

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

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James, John A., Jr. advs. Karen Bachler #2009-006

SIX MONTH SUSPENSION STAYED FOR TWO YEARS
Contingent on Compliance with Terms and Conditions of this Order

On February 15, 2011, the Professional Conduct Committee (PCC) heard Oral Argument and deliberated the above captioned matter. The following members were present: 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 Lawrence A. Vogelman. Thomas P. Connair and Richard H. Darling were absent.

I. FINDINGS OF FACT

In preparation for the hearing, the Committee members reviewed the record in this case, including but not limited to the Hearing Panel Report. Both parties stated that they take no exception to the Finding of Fact made in that report, so the Committee finds that there is clear and convincing evidence establishing the following:

1. John A. James, Jr. is an attorney licensed to practice law in New Hampshire. Mr. James was admitted to practice in 1977. At all times material to this proceeding, Mr. James operated

his law office as James & James, 23 Main Street #2, Andover, Massachusetts 01810-3730. He is also admitted to the Massachusetts and Florida Bars.

2. On June 15, 2007, Karen Bachler, her husband, Craig Bachler, and their two children met with Mr. James at his office. Karen Bachler sought to retain legal counsel to represent her in a trust matter regarding The Ferris Family Trust - 2006 (hereinafter "the Trust").

3. Warren Ferris, Sr., Karen Bachler's father, created the Trust. Warren Ferris, Jr., Karen Bachler's brother, was listed as trustee on the Trust. The Trust granted the trustee virtually unfettered discretion in disbursing trust assets for the education of the grandchildren, after which the trust was to be divided between Karen Bachler's brother and sister. The Trust expressly made no provision for Karen Bachler or her children.

4. Mrs. Bachler told Mr. James about her involvement in her parents' lives and finances. Several years prior to her father's death, Mrs. Bachler's parents had fallen onto hard times, and Mrs. Bachler told Mr. James of her claim to property located at 1-3 Kenyon Road, Salem, New Hampshire, based on a history of conveyances of the property during that time.

5. Mrs. Bachler took a deed to the property and took over the mortgage, making the payments so that her parents could remain in their house. Later, when her parents became financially able, Mrs. Bachler deeded the house back to her parents who then resumed making the payments on the mortgage. At some point after that, Mrs. Bachler's parents conveyed the house into the Ferris Family Trust, a fact Mrs. Bachler learned upon her mother's death, approximately 6 months prior to her father's death. At that same time, Mrs. Bachler learned that the Trust excluded her and her family.

6. Mrs. Bachler also told Mr. James that she was worried that her brother would spend the money in the trust within the next couple of years. She explained that her brother had two children, one in private college and one about to go.
7. Mrs. Bachler informed Mr. James that Attorney Ralph Stein represented Warren Ferris, Jr., regarding the Trust and Mr. Ferris, Sr.'s estate.
8. Mr. James and Mrs. Bachler discussed the prospects of settlement. Mrs. Bachler communicated to Mr. James that she desired to negotiate a settlement with her brother and believed that he was interested in sharing some of her father's estate with her.
9. Mr. James agreed to represent Mrs. Bachler in connection with any process required in pursuit of her claims.
10. Mr. James and Mrs. Bachler did not enter into a written fee agreement. However, Mr. James required \$3,000 up front, which Mrs. Bachler paid in full. Mr. James wrote a letter to Attorney Stein that day, stating that he represented Mrs. Bachler and asking Attorney Stein to contact him to discuss the Ferris Estate matter.
11. Over the next month to six weeks, Mr. James worked to draft an agreement between Karen Bachler and her siblings that would satisfy Mr. and Mrs. Bachler. Mr. James kept in touch with the Bachlers by email and they traded drafts of the proposed agreement back and forth.
12. From the date Mrs. Bachler retained Mr. James, Mr. James had nearly all of his conversations and correspondence with Craig Bachler, with permission from Mrs. Bachler.
13. On Friday, August 17, 2007 at 9:11 p.m., Mr. Bachler sent the following email to Mr. James:

John,

Prepare a strategy. Kathleen has changed her mind because of an aunt and uncles [sic] influence. We want to go forward with a suit for everything including the second trust. Notify the trustee (Warren) we are suing for everything. We need to set up a call to go over details including how much money we need to put into escrow.

