 N.H. 710, 714 (2005) ("In applying these factors, the first step is to categorize the respondent's misconduct and identify the appropriate sanction"). Once the baseline sanction is determined, the Court then looks to the fourth and final step in the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *See id.* ("After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.").

As to the first factor, Mr. Morse violated duties to his client, the court and his profession. Mr. Morse misrepresented the status of his client's case to the client and the court, and did not cooperate promptly with subsequent counsel.

The second factor relates to Mr. Morse's state of mind. The evidence is clear that with respect to each of Mr. Morse's violations, he acted with gross negligence by ignoring his obligations both to his client and to the Court. However, there is no evidence that he acted with any intent to do harm to anyone or with any intent to benefit himself.

The third factor requires consideration of the potential or actual injury caused by Mr. Morse's misconduct. Here, Mr. Morse's conduct caused injury to his client, both emotionally, in that she suffered additional stress and aggravation, and monetarily, in that she needed to hire another attorney. While Mr. Morse's conduct was deplorable, the Committee consensus was that the injury in the case did not rise to the level of "serious" injury as described in the *Standards*.

The relevant section of the *Standards* is Section 6.0, Violations of Duties Owed to the Legal System, and specifically 6.1, False Statements, Fraud, and Misrepresentation. The relevant provisions of 6.1 are as follows:

"Absent aggravating or mitigating circumstances, ... the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

- 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
- 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Having considered the first three factors by considering the duties Mr. Morse violated, his mental state, and the injuries caused by his misconduct, the Committee determined that the

appropriate baseline sanction for Mr. Morse's misconduct was a suspension.

The final factor is to determine whether any aggravating or mitigating factors are present that affect the baseline sanction. The Hearing Panel identified the following as aggravating factors: Mr. Morse's prior misconduct (public censure in 2001); his making a false and deceptive representation to the Committee during the investigation of this matter; Mr. Morse's refusal to acknowledge the wrongful nature of his conduct; the vulnerability of the victims (elderly client and legatees); Mr. Morse's substantial experience in the practice of law; and his apparent indifference to making restitution. The Hearing Panel also identified the following as mitigating factors: the absence of any selfish motive; Mr. Morse's character and reputation (based on Disciplinary Counsel's opinion, based on her investigation, that Mr. Morse is highly regarded in his community); and Mr. Morse's remorse for his professional failings. Hearing Panel Report at 6-7.

The Hearing Panel found that the violations of Rule 3.3(a)(1) and Rule 8.4(c) were the most serious infractions and concluded that the baseline sanction was suspension. The Hearing Panel then considered the aggravating and mitigating factors it had identified, and recommended the following sanction:

Two (2) years suspension from the practice of law in New Hampshire, with the following conditions for reinstatement:

- Full restitution to the victims;
- Completion of 12 hours of ethics training; and
- Submission of a plan that is approved by the Committee for office management, including a provision for mentoring and supervision, with which Mr. Morse will

comply for one year following reinstatement.

At Oral Argument, Disciplinary Counsel argued that the appropriate baseline sanction was disbarment, based on the egregiousness of Mr. Morse's conduct and his lack of remorse (contrary to the Hearing Panel's findings). Disciplinary Counsel also asserted an additional aggravating factor, namely that Mr. Morse's behavior showed a pattern of misconduct. Disciplinary Counsel contended that even if a baseline of suspension were accepted, the aggravating factors moved the appropriate sanction to disbarment because Mr. Morse poses such a threat to the public and the integrity of the profession that he should be disbarred.

At Oral Argument, Mr. Morse urged the Committee to accept the Hearing Panel's recommendation.

After considering the aggravating and mitigating factors, the Committee found an insufficient basis for elevating the sanction to disbarment. Mr. Morse did not act with any selfish or dishonest motive, and the Committee did not agree with Disciplinary Counsel that Mr. Morse's conduct in this one case constituted a pattern of misconduct. The Committee also considered Mr. Morse's reputation in his community and the length of time he has practiced. Finally, the Committee considered other cases in which similar circumstances were presented, and found no basis for inconsistently imposing the harshest sentence of all, *i.e.*, disbarment, in this case.

V. SANCTION

Based on the foregoing, the Committee voted to recommend the following sanction:

Two (2) year suspension from the practice of law in New Hampshire, with the following recommended conditions for reinstatement:

- Submission of a case-management plan for approval by the Committee, with which Mr. Morse will comply for one year following reinstatement with periodic reports to the Committee; and
- Full restitution to the victims.

VI. COSTS

Mr. Morse shall pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

January 28, 2009


Benette Pizzimenti, Vice Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
Lynn D. Morse, Esquire
File

New Hampshire Supreme Court
Hearings Committee

Morse, Lynn D. advs. Ruth Ann Mize # 04 - 067

Hearing Panel Report

A complaint was referred to this Panel pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(4) on May 15, 2008. The following Panel was appointed:

Robert C. Varney, Esquire, Chair
James T. Boffetti, Esquire, Reporter
Melissa Countway Guldbrandsen, Esquire
Kimberly Mark
Elaine Holden

Background

On April 7, 2008, Disciplinary Counsel filed Notice of Charges alleging misconduct against Lynn D. Morse, Esq. Those charges stem from Mr. Morse's representation of the estate of Bertha McInnes. Her niece, Ruth Ann Mize, was the named executrix. The notice of charges involved, in summary form, allegations that Mr. Morse failed to take the necessary steps to close out the estate administration in a timely fashion, that Mr. Morse failed to provide a copy of the estate file in a timely manner to successor counsel, and that Mr. Morse made false assertions to the Court about filing of tax returns for the estate.

The parties entered into a 131 paragraph Stipulation of Facts on August 29, 2008. That Stipulation was adopted by the Panel and should be deemed incorporated into this report.

The Hearing

The Hearing Panel thoroughly reviewed the entire record and evidence presented at the September 3, 2008, hearing, which included exhibits from the parties, the Stipulation, and offers of proof from Disciplinary Counsel and Mr. Morse. No witnesses were called by either side.

Findings of Fact and Rulings of Law

After giving due consideration to this evidence, the Panel in addition to incorporating the Stipulation in its findings, determined by clear and convincing evidence that the following narrative report accurately summarizes the history of this matter.

Mr. Morse filed his appearance in the Estate of the late Bertha McInnes in the Rockingham County Probate Court on or about September 22, 1998. On June 27, 2003, Mr. Morse was replaced as counsel for the estate. During the period of time of Mr. Morse's representation, he filed twelve (12) petitions to extend filing deadlines.

What began as procrastination eventually became culpable neglect. As a consequence, the Court issued a number of citations for these failures. With respect to the second account for the estate, Mr. Morse failed to timely file the account by the extended Court deadlines, and on June 12, 2003, the Court ordered the executrix, Ruth Ann Mize, to appear personally on June 23, 2003, to show cause why she should not be held in contempt.

Mr. Morse then prepared a proposed second account, sent the original to Ms. Mize in California on June 16, 2003, and sent a copy to the Probate Court on June 23, 2003, with correspondence expressing his belief that Ms. Mize would be sending the signed original to the Court. He also paid the \$50 citation fee. He anticipated that with these submissions no hearing would be held and left on a vacation.

The Second Account Mr. Morse submitted contained two questions:

“Have all Federal and State Income Tax Returns of the decedent for the period ending with his/her death been filed and the taxes connected therewith paid?

Yes No If no, attach explanation in Information Schedule.”

“Have all Federal and State Income Tax Returns of the Estate which are due at the time of filing this account been filed and the taxes connected therewith paid?

Yes No If no, attach explanation in Information Schedule.”

Mr. Morse checked the "yes" box with each of these questions although he knew this not to be true.

However, contrary to Mr. Morse's expectations, the executrix actually did travel from California to New Hampshire and appeared at the contempt hearing on June 23, 2003. After meeting with the judge, she fired Mr. Morse and retained new counsel.

During the course of his representation, Mr. Morse's repeated Petitions for Extension of Time to file the inventory and annual accounting forms with the Court caused avoidable harm to the interests of the estate. The Panel found that these were the consequence of Mr. Morse's inattention, incompetence, lack of diligence and negligence in handling this matter. The harm caused by these delays was further compounded by his efforts to forestall revelation of his delinquencies, particularly in the area of the unfiled tax returns.

New counsel replaced Mr. Morse on June 27, 2003, and asked him for the estate file. Mr. Morse delayed producing a copy until October 6, 2003, despite repeated and ever more urgent requests for him to do so. There was no good reason for this delay. Even at that late date, the copied file Mr. Morse produced was apparently incomplete, for it did not contain the work sheets of tax returns that Mr. Morse claims to have prepared in 2003, but never filed.

Mr. Morse admits that the assurances he caused to be made to the Court that he had filed tax returns for the estate and for Mrs. McInnes personally were misleading because, in fact, he never filed those returns. At the hearing, he asserted that he made those representations in the expectation that he would make these filings in the near future. The record, however, shows no subsequent attempt by Mr. Morse to correct this false representation. In addition, Mr. Morse falsely informed the executrix that tax returns had been filed and even advised her that the estate could expect to receive a sizeable tax refund. Mr. Morse even billed the client for this incomplete tax work.

Mr. Morse's omissions and evasions resulted in significant harm to the estate, including the assessment of IRS penalties and interest, the loss of tax refunds due to late filing and expanded legal fees charged by successor law firms for filing the required tax returns. Mr. Morse has never compensated the estate for these financial losses.

Mr. Morse asserted at the hearing, that he had prepared the tax returns for tax years 1998 – 2002 in hand-written form in 2003, but that for inexplicable reasons he kept those forms in his file and failed to turn them over to successor counsel with the rest of his file, not producing them until the day before the Panel hearing. Perhaps. He provided no adequate explanation for why he did not turn those forms over to successor counsel with the rest of the file in 2003, nor could he explain why he had not filed any timely tax returns during the period of his representation.

In his September 24, 2004, reply to the PCC complaint, [Disciplinary Counsel's Exhibit 4] Mr. Morse asserted at that time that "[t]he [tax] returns were prepared for Mrs. Mize signature. I retained copies for my file." In fact, Mr. Morse failed to prepare anything suitable for signature.

