

Tab  
16

New Hampshire Supreme Court  
**Professional Conduct Committee**  
*a committee of the attorney discipline system*

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\*

4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
603-224-5828 • Fax 228-9511

Richard H. Darling\*  
Gretchen Rule Hamel  
James R. Martin  
Jennifer L. Parent

\* non attorney member  
Holly B. Fazzino, Admin. Coordinator

*Grodt, Thomas P. advs. Margaret S.C. Johns # 08-008*

**RECOMMENDATION TO PETITION THE NH SUPREME COURT FOR A  
THREE YEAR SUSPENSION, STAYED FOR THREE YEARS WITH CONDITIONS**

On October 20, 2009, the Professional Conduct Committee deliberated the above captioned matter. Members present were Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Thomas P. Connair, Reporter, Susan R. Chollet, David N. Cole, Gerald A. Daley, Richard H. Darling and Gretchen Rule Hamel. The matter was tabled to afford counsel an opportunity to consider a proposed supplement to the stipulation of the parties, and to give the parties the opportunity to request oral argument if the supplement was not acceptable. Counsel for the Respondent and Disciplinary Counsel assented to the supplement, following which the Committee further deliberated the matter on November 17, 2009. After concluding its deliberation, the Committee voted to direct Disciplinary Counsel to file a petition with the NH Supreme Court requesting a three year suspension, suspended for three years, contingent on the conditions set forth below.

**I. FINDINGS OF FACT**

The Professional Conduct Committee has determined that the record supports these facts as stipulated to by the parties, by clear and convincing evidence:

1. Mr. Grodt is an attorney licensed to practice law in New Hampshire. Mr. Grodt was admitted to practice on May 27, 1997. At times material to this proceeding, Mr. Grodt worked for the law firm of Forman, Corcoran, Grodt & Gerrin, P.A., at 74 Gilcreast Road, Londonderry, New Hampshire 03053. In January of 2007, he opened his own law office as Thomas P. Grodt, Attorney at Law, at 42 West Broadway, Derry, New Hampshire. In May or June of 2007, his law firm moved to 4 Peabody Road Annex, Derry, New Hampshire 03038.
2. In June 2004, Margaret Johns and Donald Nowicki, husband and wife (hereinafter referred to collectively as “Johns-Nowicki”), contracted with Craig Fowler of Natural Energy Designs, Inc. (“NED”) to build a house in Londonderry.
3. Johns-Nowicki purchased the property and house from NED in a single transaction which closed on March 30, 2005. Mr. Grodt represented Johns-Nowicki at the closing.

**November 2006: Filing of Fowler and Doucet Cases**

4. After the closing, Johns-Nowicki became aware of water drainage problems with their property. Johns-Nowicki retained Mr. Grodt to bring a lawsuit against NED and Mr. Fowler; the two real estate agencies involved in the sale, Coldwell Banker Residential Brokerage (“Coldwell”) and Prudential Verani Realty (“Verani”); and the two real estate agents, Kathy Corey-Fox and Mary Goodnow. Mr. Grodt agreed to bring lawsuits against those defendants based upon Ms. Johns-Nowicki’s allegations.
5. Johns-Nowicki also retained Mr. Grodt to bring a second lawsuit against their neighbors, Ronald and Joyce Doucet, whom Johns-Nowicki alleged were allowing water drainage improperly to flow onto their property.

6. Mr. Grodt and Ms. Johns agreed on an hourly fee arrangement. Mr. Grodt's hourly rate was \$175.00.
7. On October 5, 2006, Johns-Nowicki signed the writ prepared by Mr. Grodt to be filed against the contractor and real estate agents, as well as the petition for injunctive relief prepared by Mr. Grodt to be filed against the Doucets.
8. On November 27, 2006, Mr. Grodt filed the writ (containing 12 counts) against the defendants in Rockingham County Superior Court. The case was captioned, "Margaret Johns and Donald Nowicki vs. NED, et. al, docket # 06-C-1056 ("Fowler Case"). The Doucets were not named as defendants in the Fowler Case.
9. On December 4, 2006, Mr. Grodt filed the petition for injunctive relief against the Doucets in the same Court. The case was captioned, "Margaret Johns and Donald Nowicki v. Ronald and Joyce Doucet," docket # 06-E-0676 ("Doucet Case").
10. Throughout the pendency of the litigation, NED and Mr. Fowler were represented by Peter M. Solomon, Esq. of Solomon Professional Association; Coldwell and Ms. Fox were represented by Peter G. Callaghan, Esq. of Preti, Flaherty, Beliveau & Pachios, PLLP; Verani and Ms. Goodnow were represented by Gregory A. Moffett, Esq. of McCaffrey & Moffett, PLLC; and the Doucets were represented by Steven A. Clark, Esq. of Boutin and Altieri, PLLC.<sup>1</sup>
11. On December 19, 2006, a preliminary hearing was held on the petition in the Doucet Case, and the Court (Fitzgerald, J.) denied Johns-Nowicki's request for emergency and

---

<sup>1</sup> Because Coldwell and Ms. Fox were represented by the same attorney and the pleadings for both were identical, this Notice of Charges refers to them collectively as "Coldwell." The same is true for Verani and Ms. Goodnow; they are referred to collectively as "Verani."

temporary relief. The Court scheduled a structuring conference in the Doucet Case for January 29, 2007.

12. On December 20, 2006, NED filed a motion to dismiss the Fowler case on grounds that the dispute was subject to arbitration. A hearing on the motion was scheduled for March 5, 2007.

13. In January 2007, Mr. Grodt left his law firm, Forman, Corcoran, Grodt & Gerrin, P.A., and opened his own law firm, Thomas P. Grodt Attorney at Law. Mr. Grodt continued to represent Johns-Nowicki in the pending litigation.

14. On January 29, 2007, a structuring conference took place in the Doucet Case. At that conference, the Court (McHugh, J.) issued an Order containing a discovery schedule and a trial date of September 20, 2007.

