

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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**RECOMMENDATION OF A
TWO YEAR SUSPENSION: ONE YEAR RETROACTIVE TO APRIL 6, 2012
AND THE REMAINING YEAR STAYED WITH CONDITIONS**

On April 17, 2012, the Professional Conduct Committee heard Oral Argument and deliberated the above captioned matter. The entire record was also reviewed. The following members were present: Margaret H. Nelson, Chair; Benette Pizzimenti, Vice Chair; Toni M. Gray, Vice Chair; Susan R. Chollet; David N. Cole; Thomas P. Connair; Gerald A. Daley; Richard H. Darling; James R. Martin, and Richard D. Sager. Alan J. Cronheim was recused. Jaye L. Rancourt was recused and also absent. James L. Kruse, Assistant Disciplinary Counsel, represented the Attorney Discipline Office (“ADO”), Jeffrey H. Karlin, Esquire, represented Peter A. Riley, Esquire, who was present. Cecie Hartigan, Esquire, Director, NH Lawyers Assistance Program, was also present, and spoke about the drug testing aspect of the monitoring agreement between her office and Mr. Riley.

The Committee granted the Assented-To Motion for Protective Order with regard to all medical and counseling records.

I. FINDINGS OF FACT

The Respondent and the Attorney Discipline Office (the "ADO") have stipulated and the Committee accepts the Stipulation of facts. The following facts are established by clear and convincing evidence.

A. Facts

1. Respondent, Peter A. Riley, Esq., of Seabrook, New Hampshire, is a New Hampshire lawyer who has been a member of the bar of New Hampshire since October 30, 1995. Mr. Riley is also a member of the bar of the Commonwealth of Massachusetts, where he was also admitted in 1995. At all times relevant to this proceeding, Mr. Riley has maintained a law office at 855 Lafayette Road, Seabrook, New Hampshire.
2. Mr. Riley was married to Melissa J. Fay, Esq., who is also a New Hampshire lawyer and a member of the Massachusetts bar. For a number of years, Mr. Riley and Ms. Fay practiced law together as Riley and Fay, PLLC. The firm maintained an office in Seabrook, New Hampshire. Ms. Fay voluntarily stopped working at the office on or about November 24, 2008, the date she filed for divorce.
3. Mr. Riley and Ms. Fay had one adopted child. Before their separation, they resided in Seabrook, New Hampshire. Mr. Riley and Ms. Fay had three properties, all owned by the Riley Family Real Estate Trust.
4. On November 24, 2008, Ms. Fay, through her attorney, Celeste M. Christo, Esq., filed a Petition for Divorce and Request for *Ex Parte* Orders against Mr. Riley. At the time of filing, Mr. Riley was in Florida assisting his mother Ms. Fay was aware of the dates of Mr. Riley's trip.
5. Ms. Fay alleged in her Petition that Mr. Riley was an alcoholic and that he had been drinking while driving with their son. Ms. Fay sought an order assigning temporary primary responsibility for their son to her, limiting Mr. Riley's parenting rights conditioned on his sobriety, requiring Mr. Riley to undergo an alcohol abuse evaluation and attend substance abuse counseling, and appointing a guardian *ad litem* (GAL).
6. On November 25, 2008, Mr. Riley, *pro se*, responded to Ms. Fay's Petition with a Request for Emergency Hearing. Mr. Riley denied alcohol or drug abuse, and specifically denied drinking while driving the parties' son, but Mr. Riley offered to attend an intensive outpatient program (IOP) and to install a breathalyzer device in his vehicle. In addition, Mr. Riley alleged that Ms. Fay may be placing their son

at risk because of her condition requiring the use of a "mood stabilizer" drug. Mr. Riley argued that there should be no changes to the parties' existing joint parenting arrangements.

