

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Pasquina, Edward F. Jr. advs. Attorney Discipline Office # 09-032

AMENDED SIX MONTH SUSPENSION STAYED FOR ONE YEAR

On January 17, 2012, the Professional Conduct Committee (the "PCC") deliberated the above captioned matter. The following members were present: Margaret H. Nelson, Chair; Toni M. Gray, Vice Chair; Susan R. Chollet; David N. Cole; Thomas P. Connair; Alan J. Cronheim; Gerald A. Daley; Richard H. Darling; James R. Martin, and Jaye L. Rancourt. Benette Pizzimenti, Vice Chair, and Richard D. Sager were absent.

Procedurally, this matter involved two respondents, Mr. Pasquina and William J. Kobuszewski. On January 21, 2011, the PCC accepted a Stipulation that was entered into by Mr. Kobuszewski and Disciplinary Counsel. A subsequent Order was issued finding No Misconduct with Warnings.

As to the charges against Mr. Pasquina, the PCC accepts the facts found in the Reissued Hearing Panel Report of February 25, 2011, and the Second Hearing Panel Report of October 20, 2011. Those reports are summarized below.

I. FINDINGS OF FACT

A. Summary of Charges

Mr. Pasquina is accused of violating New Hampshire Rules of Professional Conduct 3.3(a)(1), 3.4(c), 8.4(c), 8.1(a) and 8.4(a). These charges arise from his filing of a writ of summons at Hampton District Court on April 29, 2009, under Mr. Kobuszewski's name, and Mr. Pasquina's subsequent conduct before the Attorney Discipline Office ("ADO").

B. Procedural Background

Special Justice Mark F. Weaver referred this matter to the PCC on June 18, 2009. The matter arose out of Mr. Pasquina's (a Massachusetts attorney) filing a writ of summons in Hampton District Court on April 29, 2009, captioned *Walter Vickery v. Joseph Tuccolo*, No. 09-CV-90, with the alleged assistance of local counsel William J. Kobuszewski. Disciplinary Counsel Jennifer B. Sargent issued separate Notices of Charges as to both attorneys on October 18, 2010, arising out of that matter. The two matters were assigned to a single docket.

Mr. Kobuszewski answered the Notice of Charges on November 15, 2009. On December 27, 2010, Disciplinary Counsel and Mr. Kobuszewski filed an Assented-to Motion to Dismiss with Warning, which they amended and re-filed on January 13, 2011. On January 18, 2011, the PCC deliberated, following which it issued, then corrected and reissued, a Finding of No Misconduct but with Warnings as to Mr. Kobuszewski dated January 21, 2011.

Mr. Pasquina moved for additional time to answer the Notice of Charges on November 26, 2010, and concurrently filed his answer to the Notice of Charges. He also filed a Motion to Dismiss, alleging a lack of subject matter jurisdiction. Disciplinary Counsel objected to both motions. On December 9, 2010, Hearing Panel Chair Richard E. Fradette, Esquire,

granted Mr. Pasquina's motion for additional time to answer, but denied the motion to dismiss on the basis that the Hearing Panel does not make jurisdictional rulings.

Disciplinary Counsel and Mr. Pasquina thereafter engaged in discovery, as to which the Hearing Panel Chair's intervention was required. Disciplinary Counsel also moved to add additional charges against Mr. Pasquina, which the Hearing Panel Chair initially permitted, but then reconsidered. On January 14, 2011, Mr. Pasquina moved to continue the hearing because of the additional charges, but the Hearing Panel Chair denied that motion on January 18 in light of the Chair's other rulings with respect to discovery and the reconsideration of the additional charges. Disciplinary Counsel later withdrew the additional charges by motion, which the PCC granted. As a result, the charges presented to the Panel consisted of the Amended and Consolidated Notice of Charges as to Edward F. Pasquina, Jr. dated January 13, 2011, minus the additional charges appearing in paragraphs 123 through 136 therein.

The Panel held a Final Hearing in this matter on January 28, 2011, at which it viewed Exhibits 1-18 and Proposed Findings of Fact and Rulings of Law and heard the testimony of five witnesses. The Panel received no stipulations. The Panel deliberated after the hearing and again on February 9, following which it issued, then reissued, a Hearing Panel Report, the latter of which is dated February 25, 2011, and is the document the PCC reviewed.