Thanks,
Craig Bachler

13. The next day, August 18, Mr. James emailed Mr. Bachler and asked, "Can we talk Monday?"

14. On or about August 21, Attorney Stein, on behalf of Mr. Ferris, Jr., wrote Mr. James a letter indicating that there were significant legal limitations that restricted Mr. Ferris' ability to alter or amend the Trust. Mr. James forwarded that letter to the Bachlers on August 23.

15. Sometime between August 21 and September 13, Warren Ferris, Jr. offered \$45,000 plus some items in settlement. Mr. James discussed this offer with Mr. and Mrs. Bachler. Mrs. Bachler decided not to accept the offer. On September 13, Mr. James wrote Attorney Stein a letter rejecting the settlement offer.

16. On September 18, Attorney Stein confirmed to Mr. James that Mr. Ferris, Jr., did not intend to probate the estate and had filed a will with the Rockingham County Probate Court. Mr. James sent copies of this correspondence to Mr. and Mrs. Bachler.

17. On January 27, 2008, Mrs. Bachler sent an email to her sister-in-law, Betty Ferris, and copied Mr. James on it. In it, she claimed to be a "debtor of the family trust," entitled to payment. She also indicated she was going to have Mr. James challenge a second trust (a trust Mrs. Bachler believed to be separate from Ferris Family Trust - 2006, because real estate documents made mention of a Ferris Family Realty Trust) in order to have it declared null and void. Mrs.

Bachler indicated that the matter should "go to Probate" and be "divided three ways." Mrs.

Bachler stated that she told her attorney to wait until after the holidays and then file suit.

18. At no time during the period from August 17, 2007 until January 27, 2008, or beyond did Mr. James indicate to the Bachlers that they had to reengage him to bring suit, that he had not previously contemplated bringing suit on their behalf, or that his representation had been limited.

19. Mr. James filed a Petition for Estate Administration ("Petition") on or about April 23, 2008. He stated in the Petition, "Warren Ferris, Jr. of Salem cannot serve or continue to serve [as named executor] because of a potential conflict of interest. His children are beneficiaries of a Trust created by Deceased which if subject to probate results in financial loss."

20. In his Petition, Mr. James stated the wrong date of death, even though he had the death certificate.

21. After Mr. James filed the Petition, the Rockingham County Probate Court brought several filing problems to Mr. James' attention. On April 24, the Court notified Mr. James that he had failed to pay the correct filing fee with the Petition.

22. About two weeks after the Court notified Mr. James of the filing fee problem; it notified him that he had failed to submit certain required documents: 1) the legatees and devisees form; 2) the declination of Warren Ferris, Jr., named executor in the will; and 3) the certification of trust pursuant to RSA 564-B:10-1013.

23. On or about June 18, 2008, the Probate Court contacted Mr. James again and informed him that that he had improperly filed the legatees and devisees form, and that the other forms mentioned above were still outstanding.

24. On or about June 27, 2008, the Probate Court again contacted Mr. James and explained other deficiencies with the Petition and legatees and devisees form. The Court indicated that the correct documents had to be submitted by the date certain of July 20, 2008.

25. On or about July 23, 2008, Mr. James filed the documents as requested, along with a Motion for Instructions seeking the Court's guidance "as to how to proceed in the absence of a Declination by the Executor or a Certificate of said trust by the Trustee." The Court scheduled a hearing on the Motion for August 25, 2008.

26. On August 6, 2008, Attorney Stein objected on behalf of his client, Mr. Ferris, Jr., and stated that Mr. Ferris, Jr. denied "receiving a request that he decline the appointment as executor or that he provide a certification pursuant to NHRSA 564-B:10-1013."

27. Also on August 6, 2008, Mr. James moved to continue the August 25 hearing because he planned to be out of the country on that date. The Court rescheduled the hearing for September 15, 2008.