The Hearing Panel finds by clear and convincing evidence the following violations of the Rules:

1. That Mr. Morse violated Rule 1.1(1): Competence and Rule 3(1): Diligence. By repeatedly failing to file timely estate administration documents for the estate, and by his failure to take the necessary steps to finalize and close out the estate administration, Mr. Morse caused significant and avoidable harm to the interests of the estate. Mr. Morse offered no adequate explanation for his failures in this regard.
2. That Mr. Morse violated Rule 1.16(d): Return of the File. Despite repeated requests, and given the protracted procedural history of this probate filing, it was especially incumbent on Mr. Morse to copy the file in an expeditious manner to protect the already jeopardized interests of the estate. Despite repeated requests and his repeated assurance of compliance, Mr. Morse delayed turning over a copy of the file for over three months, thereby further contributing to the harm to the estate. Significantly, Mr. Morse asserted that he neglected to provide a copy of his hand-written tax forms for successor counsel.

Nor did he inform counsel that those tax forms existed and that they were never filed. Those actions caused additional harm and expense to the estate.

3. That Mr. Morse violated Rule 3.3(1): Candor to the Tribunal: Mr. Morse made false factual assertions to the Court about the tax filings. [See Stipulation, Paragraph 85, cover letter from Morse's office to the Court indicating that he was awaiting refunds from the IRS.] The Hearing Panel finds that those assertions were not done by mistake but done knowingly, in the hope that future events would cover the omission. Mr. Morse knew at the time he made those false representations that he had not filed the tax forms. He, nonetheless, unequivocally indicated that the tax forms had been filed and the taxes paid. [Disciplinary Counsel Exhibit 1A, page 308]. He made no effort to correct that misrepresentation.
4. Dishonesty, Rule 8.4(c): Throughout his representation of the estate he purposely neglected to inform Ms. Mize that required tax returns had not been filed though he knew this was the case and delivered communications to her which were calculated to make her believe they had.

Recommended Sanction

The Hearing Panel felt that the violations of Rule 3.3(1): Candor to the Tribunal and Rule 8.4(c): Dishonesty were the most serious infractions. Section 6.12 of the ABA Standards for Imposing Lawyer Sanctions provides as follows:

Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

The Hearing Panel felt that suspension was the baseline sanction in this case and then considered the following aggravating and mitigating factors.

Aggravating factors:

- a. Prior Disciplinary Offense. Mr. Morse was publicly censured, by order of the New Hampshire Supreme Court, on September 13, 2001 for misconduct that occurred from 1990 to 1996 [LD-99-003, In the Matter of Lynn D. Morse]. That violation bore marked similarities to the violations in this case in that there, as here, Mr. Morse failed to provide competent representation, to take actions on behalf of his clients in a timely and effective manner, to act with reasonable promptness and diligence or to keep his clients reasonably informed. Particularly troubling is the fact that this censure was imposed while Mr. Morse was in the midst of his representation of this estate.

- b. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process. The Hearing Panel noted that Mr. Morse made a false and deceptive representation to the PCC in his September 24, 2004, letter when he asserted that the tax returns had been prepared for the executrix's signature, when, in fact, they had not and by further implying that he had filed the appropriate forms and was expecting a return to the estate of approximately \$10,000. In truth, Mr. Morse never filed any tax return for the estate during his representation.

- c. Refusal to acknowledge wrongful nature of conduct. The Hearing Panel noted Mr. Morse's reluctance to accept full responsibility for his actions. Even during his offer of proof, Mr. Morse sought to minimize his actions and the harm they caused to the estate. For example, while admitting that he indicated to the Court that tax forms were filed, when he knew they had not been, he asserted at the hearing that the statement was made in expectation of future events. Given that Mr. Morse never filed a tax return for the estate and never even prepared those forms in typed form, his explanation at the hearing was a clear attempt to minimize the wrongfulness of his actions. And, while Mr. Morse admitted that he should have copied the file and turned it over to successor counsel sooner, he asserted at the hearing that the file was turned over in sufficient time, ignoring the fact that the delay, compounded by his failure to inform successor counsel of tax issue, caused further financial harm to the estate.

- d. Vulnerability of victims. The victims here were the executrix and legatees, all of whom were elderly and/or infirm and in need of the assets from the estate. One of the legatees died during the period the estate remained unresolved. The executrix, Ms. Mize, experienced significant emotional distress and was forced to travel from California to New Hampshire to respond to the Court's order to appear.
- e. Substantial experience in the practice of law. Mr. Morse has over thirty years of experience in the practice of law, including significant work in probate matters.
- f. Indifference to making restitution. There is no indication in the record that Mr. Morse made any effort to compensate the estate for its financial losses due to his misconduct.

Mitigating factors:

- a. Absence of selfish motive. The Hearing Panel found it significant that Mr. Morse did not appear to engage in this misconduct for personal financial gain. While it can be argued that he benefited from legal fees for work not completed or done in an unsatisfactory manner, the Panel found this was not the primary motive for the misconduct.
- b. Character or reputation. Disciplinary Counsel offered her opinion, based on her own investigation, that Mr. Morse is highly regarded in his community and by people who have worked for him, even to include the paralegal who did the bulk of the work on this matter and whose position was, in this case, adverse to his. The Panel has no reason to question that he enjoys a good reputation.
- c. Remorse. Although tempered by his tendency to minimize his conduct, Mr. Morse did show remorse and regret for his professional failings.

In accordance with New Hampshire Supreme Court Rule 37(A) (III)(d)(1) the Hearing Panel recommends that the New Hampshire Supreme Court Professional Conduct Committee request the following sanction be imposed upon Lynn D. Morse for violation of the New Hampshire

Rules of Professional Conduct: Rule 1.1(1): Competence; Rule 3(1): Diligence; Rule 1.16(d):
Return of the File; Rule 3.3(1): Candor to the Tribunal and Rule 8.4 (c): Dishonesty:

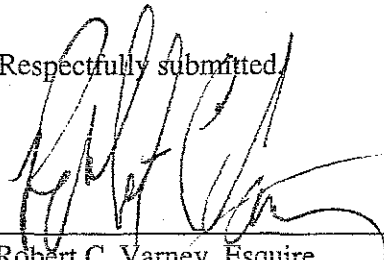
Two [2] years suspension from the practice of law in New Hampshire with the following
conditions imposed for reinstatement:

- Full restitution to the victims
- Completion of 12 hours of ethics training
- Submission of a plan that is approved by the PCC, for office management,
including a provision for mentoring and supervision.

Mr. Morse must agree to comply with the terms of that plan for one year after readmission.

The panel also recommends that Lynn D. Morse be ordered to reimburse the Professional
Conduct Committee for all costs associated with the investigation and prosecution of this matter.

Respectfully submitted,



Robert C. Varney, Esquire
Hearing Panel Chair

September 12, 2008

Distribution:

Landya B. McCafferty, Disciplinary Counsel
Lynn D. Morse, Esquire
File

NEW HAMPSHIRE SUPREME COURT

HEARINGS COMMITTEE

Morse, Lynn D.

advs.

Ruth Ann Mize

#04-067

STIPULATION

I. Stipulation of Facts

1. Mr. Morse is an attorney licensed to practice law in New Hampshire. Mr. Morse was admitted to practice in 1972. At all times material to this proceeding, Mr. Morse operated his law office as Morse Law Office, 81 Water Street, Exeter, New Hampshire 03833. Mr. Morse's current address is Morse Law Office, 14 Front Street, Exeter, New Hampshire 03833. Answer at ¶ 1.¹
2. On September 12, 1998, Bertha McInnes died at the age of 86 years. Ms. McInnes' Will named her niece, Ruth Ann Mize, as executrix. Answer at ¶ 2.
3. At all times relevant to this matter, Ms. Mize resided in Lodi, California. See Answer at ¶ 3 (not denied).

4. On or about September 22, 1998, Mr. Morse filed in the Rockingham County Probate Court an Appearance on behalf of Ms. Mize, Ms. McGinnis' original Death Certificate, a Petition for Estate Administration, Ms. McInnes' Will, Mr. Morse's Appointment as Resident Agent, and certain other forms ("AU-101" and "AU-101B"), as well as a \$130.00 filing fee. Answer at ¶ 4; DC Exh. 1 at 12-22.²
5. On October 5, 1998, the Court (Hampe, J.) approved the Petition for Estate Administration. Answer at ¶ 5; DC Exh. 1 at 15.
6. A bond in the amount of \$350,00.00 was approved by the Court on November 23, 1998. Answer at ¶ 6; DC Exh. 1 at 26.
7. By Order dated November 25, 1998, the Court assigned the following due dates for the Estate's financial documents:

Inventory Due Date: 02/21/99

Accounting Due Date: 11/24/99

The Order instructed: "An account must be filed each year on the same day until a final accounting is made. . . ." Answer at ¶ 7; DC Exh. 1 at 29.
8. The Petition for Estate Administration listed the total value of the Estate at \$461,500.00. Of that amount, \$346,500.00 was listed as personal property and \$115,000.00 was listed as real estate. Answer at ¶ 8; DC Exh. 1 at 14.

¹ "Answer" signifies Attorney Lynn D. Morse's Answer to the Notice of Charges dated May 6, 2008.

Extensions re: Inventory

9. No Inventory was filed on the February 21, 1999, due date. Answer at ¶ 9; DC Exh. 1 at 36.
10. On or about March 19, 1999, Mr. Morse filed a Petition for Extension of Time (hereinafter referred to as "PET") to file a late inventory. Answer at ¶ 10; DC Exh. 1 at 36.
11. In his March 19, 1999 PET, Mr. Morse explained the need for an extension as follows:

The inventory cannot be completed until the final account in the Guardianship of Bertha McInnes, Docket #1998-0123, has been completed and the Executrix receives the guardianship Estate.

Answer at ¶ 11; DC Exh. 1 at 36.
12. Prior to Ms. McInnes' death, Mr. Morse had been representing Ms. McInnes in a guardianship action (docket #1998-0123) that had not yet been finalized and closed. The closing of the guardianship action was necessary in order for the executrix to be appointed to administer the estate to sign a receipt of the guardianship funds. The balance of the guardianship estate would serve as the inventory values of the probate estate. Answer at ¶ 12; DC Exh. 1 at 36.
13. The Court (Taube, J.) granted Mr. Morse's request and extended the due date for the Inventory to April 21, 1999. Answer at ¶ 13; DC Exh. 1 at 36.

