

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
Susan R. Chollet*
David N. Cole
Thomas P. Connair
Alan J. Cronheim

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

Gerald A. Daley*
Richard H. Darling*
Julie A. Introcaso
James R. Martin
Lawrence A. Vogelman
* non attorney member
Holly B. Fazzino, Admin. Coordinator

Brouillard, Philip A. advs. John J. Moynihan # 10-003

PUBLIC CENSURE

On February 15, 2011, the Professional Conduct Committee deliberated the above captioned matter. Members present included: Margaret H. Nelson, 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. Benette Pizzimenti, Vice Chair was recused and not present. Thomas P. Connair and Richard H. Darling were absent.

The Committee granted the Joint Motion to Permit Waiver of Formal Proceedings and For Final Ruling and approved the Stipulation as to the Facts and Rule Violations submitted by the parties.

I. FINDINGS OF FACT

The Respondent and the Attorney Discipline Office (ADO) have stipulated as to the facts in this matter, and the Committee accepts the Stipulation. Accordingly, the facts described below as set forth in the Stipulation are established by clear and convincing evidence:

1. Mr. Brouillard is an attorney licensed to practice law in New Hampshire. Mr. Brouillard was admitted to practice in 1981. At all times relevant to this proceeding, Mr. Brouillard operated his law office, as a sole practitioner, at

16 Academy Street, Laconia, New Hampshire.

2. On January 17, 2010, John J. Moynihan of Hampstead, New Hampshire, filed a complaint with the New Hampshire Attorney Discipline Office alleging that Mr. Brouillard violated the New Hampshire Rules of Professional Conduct in the course of representing Mr. Moynihan's ex-wife, Ann Marie Moynihan, in a domestic relations proceeding in the Brentwood Family Court (Case No. 618-2002-DM-00206).
3. Mr. Moynihan's complaint focuses on Mr. Brouillard's pleading practice after entering the domestic relations case on behalf of Ms. Moynihan in June 2009, as well as his alleged violation of a Brentwood Family Court non-disclosure order issued prior to his involvement in the case.
4. By letter of February 19, 2010, the New Hampshire Supreme Court also referred the matter to the ADO to address the issue whether Mr. Brouillard violated a non-disclosure order issued by the Brentwood Family Court.
5. The Moynihans were divorced by decree dated May 27, 2003. They have two minor children, a son and a younger daughter.
6. The marital home was located at 9 Summer Street, Hampstead, New Hampshire. Following the divorce, Ms. Moynihan and the children continued to live at the Summer Street residence. Mr. Moynihan lived at a nearby location in Hampstead.
7. Pursuant to the divorce decree, Mr. and Ms. Moynihan were awarded joint legal custody of the children, with Ms. Moynihan having primary physical custody.
8. The divorce decree incorporated the parties' Permanent Stipulations dated May 8, 2003, providing, in pertinent part, that each party had the duty to advise the other of significant developments in the children's lives and to consult regularly regarding matters pertaining to the children's health, welfare, education, and general upbringing. Further, each party was to notify the other of any change in their residential address by certified mail 60

days prior to the change. The parties also agreed that Mr. Moynihan would provide all transportation from and to all visits, except that Ms. Moynihan would share in transportation if she “relocate[s] the children’s primary residence to a location outside of their present school district.”

9. At the time of the divorce, Mr. Moynihan was represented by Steven Shadallah, Esq., and Ms. Moynihan was represented by Jennifer Lemire, Esq.
10. Pursuant to a December 30, 2004, Stipulation on Modification to Permanent Stipulations/Divorce Decree, the parties agreed to make a good faith effort to mediate any disagreements before resorting to filing pleadings in court.
11. On July 11, 2007, Ms. Moynihan, who had primary residential responsibility for the children, notified Mr. Moynihan that, effective September 9, 2007, she and the children would be relocating to a condominium that Ms. Moynihan had purchased on Watson Road in Gilford, New Hampshire.

Brentwood Family Court Proceedings

12. Mr. Moynihan disagreed with the relocation that Ms. Moynihan planned. The parties did not undertake to mediate their differences. Accordingly, Mr. Moynihan filed Petitioner’s Motion to Bring Forward, Modify and for an Order Precluding Relocation (Motion to Preclude Relocation) in the Brentwood Family Court.
13. Mr. Moynihan argued in his Motion to Preclude Relocation that relocation of the children’s primary residence was a major decision affecting their home and schooling, that Ms. Moynihan had made the decision unilaterally, and that the move was not in the best interests of the children. Mr. Moynihan proposed that if Ms. Moynihan moved to Gilford, primary residential responsibility for the children should be placed in Mr. Moynihan. A temporary hearing was scheduled for August 21, 2007.

14. Following the hearing on August 21, 2007, the Court (LaFrancois, J.) appointed a guardian *ad litem* (GAL) to examine the proposed relocation of the children. Pending further hearing, the Court ordered that “the parties are not to discuss the specifics of any relocation dispute with the minor children.”
15. On November 20, 2007, the GAL, Nathan Weeks, filed a preliminary report regarding the proposed relocation of the children to Gilford. Mr. Weeks recommended that Ms. Moynihan remain as the primary parent for the children and that she be allowed to move to Gilford at the end of the current school semester.
16. In his report, Mr. Weeks noted that the post-divorce communications between Mr. and Ms. Moynihan had been poor and confrontational and that there was a “pronounced lack of co-parenting.” Further, while Mr. Moynihan had benefited from the development of coping skills, he had been diagnosed with Attention Deficit Disorder and Narcissistic Personality Disorder. Based on that history and his current observations, Mr. Weeks expressed concern about Mr. Moynihan’s “anger control as it might affect his ability to parent full-time.” Mr. Weeks found that the older child, the parties’ son, wanted things to remain the same and felt divided loyalty and pressure from the situation.
17. On December 3, 2007, Mr. Moynihan, by and through Mr. Shadallah, filed Petitioner’s Motion to Remove GAL and to Strike GAL’s Report.
18. On January 3, 2008, Mr. Moynihan filed a motion to hold Ms. Moynihan in contempt. Mr. Moynihan rejected Ms. Moynihan’s plan to relocate the children and complained that Ms. Moynihan was not allowing Mr. Moynihan the visiting rights to which he was entitled.
19. Ms. Moynihan was represented at this time by Michele Struffolino, Esq. Mr. Brouillard was not involved in the proceeding at this point and did not enter an appearance on behalf of Ms. Moynihan until June 2009.
20. Ms. Moynihan, through Ms. Struffolino, filed an objection to Mr. Moynihan’s motion for contempt and cross motion

