

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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**RECOMMENDATION FOR DISBARMENT**

On February 16, 2010, the Professional Conduct Committee heard oral argument in the above-referenced matter pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(2). Landya B. McCafferty, Disciplinary Counsel, appeared for the Attorney Discipline Office. Russell F. Hilliard, Esquire, appeared on behalf of the Respondent, Mary Notaris, Esquire. The Professional Conduct Committee included Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Susan R. Chollet, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, James R. Martin and Jennifer L. Parent. David N. Cole was absent. Toni M. Gray, Vice Chair and Richard H. Darling were recused from the proceeding. Having reviewed the record, including the Notice of Charges, the Answer, the Jointly Submitted Exhibits, the transcript of the sanction hearing, Respondent's prior disciplinary record, the Hearing Panel Report and the Stipulation of the parties submitted at the time of oral argument, the Professional Conduct Committee makes the factual findings and rulings of law as detailed below.

**I. FACTUAL FINDINGS**

The parties stipulated to certain factual allegations contained in the Notice of Charges.

The Hearing Panel found these facts and certain others by clear and convincing evidence. In addition, the parties entered into a stipulation of further facts that was submitted to the Professional Conduct Committee on February 16, 2010. As a result, the Professional Conduct Committee, upon consideration and review of these materials and the record as a whole, determined that the record supports the following findings of fact by clear and convincing evidence:

1. Ms. Notaris is an attorney licensed to practice law in New Hampshire. She was admitted to practice on June 19, 1992. At all times material to this proceeding, Ms. Notaris operated her law office as Notaris Law Office, 45 Stiles Road, Unit 104, Salem, New Hampshire 03079.

2. In the Fall of 2007, Paul Pedersen, the Complainant, was dealing with a post-divorce family law matter that was being handled by his counsel in Massachusetts.

3. Although his divorce was entered in Massachusetts, Mr. Pedersen had since remarried and moved to Florida.

4. Mr. Pedersen's ex-wife and then 19 year-old son were residing in New Hampshire. Mr. Pedersen believed his ex-wife was in contempt of the divorce decree for not having taken out a second mortgage on her home in New Hampshire.

5. Mr. Pedersen's lawyer in Massachusetts advised him to seek representation in New Hampshire. He further advised him to attempt to register the Massachusetts divorce decree in a New Hampshire court and then to file for contempt.

6. Mr. Pedersen understood that the issue of whether to register the decree in New Hampshire was time-sensitive because he was also contemplating an appeal of the ruling in

Massachusetts. He understood that he had a limited time within which to attempt to register the decree.

7. On or about September 26, 2007, Mr. Pedersen telephoned Ms. Notaris and discussed the matter.

8. After a couple of telephone calls with Ms. Notaris, Mr. Pedersen decided to retain her to register the foreign decree and pursue the matter in New Hampshire.

9. Ms. Notaris agreed to represent Mr. Pedersen and to make the requisite filing in Hillsborough County Superior Court - North. Ms. Notaris asked Mr. Pedersen to send her a \$2,200.00 retainer.

10. On or about October 5, 2007, Mr. Pedersen forwarded to Ms. Notaris a retainer check for \$2,200.00.

11. Based on his conversation with Ms. Notaris, Mr. Pedersen understood that Ms. Notaris would complete the registration process within approximately two months.

12. Ms. Notaris' bill, which she forwarded to Mr. Pedersen at a later date, contained an entry that indicated that she had prepared and filed a petition to register a foreign decree on October 16, 2007.

13. On or about October 29, 2007, Mr. Pedersen telephoned Ms. Notaris' office to confirm that Ms. Notaris had filed the necessary paperwork to register the decree.

14. Ms. Notaris returned Mr. Pedersen's call sometime between October 29 and November 6, 2007. Ms. Notaris informed Mr. Pedersen that she would forward to him a copy of what she had filed with the court.

15. On or about November 14, 2007, Mr. Pedersen telephoned Ms. Notaris' office and

left a message asking “if [Ms. Notaris had filed, and if [she] had sent him the hard copy [she] had talked to him about.”

16. Having received no response, on or about November 26, 2007, Mr. Pedersen sent Ms. Notaris an email, in which he wrote: “We have not received a copy of what you submitted. Will you send us one?”

