

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  
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*Colella, Stephen P. advs. Attorney Discipline Office #09-055*

**PUBLIC CENSURE**

On July 20, 2010, the Professional Conduct Committee deliberated the above-referenced matter. Members present included Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, David N. Cole, Alan J. Cronheim, Gerald A. Daley, Julie A. Introcaso, James R. Martin and Jennifer L. Parent. Thomas P. Connair and Richard H. Darling were absent.

Having reviewed the record, including the Joint Motion to Permit Waiver of Notice of Charges and Hearings Committee Process, and Stipulation as to Facts, Violations, and Sanction, and additional documentation supplied by the Respondent, the Professional Conduct Committee accepted the Stipulation and made factual findings and rulings as detailed below:

**I. FACTUAL FINDINGS**

The Professional Conduct Committee (“Committee”) has determined that the record supports the following factual findings, by clear and convincing evidence:

1. Stephen P. Colella, Esquire, is a Massachusetts attorney admitted to the Massachusetts Bar in 1977.
2. Mr. Colella is not a member of the New Hampshire Bar.

3. Mr. Colella has always practiced alone with a very small clerical staff. His office is located at 145 South Main Street, Bradford, Massachusetts 01835-0038.
4. Over the years, Mr. Colella has occasionally appeared in New Hampshire courts. During that time, the process for doing so evolved.
5. In the early years, Mr. Colella obtained local counsel. Next, local counsel had to be in the courtroom. As time went on, a Motion Pro Hac Vice had to be filed. Finally, the present rule was adopted covering out of state practice in New Hampshire.
6. By order dated January 5, 2006, Mr. Colella was publicly reprimanded in Massachusetts.
7. On September 25, 2009, Mr. Colella filed a Motion for Admission Pro Hac Vice in Merrimack County Superior Court in *State v. Bardsley, et al*, Docket No. 09-E-0317.
8. The motion did not disclose that Mr. Colella had been reprimanded in Massachusetts in 2006.
9. The motion did not disclose that a previous Motion for Admission Pro Hac Vice filed in March 2009 had been denied in April 2009, without prejudice to re-file and without explanation.
10. Mr. Colella had instructed his paralegal to prepare the earlier 2009 motion which she "cut and pasted" from a computer version of a similar matter from prior to January 2006.
11. Mr. Colella's paralegal took the same information and attached it to the September 25, 2009, motion.
12. The same procedure had been followed with eight other Motions for Admission Pro Hac Vice filed by Mr. Colella between January 5, 2006 and July 23, 2008.
13. Mr. Colella represents that he has a busy practice and delegates responsibilities to his staff.
14. He did not read the motions for content before signing them.
15. Mr. Colella represents, and there is no evidence to the contrary, that the omissions were inadvertent and an oversight without any intent to withhold any information.
16. Upon learning of the omissions, the Merrimack County Superior Court denied the September 25, 2009 Motion for Admission Pro Hac Vice.
17. Mr. Colella had appearances in two other New Hampshire Courts. In both matters he filed an amended motion with no action being taken.

18. Mr. Colella takes full responsibility for not reading the motions for content.
19. Mr. Colella acknowledges that it is presumed that lawyers familiarize themselves and know the rules of courts in which they practice.

## II. RULINGS OF LAW

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

### **Rule 3.4(c): Fairness to Opposing Party and Counsel**

“A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.”

20. Mr. Colella acknowledges that New Hampshire Superior Court Rule 15(b) reads: “The signature of an attorney to a pleading constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information and belief there is good ground to support it; and it is not interposed for delay.”
21. Mr. Colella did not read the motions for content (or similar motions filed since 2006) before signing them. He acknowledges that there is clear and convincing evidence of a violation of Rule 3.4(c).

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

Having found the foregoing violation, there is clear and convincing evidence that Mr. Colella’s conduct, as described herein violated N.H. R. Prof. Conduct 8.4(a).

## III. ANALYSIS

The purpose of the Court’s disciplinary power “is to protect the public, maintain public

confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future.” *E.g. Conner’s Case*, 158 N.H. 299, 303 (2009). “The sanction must take into account the severity of the misconduct.” *Coffey’s Case*, 152 N.H. 503, 513 (2005). Although the Court has not adopted the *ABA Standards For Imposing Lawyer Sanctions* (1991) (“Standards”), it looks to them for guidance. *Conner’s Case*, 158 N.H. at 303. The *Standards* set forth a four part analysis for courts to consider when imposing sanctions: a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by the lawyer’s misconduct; and (d) the existence of aggravating or mitigating factors.” *Id.* (quoting *Douglas’ Case*, 155N.H. 613, 621 (2007); *Standards* 3.0.

Under the first prong of the analysis, Mr. Colella violated his duty to the Court by not following the rules of the tribunal. The purpose of a Pro Hac Vice is to gain admission to another Bar for the purpose of one proceeding. Mr. Colella repeatedly signed motions that were not true, not verified; and he failed to inform the Court of his prior Reprimand in the State of Massachusetts. Even though his omission was inadvertent, it was caused by negligence on his part by not reading and not verifying each motion for content before signing it. In addition, based on the supplemental facts discovered during oral argument, one Pro Hac Vice motion was not signed by him, but by a paralegal. This action violates applicable Court rules.

Under the second prong of the analysis, Mr. Colella’s mental state appears to be one of negligence. Mr. Colella represents that his omissions were inadvertent.

Under the third prong of the analysis, Mr. Colella interfered with the legal proceedings in the State of New Hampshire by not informing the Court of his prior misconduct in the State of Massachusetts. The decision to allow him to present a case in New Hampshire courts may not

have been allowed if the court had been duly informed of his prior record.

Based on the above considerations the Professional Conduct Committee turned to the *Standards* to establish a baseline sanction. *Standards* Section 6.24 states: ‘Admonition<sup>1</sup> is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.’ Section 6.24 does not apply in this case because this was not an isolated instance of negligence.

*Standards* Section 6.23 states: “Reprimand<sup>2</sup> is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.” In this case, Mr. Colella committed the negligence of not reading for content a pleading which he then signed. Section 6.23 is the baseline sanction given the negligence and the injury to the Court.

Mitigating factors in this case include the fact that Mr. Colella has accepted responsibility for his conduct and has cooperated with the disciplinary process. The Committee identified one aggravating factor: Mr. Colella’s record of Reprimand for similar conduct in another state. Taking the aggravators and mitigators into consideration, the Committee determined that Public Censure is the appropriate sanction.

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<sup>1</sup> The most analogous sanction in New Hampshire is a Reprimand.

<sup>2</sup> The most analogous sanction in New Hampshire is a Public Censure.

#### IV. SANCTION

Having made the aforementioned findings and rulings, the Committee concludes that the appropriate discipline in this matter is a Public Censure. 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 *Standards*. *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).

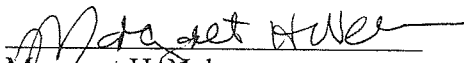
#### V. COSTS

The parties have stipulated, and the Committee accepts the Stipulation, that the Respondent shall pay all costs associated with the investigation and prosecution of this matter.

#### VI. CONCLUSION

For all of the above reasons, the Committee hereby issues a Public Censure to Mr. Colella for violating N.H. R. Prof. Conduct 3.4(c): Fairness to Opposing Party and Counsel; and 8.4(a): General Rule.

August 30, 2010

  
Margaret H. Nelson  
Chair

c.c. James L. DeHart, General Counsel  
Russell F. Hilliard, Esquire  
File