for contempt. Ms. Moynihan complained about Mr. Moynihan's conduct in violation of the divorce decree and his alleged use of their son as a conduit to communicate with Ms. Moynihan. Ms. Moynihan claimed that Mr. Moynihan discussed their "legal affairs" with the children.

21. Following a hearing on January 15, 2008, the Court (LeFrancois, J.) issued an order dated January 16, 2008. The Court denied the parties' prayers for relief. It found that Ms. Moynihan had not yet relocated the children, but was having them temporarily stay in Gilford. Further, the Court found that neither party had made an effort to participate in co-parent counseling and there was some evidence that both parties were commenting on the issue of relocating the children. The Court cautioned the parties to comply with the order of August 21, 2007, prohibiting such communications. The Court also denied the motion to remove Mr. Weeks as the GAL and to strike his report.
22. On February 11, 2008, Mr. Weeks filed another report following his interview of the son's counselor, confirming his recommendation that primary care of the child should remain with Ms. Moynihan and reiterating his concern about Mr. Moynihan's personality disorder, his current behavior, and his history of parenting.
23. The Court (LeFrancois, J.) conducted several days of hearings on Mr. Moynihan's Motion to Preclude Relocation and issued an order on June 5, 2008, ruling on various requests and granting the motion. The Court granted the motion precluding relocation on grounds that Ms. Moynihan had not shown a legitimate purpose for the relocation or that a move was in the best interests of the children. The Court noted the son's stated preference, as a seventh grader, to remain in Hampstead. The Court agreed with the recommendation of the GAL that Ms. Moynihan should continue as the primary residential parent.
24. On or about July 11, 2008, Mr. Moynihan filed another motion for contempt on grounds that, notwithstanding the Court's order of June 5, 2008, Ms. Moynihan rented out the Summer Street home in Hampstead and moved the children to the Watson Road condominium in Gilford.

25. On July 22, 2008, the Court (LeFrancois, J.) held a hearing with respect to pending issues. Based in part on Ms. Moynihan's representation that she intended to resume residency in Hampstead so as to permit the children to continue attending the Hampstead schools, the Court held in abeyance the question of Ms. Moynihan's alleged contempt for relocating the children. In the event Ms. Moynihan did not resume residency in Hampstead, the Court anticipated implementation of an alternative parenting plan.
26. The Court (LeFrancois, J.) held a further hearing on pending issues on October 28, 2008. In its order of October 29, 2008, the Court found Ms. Moynihan in contempt of the Court's order of June 5, 2008, because she kept the children in different locations and did not maintain an actual and legal residence in Hampstead. The Court adopted provisions of an alternative parenting plan granting the Moynihans equal residential responsibility for the children, subject to further review by the GAL.
27. On November 11, 2008, Ms. Moynihan filed a Motion for Reconsideration of the October 29, 2008, order. She was represented at the time by Katherine Stearns, Esq. Ms. Moynihan claimed that she was denied a fair opportunity to defend herself against Mr. Moynihan's allegations; that she had avoided the Hampstead residence because of Mr. Moynihan's stalking behavior; that an order compelling the children to attend a certain school district was unconstitutional; and that, considering Mr. Moynihan's personality disorder, it was not in the children's best interest to allow Mr. Moynihan greater access to the children.
28. On or about October 30, 2008, Ms. Moynihan had also filed a stalking petition in Plaistow District Court against Mr. Moynihan. Ms. Moynihan, appearing *pro se*, claimed that Mr. Moynihan had been walking by the former marital home on a daily basis, engaging in harassing behavior. The Court issued a temporary restraining order against Mr. Moynihan and scheduled the matter for hearing at a later date. Mr. Shadallah entered his appearance as Mr. Moynihan's counsel and successfully moved to have the matter transferred and consolidated with the domestic

relations case pending in Brentwood Family Court.

29. Hearings on the stalking petition and the issue of contempt were convened on January 29, 2009. (LeFrancois, J.) Ms. Moynihan, appearing at first *pro se*, and later with Ms. Stearns, testified about the alleged stalking. Ms. Moynihan also represented that she continued to maintain the former marital home as the “legal and actual residence,” while, at the same time spending time with the children at property she owned in Gilford, New Hampshire.
30. With respect to the issue of contempt, Mr. Moynihan elaborated on evidence that Ms. Moynihan had rented the former marital home and moved to the Gilford condominium; that Ms. Moynihan and the children spent very little time staying in a small one-bedroom in-law apartment at the former marital home; and that the children were being “shuffled” from Gilford to Ms. Moynihan’s sister’s house in Boxford, Massachusetts.
31. The Court made no further findings with respect to the contempt issue. It dismissed the stalking petition and denied Ms. Moynihan’s Motion for Reconsideration of the October 29, 2008, order. Ms. Moynihan was also unsuccessful in her Rule 7 Appeal of the dismissal to the New Hampshire Supreme Court.
32. On February 5, 2009, Mr. Moynihan filed a Motion to Modify Residential Responsibility (Motion to Modify). Mr. Moynihan claimed that he should be awarded primary custody of the children because Ms. Moynihan continued to violate the Court’s order regarding the children’s residence in Hampstead; she regularly interfered with Mr. Moynihan’s parenting rights; and the children were “upset, unnerved, anxious and confused,” and expressed a desire to live with Mr. Moynihan.
33. On behalf of Ms. Moynihan, Ms. Stearns filed an objection to Mr. Moynihan’s Motion to Modify, denying the various allegations of fact and claiming that Mr. Moynihan’s reckless, unstable, and aggressive behavior was harmful to the children.