28. On or about August 8, 2008, Attorney Stein sent Mr. James a copy of Mr. Ferris, Jr.'s answer and objection to the Petition, along with a letter expressing his opinion that no second trust actually existed, and that some amendments Mr. Ferris, Sr. made to the Family Trust were the source of the confusion. Attorney Stein invited Mr. James to sit down and talk with him in an effort to straighten the matter out. Mr. James did not contact Attorney Stein to discuss the confusion surrounding whether there were two trusts or just one.

29. Mr. James sent a copy of the answer and objection to the Bachlers.

30. The Probate Court sent the Bachlers notices of the original hearing date for the Motion for Instructions. Mrs. Bachler contacted Mr. James and told him that she would attend the

hearing if necessary. Mr. James told Mrs. Bachler that she need not attend the hearing because it was a "formality."

31. After Mr. James continued the matter and the Court rescheduled the hearing on the Motion for Instructions, Mrs. Bachler again told Mr. James in two emails and a phone message that she could attend the hearing. Mr. James never responded to the message and emails.

32. On September 15, 2008, Mr. James did not show up for the court hearing on his Motion for Instructions. The Court denied Mr. James' Motion.

33. On September 18, the Court sent Mr. James a check for \$35.00 representing a refund of the publication fee, since no appointment was made in the matter.

34. Mr. James' mother had died on August 24, 2008. Mr. James did not inform the Bachlers or the Court that he would be absent or unavailable around this time. In his December 17, 2009, response to Disciplinary Counsel, Mr. James says only, "My Mother died in late August, 2008. I missed the hearing scheduled hearing [sic] of September 15, 2008 as a result of a scheduling error."

35. On September 19, 2008, Mr. Bachler sent an email to Mr. James that stated as follows:

John,

I left several messages for you. We received the court notice indicating that our action is not being granted. On the 15th, what transacted? Were you in court? I called and left a message earlier this week on what happened and you failed to return my call. We realize you are busy, but we are too. We retained you to represent Karen's best interest. Karen was ready to fly up to NH this week to attend this hearing that "is a formality". If she was there, she could of (sic) possibly pleaded the case.

I want an outline this week as to where we go from here. It is 15 months since we retained you, [sic] it took over a year before you scheduled any type of action in probate. I have left repeated calls and emails in the past. I maintain a log and record of all e-mails. Start proceedings to sue for the house. Karen has proof that she has a financial interest in it, she is a creditor of the estate. Go forward with this. Send a notice of demand for the house to the trustee and his attorney. I want to see a draft by September 26, 2008.

I look forward to hearing from you.

Sincerely,

Craig Bachler

36. On September 23, 2008, Mr. James emailed Mr. Bachler and said:

Just opened [the September 19] email. Called you and left a voice mail. I am in Court every morning but available in the afternoons. When you say that you wanted to sue for the house, what do you mean? I know that you have discussed in the past irregularities concerning the execution of the deed. Is this what you are talking about?

Jay

37. The house that Mr. Bachler referenced to in his September 19 email was the 1-3 Kenyon Road house in Salem, New Hampshire that Mrs. Bachler discussed with Mr. James at their first and subsequent meetings.

38. Mr. Bachler attempted numerous times to contact Mr. James over the month via email and messages left with Mr. James' support person.

39. On Thursday, October 23, Craig Bachler sent Mr. James another email, indicating that he had not heard from Mr. James for a month.

40. On November 6, 2008, Karen Bachler sent Mr. James an email telling Mr. James she had not heard from him. She demanded action.

41. On December 8, 2008, Craig Bachler sent Mr. James an email stating that Mr. James had continued to ignore the Bachlers' emails and phone calls. Mr. Bachler told Mr. James to consider the email a demand for the refund of the \$3,000.00 retainer.

42. On December 19, 2008, Mr. Bachler sent Mr. James an email telling Mr. James that he had ignored Mr. Bachler's email of two weeks ago, and that if Mr. James did not send the file and refund, they would file fraud charges.

43. Mrs. Bachler did not pursue any further legal action. She believed that her brother had spent the trust money by that point.