15. Mr. Grodt did not forward a copy of the January 29, 2007, Order to Johns-Nowicki.

**February 2007: Coldwell Interrogatories Served**

16. On or about February 12, 2007, Coldwell and Ms. Fox, through counsel, served one set of interrogatories and requests for admissions on Johns-Nowicki (hereinafter referred to as "Coldwell Interrogatories"). The Coldwell Interrogatories required responses prepared and signed by both Ms. Johns and Mr. Nowicki.

17. Answers to the Coldwell Interrogatories were due in 30 days.

18. At the March 5, 2007, hearing on NED's motion to dismiss the Fowler Case, Michael T. McCormack, Esq., an associate of Mr. Callaghan's, appeared for Coldwell. Mr. McCormack asked Mr. Grodt about the answers to the Coldwell Interrogatories. Mr. Grodt told Mr. McCormack that answers would be forwarded by the end of the week.

19. On March 7, 2007, the Court (McHugh, J.) granted NED's motion to dismiss the breach of contract action against NED and to allow that count to proceed to arbitration. In its Order, the Court held that it would stay the litigation "until the arbitration is concluded." The Court further held, however, that it would "allow all parties . . . to engage in reasonable discovery" before the arbitration was scheduled.
20. On or about March 20, 2007, Mr. McCormack wrote a follow-up letter to Mr. Grodt requesting answers to the Coldwell Interrogatories. Mr. McCormack noted that the answers were late, as they were due on March 14, 2007.

**March 2007: Verani Interrogatories Served**

21. On or about March 22, 2007, Verani, through counsel, served one set of interrogatories on Johns-Nowicki (hereinafter referred to as "Verani Interrogatories"). The Verani Interrogatories required responses prepared and signed by both Ms. Johns and Mr. Nowicki.
22. Answers to the Verani Interrogatories were due in 30 days.
23. With respect to the Coldwell Interrogatories previously served, in a letter to Mr. McCormack dated March 26, 2007, Mr. Grodt wrote:

Thank you for your letter of March 20, 2007. I apologize for the delay in getting the answers to your admissions and interrogatories [sic] to you. At the hearing, I relayed what had been represented to me by my clients. Unfortunately, it seems my clients and I were talking at cross purposes and I misunderstood. I have explained, once again, the need for prompt responses to these discovery requests. I anticipate the admissions answers in the very near future, and the answers to the interrogatories [sic] as well.

To aid me in preparing the interrogatory answers in a more readable form, would it be possible for you to e-mail me an editable electronic version of the interrogatories.

If you have any questions regarding this matter, please do not hesitate to contact me.

24. In a letter dated March 27, 2007, Mr. McCormack wrote again to Mr. Grodt requesting answers to the Coldwell Interrogatories. Mr. McCormack apparently had not yet received Mr. Grodt's March 26 letter. In his March 27 letter, Mr. McCormack informed Mr. Grodt that the answers were due on March 14, 2007, and if answers were not received by April 6, 2007, Mr. McCormack would be filing a motion for conditional default.
25. In an email dated April 2, 2007, Mr. McCormack forwarded to Mr. Grodt an electronic copy of the Coldwell Interrogatories.

**April 2007: Answers to Coldwell Interrogatories in Default**

26. Having heard nothing further from Mr. Grodt, on or about April 12, 2007, Coldwell filed a motion for conditional default for failure to answer the Coldwell Interrogatories.
27. On or about April 19, 2007, Mr. Grodt faxed Ms. Johns a second copy of the Coldwell Interrogatories, as Ms. Johns had misplaced the original copy that Mr. Grodt had previously forwarded to her.
28. On April 30, 2007, the Court granted Coldwell's request for a conditional default.
29. In or about the first week of May in 2007, Ms. Johns went to Mr. Grodt's office to deliver an electronic copy of her answers to the Coldwell Interrogatories. At that time, Ms. Johns and Mr. Grodt had a lengthy meeting about her draft answers to the Coldwell Interrogatories. Mr. Grodt indicated that he would review her answers and ask her to come in at a later date and sign them. During this meeting, Mr. Grodt did not ask or

otherwise discuss with Ms. Johns the need for Mr. Nowicki to provide separate answers to the Coldwell Interrogatories.

30. On May 11, 2007, Ms. Johns returned to Mr. Grodt's office and signed her answers. Mr. Grodt did not mention to her any need for Mr. Nowicki to answer the Coldwell Interrogatories.
31. On or about May 11, 2007, Coldwell filed a motion for entry of default judgment against Johns-Nowicki, on the basis of Mr. Grodt's failure to supply responses to the Coldwell Interrogatories and to move to strike the conditional default.
32. On or about May 11, 2007, Mr. Grodt sent Ms. Johns's Answers to the Coldwell Interrogatories to Mr. Callaghan. Because Mr. Grodt did not request that Mr. Nowicki prepare answers to the Coldwell Interrogatories, no answers by him had been prepared.
33. Also on May 11, 2007, Mr. Grodt filed a motion to strike the conditional default, stating:
  1. Defendants Coldwell Banker and Kathy Corey-Fox on February 12, 2007 [sic].
  2. Plaintiffs' began work on said interrogatories.
  3. Due to the large amount of research necessary to obtain past correspondence, Plaintiffs' have exceeded the one month deadline for response.
  4. Counsel for Plaintiffs' has this day forwarded the answers to the propounded interrogatories to the Counsel for the named defendants, including more than 300 pages of correspondence.
34. On or about May 15, 2007, Mr. Callaghan received Ms. Johns's answers to the Coldwell Interrogatories. Mr. Callaghan did not receive Mr. Nowicki's answers.