² * "DC Exh." signifies Volumes 1, 1A, and 2 of Disciplinary Counsel's Exhibits. The page citations are to the bates-stamped numbers in the bottom-right hand corner of every page. This, "DC Exh. 1 at 12-22" signifies pages

14. By Order dated April 21, 1999, the Court notified Ms. Mize that Mr. Morse had not filed the Inventory and that a citation would issue if it was not filed by May 21, 1999. Answer at ¶ 14; DC Exh. 1 at 44.
15. On May 21, 1999, Mr. Morse filed a PET seeking a deadline of June 11, 1999, to file the Inventory. The rationale for the second PET was the same as for the first PET: Mr. Morse needed additional time to balance the final account in the guardianship proceeding. The Court (O'Neill, J.) granted Mr. Morse's request. Answer at ¶ 15; DC Exh. 1 at 47, 49.
16. On or about June 11, 1999, Mr. Morse filed a third PET, this time seeking an extension until July 16, 1999 to file the Inventory. The rationale for this PET was the same as for the other two PETs. Answer at ¶ 16; DC Exh. 1 at 52.
17. The Court (Taube, J.) granted Mr. Morse's third PET and extended the due date for the Inventory to July 16, 1999. Answer at ¶ 17; DC Exh. 1 at 52.
18. On July 16, 1999, Mr. Morse filed a fourth PET, this time seeking an extension until September 1, 1999, to file the Inventory. The rationale for this PET was the same as for the other three PETs. Answer at ¶ 18; DC Exh. 1 at 56, 58.
19. The Court (Taube, J.) granted Mr. Morse's fourth PET and extended the due date for the Inventory to September 1, 1999. Answer at ¶ 19; DC Exh. 1 at 56.

20. By Order dated September 1, 1999, the Court notified Ms. Mize that Mr. Morse had not filed an Inventory and that a citation would issue if the Inventory was not filed by October 1, 1999. Answer at ¶ 20; DC Exh. 1 at 62.
21. On or about September 27, 1999, Mr. Morse filed the Inventory, along with several other forms. Answer at ¶ 21; DC Exh. 1 at 65, 73-94.
22. On or about February 4, 2000, Mr. Morse notified the Court that Ms. McInnes' real estate had been sold and all interested persons had consented to the sale. Answer at ¶ 22; DC Exh. 1 at 103.

Extensions re: First Account

23. On February 23, 2000, the Court notified Ms. Mize that Mr. Morse had not filed an Account (due November 24, 1999) and the case was in default. A \$25 default fee was assessed. The Court further notified Ms. Mize that a citation would issue if the Account was not filed within 30 days. Answer at ¶ 23; DC Exh. 1 at 104.
24. On or about February 23, 2000, Mr. Morse filed a PET, seeking an extension on the deadline for filing the Account. Mr. Morse's first PET sought a due date of April 24, 2000. Answer at ¶ 24; DC Exh. 1 at 106.
25. Mr. Morse described the grounds for this first PET as follows:

This is a complex Estate with a number of personal property assets that have been sold or transferred. The Attorney for the Estate needs additional time to complete.

Answer at ¶ 25; DC Exh. 1 at 106.

26. On March 13, 2000, the Court (Taube, J.) granted the first PET and extended the due date to April 24, 2000. Answer at ¶ 26; DC Exh. 1 at 106.
27. On or about April 21, 2000, Mr. Morse filed a second PET with respect to the Account, seeking a new due date of May 19, 2000. Mr. Morse described the grounds for the second PET as follows: "I have not had sufficient time to complete the account." Answer at ¶ 27; DC Exh. 1 at 114.
28. On May 8, 2000, the Court (Hampe, J.) granted the second PET and extended the due date to May 19, 2000. Answer at ¶ 28; DC Exh. 1 at 114.
29. In an Order dated May 22, 2000, the Court (Maher, J.) notified Ms. Mize that Mr. Morse had failed to file the Account by the due date. The Order further required that Ms. Mize appear at a hearing on June 26, 2000, to show cause why the Account had not been filed. Answer at ¶ 29; DC Exh. 1 at 119.
30. On or about June 23, 2000, Mr. Morse filed the First Account, along with a petition to make interim distributions to the three residuary legatees. Answer at ¶ 30; DC Exh. 1 at 124, 140-56.
31. The First Account was allowed by the Court (Cassavechia, J.) on July 31, 2000. Answer at ¶ 31; DC Exh. 1 at 140.

32. Mr. Morse attached as an addendum to the First Account his legal bill for the Estate covering the time period of the First Account (November 1998 – November 1999). Answer at ¶ 32; DC Exh. 1 at 150-54.
33. A time entry in Mr. Morse’s legal bill dated April 15, 1999, states: “Prepare 1998 Fm 1040.” The entry lists 1.5 hours spent, at \$120.00 per hour. Answer at ¶ 32; DC Exh. 1 at 151.

Extensions re: Second Account

34. On or about February 23, 2001, Mr. Morse filed a PET with respect to the Second Account, seeking an extension of the due date from November 24, 2000, to April 27, 2001. Answer at ¶ 34; DC Exh. 1 at 160.
35. Mr. Morse described the grounds for the PET as follows:
- This is a complex Estate with a number of assets. Tax returns are being prepared that will allow the Estate to be closed. The Attorney for [sic] Estate needs additional time to complete the returns and the account.
- Answer at ¶ 35; DC Exh. 1 at 160.
36. On March 7, 2001, the Court (Maher, J.) granted the first PET and extended the due date for the Second Account to April 27, 2001. Answer at ¶ 36; DC Exh. 1 at 160, 163.
37. On or about April 27, 2001, Mr. Morse filed a second PET with respect to the Second Account, seeking an extension of the due date to June 22, 2001. Answer at ¶ 37; DC Exh. 1 at 165, 167.
38. Mr. Morse described the grounds for the second PET as follows:
- The Estate has recently learned that it owns certain shares of Avaya, Inc., common stock resulting from a

distribution from Lucent Technologies, Inc. These shares must be sold before a final account can be filed.

Answer at ¶ 37; DC Exh. 1 at 165.

39. On May 7, 2001, the Court (Hampe, J.) granted the second PET and extended the due date to June 22, 2001. Answer at ¶ 39; DC Exh. 1 at 165, 168.
40. On or about June 22, 2001, Mr. Morse filed a third PET with respect to the Second Account, seeking an extension of the due date to August 17, 2001. Answer at ¶ 40; DC Exh. 1 at 173, 175.
41. Mr. Morse described the grounds for the third PET as follows:

The Estate is still waiting to receive final payment for the sale of the Avaya, Inc. and Lucent Technologies stocks. Following a receipt of these payments a final account can be filed.

Answer at ¶ 41; DC Exh. 1 at 173.

42. On July 9, 2001, the Court (Hampe, J.) granted the third PET and extended the due date to August 17, 2001. Answer at ¶ 42; DC Exh. 1 at 173.
43. On or about August 17, 2001, Mr. Morse filed a fourth PET with respect to the Second Account, seeking an extension of the due date to October 17, 2001. Answer at ¶ 43; DC Exh. 1 at 177.
44. Mr. Morse described the grounds for the fourth PET as follows:

The Estate is still waiting to receive final payment for the sale of the Avaya, Inc. and Lucent Technologies stocks. Following a receipt of these payments a final account can be filed.

Answer at ¶ 44; DC Exh. 1 at 177.

45. On September 4, 2001, the Court (O'Neill, J.) granted the fourth PET and extended the due date to October 17, 2001. Answer at ¶ 45; DC Exh. 1 at 177, 179.
46. On or about October 17, 2001, Mr. Morse filed a fifth PET with respect to the Second Account, seeking an extension of the due date to December 7, 2001. Answer at ¶ 46; DC Exh. 1 at 180.
47. Mr. Morse described the grounds for the fifth PET as follows:
- The Estate is still waiting to receive final payment for the sale of the Lucent Technologies stocks. There is one antique item in the possession of Skinner, Inc. which is awaiting sale at auction.
- Answer at ¶ 47; DC Exh. 1 at 180.
48. On October 29, 2001, the Court (Hampe, J.) granted the fifth PET and extended the due date for the Second Account to December 7, 2001. Answer at ¶ 48; DC Exh. 1 at 180.
49. By Order dated December 7, 2001, the Court (Maher, J.) notified Ms. Mize that Mr. Morse had failed to file the Second Account by the deadline. Answer at ¶ 49; DC Exh. 1 at 184.
50. In its December 7, 2001, Order, the Court further notified Ms. Mize that she was required to personally appear at a hearing on January 14, 2002, to show cause why the Second Account had not been filed. Answer at ¶ 50; DC Exh. 1 at 184.

51. On or about January 14, 2002, Mr. Morse filed a sixth PET with respect to the Second Account, seeking an extension of the due date to February 8, 2002. Answer at ¶ 51; DC Exh. 1A at 189.
52. Mr. Morse described the grounds for the sixth PET as follows: "The Account has been prepared for forwarding to the executrix in CA." Answer at ¶ 52; DC Exh. 1A at 189.
53. On January 28, 2002, the Court (Hampe, J.) granted the sixth PET and extended the due date for the filing of the Second Account to February 8, 2002. Answer at ¶ 53; DC Exh. 1A at 189, 192.
54. By Order dated February 8, 2002, the Court (Maher, J.) notified Ms. Mize that Mr. Morse had not filed the Second Account by the February 8, 2002, due date. Answer at ¶ 54; DC Exh. 1A at 193.
55. In its February 8, 2002, Order, the Court further notified Ms. Mize that she was required to personally appear at a hearing on April 1, 2002, to explain why the Second Account had not been filed. Answer at ¶ 55; DC Exh. 1A at 193.
56. In an Order dated April 1, 2002, the Court (Cassavechia, J.) held:

The executrix appeared through her counsel this date in response to the 2/8/02 citation order issued for her failure to account. Document 37.

On the submission, no finding is entered on condition that the account now due is filed **no later than 5/1/02**.

SO ORDERED.

(Emphasis in original).

Answer at ¶ 56; DC Exh. 1A at 202-03.

57. On or about April 30, 2002, Mr. Morse filed a seventh PET with respect to the Second Account, seeking an extension of the due date to June 15, 2002. Answer at ¶ 57; DC Exh. 1A at 204, 206.

58. Mr. Morse described the grounds for the seventh PET as follows:

The Estate is still waiting receipt of funds from the sale of stock in Avaya, Inc. All other assets have been liquidated and the Estate will be closed upon receipt of those funds.

Answer at ¶ 58; DC Exh. 1A at 204.

59. On May 13, 2002, the Court (Hampe, J.) granted the seventh PET and extended the due date for the filing of the Second Account to June 15, 2002. Answer at ¶ 59; DC Exh. 1A at 204.

60. On or about June 14, 2002, Mr. Morse filed an eighth PET with respect to the Second Account, seeking an extension of the due date to July 25, 2002. Answer at ¶ 60; DC Exh. 1A at 208.