44. On February 1, 2009, Mrs. Bachler filed a complaint with the Attorney Discipline Office (ADO). The ADO could not docket it because Mrs. Bachler did not file it in accordance with the rules for filing. On March 9, 2009, Mrs. Bachler filed her complaint again, this time in accordance with all rules and the ADO docketed her complaint.

45. In a letter to Mr. James dated March 18, 2009, James L. DeHart, General Counsel to the ADO, notified Mr. James in writing that he had docketed Mrs. Bachler's grievance as a formal complaint. Mr. DeHart enclosed a copy of Mrs. Bachler's grievance with his letter to Mr. James.

The letter included the following language:

You are required to submit an original and two copies of your reply [to the complaint] within 30 days of the date of this letter to James L. DeHart, General Counsel, Attorney Discipline Office, 4 Chenell Drive, Suite 102, Concord, NH 03301. See Supreme Court Rule 37A(II)(a)(5)(C).
IT IS EXPECTED THAT YOU WILL PROMPTLY RESPOND TO THE REQUESTS OF THIS OFFICE. THE FAILURE TO COOPERATE WITH A DISCIPLINARY AGENCY COULD RESULT IN THE SCHEDULING OF A PUBLIC HEARING AND IN A FINDING THAT THE RULES OF PROFESSIONAL CONDUCT HAVE BEEN VIOLATED. RULE 8.1(b).
(Emphasis in the original)

46. Mr. James did not respond to Mrs. Bachler's docketed complaint.

47. On May 4, 2009, the ADO sent Mr. James another letter indicating that it had not heard from him, enclosing a copy of the March 18 letter, and reminding him that his failure to cooperate would result in a referral to Disciplinary Counsel for a Rule 8.1(b) violation. The letter

asked Mr. James to "[p]lease give this matter your *immediate* attention." (Emphasis in the original) Mr. James did not respond.

48. On June 11, 2009, Martha Van Oot, Chair of the Complaint Screening Committee, copied Mr. James on a letter informing Disciplinary Counsel that "the Complaint Screening Committee voted to refer the matter to Disciplinary Counsel for further action on both the failure to respond to a disciplinary authority and on the merits of the complaint."

49. Mrs. Bachler filed the identical grievance (dated February 1, 2009) with the Massachusetts Office of the Bar Counsel. The Massachusetts Office of Bar Counsel received the grievance on February 4, 2009.

50. On December 2, 2009, former Disciplinary Counsel Landya B. McCafferty sent Mr. James a letter explaining that she was reviewing the file in the Bachler matter and was interested in speaking with him. Shortly thereafter, Mr. James contacted the ADO in an effort to set up a time to speak with Ms. McCafferty. Mr. James filed a three-page written response and exhibits on or about December 17, 2009.

51. By mid-March, Mr. James still had not followed up with Ms. McCafferty to schedule a meeting with her. On March 17, 2010, Ms. McCafferty wrote a letter to Mr. James, again asking to speak with him. Ms. McCafferty mentioned that she had left a voice mail on March 15, 2010, but had not heard from him.

52. Mr. James finally contacted the ADO on March 22, 2010. Mr. James said he had been on vacation, which is why he did not respond to Ms. McCafferty's letter sooner. After some discussion, Ms. McCafferty and Mr. James scheduled a meeting for April 2, 2010. They did, in fact, meet to discuss the complaint and the file on April 2, 2010.

II. RULINGS OF LAW

The Committee finds, by clear and convincing evidence, that the record in this matter establishes that Mr. James violated the following Rules of Professional Conduct:

Rule 1.1: Competence

Mr. James owed Mrs. Bachler a duty to identify areas beyond Mr. James' competence and bring those areas to Mrs. Bachler's attention. Mr. James had the duty to formulate a real and cognizable basis for bringing an action that allowed Mrs. Bachler to gain the legal relief and result she sought. Once Mr. James filed the Petition for Estate Administration, he owed Mrs. Bachler a duty to properly prepare it along with all accompanying documents, and to pay attention to details and schedules necessary to assure that he completed the matter he undertook with no avoidable harm to Mrs. Bachler's interest. Mr. James breached this duty. He took ineffective legal action in Mrs. Bachler's case, and then made repeated errors while attempting to file the Petition for Estate Administration, including failing to file fees and documents in accordance with the rules and procedures of the Probate Court.