35. Mr. Callaghan wrote a letter dated May 15 to Mr. Grodt inquiring about the Nowicki answers. He also noted that Ms. Johns had provided only partial answers to the Coldwell Interrogatories.
36. On May 15, 2007, Mr. Callaghan also filed an objection to Mr. Grodt's motion to strike, arguing that he had received only partial answers from Ms. Johns and had not received any answers from Mr. Nowicki.
37. In a letter to Mr. Callaghan dated May 17, 2007, Mr. Grodt wrote:

Thank you for your letter of May 15, 2007 regarding Ms. Johns' interrogatory answers. I have been out of the office this week on other matters, but I have called Ms. Johns and will discuss her answers and your issues with her tomorrow. I will return to the office on Tuesday and will by that time have discussed your issues with Ms. Johns. I will respond to your letter as early as possible next week.

With regard to Mr. Nowicki's interrogatories, a search by my part time assistant of my mail log, my files, scanned documents, and emails turns up only Ms. Johns Interrogatories and not Mr. Nowicki's. Of course it is always possible that I am mistaken and that I have received them. However, I will continue to search could you please provide me an electronic copy of Mr. Nowicki's interrogatories at your earliest convenience and I will make sure that he receives them post haste and will endeavor to have them answered over the weekend to be returned to you also next week. If I am mistaken in this my apologies.

Finally, with respect to the potential liability of Ms. Corey-Fox, misrepresentations may be both explicit and by omission. Thus, Ms. Corey-Fox can be liable by either explicit misrepresentation of conditions known or that should have been known to her, or by failing to properly inform Ms. Johns and Mr. Nowicki of conditions that she knew or should have known of. Although I will discuss your issues with Ms. Johns, at this point I believe it is premature to discuss nonsuiting Ms. Corey-Fox.

In addition, the current status of the entire case is that it is suspended pending arbitration per the court order of March 7, 2007. Thus, I believe [sic] that discussion of nonsuiting a party and of default etc., is at best academic in nature at this time.

If you have any questions regarding this matter, please do not hesitate to contact me.

38. In an email to Mr. McCormack later in the day on May 17, Mr. Grodt wrote:

Atty McCormack, I have corrected the misunderstanding regarding Mr. Nowicki's interrogatory answers. They will be forwarded to you tomorrow. My apologies for the delay and the misunderstanding.

39. In an email to Mr. McCormack in the afternoon on May 18, 2007, Mr. Grodt wrote:

Hi Mike I did not realize that Mr. Nowicki is traveling to Seattle. I have left messages and emails asking for his responses. The problem arose because he misunderstood that both he and MJ were to answer the same questions, even if the answers will be the same. I will endeavor to get his answers asap.

Tom

40. In a letter to Mr. Grodt dated May 29, 2007, Mr. Moffett informed him that the answers to the Verani Interrogatories were overdue.
41. On May 30, 2007, the Court granted Mr. Grodt's motion to strike the default conditionally entered in connection with the Coldwell Interrogatories.
42. On June 11, 2007, Mr. Callaghan filed a motion to reconsider the May 30, 2007, Order, on grounds that, contrary to Mr. Grodt's assertion in the motion to strike, Mr. Nowicki had not filed any answers to the Coldwell Interrogatories.
43. Mr. Grodt did not file a response to the motion to reconsider.

**April 2007: Verani Interrogatories in Default**

44. In a letter to Mr. Grodt dated June 26, 2007, Mr. Moffett again requested answers to the Verani Interrogatories, which he noted were due on April 21, 2007.

45. On or about July 11, 2007, Mr. Grodt forwarded to Mr. Moffett a packet of material containing responsive documents to the Verani Interrogatories.

46. In a letter to Mr. Grodt dated July 11, 2007, Mr. Moffett's legal assistant, Pamela Woodworth, wrote:

Thank you for what appears to be the answers to our interrogatories. However, the packet received did not have either a heading page with the case name or, more importantly, a signature page. Would you please review the documents you sent and provide us with a signature page indicating who supplied these answers. As you will recall, we provided a set of interrogatories to both Ms. Johns and Mr. Nowicki.

Thank you for your attention to this matter.

47. On or about July 18, 2007, Mr. Grodt telephoned Mr. Moffett's office and left the following voicemail message:

Hi Greg, it's Tom Grodt, calling about the Margaret Johns, Nowicki, Goodall that stuff. Anyway, I got your letter and I finally moved my office and got everything more or less working and in responding to your objections to the interrogatory answers and the like, I will have supplemental answers for you by the end of next week. She is out of town and has been for a while on business um and I'm taking care of Don's signatures as well and will have that for you just as soon as I can but certainly by the end of next week at the latest. If you have any questions, I'm in the office um, I'm in court this morning and will be back in the office this afternoon 437-2600. Thanks a lot, I'll talk to you later.

**July 2007: Coldwell Files Motion for Summary Judgment**

48. On or about July 23, 2007, Mr. Callaghan filed a motion for summary judgment in connection with all claims against Coldwell.

49. Mr. Grodt did not file an objection to the motion for summary judgment on behalf of his clients.

50. On August 20, 2007, the Court granted Coldwell's pending motion to reconsider the order striking the default, holding: "Plf. Donald Nowicki is defaulted. The case will proceed with Margaret Johns being the sole Plf."
51. In a letter to Mr. Grodt dated August 22, 2007, Mr. Moffett's Legal Assistant, Pamela Woodworth, wrote:

I am writing in follow up to my letter of July 11, 2007 and your telephone message to Attorney Moffett of July 18, 2007 indicating that you would provide signed and supplemental answers "by the end of next week." We have not received signed or supplemental answers to interrogatories from either Ms. Johns or Mr. Nowicki nor have we received any further word from you regarding when we might expect to receive them. These interrogatories have been outstanding since April 21, 2007.

This is to request that you provide signed answers to interrogatories by Friday, August 24, 2007. If we do not receive the required answers, we are prepared to go forward with the filing of Motion for Conditional Default.

Thank you for your attention to this matter.

Ms. Woodworth sent the above letter to Mr. Grodt via telefax, email, and Federal Express.

52. On August 28, 2007, the Court issued an Order granting Coldwell's motion for summary judgment, stating "No objection filed."

