

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

David M. Rothstein, Chair  
Benette Pizzimenti, Vice Chair  
Elaine Holden,\* Vice Chair  
Peter G. Beeson  
Susan R. Chollet\*  
Alan J. Cronheim  
Richard H. Darling\*

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

Heather E. Krans  
Martha Van Oot  
Georges J. Roy\*  
Richard D. Sager  
Mary Elizabeth Tenn  
\* non attorney member  
Holly B. Fazzino, Administrator

*Theroux, Linda A. advs. Attorney Discipline Office and Jeffrey R. and  
Jean M. Ruggiero # 09-035 Remand*

**PUBLIC CENSURE**

On June 17, 2014, the Professional Conduct Committee (the “Committee”) heard oral argument and deliberated the issue of sanction as appealed by the Attorney Discipline Office (the “ADO”). Members present included David M. Rothstein, Chair; Benette Pizzimenti, Vice Chair; Elaine Holden, Vice Chair; Peter G. Beeson; Susan R. Chollet; Richard H. Darling; Heather E. Krans; Georges J. Roy; and Richard D. Sager. Alan J. Cronheim and Martha Van Oot were recused and not present. Mary Elizabeth Tenn was absent.

Oral Argument was presented by Elizabeth M. Murphy, Assistant Disciplinary Counsel, on behalf of the ADO, and Linda A. Theroux, represented herself. Gladys Strickhart, Legal Assistant to Attorney Murphy, was also present.

The Committee reviewed the record, including the New Hampshire Supreme Court Order remanding the matter to the Committee, Notice of Charges, Answer, Stipulation as to the Facts, Jointly Submitted Exhibits 1-68, the ADO’s Requests for Findings of Fact and Rulings of Law and Request for Costs, Respondent’s Proposed Findings of Fact, Preliminary Hearing Panel Report, Transcripts of Hearing on Sanction, ADO’s Memorandum on Sanction, Hearing Panel Report, ADO’s Limited Appeal on Sanction and Supporting Memorandum of Law, and Respondent’s Memorandum of Law in Opposition to the ADO’s Limited Appeal on Sanction.

For the reasons stated herein, the Committee determined that Ms. Theroux should be publicly censured for violating Rules 4.1(a), 8.4(c) and 8.4(a).

**I. FINDINGS OF FACT**

The Committee determined and the parties stipulated that the facts set forth at pp. 2-19 of the Hearing Panel Report were not in dispute. These facts have been established by clear and convincing evidence. The Committee summarizes those facts, with reference to the record, as follows:

## Background Facts

1. Attorney Linda Theroux is licensed to practice law in New Hampshire. Ms. Theroux was admitted to practice on October 31, 1994, and has conducted a full-time, solo practice since that time, focusing primarily on family and criminal law. Stipulation,<sup>1</sup> ¶ 1; Answer ¶ 1;<sup>2</sup> Ex. 6 p. 1.<sup>3</sup>

2. At all times material to this proceeding, Ms. Theroux operated her law office as The Law Firm of Linda A. Theroux, PLLC, 58 Patten Road, Merrimack, New Hampshire 03054. Answer ¶ 1; Ex. 6 p. 1. Ms. Theroux's daughter served as her legal/administrative assistant. At times, Ms. Theroux also retained part-time temporary employees to assist with her practice. Stipulation ¶ 2.

3. As of December 1, 2012, Ms. Theroux closed her law practice. Stipulation ¶ 3. She closed her practice because it was her intention to focus on volunteer work in her retirement. T-II p. 120; T-III pp. 30-31.<sup>4</sup>

4. This attorney discipline matter was initiated by a lawyer referral dated August 6, 2009, and a complaint dated August 12, 2009, filed with the ADO. The referral and complaint alleged that Ms. Theroux violated the New Hampshire Rules of Professional Conduct in connection with her representation of Kristin Ruggiero in a divorce proceeding (*In the Matter of Kristin K. Ruggiero and Jeffrey R. Ruggiero*, 618-2007-DM-00395) in the Brentwood Family Division during the period 2007 to 2009. Attorney Philip Desfosses, who represented Mr. Ruggiero during a portion of the Family Division case, made the referral. Mr. Ruggiero filed the complaint. Stipulation ¶ 4; Ex. 1 pp. 1-3; Ex. 2 pp. 12-17.

