

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Benette Pizzimenti, Vice Chair
Toni M. Gray,* Vice Chair
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Larkowich, Peter advs. Attorney Discipline Office #10-055
and
Larkowich, Peter advs. Brenda L. McKelvey #10-061

PUBLIC CENSURE

On April 17, 2012, the Professional Conduct Committee deliberated the above captioned matters. The entire record was also reviewed. Members present included: Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Thomas P. Connair, Susan R. Chollet, David N. Cole, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling, James R. Martin, and Richard D. Sager. Jaye L. Rancourt was absent.

I. FINDINGS OF FACT

Larkowich, Peter advs. Attorney Discipline Office #10-055

1. On November 9, 2011, pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(2), the Attorney Discipline Office issued a Notice of Charges in this matter.
2. That same day, Peter Larkowich accepted in-hand service of the Notice of Charges while meeting with Disciplinary Counsel.
3. To date, the Attorney Discipline Office has not received an Answer to the Notice of Charges.

4. Pursuant to Rule 37A(III)(b)(3)(A), Mr. Larkowich had thirty (30) days from the date of service (November 9, 2011) to file an Answer to the Notice of Charges.
5. Because of Mr. Larkowich's failure to file an Answer, the same Rule requires that "the allegations set forth in the Notice of Charges shall be deemed to be admitted." N.H. Sup. Ct. R. 37A(III)(b)(3)(A).
6. By operation of Rule 37A(III)(b)(3)(A), this pleading incorporates as admissions the alleged facts and rule violations contained in the Notice of Charges.
7. Peter Larkowich ("Respondent") has been a member of the Massachusetts bar since June 1974. In July 2005, Mr. Larkowich was suspended from the practice of law in Massachusetts for failure to comply with Massachusetts S.J.C. Rule 4:02(1) (non-payment of registration fee). He has not been reinstated.
8. Mr. Larkowich is not admitted to the practice of law in New Hampshire.
9. Mr. Larkowich's last known residential address is 216C Kearsarge Drive, Pembroke, NH¹.

Dargon Law Firm

10. In 2010, Mr. Larkowich worked at the Dargon Law Firm.
11. Dargon Law Firm P.L.L.C. was created in New Hampshire on November 14, 2008. Its primary office was located in Concord, New Hampshire.
12. Attorney Daniel P. Dargon was the registered agent and principal of Dargon Law Firm.

¹ The ADO later learned of a more recent address for Mr. Larkowich. *See* Certificate of Service, below. This paragraph appears as it had in the Notice of Charges.

13. Dargon Law Firm's Certificate of Formation filed with the New Hampshire Secretary of State describes its primary business purpose as "attorney services to the public."
14. When accessed on April 18, 2010, the Dargon Law Firm website indicated that "Attorney Peter Larkowich" had been with the firm since January 2010, and that Mr. Larkowich "is licensed to practice law in the Commonwealth of Massachusetts in both the state and federal courts."
15. On or about May 3, 2010, Elizabeth Chicoine, a resident of the state of Washington, contacted Dargon Law Firm and spoke with the firm's Senior Consultant, Ira Sutton.
16. Ms. Chicoine was seeking legal services regarding a possible bankruptcy and loan modification.
17. Mr. Sutton communicated with Ms. Chicoine via email over the next several days indicating that her case was being referred to and reviewed by counsel. Mr. Sutton also indicated that counsel "may be conferring with one of the other attorneys as well."
18. Mr. Sutton later advised Ms. Chicoine that her case had been the subject of discussion between the Dargon Law Firm and their local counsel in Washington, and that "the recommendation from counsel is to initiate the loan modification." Mr. Sutton went on to discuss the firm's usual fee and typical payment arrangements.
19. On May 10, 2010, Mr. Sutton forwarded documents to Ms. Chicoine and her co-borrower, Gloria Torres-Landa. He instructed them to complete the enclosed forms and send them back with their payment. The letter went on as follows:

I will advise you immediately once we have received your paperwork and payment. Our paralegal department will send you a welcome package with a description of the financial records we need and shortly thereafter *you will have counsel assigned to represent your interests* (emphasis added)

and they will be in touch with you immediately thereafter.

20. Ms. Chicoine and Ms. Torres-Landa signed a Client Flat Fee Agreement (Agreement) with Dargon Law Firm on May 14, 2010, for "law-related services."
21. The Agreement described the scope of services as follows:

Client is hiring Dargon Law to represent Client in one or more of the following matters:

Client's request for negotiation of a loan modification on Client's residential real property.

Client's request to settle debts with creditors. An attorney will advise Client what steps need to be taken to settle, reduce or discharge debts.
22. The Agreement also indicates that "Dargon Law, where necessary, will retain and act through affiliate attorney(s) licensed to practice law in the jurisdiction of the Client."
23. Further, the Agreement states that "Dargon Law will provide legal and/or law-related services reasonably required to fulfill Client's goals."
24. The Agreement called for a fixed, flat fee payment of \$2,700.00. The payment schedule provided for three installments of \$900.00 each.
25. On May 14, 2010, Ms. Chicoine and Ms. Torres-Landa also signed a Client Authorization for Credit Report and Attorney Services. The authorization "grants the Dargon Law Firm PLLC and any of its representatives authorization to discuss, negotiate, and accept or reject negotiations for all aspects of the below client's (loans and debts)."
26. Ms. Chicoine made two initial installment payments, the first on May 14, 2010, and the second on June 14, 2010.
27. On June 15, 2010, Dargon Law Firm's paralegal, Lacie Kingsbury, sent an email to Ms. Chicoine stating:

I received your fax the other day. We are currently reviewing the documents that you sent in. If Peter or I have any questions, we will be sure to contact you. Once we have the loan modification package together, we will forward it to Bank of America for review.