34. On March 1, 2009, the son's therapist, Sheryl Kamman, Ph.D., issued a report to Joseph Tropiano, Esq., the newly appointed GAL. Dr. Kamman indicated that the conflict between the parents was taking a tremendous toll on the child's emotional well-being and insisted that the "conflict needs to stop."
35. On June 9, 2009, Mr. Tropiano filed a motion to suspend Ms. Moynihan's parenting time with her son, on grounds that he had witnessed his mother bringing domestic violence complaints against his father and was distressed by his mother's complaints of parental alienation against his father. Mr. Tropiano alleged that the son asked that parenting time with his mother be suspended.
36. The motion to suspend was scheduled for a hearing on June 19, 2009. Prior to the hearing, Ms. Moynihan told Mr. Brouillard that Ms. Stearns would not be able to attend the hearing on her behalf and asked Mr. Brouillard to appear. Mr. Brouillard entered an appearance for Ms. Moynihan on June 9, 2009. Ms. Stearns withdrew on June 19, 2009, and Mr. Brouillard remained in the case until March 2010.
37. Mr. Brouillard was romantically involved with Ms. Moynihan at the time and had frequent personal contact with Ms. Moynihan's children. Shortly after filing his appearance on behalf of Ms. Moynihan, Mr. Brouillard filed an objection to Mr. Tropiano's motion to suspend. Mr. Brouillard argued on Ms. Moynihan's behalf that Dr. Kamman had not recommended a change in Ms. Moynihan's parenting time, that there was no other basis in fact or law for changing the current parenting arrangement, and that Ms. Moynihan had not involved her son in any filing she made against Mr. Moynihan.
38. On June 19, 2009, the Court convened a hearing on offers of proof to consider the GAL's motion to suspend. Mr. Brouillard appeared with Ms. Moynihan. Mr. Shadallah appeared for Mr. Moynihan. Mr. Brouillard argued in opposition to the motion.
39. At the June 19, 2009, hearing, Mr. Brouillard acknowledged that Ms. Moynihan had given her son a copy of the GAL's motion to suspend. Mr. Brouillard further

represented to the Court that, on his recommendation, Ms. Moynihan gave her son a copy of the motion in order “to verify that the statements made in the motion [to suspend] that were attributable to him were true.” While Mr. Brouillard does not dispute that he made the foregoing statements to the Court, his present recollection is that he advised his client to talk to her son about the contents of the motion, but did not suggest that she show him a copy of the motion.

40. Mr. Brouillard had not been involved in the case for the bulk of its history, including when the Court issued its August 2007 order and January 2008 admonition regarding communication with the children. However, Mr. Brouillard acknowledges that, upon entering the case, he had a responsibility to review and understand the contents of the file and to advise his client accordingly.
41. The Court issued an order dated June 26, 2009, suspending Ms. Moynihan’s parenting time with her son until the GAL and therapist recommended otherwise, or until her son requested parenting time with Ms. Moynihan. The Court further provided as follows: “Neither party shall discuss the pending matter with or provide any pleadings or related documents to the minor children.”
42. On July 9, 2009, Mr. Brouillard filed a motion to reconsider the order suspending Ms. Moynihan’s parenting time and prohibiting disclosure of relevant pleadings and documents to the children.
43. Mr. Brouillard argued on behalf of Ms. Moynihan that the order was contrary to the best interests of her son and detrimental to the relationship between Ms. Moynihan and her son, in violation of various provisions of RSA 461-A; that the Court unreasonably relied on the son’s stated desire to live with his father and disregarded his ongoing need for counseling and psychotherapy; that the order violated Ms. Moynihan’s constitutional rights; that Ms. Moynihan should not be foreclosed from discussing matters with her son in order “to reconcile differences alleged in the Court hearing and in Court documents . . .;” that it failed to consider evidence of Mr. Moynihan’s misconduct; and that it was contrary to earlier findings and recommendations

that primary residential custody should remain with Ms. Moynihan.

44. Mr. Tropiano filed a response to Mr. Brouillard's motion to reconsider the order suspending Ms. Moynihan's parenting time. Mr. Tropiano argued that the Court's order was warranted, in part, because of evidence that Ms. Moynihan was "placing the child in the divorce conflict and was subordinating his needs in this conflict to her needs" and that Ms. Moynihan's actions against Mr. Moynihan contributed to alienating her son from her. Mr. Tropiano also reported that, while the son was visiting grandparents with Ms. Moynihan on June 17, 2009, Ms. Moynihan told him that the GAL was obtaining a restraining order that would prevent him from seeing Ms. Moynihan or her side of the family until he was eighteen. According to Mr. Tropiano, her son did not believe his mother and wanted to "see the paper;" two days later, Ms. Moynihan called her son on his cell phone while riding the bus home from school and asked him to repeat his request that he be allowed to see the "motion;" and he apparently declined. Mr. Brouillard was not aware at the time of any of the facts set forth in Mr. Tropiano's pleading.
45. At a hearing convened in July 2009, the Brentwood Family Court denied Mr. Brouillard's motion to reconsider the order suspending Ms. Moynihan's parenting time.
46. On July 14, 17, and 21 and September 1, 2009, the Court heard testimony regarding Mr. Moynihan's Motion to Modify. The Court did not issue an order until November 30, 2009, summarized below.
47. On September 4, 2009, Mr. Brouillard filed Respondent's Motion to Examine the Dynamic of This High Conflict as it Relates to the Best Interest of the Children (Motion to Examine Dynamic).
48. Ms. Moynihan wrote most of the Motion to Examine Dynamic that Mr. Brouillard filed on her behalf, arguing that the prolonged conflict between the parties was the product of Mr. Moynihan's rigid, uncompromising behavior and his "maladaptive personality," for which Mr. Moynihan required mental health treatment. Under these