5. Both the referral and the complaint focused on Ms. Theroux's handling of a military records release executed by Mr. Ruggiero and tendered to Mr. Ruggiero's employer, the U.S. Coast Guard ("Coast Guard"). Stipulation ¶ 5; Ex. 1 p. 2; Ex. 2 p. 13.

6. On August 1, 2011, the ADO issued a Notice of Charges, alleging violations of Rules 3.4(c), 4.1(a), 4.4(a), 8.4(c) and 8.4(a). The Notice of Charges is hereby incorporated by reference. Stipulation ¶ 6; Ex. 5.

7. On August 24, 2011, Ms. Theroux filed an Answer to the Notice of Charges, contesting all alleged rule violations. The Answer is hereby incorporated by reference. Stipulation, ¶ 7 Ex. 6.

---

<sup>1</sup> References to "Stipulation" refer to the parties' Stipulation as to Facts dated November 2013, which can be found in Volume 1 of the Jointly Submitted Exhibits, Exhibit 7. A signed copy of the Stipulation as to Facts was submitted at the December 16, 2013 hearing.

<sup>2</sup> "Answer" refers to Linda A. Theroux's Answer to Notice of Charges dated August 24, 2011. The Answer can be found at Volume 1, Exhibit 6 of the Jointly Submitted Exhibits.

<sup>3</sup> "Ex." refers to the "Jointly Submitted Exhibits," two volumes containing 66 pre-marked exhibits stipulated to by the parties. Page numbers reference the Bates numbers on the bottom right-hand corner of the page, or if the document was not Bates stamped, the page number on the bottom of the page.

<sup>4</sup> References to "T-I," "T-II," and "T-III" refer to the respective volumes of trial transcript followed by the page number.

8. On June 5, 2012, Ms. Theroux appealed a decision of the Committee making certain findings and rulings based upon a November 21, 2011 Stipulation as to Facts, Violations, and Recommended Sanction submitted by the ADO and Ms. Theroux. Stipulation ¶ 8.

9. On June 6, 2013, the Supreme Court issued a remand order, stating in relevant part:

Because of these gaps in our rules and our concerns about due process, we conclude that in the instant matter, the PCC erred by only partially accepting the stipulation of the ADO and the respondent. We, therefore, vacate the PCC's decision and remand it to determine whether to accept or reject the stipulation in its entirety. If the PCC decides to reject the stipulation in its entirety, the ADO and the respondent may either enter into a new stipulation to resolve this case or proceed to an evidentiary hearing before a new hearing panel.

*See In re Theroux*, No. LD-2012-0007 (N.H. June 6, 2013).

10. On June 27, 2013, the Committee issued an order rejecting the stipulation in its entirety. On September 9, 2013, the ADO requested the appointment of a new hearing panel. Stipulation ¶ 9; Record Tab 1 and 2.<sup>5</sup>

11. A Hearing Panel conducted a hearing on the merits on December 16 and 18, 2013, and a Sanctions Hearing on January 30, 2014. At the evidentiary hearing, the dispute concerned Ms. Theroux's intent when she altered and submitted a military records release to the Coast Guard.