28. On June 17, 2010, Mr. Larkowich wrote a letter to Bank of America, Home Retention Department, using Dargon Law Firm letterhead indicating its location in Concord, New Hampshire. The letter reads as follows:

To Whom it May Concern,

The Dargon Law Firm now represents Elizabeth Chicoine and Gloria Torres-Landa. We are a law firm which represents clients in bankruptcy, mortgage modifications and debt settlement. We are formally requesting a mortgage modification for our clients.

Ms. Chicoine's and Ms. Torres-Landa's financial status has changed, as their hardship affidavit and supporting documentation make clear. They are determined to retain their home and avoid foreclosure. In order to accomplish this, they would need the terms of their mortgage loan modified.

We are authorized to discuss the terms of any modifications of our client's mortgage loan. An authorization form has been sent to the appropriate contact. We formally request that you place on hold any foreclosure activity in this matter until you have evaluated the available federal and internally-generated mortgage modification programs appropriate to Ms. Chicoine's and Ms. Torres-Landa's financial situation, including the HAMP Program.

Enclosed please find our client's loan modification package. Please contact me in order to verify the receipt of this package and to request any additional documentation you may require.

Sincerely,

(signature)

Peter Larkowich, Esq.
Dargon Law Firm PLLC

29. A copy of this letter was sent to Ms. Chicoine and Ms. Torres-Landa.

30. On August 13, 2010, Mr. Larkowich sent Ms. Chicoine an email stating that he had checked with Bank of America about the modification and said he would be checking back with the lender in 10 to 14 days.
31. Mr. Larkowich sent an email update on August 19, 2010, asking Ms. Chicoine to call him when she received the forms from Bank of America so that they could discuss them.
32. Both of Mr. Larkowich's emails included the following footer:

Peter Larkowich, Esq.
Dargon Law Firm
101 N. State St.
Concord N.H. 03301

P: 603-224-6333
F: 1-877-441-2846

33. On September 8, 2010, Ms. Chicoine called the above telephone number to inquire as to the status of her case. The telephone line was disconnected.
34. On September 10, 2010, Ms. Chicoine and Ms. Torres-Landa filed a Consumer Complaint Form regarding the Dargon Law Firm with the New Hampshire Office of the Attorney General, Consumer Protection Bureau. They provided a brief chronology of their involvement with the Dargon Law Firm. The complaint also stated that they had seen the loan modification service offered by the Dargon Law Firm advertised on the internet and that the web address for the business was www.dargonlaw.com.
35. The Consumer Protection Bureau forwarded Ms. Chicoine's complaint to the Attorney Discipline Office (ADO).

NewEnglandForeclosureRescue.com

36. The ADO's initial investigation into Ms. Chicoine's grievance in the fall of 2010 revealed that Mr. Larkowich was now working for NewEnglandForeclosureRescue.Com LLC (NEFR).
37. NEFR is a limited liability company created in New Hampshire on August 30, 2010.
38. According to the records of the New Hampshire Secretary of State, as of October 24, 2011, NEFR is "Not in Good Standing."
39. NEFR's Certificate of Formation describes its primary business purpose as "debt restructuring."
40. VCorp, LLC, of Manchester, New Hampshire, is listed as NEFR's registered agent. NEFR's principal office address is in Pembroke, NH.
41. The NEFR website solicited clients for representation by licensed attorneys in loan-restructuring cases.
42. On October 7, 2010, NEFR's website displayed the following relevant information:

MOST IMPORTANTLY, at NewEnglandForeclosureRescue.com, every case is in the hands of a licensed attorney who has as much experience in loan re-structuring as anyone in the country.

Our founding attorneys are:

Peter Larkowich

[PHOTO]

Peter is a graduate of Providence College and Suffolk University Law School.

He then spent thirty years representing individuals and corporations in every aspect of the law.

Since 2009, he has devoted all of his experience, expertise and energy in the field of loan modification and mortgage debt re-structuring, and he has

successfully secured life-saving modifications for clients from virtually every mortgage lender in the business . . .

43. Mr. Larkowich's profile ends, "he is an expert who accomplishes what individuals cannot accomplish by trying to represent themselves."
44. The NEFR website also included a profile for Attorney Erik Simensen. As of October 7, 2010, Mr. Simensen was also described as a founding attorney and his profile stated that Mr. Simensen had "worked for many months with Attorney Larkowich representing clients from all over the country."
45. Mr. Simensen had previously been employed at Dargon Law Firm.

Disciplinary Proceedings

46. The ADO sent a letter to Mr. Larkowich on October 12, 2010, informing him that it had docketed the Chicoine complaint and that, pursuant to New Hampshire Supreme Court Rule 37A(II)(a)(5)(C), he must submit a reply to the complaint within 30 days of the date of the letter. This letter listed the ADO's address both in the reply requirement and in its letterhead.
47. The letter was addressed to Mr. Peter Larkowich, NewEnglandForeclosureRescue.com, 10 Ferry Street, Suite 311, Concord, NH 03301.
48. On November 15, 2010, the ADO sent Mr. Larkowich an "immediate reply" letter, informing him that the November 12, 2010, deadline for his reply had passed.
49. As of December 2, 2010, Mr. Larkowich had not responded to the ADO.
50. On December 2, 2010, ADO Assistant General Counsel Janet DeVito was at a Banking Department hearing relating to Dargon Law Firm.
51. Mr. Larkowich was in attendance and asked to speak with Ms. DeVito during a break.