17. Thereafter, Mr. Pedersen continued to inquire of Ms. Notaris about the October 16 filing and whether she could forward a copy to him. Ms. Notaris did not forward a copy to him, nor did she respond to Mr. Pedersen’s inquiries or otherwise address his questions concerning the October 16 pleading.

18. Between December 1, 2007, and February 22, 2008, Mr. Pedersen made seven specific, additional requests of Ms. Notaris via email and telephone that she provide him with a copy of the October 16 pleading.

19. On or about December 31, 2007, Ms. Notaris filed what purported to be a second petition to register with the court. Ms. Notaris forwarded to Mr. Pederson a copy of this purported second petition. Nonetheless, Mr. Pedersen persistently asked to see a copy of the October 16 pleading.

20. Despite Mr. Pedersen’s repeated and specific requests, Ms. Notaris did not provide him with a copy of the October 16 pleading or otherwise respond to his requests for information about it.

21. On May 5, 2008, Mr. Pedersen filed a letter of complaint with the Attorney Discipline Office, alleging professional misconduct on the part of Ms. Notaris related to her handling of the registration of the foreign decree, as well as her failures to communicate with him

about matters, including the October 16 pleading.

22. In Mr. Pedersen's May 5, 2008, complaint, he specifically referenced Ms. Notaris' failures to respond to his requests for a copy of the October 16 pleading.

23. In a letter to the Attorney Discipline Office dated July 18, 2008, Ms. Notaris responded to Mr. Pedersen's complaint. In her letter, Ms. Notaris did not mention the October 16 pleading, or explain why she had not forwarded it to Mr. Pedersen.

24. During the investigation conducted by the Attorney Discipline Office, numerous requests were made by members of the Attorney Discipline Office for Ms. Notaris to supply the Office with a copy of the October 16 pleading. Although Ms. Notaris responded to other requests for information, Ms. Notaris repeatedly failed to respond to the requests that she supply the Office with a copy of the October 16 pleading.

25. There was no record at the Hillsborough County Superior Court - North that the October 16 pleading had been filed.

26. On March 24, 2009, Ms. Notaris supplied the Attorney Discipline Office with what she claimed was a copy of the October 16 pleading (hereinafter referred to as "Altered Pleading").

27. On April 3, 2009, Ms. Notaris spoke with Landya B. McCafferty, Disciplinary Counsel, about the case at Ms. Notaris' office. Gladys E. Strickhart, Administrative Assistant to Disciplinary Counsel, was also present.

28. During the April 3 meeting, Ms. Notaris falsely stated that the Altered Pleading was the document that was created and filed on Mr. Pedersen's behalf on October 16, 2007.

29. During the April 3 meeting, Ms. Notaris falsely asserted that the Altered Pleading

had been misfiled in another case file within her office, which file she described as belonging to a “Mr. Peterson” (as distinguished from Mr. Pedersen, and hereinafter referred to as the “Peterson Case”). Ms. Notaris stated that she had not been able to locate the Altered Pleading or send a copy to Mr. Pedersen because it had been misfiled.

30. During the April 3 meeting, Ms. Notaris stated that she discovered the misfiling when she noticed that the pleadings index in the Peterson Case contained an entry for a petition to register foreign decree, which she knew had not been done in the Peterson Case. Ms. Notaris stated that, upon recently retrieving the Peterson Case file, she was able to locate the Altered Pleading inside that file.

31. During the April 3 meeting, and upon request by Disciplinary Counsel, Ms. Notaris showed Disciplinary Counsel on Ms. Notaris’ computer what Ms. Notaris asserted was the digital version of the pleadings index of the Peterson Case file.

32. Prior to showing Disciplinary Counsel the digital pleadings index in the Peterson Case, and while Disciplinary Counsel was waiting to examine the index, Ms. Notaris altered the digital version of the pleadings index of the Peterson Case file so that it would contain an entry for a petition to register foreign decree.

33. Later in the April 3 meeting, Ms. Notaris admitted that she did not have a copy of the original October 16 pleading. Ms. Notaris admitted that she manufactured the Altered Pleading in an effort to provide the Attorney Discipline Office with a copy of the purported October 16 pleading.

34. Ms. Notaris admitted that she manufactured the Altered Pleading by making small changes to the December 2007 pleading *see, supra* at ¶ 19, to make that pleading look like the

purported October 16 pleading.