7. Marital Master Philip D. Cross convened a hearing at the Portsmouth Family Division on December 3, 2008. Mr. Riley was represented by Keri J. Marshall, Esq., and Ms. Christo appeared for Ms. Fay.
8. By order dated December 5, 2008, the Court granted the parties' joint decision-making responsibility for the child, but limited Mr. Riley's parenting time. The Court also ordered Mr. Riley to complete an IOP, in which he had already voluntarily enrolled. Further, pending a hearing on temporary orders, Mr. Riley was to continue paying all of the parties' expenses and child support. Ms. Fay, who was unemployed at the time, was directed to make a diligent search for employment. (Notwithstanding this order, Ms. Fay remained unemployed and was later found in contempt by Master Foley in October 2000.) The Court did not appoint a GAL.
9. On December 19, 2008, Mr. Riley, *pro se*, filed a timely Motion for Reconsideration of the Court's December 5, 2008, order. Mr. Riley claimed that Ms. Fay had acted in bad faith by planning her move out of the marital home and taking a substantial amount of marital property, and filing for *ex parte* relief in bad faith, knowing that Mr. Riley would be out of state at the time. Mr. Riley also reiterated the request for the appointment of a GAL.
10. On December 31, 2008, the Court denied Mr. Riley's Motion for Reconsideration, except that his parenting time on weekends was expanded. The Court also cautioned both parties to "tone down the tenor of their pleadings and instead of accusing each other (and the Court) of ill motives, focus on [the child's] best interests and the orderly distribution of marital assets." Master Cross denied the parties' request to appoint a GAL.
11. On February 17, 2009, Ms. Christo filed a Motion to Prohibit Computer Access. Ms. Christo claimed that Mr. Riley installed a "spyware" program on the office computer used by Ms. Fay that afforded him access to all passwords and information, including Ms. Fay's private email correspondence with her attorney.
12. Mr. Riley, through counsel, objected to Ms. Christo's Motion. In his objection and at a hearing on the issue, Mr. Riley acknowledged that he installed the software monitoring program on the computer without advising Ms. Fay, but represented that he did so because Ms. Fay had denied him access to the office computer she was using. Mr. Riley claimed that Ms. Fay had been mishandling and misappropriating firm funds, forged checks, and taken certain financial records and files. Mr. Riley sought to protect records (including IOLTA account

information, other financial records, and client files) critical to the operation of the law firm. Mr. Riley denied any knowledge of Ms. Fay's email account or that the spyware program would give him access to such account. Mr. Riley also disputed the admissibility of information obtained and submitted by Ms. Christo regarding the spyware on grounds that the information had been obtained with invalid subpoenas.

13. On March 27, 2009, the Court ruled on the pending motions. The Court granted Ms. Fay's Motion to Prohibit Computer Access and her request for costs. The Court was critical of the parties' efforts to convince the Court of each other's bad conduct.
14. The Court found that Mr. Riley's installation of special software in the office computer used by Ms. Fay without telling her was unreasonable, unjustified, and an invasion of privacy. Further, the Court rejected Mr. Riley's claim that he was unaware of the program's capacity to access email as not credible.
15. In its March 27, 2009, order the Court also ruled on Ms. Fay's request to reduce Mr. Riley's parenting time. It denied the request, finding that she had "little evidence to support her accusation that [Mr. Riley] may still be abusing alcohol."
16. On May 18, 2009, the Court issued a scheduling conference order and a temporary decree with attached parenting plan and temporary support order. The Court addressed the division of assets and family debt, as well as Mr. Riley's responsibility for the parties' personal and business expenses, assigning most of the financial burden to Mr. Riley. The Court did not appoint a GAL.
17. Under the parenting plan, the parties were awarded joint decision-making authority, with primary residential custody remaining with Ms. Fay. The Court set a schedule of parenting and visitation by the parties and ordered Mr. Riley to attend AA meetings, to abstain from consuming any alcohol or non-prescribed drugs, and to submit to sobriety checks at the beginning and end of parenting time.
18. On May 26, 2009, Mr. Riley filed a *pro se* appearance, followed shortly by Ms. Marshall's withdrawal. According to Mr. Riley, he could no longer afford counsel in light of the Court's orders regarding his share of the parties' financial burden.
19. On May 26, 2009, Mr. Riley filed a Motion for Reconsideration in connection with the Court's May 18, 2009, temporary order on parenting. Mr. Riley's arguments are summarized, in part, as follows:
 - a. A GAL is required in this case to address parenting issues. The Court has adopted much of the Petitioner's parenting plan without the benefit of an

independent recommendation.