The facts above having been proven by clear and convincing evidence, Mr. James' conduct in these respects violates of N.H. R. Prof. Conduct 1.1(b)(3), 1.1(b)(4) and 1.1(b)(5).

Rule 1.3: Diligence

Mr. James owed a duty to Mrs. Bachler to act with reasonable diligence and promptness while representing her. Mr. James breached his duty to act with reasonable diligence and promptness when he delayed filing any action, and ultimately filed an ineffective action, almost four months after Mrs. Bachler directed him to seek legal recourse beyond settlement. Mr. James breached his duty to pay attention to details and schedules necessary to assure that he completed

the matter he undertook with no avoidable harm to Mrs. Bachler's interest when he failed to appear at the September 15, 2008 Motion for Instructions hearing, causing the Court to dismiss the matter.

The facts above having been proven by clear and convincing evidence, Mr. James' conduct in these respects violates of N.H. R. Prof. Conduct N.H. R. Prof. Conduct 1.3.

Rule 1.4: Communications

Mr. James owed Mrs. Bachler a duty to keep Mrs. Bachler reasonably informed regarding the status of legal steps he had taken, was taking, and planned to take on her behalf. Mr. James owed Mrs. Bachler a duty to promptly respond to reasonable requests for information about the case. Mr. James breached his duty by neglecting to respond to Mr. and Mrs. Bachler's inquiries via email and telephone from September 2008 through February 2009, seeking information about the status of Mrs. Bachler's case.

The facts above having been proven by clear and convincing evidence, Mr. James' conduct in these respects violates N.H. R. Prof. Conduct 1.4(a)(3) and 1.4(a)(4).

Rule 8.1: Failure to Cooperate

In its March 18, 2009 letter, the Attorney Discipline Office (ADO) informed Mr. James that it had docketed a complaint against him based upon Mrs. Bachler's allegations. A copy of the complaint was enclosed. The March 18 letter informed Mr. James that, pursuant to N.H. Sup. Ct. R. 37A(II)(a)(5)(C), Mr. James was required to respond within 30 days. The ADO also wrote to Mr. James on May 4, 2009, reminding him of the complaint and asking for his immediate attention to the matter. The Complaint Screening Committee copied Mr. James on its June 11, 2009 letter, referring the matter to Disciplinary Counsel. By letter dated December 2, 2009,

Disciplinary Counsel wrote to Mr. James explaining that she was reviewing the file and would like to speak with him. Only then did Mr. James respond to the ADO, and again waited until April 2010 to meet with Disciplinary Counsel face-to-face.

Mr. James' failure to respond to the ADO's correspondence until the prosecutor informed Mr. James she was actively reviewing the file represents a knowing failure to respond to a lawful demand for information from a disciplinary authority.

The facts having been proven by clear and convincing evidence, Mr. James' conduct in these respects violates of N.H. R. Prof. Conduct 8.1(b).

Rule 8.4(a): General Rule

Any one of the above alleged rule violations, proven by clear and convincing evidence, would necessarily constitute a violation of 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* ("*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 in imposing sanctions: "(a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." *Id.* (quoting *Douglas' Case*, 155 N.H. 613, 621 (2007)); *Standards* §3.0.

The evidence shows that Mr. James's conduct violated certain duties to his client, and

also a duty to the profession. It is also clear that Mr. James acted knowingly with respect to each of his violations. Regarding any actual or potential injury, Mrs. Bachler did not suffer any articulable financial harm as a result Mr. James' conduct, but there was serious injury to the profession as a result of the violations found, including the lack of cooperation with the disciplinary process.