35. Later in the April 3 meeting, Ms. Notaris also admitted that, during the meeting, she had altered the digital version of the pleadings index in the Peterson Case to make false reference to the Altered Pleading while Disciplinary Counsel was waiting for Ms. Notaris to locate the pleadings index in the Peterson Case on Ms. Notaris' computer.

36. On February 16, 2010, during oral argument before the Professional Conduct Committee, and for the purposes of this attorney discipline proceeding, the parties stipulated that an October 16 petition in the case was created in Ms. Notaris' office on or about that date.

37. The parties further stipulated that Ms. Notaris believed a petition had been filed on or about October 16, 2007.

## **II. RULINGS OF LAW**

The Professional Conduct Committee, upon consideration and review of the record in this case, makes the following rulings of law by clear and convincing evidence:

### **Rule 1.4: Failure to Communicate**

38. Allegations set forth above are incorporated by reference.

39. During the pendency of the underlying case, Rule 1.4 was amended, effective January 1, 2008. Both the new Rule 1.4, as well as the old Rule 1.4, contain provisions requiring attorneys to "promptly comply with reasonable requests for information" from clients. See N.H. R. Prof. Conduct 1.4(a)(4) (new rule); Rule 1.4(a) (old rule).

40. Accordingly, at all relevant times, Ms. Notaris had a duty to Mr. Pedersen to promptly comply with his reasonable requests for information.

41. As described in more detail above, Ms. Notaris violated her obligation to

communicate properly with Mr. Pedersen by repeatedly ignoring his reasonable requests for a copy of the purported October 16 pleading, and/or any information related thereto.

42. As a result, Ms. Notaris failed to adequately communicate with Mr. Pedersen thereby violating Rule 1.4.

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

43. Allegations set forth above are incorporated by reference.

44. In a letter to the Attorney Discipline Office dated March 24, 2009, Ms. Notaris submitted the Altered Pleading, and offered it as evidence of the existence of the purported October 16 pleading.

45. At the time that Ms. Notaris submitted the Altered Pleading as evidence, she knew that the Altered Pleading was a false representation of the purported October 16 pleading. Ms. Notaris intended to induce the Attorney Discipline Office into believing that the Altered Pleading was an actual copy of the October 16 pleading.

46. During the April 3, 2009, meeting with Disciplinary Counsel, Ms. Notaris reiterated her false assertion that the Altered Pleading was an actual copy of the October 16 pleading.

47. At the time that she made this false assertion, Ms. Notaris knew that the Altered Pleading was a false representation of the purported October 16 pleading. At the April 3, 2009, meeting, Ms. Notaris intended to induce the Attorney Discipline Office into believing that the October 16 pleading existed and that the Altered Pleading was an actual copy of the purported October 16 pleading.

48. During the April 3 meeting, Ms. Notaris altered certain digital records on her

computer in an effort to manufacture further false evidence that would support her claim that the October 16 pleading had been misfiled.

49. At the time that she altered this digital evidence on her computer, she knew that the actual digital evidence would not support her story about the mistaken filing of the Altered Pleading. At the April 3, 2009, meeting, Ms. Notaris altered this digital evidence with the intent to induce Disciplinary Counsel into believing that the Altered Pleading was an actual copy of the purported October 16 pleading, and that it had been misfiled in the Peterson Case file.

50. During the April 3, 2009, meeting at Ms. Notaris' office, Ms. Notaris admitted that her statements concerning the Altered Pleading were false, and that she had manufactured the Altered Pleading in an effort to induce the Attorney Discipline Office to believe that the Altered Pleading was an actual copy of the purported October 16 pleading.

51. During the April 3, 2009, meeting at Ms. Notaris' office, Ms. Notaris admitted that, during that meeting and in the presence of Disciplinary Counsel, she had altered digital evidence on her computer in the Peterson Case in an effort to create evidence that would support her claim that the Altered Pleading had been misfiled.

52. The existence and veracity of the Altered Pleading was a fact material to the Attorney Discipline Office's investigation of Ms. Notaris' handling of the case and the Attorney Discipline Office's prosecution of this attorney discipline matter.