circumstances, Ms. Moynihan indicated that she was required “to act much more aggressively in stopping the Petitioner [Mr. Moynihan] from further harm by exposing the truth and setting the record straight.” The motion contained the additional allegation that Mr. Moynihan’s testimony on the relocation issue reveals that he “DOES NOT WANT THE CHILDREN.”

49. Mr. Moynihan objected to the Motion to Examine Dynamic on grounds that it was untimely, defective (in the absence of an affidavit), replete with hearsay, and frivolous.
50. On September 18, 2009, Mr. Brouillard filed another motion to dismiss Mr. Moynihan’s February 8, 2009, Motion to Modify. Mr. Brouillard acknowledged that the underlying motion had already been heard by the Court (at the July and September 2009, hearings), but he argued that the testimony revealed that Mr. Moynihan knew that Ms. Moynihan had not actually moved to Gilford with the children. Accordingly, Ms. Moynihan should not have been found in contempt of the Court’s June 2008 order precluding relocation of the children.
51. Mr. Moynihan objected to Mr. Brouillard’s motion to dismiss, arguing in part that it was frivolous.
52. On September 23, 2009, Mr. Brouillard filed Respondent’s Motion for Summary Judgment on Burden of Proof (Motion for Summary Judgment). The Motion was accompanied by a comprehensive affidavit of Ms. Moynihan and several pages of exhibits relating to the issues of relocation and contempt.
53. In the Motion for Summary Judgment, Mr. Brouillard argued that Mr. Moynihan had not met his burden of proof under RSA 461-A:6 in support of the modification of parental rights.
54. Mr. Brouillard also undertook on Ms. Moynihan’s behalf to challenge the Court’s orders of “June 9, 2008” [dated June 5], precluding relocation of the children, and October 29, 2008, finding Ms. Moynihan in contempt. Mr. Brouillard identified and argued many issues of fact, some of which had already been tried or adjudicated, and asserted that the

Court's prior findings were based on Mr. Moynihan's "lack of knowledge and half-truths he presented to this Court"

55. The Motion for Summary Judgment contained no allegation or basis for finding that Ms. Moynihan was entitled to judgment as a matter of law. See RSA 491:8-a, III.
56. Mr. Moynihan, through Mr. Shadallah, filed an objection to the Motion for Summary Judgment and a cross motion for fees and sanctions. Mr. Shadallah argued that the Court's rules made no provision for such a motion and that, in any event, it could not be filed in any court after a trial. Mr. Shadallah also argued that the Motion for Summary Judgment was prepared by Mr. Brouillard (who was Ms. Moynihan's boyfriend) for the express purpose of harassing Mr. Moynihan and increasing the cost of litigation. Mr. Moynihan requested an award of costs and attorney's fees.
57. On September 28, 2009, Mr. Brouillard responded to Mr. Moynihan's objection, arguing that, with the Motion for Summary Judgment, Mr. Brouillard sought declaratory judgment under RSA 491:8-a on the question whether Mr. Moynihan had met his burden of proof under RSA 461-A:6 regarding the parenting issues.
58. In its Order dated November 30, 2009, the Court granted Mr. Moynihan's Motion to Modify and denied a further order of contempt against Ms. Moynihan. The Order was issued on December 15, 2009.
59. In its November 30, 2009, Order, the Court made the following findings:
 1. There is clear and convincing evidence of mental and emotional harm to the parties' son by remaining in the environment afforded him by Ms. Moynihan. The Court found that Ms. Moynihan continues to battle the relocation decision; that her "current attorney is also her live in boyfriend which means that that [the son's] mother's boyfriend represents [the son's] mother against his father"; that the son feels that he will be used in the litigation against his father with whom he has a very good relationship; and that the son was drawn deeper into the conflict

- when, notwithstanding the Court's prior orders and, "on advice from counsel", Ms. Moynihan gave him a copy of the GAL's pleading requesting a suspension of Ms. Moynihan's parenting time.
2. The parties' son has stated a preference for residing with his father.
 3. Mr. Moynihan has established a basis to modify parental rights and responsibilities regarding the parties' son.
 4. Mr. Moynihan is assigned sole decision-making and primary residential responsibility for his son, and, in that capacity, Mr. Moynihan is entitled to child support as primary residential parent of the parties' son.
60. With respect to various pleadings filed by Mr. Brouillard since the conclusion of the evidentiary hearings, the Court denied the Motion to Examine the Dynamic on grounds that it was an attempt to supplement evidence already presented without any basis, and it requested relief already denied. The Court denied Ms. Moynihan's motion to dismiss the Motion to Modify because it offered no basis for the relief requested.
61. The Court also denied Ms. Moynihan's Motion for Summary Judgment. The Court found that there was no basis to file it after a four-day trial with many contested issues and that it was filed in bad faith. Mr. Moynihan was awarded costs and fees associated with having to respond to the Motion for Summary Judgment.
62. On December 28, 2009, Mr. Brouillard filed a motion to reconsider the Court's Order of November 30, 2009, issued on December 15, 2009, and received by Mr. Brouillard on December 21, 2009. Mr. Brouillard claimed that the Court misconstrued and disregarded some of the evidence, that it should not have relied on Mr. Tropiano, and that it erred as a matter of law in evaluating the issues as required under RSA 461-A.
63. Mr. Brouillard filed additional motions to reconsider on the same date addressing separate issues raised in the November 30, 2009, Order.