- b. Mr. Riley has been deprived of a fair allocation of parenting time due to Ms. Fay's "vicious lies" and unsupported allegations of Mr. Riley's abuse of alcohol. The Court's order regarding Mr. Riley's parenting time is "careless, reckless and simply outrageous."
 - c. The Court has failed to take into account the risks to the child associated with drug use by Ms. Fay and her sister and boyfriend.
 - d. The Court has shown a preference for one parent over the other in violation of RSA 461-A:6(III).
20. On May 26, 2009, Mr. Riley also filed a Motion for Reconsideration of the Court's May 18, 2009, temporary order regarding support, to which Ms. Christo objected.
21. Mr. Riley filed a detailed reply (dated June 15, 2009) to Ms. Christo's objection to his Motion for Reconsideration regarding support. Mr. Riley claimed that Ms. Fay was "a liar and a thief" because she had obtained certain documents used in connection with the support issue by sneaking into Mr. Riley's office and going through his desk; she had misappropriated business funds, and she and her counsel had made additional misrepresentations regarding property issues. Further, Mr. Riley alleged that "the Court has cast a blind eye on the Petitioner's continued lies, devious and illegal behavior in this matter, all to the detriment of the respondent and his parenting time with his Son." (sic). Mr. Riley reiterated his request for a GAL, to no avail.
22. On May 26, 2009, Mr. Riley filed a *pro se* Motion to Have All Future Hearings Heard by Judicial Officer (Motion for Hearings by a Judge). Mr. Riley argued that he had a constitutional right to have the material facts in the divorce adjudicated by a judge who is present to hear the evidence. Mr. Riley also raised an issue as to "the competence and impartiality of Master Cross in deciding certain issues...."
23. On May 28, 2009, Mr. Riley wrote to Ms. Christo regarding various issues. Mr. Riley indicated that there were documents on record at the Barnstable County Registry of Deeds that Ms. Fay had forged. Mr. Riley was referring to a POA recorded in 2002 and a quitclaim deed recorded in 2005, both relating to property belonging to her parents, Joanne and Cyril Fay, in E. Falmouth, Massachusetts.
24. Mr. Riley acknowledged in his letter to Ms. Christo that he "wrongfully acknowledged" the execution of these documents which Ms. Fay signed on behalf of her mother, Joanne. Mr. Riley indicated that he was considering filing and recording an affidavit to correct the record (and providing notice of same to the

“appropriate authorities”) because he felt he had such a responsibility “in light of the divorce and custody issues pending before this Court, and my obligations as an attorney both in Massachusetts and New Hampshire.” Mr. Riley confirmed that he had spoken to Ms. Fay on May 27, 2009, regarding this issue.

25. On June 4, 2009, Ms. Christo filed an objection to Mr. Riley’s *pro se* Motion for Hearings by a Judge, arguing that Mr. Riley was engaging in vexatious litigation. Ms. Christo alleged that Mr. Riley threatened to expose conduct relating to the POA and told Ms. Fay that “if it results in his inability to practice law, he doesn’t care because he will affect her ability to practice as well.” Ms. Christo also alleged that Mr. Riley told Ms. Fay that he would “make a mess of her life and screw her over as much as possible.” Mr. Riley has denied making these statements.
26. On June 10, 2009, Mr. Riley filed a reply to Ms. Christo’s objection to the Motion for Hearings by a Judge, stating that the increase in tension in the case was caused by the “Court’s continued bias against him, the continued violation of fundamental constitutional rights as they relate to his ability to spend time with [his] son, and the Court’s continued pandering to the Petitioner’s each and every whim.” Mr. Riley denied threatening Ms. Fay, as Ms. Christo alleged, but acknowledged telling her that he intended to “correct the deed and POA that the Petitioner forged the Petitioner’s mother’s signature to” even though such a recording might also affect Mr. Riley’s ability to practice law. Mr. Riley further alleged in connection with the forgery that Ms. Fay had “defrauded the State of Massachusetts and the Federal Government out of thousands of dollars”
27. The Court denied Mr. Riley’s Motion for Hearings by a Judge.
28. By order of June 9, 2009, the Court disposed of Mr. Riley’s May 26, 2009, Motions for Reconsideration regarding parenting and support. The Court confirmed that it granted more parenting time to Ms. Fay, in part, because of Mr. Riley’s conduct and use of alcohol (with respect to which Mr. Riley claims there was no evidence and no positive readings on his car breathalyzer), but it agreed to clarify its order to address a conflict in scheduling of parenting time. According to Mr. Riley, the Court’s order requiring his attendance at IOP aftercare meetings conflicted with his allotted parenting time. Other requests regarding support and property issues were denied. The Court also denied Mr. Riley’s request for the appointment of a GAL.
29. By order of June 9, 2009, the Court granted a Motion for Clarification filed by Ms. Christo. Based on an offer of proof in support of the need for a further release of records pertaining to Mr. Riley’s alcohol treatment (vigorously contested by Mr. Riley), the Court ordered Mr. Riley to sign another HIPAA release. The Court also clarified its order regarding scheduling of parenting time to correct the above-referenced conflict. The Court did not specifically address the issues of fact raised

by Mr. Riley regarding whether he had been referred by the IOP for an evaluation and thus whether there was any cause to require execution of another release.