61. Mr. Morse described the grounds for the eighth PET as follows:

The Estate is still awaiting proceeds from the sale of Avaya stock. All other shares have been liquidated and the Estate will be closed upon receipt of those funds.

Answer at ¶ 61; DC Exh. 1A at 208.

62. On June 26, 2002, the Court (Maher, J.) granted the eighth PET and extended the due date to July 25, 2002. Answer at ¶ 62; DC Exh. 1A at 208, 211.

63. On or about July 25, 2002, Mr. Morse filed a ninth PET with respect to the Second Account, seeking an extension of the due date to September 6, 2002. Answer at ¶ 63; DC Exh. 1A at 212, 214.

64. Mr. Morse described the grounds for the ninth PET as follows:

The Estate is still awaiting proceeds from the sale of Avaya stock. A request to sell stock was filed with the company on March 21, 2002. All other shares have been liquidated. The Estate will be closed upon receipt of the Avaya funds.

Answer at ¶ 64; DC Exh. 1A at 212.

65. On August 6, 2002, the Court (O'Neill, J.) granted the ninth PET and extended the due date to September 6, 2002. Answer at ¶ 65; DC Exh. 1A at 212.

66. On or about September 6, 2002, Mr. Morse filed a tenth PET with respect to the Second Account, seeking an extension of the due date to November 1, 2002. Answer at ¶ 66; DC Exh. 1A at 216, 218.

67. Mr. Morse described the grounds for the tenth PET as follows:

The Estate has yet to receive the proceeds from the sale of Avaya stock even though the sale order was filed with the company on March 21, 2002. All other shares have been liquidated. The Estate will be closed upon receipt of the Avaya funds.

Answer at ¶ 67; DC Exh. 1A at 216.

68. On September 17, 2002, the Court (O'Neill, J.) granted the tenth PET and extended the due date to November 1, 2002. Answer at ¶ 68; DC Exh. 1A at 216.

69. On or about November 1, 2002, Mr. Morse filed an eleventh PET with respect to the Second Account, seeking an extension of the due date to December 31, 2002. Answer at ¶ 69; DC Exh. 1A at 220, 222.

70. Mr. Morse described the grounds for the eleventh PET as follows:

The Estate is awaiting receipt for funds from the sale of Avaya stock Sale requested on March 21, 2002 to the transfer agent. It is not known why sale has not been completed.

Answer at ¶ 70; DC Exh. 1A at 220.

71. On November 25, 2002, the Court (Hampe, J.) granted the eleventh PET and extended the due date for the filing of the Second Account to December 31, 2002. Answer at ¶ 71; DC Exh. 1A at 220, 223.

72. Judge Hampe's November 25, 2002, Order included the following additional language: "No further extensions." Answer at ¶ 72; DC Exh. 1A at 220, 223.

73. On or about December 31, 2002, Mr. Morse filed a twelfth PET with respect to the Second Account, seeking an extension of the due date to March 14, 2003. Answer at ¶ 73; DC Exh. 1A at 225, 227.

74. Mr. Morse described the grounds for the twelfth PET as follows:

The Estate is awaiting receipt for funds from the sale of Avaya stock Sale requested on March 21, 2002 to the transfer agent. It is not known why sale has not been completed.

Answer at ¶ 74; DC Exh. 1A at 225.

75. By Order dated January 15, 2003, Judge O'Neill denied Mr. Morse's request to extend the deadline to March 14, 2003. However, Judge

O'Neill permitted Mr. Morse an extension of the due date to February 10, 2003. Answer at ¶ 75; DC Exh. 1A at 225, 228.

76. By Order dated February 10, 2003, the Court (Maher, J.) notified Ms. Mize that Mr. Morse had not filed a Second Account by the February 10, 2003, deadline. The Court scheduled a hearing for April 7, 2003, and ordered Ms. Mize "to personally appear" and explain why a Second Account had not been filed. Answer at ¶ 76; DC Exh. 1A at 229.

77. By subsequent Order, the Court continued the April 7, 2003, hearing to April 21, 2003. Answer at ¶ 77; DC Exh. 1A at 235.

78. By Order dated April 25, 2003, the Court (Cassavechia, J.) held:

The administrator appeared through counsel before the court April 21, 2003 on the March 14, 2003 issued citation for failure to account.

On the administrator's assurance that he will file a final account **no later than May 23, 2003**, no finding is entered nor sanction is presently imposed. He is **ordered** to file the account in accordance with his assurance. No further postponements shall issue.

SO ORDERED.

(Emphasis in original). Answer at ¶ 78; DC Exh. 1A at 237.

79. In a letter to the Court dated May 21, 2003, Ms. Mize wrote:

I am writing in regards to the Estate of Bertha McInnes, docket number 1998-1002.

I am the executrix of my aunt, Bertha McInnes' Estate, at her request in her will. My residence is on the west coast. This has made my job quite difficult.

In addition, when my aunt became incompetent, some of her neighbors convinced the State of New Hampshire that she had no know [sic] relatives, nor a

will. I became aware that she had been put in a rest home, when a member of her church wrote to me letting me know of her condition. I immediately got in touch with the care facility and found that her neighbors had secured an attorney to represent her. I immediately made a trip to New Hampshire to check on her well being. At that time I also met Mr. Morse. As I didn't know any other attorney in New Hampshire and he was familiar with her case, I decided to keep him on to continue representing her. Shortly after my visit, my aunt passed away. Again, I went back to New Hampshire to make funeral arrangements and start the process of settling her Estate.

I will spare you the details, but the process has been very slow. I made one more trip to New Hampshire to hopefully wrap up the rest of her affairs. During this time I had a full time position here in Lodi that required my attention. Therefore I could not spend more time in New Hampshire. Mr. Morse assured me that he would handle the details to settle the Estate.

It has been 5 long years of numerous phone calls and letters trying to settle these matters. Mr. Morse never returns my calls, making it necessary for me to make numerous calls until he is in and available.

Last year, in frustration, I called the probate court to see if there was anything that could be done to speed things up and bring closure to this Estate. I was told they could not help me and that I could contact the New Hampshire Bar Association, if I wanted to file a complaint against Mr. Morse. It is not my desire to file a complaint against Mr. Morse. However, it was my understanding that [sic] probate court had the responsibility to protect people's Estates and assure that they are administered as the decedent requested. It seems to me that 5 years is much too long for an Estate to be settled.

When I received your order dated April 25, 2003, I was embarrassed and angry. The three recipients of the bulk of the Estate are in the later years of their lives, 84, 90 and 91. They have looked to me to see that my aunt's will would be carried out. At their age these

delays are hard to understand. I am ashamed that I haven't been more effective in bringing closure to this.

I called Mr. Morse as soon as I got your notice. He assured me that he would have everything wrapped up by the deadline you have set. He also told me that he would be sending me papers that I needed to sign. On Monday of this week, I called his office to see why I hadn't received anything. He said he hadn't gotten it finished and promised to overnight the papers to me, to arrive at my home on Wednesday, May 21st. The papers never arrived.

It is my understanding that he is to meet with you on Friday, May 23rd. I am sending you this letter, overnight, in the hopes that you will receive this before you meet with Mr. Morse.

Please advise me what I need to do to finish this long process and make the final payments to those entitled. I'm not an attorney. It doesn't make sense to me at this late time in the process to secure another attorney. Please intervene and do what you can to assure that this is brought to an end.

See Answer at ¶ 79 (not denied); DC Exh. 1A at 239-40.

80. In an undated letter to Mr. Morse, Ms. Mize wrote:

I deeply regret having to write this letter. However, both my husband and I have tried repeatedly over the past four months to reach you by phone, to no avail. We have left messages asking that you return our calls and while all of the numbers that you can reach us at have answering services if we are busy or away, we have had no response to any of our messages.

When I spoke with you last, you told me that you would be filing the final taxes on the McInnes Estate the following Monday. As soon as you heard back from the State, you would then be able to proceed to pay out the remaining assets in the Estate and close your file. You told me that the State should respond to your filing of the taxes without four weeks.

I realize there have been some circumstances that have slowed down the process of settling this Estate, including your losing your receptionist. However, I have made you aware of my concern that one uncle who was to receive an inheritance from this Estate has already passed away and the three women remaining who benefit from this Estate, are of advanced age. I am anxious to see them receive their inheritance, so they can enjoy it [sic] their lifetime.

By this letter and a copy being sent to the Rockingham Probate Court, I am requesting that I be completely informed of the status of this file immediately. If the taxes have not been filed, please explain why they haven't. If they have been filed, when were they filed and has the State approved the filing? What, if anything, is preventing the final closure of this Estate?

It has been difficult for me, in that I am so far away. However, I have been available at all times, have made several trips to the east coast, specifically for this matter and find myself quite embarrassed that I have not been able to see this matter concluded in a timely manner.

I am expecting to hear from you immediately, upon receipt of this letter.

Answer at ¶ 80; DC Exh. 1A at 241.

81. On June 12, 2003, the Court (Maher, J.) issued an "Order to Show Cause on Failure to File Account." In that Order, the Court notified Ms. Mize that she was "to personally appear" at the hearing. The Order further stated:

At this hearing, the fiduciary must show cause why he/she should not be held in contempt of court and punished accordingly for the failure and neglect to comply with the court's order of April 25, 2003.

THE FIDUCIARY MUST APPEAR AT THIS HEARING.
Failure of the fiduciary to appear may result in his/her

removal as fiduciary and/or arrest. All interested parties of this case may appear at this hearing.

(Emphasis in original). Answer at ¶ 81; DC Exh. 1A at 246.

82. In a letter to Ms. Mize dated June 17, 2003, Mr. Morse wrote:

With this letter you will find a number of documents that need to be filed with the Rockingham County Probate Court and an amended State of New Hampshire return. I am also enclosing some further information on the Avaya stock. The documents are as follows:

1. The account that I have prepared through May 21, 2003. The account includes all of the activities of the Estate from November, 1999. In addition to the schedules of receipts and disbursements I am also attaching copies of my statement for attorneys fees and the most recent bank statement of the savings and checking accounts. You will notice that the account also includes an Information Schedule indicating that we are awaiting receipt of funds from the sale of the Avaya stock and tax refunds. You must sign the account on the third page where indicated and your signature must be acknowledged. The account must then be returned to me for filing with the Court.
2. The Motion For Order Of Distribution requests that the court confirm the distribution of \$180,000 to the legatees. This represents the distributions made over the past two years. You must also sign this form where indicated and return it to me.
3. The amended Legacy & Succession Tax Return includes all of the expenses incurred by the Estate to date as well as estimates for what needs to be completed. Based on the amount previously paid there should be a small refund due on this

return. You must sign in two places on the first page where indicated and return the form to me.