**August 2007: Verani Files Conditional Default**

53. Having received no signature pages for the answers to the Verani Interrogatories, on or about August 29, 2007, Verani filed a motion for conditional default on that basis.
54. On September 7, 2007, the Court granted Verani's motion for conditional default.

**September 2007: Voluntary Nonsuit Filed in Doucet Case;  
Verani Moves for Default Judgment**

55. On or about September 19, 2007, and without any prior communication with Johns-Nowicki, Mr. Grodt filed a motion for entry of voluntary nonsuit in the Doucet Case.
56. On or about September 26, 2007, Verani filed a motion for entry of default judgment on the basis of both Johns-Nowicki's failure to move to strike the conditional default and to provide the answers to the Verani Interrogatories.
57. Mr. Grodt did not file a response to the motion for default judgment filed by Verani.
58. Ms. Johns has a clear memory of the following:

In late September 2007, Ms. Johns was preparing to leave for a month-long trip to China, departing on October 5, 2007. In late September, Ms. Johns spoke to Mr. Grodt in the parking lot of their health club and asked him whether there was anything she needed to know (or do) on her cases before leaving the country, and Mr. Grodt responded: "No. Nothing." Ms. Johns repeated her question; Mr. Grodt supplied the same answer.

Although he does not recall the conversation, Mr. Grodt does not dispute Ms. Johns's recitation of this conversation.

59. In an Order dated October 18, 2007, the Court granted Mr. Grodt's motion for entry of voluntary nonsuit in the Doucet Case.

**October 2007: Coldwell Files Motion for Attorney's Fees;  
Default Judgment Granted for Verani**

60. On October 18, 2007, Coldwell filed a motion requesting the Court order Johns-Nowicki to pay Coldwell's attorney's fees in the amount of \$15,905.72.
61. Mr. Grodt filed no objection to this motion.

62. In an Order dated October 22, 2007, the Court granted Verani's motion for default judgment.
63. In an Order dated October 31, 2007, the Court granted Coldwell's motion for attorney's fees, holding:

"Motion granted. This type of outrageous [sic] conduct cannot be condoned by the Court. People cannot bring a lawsuit without a good faith basis and escape responsibility by merely dropping the case. Judgment is awarded to defendant Coldwell Banker in the sum of \$15,905.72."

**November 2007: Ms. Johns Terminates Mr. Grodt**

64. On November 9, 2007, in the morning, Thomas Corcoran, Esq., of Forman, Corcoran & Associates, telephoned Ms. Johns to inform her that he had learned of a default judgment against her in the Fowler Case for over \$15,800.
65. Later that morning, Ms. Johns went to Mr. Grodt's office and asked him about the default judgment. Ms. Johns told Mr. Grodt she was considering terminating him. Mr. Grodt told Ms. Johns that the default judgment was his fault; he had sent the case out to a different attorney whom he did not properly supervise and who had neglected the case. Mr. Grodt told her that, while they no longer had a case against the realtors, they still had a case against NED and Mr. Fowler. Mr. Grodt asked Ms. Johns to think further about her case before deciding whether to terminate him.
66. Although Mr. Grodt does not have personal knowledge of these facts, he does not dispute that, after speaking with Mr. Grodt, Ms. Johns went to the Court and made a copy of her case files. Mr. Grodt does not dispute that it was on that date that she first learned of the motions for default, for summary judgment, for attorney's fees, and other pleadings in the

Fowler and Doucet cases. Mr. Grodt does not dispute that she had seen none of these pleadings prior to November 9, 2007.

67. Later in the day on November 9, 2007, Ms. Johns orally communicated to Mr. Grodt that she was terminating him. Mr. Grodt does not dispute that, on that date, Ms. Johns retained Michael J. Scott, Esq., of Scott & Scott, PA to represent Johns-Nowicki.
68. In a letter dated November 9, 2007, Ms. Johns wrote to Mr. Grodt and formally terminated his services.
69. On or about November 15, 2007, Mr. Scott filed a motion to reconsider the award of attorney's fees.
70. On or about November 19, 2007, Ms. Johns filed a letter of complaint against Mr. Grodt with the Attorney Discipline Office.
71. On December 18, 2007, the Court denied the motion to reconsider which Mr. Scott had filed on Johns-Nowicki's behalf.
72. In a letter dated January 30, 2008, Mr. Grodt replied to Ms. Johns's professional conduct complaint.
73. With respect to having sent the Johns-Nowicki case out to an unnamed attorney, Mr. Grodt wrote:

In Ms. John's [sic] case, I had met an attorney who indicated that he had significantly more experience in arbitration than I had and we discussed our teaming together on this matter. I provided him with the case file and a letter to Ms. Johns explaining what was happening. I felt comfortable, at the time, that I had managed to team with another attorney and that Ms. Johns would be well represented. . . .

Upon the notice of default and award of legal fees, Ms Johns came to my office, obviously upset and I explained what had gone wrong, how I was at fault, and that I would be responsible for the cost of the judgment of legal

fees. I attempted to contact my “team mate” but was unable to contact him. I immediately began to set aside money toward this judgment. I have also put my mal-practice carrier on notice that a mal-practice suit may be pending for any damages that may incur.

This is a failure on my part, not on anyone else’s part. Ultimately, it did not matter what my “team mate” did or did not do. The failure to diligently monitor the other attorney and the status of the litigation is my own fault and I accept the responsibility for it.

74. Lines 4-5 of the above letter refer to Mr. Grodt having provided his “teammate” with a copy of a letter Mr. Grodt had written to Ms. Johns-Nowicki. Mr. Grodt did not write a letter to Ms. Johns explaining that he had sent her case out to a different attorney.
75. On or about February 13, 2008, full payment was made by Mr. Grodt for the attorney’s fees owed to Coldwell and Ms. Fox.
76. In a letter to the Court dated February 20, 2008, Mr. Callaghan informed the Court that his clients had been paid the attorney’s fees awarded by the Court. In a letter to Mr. Grodt dated April 4, 2008, James L. DeHart, General Counsel for the Attorney Discipline Office, wrote:

In your letter of January 30, 2008, you reported that you teamed with another attorney with more arbitration experience than you. You stated that you provided him with a copy of Ms. Johns’ file.