30. On June 16, 2009, Mr. Riley sent to the probate court a Petition to Terminate [Mr. Riley's] Parental Rights. Mr. Riley alleged that, due in part to his own "mental deficiency or mental illness" and inability to cope with the Court's financial and parenting orders, he believed the child's adoptive mother [Ms. Fay] was better suited at that time and in light of the Court's orders.
31. Another of Mr. Riley's "primary goals" in filing the Petition to Terminate Parental Rights was to cause the Court to appoint a GAL. After speaking with counsel, Mr. Riley withdrew the Petition before it was docketed. According to Mr. Riley, he was in considerable emotional and financial distress at the time he undertook to file the petition, because of the limitations placed on his access to the parties' child and the financial responsibilities imposed on him by the Court.
32. On June 17, 2009, Ms. Christo filed another Verified Petition for *Ex Parte* Relief ("Verified Petition"), requesting a temporary suspension of Mr. Riley's parenting time and decision-making authority regarding the child. Ms. Christo also requested that Mr. Riley undergo a psychological evaluation, alleging that Mr. Riley had engaged in increasingly threatening and troubling behavior which Ms. Fay felt posed a risk to the safety of their child. The alleged behavior included threats to "hurt" Ms. Fay and make her "suffer;" to file a petition to terminate his own parental rights; to "burn the [parties' commercial] building to the ground before he has to sell it and give Melissa half of the proceeds;" and to move out of the area to take another job. Evidence later produced revealed that the witness to Mr. Riley's alleged threat to burn the building did not believe Mr. Riley meant to take such action. Mr. Riley denies ever making any statements indicating that he would ever physically harm Ms. Fay.
33. On June 17, 2009, the Court convened a hearing on Ms. Fay's Verified Petition. Ms. Christo appeared for Ms. Fay. Mr. Riley appeared *pro se*.
34. At the June 17, 2009, hearing, which, according to Mr. Riley, was convened on less than two hours notice and with little time to prepare, Mr. Riley acknowledged telling Ms. Fay that he had obtained documents at the Registry of Deeds that Ms. Fay had forged. Mr. Riley testified that he had drafted the documents and notarized signatures entered by Ms. Fay on behalf of her mother, and that, at the time, Ms. Fay's mother was "unable to comprehend even the simplest of matters." Mr. Riley represented that he was trying to help Ms. Fay and her parents during very difficult times in their lives. He acknowledged, however, that, by signing her mother's name, Ms. Fay had engaged in "fraudulent acts," and Mr. Riley was "complicit in that."

35. At the June 17, 2009, hearing, Mr. Riley also admitted that he hoped Ms. Fay would suffer emotionally through this process, just as he had, as a result of Ms. Fay's "lies" and her "calculated" plan to file for *ex parte* relief while Mr. Riley was in Florida. Mr. Riley argued that "but this Court doesn't seem to care about that."
36. At the June 17, 2009, hearing, Mr. Riley alleged with respect to certain representations of fact made by Ms. Christo that "Attorney Christo—I'm not sure whether she's a pathological liar or what the deal is . . ." Mr. Riley, citing, inter alia, a statement from Robin Ells, reiterated his position that Ms. Christo had lied about circumstances warranting an additional release of records pertaining to his alcohol treatment, and he said he would not execute such a release, pending an interlocutory appeal of the Court's prior order.
37. With respect to parenting time, Mr. Riley reiterated at the hearing his prayer for equal time with his son and claimed that Ms. Fay's false accusations were effectively depriving him of his relationship with his son. Mr. Riley claimed that the Court's rulings limiting his parenting were "due to a certain level of bias on-- on your part against me." Mr. Riley cited an old case in which he had cross-examined Master Cross, before he was appointed to the bench, regarding hours Master Cross claimed he had worked on the case as a GAL.
38. Following the hearing, the Court issued an order dated June 17, 2009, temporarily suspending Mr. Riley's parenting rights, pending a psychological evaluation. The Court found that a) Mr. Riley had engaged in threatening behavior as alleged by Ms. Fay; b) Mr. Riley had accused Ms. Christo of being a "pathological liar;" c) Mr. Riley had accused the Court (Master Cross) of bias and violating his constitutional rights, notwithstanding the substantial parenting time afforded under the Court's order; d) Mr. Riley had declined to sign a release of medical information despite the Court's order of June 9, 2009; and e) Mr. Riley's petition to terminate his own parental rights was not filed in good faith. The Court (Master Cross) indicated that he intended to make a referral to the Professional Conduct Committee and expected to recuse himself from the pending case.
39. On June 22, 2009, Mr. Riley recorded at the Barnstable County Registry of Deeds the Affidavit of Peter A. Riley, dated June 17, 2009 (Riley Affidavit). The Riley Affidavit made specific reference to the 2002 POA and the 2005 quitclaim deed pertaining to the Fays' E. Falmouth property, with the registry book and page references for each.
40. Mr. Riley sent a copy of the Riley Affidavit to the Insurance Fraud Division of the Commonwealth of Massachusetts and Medicaid to make them aware of the false notarizations.