4. On Monday, June 16, I received a mailing from Avaya offering voluntary purchase of the Estate's 22 shares. I called the phone number indicated and have initiated the sale of the stock. I hope the sale will go through without incident. I did receive a confirmation number, which is written on the enclosure. I never did get a response from Avaya as to why all of our efforts over the last 15 months to sell those shares were never acted upon.

I am enclosing a return envelope for your use. I would ask that you review the enclosed documents and call me should you have any questions. As you know the court wants to see the account filed by Monday, June 30. I hope that once this account is approved we will be able to close the Estate in the near future.

Answer at ¶ 82; DC Exh. 2 at 728-29.

83. By letter to the Court dated June 18, 2003, Mr. Morse wrote:

Enclosed herewith please find my check in the sum of \$50 representing the fine regarding the above referenced Estate. The invoice was forwarded to the Executrix. The account has been prepared and mailed to the Executrix for her signature. I anticipate the executed account will be returned to me by June 20 and it will be filed on that date.

Answer at ¶ 83; DC Exh. 1A at 249.

84. A hearing was held on June 23, 2003. Ms. Mize appeared at the hearing; Mr. Morse was not present. The cost to the Estate for Ms. Mize to travel to New Hampshire for the June 23rd hearing was \$1,849.68. See Answer at ¶ 84 (not denied); DC Exh. 2 at 791.

85. On June 23, 2003, prior to the hearing, Mr. Morse (or someone from his office) filed an unsigned copy of the Second Account with the following cover letter:

Enclosed herewith please find a copy of the Executrix's Second Accounting in the above referenced Estate, together with a check from the Estate account in the sum [of] \$55 representing the filing fee. Also enclosed are all the appropriate schedules and bank statements confirming the balance in the Estate account along with my statement for legal fees.

I am also enclosing a Motion For Order Of Distribution to confirm distributions made to the legatees. There are still ample funds remaining in the Estate and all obligations have been paid in full. As the information schedule indicates, we are awaiting refunds from the Internal Revenue Service for monies that were withheld at the time of the sale of certain securities.

The original second account was mailed on Tuesday, June 17th, via UPS overnight delivery to the Executrix's home address in California to obtain her signature. A completed return UPS overnight delivery envelope was included with the mailing to the Executrix. It is unclear as to why the documents have not yet been returned. This office was able to confirm by utilizing the UPS website, that the overnight package was delivered to the Executrix's home address on June 18th at 10:13 am, but as of this date there is no tracking information available for the return shipping envelope. A phone message was also left on the Executrix's answering machine of Friday, June 20th, requesting a return call to confirm the accounting documents had been mailed back to this office but as of this date have received no reply. Enclosed are copies of the shipping labels and the UPS website delivery tracking information.

Once this office is in receipt of the original signed account documents from the Executrix we will then forward these to the Court for replacement of the copied documents on file.

Answer at ¶ 85; DC Exh. 1A at 259-79.

86. On June 24, 2003, the Court (Cassavechia, J.) issued the following order:

Ruth Ann Mize, the executrix, appeared June 23, 2003, on the June 12, 2003 issued order to show cause. Her attorney did not accompany her.

Ms. Mize reported that her non-compliance with the April 25, 2003 order (underlying the show cause) is the result of her attorney's failure to discharge his duties to her. She has attempted to contact him to secure answers to questions that she would like to have clarified before she executes documentation that he has prepared and forwarded to her. The questions she detailed to the court seemed reasonable. The court does not apprehend why her attorney has not reasonably responded. The April 25, 2003 order followed an April 21, 2003 appearance by Attorney Morse on the executrix' behalf in which he took responsibility for the delayed administration and gave assurance that he would be able to readily comply with the May 23, 2003 deadline for a final account.

Ms. Mize voiced exasperation. The legatees are all elderly relatives, and she would like to provide them with distribution while they still are able to benefit from and enjoy it.

The court explained to Ms. Mize that she is the party responsible for the completion of administration. If her attorney is providing deficient services, her option is to discharge the attorney and secure another, and/or register an appropriate complaint with the state Supreme Court Committee on Professional Conduct. If her voiced wish to spare Attorney Morse disciplinary proceedings is in some respect laudable, it yet cannot serve to excuse her legal duty to diligently administer the Estate.

On this occasion the court forbears from issuing a contempt or imposing sanction. That said, Ms. Mize must make an even greater effort to bring this Estate to a resolution. A final account shall be filed **no later than July 31, 2003**; provided, however, that the executrix may have leave to submit a motion requesting that the accounting be an interim account

rather than a final account on allegations explaining the cause and projecting the time necessary to complete what needs to be done. Any cause must be unrelated to that which the executrix can reasonably avoid through common diligence.

SO ORDERED.

(Emphasis in original). Answer at ¶ 86; DC Exh. 2 at 732-34.

87. Following the hearing on June 23, 2003, Ms. Mize terminated Mr. Morse's representation and hired Charles F. Tucker, Esq., to represent her. Answer at ¶ 87; DC Exh. 1A at 283; DC Exh. 2 at 730-31.
88. On or about June 27, 2003, Mr. Tucker filed his appearance on behalf of Ms. Mize. Answer at ¶ 88; DC Exh. 1A at 283.
89. In early July 2003, Ramona L. Brown (formerly Mr. Morse's paralegal, but now a paralegal for Mr. Tucker) contacted Mr. Morse about obtaining the Estate file. Mr. Morse agreed to supply her with a copy of the file at that time. DC Exh. 2 at 989.
90. As of July 14, 2003, Ms. Brown had not received the file. On that date, Ms. Brown wrote a follow-up email to Mr. Morse requesting that they meet so that they could discuss the file "this week." See Answer at ¶ 90 (not denied); DC Exh. 2 at 990.
91. Mr. Morse responded to Ms. Brown's July 14, 2003, email by an email of the same date. In his email to Ms. Brown, Mr. Morse assured her that he would get her the file "soon." See Answer at ¶ 91 (not denied); DC Exh. 2 at 991.

92. On or about July 18, 2003, Mr. Tucker filed a pleading entitled, "Motion to Accept Interim Accounting and for Extension of Time to Finalize Estate." Mr. Tucker enclosed with that pleading, inter alia, the Second Account (covering the account period beginning November 24, 1999 and ending May 21, 2003), which document had been prepared by Mr. Morse. Answer at ¶ 92; DC Exh. 1A at 286, 288, 307-26.
93. Contemporaneous with the filing of Mr. Tucker's July 18th pleading, Ms. Brown wrote to the four residual legatees of the Estate and updated them on the status of the case. Ms. Brown explained in the letter the status of the Avaya stock and the Estate taxes as follows:

. . . Since May, Attorney Morse has received \$119.00 for the sale of the Avaya stock. He is still awaiting tax refunds from the Internal Revenue Service and from the State of New Hampshire, which he estimates may be in excess of \$15,000.00. Once the refunds are received, we will be in a better position to estimate what remaining distribution amounts will be made to Ms. Juke, Ms. Phyllis McInnes and Ms. Dorothy McInnes. I am sure, between Ruth Ann and I, you will be kept advised as to the status of the Estate. . . .

See Answer at ¶ 93 (not denied); DC Exh. 2 at 743.

94. By Order dated July 18, 2003, the Court allowed the filing of the Second Account and granted Mr. Tucker's request for an extension of time to finalize the Estate. Answer at ¶ 94; DC Exh. 1A at 286.
95. On the second page of the Second Account, Mr. Morse answered the following two questions regarding Federal and State income and Estate taxes in the affirmative:

Have all Federal and State Income Tax Returns of the decedent for the period ending with his/her death been filed and the taxes connected therewith paid?

Have all Federal and State Income Tax Returns of the Estate which are due at the time of filing this account been filed and the taxes connected therewith paid?

Answer at ¶ 95; DC Exh. 1A at 308.

96. Schedule 4 in the Second Account states:

TAXES

Form 1041, Income Tax 1999-2003, including capital gains on sales of securities and real estate	\$9,933.75
NH Interest and Dividends Tax 1999-2003	\$ 971.41
TOTAL TAXES	\$9,905.16 [sic]

(Emphasis in original). Answer at ¶ 96; DC Exh. 1A at 314-15.

97. Mr. Morse's legal bills for the period of the Second Account contain 10 separate entries relative to state and federal taxes as follows:

<u>DATE</u>	<u>SERVICE</u>	<u>HOURS</u>	<u>FEES/COSTS</u>
12/31/99	Prepare Form 1041 and 1040 (not included previously); allocate income.	4	\$560.00
12/31/99	Prepare NH Interest & Dividend Return	0.8	\$112.00
04/10/00	Prepare Form 1041 w/Sched. D; confirm all sales & income.	3	\$420.00
04/10/00	Prepare NH Interest		

	& Dividend Return	0.5	\$ 70.00
04/14/01	Prepare Form 1041 w/Schedules.	2	\$280.00
04/14/01	Prepare NH Interest & Dividend Return.	0.5	\$ 70.00
04/15/02	Prepare Form 1041 and NH Interest and Dividend return.	2.5	\$350.00
04/15/03	Prepare 1041 and NH Interest and Dividend return.	2	\$280.00
05/20/03	Work on amended L & S tax return.	1.5	\$210.00
05/21/03	Work on amended L & S tax return.	2	\$280.00

Answer at ¶ 97; DC Exh. 1A at 317-21.

98. The total value of the Avaya stock (22 shares) which was the subject of multiple PETs related to the Second Account, is listed in Schedule F as \$352.47. Answer at ¶ 98; DC Exh. 1A at 313.

99. In an addendum to the Second Account entitled "Information Schedule,"

Mr. Morse wrote:

Filed with this account is a Motion For Order Of Distribution to confirm the distribution of \$60,000 to each of the three legatees. All taxes, debts and other obligations of the Estate have been paid.

The Estate is still awaiting receipt of funds resulting from the sale of the Avaya stock and refunds on FM 1041 income tax returns in excess of \$15,000. This sum represents prepaid taxes withheld at the time of the sale of some of the Estate's securities. Upon receipt of those funds there can be a final

disbursement to the legatees and the Estate will be closed.

Answer at ¶ 99; DC Exh. 1A at 323.

