

New Hampshire Supreme Court  
**Professional Conduct Committee**

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Toni M. Gray,\* Vice Chair  
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*Hobbs, James B. advs. Professional Conduct Committee #02-049*

**Public Censure**

On September 20, 2005, the Professional Conduct Committee deliberated on the above-referenced matter. Both Disciplinary Counsel and Respondent, representing himself, waived oral argument.

Members present included Margaret H. Nelson, Chair, Benette Pizzimenti, Toni Gray, James Martin, Reporter, Eleanor Dahar, Nancy Hacking, Stephen Stepanek, Tom Connair, David Cole, Gretchen Hamel, Alan Cronheim. Member David Page was absent.

The Professional Conduct Committee thoroughly reviewed the record which includes: Notice of Charges; Answer; Notice of Hearing; Disciplinary Counsel's Witness List; Disciplinary Counsel's Exhibits; Disciplinary Counsel's Proposed Findings of Fact and Rulings of Law and Requests for Costs; Transcript of Hearing Before the Hearing Panel on April 22, 2005; Hearing Panel Report dated June 15, 2005; Disciplinary Counsel's Memorandum in Response to Hearing Panel Report with Exhibits, dated June 30, 2005; Respondent's Waiver of Oral Argument.

The Professional Conduct Committee makes factual findings and rulings as detailed below.

**I. FINDINGS OF FACT**

The Professional Conduct Committee has determined that the record supports the following factual findings of the Hearing Panel by clear and convincing evidence:

1. On October 12, 2001, in the course of representing a client, the Respondent filed a Motion to Dismiss in Hillsborough County Superior Court for the Southern District. Paragraph 9 in that Motion reads as follows:

That without further notice to the Defendant, Attorney Devine then caused the arrest file to be transferred to Superior Court. In addition, it appears that the State deliberately used a false address for the Defendant to insure [sic] that the Defendant was not given notice of the arraignment hearing. The address used by the State was 39 Conant Road, Nashua, New Hampshire. Defendant's address was at all times 54 Profile Circle, Nashua, New

Hampshire and there is no indication in the police file of any witnesses at the address of 39 Conant Road, Nashua, New Hampshire. It is unlikely that this error was not intentional.

2. Attorney Roger Chadwick, an Assistant County Attorney for Hillsborough County was the author of the indictment that was incorrectly mailed to the client. Prior to the filing of the Motion to Dismiss, Attorney Chadwick and Attorney Hobbs had a conversation where Attorney Chadwick admitted to the mistake and assured Attorney Hobbs that it was an oversight. Attorney Hobbs filed the Motion to Dismiss anyway leaving in the language above.
3. Attorney Chadwick has been an Assistant County Attorney for over five years.
4. An indictment is the criminal equivalent of the civil complaint that notifies the defendant of the charges against him.
5. At the time of the incident at issue, Attorney Chadwick would often retrieve an old indictment saved in his computer and use it as a model for a new one, changing only the dates and names and addresses as appropriate. Often the actual charging language for a specific offense would remain the same.
6. For the underlying case that resulted in the alleged offense. Attorney Chadwick did in fact retrieve an existing indictment that he had previously saved on disc to use as a model. He then replaced the names and the dates.
7. Attorney Chadwick failed to change the address in this case by accident.
8. Attorney Chadwick did not realize his error until after the defendant failed to show up for his arraignment, and was subsequently arrested.
9. Upon realizing the error, Attorney Chadwick released the defendant.
10. Subsequently, Attorney Chadwick and Attorney Hobbs had a conversation in a court parking lot where Attorney Hobbs told Attorney Chadwick that he thought that Attorney Devine, the Nashua police prosecutor, and the Nashua Police had conspired to forward a false address to the county attorney's office.
11. Attorney Chadwick told Attorney Hobbs that the idea was ludicrous and that the error had in fact been his. The police reports showed that the correct address had in fact been forwarded to the county attorney's office.
12. Upon receiving the Motion to Dismiss, Attorney Chadwick immediately called Attorney Hobbs, repeated again that the fault was his, that the allegations in the Motion were groundless and that he expected Attorney Hobbs to immediately withdraw that portion of the motion. Attorney Hobbs did not.

13. Attorney Chadwick processed an average of 15 indictments per month; he often typed his own documents.

### **RULINGS OF LAW**

The above-listed facts having been found by clear and convincing evidence, the Professional Conduct Committee concludes that there is clear and convincing evidence that Attorney Hobbs has violated the following Rules of Professional Conduct:

Rule 3.1 A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 8.4(a) It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

### **III. ANALYSIS**

Attorney Hobbs was not credible when he claimed that he had not heard the explanation of error prior to filing the Motion to Dismiss. After the motion was filed he was again advised that the error was innocent and requested to withdraw that portion of his motion. He failed to do so. When Attorney Hobbs claimed that the state deliberately used a false address, he had no basis for that assertion and it was frivolous.

Attorney Hobbs' actions constitute a violation of Rule 3.1.

Attorney Hobbs violated Rule 3.1, and thus his actions constitute a violation of Rule 8.4(a).

### **IV. SANCTION**

Having made the aforementioned findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is a Public Censure and the assessment of all costs incurred by the Professional Conduct Committee in the prosecution of this matter.

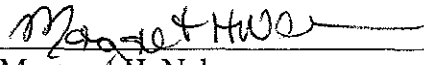
In aggravation, Respondent has a lengthy disciplinary record. On June 29, 1992, Attorney Hobbs received an Admonition in Case No. 914252; on July 28, 2000, Attorney Hobbs received a Reprimand in Case No. 99-125; on October 3, 2003, Attorney Hobbs received a Warning in Case No. 03-019 and the case was dismissed with a finding of no professional misconduct; and on October 24, 2003, Attorney Hobbs received a Reprimand in Case No. 99-124. The Committee was presented with no evidence in mitigation.

This sanction is in accord with the purposes of attorney discipline as described by the New Hampshire Supreme Court. *See, e.g., Feld's Case*, 149 N.H. 19, 28 (2002). 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.

## V. CONCLUSION

For all of the above reasons, the Professional Conduct Committee Publicly Censures James. B. Hobbs for violating N.H. R. Prof. Conduct, Rules 3.1 and 8.4(a), and assesses all costs associated with the investigation and prosecution of this matter.

Date: October 5, 2005

By:   
Margaret H. Nelson  
Chair

c.c. James B. Hobbs, Esquire  
Landya B. McCafferty, Disciplinary Counsel  
File