52. Mr. Larkowich confirmed that he had received the ADO's letters and he said he had answered the first one. Ms. DeVito informed him that the ADO did not receive his reply. He then asked Ms. DeVito if she worked in the building, meaning 53 Regional Drive, where the Banking Department is located. Ms. DeVito said no, and explained that the address for the ADO was 4 Chenell Drive.
53. Mr. Larkowich said he would deliver his response on December 6, 2010. On December 7, 2010, the ADO received Mr. Larkowich's response, which was signed and dated November 11, 2010.

PCC Record Tab 8, pp. 1-10.

Larkowich, Peter advs. Brenda L. McKelvey #10-061

1. On November 9, 2011, pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(2), the Attorney Discipline Office issued a Notice of Charges in this matter.
2. That same day, Peter Larkowich accepted in-hand service of the Notice of Charges while meeting with Disciplinary Counsel.
3. To date, the Attorney Discipline Office has not received an Answer to the Notice of Charges.
4. Pursuant to Rule 37A(III)(b)(3)(A), Mr. Larkowich had thirty (30) days from the date of service (November 9, 2011) to file an Answer to the Notice of Charges.
5. Because of Mr. Larkowich's failure to file an Answer, the same Rule requires that "the allegations set forth in the Notice of Charges shall be deemed to be admitted." N.H. Sup. Ct. R. 37A(III)(b)(3)(A).

6. By operation of Rule 37A(III)(b)(3)(A), this pleading incorporates as admissions the alleged facts and rule violations contained in the Notice of Charges.
7. Peter Larkowich ("Respondent") has been a member of the Massachusetts bar since June 1974. In July 2005, Mr. Larkowich was suspended from the practice of law in Massachusetts for failure to comply with Massachusetts S.J.C. Rule 4:02(1) (non-payment of registration fee). He has not been reinstated.
8. Mr. Larkowich is not admitted to the practice of law in New Hampshire.
9. Mr. Larkowich's last known residential address is 216C Kearsarge Drive, Pembroke, NH².

Dargon Law Firm

10. In 2010, Mr. Larkowich worked at Dargon Law Firm.
11. Dargon Law Firm PLLC was created in New Hampshire on November 14, 2008. Its principal office was located in Concord, New Hampshire.
12. Attorney Daniel P. Dargon was the registered agent and principal of Dargon Law Firm.
13. Dargon Law Firm's Certificate of Formation filed with the New Hampshire Secretary of State describes its primary business purpose as "attorney services to the public."
14. When accessed on April 18, 2010, the Dargon Law Firm website indicated that "Attorney Peter Larkowich" had been with the firm since January 2010, and that Mr. Larkowich "is licensed to practice law in the Commonwealth of Massachusetts in both the state and federal courts."

² The ADO later learned of a more recent address for Mr. Larkowich. *See* Certificate of Service, below. This paragraph appears as it had in the Notice of Charges.

15. In March of 2010, Brenda L. McKelvey sought out Dargon Law Firm for legal representation in a home mortgage loan modification.
16. Ms. McKelvey and her husband, Coy McKelvey, were hoping to modify the terms of a Bank of America mortgage loan. The McKelveys live in Illinois.
17. On or about March 26, 2010, Mr. C. B. Hart of the Dargon Law Firm (Salem Office) faxed documents to Ms. McKelvey with instructions to "Sign + fill out + fax back . . ."
18. One of those documents was a Client Flat Fee Agreement (Agreement) for "law-related services," which the McKelveys signed on March 26, 2010.
19. The Agreement described the scope of services as follows:
 - Client is hiring Dargon Law to represent Client in one or more of the following matters:
 - Client's request for negotiation of a loan modification on Client's residential real property.
 - Client's request to settle debts with creditors. An attorney will advise Client what steps need to be taken to settle, reduce or discharge debts.
20. The Agreement also indicates that "Dargon Law, where necessary, will retain and act through affiliate attorney(s) licensed to practice law in the jurisdiction of the Client."
21. Further, the Agreement states that "Dargon Law will provide legal and/or law-related services reasonably required to fulfill Client's goals."
22. The Agreement called for a fixed, flat fee payment of \$3,200.00.
23. The McKelveys also signed a Client Authorization for Credit Report and Attorney Services on March 26, 2010. The authorization "grants the Dargon Law Firm PLLC and any of its representatives authorization to discuss, negotiate, and accept or reject negotiations for all aspects of the below client's (loans and debts)."