53. Ms. Notaris' creation and submission of the Altered Pleading, her false statements about the veracity of the Altered Pleading, as well as her alteration of the digital evidence on her computer to support her false statements about the Altered Pleading, constituted 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**

54. Allegations set forth above are incorporated by reference.

55. As specifically alleged *supra* at ¶ 42-50, Ms. Notaris' creation and submission of the Altered Pleading, her false statements about the veracity of the Altered Pleading, as well as her alteration of the digital evidence on her computer to support her false statements about the Altered Pleading, constituted conduct involving dishonesty, deceit or misrepresentation in violation of N.H. R. Prof. Conduct 8.4(c).

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

56. As a consequence of violating Rule 1.4, Rule 8.1(a) and Rule 8.4(c), Ms. Notaris also violated N.H. R. of Prof. Conduct 8.4(a).

### **III. SANCTION**

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

We recognize that "the purpose of attorney discipline is not to inflict punishment, but rather to protect the public, maintain public confidence in the Bar, preserve the integrity of the legal profession and prevent similar conduct in the future." *Grew's Case*, 156 NH 361, 365 (2007); quoting *Coddington's Case*, 155 NH 66, 68 (2007).

In making the recommendation for disbarment, we focus in this case on Ms. Notaris' conscious and deliberate decision to deceive Disciplinary Counsel during the investigation of this matter and her decision to undermine Disciplinary Counsel's effort to obtain an accurate record in this case. Ms. Notaris' choice can only be seen as an effort to undermine the attorney discipline process itself. We recognize, too, that Ms. Notaris failed to respond to Mr. Pedersen's

reasonable, repeated and insistent requests for information about his case. Mr. Pedersen needed to register the Massachusetts decree in a timely manner to protect his legal interests in his divorce case. The record reflects that the Petition to Register the Foreign Order was not filed in October, 2007, as Respondent initially claimed, but instead was filed on January 26, 2008 after Ms. Notaris properly completed the Petition and included Mr. Pedersen's sworn signature. See, Jointly Submitted Exhibits, Exhibit 6, pp 122-125. Ms. Notaris also failed to answer Mr. Pedersen's requests for information about the October 16 pleading, requests which started as early as the end of October, 2007. She only directly addressed the request for a copy of the pleading when she sent the Altered Pleading to the Attorney Discipline Office on March 24, 2009, a delay of more than one year. At that point, Ms. Notaris misled not only Disciplinary Counsel but her client as well.

In reaching this decision, we use the *American Bar Association Standards For Imposing Lawyer Sanctions* (2005) for guidance. *Grew's Case, supra* at 365; *Coffey's Case*, 152 NH 503, 513 (2005). Under the *Standards*, we are to consider the following factors when imposing sanctions: "(a) the duty violated; (b) a lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; (d) the existence of aggravating or mitigating factors." *Standards, supra*, § 3.0. In instances of multiple charges of misconduct, "the ABA recommends that the sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct." *Douglas' Case*, 156 NH 613, 621 (2007), quoting *Richmond's Case*, 152 NH 155, 160 (2005).

In the first instance, we consider the ethical duty violated by Ms. Notaris when she (a)

fabricated the October 16, 2007 pleading and provided it to Disciplinary Counsel; (b) falsely told Disciplinary Counsel that she had located the pleading on her computer during their meeting of April 3, 2009; and (c) further failed to provide Mr. Pedersen with a copy of the pleading or any explanation of its status despite numerous requests that the pleading and information about it be provided to him.

The Hearing Panel, in reviewing the *Standards*, and recommending that Ms. Notaris be suspended for a three year period, chose to apply *Standards*, § 7.0, finding that Ms. Notaris violated a duty she owed as a professional.

Disciplinary Counsel suggests that Ms. Notaris' conduct more properly is covered by *Standards*, § 5.1 in that Ms. Notaris failed to maintain her personal integrity. More particularly, Disciplinary Counsel contends that Ms. Notaris' deceit and misrepresentation during the investigation of this case seriously and adversely reflects on her fitness to practice law. Disciplinary Counsel supports her claim by pointing out that Ms. Notaris' conduct not only impacted efforts to resolve Mr. Pedersen's disciplinary complaint but also occurred while Ms. Notaris was addressing a separate disciplinary complaint regarding her conduct in another pending matter. *See, Notaris, Mary advs. Attorney Discipline Office # 07-059*, hereinafter referred to the "Pierce Case."