41. Mr. Riley stated in his Affidavit that he witnessed Ms. Fay forge her mother's signature (Joanne Fay) on a POA in November 2002, and again in March 2005, on a quitclaim deed that was backdated to October 25, 2000. Mr. Riley stated that he had prepared the documents at the request of Ms. Fay's father, Cyril Fay; that he notarized the forged signatures on both documents at Cyril's request; and that Joanne was present when Mr. Riley notarized and witnessed the deed. Mr. Riley further stated that, based upon his personal knowledge, Joanne was not capable of understanding the purpose, intent or any consequence of executing these documents due to her advanced dementia.
42. Mr. Riley also made the following statement in his Affidavit: "I further understand that the purpose behind the execution of both of these documents was to defraud the government ... insofar as both ... Melissa... and her father, Cyril... anticipated that ... Joanne ... would have to enter into a full time nursing facility due to her terminal illness and dementia."
43. On June 24, 2009, Mr. Riley filed a Motion for Reconsideration of the Court's June 17, 2009, Order. Mr. Riley's arguments included the following:
 - a. Master Cross did not recuse himself from the case after finding Mr. Riley in contempt and stating his intention to withdraw from the case. Master Cross was clearly biased in the case and "brought the judiciary into disrepute."
 - b. Master Cross's consideration of disputed testimony and offers of proof about whether Mr. Riley actually appeared in probate court to file a petition to terminate parental rights showed that "Master Cross is out of control and lacks the competence to be a Marital Master."
 - c. Master Cross's rulings have prevented Mr. Riley from having any contact with his son for more than two months—it is "unconscionable."
 - d. "Master Cross was patently and objectively wrong in each of his . . . conclusions which led to his biased diatribe against the Respondent ending with the statement that he was referring the Respondent to the PCC."
 - e. Master Cross's bias comes from Ms. Fay's original *ex parte* petition, with respect to which Master Cross "blindly accepted the Petitioner's false statements of the events and circumstances in this matter."
 - f. Master Cross is the subject of three complaints pending in the New Hampshire Legislature (Petitions for Redress of Grievances alleging misconduct in unrelated domestic cases).

44. On June 30, 2009, the Court approved Master Cross's recommended order denying Mr. Riley's Motion for Reconsideration of the June 17, 2009, Order.
45. Master Cross filed a referral to the ADO on June 18, 2009. On June 30, 2009, Master Cross recused himself from the proceeding and Master Robert J. Foley was assigned to the matter.
46. On June 30, 2009, Mr. Riley filed a Motion to Vacate All Orders Issued after March 23, 2009 (Motion to Vacate). Mr. Riley's arguments in his Motion to Vacate included the following:
 - a. "Master Cross harbored a bias and prejudice against the Respondent from the date of the March 23, 2009, hearing during which the Respondent testified about the Spectorpro software;"
 - b. as a result of such predisposition, Master Cross "ignored and swept under the rug the clear and unambiguous fact that the Petitioner forged the Respondent's name to thousands of dollars of checks with impunity;" and
 - c. the Master's "refusal to appoint a GAL to evaluate what is in the best interests of the child appears to be an attempt to insulate his rulings from scrutiny so as to maintain his control over the case and continue to effect his disdain for the Respondent;"
 - d. the Master suspended Mr. Riley's parenting rights after having stated during the June 17, 2009, proceeding that he intended to make a referral to the Professional Conduct Committee.
47. On July 20, 2009, the Court approved Master Foley's recommended order appointing a GAL.
48. On July 20, 2009, Brian Kenyon, Esq., entered an appearance for Mr. Riley.
49. On January 15, 2010, Mr. Riley was deposed.
50. Mr. Riley testified in deposition that the POA and quitclaim deed were prepared by him on behalf of Ms. Fay's parents; the documents were both forged by Ms. Fay; the deed was backdated by Mr. Riley at Cyril's request, possibly out of concern about Joanne going into the hospital and receiving state and federal benefits; both documents were falsely notarized by Mr. Riley; at the time of execution of both documents, Joanne was severely debilitated mentally, emotionally, and physically; and both documents were recorded at the Barnstable County Massachusetts, Registry of Deeds. Mr. Riley also testified that he sent

copies of his Affidavit to the Insurance Fraud Division of the Commonwealth of Massachusetts and Medicaid.