### **Facts Regarding Underlying Matter**

12. The underlying divorce proceeding was initiated by Kristin Ruggiero with a *pro se* Petition for Divorce filed on July 20, 2007. Ms. Theroux subsequently entered an appearance for Ms. Ruggiero. Mr. Ruggiero was represented initially by Robert A. Battles, Esq. Answer ¶ 4; Ex. 6 p. 2; Ex. 8 p. 708. The record of the divorce/parenting proceeding in the following two years demonstrates a highly contentious divorce, with criminal charges being pressed against both parties and ultimately resulting in the conviction of Ms. Ruggiero for multiple counts of falsifying physical evidence.<sup>6</sup>

13. On February 26, 2008, the Family Court Division issued a Temporary Decree and appointed a guardian *ad litem* ("GAL") to report on matters pertaining to the parties' minor child. Ex. 11; Ex. 12. Mr. Ruggiero was ordered to pay child support, with payment secured through a wage garnishment set up with the Coast Guard. Ex. 13, Ex. 14. Mr. Ruggiero, through Mr. Battles, sought

---

<sup>5</sup> References to "Record" refer to the Professional Conduct Committee's Index of Record submitted to this Hearing Panel.

<sup>6</sup> Ms. Theroux did not represent Kristen Ruggiero in the criminal matters of which she was convicted. Ms. Theroux testified at the criminal trial, and ultimately withdrew from representing Kristen Ruggiero after learning that Ms. Ruggiero had lied to Ms. Theroux about multiple issues in the divorce case. T-II pp. 38-39.

reconsideration of the support order, arguing in part that “travel vouchers” received from the Coast Guard should not have been considered income for purposes of determining the appropriate level of support. The Court denied Mr. Ruggiero’s motion, and the parties continued to contest financial and other issues. Stipulation ¶ 11.

14. On June 5, 2008, Ms. Theroux forwarded a set of interrogatories and requests for production of documents to Mr. Battles, to be answered by Mr. Ruggiero. The requests were accompanied by releases for criminal, financial, employment, medical, and counseling/mental health records. Ex. 16. In consideration of Mr. Battles’ subsequent withdrawal as Mr. Ruggiero’s counsel, Ms. Theroux offered Mr. Ruggiero a two-week extension for responding to the discovery requests. Ex. 18. Mr. Ruggiero did not provide responses. Stipulation ¶ 12.

15. On August 12, 2008, Ms. Theroux filed a motion for conditional default on grounds that the discovery requests had not been answered. Ex. 19. The Court issued a notice of conditional default. Ex. 20. After Mr. Ruggiero did not provide responses within the allowed ten days, Ms. Theroux subsequently filed a Motion for Default. Ex. 21 pp. 809-11. At a September 16, 2008, hearing, the Court allowed Mr. Ruggiero until October 16, 2008, to address the discovery issues raised in Ms. Theroux’s motion. Stipulation ¶ 13; Ex. 22 p. 326.

16. On or about October 17, 2008, Mr. Desfosses entered an appearance for Mr. Ruggiero. Stipulation ¶ 14; *see e.g.* Ex. 24 pp. 108-09.

17. On or about December 16, 2008, Mr. Desfosses transmitted Mr. Ruggiero’s responses to Ms. Theroux’s discovery requests, originally due in July 2008, via fax. The responses were incomplete and did not include all of the requested releases. Mr. Ruggiero objected to several of the interrogatories and requests. Stipulation ¶ 15; Ex. 32 pp. 863-900.

18. On January 9, 2009, Ms. Theroux filed a Motion to Compel, setting forth in detail the deficiencies she claimed appeared in Mr. Ruggiero’s responses to the discovery requests, including Mr. Ruggiero’s failure to execute all of the requested releases. Ms. Theroux complained that Mr. Ruggiero had not executed a standard employment records release, affording access to information regarding Mr. Ruggiero’s employment with the Coast Guard. Ms. Theroux had not included in the original discovery request a “military” records release, and did not address the need for such a release in the motion. Stipulation ¶ 16; Ex. 32 pp. 850-62.

19. In her Motion to Compel, Ms. Theroux also addressed Mr. Ruggiero’s objections to interrogatories and requests seeking mental health and other medical information and releases. She argued that “since residential parenting rights and responsibilities are at issue in this case, all Respondent’s medical records including any mental health records are relevant and are necessary, not only for the Petitioner, but also for the GAL and for the Court when determining allocation of these rights and responsibilities so seriously affecting this six year old child.” Stipulation ¶ 17; Ex. 32 pp. 855-56.