The Committee discussed the mitigating and aggravating factors to be considered in this case as those were the focus of the parties' arguments. The Hearing Panel suggested that the following be considered as mitigating factors:

- 1. Absence of a dishonest or selfish motive,*
- 2. Personal or emotional problems, and*
- 3. Remorse.*

The Committee agrees that no dishonest or selfish motive for Mr. James' misconduct is apparent. Additionally, the fact that Mr. James' mother passed away during his representation of Mrs. Bachler likely caused Mr. James' distress, leading to his failure to act with respect to communications with his client and the court. Finally, Mr. James appeared to be sincere in his remorse when he appeared before the Hearing Panel and the Committee was similarly impressed by Mr. James' remorse at the time of his oral argument.

However, there are aggravating factors to be considered as well. The Hearing Panel found the following factors exist:

- 1. Prior disciplinary offenses;*
- 2. Multiple offenses;*
- 3. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with Rules or Orders of the disciplinary agency, and*
- 4. Substantial experience in the practice of law.*

Mr. James has been found to have previously violated the rules, specifically Mr. James received a sanction of public reprimand on in March, 2002. In this matter, Mr. James violated a number of rules by engaging in various separate and distinct acts giving rise to “multiple offenses.” Finally, Mr. James’ unusual reluctance to cooperate with Disciplinary Counsel must be considered as an aggravating factor. The reason for his lack of cooperation is unknown, but the Hearing Panel found that the delays and non-responsiveness of Mr. James in his interactions with Disciplinary Counsel suggested an element of bad faith, and the Committee agrees that his lack of cooperation with the disciplinary process is troubling.

The Committee recognizes that Mr. James has been a practicing attorney for more than thirty years, and the nature of the legal practice and law office practice management has evolved during that time. It is of particular concern to the Committee that there appears to have been no fee agreement in this case, few time records and a lack of reliable office practices in place to assure adequate and timely communication with clients. This dilatory approach to representation, if left unaddressed, will likely result in further incidents of misconduct. Obviously, his lack of competence in the area of probate law, at the time he agreed to handle a probate matter, is also a significant concern.

Mr. James indicated that he has always practiced law in a small firm or as a sole practitioner. He admitted that he never reached out to other attorneys when he could have used additional expertise or assistance in this case, but whatever the specific cause of his misconduct here, Mr. James failure to seek assistance from or consultation with others was another fundamental error. Again, there does not appear to be a selfish or dishonest motive behind this

misconduct, rather the violations here are the results of ineptitude, oversight, avoidance, or mismanagement of his practice.

The Hearing Panel recommended to this Committee that an appropriate sanction in this matter was a suspension from the practice of law for a period of 45 days. The Committee agrees, in part, with the argument put forth by Disciplinary Counsel that a period of suspension for such a limited amount of time fails to further the goals of attorney discipline, primarily rehabilitation and public protection. Rather, such a sanction serves only to punish the respondent and could adversely impact the cases of current clients.

Disciplinary Counsel suggested to the Committee that Mr. James should be suspended from the practice of law for one year. It was argued that this lengthier period of suspension would more accurately reflect the severity of the offenses, and allow for a greater period of rehabilitation, public protection and continuing education, including the MPRE. In support of this recommendation, additional details regarding Mr. James's prior misconduct, not provided to the Hearing Panel, were presented to the Committee. Specifically, counsel provided evidence that the prior misconduct in Massachusetts relates to the Respondent's failure to record a mortgage discharge on behalf of a client. That order also states that Mr. James failed to participate in the Massachusetts Office of the Bar Counsel investigation. There is a prior admonition on record for Mr. James in Massachusetts.

Disciplinary Counsel also presented information regarding a Florida proceeding where Mr. James did not participate in a hearing regarding reciprocal discipline based on the Massachusetts finding of misconduct. Disciplinary Counsel expressed a belief that this evidence showed a persistent lack of cooperation on the part of the Respondent in addressing complaints

before discipline boards. It was also suggested that his failure to enlighten the Hearing Panel about the existence of these prior proceedings, and his lack of cooperation with bar counsel in those cases, was another aggravating fact to consider in imposing a sanction in this case.

Mr. James argued for a less severe sanction of admonition. He began his presentation by expressing remorse for his conduct in the handling of the Bachler matter and for his inaction and lack of cooperation throughout the disciplinary process. He acknowledged bewilderment at his own handling of the complaint, noting that inaction was not an effective way to resolve disciplinary matters.