Stipulation As To Facts, Rule Violations, and Sanction, at 1-17.

II. RULINGS OF LAW

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

Rule 8.4(b) and (c): Misconduct

51. Mr. Riley owed a duty to the parties, legal profession, the Court, and the public not to commit a criminal act or otherwise engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(b) and (c).
52. Mr. Riley breached that duty, as follows:

2002 Power of Attorney

- a. In or about November 2002, Mr. Riley prepared a limited durable power of attorney (POA) for Joanne Fay, naming her husband, Cyril Fay, as the attorney-in-fact to handle matters relating to jointly held property in E. Falmouth, Massachusetts.
- b. Mr. Riley witnessed Melissa Fay signing Joanne's name as grantor on the POA.
- c. Mr. Riley believed at the time of execution that Ms. Fay was forging Joanne's signature as grantor.
- d. Mr. Riley believed at the time of execution that Joanne was not capable of understanding the purpose, intent, or any consequences of executing the document.
- e. Mr. Riley served as notary when Melissa Fay signed Joanne's name on the POA.

- f. Mr. Riley falsely attested to the execution of the POA by Joanne; he also falsely attested to taking Joanne's oath that she understood the contents and meaning of the document and that it was her "free act and deed."
- g. The aforesaid POA was recorded at the Registry of Deeds on December 11, 2002.
- h. Mr. Riley should have known at the time of execution that the POA would be recorded at the Registry of Deeds.
- i. Mr. Riley was complicit in "fraudulent acts" comprised of the execution and acknowledgment of the POA.

2005 Quitclaim Deed

- j. In or about March 2005, at the request of Cyril Fay, Mr. Riley prepared a quitclaim deed conveying Joanne Fay's interest in jointly held property in E. Falmouth to her husband, Cyril Fay.
- k. On or about March 22, 2005, Mr. Riley witnessed Melissa Fay signing Joanne's name on the quitclaim deed as grantor in the presence of Joanne and Cyril Fay.
- l. Mr. Riley believed at the time of execution that Joanne Fay was not capable of understanding the purpose, intent, or any consequences of executing the document.
- m. Mr. Riley believed at the time of execution that Melissa Fay was forging Joanne's signature on the deed as grantor.
- n. Mr. Riley served as a notary when Melissa Fay signed Joanne's name as grantor on the quitclaim deed.
- o. Mr. Riley knew at the time of execution that his Massachusetts notary license had expired.
- p. At Cyril's request, Mr. Riley changed the stated date of execution on the deed to October 25, 2000.
- q. Notwithstanding the actual date of execution of the deed in March 2005, in Mr. Riley's presence, Mr. Riley notarized the deed as if it had been executed on October 25, 2000.

- r. Mr. Riley falsely attested to the execution of the deed by Joanne, to her acknowledgment that the execution was her “free act and deed,” and to the date of execution.
 - s. Mr. Riley falsely signed the document as “witness” to Joanne’s signature.
 - t. Mr. Riley knew or should have known at the time of execution of the documents that the deed would be recorded at the Registry of Deeds.
 - u. The quitclaim deed was recorded at the Registry of Deeds on March 22, 2005, by Cyril Fay.
 - v. Mr. Riley was complicit in “fraudulent acts” comprised of the execution, acknowledgment, and dating of the deed.
53. The conduct described herein represents clear and convincing evidence that Mr. Riley engaged in a criminal act and/or conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(b) and (c).

Rule 3.5: Impartiality and Decorum of the Tribunal

54. Mr. Riley owed a duty to conduct himself in a professional manner and not to engage in conduct intended to disrupt the tribunal.
55. Mr. Riley breached that duty as follows:
- a. During the June 17, 2009, hearing on Ms. Fay’s Verified Petition for *Ex Parte* Relief, seeking temporary suspension of Mr. Riley’s parenting time, Mr. Riley acknowledged his desire that Ms. Fay should suffer emotionally through the litigation process, just as he had as a result of her “lies” and “calculated” plan to file for *ex parte* relief while Mr. Riley was in Florida. Mr. Riley then claimed that “[t]his court doesn’t seem to care about that.”
 - b. Mr. Riley’s June 24, 2009, Motion for Reconsideration of the Court’s Order of June 17, 2009, included allegations, as follows:
 - i. Master Cross should not have issued any order on Petitioner’s initial *ex parte* petition. He “blindly accepted the Petitioner’s false statements of the events and circumstances in this matter.”