The PCC held Oral Argument on May 17, 2011. After consideration of the Record, the Hearing Panel Report and its recommendation as to sanction, and the arguments of counsel for the ADO and the respondent, the PCC remanded the matter for further proceedings before the Hearing Panel to consider and respond to particular questions framed to the Panel.

On September 26, the ADO and Mr. Pasquina executed a Stipulation as to Facts, Violations, and Recommended Sanction. On October 14, at which time the Hearing Panel held a second hearing based on the PCC remand, at which the Hearing Panel considered the Stipulation. The Panel issued its Second Hearing Panel report dated October 20, 2011, which the PCC deliberated on January 17, 2012.

C. Hearing Panel Final Hearing - Witnesses

The hearing panel reviewed the entire record, consisting of the Notice of Charges and Answer, Exhibits 1 through 18, and the testimony of the following witnesses: Diane Lamie, Special Justice Mark F. Weaver, Mr. Kobuszewski, Wesley Prevost, James L. DeHart, and Mr. Pasquina. A summary of each witness' testimony follows.

1. *Diane Lamie*

Ms. Lamie has worked in the Hampton District Court for fourteen years. On April 28, 2009, she waited on Mr. Pasquina at the court's counter window. He told her that he needed to file a civil "complaint." She told him that he also needed to file a "civil writ," and he disagreed. She asked if he were a member of the New Hampshire bar, and he said that he was not. She told him that he would also need to file a *pro hac vice* motion. She gave him a writ of summons form. Ms. Lamie testified that Mr. Pasquina became angry with her and she invited him to speak with a judge in the courtroom. He accepted that offer and entered the courtroom to meet with Judge Francis J. Frasier. *See* Section D(1) concerning that meeting.

The next day, April 29, 2009, Mr. Pasquina returned to the court's counter window and once again Ms. Lamie waited on him. He stated that he wanted to file his "complaint" on behalf of a New Hampshire attorney. She asked him if he had filled out the writ of summons and he

responded “no.” She told him that she would not accept a “complaint” without a writ of summons. She testified that he then took out a blank writ of summons from his folder and filled it out within her line of sight at a desk by the door of the clerk’s office. Mr. Pasquina then handed Ms. Lamie a writ that he had filled in by hand along with his typed “complaint.” Both the writ and the “complaint” contained a signature for “William J. Kobuszewski.” She accepted a check from Mr. Pasquina written on his business account for the filing fee and issued him a receipt. Mr. Pasquina did not file a *pro hac vice* motion. After seeking the advice of John Clark, Clerk of Hampton District Court, she docketed the documents as *Walter Vickery v. Joseph Tuccolo*, No. 09-CV-90.

The Panel found Ms. Lamie’s testimony to be credible. The Panel neither needed to nor actually did rely upon her characterization of Mr. Pasquina’s demeanor in making its findings.

2. *Hon. Mark F. Weaver*

Judge Weaver testified about his involvement with the *Vickery* case, his meeting in chambers with Mr. Pasquina and Mr. Kobuszewski on May 27, 2009, initially with respect to another case, and his subsequent May 28, 2009, order dismissing the *Vickery* case.

Judge Weaver was not party to any of the activity surrounding Mr. Pasquina’s attempts to file documents with the Hampton District Court on April 28 and 29, 2009. The judge present at the court house on April 28, 2009 was Judicial Referee Francis J. Frasier. Judge Weaver relied on the statements of Ms. Lamie, Clerk Clark, and Judge Frasier (directly or indirectly).

On May 27, 2009, Mr. Kobuszewski and Mr. Pasquina appeared at the Hampton District Court for a criminal trial in another unrelated matter. Mr. Pasquina’s motion for *pro hac vice* admission in which Mr. Kobuszewski was to serve as local counsel was then pending. Judge

Weaver testified that he called Mr. Pasquina and Mr. Kobuszewski into his chambers and asked them about the circumstances surrounding the filing in the *Vickery* case. Mr. Kobuszewski told Judge Weaver that he had given Mr. Pasquina permission on the telephone to sign Mr. Kobuszewski's name to pleadings initiating a civil matter. Mr. Pasquina admitted that he signed Mr. Kobuszewski's name to the *Vickery* pleadings.