64. In his second motion, Mr. Brouillard challenged the court's order denying the Motion to Examine the Dynamic. This motion to reconsider, apparently written for the most part by Ms. Moynihan, focused on Mr. Moynihan's alleged "maladaptive Narcissistic Personality Disorder" and the resulting "attacking and blaming behavior against Ms. Moynihan" which, in turn, is harmful to the children. The motion contained the same warning appearing in the Motion to Examine Dynamic, that "the Petitioner's victory now requires the Respondent to act much more aggressively in stopping the Petitioner from further harm by exposing the truth and setting the record straight; that due to the dynamic of this conflict, the Court got it 'backwards.'" Ms. Moynihan, through Mr. Brouillard, further alleged that, in connection with the relocation and parenting issues, Mr. Moynihan acknowledged in Court "on at least three occasions that he DOES NOT WANT THE CHILDREN."
65. Mr. Brouillard's third motion to reconsider was apparently directed at the Court's order denying the Motion to Dismiss. However, in support of the motion for reconsideration, Mr. Brouillard stated only as follows:
- "1. The matters of law and finding of fact in the Respondent's Motion to Reconsider Court Order dated December 28, 2009." (sic)
66. Mr. Brouillard's fourth motion to reconsider challenged the Court's order denying the Motion for Summary Judgment, arguing that there was a legitimate and proper basis for bringing the motion "regarding the burden of proof."
67. Mr. Brouillard's fifth motion to reconsider addressed the Court's order regarding parenting. Mr. Brouillard argued that Mr. Moynihan did not meet his burden of proof and that the evidence favored Ms. Moynihan's position; the GAL's investigation was incomplete; the order violated Ms. Moynihan's constitutional rights; and granting primary responsibility to Mr. Moynihan "conflicts with and at the same time validates this Court's finding of fact that the narcissist will dominate children and stunt their growth."

68. By order dated January 19, 2010, the Court denied all of Ms. Moynihan's post-hearing motions.
69. Following further hearing to review the prospects of resuming parental time between Ms. Moynihan and her son, the Court issued an order on February 22, 2010. It found that Ms. Moynihan had declined to attend counseling with her son, that no progress in restoring the relationship between her son and Ms. Moynihan had been made, and that Ms. Moynihan's parenting time with her son would remain suspended.
70. In January and February, 2010, Mr. Brouillard filed multiple Rule 7 Notices of Appeal with the New Hampshire Supreme Court, as described below, regarding various orders issued by the Brentwood Family Court. The Supreme Court declined to accept any of the appeals.
71. On April 6, 2010, the Brentwood Family Court convened a hearing to address pending motions, including Mr. Moynihan's February 19, 2010, motion for contempt filed against Ms. Moynihan for failure to pay child support. The Court issued an order on April 16, 2010, finding Ms. Moynihan in contempt and ordering her to pay costs and attorney's fees incurred in connection with filing the motion. The Court also ordered a review of the level of child support and found that Ms. Moynihan had not demonstrated any effort to seek gainful employment, as required by the Court's order of November 30, 2009. The Court approved the costs and fees incurred by Mr. Moynihan in connection with having to respond to the Motion for Summary Judgment that was filed in bad faith.

New Hampshire Supreme Court Proceedings

72. On or about January 13, 2010, Mr. Brouillard filed a Rule 7 Notice of Discretionary Appeal with the New Hampshire Supreme Court, challenging the Brentwood Family Court's June 2009 order suspending Ms. Moynihan's parenting time with her son (and the Court's denial of Mr. Brouillard's motion for reconsideration), and its November 30, 2009 order (issued December 15, 2009) granting Mr. Moynihan's Motion to Modify residential responsibility. Mr. Brouillard argued that the Brentwood Family Court had

erred in some of its findings of fact and rulings of law. Further, the lower court's orders violated Ms. Moynihan's constitutional right to parent her child and were not supported by requisite findings under various provisions of RSA 461-A.

73. On or about February 10, 2010, Mr. Brouillard filed additional Rule 7 Notices of Discretionary Appeal. The first reiterated Ms. Moynihan's appeal of the Brentwood Family Court's orders suspending Ms. Moynihan's parenting time and granting Mr. Moynihan's motion to modify parenting rights. Mr. Brouillard raised the issue whether the Court undertook an "unsustainable exercise of discretion" in considering the evidence and ruling on the parenting issues.
74. In his second Rule 7 Notice of Discretionary Appeal of February 10, 2010, Mr. Brouillard challenged the Brentwood Family Court's various rulings bearing on parenting, including the October 29, 2008, order adopting the alternative parenting plan. Mr. Brouillard claimed that the Court's action was taken in response to Mr. Moynihan's efforts to blame Ms. Moynihan for causing trauma to the children and that Mr. Moynihan's conduct was the product of his Narcissistic Personality Disorder. Other issues identified included whether the lower court's orders violated Ms. Moynihan's constitutional rights and whether the court failed to apply the correct standards in its assessment of the facts and in its rulings of law under RSA 461-A.
75. On February 23, 2010, Mr. Shadallah filed a motion in New Hampshire Supreme Court seeking to dismiss the multiple notices of appeal. He claimed they were without merit and were intended to be vexatious, harassing and annoying, and requested an award of costs and fees.
76. On or about March 2, 2010, Ms. Moynihan filed a *pro se* objection to Mr. Shadallah's motion. Ms. Moynihan acknowledged that in June 2009, she asked Mr. Brouillard, her "friend/boyfriend of four years," to represent her in this matter, and that she has now asked him to withdraw. Ms. Moynihan denied that her appeals were frivolous and represented that she had been encouraged to pursue such

relief by “A Safe Place.” Moreover, she alleged that Mr. Moynihan’s multiple attacks and harassment have required her to defend herself. Ms. Moynihan argued that “the appeals are about justice for the Moynihan children and for *all* children, the Petitioner thinks the appeals are about him.”