20. On January 13, 2009, the Court held a hearing on all pending motions. Mr. Desfosses had not yet filed an objection to Ms. Theroux’s Motion to Compel, and the Court indicated it would consider sanctions against Mr. Ruggiero for his failure to comply with the discovery requests. Mr.

Desfosses conceded that Mr. Ruggiero's responses to the interrogatories and requests were not complete. Stipulation ¶ 18; Ex. 33<sup>7</sup> pp. 412-24.

21. Mr. Desfosses told the Court that he and his client would "fix the releases," but he also argued that "the releases don't have any information that's germane to the central issues in this case, which are custody of the child . . ." The Court ruled that the information was "discoverable" and Mr. Desfosses agreed. Stipulation ¶ 19; Ex. 33 pp. 419-20.

22. At one point during the discussion, the Court and counsel had the following exchange:

THE COURT: Ms. Theroux, is the - you have the releases that could be executed today?

MS. THEROUX: I have the ones that were in the - that I was provided in response. There was an employment record release that he didn't even provide back to me, because I want his military records.

THE COURT: All right, so you don't have all of the releases that Mr. Ruggiero could sign?

MS. THEROUX: Only what he -- I wanted to show you what he didn't do.

THE COURT: Right.

MS. THEROUX: So I didn't - I probably in my file have a copy of the employment records release, but I'm not sure that would be sufficient for the military. They might want a military records release.

THE COURT: Okay. So we couldn't get those all executed today.

MS. THEROUX: We can get the three that I have.

THE COURT: Okay.

MS. THEROUX: Probably I have an employment records release. I don't know if the military would accept it.

MR. DESFOSSES: Regarding the - we will sign whatever releases are available today. Regarding the military records, because of the ongoing spillover, there may be some issues regarding what anybody is willing to release to her, but we'll deal with it.

MS. THEROUX: See, there we go, your Honor. That's the problem we're going to have. We're going to be back in front of your Honor again. And maybe there's no prejudice from Attorney Desfosses's perspective, but for my client, these legal fees are going through the roof. When we talk about -

THE COURT: Well, that's why I indicated I would look at sanctions, okay?

MS. THEROUX: Right.

THE COURT: I'm not quite clear on the issue with the - you're looking for certain military records including financial and salary records from the military?

---

<sup>7</sup> Exhibit 33 is a transcript of the January 13, 2009 hearing on the motions pending in the Ruggiero divorce matter. The transcript was prepared after this disciplinary proceeding was initiated. See T-I at 16.

MR. DESFOSES: If you're saying they're entitled to that, we don't object.

THE COURT: I'm not quite sure what the issue would be.

MS. THEROUX: Well, there is - there is - from our understanding is that there are pending investigations against Mr. Ruggiero that CGIS, which is Coast Guard Investigative Services, are conducting. We don't know whether those might affect the custodial or the residential parenting issue. There are so many unknowns right now and-

THE COURT: Right. But as far - what I'm hearing is Mr. Desfosses is indicating that those releases will be signed. If the military for some reason doesn't release certain records, that's a different issue.

MS. THEROUX: Well, there may be, you know, classification - secret classification issues that we're not privy to. Issues that we are privy to, then we would want anything unclassified.

THE COURT: All right. And, Mr. Desfosses, correct me if I'm wrong, but you don't have a problem with that at this point?

MR. DESFOSES: No, sir. All of the investigations which were instigated by the plaintiff have all been resolved.

MS. THEROUX: I'm sorry; I didn't hear what Attorney Desfosses said. My client was talking to me.

MR. DESFOSES: I said all of the investigations have been closed.

MS. THEROUX: That's not our understanding.

THE COURT: Okay. So if-

MR. DESFOSES: This case is extremely fluid, your Honor, from week to week.

THE COURT: We can -

MS. THEROUX: That's putting it mildly.