Judge Weaver dismissed the *Vickery* case on the basis that it was improperly filed because no valid attorney of record had signed the writ of summons. In his order Judge Weaver relied in part on his understanding that on April 28, 2009, Judge Frasier had alerted Mr. Pasquina that under District Court rules only a New Hampshire attorney or one admitted *pro hac vice* may sign a writ of summons. Judge Weaver also denied the *pro hac vice* motion in the criminal case and continued that trial to allow the defendant to retain new counsel.

The Panel found Judge Weaver's testimony to be credible and that his dismissal of the *Vickery* case was supported by District Court rules. The Panel noted that Judge Weaver did not witness what transpired with Mr. Pasquina at the clerk's office on April 28 and 29, 2009, and when making the May 28, 2009, order, he did not have access to all of the evidence available to the Panel, including Mr. Kobuszewski's and Mr. Pasquina's testimony, exhibits, and a transcript of the conversation between Judge Frasier and Mr. Pasquina on April 28, 2009.

3. *William J. Kobuszewski*

In his testimony Mr. Kobuszewski affirmed that he stipulated to a number of facts that resulted in the Reissued Finding of No Misconduct but with Warnings as to him. Those stipulated facts include his admission to practice law in New Hampshire and Massachusetts, Reissued Finding ¶ 2, and his agreement on March 23, 2009, to serve as local counsel with Mr.

Pasquina in a driving while intoxicated criminal matter pending in Hampton District Court (*State v. Enslow*, No. 441-2009-CR-0043), *Id.* ¶ 9. The next day Mr. Kobuszewski filed his appearance and moved to continue the Enslow trial, noting that Mr. Pasquina was “engaged in a major trial in Federal Court” and would be filing his *pro hac vice* motion “shortly”. *Id.* ¶ 10. The Court continued the Enslow trial to May 27. *Id.* ¶ 11. Mr. Pasquina did not file his *pro hac vice* motion until May 22, after Mr. Kobuszewski reminded him to do so. *Id.* ¶¶ 13, 14.

Mr. Kobuszewski testified that he received a telephone call from Mr. Pasquina late in the afternoon on April 27. He said that in that call Mr. Pasquina stated he was calling from court, that he had another case in Hampton District Court “for *pro hac vice*,” he had tried to file it, the clerk’s office would not let him do so, and the statute of limitations was going to expire. Transcript at 140-41. Mr. Kobuszewski testified that “I do remember talking to him and giving him permission to sign my name in that context.” *Id.* When asked “in what context,” Mr. Kobuszewski testified “As in-state attorney in a *pro hac vice* motion, not in its entirety as it was filed with the court.” *Id.* He stated that he gave Mr. Pasquina permission to sign his name “under agency,” and that the signature of Mr. Kobuszewski’s name on the writ of summons in Mr. Pasquina’s handwriting included the notation “asst” which could mean “assented.” *Id.* at 168-70, 173. He recalled telling Mr. Pasquina during the call to file a *pro hac vice* motion as well. *Id.* at 154, 161, 183. In that call, Mr. Kobuszewski also discussed some differences between Massachusetts and New Hampshire practice in filing and serving civil lawsuits. Mr. Kobuszewski stated that Mr. Pasquina did not mention that Mr. Kobuszewski would take over the case in its entirety. *Id.* at 142.

Mr. Kobuszewski denied that he had a follow-up telephone conversation with Mr. Pasquina on April 28 or the next day. *Id.* at 163, 178. He testified that he called Mr. Pasquina's office a few days later, asking for copies of the documents from the civil matter, but never received them. *Id.* at 146, 181. He testified that a woman in Mr. Pasquina's office found a reference to the matter and said "oh, it's your case," which Mr. Kobuszewski said was never the situation. *Id.* at 176.

On May 27 Mr. Kobuszewski and Mr. Pasquina arrived at Hampton District Court for the *Enslow* trial. Mr. Kobuszewski testified that Clerk John Clark showed him for the first time a packet of materials relating to the *Vickery* matter, including the pleadings Mr. Pasquina signed with Mr. Kobuszewski's name, and the statement of Ms. Lamie. *Id.* at 134-36. After that, Mr. Kobuszewski testified, he asked Mr. Pasquina whether he had made service of process. Mr. Pasquina responded that he had not done so but invited Mr. Kobuszewski to complete service if he wanted, and that Mr. Pasquina intended to settle the case himself. *Id.* at 145.