Mr. James briefly described two events in his personal life, namely the death of his mother and a contentious divorce, which he suggests contributed to his lack of diligence in his law practice, ultimately resulting in allegations and findings of misconduct.

He claimed to have learned the importance of being forthcoming and cooperative with bar counsel. Mr. James also expressed regret for not having consulted with fellow members of the bar when facing personal or practice management issues, as well as questions about the substance of particular legal issues and court procedures. Mr. James made it clear to the Committee that he knows he needs additional education if he is to practice in the area of probate law, and he represented that he has taken various steps to address his personal issues leading to procrastination and poor communication.

Finally, he spoke about his good fortune in being a member of the bar, his pride in his profession and his willingness to accept a sanction that could help him to move forward and improve his practice. He feels that an admonition would be adequate incentive to improve his

practice and that suspension would be unnecessarily punitive, adversely affecting himself and his family.

IV. SANCTION

It is the desire of this Committee to impose a sanction that will provide meaningful public protection by allowing Mr. James an adequate opportunity for reflection and rehabilitation through the institution of useful modifications to his business practices so that future misconduct can be avoided. Accepting the aggravating factors presented, a suspension seems appropriate in response to the violations and the Respondent's persistent refusal to cooperate in the timely resolution of this and other disciplinary matters. However, a suspension from the practice of law for one year seems unduly harsh for violations that do not involve dishonesty, deception or a personal or illegal motive. Similarly, there doesn't appear to be sufficient evidence on the record to establish an ongoing pattern of misconduct, particularly considering the length of time Mr. James has been practicing law.

As a result, the Committee imposes a six month suspension from the practice of law, stayed for two years under a series of terms and conditions designed to closely monitor and improve Mr. James' law practice. A two year stay affords the Respondent an adequate opportunity to improve his professional competence and effectiveness as a lawyer by instituting law practice management techniques and personal work habits that will consistently meet professional standards. Obviously, should the Respondent fail to comply with any of the conditions set forth below, the period of suspension would be warranted and could be imposed.

Therefore, as the Committee believes that the public would be protected, public confidence in the Bar would be maintained, and similar, future misconduct by Mr. James could

be prevented if he complies with the conditions of the stay, as follows:

1. Mr. James shall agree to, and pay any costs associated with, the monitoring of his law practice, as described herein.
 - (a) Within 60 days of the date of this order, Mr. James shall provide Disciplinary Counsel with the name of an individual he intends to retain for the purpose of carrying out the additional terms of this order.
 - (b) Disciplinary Counsel shall make sufficient inquiries to assure that the individual selected by Mr. James is capable of acting as a law practice management consultant, or mentor with significant experience in that area.
 - (c) Within 90 days of the date of this order, the consultant or mentor engaged by Mr. James shall review and evaluate his current business practices and draft a report, for review by Disciplinary Counsel, which includes a plan for establishing business practices necessary for the ethical and effective management of Mr. James' legal practice.
 - (d) Mr. James shall meet or confer with the consultant/mentor on a schedule sufficient to accomplish all aspects of the plan.
 - (e) The consultant/mentor shall report to Disciplinary Counsel on a quarterly basis regarding the progress and implementation of the business practice plan, and state with specificity whether there are present issues or concerns regarding Mr. James' business practices, diligence and/or communication with his clients.

2. If the consultant/ mentor reports issues or concerns in accordance with Paragraph 1(e), Disciplinary Counsel shall review that report and determine whether the reported event is a material violation of the terms of this Order. In making that determination, Disciplinary Counsel may conduct such further investigation, if

any, that he or she deems appropriate. Mr. James shall have the right to provide Disciplinary Counsel with any additional information regarding the reported event. If Disciplinary Counsel believes that the reported event is a material violation, a motion may be filed with the Committee requesting that the Committee impose the stayed six month suspension. Mr. James 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 Committee shall rule upon any request for an evidentiary hearing and for oral argument. Following an evidentiary hearing (if requested), or the denial of a request for such hearing, the Committee shall determine whether the motion requesting imposition of the six month suspension should be granted or denied. Unless waived, oral arguments will be conducted to allow Disciplinary Counsel and Mr. James ten (10) minutes to address the issue of imposition of the stayed suspension. The Committee's decision shall be final. Disciplinary Counsel shall have the burden of proof by a preponderance of the evidence to establish that imposition of the stayed suspension is warranted.