Counsel for Ms. Notaris acknowledged that her conduct involved dishonesty and deceit, factors covered by *Standards*, § 5.1, but noted that Ms. Notaris believed the disputed pleading was created on or about October 16, 2007. Counsel therefore contended that the seriousness of Ms. Notaris' conduct should be assessed in light of this important factor. *See, transcript of oral argument before the Professional Conduct Committee, February 16, 2010, p 59.*

The Professional Conduct Committee, after reviewing the record, the Hearing Panel Report, the Stipulation and arguments of counsel, concludes that Ms. Notaris breached her ethical duty to maintain her personal integrity and uses *Standards*, § 5.1 as its basis for determining a sanction in this case.

As the Hearing Panel noted, the New Hampshire Supreme Court has repeatedly stated:

No single transaction reflects more negatively on the legal profession than a lie.  
*Astle's Case*, 134 NH 602, 606 (1991).

Here, Ms. Notaris realized for months that she could not locate the October 16, 2007, pleading. Rather than acknowledge this to her client and Disciplinary Counsel, she created a false document, forwarded it to Disciplinary Counsel and hoped that her deception would not be uncovered. Only at a point when she was directly challenged about the pleading's authenticity – and this after she had fabricated a false entry on her computer – did she admit to her deception and acknowledge her deceit.

In reviewing the *Standards*, § 5.1, the Committee also concludes that Ms. Notaris' mental state was intentional. She created the false pleading, mailed it to Disciplinary Counsel and contended it was an actual copy of the original. Her conduct was deliberate and done with the intention of protecting herself during the investigation of Mr. Pedersen's disciplinary complaint.

As to the injury caused by Ms. Notaris' conduct, the Committee concludes that it seriously impacted Disciplinary Counsel's effort to address Mr. Pedersen's complaint, and was done with the purpose of interfering with the attorney discipline process. This conduct can only be seen as significantly undermining the confidence that the public could have in relying on Ms. Notaris' representations and the disciplinary process itself. There is actual injury to the

disciplinary process, the legal profession and to Mr. Pedersen in his effort to obtain accurate, complete and timely information about his case.

The New Hampshire Supreme Court has repeatedly noted the importance of lawyers cooperating with disciplinary investigations. In *Clark's Case*, 136 NH 497 (1992), the Court quoted the Washington Supreme Court:

Internal investigation and self-discipline are at the very heart of a profession, as distinguished from a trade or business. The Bar Association's investigation of a complaint is an integral part of the machinery for handling charges regarding the ethics and conduct of the attorneys admitted to practice before this court. Public confidence in the legal profession, and the deterrence of misconduct, require prompt, complete investigations. The process of investigating complaints depends to a great extent upon an individual attorney's cooperation. Without that cooperation, the Bar Association is deprived of information necessary to determine whether the lawyer should continue to be certified to the public as fit. Obviously, unless attorneys cooperate in the process, the system fails and public confidence in the legal profession is undermined. If the members of our profession do not take the process of internal discipline seriously, we cannot expect the public to do so and the very basis of our professionalism erodes. *In re Clark*, 99 Wash. 2d 702, 707-708, 663 P.2d 1339, 1341-1342 (1983).

Having determined that Ms. Notaris' conduct demonstrated a failure to maintain personal integrity, the Committee also concludes that *Standard 5.11(b)* most appropriately addresses the issues raised by this case. It provides:

Disbarment is generally appropriate when...:

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously reflects on the lawyer's fitness to practice.

In light of Ms. Notaris' intentional conduct, the breach of her ethical duties and the consequences which flowed from it, the Committee concludes that the baseline sanction in this case is disbarment. *See, Grew's Case, supra* at 366.

In reaching our conclusion regarding sanction, we have also considered a number of aggravating and mitigating factors included in the *Standards*, §§ 9.2 and 9.3.