24. The McKelveys also completed a Mortgage Forensic Audit Analysis form. On the undated form, Ms. McKelvey indicated that she believed that her lender or broker had engaged in fraud. That form also includes an "Internal Use Only" section that requires the "auditor" to make an assessment of the allegations of fraud and notify the client's attorney of the findings.
25. Ms. McKelvey made two initial installment payments of \$320.00 each on April 2, 2010. The payments were made to Dargon Law Firm, PLLC, by e-check using an electronic payment service.
26. Three additional payments of \$320.00 were made using bank checks dated April 30, 2010; May 14, 2010; and June 4, 2010.
27. Sometime after forwarding the documents required to retain the services of Dargon Law Firm, Ms. McKelvey spoke with Mr. Larkowich who told her that he was going to get her mortgage loan modified.
28. No other person associated with Dargon Law Firm ever initiated a call to Ms. McKelvey regarding the negotiation of the loan modification.
29. On May 10, 2010, Mr. Larkowich wrote a letter to Bank of America, Loan Modification Department, using Dargon Law Firm letterhead indicating its location in Concord, New Hampshire. The letter reads as follows:

To Whom it May Concern,

The Dargon Law Firm now represents Coy and Brenda McKelvey. We are a law firm which represents clients in bankruptcy, mortgage modifications and debt settlement. We are formally requesting a mortgage modification for our clients.

Mr. and Mrs. McKelvey's financial status has changed, as their hardship affidavit and supporting documentation make clear. They are determined to retain their home and avoid foreclosure. In order to accomplish this, they would need to modify the terms of their mortgage loan with your company.

We are authorized to discuss the terms of any modifications of our client's mortgage loan. An authorization form has been sent to the appropriate contact. We formally request that you place on hold any foreclosure activity in this matter until you have evaluated the available federal and internally-generated mortgage modification programs appropriate to the McKelvey's financial situation, including the HAMP Program.

Enclosed please find our client's loan modification package. Please contact me in order to verify the receipt of this package and to request any additional documentation you may require.

Sincerely,

(signature)

Peter Larkowich, Esq.
Dargon Law Firm PLLC

30. A copy of this letter was sent to the McKelveys.
31. Ms. McKelvey called the Dargon Law Firm routinely to inquire as to the status of her loan modification. She received reassurances that the matter was progressing, but she never heard that the modification was complete.
32. In September 2010, Dargon Law Firm had ceased operations.
33. On September 24, 2010, after hearing nothing as to the progress of her case, Ms. McKelvey called Mr. Larkowich. Mr. Larkowich did not tell Ms. McKelvey that the Dargon Law Firm had ceased operations.
34. The next week, Ms. McKelvey called Mr. Larkowich again, but the phone number she had been given was no longer in service.

35. Mr. Larkowich never discussed with Ms. McKelvey or corresponded with her regarding any course of action she could take in order to secure new legal counsel.
36. On October 18, 2010, Ms. McKelvey filed a Consumer Complaint Form regarding the Dargon Law Firm with the New Hampshire Office of the Attorney General, Consumer Protection Bureau. The Addendum to her complaint stated, "Peter Larkowich was our attorney."
37. The Consumer Protection Bureau forwarded Ms. McKelvey's complaint to the Attorney Discipline Office (ADO).

New England Foreclosure Rescue

38. The ADO's investigation into the complaint against Mr. Larkowich revealed that Mr. Larkowich was now working for NewEnglandForeclosureRescue.Com LLC (NEFR).
39. NEFR is a limited liability company created in New Hampshire on August 30, 2010.
40. NEFR's Certificate of Formation describes its primary business purpose as "debt restructuring."
41. Charles Hart is the individual that formed NEFR.
42. According to the records of the New Hampshire Secretary of State, as of October 24, 2011, NEFR is "Not in Good Standing."
43. VCorp, LLC, of Manchester, New Hampshire, is listed as NEFR's registered agent. NEFR's principal office address is in Pembroke, NH.
44. The NEFR website solicited clients for representation by licensed attorneys in loan-restructuring cases.
45. The NEFR website listed its business address as 10 Ferry Street, Suite 311, Concord, NH.

46. On October 7, 2010, the NEFR website displayed the following relevant information:

MOST IMPORTANTLY, at NewEnglandForeclosureRescue.com, every case is in the hands of a licensed attorney who has as much experience in loan re-structuring as anyone in the country.

Our founding attorneys are:

Peter Larkowich

[PHOTO]

Peter is a graduate of Providence College and Suffolk University Law School.

He then spent thirty years representing individuals and corporations in every aspect of the law.

Since 2009, he has devoted all of his experience, expertise and energy in the field of loan modification and mortgage debt re-structuring, and he has successfully secured life-saving modifications for clients from virtually every mortgage lender in the business . . .

47. Mr. Larkowich's profile ends, "he is an expert who accomplishes what individuals cannot accomplish by trying to represent themselves."
48. The NEFR website also included a profile for Attorney Erik Simensen. As of October 7, 2010, Mr. Simensen was also described as a founding attorney and his profile stated that Mr. Simensen had "worked for many months with Attorney Larkowich representing clients from all over the country."
49. Mr. Simensen had previously been employed at Dargon Law Firm.

Disciplinary Proceedings

50. The ADO docketed Ms. McKelvey's complaint on November 2, 2010, and sent a letter to Mr. Larkowich on the same day informing him that pursuant to New Hampshire Supreme

Court Rule 37A(II)(a)(5)(c), he was required to submit his reply within 10 days. This letter listed the ADO's address both in the reply requirement and in its letterhead.