Please **promptly** disclose to this Office, in writing, the name of the attorney.

In addition, enclose copies of all transmittal letters to and from said attorney. Finally, we need a copy of the letter you wrote to Ms. Johns explaining the referral.

(Emphasis in original.)

77. Mr. Grodt did not respond to Mr. DeHart’s April 4, 2008, inquiry.

78. On December 5, 2008, Mr. Grodt met with Disciplinary Counsel and Mr. DeHart at the Attorney Discipline Office. During that meeting, Mr. Grodt reiterated his story about having sent the Johns-Nowicki file to a different lawyer, but provided more details. Eventually, however, Mr. Grodt admitted that his story about the other lawyer was false. Mr. Grodt admitted that he did not give the file to a different lawyer; he was embarrassed about his mishandling of the Johns-Nowicki case and did not want to admit that he was solely responsible.

## **II. RULINGS OF LAW**

The above-listed facts having been found by clear and convincing evidence, the parties stipulated to and the Professional Conduct Committee concludes that there is clear and convincing evidence that Mr. Grodt violated the Rules of Professional Conduct as follows: New Hampshire Rules of Professional Conduct 1.3(a); 1.4(a)-(c); 8.1(a); 8.4(c) and 8.4(a).

### **Rule 1.3(a): Lack of Diligence**

79. Mr. Grodt had a duty to act with reasonable promptness and diligence on behalf of Johns-Nowicki.
80. Mr. Grodt failed to provide diligent representation to Johns-Nowicki in the following ways: (a) he failed to respond properly and in a timely manner to counsel for Coldwell and Verani about Johns-Nowicki's answers to interrogatories; (b) he failed to file proper and timely answers to Coldwell's and Verani's Interrogatories; (c) he failed to file a response to Coldwell's motion for summary judgment; (d) he failed to file a response to the motion for default judgment filed by Verani; (e) he failed to cure the conditional

defaults filed by Coldwell and Verani; (f) and he failed to respond to Coldwell's motion for attorney's fees.

81. Mr. Grodt's conduct as described above constitutes the failure to act with reasonable promptness and diligence on behalf of his clients.
82. Mr. Grodt's failures to act with reasonable promptness and diligence on his clients' behalf caused avoidable harm both to his clients' cases and to the lawyer-client relationship.
83. Mr. Grodt's failures in these regards constitute clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.3(a).

**Rule 1.4(a)-(c): Failure to Communicate**

84. Mr. Grodt had a duty to keep Johns-Nowicki reasonably informed regarding the status of their cases and to promptly comply with reasonable requests for information.
85. Mr. Grodt also had a duty to explain the legal and practical aspects of the matter so as to permit his clients to make informed decisions regarding the representation.
86. Mr. Grodt violated his obligation to communicate properly with Johns-Nowicki by failing to: (a) copy Johns-Nowicki on important pleadings and orders in their cases, including motions for default judgment and/or attorney's fees, and summary judgment, or otherwise communicate the substance of those pleadings, motions and orders to them; (b) explain to Johns-Nowicki the proper method of answering interrogatories, so that Ms. Johns and Mr. Nowicki would have understood that they were each required to file a separate set of answers to the Coldwell and Verani Interrogatories; (c) inform Johns-Nowicki of the reason he thought a nonsuit was necessary in the Doucet Case, and otherwise seek their

input on that issue; (d) respond to Ms. Johns' specific inquiries in late September 2007, about the status of their cases before her departure to China; and (e) inform Johns-Nowicki about the default judgment that the Court had entered against them as a result of his representation.

87. Mr. Grodt's failures to communicate with Ms. Johns constitute clear and convincing evidence of violations of N.H. R. Prof. Conduct 1.4(a)-(c).

**Rule 8.1(a): False Statements to Disciplinary Agency**

88. In Mr. Grodt's reply dated January 30, 2008, to Ms. Johns's professional conduct complaint, Mr. Grodt stated that he had sent the Johns-Nowicki case to a different attorney (whom Mr. Grodt referred to in the letter as his "team mate"). In Mr. Grodt's letter, he stated that the "team mate" did not properly handle the case, and Mr. Grodt did not properly supervise the "team mate."
89. During a meeting with Mr. DeHart and Disciplinary Counsel at the Attorney Discipline Office on December 5, 2008, Mr. Grodt reiterated his statement that he had sent the Johns-Nowicki case to a different lawyer and that that lawyer had neglected to answer the interrogatories and other pleadings. Mr. Grodt stated that he failed to supervise this other lawyer.
90. During the December 5 meeting at the Attorney Discipline Office, Mr. Grodt admitted that his statements concerning the other lawyer were false.
91. At the time that he made his false statements, Mr. Grodt intended to induce the Attorney Discipline Office to believe that the underlying lack of diligence in the Johns-Nowicki

litigation was due to the failure of a different lawyer to timely perform work in that litigation and Mr. Grodt's failure to supervise that lawyer.

92. The involvement of a purported second lawyer in this professional conduct complaint was a fact material to the Attorney Discipline Office's investigation of the handling of the Johns-Nowicki litigation, and the Attorney Discipline Office's prosecution of this attorney discipline matter.
93. Mr. Grodt's written statement in his January 30, 2008, letter about the existence of a "team mate" to whom he sent the Johns-Nowicki litigation, and his subsequent oral statements to that effect, constitute clear and convincing evidence of false statements of material fact to a disciplinary agency in violation of N.H. R. Prof. Conduct 8.1(a).

**Rule 8.4(c): Deceit**

94. On November 9, 2007, when Ms. Johns confronted Mr. Grodt about the default judgment, Mr. Grodt told Ms. Johns that he had collaborated with a different attorney to handle her case, and that Mr. Grodt had failed to supervise that attorney.
95. Mr. Grodt's statements about having involved a different attorney in the case whom Mr. Grodt failed to supervise were false, and Mr. Grodt knew at the time he made the statements that they were false.
96. Mr. Grodt intended thereby to induce Ms. Johns to believe that the underlying lack of diligence on her cases was due to the failure of another attorney as well as Mr. Grodt's own failure to supervise that attorney.
97. Mr. Grodt's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(c).