The Committee first notes that this is not Ms. Notaris' first complaint reviewed by the Attorney Discipline System. In 2001, she received a reprimand for charging a clearly excessive fee to a client. Much as the case we now consider relates to Ms. Notaris' personal integrity, we conclude that this prior violation also relates to her personal integrity. *See, Notaris, Mary advs. Doris Donovan #00-008*. In 2009, in the Pierce Case, she agreed to a public censure based on her simultaneous representation of clients who had conflicting interests in a custody matter. *See, Notaris, Mary advs. Attorney Discipline Office # 07-059*. Importantly, the violation in the instant case occurred as Ms. Notaris addressed the allegations in the Pierce Case. As a consequence, Ms. Notaris' choice to provide false and deceptive information to the Attorney Discipline Office was made at a time when she should have been acutely aware of her duty to cooperate in a disciplinary investigation. That she then chose to affirmatively mislead Disciplinary Counsel while the public censure in the Pierce Case was waiting our review can only be considered a significant and serious aggravating factor. *See, Standards*, § 9.22(a).

Ms. Notaris' conduct also must be considered not only as dishonest but also as selfish within the contemplation of the *Standards* for aggravating factors. *See, Standards*, § 9.22(b). Ms. Notaris' decision to mislead Disciplinary Counsel, create a false document, falsely claim that it could not be found because it was misfiled in another client's file and, finally, falsely create an entry on her computer during the time she was being interviewed by the Attorney Discipline Office staff are further significant and serious aggravating factors.

Apart from Ms. Notaris' conduct in responding to the disciplinary complaint, Ms. Notaris

also engaged in conduct that disregarded Mr. Pedersen's concerns and placed her interest in self protection ahead of his desire to obtain information about his case. Mr. Pedersen had a legitimate interest in finding out details about the status of his case and the contents of his file.

Ms. Notaris' decisions were made in bad faith and made with a conscious effort to avoid providing the requested materials. Her decisions were made to mislead and to deceive Disciplinary Counsel and continued until the moment when she could no longer maintain the deception and therefore had to acknowledge the truth of her conduct. Ms. Notaris submitted false evidence and made false statements during this investigation. *See, Standards, § 9.22(e).*

Finally, Ms. Notaris had been practicing law for more than 15 years at the time the investigation was conducted and at the time she made these misrepresentations. Any lawyer, particularly an experienced lawyer, knows that this conduct is unacceptable. *See, Standards, §9.22(i).*

The Committee therefore concludes that Ms. Notaris' prior disciplinary offenses, *Standards, §9.22(a)*, her dishonest and selfish motive, *Standards, §9.22(b)*, the fact that she violated multiple disciplinary rules, *Standards, §9.22(d)*, her bad faith obstruction of Disciplinary Counsel's investigation by failing to provide requested materials to the Attorney Discipline Office and by creating the Altered Pleading and the false entry on her computer, *Standards, §9.22(e) and (f)*, and her substantial experience in the practice of law, *Standards, §9.22(i)*, are all aggravating factors in this case.

There is one considerable mitigating factor presented by Ms. Notaris. It is a factor we noted in issuing the public censure in the Pierce Case. Ms. Notaris has made a career choice to provide extensive *pro bono* services, legal services which are not otherwise available. In her

testimony before the Hearing Panel, Ms. Notaris described her volunteer work with the AIDS community. She was a Board member and then President of the New Hampshire AIDS Foundation. She has volunteered to prepare estate plans for over 100 of their clients. She also volunteered to assist AIDS Foundation clients with social security disability applications. When other AIDS organizations learned of her availability, Ms. Notaris performed these same services, first for Seacoast AIDS Response in Portsmouth, and then for an AIDS organization in Nashua. Not only has she devoted a considerable amount of time to these activities, she has also volunteered to provide free legal services to New Hampshire military families. When her nephew was being deployed to Iraq, she agreed not only to prepare his will but also 480 wills and estate plans for every member of his unit. At the time of her hearing, she was also in the process of assisting another 213 soldiers who were part of a transportation group being deployed to Iraq. Other than assisting with estate plans and wills, Ms. Notaris also testified that she volunteered to perform numerous civil unions and marriages for those being deployed. Ms. Notaris further testified to her community work which included being president of hockey and softball organizations and acting as treasurer for seven years for her children's Parent Teacher Organization.

Ms. Notaris testified at the hearing to recognizing and regretting her mistakes:

...I've been in practice for a long time. And if anything that I've learned from being in practice is that people make mistakes, and it is not necessarily a white or a black, that sometimes there are gray. And I've met numerous people that have made bad decisions in their life, and as lawyers, we try to get them through this process and help them and help them realize that there's life on the other side. And they own up to what they did, and they move forward.