51. The letter was addressed to Mr. Peter Larkowich, NewEnglandForeclosureRescue.com, 10 Ferry Street, Suite 311, Concord, NH 03301.
52. On November 15, 2010, the ADO sent an additional letter to Mr. Larkowich stating it had not received his reply which was due on November 12, 2010, and further informed him that his failure to immediately file response to the complaint could result in the issuance of a Notice of Charges.
53. On December 2, 2010, Assistant General Counsel Janet DeVito was at a hearing before the New Hampshire Banking Department regarding the Dargon Law Firm. Mr. Larkowich was also in attendance, and asked to speak with Ms. DeVito during a break.
54. Mr. Larkowich told Ms. DeVito that he had received the ADO's letters and had responded to the first one. See Larkowich, Peter advs. Attorney Discipline Office ADO #10-055. Ms. DeVito told Mr. Larkowich that the ADO did not receive that response.
55. He then asked Ms. DeVito if she worked in the building, meaning 53 Regional Drive, where the Banking Department is located. Ms. DeVito said no, and explained that the address was 4 Chenell Drive. Mr. Larkowich seemed surprised but said he would drop off his reply on December 6.
56. On December 7, 2010, Mr. Larkowich delivered a response to the complaint in ADO #10-055, but to date, Mr. Larkowich has failed to respond to the complaint in this matter.

PCC Record Tab 8, pp. 1-10.

III. RULINGS OF LAW

The Committee finds the following violations by clear and convincing evidence:

Larkowich, Peter advs. Attorney Discipline Office #10-055

Rule 5.5(a): Unauthorized Practice of Law

1. The practice of law includes all actions taken for a client in matters connected with the law. 7 C.J.S. § 26.
2. In Kamasinski v. McLaughlin, the New Hampshire Superior Court (Fitzgerald, J.) held that someone who was not a licensed attorney was engaging in the unauthorized practice of law by representing a client. N.H. Super. Merr. Co. 2001-E-0386, (Jan. 30, 2003). The Court stated that, for the purposes of that case, law practice included but was not limited to “negotiation of legal rights or responsibilities on behalf of another entity or person(s).” *Id.* (citing N.H. HB 1420, Chapter 218:1, Laws of 2002, Task Force on the Definition of the Practice of Law).
3. Under N.H.R. Prof. Conduct 5.5(a), a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession of that jurisdiction.
4. Mr. Larkowich is not a member of the New Hampshire bar, and in this case, Mr. Larkowich presented himself as an attorney to Ms. Chicoine and Bank of America, and took the initial steps necessary to negotiate a modification of Ms. Chicoine’s and Ms. Torres-Landa’s mortgage loan.
5. There exists clear and convincing evidence, as detailed above, that Mr. Larkowich’s conduct with respect to his communications with his clients and to third parties, and his negotiation of a modification of the terms of the clients’ residential mortgage loan while unlicensed in New Hampshire, constitutes a violation of N.H. R. Prof. Conduct 5.5 (a).

Rule 5.5(b)(1): Unauthorized Practice of Law

6. The practice of law includes all actions taken for a client in matters connected with the law. 7 C.J.S. § 26.
7. In Kamasinski v. McLaughlin, the New Hampshire Superior Court (Fitzgerald, J.) held that someone who was not a licensed attorney was engaging in the unauthorized practice of law by representing a client. N.H. Super. Merr. Co. 2001-E-0386, (Jan. 30, 2003). The Court stated that, for the purposes of that case, law practice included but was not limited to “negotiation of legal rights or responsibilities on behalf of another entity or person(s).” *Id.* (citing N.H. HB 1420, Chapter 218:1, Laws of 2002, Task Force on the Definition of the Practice of Law).
8. Under N.H.R. Prof. Conduct 5.5(b)(1), a lawyer who is not admitted to practice in this jurisdiction shall not establish a systematic and continuous presence in this jurisdiction for the practice of law.
9. Mr. Larkowich is not a member of the New Hampshire bar, and Mr. Larkowich practiced law and provided law related services to clients of the Dargon Law Firm from January 2010, until the firm ceased operations in August 2010.
10. Mr. Larkowich is not a member of the New Hampshire bar, and as of October 7, 2010, the NEFR website solicited clients for representation by licensed attorneys in loan-restructuring cases.
11. Mr. Larkowich was identified on the NEFR website as a “founding attorney” who had years of experience representing individuals and corporations in every aspect of the law.

12. There exists clear and convincing evidence, as detailed above, that Mr. Larkowich's conduct with respect to his representation of clients at the Dargon Law Firm and his solicitation of clients for representation by NewEnglandForeclosureRescue.com, constitutes a violation of N.H. R. Prof. Conduct 5.5(b)(1).

Rule 7.1(a): Misleading Communications

13. Under the New Hampshire Rules of Professional Conduct, a lawyer shall not make any false or misleading communication about himself or his services.

Without limiting the generality of the foregoing, a communication is false or misleading if it:

- (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement, considered in light of all of the circumstances, not materially misleading

N.H. R. Prof. Conduct 7.1(a).

14. In Mr. Larkowich's letter to Bank of America and in his email correspondence to his clients on August 13 and 19, 2010, Mr. Larkowich used the title "Esq." when identifying himself.
15. Furthermore, Mr. Larkowich's letter to Bank of America on Dargon Law Firm letterhead stated that the Dargon Law Firm represented Ms. Chicoine and Ms. Torres-Landa. His use of the term "we," in conjunction with his identification of himself as an attorney, created a misleading impression that he was an attorney member of the firm.
16. Although the Dargon Law Firm's website indicated that Mr. Larkowich was licensed to practice in Massachusetts, it was necessary in these additional communications for him to note his administrative suspension in order to prevent those communications from being

materially misleading as to his status as a lawyer not currently licensed to practice in any jurisdiction.