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

98. Because there exists clear and convincing evidence of the above violation as set forth herein, Mr. Grodt has necessarily violated Rule 8.4(a).

### **III. SANCTION AND ANALYSIS**

The Committee recommends the following sanction to which the parties agree:

1. Respondent's license shall be suspended for three years. The suspension shall be stayed for three years, during which period the Respondent shall be monitored and subject to conditions. The three-year period shall begin to run upon the entry of an order of discipline by the New Hampshire Supreme Court.
2. New Hampshire Supreme Court Rule 37(16)(f) provides that the Court may suspend attorneys "upon such terms and conditions as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession." A stayed suspension under conditions in this case is appropriate because it satisfies the Court's concerns as follows: (a) Respondent can be adequately supervised as he continues to perform legal services during the period of the stay; (b) conditions of suspension include monitoring and reporting on Respondent's practice, as well as his physical and mental health; and (c) so long as he abides by the conditions of the stay, Respondent will be able to perform legal services and practice law without causing harm to the public or to the integrity of the legal profession. The Committee believes that this sanction is in accord with the purposes of attorney discipline as described by the N.H. S. Ct. *See, e.g., Feld's Case*, 149 NH 19, 28 (2002). This sanction is also in accord with the ABA Center for

Professional Responsibility, *Standards for Imposing Lawyer Sanctions* (1991). See, e.g., *Shillen's Case*, 149 N.H. 132, 139 (2003) (noting that although the Court has never formally adopted these Standards, the Court has considered them when imposing sanctions).

### CONDITIONS OF STAY

3. The conditions of the three-year stay of suspension as outlined below is an agreement between the parties and is recommended by the Committee:

A. **Monitor:** The Monitor for the three-year period shall be the Executive Director of New Hampshire Lawyer's Assistance Program (NH LAP), currently Cecile B. Hartigan, Esquire.

B. **Mental Health Treatment:**

(1) Respondent shall continue to undergo therapy with a mental health professional and take medication for anxiety and depression, which is being monitored by his doctor. Respondent and his treating professionals confirm that the medications he is taking are extremely effective and have been successful in treating the symptoms of anxiety and depression that Respondent has experienced. Respondent agrees to: (a) continue having his doctor, currently Dr. Richard P. LaFleur of Southern New Hampshire Internal Medicine Associates of Derry, New Hampshire, oversee, supplement, adjust, and monitor the medications that treat his anxiety and depression, and (b) comply with all treatment recommendations made by that doctor (or any doctor, therapist, or other mental health professional

who is part of Respondent's treatment team), including the taking of any prescribed medication in such amounts and with such frequency as recommended by that doctor, throughout the period of the stay.

- (2) Respondent consents to directing his doctor to send a report to the Monitor, with a copy to Respondent, every six months (within the three-year time period) informing the Monitor of Respondent's participation and progress in the treatment recommended by that doctor. Each report shall address issues including whether Respondent is timely appearing at his scheduled appointments with that doctor, is meaningfully participating in the treatment prescribed by that doctor, and is complying with all of the treatment recommendations of the doctor. The reports shall be due as of June 30 and December 31 of each calendar year during the term of this Agreement. If the first report would cover less than thirty (30) days, that report shall be submitted on the following reporting date and shall cover the extended period.
- (3) Respondent shall execute a release permitting the doctors and any other mental health professionals treating Respondent to advise the Monitor and Disciplinary Counsel of any issues involving the medical treatment or counseling received by Respondent. The release shall permit both the Monitor and Disciplinary Counsel at any time during the three-year period
  - (a) to communicate with the doctors and mental health professionals and/or examine records pertaining to counseling and medical treatment,

and (b) to confirm Respondent's ongoing and meaningful participation in this counseling and the recommended medical treatment.

- (4) Every three months, each mental health professional other than the lead doctor treating Respondent shall provide a report to the Monitor addressing whether Respondent has meaningfully participated in any recommended treatment or counseling, whether Respondent is timely appearing at his scheduled appointments with each such professional, whether Respondent is complying with all of the treatment recommendations of that professional, and whether Respondent's mental health condition impedes occupational functioning as a lawyer. The quarterly reports shall be due on March 31, June 30, September 30, and December 31 of each calendar year during the term. If the first report would cover less than thirty (30) days, that report shall be submitted on the following reporting date and shall cover the extended period.
- (5) At any time during the term of this Agreement, any doctor or mental health professional shall advise the Monitor immediately of any conduct that raises a question as to Respondent's honesty, trustworthiness, or fitness as a lawyer. The Monitor shall, in turn, so notify Disciplinary Counsel. Such information may be considered by Disciplinary Counsel, depending on the circumstances, as grounds for filing a motion to impose all or a portion of the stayed suspension.
- (6) A failure on the part of Respondent to appear at a scheduled appointment

with any doctor or therapist (or anyone within the treatment team), without good cause, is to be communicated to the Monitor as soon as possible by the doctor (or other member of the treatment team). Should Respondent fail to appear without good cause at *two* consecutive appointments, with any member of the treatment team, the Monitor shall notify Disciplinary Counsel, and such failure may be considered by Disciplinary Counsel, depending on the circumstances, as grounds for filing a motion to impose all or a portion of the stayed suspension.

- (7) Respondent shall notify the Monitor within seven (7) days of any change in treatment professionals.