And I think people deserve a second chance. I think that this – this is a – I'll live with this for the rest of my life. It is not representative of me. It is – it is a single instance of a bad choice, and you know, it's not what I want to be

remembered for...

Transcript, Sanction Hearing, October 7, 2009, at 70.

The Committee therefore finds that Ms. Notaris' *pro bono* work and her service to the community is a mitigating factor in this case. *Standards, See*, §9.32(g).

The issue for the Committee in assessing the aggravating and mitigating factors is whether, on balance, they warrant a departure from the baseline sanction of disbarment.

Disciplinary Counsel strongly argues that despite Ms. Notaris' volunteer work, her conduct in this case, combined with the serious aggravating factors presented, warrants disbarment as the only appropriate sanction.

Counsel for Ms. Notaris counters that the *Standards* are guidelines, guidelines frequently referenced by the New Hampshire Supreme Court, but guidelines that have never been adopted by the Court. Counsel contends that considering the record as a whole, including Ms. Notaris' misconduct but also including her record of accomplishment as a lawyer, a suspension is a more appropriate sanction in this matter. He notes that the stipulation provided to the Committee at oral argument augments the record to demonstrate that Ms. Notaris actually created the October 16, 2007 petition. In that context, he argues that the creation of the Altered Pleading, while deceptive and improper, had an underlying factual basis. Further, he argues that the false document was provided to Disciplinary Counsel on March 24, 2009 and Ms. Notaris acknowledged her error on April 3, 2009, only 10 days later.

While the Committee recognizes Ms. Notaris' volunteer work and her eventual admission that she had created the second copy of the October 16, 2007 petition, her dishonesty goes to the heart of an attorney's responsibility. As the New Hampshire Supreme Court noted in *Astle's*

Case:

In today's society, more than ever before, the legal profession touches and affects nearly every facet of private and public life. Without debating the merits of this pervasiveness, one indisputable consequence of such an increase has occurred: the need for maintaining and requiring the highest possible levels of honesty and trustworthiness from the legal practitioners in this State. 136 N.H. at 606.

In weighing the full record in this case, including Ms. Notaris' prior disciplinary record, her substantial experience in practicing law, the multiple misrepresentations made to the Attorney Discipline Office and her failure to respond in a timely and accurate manner to Mr. Pedersen's requests for information about her case, the Professional Conduct Committee respectfully recommends that the New Hampshire Supreme Court issue an Order disbarring Ms. Notaris.

While the Committee recommends disbarment as the appropriate sanction in this matter, we are also mindful of Ms. Notaris' commitment to perform *pro bono* work, a commitment which is all the more notable because she is a sole practitioner. Recently, the Supreme Court in *Conner's Case*, 158 N. H. 299 (2009), allowed an attorney to apply for readmission three years following the time he ceased practicing law, a period the Court characterized as "a meaningful term of disbarment." *Id.* at 305. The Court included a time frame for possible readmission in light of Mr. Connor's efforts to address his personal problems. Here, we believe that Ms. Notaris should also be allowed the opportunity to reapply for admission after three years. Ms. Notaris has demonstrated an ability to contribute to the community and to those in need through her legal work. We, therefore conclude, under the full circumstances of this case, Ms. Notaris should be able to seek readmission three years following her disbarment.

As a result, The Committee respectfully recommends that the Supreme Court issue an

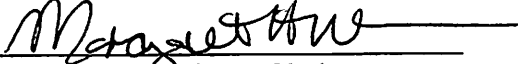
Order disbaring Ms. Notaris in this case and allow her to start the process of readmission three years following the date of the final Order of the Supreme Court. Ms. Notaris would need to comply with the requirements of New Hampshire Supreme Court Rule 37(2)(d).

#### IV. CONCLUSION

For the above reasons, the Professional Conduct Committee recommends to the New Hampshire Supreme Court that Mary Notaris be disbarred for violating New Hampshire Rules of Professional Conduct to include Rule 1.4, Rule 8.1(a), Rule 8.4(c) and, as a consequence, Rule 8.4(a). The Professional Conduct Committee recommends that Ms. Notaris be assessed all costs and expenses related to the investigation and prosecution of this matter. *See*, N.H. Supreme Court Rule 37(19).

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

April 20, 2010

  
Margaret H. Nelson, Chair

Distribution:

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