Overall, the Panel found Mr. Kobuszewski's testimony to be credible, although the Panel notes that his testimony tracked his statements made in a stipulation that led to a warning, but no more serious sanction, from the PCC. The Panel found that Mr. Kobuszewski gave telephonic permission to Mr. Pasquina to sign his name on the *Vickery* writ of summons, but also told Mr. Pasquina to contemporaneously file a *pro hac vice* motion. Mr. Kobuszewski gave that permission without speaking with Mr. Vickery or reviewing the special declaration or assessing the merits of the case.

4. *Wesley Prevost*

Mr. Prevost is an attorney admitted in Massachusetts. He testified as a character witness for Mr. Pasquina based upon many years of personal experience. He also testified that he was present during a conversation between Mr. Pasquina and Mr. Kobuszewski during which time Mr. Pasquina told Mr. Kobuszewski that he would “refer” an unspecified tort matter to him. *Id.* at 202-03, 222. The Panel found Mr. Prevost’s character testimony of limited use and the tort referral testimony not specific enough to be helpful.

5. *James L. DeHart*

Mr. DeHart testified that he was the Attorney Discipline Office’s General Counsel. He outlined for the Panel the procedure his office follows when investigating attorney discipline matters. He testified that Mr. Pasquina did not respond substantively to requests for information on July 21 or August 26, 2009. Ex. 6, 8. Mr. Pasquina did accept Mr. DeHart’s February 2, 2010, written offer to meet in person. Ex. 10, 11.

Mr. DeHart testified that he met with Mr. Pasquina on February 23, 2010. Mr. Pasquina told him that he was not looking to have Mr. Kobuszewski serve as local counsel in the *Vickery* matter but instead wanted to give him the case as a reward for his local counsel service in the *Enslow* case. Mr. Pasquina told him that he was not planning to be admitted *pro hac vice* in that case. *Id.* at 106-07. Mr. DeHart testified that Mr. Pasquina told him that this was a small case that could be settled with a couple of telephone calls so would not be a lot of work for Mr. Kobuszewski. *Id.* at 114. Mr. DeHart found Mr. Pasquina’s story notable in that it contradicted what he had heard from Mr. Kobuszewski: that Mr. Kobuszewski was going to serve in the *Vickery* matter as local counsel with Mr. Pasquina acting *pro hac vice*. *Id.* at 107, 115.

The Panel found Mr. DeHart's testimony to be credible.

6. *Edward F. Pasquina, Jr.*

Mr. Pasquina testified on his own behalf. He stated that an ongoing client, Russell Enslow, paid him \$3,000 to defend a driving while intoxicated charge pending in Hampton District Court. He first suggested to Mr. Enslow that he refer the case out to a New Hampshire lawyer but Mr. Enslow wanted to use Mr. Pasquina, so Mr. Pasquina told him that he would need to "get a New Hampshire lawyer to sit with me." *Id.* at 235. Mr. Pasquina testified that he paid Mr. Kobuszewski \$1,500.00 for his local representation in the case.

Mr. Pasquina testified that Walter Vickery's auto negligence matter then came to light. Mr. Pasquina thought that the collision had occurred in Massachusetts, but it had occurred in New Hampshire. The statute of limitations was about to expire so he had to get the case filed quickly. Mr. Pasquina stated that he drafted a "complaint" and hand delivered it on April 28, 2009, to the Hampton District Court to file, not intending to handle the case but to prevent the statute of limitations from running. He spoke with Ms. Lamie but did not believe he treated her rudely, and was trying to joke with her. She brought him to Judge Frasier, who told him that he could not file a case without a New Hampshire lawyer. *Id.* at 236, 250.

Mr. Pasquina testified that after he left the court he called Mr. Kobuszewski. The two discussed how writs of summons are filed in New Hampshire and how they are served. Mr. Kobuszewski told him that Mr. Pasquina could sign his name "on all the pleadings."

The next morning, April 29, Mr. Pasquina changed his mind and decided to refer the case entirely to Mr. Kobuszewski. He called Mr. Kobuszewski and related the change to him. Mr. Pasquina testified that he then got his secretary to change the signature lines on the "complaint"

to Mr. Kobuszewski and went back to Hampton District Court. *Id.* at 240. He did not recall whether he told Mr. Vickery about Mr. Kobuszewski's involvement. *Id.* at 289.