77. On April 14, 15, and 16, 2010, the New Hampshire Supreme Court issued orders declining to accept each of the Rule 7 Discretionary Appeals filed on behalf of Ms. Moynihan.

Stipulation at ¶¶ 1-77.

II. RULINGS OF LAW

The Respondent and the ADO have stipulated, and the Committee accepts the Stipulation, as to the Rules of Professional Conduct that were violated. The Stipulation establishes the following violations by clear and convincing evidence:

Rule 1.7(b): Conflicts of Interest

78. Mr. Brouillard owed Ms. Moynihan a duty not to represent her under such circumstances as to produce a significant risk that Mr. Brouillard’s representation of Ms. Moynihan would be materially limited by Mr. Brouillard’s personal interest.
79. Mr. Brouillard breached that duty by undertaking to represent Ms. Moynihan in a complex, highly contentious domestic relations matter involving disputes over parenting rights and visitation of the parties’ children while, at the same time, Mr. Brouillard had a personal interest in and was romantically involved with Ms. Moynihan. Mr. Brouillard was unduly personally and emotionally involved in the case, the effect of which was aggravated by the fact that he had frequent, close personal contact with Ms. Moynihan’s children.
80. While Mr. Brouillard did not think he was doing anything wrong at the time he first entered the case on behalf of Ms. Moynihan, he could not reasonably have believed under the

circumstances that he could provide competent and diligent representation to Ms. Moynihan in dealing with parenting, custody, and child relocation issues in the underlying domestic relations matter.

81. Mr. Brouillard did not obtain Ms. Moynihan's informed, written consent to represent her under the foregoing circumstances, and, in any event, such consent could not reasonably have been requested or obtained by a disinterested lawyer.
82. Consequences of the aforesaid breach include the following:
 - a) Mr. Brouillard did not exercise independent and professional judgment in advising Ms. Moynihan, thereby depriving Ms. Moynihan of the legal representation to which she was entitled.
 - b) Mr. Brouillard counseled Ms. Moynihan to communicate with her minor son about the GAL's June 2009 motion to suspend Ms. Moynihan's parenting rights and to talk to the child about the allegations contained in the motion, notwithstanding the court's August 2007 order and January 2008 admonition regarding communications with the children about the issue of relocation of the children;
 - c) Mr. Brouillard agreed to file pleadings on behalf of his client which were procedurally defective, redundant, meritless, and sometimes vexatious. Such pleadings included the September 4, 2009, Motion to Examine Dynamic, apparently written for the most part by Ms. Moynihan to advance her allegations and theories about Mr. Moynihan's behavior, replete with hyperbole; the September 18, 2009, motion to dismiss the Motion to Modify, addressing issues already adjudicated; the September 23, 2009, Motion for Summary Judgment, addressing issues already tried or formally adjudicated and undertaking to supplement the record; multiple motions to reconsider the Court's order of November 30, 2009, filed on

December 28, 2009, including one apparently written in large part by Ms. Moynihan, replete with hyperbole; and multiple Rule 7 Notices of Appeal filed with the New Hampshire Supreme Court in January and February 2009, which were, in part, untimely and which sought to some extent to supplement the record.

83. Mr. Brouillard's aforementioned conduct constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.7(b).

Stipulation at ¶¶ 80-85.

Rule 2.1: Advisor

84. Mr. Brouillard owed Ms. Moynihan a duty to exercise independent professional judgment and render candid advice.
85. Mr. Brouillard breached that duty under the circumstances set forth at paragraphs 80 to 83 above.
86. Mr. Brouillard's aforementioned conduct constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 2.1.

Stipulation at ¶¶ 87-89.

Rule 1.1: Competence

87. Mr. Brouillard owed Ms. Moynihan a duty to provide competent representation.
88. Mr. Brouillard lacked the knowledge and skill and/or failed to perform with the skills required to competently litigate the domestic relations issues confronting Ms. Moynihan.
89. Mr. Brouillard breached his duty to perform competently by filing certain pleadings, as follows:
 - a) The aforesaid Motion for Summary Judgment which purported to identify a number of genuine issues of material fact rather than to establish the absence of

such issues, and which neither alleged nor set forth a basis for determining that Ms. Moynihan was entitled to judgment as a matter of law (RSA 491:8-a, III). The motion sought to reargue facts already tried or formally adjudicated, and undertook inappropriately and in an untimely fashion to supplement the record.

- b) The aforesaid Motion to Examine Dynamic which undertook inappropriately and in an untimely fashion to supplement the record.
 - c) The aforesaid motion to dismiss the Motion to Modify which was untimely and sought inappropriately to reargue facts already adjudicated.
 - d) The aforesaid third motion to reconsider filed on December 28, 2009, which contained no intelligible text in support of the relief sought.
 - e) The aforesaid redundant Rule 7 Supreme Court appeals which were, in part, untimely and which sought to some extent to supplement the record.
90. Mr. Brouillard's aforesaid conduct constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 1.1.

Stipulation at ¶¶ 91-94.

Rule 8.4(a): General Rule

91. Because there exists clear and convincing evidence that Mr. Brouillard violated the above rules, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

Stipulation at ¶ 95.