100. In an email to Ms. Brown dated July 25, 2003, Mr. Morse assured her that he would be hand-delivering the Estate file to her in the coming days. See Answer at ¶ 100 (not denied); DC Exh. 2 at 1000.
101. In or about mid-August of 2003, Ms. Brown left Mr. Tucker's law firm to work at Robinson, Boesch, Sennott & Aeschliman, PA. Ms. Mize desired to have Ms. Brown remain on her case. As a result, Ms. Mize retained Andrea L. Sennott, Esq., to close out the Estate. See Answer at ¶ 101 (not denied); DC Exh. 2 at 763, 767-68.
102. On or about August 29, 2003, Ms. Sennott filed an Appearance on behalf of Ms. Mize. See Answer at ¶ 102 (not denied); DC Exh. 1A at 302.
103. In a letter to Mr. Morse dated September 5, 2003, Denise F. Laporte, a Tax Auditor for the New Hampshire Department of Revenue Administration ("DRA"), acknowledged receipt of a Legacy and Succession Tax Return for the Estate. Ms. Laporte wrote that a "routine review indicated that additional information is required." Ms. Laporte listed the documentation she needed from Mr. Morse and requested that Mr. Morse submit the documentation by September 25, 2003. Answer at ¶ 103; DC Exh. 2 at 1360.
104. On September 5, 2003, Ms. Sennott spoke with Mr. Morse on the telephone. He assured her that he would get her the Estate file "very soon." See Answer at ¶ 104 (not denied); DC Exh. 2 at 1007.

105. By Order dated September 8, 2003, the Court (Cassavechia, J.) granted Mr. Tucker's Motion to Withdraw and approved the Second Account. Answer at ¶ 105; DC Exh. 1A at 327; DC Exh. 2 at 777.
106. Also on September 8, 2003, the Court (Cassavechia, J.) held that the Final Account must be filed by October 31, 2003. Answer at ¶ 106; DC Exh. 1A at 293.
107. In a letter to Ms. Mize dated September 24, 2003, Ms. Brown explained the difficulties her office was having getting a copy of the file from Mr. Morse:

. . . Attorney Sennott has spoken with Lynn on at least two different occasions requesting the file, without much success. I called the Court and asked what we should do and the Clerk suggested we file a motion for instruction. I called Laurie, at Lynn's office, yesterday and told her that I would be at his office at 12:00 p.m. Thursday to pick up the file. I also told her that, if for some reason he still was not ready to part with it, we were going to file a motion for instruction with the Court, advising the Court that we are unable to obtain the Estate file from Lynn. I am very hopeful that we will not have to file the motion, as I think he has had enough bad publicity.

I certainly will keep you posted. There is no reason, once I receive the file, that we cannot prepare and file a final account within the next couple of weeks.

See Answer at ¶ 107 (not denied); DC Exh. 2 at 779.

108. On October 2, 2003, Ms. Mize wrote the following email to Ms. Brown:

Hi Ramona!

Have you gotten the file yet? I'm sorry to be a pest, but this is really weighing heavy on my mind.

I'm so sorry you are caught in the middle of this situation, but I'm also very confident in your ability to help us clear everything up.

The delay in handing over the file is annoying, but I worry about how long he will take to forward the tax check to us. Is there any way to check with IRS on the status of the filing?

I hope you are happy with your new job and everything is going well for you. I'm progressing quite well. I started driving again yesterday. That makes a big difference.

Look forward to hearing from you soon.

Ruth Ann

See Answer at ¶ 108 (not denied); DC Exh. 2 at 1009-10.

109. Ms. Brown responded to her email on October 3, 2003, as follows:

Hi Ruth Ann:

Good to hear you are improving. I met with a woman yesterday that was going to have both knees replaced at the same time. I can't imagine what that's going to feel like.

It is with much regret that I have to inform you that, no, Lynn still hasn't gotten the file to us. I've tried daily. I've made appointments with him to pick it up and he calls and cancels at the last minute because he's out of paper, the copier isn't working, or one excuse after another. I really thought, where we were friends, he would be a little more cooperative than this. It's just Lynn being Lynn again. I talked to Andrea about it yesterday and we will be preparing a motion for instruction with the court and will file it Monday if we do not get the file from him. We cannot wait any longer. If Judge Cassevechia is the sitting judge at the time we file the motion, I am not sure it will look real good for Lynn. We just can't wait any longer. The final account is to be filed October 30 and we are running out of time. It weighs heavy on my mind too.

I'm sorry I haven't called to let you know earlier. I am being as bad as Lynn not letting you know what's going on. I'll talk to you next week. Be well. Mona

See Answer at ¶ 109 (not denied); DC Exh. 2 at 1009.

110. On or about October 6, 2003, Ms. Brown received the Estate file from Mr. Morse. This was less than one month before the due date of the Final Account. See Answer at ¶ 110 (not denied); DC Exh. 2 at 792.
111. In a letter to Ms. Mize dated October 15, 2003, Ms. Brown expressed some concerns regarding the lack of any evidence in the Estate file (which she had recently retrieved from Mr. Morse) of executed tax returns. See Answer at ¶ 111 (not denied); DC Exh. 2 at 1384.
112. In a letter to Mr. Morse dated October 28, 2003, Ms. Laporte (the Tax Auditor from DRA) indicated that, because she had not received the documentation requested in her letter dated September 5, 2003, she was making an audit adjustment (\$12,034.00) on the basis of the documentation in the file. Ms. Laporte indicated that she would give Mr. Morse until November 17, 2003, to voice any disagreement with her adjustment. Mr. Morse did not forward Ms. Laporte's October 28, 2003, letter to Ms. Sennott. See DC Exh. 2 at 1361.
113. In a letter to Ms. Mize dated October 29, 2003, Ms. Brown updated Ms. Mize (and the legatees) on the status of the Estate tax issues. As of the date of her October 29, 2003, letter, and the preparation of the Final Account, Ms. Brown was unaware that Mr. Morse had filed no tax

returns for either the Estate or Ms. McInnes, personally. In her October 29 letter, Ms. Brown wrote:

I have also left numerous messages with Attorney Morse's office with regard to the status of the refunds for the tax returns he filed with the Internal Revenue Service and the New Hampshire Department of Revenue Administration. He has yet to ever call me back. In the meantime, I have obtained written authority from Ruth Ann for this office to deal directly with the IRS and the state with regard to the refunds.

Rather than wait any longer, I recommend closing the Estate with the Probate Court, based upon the funds that Ruth Ann currently has in the Estate account. In order for the Court to approve the account, we will need to file Receipts from the three of you.

Accordingly, I have prepared and enclosed a Receipt for each of you to date, sign and return to me in the self-addressed, stamped envelope enclosed. The dollar amount on each Receipt is the current balance of the Estate account (\$15,028.08), divided between the three of you. You will note that, because \$15,028.08 does not equally divide into three shares, I gave Mrs. Juke one cent less than I did Phyllis and Dorothy. I apologize, Mrs. Juke, but, of the three of you, you are the only one I had met personally and I am hoping that you will not be offended.

All three of you must be aware, however, that the dollar amount listed on the enclosed Receipt will most likely **not** be the dollar amount you will receive when the Estate is closed. There will be additional fees and costs which have not been accounted for on the enclosed account, as well as the possible income from the anticipated tax refunds. In order to close the probate Estate, however, we are required by statute to file receipts for the balance of the Estate listed on the account.

To expedite closing the Estate, I have also prepared and enclosed an assent form. If you are in agreement with the enclosed account, please date and sign your name on the enclosed form where I have indicated and return it to me with the signed Receipt. When I receive

all of the executed documents back from you, I will file them with the Probate Court. Once the Court approves the account and we have finalized all tax matters, Ruth Ann can close the Estate account and forward to each of you your one third share of the residue of the Estate.

If you have any questions at all regarding the Third Account or the forms that I have enclosed for your signature, please do not hesitate to call me.

See Answer at ¶ 113 (not denied); DC Exh. 2 at 792.

114. On or about October 30, 2003, Ms. Sennott filed the Final Account.

Answer at ¶ 114; DC Exh. 1A at 328, 339-50.

115. In a letter to the IRS dated October 31, 2003, William S. Boesch, Esq., of

Robinson, Boesch, Sennott & Aeschliman, PA, wrote on behalf of the Estate:

I am faxing herewith Form 2848 for the subject Estate, duly signed by the Court appointed Executrix, Ruth Ann Mize, of Lodi, California.

The attorney for the Estate has withdrawn and we have assumed that role. We are attempting to make sure that all tax matters have been attended to. Accordingly, we need information concerning the decedent's final 1040 (1998) and we need to know whether any fiduciary income tax returns (Forms 1041) have been filed for the Estate. We found a draft copy for calendar year 2002 for the Estate in the file, but have found no signed copies for any of the years since the decedent's death.

We would appreciate your checking the individual and Estate income tax status for the decedent and her Estate and informing us so that we can prepare and file any returns required by the Internal Revenue Code.

Thank you for your assistance in this matter.

See Answer at ¶ 115 (not denied); DC Exh. 2 at 1396.

116. On or about November 3, 2003, Mr. Boesch learned from the IRS that its records revealed that no tax returns had been filed for the Estate and no personal tax return was filed for the decedent. See DC Exh. 2 at 1406.
117. Subsequent to learning this information, Mr. Boesch reviewed the records on file at the IRS office in Portsmouth and confirmed that no tax return had been filed for either the decedent or the Estate during Mr. Morse's representation of the Estate.
118. By Order dated December 1, 2003, the Court (Maher, J.) granted the Final Account on condition that the tax certification letter from the New Hampshire Department of Revenue Administration for the Legacy & Succession Tax be filed by January 9, 2004. See Answer at ¶ 118 (not denied); DC Exh. 1A at 351.
119. On or about January 8, 2004, Ms. Sennott filed a Motion for an Extension of Time to file the tax certification letter. The reason for the requested extension was explained in the motion as follows:

It has recently come to the attention of counsel for the fiduciary that prior counsel for the Estate failed to file decedent's final federal and state income tax returns and filed no income tax returns for the Estate (calendar years 1999 through 2002).

Prior to finalizing the Estate, the tax returns must be prepared and filed. Counsel for the fiduciary is in the process of communicating with the Internal Revenue Service and the Department of Revenue Administration on these matters. The executrix will amend the final account in order to reflect these changes in the taxes before the end of the extension period.

See Answer at ¶ 119 (not denied); DC Exh. 1A at 352-53.