According to his testimony, at the court on April 29 Ms. Lamie told Mr. Pasquina that he needed to file a *pro hac vice* motion. He responded that "all I am is a courier." She also told him that he needed a writ, so he filled out the writ in the clerk's office in plain sight and handed it back to Ms. Lamie with the "complaint." He testified that he wrote "assented" next to the signature on the writ to show it was not his signature. *Id.* at 241-42. Thereafter, Mr. Pasquina's plan was to have Mr. Kobuszewski make a few telephone calls to settle the case. *Id.* at 242-43. Mr. Pasquina maintained that he filed the *Vickery* pleadings as an agent for Mr. Kobuszewski, not as an attorney. *Id.* at 254-55, 280, 290. He testified that he considered getting Mr. Vickery to sign the pleadings himself, but he thought the clerk's office might see it as a way to circumvent the rules. *Id.* at 281.

Mr. Pasquina then testified that he saw Mr. Kobuszewski in the parking lot of Hampton District Court on May 27 when they arrived to try the *Enslow* case. Mr. Kobuszewski told Mr. Pasquina there was a problem with the way in which Mr. Pasquina had signed his name on the *Vickery* pleadings. Mr. Pasquina testified that there was no mention at that time of a *pro hac vice* motion. *Id.* at 243-44.

With respect to his interaction with the ADO, Mr. Pasquina testified that he delayed in responding because he did not know whether it had jurisdiction over him. *Id.* at 261.

The Panel found Mr. Pasquina's testimony about the *Enslow* case, the urgency to commence an action in the *Vickery* case, his general recollection of the telephone conversation with Mr. Kobuszewski on April 28, and his general account of what transpired in the clerk's

office on April 28 and 29 credible. The Panel did not find his testimony about his conversation with Mr. Kobuszewski on April 29 or his alleged intent simply to turn the case over to Mr. Kobuszewski credible. The panel concluded that Mr. Pasquina delayed filing suit in the *Vickery* matter until the eve of the expiration of the statute of limitations, was concerned about the consequences arising from the delay, hoped to settle the case in the near future, and planned to rely upon Mr. Kobuszewski's New Hampshire bar admission to buy him some time.

D. Hearing Panel Final Hearing – Exhibits

The Panel found that certain exhibits submitted at the final hearing deserved special note.

1. *Transcript of Exchange with Judge Frasier – Exhibit 3*

The Panel received the transcript of an April 28 tape recorded conversation between Judicial Referee Francis J. Frasier and Mr. Pasquina. In that conversation, Mr. Pasquina is recorded as saying that he wants to file a “complaint” because the statute of limitations is expiring “and pending me acquiring New Hampshire counsel, which I agree to do promptly, Friday or over the weekend.” Exhibit 3 at 3. Judge Frasier told Mr. Pasquina that he should “read the whole rule, sir” relating to *pro hac vice* motions, and that “there’s nothing I can do” unless he files such a motion. *Id.* Judge Frasier told him that he is “acting as an attorney” and Mr. Pasquina responded “that’s true. *Id.* at 4. Judge Frasier told him to get a New Hampshire attorney to file the writ now. He said “But if you sign it as an out-of-state attorney, I believe you might—it could ultimately be dismissed. You could have an issue with the professional conduct committee. Because they’ve rewritten that rule, and it’s very strict.” *Id.* The judge then discussed the jurisdictional limits of the district and superior courts and the right to a jury trial. The judge then said “you might grab a New Hampshire lawyer that will just agree with you to

sign the writ today.” Mr. Pasquina responded: “No, I have one in mind. I haven’t been able to reach him. I’ve tried both cases up here.” *Id.* at 5-6. Judge Frasier advised Mr. Pasquina “to get up early tomorrow” to get someone to sign the writ. He again told Mr. Pasquina to take a copy of the rule relating to *pro hac vice* admissions. *Id.* at 7.

2. *Vickery Pleadings – Exhibits 12 and 13*

The hand written writ of summons form that includes Mr. Kobuszewski’s alleged signature was actually signed by Mr. Pasquina on April 29 at the Hampton District Court clerk’s office. The writ endorsement line contains a notation that appears to read “asst,” which the Panel believed meant “assent.” The “complaint” and the appearance with the alleged signature of Mr. Kobuszewski were also actually signed by Mr. Pasquina, but without any additional notation.