- ii. In his order of June 17, 2009, Master Cross engaged in a “biased diatribe against the Respondent ending with the statement that he was referring the Respondent to the PCC.” The order reflects that “Master Cross is clearly biased against the Respondent and has brought the judiciary into disrepute.”
 - iii. Master Cross’s finding on the issue whether Mr. Riley actually appeared at the probate court to file the Petition to Terminate Parental Rights revealed that “Master Cross is out of control and lacks the competence to be a Marital Master.”
 - c. In Mr. Riley’s June 30, 2009, Motion to Vacate, Mr. Riley alleged that because of his bias, Master Cross “ignored and swept under the rug the clear and unambiguous fact that the Petitioner forged the Respondent’s name to thousands of dollars of checks with impunity.” Further, according to Mr. Riley, Master Cross’s “refusal to appoint a GAL . . . appears to be an attempt to insulate his rulings from scrutiny so as to maintain his control over the case and continue to effect (sic) his disdain for the Respondent.”
56. Mr. Riley also breached his duty by engaging in over-zealous, emotional, and disruptive advocacy by the following:
- a. In communications with Ms. Fay on May 27, 2009, and by letter to counsel of May 28, 2009, Mr. Riley stated that he was inclined to file an affidavit to “correct” the registry record which contained documents forged by Ms. Fay (the 2002 POA and 2005 quitclaim deed). Mr. Riley, while there were substantive issues outstanding in the divorce proceeding, offered to discuss such matters before he recorded the affidavit and notified the “appropriate authorities.”
 - b. In his reply pleading of June 10, 2009, Mr. Riley alleged that Ms. Fay had “defrauded the State of Massachusetts and the Federal Government out of thousands of dollars, and her license to practice law may also be at issue.”
 - c. At the June 17, 2009, hearing, Mr. Riley represented that, in light of Joanne Fay’s incapacity, “for her [Melissa Fay] to sign documents [the 2002 POA and 2005 deed] of the importance of those documents I think is clearly evidence of the falsehood and the—in my opinion—fraudulent acts on the part of Ms. [Melissa] Fay.”
 - d. Mr. Riley recorded the Riley Affidavit at the Barnstable County Registry of Deeds and sent copies to government offices charged with investigating

insurance and Medicaid fraud.

57. Mr. Riley's conduct, as described herein, disrupted the proceedings and tended to impugn the integrity of the tribunal.
58. There is clear and convincing evidence of a violation of Rule 3.5.

Rule 8.4(a): General Rule

59. Because there is clear and convincing evidence that Mr. Riley violated Rules 8.4(b) and (c), and 3.5, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

Stipulation As To Facts, Rule Violations, and Sanction at 17-23.

III. ANALYSIS

The purpose of the Court's disciplinary process 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). Any sanction should take into account the severity of the misconduct. *See Coffey's Case*, 152 N.H. 503, 513 (2005). Although the Supreme 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. *Conner's Case*, 158 N.H. at 303. After 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. Riley violated duties of honesty and integrity in connection with the execution of legal documents, fairness and integrity in the pursuit of litigated matters, and professionalism and respect for the adjudicative process and the tribunal.

Under the second prong of the analysis, Mr. Riley's mental state was one of knowing, rather than one of negligence. Mr. Riley breached these duties by knowingly facilitating the fraudulent execution and recording of the 2002 POA and 2005 quitclaim deed, pursuing over-zealous and irresponsible litigation tactics, and impugning the integrity of the presiding Master.

Under the third prong of the sanction analysis, Mr. Riley caused harm to the integrity and reputation of the legal profession and to the adjudicative process. Mr. Riley's actions undermined the public record and caused potential harm to the title of the Fays' E. Falmouth property when he falsely attested to the execution of the 2002 POA and the 2005 deed, which were recorded at the Barnstable County (Mass.) Registry of Deeds.

The following provisions of the *Standards* offer some guidance in determining a baseline sanction:

Section 5.1: Failure to Maintain Personal Integrity

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
- 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
- 5.13 Reprimand¹ is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.
- 5.14 Admonition² is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

Section 6.1: False Statements, Fraud, and Misrepresentation

- 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
- 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
- 6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
- 6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or

¹ Section 5.13 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

² Section 5.14 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

Section 6.2: Abuse of the Legal Process

- 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
- 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.
- 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
- 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

Section 6.3: Improper Communications with Individuals in the Legal System

- 6.31 Disbarment is generally appropriate when a lawyer:
 - (a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
 - (b) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
 - (c) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.