120. In an Order dated January 23, 2004, the Court (Cassavechia, J.) granted the extension. See Answer at ¶ 120 (not denied); DC Exh. 1A at 355.
121. Thereafter, Mr. Boesch began the process on behalf of the Estate of filing the necessary tax returns and negotiating the applicable penalties and refunds. See Answer at ¶ 121 (not denied).
122. On or about February 24, 2004, Mr. Boesch filed a Form 1040 on behalf of the decedent for the taxable year 1998, and a Form 1041 on behalf of the Estate for the years 1999, 2000, 2001, and 2002. See Answer at ¶ 122 (not denied); DC Exh. 2 at 1530-32, 1536-47 (for year 1998); 1130, 1131-39 (for year 1999); 1203, 1204-1211 (for year 2000); 1263, 1267-72 (for year 2001); 1314-25 (for year 2002). Mr. Boesch also filed Form DP-10's with the State of New Hampshire Department of Revenue Administration for the Estate during the years 1999-2002. See DC Exh. 2 at 1140, 1273, 1327.
123. With respect to the decedent's 1040, Mr. Boesch sought a refund in the amount of \$579.00. Because three years had passed since the due date of the 1040, Mr. Boesch did not anticipate that the IRS would allow the refund. See Answer at ¶ 123 (not denied); DC Exh. 2 at 1552-54.
124. With respect to taxable years 1999, 2000, and 2001, the Estate owed late payment and filing penalties, and owed late interest payments. See Answer at ¶ 124 (not denied); DC Exh. 2 at 1130, 1203, 1267.
125. On or about March 16, 2004, the DRA's Estate and Legacy Bureau issued a Certificate of Compliance for the Estate's Legacy and Succession

Tax. Shortly thereafter, Ms. Sennott filed the Certificate of Compliance with the Court. See Answer at ¶ 125 (not denied); DC Exh. 1A at 356-57; DC Exh. 2 at 1375-77.

126. On or about March 22, 2004, the Court issued a Certificate of Bond Discharge for the Estate, and certified that the fiduciary had met the requirements of filing for the Estate and no longer needed to hold a surety bond. Answer at ¶ 126; DC Exh. 1A at 358.

127. On or about April 8, 2004, the IRS notified Mr. Boesch that it was denying the decedent's tax refund because it was filed outside the three-year time limit. See Answer at ¶ 127 (not denied); DC Exh. 2 at 1552-54.

128. Sometime in or about August 2004, Mr. Boesch was able to resolve the Estate's outstanding IRS issues. See Answer at ¶ 128 (not denied); DC Exh. 2 at 1241-43.

129. The legal bill to the Estate for Ms. Sennott's firm to complete the unfinished matters left open by Mr. Morse's representation of the Estate totaled approximately \$8,000.00. See Answer at ¶ 129 (not denied); DC Exh. 2 at 1559-64.

II. Stipulation as to Costs

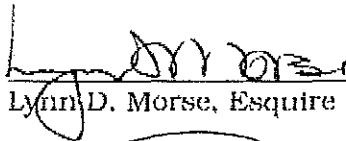
130. Lynn D. Morse, Esq. agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

III. Effect of Stipulation

131. Respondent understands that by signing this Stipulation, he is hereby bound to the facts as stipulated. In the event that the Professional Conduct Committee does not agree with the Stipulation, the Respondent is nonetheless hereafter bound to the facts as stipulated.

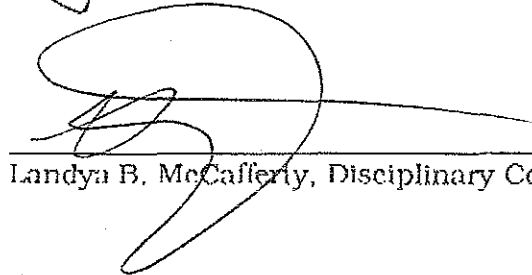
Respectfully submitted

Dated: 8-29, 2008



Lynn D. Morse, Esquire

Dated: 8-29, 2008



Landya B. McCafferty, Disciplinary Counsel

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Morse, Lynn D.

advs.

Ruth Ann Mize

#04-067

MOTION TO RECONSIDER

NOW COMES Landya B. McCafferty, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, and seeks reconsideration of the Professional Conduct Committee's "Recommendation for Two Year Suspension with Conditions for Reinstatement" Order dated January 28, 2009.

In support, Disciplinary Counsel states as follows:

1. In its Order dated January 28, 2009, the Professional Conduct Committee misapprehended five critical legal principles in determining that a two-year suspension is appropriate for Mr. Morse's misconduct. Disciplinary counsel respectfully requests that the Committee reconsider its decision in light of these fundamental legal principles. Disbarment is the appropriate sanction for Mr. Morse's misconduct.

2. A summary of the five errors of law in the Committee's January 28, 2009, Order follows.

A. The Committee erred in finding that Mr. Morse's mental state was one of "gross negligence" rather than intentional deceit.

3. Under the second prong of the sanction analysis, the Committee properly considered Mr. Morse's mental state. However, its characterization of Mr. Morse's conduct as "gross negligence" is not supported by the evidence and is incorrect as a matter of law.
4. In addition to violations of Rules 1.1, 1.3, and 1.16, the Committee found clear and convincing evidence that Mr. Morse violated Rules 3.3(a)(1) and 8.4(c). Both rules involve misconduct constituting deceit.
5. Indeed, a Rule 8.4(c) misrepresentation or deceit charge cannot be sustained without such a finding. See Basbanes Case, 141 N.H. 1, 6 (1996) ("An intentional misrepresentation requires a misstatement of fact for the purpose of inducing another to act or to refrain from action in reliance upon it.") (quoting Carpenito's Case, 139 N.H. 168, 174 (1994)).
6. The Notice of Charges in this case charged that Mr. Morse falsely informed the Complainant and the Court that tax returns had been filed and did so with the intent to induce the Court and interested persons to believe the tax returns had been filed. See Notice of Charges at paragraphs 163-64.
7. If, for purposes of determining sanction, Mr. Morse's intent was merely "gross negligence," as the Committee has suggested, the Committee would need to alter its analysis of rules violations to find: (a) that Mr.

Morse committed only negligent misrepresentation, and (b) that negligent misrepresentation is cognizable under Rule 8.4(c). Such a change in the analysis is not warranted. The evidence clearly supports the Committee's finding of deceit, an intentional act. This is not a negligence case. Moreover, it is an open question whether negligent misrepresentation is cognizable under Rule 8.4(c). See Lane's Case, 153 N.H. 10, 19-20 (2005).

8. It appears that the Committee has conflated the mental state analysis with the analysis of mitigating factors.
9. Respectfully, the Professional Conduct Committee made a similar legal error in Grew's Case, 156 N.H. 361, 366 (2007). In that case, the Court explained and corrected the error:

With respect to the second factor, the Professional Conduct Committee found that the respondent's "mental state was more a reflection of his initial panic over the family and financial ramifications of the accident, than evidence of a specific intent to defraud his insurance carrier." In its finding, the Professional Conduct Committee appears to have conflated factor two, the respondent's mental state, and factor four, mitigating factors. The respondent's "mental state may be one of intent, knowledge, or negligence." Standards, supra § 3.0 cmt. What is relevant to the second factor is the volitional nature of the respondent's acts, and not the external pressures that could potentially have hindered his judgment. Therefore, even if panicked, the proper inquiry is whether the respondent acted with either: (1) the conscious objective to defraud Progressive; (2) the knowledge of the nature or attendant circumstances of his conduct; or (3) a negligent failure to notice a substantial risk that fraud would result from his actions. See Standards, supra s. II, at 6.

The record here shows that respondent's mental state was "one of intent." Standards, supra § 3.0 cmt. The respondent

admits that his conduct “constituted a crime.” Indeed, he pled guilty to the charge of insurance fraud and has thus acknowledged that he acted with “intent to injure, defraud or deceive.” . . . We therefore hold that the respondent acted with intent, which is “[t]he most culpable mental state. . . .”

Grew’s Case, 156 N.H. at 366.

10. Likewise, in this case, the Committee has confused Mr. Morse’s mental state under prong two of the analysis with the mitigating circumstances under prong four of the analysis. Mr. Morse’s mental state with respect to the Rule 8.4(c) charge was an intent to deceive, the “most culpable” of mental states.

B. The Committee erred in finding Mr. Morse acted without any dishonest motive.

11. Second, in light of the Professional Conduct Committee’s findings that Mr. Morse violated Rules 3.3(a)(1) and 8.4(c), its further finding that Mr. Morse acted without any dishonest motive is clear error. Mr. Morse was dishonest, as a matter of law, when he made a “false statement of material fact” to the Court in violation of Rule 3.3(a)(1), and when he undertook to deceive the Court and his client in violation of Rule 8.4(c).

C. The Committee erred in applying Standard 6.12, rather than 6.11.

12. Third, the Committee erred in applying the Standards. Specifically, the Committee erred in two ways in finding that Standard 6.12, rather than 6.11, applied.
13. The Committee erred in that it held that a finding of “serious injury” was required under Standard 6.11, and that the injury to Ms. Mize was not “serious injury.” A finding of “serious injury” is not required for

Standard 6.11 to apply. Rather, a finding of “serious or potentially serious injury” to a party or to the legal proceeding is required.

14. It is unclear how the Committee could determine there was not “serious injury,” (or “potentially serious injury”), where a respondent’s incompetence and deceit lasted in excess of four years, and led to serious harm, including: (a) an estate being opened for many years longer than was necessary, during which time one of the legatees died, and during which time the estate incurred additional taxable years as a result; (b) the elderly legatees, each of whom was in need of financial assistance, were left waiting for years for the full extent of their inheritance; (c) tax returns being filed late such that penalties were incurred and a tax credit denied, and (d) the complainant traveling from her home in California to the Probate Court in New Hampshire solely in order to address the respondent’s repeated late filings and, as advised by the Probate Court, to terminate the respondent and hire new counsel.
15. The Committee further erred in determining that the applicable Standard was 6.12 rather than 6.11 because of the Committee’s error on the question of Mr. Morse’s intent. Standard 6.11 states that disbarment is appropriate when a lawyer “with the intent to deceive the court, makes a false statement, submits a false document”
16. Here, there is no question but that Mr. Morse submitted false statements to the Probate Court about the tax returns. He knew his statements were false. He intended to deceive the Court thereby.

17. For these reasons, Standard 6.11 applies to Mr. Morse's misconduct, and the appropriate baseline sanction in this case is disbarment.