3. *Pasquina Check and Receipt – Exhibits 14 and 15*

Mr. Pasquina wrote a check to the Hampton District Court on his law firm’s account for the \$125 filing fee in the *Vickery* matter and received a receipt from the clerk in his name.

E. PCC Remand

Oral Argument before the PCC was held on May 17, 2011. After consideration of the Record, the Hearing Panel Report and its recommendation as to sanction, and the arguments of counsel for the ADO and the respondent at oral argument, based on its equity power and the circumstances of this matter the PCC remanded the matter for further proceedings before the Hearing Panel to address the following specific questions:

1. Mr. Pasquina apparently was not allowed by the staff of the Hampton District Court to file the Plaintiff’s Complaint and Notice of Appearance of Counsel in the *Vickery* case. *See* Disciplinary Counsel’s Exhibits 12-13. Neither of these pleadings appear to bear the “asst” notation, which the Hearing Panel found indicated “assented.” *See* Hearing Panel Report at 10. Assuming that the Hearing Panel finds these facts true, the Committee requests that the Hearing Panel review these facts to determine whether the Respondent’s attempt to file documents purporting to be signed by another but actually signed by him constitutes a violation of N.H. Rule of Professional Conduct 8.4(c). If so, does this change the

Hearing Panel's recommendation as to sanction?

2. The remand hearing shall be limited to the issues and evidence referenced in Respondent's Motion to Remand. The parties and the Hearing Panel are advised that the purpose of the remand is to consider the referenced evidence and to determine whether this further evidence impacts the Hearing Panel's judgment as to rule violations or its recommendation as to sanction in this matter. The remand is for this limited purpose, rather than for the purpose of relitigating this matter. The Hearing Panel Chair shall have the discretion to rule on admissibility of any testimony or evidence that is referenced in the Motion to Remand and to exclude presentation of cumulative evidence previously presented to the Hearing Panel on January 28, 2011.

Order on Motions at 2.

F. Second Hearing Panel Report

Following the remand, based on the PCC's questions the Second Hearing Panel report focused on Exhibits 12 and 13 and Rule 8.4(c). The Hearing Panel first addressed whether Mr. Pasquina's action of signing Mr. Kobuszewski's name to a "Complaint" and an appearance without any specific notation of assent (Exhibit 13) constitutes a violation of Rule 8.4(c); i.e., involves dishonesty, fraud, deceit, or misrepresentation.

Because the Panel found that there was no evidence in the record that there was any signature block for Mr. Kobuszewski appearing on the subject documents and that Mr. Pasquina credibly testified that on April 28 the documents he planned to file contained signature blocks with his own name appearing, the Panel found it could not find by clear and convincing evidence that the events of April 28 form the basis for a violation of Rule 8.4(c). In so finding the Panel also considered the parties' Stipulation at ¶ 93, and that it had reached the same result in considering Exhibits 12 and 13 in the context of the events of April 29 in finding that the signatures appear to be similar to that on the writ of summons and there is no indication Mr. Pasquina attempted to mislead the court on April 29 as to who actually signed them, although the

Panel found that his behavior, including his execution of Exhibits 12 and 13, constituted a knowing and flagrant violation of court rules.

In considering the PCC's second question, the Panel focused on new information the respondent's counsel, Peter Beeson, submitted with his Assented-to Motion to Remand to Hearing Panel with respect to the violation of Rule 8.1(a) and the parties' Stipulation as to facts. In its First Reissued Report, the Panel chose to believe Mr. DeHart as to what Mr. Pasquina told him at the February 23, 2010, meeting: that Mr. Pasquina planned to turn over the entire *Vickery* case to Mr. Kobuszewski as of April 29, 2009. The Panel determined that this statement was false based on Mr. Kobuszewski's testimony, the transcript of Mr. Pasquina's discussion with Judge Frasier, and the absence of records of a telephone call that Mr. Pasquina testified he made to Mr. Kobuszewski on April 29, 2009. First Report, pp. 6, 8, 10, 12–13.