17. The NewEnglandForeclosureRescue.com website clearly listed Mr. Larkowich as a Founding Attorney who had spent “thirty years representing individuals and corporations in every aspect of the law.” There is no statement clarifying that he was only admitted to the bar in the Commonwealth of Massachusetts nor is there any statement that he was currently suspended from the practice of law.
18. There exists clear and convincing evidence, as detailed above, that Mr. Larkowich’s failure to inform the public and his clients of his inability to practice law in any jurisdiction constitutes a violation of N.H. R. Prof. Conduct 7.1(a).

7.5(c): Firm Name and Letterheads: Lawyer Identification

19. Rule 7.5(c) requires lawyers in an office of a law firm to indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.
N.H. R. Prof. Conduct 7.5(c).
20. Mr. Larkowich had an affirmative duty to identify his jurisdictional limitations while working at Dargon Law Firm.
21. Here, the Dargon Law Firm office was located in the state of New Hampshire and Mr. Larkowich has never been licensed to practice in New Hampshire.
22. As Mr. Larkowich represented himself to be part of the Dargon Law Firm, he therefore had a duty to indicate, under all appropriate circumstances, his jurisdictional limitations because he was not licensed in New Hampshire where the firm was located.

23. Mr. Larkowich permitted Dargon Law Firm to list him as an attorney on the firm's website, indicating that he was licensed to practice in Massachusetts state and Federal courts. However, in correspondence to the Bank of America issued by Mr. Larkowich, he did not indicate the jurisdictional limitations on his ability to practice.
24. There is clear and convincing evidence, as detailed above, that Mr. Larkowich's failure to indicate his jurisdictional limitations in his communications with clients and third parties constitutes a violation of N.H. R. Prof. Conduct 7.5(c).

Rule 8.4(a): General Rule

25. There is clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).
PCC Record Tab 8, pp. 11-16.

Larkowich, Peter advs. Brenda L. McKelvey #10-061

Rule 5.5(a): Unauthorized Practice of Law

1. The practice of law includes all actions taken for a client in matters connected with the law. 7 C.J.S. § 26.
2. In Kamasinski v. McLaughlin, the New Hampshire Superior Court (Fitzgerald, J.) held that someone who was not a licensed attorney was engaging in the unauthorized practice of law by representing a client. N.H. Super. Merr. Co. 2001-E-0386, (Jan. 30, 2003). The Court stated that, for the purposes of that case, law practice included but was not limited to "negotiation of legal rights or responsibilities on behalf of another entity or person(s)." *Id.* (citing N.H. HB 1420, Chapter 218:1, Laws of 2002, Task Force on the Definition of the Practice of Law).
3. Under N.H.R. Prof. Conduct 5.5(a), a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession of that jurisdiction.

4. Mr. Larkowich is not a member of the New Hampshire bar, and in this case, Mr. Larkowich represented himself as an attorney to Ms. McKelvey and Bank of America, and took the initial steps necessary to place on hold any foreclosure activity with respect to the McKelveys' property, and informed the bank that Dargon Law Firm had authorization to discuss the terms of any modification of the mortgage.
5. Mr. Larkowich's conduct with respect to his communications with his clients and to third parties, and his negotiation of a modification of the terms of the McKelveys' residential mortgage loan while unlicensed in New Hampshire, is a violation N.H. R. Prof. Conduct 5.5(a), by clear and convincing evidence.

Rule 5.5(b)(1): Unauthorized Practice of Law

6. The practice of law includes all actions taken for a client in matters connected with the law. 7 C.J.S. § 26.
7. In *Kamasinski v. McLaughlin*, the New Hampshire Superior Court (Fitzgerald, J.) held that someone who was not a licensed attorney was engaging in the unauthorized practice of law by representing a client. N.H. Super. Merr. Co. 2001-E-0386, (Jan. 30, 2003). The Court stated that, for the purposes of that case, law practice included but was not limited to "negotiation of legal rights or responsibilities on behalf of another entity or person(s)." *Id.* (citing N.H. HB 1420, Chapter 218:1, Laws of 2002, Task Force on the Definition of the Practice of Law).
8. Under N.H.R. Prof. Conduct 5.5(b)(1), a lawyer who is not admitted to practice in this jurisdiction shall not establish a systematic and continuous presence in this jurisdiction for the practice of law.

9. Mr. Larkowich is not a member of the New Hampshire bar, and Mr. Larkowich practiced law and provided law related services to clients of the Dargon Law Firm from January 2010, until the firm ceased operations in August 2010.
10. Mr. Larkowich is not a member of the New Hampshire bar, and as of October 7, 2010, the NEFR website solicited clients for representation by licensed attorneys in loan-restructuring cases.
11. Mr. Larkowich was identified on the NEFR website as a “founding attorney” who had years of experience representing individuals and corporations in every aspect of the law.
12. There is clear and convincing evidence that Mr. Larkowich’s conduct with respect to his representation of clients at the Dargon Law Firm and his solicitation of clients for representation by NewEnglandForeclosureRescue.com, constitutes a violation of N.H. R. Prof. Conduct 5.5(b)(1).

Rule 7.1(a): Misleading Communications

13. Under the New Hampshire Rules of Professional Conduct, a lawyer shall not make any false or misleading communication about himself or his services.

Without limiting the generality of the foregoing, a communication is false or misleading if it:

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement, considered in light of all of the circumstances, not materially misleading... N.H. R. Prof. Conduct 7.1(a).