D. The Committee erred in concluding that Mr. Morse is entitled to a finding of legal remorse.

18. The question of whether a particular respondent presents as remorseful, in a generalized way, is distinct from the question of whether he is entitled to a finding of legal remorse under the Standards. The Court has made clear that, in deceit cases, a respondent must admit his culpability to be entitled to remorse as a mitigator. See Feld's Case, 149 N.H. 19, 30 (2002) ("In cases involving dishonesty, a lawyer must admit to his professional misconduct to truly demonstrate remorse. . . . We can find no evidence that Feld has accepted responsibility for his ethical violations.") (citation omitted).

19. Here, while Mr. Morse may have seemed remorseful for his misconduct both when he appeared at his sanction hearing and at oral argument before the Committee, he did not admit the misconduct, nor did he accept responsibility. Thus, he is not entitled to a finding of remorse, as a matter of law. The Professional Conduct Committee's finding to the contrary is in error.

E. The Committee erred in not increasing Mr. Morse's baseline sanction for his multiple offenses.

20. In cases such as this one, where a respondent commits multiple violations, the Court has made clear that "[i]n the case 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. Conner's Case, 2009 WL 196564, at *3 (N.H., January 29, 2009) (emphasis added). See also Richmond's Case, 152 N.H. 155, 160 (2005) (same). Further, the respondent's multiple offenses in this case are also an aggravating factor. See Standards § 9.22(d).

21. The Committee erred in failing to account for the multiple offenses.
22. For all of the above reasons, the Committee should reconsider its decision to recommend that Mr. Morse be suspended, and instead order Disciplinary Counsel to petition the Supreme Court for his disbarment.

WHEREFORE, Disciplinary Counsel respectfully requests that:

- (A) The Committee reconsider its decision dated January 28, 2009;
- (B) Issue a decision recommending that the Supreme Court disbar Mr. Morse from the practice of law; and
- (C) Grant such other relief as is fair and in the public interest.

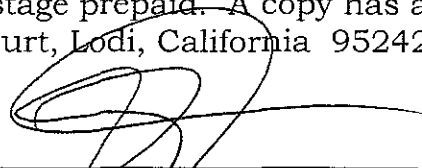
New Hampshire Supreme Court
Attorney Discipline Office
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
(603) 224-5828

Date: February 4, 2009

By: 
Landya B. McCafferty
Disciplinary Counsel

CERTIFICATION

I, Landya B. McCafferty, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that the original of the aforesaid "Motion to Reconsider" is being sent on this 4th day of February 2009, to Lynn D. Morse, Esquire, Morse Law Office, 14 Front Street, Exeter, New Hampshire 03833, by regular mail postage prepaid. A copy has also been sent to Ms. Ruth Ann Mize, 26 Pinewood Court, Lodi, California 95242.



Landya B. McCafferty
Disciplinary Counsel

New Hampshire Supreme Court

Professional Conduct Committee

Margaret H. Nelson, Chair
Benette Pizzimenti, Vice Chair
Toni M. Gray, * Vice Chair
Susan R. Chollet*
David N. Cole
Thomas P. Connair
Alan J. Cronheim

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Gretchen Rule Hamel
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Marilyn Billings McNamara
* non attorney member
Holly B. Fazzino, Admin. Coordinator

Morse, Lynn D. advs. Ruth Ann Mize # 04-067

ORDER ON MOTION TO RECONSIDER

By decision dated January 28, 2009 (“Decision”), the Professional Conduct Committee issued a Recommendation for Two-Year Suspension with Conditions for Reinstatement in the present case. By Motion dated February 4, 2009, Disciplinary Counsel filed a Motion to Reconsider (“Motion”). Mr. Morse (“Respondent”) objected to the Motion by email on February 9, 2009.

On March 17, 2009, the Committee considered the Motion and the Respondent’s objection. Members present were Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, David N. Cole, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling, Gretchen Rule Hamel, James R. Martin and Marilyn Billings McNamara. After discussion, the Committee voted to grant the Motion to Reconsider. Ms. Chollet abstained.

On May 19, 2009, the Professional Conduct Committee considered the full record of the case, including the cases cited in the Motion, and deliberated. Members present were 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, James R. Martin and Marilyn Billings McNamara. Susan R. Chollet was absent.

After thorough consideration, the Committee voted to affirm the Decision.

I. Background

In this matter, Disciplinary Counsel and the Respondent filed a lengthy Stipulation regarding the facts of the case. The hearing before the Hearing Panel thus was limited to the question of rules violations and the issue of appropriate sanction. In the hearing, Disciplinary

Counsel argued that the appropriate baseline sanction was disbarment and asserted several aggravating factors. After careful consideration of the entire record before it, the Hearing Panel found, by clear and convincing evidence, that Mr. Morse had violated N.H. Rules of Professional Conduct Rule 1.1, relative to competence, Rule 1.3,¹ relative to diligence, Rule 1.16(d), relative to termination of representation, Rule 3.3(a)(1), relative to candor toward the tribunal, and Rule 8.4(c), relative to dishonesty. Based on its findings, including findings on aggravating and mitigating factors, the Hearing Panel recommended a two-year suspension with conditions for reinstatement.

Disciplinary Counsel requested oral argument before the Committee and again argued forcefully that the appropriate sanction was disbarment. Disciplinary Counsel also asserted an additional aggravating factor, namely that Mr. Morse's behavior showed a pattern of misconduct. After hearing from Disciplinary Counsel and Mr. Morse and carefully considering the record, the Committee largely agreed with the conclusions of the Hearing Panel.² Specifically, the Committee found an insufficient basis for elevating the sanction to disbarment. Decision, p. 6.

Disciplinary Counsel then filed the Motion to Reconsider. In the Motion, Disciplinary Counsel asserted that the Committee had made five errors of law in the Decision, including that the Committee applied Standard 6.12 rather than 6.11 of the American Bar Association's Standards for Imposing Lawyer Sanctions (1992) ("*Standards*") and did not increase the baseline sanction based on aggravating factors.

II. Discussion

Disciplinary Counsel's arguments relative to the sanction would, perhaps, be more compelling if the *Standards* had been adopted as binding in New Hampshire. However, they have not. The Committee thus retains the discretion to impose or recommend³ a sanction that it believes is appropriate, considering both the purposes of attorney discipline and the specific circumstances of the particular case before it.

It is beyond dispute that the purposes of attorney discipline are to protect the public, maintain

¹ The Hearing Panel Report erroneously identifies this as "Rule 3(1)".

² The Committee also found, by clear and convincing evidence, a violation of Rule 8.4(a), in that Mr. Morse violated the Rules of Professional Conduct, and adjusted the conditions of reinstatement.

³ Per N.H. Supreme Court Rule 37A(III)(d)(2)(C), the Committee can directly impose a sanction up to a six-month suspension but can only recommend a longer suspension or disbarment.

public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future. While the sanction must account for the severity of the misconduct, discipline is not intended as punishment. *See e.g., Coffey's Case*, 152 N.H. 503 (2005).

Disciplinary Counsel cited several cases in the Motion as support for the proposition that the Decision is inconsistent with the results in other cases. The Committee believes that consistency is important, but also is cautious of maintaining an appearance of consistency at the expense of carefully considering the specific facts of each case. Specifically, the Committee considered the circumstances of this case as compared with those of *Wyatt, Donald L., Jr. advs. Deborah Stacy #03-0534*, in which the Committee recommended disbarment, *White, Stephen A.S. advs. Elaina Roberts #07-044*, in which the Committee imposed a six-month suspension but conditionally stayed it for two years, and *Engel, David C. advs. Barbara Hill #02-039*, in which the Committee imposed a Reprimand.

In *Wyatt*, the Respondent simultaneously represented five different “clients” -- an individual laboring under severe mental and physical handicaps, the conservatorship established to govern the disposition of the individual’s funds and assets, the conservator, the individual’s wife with whom the individual was experiencing marital difficulties and who was attempting to gain greater access to the funds and assets, and the Respondent’s own interests with respect to charging and collecting excessive fees. In view of the flagrant and egregious nature of the Respondent’s misconduct, the length of time over which it took place, the Respondent’s self-interest in pursuing the course of action that brought him before the Committee, and his steadfast refusal or inability to understand the outrageous nature of his misconduct despite its obviousness and despite several court hearings in which these conflicts of interest were brought to his attention, the Committee determined that disbarment was required to protect the public, maintain public confidence in the bar, and preserve the integrity of the legal profession.

In *White*, the Respondent violated his duty to his client by failing to file an appeal on her behalf from a jury’s verdict of guilty on various criminal charges, despite her requests that he do so. The Committee determined that based on the four-part analysis recommended by the *Standards*, including the Respondent’s prior disciplinary record, the appropriate sanction was a

⁴ LD 2009-0002 In the Matter of Donald L. Wyatt is currently pending before the New Hampshire Supreme Court.

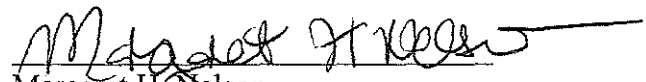
suspension. However, based on the Respondent's having taken steps toward rectifying the deficits in his practice under the terms of a prior disciplinary decision, the Committee found that it was consistent with the purpose of the Court's disciplinary power and the goals of the Rules of Professional Conduct, as well as the Committee's discretion to fashion an appropriate sanction, to stay imposition of the six-month suspension for two years provided the Respondent meets the specific conditions.

In *Engel*, the Respondent failed to disburse all remaining funds to which beneficiaries were entitled for almost 18 months after the probate court's acceptance of the final accounting; the Respondent initially denied the existence of the funds and did not correct the record in the disciplinary proceed for almost 10 months after discovering that he did, in fact, have the funds. Despite the seriousness of the violations, the Committee exercised its discretion and imposed a reprimand based on the Respondent's advanced age, "the overwhelming burden imposed" by the Respondent's daughter being diagnosed with a serious disease shortly he intended to retire, and his complete cooperation with the disciplinary process.

III. Decision

The Committee remains unconvinced, based on the totality of the information before it, that Mr. Morse poses such a threat to the public and the integrity of the legal profession that disbarment is necessary. The Committee also remains unconvinced that Mr. Morse must be disbarred in order to maintain public confidence in the bar or to prevent similar conduct in the future. The record, including evidence provided by Disciplinary Counsel herself, shows that Mr. Morse is well-respected in the community. Further, there was no selfish or dishonest motive in his misconduct in this case. The Committee thus affirms its original decision to recommend a two-year suspension with conditions for reinstatement, as detailed in the Decision.

August 5, 2009


Margaret H. Nelson
Chair

Distribution:

Landya B. McCafferty, Disciplinary Counsel
Lynn D. Morse, Esquire
Ruth Ann Mize
File