The Stipulation includes new facts with respect to the Rule 8.1(a) violation the Panel found significant:

1. The sworn affidavit of Mr. Vickery stating that Mr. Pasquina told him that a New Hampshire lawyer with a Polish-sounding name would take over the case, because the New Hampshire court had rejected the filing. Stipulation ¶ 46, Stipulation Exhibit G, ¶ 11.
2. Documents retrieved from Mr. Pasquina's office file and from a backup disk from Mr. Pasquina's office computer showing two versions of a draft motion never filed with Hampton District Court which essentially state that New Hampshire counsel, not Mr. Pasquina, will handle the case. Stipulation ¶¶ 23–29, 35, Stipulation Exhibits A and B.
3. A notation on Mr. Pasquina's Vickery file that states in part "Case will be referred out. Take no further action". Stipulation ¶ 43, Stipulation Exhibit F.
4. Mr. Pasquina's office telephone service arrangement with Verizon did not supply him with "billing call details". Stipulation ¶ 42, Stipulation Exhibit E.

Based on those facts and reconsidering other facts already in the record, the Panel found that it could not find clear and convincing evidence that Mr. Pasquina knowingly made a false statement of material fact to Mr. DeHart on February 23, 2010.

The panel also considered that the parties stipulated to an alternate charge that Mr. Pasquina violated Rule 8.1(b) by failing to respond to a demand for information from the ADO. The Stipulation includes admissions concerning Mr. Pasquina's delays and failure to produce information during Mr. DeHart's investigation of the case. Stipulation ¶¶ 67–71. More importantly, the Stipulation includes an admission that Mr. Pasquina failed to produce the draft motions to Mr. DeHart showing Mr. Pasquina's intent to refer out the case to a New Hampshire attorney. Had that draft motion been submitted, Mr. DeHart could have considered the truth of Mr. Pasquina's other statements made during their February 23, 2010, meeting. Stipulation ¶¶ 73–75.

As a result, the Panel found by clear and convincing evidence that Mr. Pasquina violated Rule 8.1(b).

II. RULINGS OF LAW

The PCC agrees with the Hearing Panel's conclusions and findings on remand. Based, therefore, on the Panel's Reissued Final Hearing Report and its Second Hearing Panel Report, considering the above stated facts found by the Hearing Panel in its two hearings, and considering the parties' Stipulation, the PCC finds that Mr. Pasquina violated Rules 3.4(c) and 8.1(b) on the following bases:

Rule 3.4(c) states in pertinent part: "A lawyer shall not . . . (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no

valid obligation exists.” The PCC finds clear and convincing evidence that Mr. Pasquina’s actions in connection with signing Mr. Kobuszewski’s name to a pleading when not admitted *pro hac vice* despite Judge Frasier having specifically told him in advance that he needed to be admitted *pro hac vice* to file his lawsuit constitutes a knowing violation of Rule 3.4(c).

Rule 8.1(b) states in pertinent part: “An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not . . . (b) knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority[.]” The record is replete with instances of Mr. Pasquina’s failure to cooperate with the ADO through failing to respond to lawful and appropriate requests for information. Accordingly, the PCC also finds clear and convincing evidence that Mr. Pasquina violated Rule 8.1(b).

Based on the above violations, the PCC finds clear and convincing evidence Mr. Pasquina also violated Rule 8.4(a).

III. ANALYSIS

The PCC is mindful that attorney discipline is not intended to inflict punishment on an offending attorney. Rather, its purpose 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. *Coffey’s Case*, 152 N.H. 503, 512-13 (2005). Although the New Hampshire Supreme Court has not adopted the *ABA Standards for Imposing Lawyer Sanctions* (“Standards”), it looks to them for guidance. *Feld’s Case*, 149 N.H. 18, 28 (2002), *cert. denied*, 540 U.S. 815 (2003). The *Standards* lists the following factors for consideration 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.” *Standards, supra*, Section 3.0.

The *Standards* offers guidance with respect to the appropriate baseline sanction. Section 6.0, entitled “Violations of Duties Owed to the Legal System,” states as follows in its Subsection entitled “Abuse of the Legal Process”:

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 party, and causes interference or potential interference with a legal proceeding.

Standards § 6.22. In this case the record establishes that given Mr. Pasquina’s colloquy with Judge Frasier prior to filing the subject pleadings in the Hampton District Court, Mr. Pasquina’s violation of Rule 3.4 was knowing. Furthermore, given Mr. Pasquina’s assertion that he did not need to respond to the ADO’s lawful demand for information on the basis that he was not clear as to its jurisdiction over him indicates that his failure to respond to the lawful demand for information was also knowing. Both duties are clear: the duty not to knowingly disobey an obligation under the rules of a court and the duty to respond appropriately to demands for information from a disciplinary authority concerning alleged professional misconduct. The record also establishes that Mr. Pasquina’s attempt to shortcut the rules governing pro hac vice admission in New Hampshire caused his client actual harm because the client’s case was dismissed as untimely files.