THE COURT: We can get some of the releases signed before the parties leave the courthouse today. And, Ms. Theroux, the other releases are already - have already been submitted or you need to submit more?

MS. THEROUX: I submitted an employment records release.

THE COURT: Right.

MS. THEROUX: But since then, I've been made aware that the military might require their own release, which I can provide to Attorney Desfosses.

THE COURT: Okay. So any further one would be provided by you?

MS. THEROUX: Correct.

THE COURT: And, Mr. Desfosses, you can supplement the answers within 30 days . . .

23. The exchange about discovery and Ms. Theroux's previously filed Motion to Compel ended as follows:

MS. THEROUX: And, your honor, I would ask that if – if Mr. Ruggiero refuses to comply with anything else in the motion to compel, that this not wait 30 days for me to find out. This divorce has been ongoing for - you know, going on over a year and a half, and it's time to start moving this toward a final hearing, and it's going to end up being a multiple-day hearing for sure, and that's going to be bumped out how many months before we can get a final hearing.

And I believe that this interrogatory discovery issue has been ongoing for long enough, so that if Attorney Desfosses reviews the records and in a week finds that there is information that I've requested in the compel that they don't agree with, that they let me know immediately so that we can either resolve it or get back to the court in a timely manner, not wait another 30 days.

MR. DESFOSSSES: That's a reasonable suggestion, your Honor. As I said, you know, as you know, I don't normally do family law. I'm not familiar with what may be completely appropriate for interrogatories. Attorney Christo will be doing that. I will inform her of that. I am grateful for the court's indulgence and will honor that suggestion.

Stipulation ¶ 21; Ex. 33 pp. 430-31.

24. During the hearing, the Court and counsel agreed that the attorneys and clients would discuss the releases after the hearing and have them signed. The attorneys and the clients did not, in fact, meet and sign releases after the hearing. Stipulation ¶ 22.

25. Ms. Theroux explained that the releases were never executed because of a heated discussion that took place after the hearing. According to Ms. Theroux, Mr. Desfosses confronted her in a threatening matter, using expletives, while still in the courtroom. T-II pp. 93-94. As is apparent from the record, the Military Records Release was not available for Mr. Ruggiero to execute after the hearing. Ms. Theroux did not have the document with her and planned to provide it to Mr. Desfosses at a later date. Stipulation ¶ 22; Ex. 33 p. 428.

26. On January 14, 2009, Ms. Theroux sent a letter to Attorney Celeste Christo, a family law attorney at Mr. Desfosses's office, regarding the various records releases. Ex. 35 p. 141. Ms. Theroux enclosed a number of releases that she wanted "fully" executed by Mr. Ruggiero. She included a "Counseling/Mental Health Records Release/Authorization" and "Authorization to Release Protected Health Information." In addition to the standard employment records release originally included with the discovery requests, Ms. Theroux included a "Request Pertaining to Military Records," Standard Form 180 (the "Military Records Release"). Ex. 35 pp. 330-44. The Military Records Release had three sections, "I," "II," and "III." Ex. 35 p. 335. With respect to that release, Ms. Theroux stated:

Although this release was not included in the interrogatories previously propounded to Mr. Ruggiero, the matter of a release of his military records was addressed by the Court, since I have recently learned as a result of a similar issue in another matter I am

handling, that the military requires the completion of the enclosed form rather than a mere 'employment record release.' The Court indicated that Mr. Ruggiero was to sign this document as well. Sections I and III must be completed by Mr. Ruggiero and the form returned to my office forthwith.

Stipulation ¶ 23; Ex. 35 p. 141.

27. In her letter of January 14, 2009, Ms. Theroux made no reference to completing Section II of the Military Records Release. Stipulation ¶ 24; Ex. 35 pp. 140-42.