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 first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner’s Case*, 158 N.H. at 303. Once the baseline sanction is determined, the Court then looks to the fourth and final part of the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *Id.*

Under the first prong of the analysis, Mr. Brouillard breached his duty to avoid operating under a conflict of interest, to exercise independent professional judgment and provide candid advice, and to provide Ms. Moynihan with competent representation. Each of these breaches arose out of Mr. Brouillard’s ill-advised determination to represent his girlfriend in a complex and hotly contested domestic relations matter involving parenting rights and visitation.

The second prong of the three-part analysis requires an assessment of Mr. Brouillard’s mental state. The New Hampshire Supreme Court has held that the respondent’s mental state may be one of intent, knowledge, or negligence, and that “what is relevant . . . is the volitional nature of the respondent’s acts, and not the external pressures that could potentially have

hindered his judgment.” [Citing *Grew’s Case*, 156 N.H. 361, 366 (2007)]. *Wyatt’s Case*, 159 N.H. 285 (2009).

Mr. Brouillard’s conduct involved a pattern of negligence. While Mr. Brouillard apparently entered the proceeding in June 2009 on the eve of a hearing with the good faith belief that he could serve Ms. Moynihan in a responsible and professional manner, he negligently failed to recognize the conflict associated with his determination to represent his girlfriend. Mr. Brouillard’s conduct thereafter in litigating the underlying matter reflects a singular focus most likely driven by his client’s demands, as a consequence of which Mr. Brouillard lost sight of and neglected to follow accepted standards of professional advocacy.

The third prong of the analysis requires analysis of the injury caused by Mr. Brouillard. Mr. Brouillard’s conduct had an adverse effect on the legal proceeding by confounding the record and the process with multiple, ineffective pleadings. Mr. Brouillard’s apparent failure to exercise independent judgment and provide candid advice to Ms. Moynihan increased the risk of adverse rulings by the court against his client.

In determining a baseline sanction, the *Standards* provide material guidance. With respect to the issue of conflict, the *Standards* provide as follows:

- 4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):
 - (a) engages in representation of a client knowing that the lawyer’s interests are adverse to the client’s with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
 - (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
 - (c) represents a client in a matter substantially related to a

matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

- 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.
- 4.33 Reprimand¹ is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.
- 4.34 Admonition² is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

With respect to the issue of competence, the *Standards* provide as follows:

- 4.41 Disbarment is generally appropriate when:
- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.
- 4.42 Suspension is generally appropriate when:
- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or

¹ Section 4.33 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

² Section 4.34 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

- 4.43 Reprimand³ is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
- 4.44 Admonition⁴ is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

Considering the facts in this case in light of the *Standards*, the parties agree that the appropriate baseline sanction is public censure.

As to the fourth prong in the sanction analysis contemplated under the *Standards*, the parties agree that there are aggravating and mitigating factors, as follows:

- a) Aggravating factors: Mr. Brouillard received a reprimand in 2004 for violations of Rules 1.3, 1.4, and 8.4(a) in connection with a real estate matter. Mr. Brouillard also has substantial experience in the practice of law.
- b) Mitigating factors: While Mr. Brouillard's professional judgment was compromised by his excessive personal and emotional involvement in the case, he did not exhibit a dishonest or selfish pecuniary motive in handling the case as he did. Mr. Brouillard has made full and free disclosure to the ADO, exhibiting a cooperative attitude and acceptance of responsibility for his misconduct. Mr. Brouillard has made significant contributions to the Bar and to the Court by doing pro bono work and serving as a mediator in the alternative dispute resolution program.

The parties and the majority of the Committee agree that the baseline sanction, combined with the aggravating and mitigating factors, indicate that a public censure is the appropriate sanction in this case.

³ Section 4.43 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

⁴ Section 4.44 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

IV. SANCTION

The parties stipulated to the respondent's receiving a public censure. The Committee engaged in considerable discussion about the stipulation especially in light of Mr. Brouillard's conduct in engaging in such an egregious conflict of interest. Ultimately the Committee, in recognition of the purpose of attorney discipline as noted above, accepted the stipulated sanction of a public censure. A Dissenting Opinion is set forth in Section VII.

V. CONCLUSION

For all of the above reasons the Committee issues a Public Censure to the Respondent for violating N.H. Prof. Conduct 1.7(b): Conflict of Interest, 2.1: Advisor, 1.1: Competence, and 8.4(a): General Rule.

VI. COSTS

The parties have stipulated, and the Committee accepts the Stipulation, that Mr. Brouillard shall reimburse the Committee for all cost associated with the investigation, prosecution, and publication of this matter.

VII. DISSENT

Divorce is difficult at best, much worse when a lawyer lacking competence in the area of practice represents the woman with whom he is living in a contentious divorce involving minor children. This is an egregious case which comes to us on stipulated facts resulting from a complaint filed with the ADO by Mr. Moynihan, the former husband and a referral from the New Hampshire Supreme Court.

Mr. Moynihan alleged rule violations relating to Mr. Brouillard's pleading practice and his violation of an Order of the Brentwood Family Court prohibiting disclosure of matters

relating to the divorce to the minor children. By letter dated February 19, 2010, the Supreme Court referred the latter issue to this Committee. Decision paragraphs 1, 2 and 4. (All references herein are to instant decision of the Committee and to the numbered paragraphs therein.)

VIOLATION OF THE COURT'S ORDERS

On August 21, 2007, the family court stated: the “parties are not to discuss the specifics of any relocation dispute with the minor children.” ¶ 14. Again on January 16, 2008, the court admonished the parties to comply with the August 21, 2007, order. ¶ 21.