- 6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.
- 6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.
- 6.34 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no actual or potential interference with the outcome of the legal proceeding.

Section 7.0: Violations of Duties Owed as a Professional

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

Under the *Standards* (§ 5.1) the baseline sanction for the Rule 8.4 violation could be disbarment. However, the Parties agree that disbarment is not warranted in this case. The *Standards* contemplate consideration of aggravating and mitigating factors.

A mitigating factor is that Mr. Riley has no prior discipline, save for a warning issued in June 2010 under Rule 3.3 regarding overstating a position to the court. There is no evidence that Mr. Riley's misconduct in 2002 and 2005 was undertaken for personal gain, and he is genuinely remorseful about such conduct. During the course of the divorce proceeding, Mr. Riley was apparently suffering from severe mental and emotional stress which clouded his judgment.

An aggravating factor bearing on Mr. Riley's conduct during the course of the divorce proceeding is his substantial experience in the practice of law.

The Committee accepts the sanction stipulated by Mr. Riley and the ADO and voted to recommend the following:

- a. Two year suspension: one year to take effect on April 6, 2012, and the remaining period to be stayed and subject to imposition at any time during the three year period following final approval.
- b. Stay of the remaining period of suspension is conditioned upon the following:
 - i. Mr. Riley shall enter into and comply with a contract for an alcohol rehabilitation, counseling and monitoring program, to be approved by the ADO. The terms and conditions of the contract shall be comparable to those set forth in the New Hampshire Lawyer Assistance Program Monitoring Agreement. In connection with such contract, Mr. Riley has stated his desire to continue to work with Frederic J. White, LICSW, LADC.
 - ii. Mr. Riley shall execute a release authorizing disclosure to the ADO and others charged with monitoring his compliance with any of the conditions set forth herein of all records and information associated with his participation in the program.
 - iii. Mr. Riley shall bear the expense of the rehabilitation, counseling and monitoring program.
 - iv. Upon reinstatement in the bar and resumption of practice at any time during the period of the aforesaid stay of suspension, Mr. Riley shall be assigned to a lawyer mentor, approved by the ADO, to monitor Mr. Riley's practice and to report to the ADO on a quarterly basis regarding Mr.

Riley's capacity to perform legal services in compliance with his obligations under the New Hampshire Rules of Professional Conduct. Mr. Riley shall authorize the mentor to communicate freely with the ADO at any time. Services of such mentor shall be paid for by Mr. Riley.

- v. The ADO will monitor Mr. Riley's compliance with this Stipulation. In order to verify compliance at any time, the ADO may investigate as appropriate.
 - vi. Upon violation of any of the foregoing conditions, Mr. Riley shall be required to show cause before the Committee (bearing the burden of proof by clear and convincing evidence) why the balance of the suspension should not be imposed.
 - vii. If the ADO receives a complaint against Mr. Riley within three years following final approval of this stipulation, and that arises out of events that post date the order in this case, the ADO will process that complaint on an expedited basis. A finding of misconduct from that complaint shall provide a basis for imposing any remaining portion of the stayed suspension.
 - viii. Disciplinary Counsel shall notify the Committee at the end of the stay whether Mr. Riley has successfully complied with the conditions of the stay, provided there are no complaints or motions pending at that time.
- c. Mr. Riley has written a detailed and sincere letter of apology to Master Cross for his conduct in violation of Rule 3.5, dated March 16, 2012.

The Committee's acceptance of the recommended sanction recognizes that Mr. Riley has taken the steps to rehabilitate himself. It is expected that he will fully comply with the terms of the Stipulation and the Monitoring Agreement.

IV. SANCTION

For the reasons stated above, the Committee directs the Attorney Discipline Office to file a Petition for Two Year Suspension. One Year to take effect on April 6, 2012, retroactive to the date Mr. Riley closed his practice in anticipation of his suspension. The imposition of the remaining one year period of suspension is stayed for a period of three years after final order of

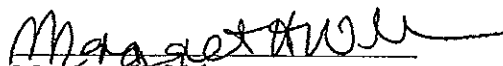
the Court. Reinstatement after the initial one year period is subject to

Rule 37(14).

V. COSTS

The Committee accepts the Stipulation that the Respondent shall pay all costs of the investigation and prosecution of this matter.

May 16, 2012


Margaret H. Nelson
Chair

Distribution:

James L. Kruse, Assistant Disciplinary Counsel

Jeffrey H. Karlin, Esquire

File