As to aggravating and mitigating factors, Mr. Pasquina’s infractions did not constitute a pattern of misconduct, multiple offenses, or other factors to be considered when applying the *Standards* except for Mr. Pasquina’s substantial experience in the practice of law. *Standards* § 9.22. By the same token, the mitigating factors set forth in the *Standards* also are largely

inapplicable to Mr. Pasquina's circumstances. *See Standards* § 9.32.

Apparently, in recognition of Mr. Pasquina's violation of the rules and *Standards*, the parties have stipulated that the baseline sanction of suspension should be reduced to a six month suspension that is stayed for one year. The parties have further voluntarily stipulated that the condition of this stay would be that, for a period of one year, Mr. Pasquina shall not practice law or assist anyone else in the practice of law in connection with any case involving New Hampshire parties or claims and shall not appear in any such capacity before any court in New Hampshire. Stipulation ¶ 115, at 31.

IV. SANCTION

Taking into consideration the above four part *Standards* analysis, New Hampshire case law, the parties' stipulation, and the purposes of attorney discipline in New Hampshire, the PCC orders as follows:

1. Mr. Pasquina is suspended from the practice of law in New Hampshire for a period of six months. This suspension shall be stayed for one year.
2. Pursuant to the parties' voluntary stipulation, the stay of the suspension is conditioned on Mr. Pasquina's agreement that he shall not practice law in New Hampshire as explicated above for a period of one year, and his fulfillment of that agreement.
3. Mr. Pasquina is assessed the costs of this proceedings, to be paid within thirty days of the assessment or the stay of the suspension shall be lifted and added to the one year in which he is prohibited from practicing law in New Hampshire.
4. The above stayed suspension shall be reported to the Massachusetts Board of Bar Overseers or equivalent authority.
5. If Mr. Pasquina subsequently moves for *pro hac vice* admission in New Hampshire at any time, in the associated affidavit or other pleadings Mr. Pasquina shall disclose the Hampton District Court's denial of his *pro hac vice* motion and this proceeding and outcome.

6. Upon the effective date of this Order, Mr. Pasquina shall not take on any new matters for new or existing clients in New Hampshire.
7. Mr. Pasquina shall comply with the provisions of Supreme Court Rule 37(13)(a) within 14 calendar days of the effective date of this Order. In his written notice to New Hampshire clients Mr. Pasquina shall apprise his New Hampshire clients of this Order and shall advise them that he will be closing his New Hampshire practice by a date no later than 30 days from the date of this Order, that they will need new counsel after that date, and shall instruct them regarding the handling and transfer of their files and make available to all New Hampshire clients being represented in pending matters all original file contents and other property to which they are entitled, calling attention to any urgency for obtaining the files or property.
8. If in connection with the previous paragraph Mr. Pasquina has matters that cannot reasonably be concluded by the above required closing date for his New Hampshire practice but which can be concluded shortly thereafter, Mr. Pasquina shall advise the PCC of the nature of each such matter, the length of time necessary to conclude the matter, and request an extension of time to complete any specific matter.
9. On or before 30 days of the effective date of this Order, Mr. Pasquina shall:
 - a. Provide the ADO with: (i) copies of all notice letters issued to clients pursuant to Paragraph (7) above, and (ii) a list of all state, federal, and administrative jurisdictions in which Mr. Pasquina is admitted to practice as of the date of this Order.
 - b. Retain copies of all notice letters issued to clients, opposing counsel, courts, and others, and maintain complete and organized records of the steps taken by Mr. Pasquina to comply with the above requirements.

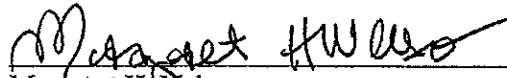
V. COSTS

Mr. Pasquina shall pay all costs associated with the investigation and prosecution of this matter.

VI. CONCLUSION

For all of the above reasons, the Committee issues a six month suspension, stayed for one year as to Edward F. Pasquina's violations of Rules of Professional Conduct 3.4(c), 8.1(b), and 8.4(a). If all of the conditions of the stay are met, the suspension shall not be imposed.

May 22 2012


Margaret H. Nelson
Chair

Distribution:

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