3. If the ADO receives a misconduct complaint against Mr. James that arises out of events that predate this Order of the Committee, 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 six month suspension in this case.
4. If the ADO receives a complaint against Mr. James during the period of the two year stay that arises out of events that postdate adoption of this Order of the Committee, and is within the period of the two year stay, that complaint will be processed by the ADO 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 Committee impose the stayed six month suspension in this case. If Disciplinary Counsel makes such a request, Mr. James shall be entitled to an evidentiary hearing and review by the Committee.

5. At the conclusion of the two year period described herein, the six month suspension shall be permanently stayed provided that there are no complaints or motions pending pursuant to paragraphs 2 or 4 of this Order. If such complaints or motions are filed during the two year period, they can provide a basis for seeking imposition of the stayed six month suspension even if the proceedings on such complaints or motions are concluded after the expiration of the two year period of the stay. Any request for imposition of the stayed suspension that is based upon a complaint under paragraph 4 hereof must be initiated within 30 days of final disposition of that complaint.
6. In any proceeding to impose the six month stayed suspension, if the Committee finds that a basis for imposition of the stayed suspension has been proven in accordance with the applicable provisions of this Order, 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.
7. If Mr. James should, for any reason, cease to practice law during the two year period, he shall notify Disciplinary Counsel immediately, and such information shall be communicated to the Committee for its consideration.

V. CONCLUSION

For all of the above reasons, the Committee hereby orders that John A. James Jr. be suspended for six months, stayed for two years contingent on Mr. James' compliance with the terms and conditions indicated above, for violating New Hampshire Rules of Professional Conduct: 1.1(b)(3), 1.1(b)(4), 1.1(b)(5) - Competence, 1.3 - Diligence, 1.4(a)(3), 1.4(a)(4) - Communication, 8.1(b) - Lack of Cooperation and 8.4(a) - Misconduct, General Rule.

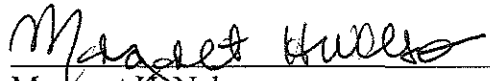
VI. COSTS

Mr. James shall reimburse the Committee for all cost associated with the investigation, prosecution, and publication of this matter.

VII. RIGHT TO APPEAL

Pursuant to Supreme Court Rule 37(A)(III)(d)(2)(D)(4)(A), the parties have the right to appeal this decision to the New Hampshire Supreme Court. *See also* Supreme Court Rule 37(3)(c).

March ¹vs, 2011



Margaret F. Nelson
Chair

cc: Jennifer B. Sargent, Disciplinary Counsel
John A. James, Jr., Esquire
File

New Hampshire Supreme Court

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Staff Auditor

March 25, 2013

Hand Delivered

Holly B. Fazzino, Administrative Coordinator
New Hampshire Supreme Court
Professional Conduct Committee
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301

Re: James, John A., Jr. advs. Karen Bachler - #09-006

Dear Ms. Fazzino:

I am writing to inform the Committee that John A. James, Jr., Esq., has completed the monitoring requirements listed in the order issued by the Professional Conduct Committee on March 15, 2011. I have received nine quarterly reports from Attorney Peter W. Bennett, Mr. James' mentor and have spoken to Mr. Bennett regarding Mr. James' compliance. Mr. Bennett confirms that Mr. James is in compliance and that their mentorship has been productive.

There have been no further complaints docketed by the Attorney Discipline office since the March 15, 2011 order was issued.

However, Mr. James is still bound by the requirement in the order that he pay the costs associated with this disciplinary matter. It is my understanding Mr. James has a payment plan in place and has been making timely payments to the Professional Conduct Committee.

Please let me know if you need any further information.

Sincerely,



Sara S. Greene
Disciplinary Counsel

SSG/ges

cc: John A. James, Jr., Esq.
Peter W. Bennett, Esquire