**C. Mentor:**

- (1) Respondent shall within seven (7) days of the Court's order in this case, propose to the Monitor a Mentor attorney to serve as Respondent's Mentor for law practice management and organization. Respondent anticipates that he will propose acceptance of his current NHLAP volunteer mentor, Jon Liland, Esq., of Sheehan, Phinney, Bass & Green, Hanover, NH, and that the Monitor and Disciplinary Counsel will approve this proposed mentor. To the extent that the proposed mentor is not approved or Respondent proposes a replacement mentor in the future, the provisions of subparagraph (2) shall apply.
- (2) The Monitor shall, in the first instance, have the authority to accept or reject the Mentor proposed by the Respondent. Disciplinary Counsel shall

have final authority. If rejected, the Respondent and Monitor shall make every effort to agree to a mutually acceptable Mentor, but, subject to Disciplinary Counsel's authority to reject a Mentor, the Monitor shall have the authority to appoint a Mentor notwithstanding Respondent's objections.

- (3) Respondent shall contact the Mentor by telephone at least once every two weeks to raise any issues that Respondent may have on the status, condition and management of Respondent's practice, as well as to seek the Mentor's recommendations for improvements to Respondent's practice. Respondent shall also meet in person with the Mentor on a periodic basis and will raise for discussion with and seek recommendations from the Mentor on other issues material to the Respondent's quarterly report.
- (4) Upon designation of the Mentor, Respondent shall execute a release permitting the Mentor to advise the Monitor at least quarterly regarding Respondent's implementation of any suggested law practice management and organization or any other changes recommended by the Mentor.
- (5) The Mentor shall promptly advise the Monitor of any conduct of Respondent that raises a question as to the Respondent's honesty, trustworthiness, or fitness as a lawyer. The Monitor shall, in turn, so notify Disciplinary Counsel. Such information may be considered by Disciplinary Counsel, depending on the circumstances, as grounds for filing a motion to impose all or a portion of the stayed suspension.

- (6) Except for good cause shown, Respondent's failure to appear at any scheduled appointment with the Mentor, shall be noted by the Mentor and reported to the Monitor immediately. If the Respondent fails to appear at *two* consecutive appointments with the Mentor and good cause has not been shown, the Monitor shall notify Disciplinary Counsel of any such failure may be considered by Disciplinary Counsel, depending on the circumstances, as grounds for filing a motion to impose all or a portion of the stayed suspension.

**D. New Hampshire Lawyer's Assistance Program:**

- (1) Respondent shall comply with all terms and conditions imposed on him by the NH LAP and Respondent's NH LAP Participation Plan dated March 17, 2009.
- (2) Respondent shall execute a release permitting the Executive Director of the NH LAP, as the Monitor in this Agreement, to communicate with Disciplinary Counsel about all aspects of his involvement in NH LAP.
- (3) Any material violation of a term of NH LAP may be considered by Disciplinary Counsel, depending on the circumstances, as grounds for filing a motion to impose all or a portion of the stayed suspension.

**E. Compliance with Rules of Professional Conduct:**

- (1) Respondent shall not engage in conduct that is contrary to the Rules of Professional Conduct;
- (2) Receipt of a grievance/complaint by the ADO during the three-year term alleging that Respondent has violated the Rules of Professional Conduct does not, in itself, constitute a violation of the terms of the stay;
- (3) In the event the ADO receives a grievance/complaint at or prior to the end of the three-year period, the stay shall be extended until such charge has been investigated and a determination has been made by the ADO (or, if necessary, the PCC) regarding disposition of such charge.

**F. Malpractice Insurance:**

- (1) If Respondent is in a practice setting in which the Rule 1.17 of the Rules of Professional Conduct would require disclosure by Respondent of the existence and extent of legal malpractice insurance coverage, then Respondent shall maintain malpractice insurance in an amount of not less than \$100,000.00 per occurrence and an aggregate amount of not less than \$300,000.00.
- (2) Respondent shall provide the Monitor with proof of such insurance within thirty (30) days of the date of commencement of the three-year term of stay and proof in each year thereafter.

**G. Change of Employment:** Respondent shall notify the Monitor and Disciplinary Counsel within seven (7) days of any change of employment. To the extent that

Mr. Grodt enters into private practice, he shall engage a law office management consultant within three months of opening an office, to review the systems that have been put into place for managing the practice.

H. **Multi-State Professional Responsibility Examination:** At least six (6) months prior to the termination of the three-year period of stay, Respondent shall take and pass the Multi-State Professional Responsibility Examination according to the standards established by the Board of Bar Examiners and provide proof to the Monitor of successful completion.

I. **Reporting Responsibility:**

(1) Respondent shall submit written quarterly reports to the Monitor concerning the status of Respondent's practice of law, as well as the condition of his physical and mental health. Respondent shall also describe and attest to his compliance with the conditions of the stay. The quarterly reports shall be due on or before March 31, June 30, September 30, and December 31 of each calendar year during the term. If the first report would cover less than thirty (30) days, that report shall be submitted on the following reporting date and shall cover the extended period. Each quarterly report shall include, but shall not necessarily be limited to, the following:

- (a) location and description of employment;
- (b) any change in residence, marital status, or employment;
- (c) description of issues discussed with the Monitor and actions taken

- in response to the Monitor's recommendations relating to Respondent's law practice, personal well-being and mental health;
- (d) description of Respondent's physical and mental health, nature of any treatment therefor, and response to recommendations of Respondent's health care providers;
  - (e) any civil lawsuit filed against Respondent;
  - (f) any civil judgment entered against Respondent;
  - (g) a description of any claims or threatened claims, civil, criminal or disciplinary, against Respondent asserted by clients, and Respondent's response thereto;
  - (h) arrests and criminal charges;
  - (i) an affirmation attesting to Respondent's compliance with the Rules of Professional Conduct and all conditions of the stay as set forth herein during the preceding calendar quarter.
- (2) In addition to all quarterly reports, a final report shall be submitted to the Monitor addressing the same issues no earlier than thirty (30) days, nor later than fifteen (15) days, prior to the last day of the three-year time period. The report shall be accompanied by an affirmation that Respondent has complied with all terms of the stay. A copy of the final report and affirmation shall be served on Disciplinary Counsel.
- (3) Respondent's quarterly and final reports shall be reviewed and approved by Respondent's Monitor.