14. In Mr. Larkowich’s letter to Bank of America, Mr. Larkowich used the title “Esq.” in identifying himself.
15. The letter to Bank of America was created on Dargon Law Firm letterhead. In it, Mr. Larkowich stated that the Dargon Law Firm represented the McKelveys. His use of the

term “we,” in conjunction with his identification of himself as an attorney, created a misleading impression that he was an attorney member of the firm.

16. Although the Dargon Law Firm’s website indicated that Mr. Larkowich was licensed to practice in Massachusetts, it was necessary in this additional communication for him to note his lack of licensure in order to prevent the communication from being materially misleading as to his status as a lawyer not currently licensed to practice in any jurisdiction.
17. The NewEnglandForeclosureRescue.com website clearly listed Mr. Larkowich as a “Founding Attorney” who had spent “thirty years representing individuals and corporations in every aspect of the law.” There is no statement clarifying that he was only admitted to the bar in the Commonwealth of Massachusetts nor is there any statement that he was currently suspended from the practice of law.
18. There is clear and convincing evidence that Mr. Larkowich’s failure to inform the public and his clients of his inability to practice law in any jurisdiction constitutes a violation of N.H. R. Prof. Conduct 7.1(a).

Rule 1.16(d): Terminating Representation

19. N.H. R. Prof. Conduct 1.16(d) requires:

(d) As a condition to termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice of (sic) the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by law.

20. When Dargon Law Firm closed, Mr. Larkowich was no longer representing the firm's clients. The law firm's closing was therefore a termination of representation.
21. Mr. Larkowich failed to mention to the McKelveys that Dargon Law Firm had closed and failed to take any steps to inform the McKelveys that there was no longer any counsel working on the case. None of the documents Ms. McKelvey submitted to Dargon Law Firm were returned to her when the firm closed.
22. There is clear and convincing evidence that Mr. Larkowich's failure to take steps to the extent reasonably practicable to protect the McKelveys' interests upon the termination of representation, such as giving reasonable notice to the client, allowing time for employment of other counsel, and surrendering papers and property to which the client is entitled, constitutes a violation of N.H. R. Prof. Conduct 1.16(d).

Rule 8.1(b): Failure to Cooperate

23. N.H. R. Prof. Conduct 8.1(b) prohibits a lawyer in connection with a disciplinary matter from knowingly failing to respond to a lawful demand for information from a disciplinary authority.
24. The ADO informed Mr. Larkowich that it had docketed a complaint against him based upon Ms. McKelvey's grievance and required him to respond.
25. There is clear and convincing evidence that Mr. Larkowich's failure to respond to the November 2, 2010, and November 15, 2010, letters constitutes a violation of N.H. R. Prof. Conduct 8.1(b).

Rule 8.4(a): General Rule

26. There is clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

PCC Record Tab 8, pp. 11-16.

IV. 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. 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, in #10-055, Mr. Larkowich's misconduct violated his duty as a professional. *Standards*, II - Theoretical Framework.

In #10-061, Mr. Larkowich's misconduct violated his duties as a professional and his duty to the public. *Standards*, II - Theoretical Framework.

The second prong requires an analysis of Mr. Larkowich's mental state. In #10-055, the

facts of this case support the conclusion that Mr. Larkowich acted knowingly with respect to the loan modification work that he was doing, and he knew he presented himself as an attorney to Ms. Chicoine and her lender. Mr. Larkowich knew or should have known that the websites created and maintained by his employers made misrepresentations as to his status as an attorney.

In #10-061, the facts of this case support the conclusion that Mr. Larkowich acted knowingly with respect to the loan modification work that he was doing, and he knew he presented himself as an attorney to Ms. McKelvey and her lender. Mr. Larkowich knew or should have known that the websites created and maintained by his employers made misrepresentations as to his status as an attorney. Mr. Larkowich knew, or should have known, that all clients of the Dargon Law Firm, including the McKelveys, should have been given proper notice of the firm's closing and should have had their interests protected as required by the New Hampshire Rules of Professional Conduct. Finally, Mr. Larkowich knew that he had failed to file a response to the complaint in this case.

Under the third prong of analysis of the actual or potential injury caused by Mr. Larkowich's misconduct. *See Kersey's Case*, 842 A.2d at 123-24 (citing *Standards* § 3.0). In #10-055, Mr. Larkowich's actions did not cause direct injury to Ms. Chicoine and Ms. Torres-Landa. Any injury they suffered was the result of the misconduct and mismanagement of Dargon Law Firm. Clearly, Mr. Larkowich caused injury to the reputation and integrity of the legal profession by engaging in the unauthorized practice of law and facilitating the production of false and misleading advertising.

In #10-061, Mr. Larkowich's actions did not cause direct injury to Ms. McKelvey. Any injury the McKelveys suffered was the result of the misconduct and mismanagement of Dargon

Law Firm. However, Mr. Larkowich could have taken steps in an attempt to avoid any potential adverse impact on the McKelveys. Clearly, Mr. Larkowich caused injury to the reputation and integrity of the legal profession by engaging in the unauthorized practice of law, facilitating the production of false and misleading advertising, and failing to adhere to professional standards when terminating a relationship with a client. Mr. Larkowich caused potential injury to the public when he failed to respond to the ADO.

Under the fourth prong of the analysis, the Court then looks to the fourth and final step in the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. (“After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.” *Wolterbeek's Case*, 152 N.H. 710 at 714 (2005)).