Mr. Brouillard acknowledged that on June 9, 2009, Mr. Tropiano, the Guardian Ad Litem, filed a motion to suspend Ms. Moynihan’s parenting time with her son. ¶ 35. On the same date, Mr. Brouillard filed a notice of appearance and shortly thereafter represented: “Ms. Moynihan had not involved her son in any filing she made against Mr. Moynihan.” ¶¶ 36, 37, 39. Mr. Moynihan acknowledged that he was, at that time, romantically involved with Ms. Moynihan. ¶ 37. The Court subsequently found that Mr. Brouillard was Ms. Moynihan’s live in boyfriend. ¶ 59.

“At the hearing on June 19, 2009, Mr. Brouillard acknowledged that Ms. Moynihan had given her son a copy of the GAL’s motion to suspend [parenting rights]. Mr. Brouillard further represented to the Court that, on his recommendation, Ms. Moynihan had given her son a copy of the motion in order ‘to verify that the statements made in the motion [to suspend] that were attributable to him were true.’” ¶ 39. Mr. Brouillard claimed to be unaware of the court’s previous orders, however, he acknowledged that, as counsel, he had an obligation to review the file. ¶ 40.

Thus Mr. Brouillard knew, or should have known, that his advice to Ms. Moynihan to

give her son a copy of the GAL's motion to suspend her parenting rights was a violation of the court's previous orders.

Following the hearing, the court issued yet another order prohibiting disclosure of such matters to the minor children. ¶ 41.

SOME OF MR. BROUILLARD'S PLEADINGS

On September 23, 2009, after four days of evidentiary hearings, Mr. Brouillard filed a Motion for Summary Judgment. ¶ 52. "The Motion for Summary Judgment contained no allegations or basis for finding that Ms. Moynihan was entitled to judgment as a matter of law." ¶ 55. The court held that it was filed in bad faith. ¶ 61.

On September 4, 2009, Mr. Brouillard filed a Motion to Examine the Dynamic. ¶ 47. Ms. Moynihan had written most of the motion and Mr. Brouillard simply signed his name, thus totally abrogating his role as lawyer, counselor and advocate. ¶ 48. Ms. Moynihan, through Mr. Brouillard, further alleged that, in connection with the relocation and parenting issues, Mr. Moynihan acknowledged in Court "on at least three occasions that he DOES NOT WANT THE CHILDREN." ¶ 64. The court denied Mr. Brouillard's Motion to Examine the Dynamic. ¶ 60.

Nevertheless, Mr. Brouillard filed four motions to reconsider, alleging, *inter alia*, violations of the constitution and making frivolous and, in some cases, unintelligible arguments. ¶¶ 62, 63, 65, 66. All the motions were denied.

In January and February 2010, Mr. Brouillard then filed multiple Rule 7 notices in the Supreme Court. ¶. 70. The court declined to accept each of them. ¶ 77.

ANALYSIS

Vigorous advocacy is to be applauded; vicious, vituperative advocacy replete with frivolous allegations filed in bad faith is to be condemned. Unfortunately, Mr. Brouillard's advocacy falls into the latter category. Mr. Brouillard abdicated his independence and judgment in favor of a non-lawyer client with whom he was living.

Mr. Brouillard has stipulated to multiple violations of Rule 1.1 Competence, Rule 1.7 Conflict, Rule 2.1 Advisor and Rule 8.4(a), the General Rule. Mr. Brouillard unnecessarily multiplied the proceedings by filing multiple, redundant and frivolous motions without factual or legal support. A responsible lawyer does not assert constitutional issues without thought and a valid basis. Mr. Brouillard ignored that precept. His repetitious and groundless motions necessarily placed a financial and emotional burden on the former husband, Mr. Moynihan and his son. They also placed a tremendous burden on the Brentwood Family Court and the Supreme Court. The courts had to read, consider and rule on each of those motions and Rule 7 notices. His behavior was wholly inappropriate and in violation of the Rules of Professional Conduct and the civility expected of the legal profession.

All courts in New Hampshire are busy and the Family Courts are extremely busy. It is likely that many litigants in those courts had meritorious matters delayed by Mr. Brouillard's numerous frivolous and redundant motions. If so, justice was delayed for those litigants. Thus the judicial system suffered serious injury as a direct result of Mr. Brouillard's actions. Mr. Moynihan and his son suffered, the judicial system suffered and even his client, Ms. Moynihan suffered. She was twice held in contempt and lost her parenting rights for her son. Ms. Moynihan did not receive the independent legal advice, judgment and counseling to which she

was entitled.

SANCTION

The decision of the committee imposed a public censure. This is wholly inadequate. This is an egregious case. The message to Mr. Brouillard, the bar and the public should be strong and clear. A serious suspension is necessary to give Mr. Brouillard a time to reflect and establish a proper work ethic, to protect the public, and to protect the integrity of the legal profession and the judicial process.

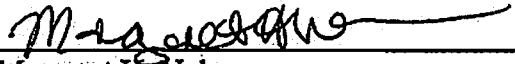
Under the *Standards*, suspension is called for each of the rule violations to which Mr. Brouillard stipulated. Mr. Brouillard violated a court order because he knew or should have known of the prior court orders. Rule 1.1 Competence provides in pertinent part:

“(c) In the performance of client service, the lawyer shall at a minimum:
(1) gather sufficient facts regarding the client’s problem from the client or from other relevant sources;
(4) undertake actions on the client’s behalf in a timely and effective manner....”

Mr. Brouillard did none of those things. He also committed repeated violations of Rules 1.7, 2.1, and 8.4(a), over an extended period of time.

The dissenting opinion recommends that Mr. Brouillard be suspended from the practice of law for a period of one year and request that the matter be reconsidered and set down for oral argument on the issue of sanctions.

March 16, 2011



Margaret H. Nelson
Chair

Distribution:

James L. Kruse, Assistant Disciplinary Counsel
Philip A. Brouillard, Esquire
John J. Moynihan
File