- (4) Following Disciplinary Counsel's receipt of the final report and affirmation, and the issuance of a certification of approval by the Professional Conduct Committee (PCC), Respondent may file an assented-to motion with the Supreme Court to find Respondent in compliance with the terms of the suspension order and order his license reinstated.

#### **BREACH OF CONDITIONS**

4. Failure to comply with any of the terms and conditions of this Agreement shall constitute a violation of this Agreement and shall be grounds for imposition of all or any portion of the stayed suspension. For example, if Respondent were to violate a condition of this Agreement near the end of the three-year time period, he would, nonetheless, be subject to imposition of the full three-year term of suspension.
  - A. If the Monitor reports issues or concerns with respect to Respondent's compliance with any term or condition of the Agreement, or his general fitness to practice law, Disciplinary Counsel shall consider the report and shall determine whether, in the opinion of Disciplinary Counsel, the reported event is a material violation of the terms of this Agreement. In making that determination, Disciplinary Counsel may conduct such further investigation, if any, that Disciplinary Counsel deems appropriate. Respondent shall have the right to provide Disciplinary Counsel with any additional information regarding the reported event.
  - B. If Disciplinary Counsel concludes that, in Disciplinary Counsel's opinion, the reported event is a material violation, Disciplinary Counsel may file a motion with the PCC requesting that it impose six months of the stayed suspension.

Disciplinary Counsel may also move the PCC to recommend imposition of a greater portion of the stayed suspension. In the event that the PCC grants such request, Disciplinary Counsel may be directed by the PCC to petition the Supreme Court for imposition of any portion of the stayed suspension greater than six months.

- C. Respondent shall have the right to respond in writing to Disciplinary Counsel's motion, to request an evidentiary hearing thereon, and to request oral argument before the Committee. The PCC shall rule upon any request for an evidentiary hearing and for oral argument. If the PCC grants a request for an evidentiary hearing, the process shall thereafter be governed by New Hampshire Supreme Court Rules 37 and 37A (with certain exceptions noted herein).
- D. Following an evidentiary hearing (if requested), or the denial of a request for such hearing, the PCC shall determine whether the motion requesting imposition of the suspension should be granted or denied. Unless waived, oral arguments will be conducted to allow Disciplinary Counsel and Respondent to address the issue of imposition of the stayed suspension.
- E. Disciplinary Counsel shall have the burden of proof by a preponderance of the evidence to establish that there has been a material violation of a term of this Agreement and imposition of the stayed suspension is warranted. This lower burden of proof applies to any allegation that Respondent has committed a material violation of a term of this Agreement, including the term in paragraph 8(E)(1). This paragraph shall not be construed to alter the burden of proof

required to prove that Respondent violated a rule of professional conduct pursuant to a new Notice of Charges filed against Respondent during the term of this Agreement.

- F. If the Attorney Discipline Office receives a complaint against Respondent that arises out of events that pre-date the Court's suspension order, that complaint will be processed in the ordinary course of business. Any finding of a violation of the Rules of Professional Conduct that may result from that complaint will not be a basis for imposition of the stayed suspension in this case.
- G. If the Attorney Discipline Office receives a complaint against Respondent during the period of the three-year stay that arises out of events that post-date adoption of this Agreement by the PCC and are within the period of the three-year stay, that complaint will be processed by the Attorney Discipline Office on an expedited basis. Any final adjudication of a violation of the Rules of Professional Conduct that may result from that complaint may provide a basis for a request by Disciplinary Counsel that the PCC impose, or petition the Supreme Court to impose, the stayed suspension in this case. If Disciplinary Counsel makes such a request, Respondent shall be entitled to an evidentiary hearing and review by the PCC.
- H. At the conclusion of the three-year period, the suspension shall be permanently stayed provided that there are no complaints or motions pending pursuant to Paragraphs 9.G. or 9.B. of this Agreement. If such complaints or motions are filed during the three-year period, they can provide a basis for seeking imposition

of the stayed suspension even if the proceedings on such complaints or motions are concluded after the expiration of the three-year period of the stay. Any request for imposition of the stayed suspension that is based upon a complaint under Paragraph 9.G. hereof must be initiated within 30 days of final disposition of that complaint.

- I. In any proceeding to impose the stayed suspension, if the PCC finds that a basis for imposition of the stayed suspension has been proven in accordance with the applicable provisions of this Agreement, it shall have the discretion to impose a suspension of less than six months if it finds that such lesser suspension is appropriate under the facts presented.
- J. If Disciplinary Counsel learns that a reporting obligation of the Monitor, Mentor or mental health professional has not been complied with, the non compliance may be considered by Disciplinary Counsel, depending upon the circumstances, as grounds for filing a motion to impose all or any portion of the stayed suspension. This is true even though the required reporters are not signatories to this Agreement. Respondent understands that this Agreement is effective *only* if the required reporters comply with their reporting obligations.
- K. Nothing herein shall preclude Disciplinary Counsel from undertaking an expedited process to obtain temporary relief by petitioning the New Hampshire Supreme Court for interim imposition of the stayed suspension pending a final decision.

#### **IV. COSTS AND PROTECTIVE ORDER**

Mr. Grodt shall pay the expenses incurred by the Attorney Discipline Office in the investigation and prosecution of this matter. The Protective Order shall allow for full publication of the record, with the exception only of mental health records.

#### **V. CONCLUSION**

Based on the above reasons, having found violations of violated the Rules of Professional Conduct 1.3(a); 1.4(a)-(c); 8.1(a); 8.4(c) and 8.4(a) by clear and convincing evidence, the Professional Conduct Committee directs Disciplinary Counsel to file a petition with the NH Supreme Court requesting a three year suspension, suspended for three years, contingent upon the conditions described above.

January 19, 2010

  
Margaret H. Nelson, Chair

#### **Distribution:**

Landya B. McCafferty, Disciplinary Counsel  
Richard Y. Uchida, Esquire  
Thomas P. Grodt, Esquire  
File