In #10-055, the duty violated, the accompanying mental state, and harm caused by the misconduct here warrant a baseline sanction of Suspension.

There are a number of mitigating circumstances that may justify a reduction in the degree of discipline to be imposed. *Standards* § 9.31. Mr. Larkowich was suspended from the Massachusetts bar for failing to pay administrative fees owed after relocating to New Hampshire to establish a small business unrelated to the practice of law. His suspension from the practice of law was not the result of professional misconduct.

Mr. Larkowich worked at Dargon Law Firm under the direction of a licensed New Hampshire attorney representing clients in loan modification negotiations. Although loan modification services may be undertaken on behalf of a client by a non-lawyer, Mr. Larkowich held himself out to both the client and the bank as a lawyer, and it was reasonable for both parties

to believe that Mr. Larkowich was acting as a lawyer possessing skills and authority beyond those of a non-lawyer acting in the same capacity.

Mr. Larkowich thought that he could represent clients in loan modification matters without violating Rule 5.5(a). Although Mr. Larkowich's lack of awareness of the breadth of Rule 5.5(a) is no defense on the question of whether the Rule was violated in this case, Mr. Larkowich's state of mind is a relevant inquiry on the question of sanction. *See Kersey's Case*, 150 N.H. at 587-88 (citing *Standards* §§ 3.0 and 8.0).

Additional mitigating factors include absence of a prior disciplinary record and timely good faith effort to rectify consequences of misconduct (misleading advertising). *Standards* § 9.32. Aggravating factors to be considered include the presence of multiple offenses and the fact that Mr. Larkowich has substantial experience in the practice of law. *Standards* § 9.22.

In #10-061, the duty violated, the accompanying mental state, and harm caused by the misconduct here warrant a baseline sanction of Suspension. Once the baseline sanction is determined, there are a number of mitigating circumstances that may justify a reduction in the degree of discipline to be imposed. *Standards* § 9.31. Mr. Larkowich was suspended from the Massachusetts bar for failing to pay administrative fees owed after relocating to New Hampshire to establish a small business unrelated to the practice of law. His suspension from the practice of law was not the result of professional misconduct.

Mr. Larkowich worked at Dargon Law Firm under the direction of a licensed New Hampshire attorney representing clients in loan modification negotiations. Although loan modification services may be undertaken on behalf of a client by a non-lawyer, Mr. Larkowich held himself out to both the client and the bank as a lawyer, and it was reasonable for both parties

to believe that Mr. Larkowich was acting as a lawyer possessing skills and authority beyond those of a non-lawyer acting in the same capacity. Mr. Larkowich thought that he could represent clients in loan modification matters without violating Rule 5.5(a). Although Mr. Larkowich's lack of awareness of the breadth of Rule 5.5(a) is no defense on the question of whether the Rule was violated in this case, Mr. Larkowich's state of mind is a relevant inquiry on the question of sanction. *See Kersey's Case*, 150 N.H. at 587-88 (citing *Standards* §§ 3.0 and 8.0).

Aggravating factors to be considered include the presence of multiple offenses and the fact that Mr. Larkowich has substantial experience in the practice of law. *Standards* § 9.22.

In summary, taking into consideration the four-part analysis recommended by the *Standards*, New Hampshire case law, and the purpose of attorney discipline in New Hampshire, a Public Censure appears to be the appropriate sanction. Applying the first three parts of the analysis of the *Standards* without question creates the framework for characterizing the misconduct and determining a baseline sanction of Suspension. *Conner's Case*, 158 N.H. at 303. Significant mitigating factors exist, however, which when considered in the sanction analysis render the imposition of a Public Censure appropriate: Mr. Larkowich was suspended from the Massachusetts bar for failing to pay administrative fees and not the result of professional misconduct; Mr. Larkowich thought that he could represent clients in loan modification matters without violating Rule 5.5(a) and his state of mind is a relevant inquiry on the question of sanction, *Kersey's Case*, 150 N.H. at 587; Mr. Larkowich has no prior disciplinary record; and finally, Mr. Larkowich made a timely and good faith effort to rectify consequences of his misconduct (misleading advertising). *Standards* § 9.32. A Public Censure takes into account the severity of Mr. Larkowich's misconduct, accords appropriate weight to the mitigating and

aggravating factors in the case, and serves a goal of attorney discipline by establishing a standard of conduct for lawyers in our state.

V. SANCTION

For all the reasons stated above, the Committee hereby imposes a Public Censure.

VI. COSTS

The Respondent shall pay all costs of the investigation and prosecution of this matter.

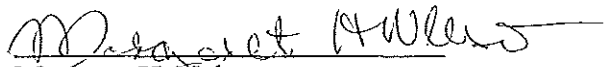
VII. CONCLUSION

For the above reasons, the Committee issues a Public Censure to Peter Larkowich for violating N.H. R. Prof. Conduct 1.16(d): Declining or Terminating Representation, 5.5(a) and 5.5(b)(1): Unauthorized Practice of Law; Multijurisdictional Practice of Law, 7.1(a): Communications Concerning a Lawyer's Services, 7.5(c): Firm Name and Letterheads, 8.1(b): Bar Admission and Disciplinary Matters, and 8.4(a): Misconduct.

VIII. RIGHT TO APPEAL

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

May 15, 2012


Margaret H. Nelson
Chair

Distribution:

Julie A. Introcaso, Disciplinary Counsel
Peter Larkowich
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