28. On January 14, 2009, Ms. Theroux corresponded, via e-mail, with Commander Pruett of the Coast Guard, detailing her concerns about child support issues in the divorce case and asking about the availability of documentation pertaining to the garnishment of wages paid to Mr. Ruggiero by the Coast Guard. Commander Pruett responded that he was constrained by the Privacy Act and would require a waiver signed by Mr. Ruggiero authorizing release of "his pay records." Stipulation ¶ 25; Ex. 36 pp. 373-76. In addition to the e-mail correspondence, Commander Pruett and Ms. Theroux had a number of phone conversations concerning issues relevant to the pending divorce. T-I pp. 266-67.

29. On January 15, 2009, Ms. Theroux sent another e-mail message to Commander Pruett regarding the discovery issue. Stipulation ¶ 26; Ex. 36 pp. 371-73.

30. In that e-mail message, Ms. Theroux advised Commander Pruett that "the Court has indicated at the January 13, 2009 hearing that BM1 Ruggiero is to sign various releases I sought from him during discovery, including a 'Military Records Release' for such things as his income records and anything else therein that is not classified information for such things as Homeland Security purposes." Ex. 36 p. 372.

31. Ms. Theroux further explained the two-week time constraint she was under and noted: "However, I have learned from bitter experience during this pending divorce that BM1 Ruggiero will not cooperate with anything I ask without a court order." Ms. Theroux promised to provide Commander Pruett with a copy of the Court's January 13, 2009 order as soon as she received a written copy from the court, as well as a copy of the Military Records Release that she intended to submit. Ex. 36 p. 372.

32. On January 21, 2009, Ms. Christo responded to Ms. Theroux's letter to her of January 14, 2009. Stipulation ¶ 27; Ex. 38.

33. In her letter, Ms. Christo indicated: "It is not my practice to provide 'blank' releases" regarding a proposed retirement plan records release." Ex. 38 p. 18. With respect to employment records, Ms. Christo also indicated, "I do not agree to have my client sign a blank release." Ex. 38 p. 19. Ms. Christo said she would not authorize Ms. Theroux "to fill in the information from pat [sic] employers from whom you wish to obtain records." *Id.*

34. With respect to the Military Records Release, Ms. Christo indicated in her letter that she would "provide the form you sent to me to Mr. Ruggiero for his signature." Ms. Christo made no other reference to the Military Records Release. Stipulation ¶ 28; Ex. 38 p. 19.

35. In her letter, Ms. Christo also referred to releases for medical and mental health records. Ms. Christo restated the prior objection made in response to the interrogatories and requests based on privilege, but indicated she would accommodate limited disclosure to the GAL under a protective order. Stipulation ¶ 29; Ex. 38 p. 19.

36. Ms. Christo was aware that the Court had ordered that Mr. Ruggiero sign a military records release that Ms. Theroux was to provide to his counsel. T-I pp. 125-26. Based on the Court's order, Ms. Christo forwarded the original releases, including the military records release, to Mr. Ruggiero, enclosing Ms. Theroux's January 14, 2009 letter and instructing him to: "Please go through Attorney Theroux's page two explanation of each release and enter the necessary information onto each release." Ex. 37 p. 949.

37. On January 27, 2009, Mr. Ruggiero signed the Military Records Release tendered by Ms. Theroux. Pursuant to Ms. Theroux's instructions, Mr. Ruggiero filled out Section I of the form, providing information needed to locate the records being sought. In Section III, Mr. Ruggiero acknowledged his return address and entered his signature where indicated. Stipulation ¶ 30; Ex. 40 p. 9.<sup>8</sup>

38. Mr. Ruggiero was not asked to, and did not fill out, Section II of the form. Stipulation ¶ 31; Ex. 35 p. 141; Ex. 40 p. 9.

39. The Military Records Release that Mr. Ruggiero signed was not photocopied before it was delivered to Ms. Theroux, and Ms. Theroux did not make a photocopy of the release in the form she received it. As a result, the only available copy is the final form, as completed by Ms. Theroux. The parties do not dispute that Ms. Theroux filled in Section II of the release after Mr. Ruggiero signed it on January 27, 2009. Ex. 40 p. 9; Answer ¶ 30; Ex. 6 p. 10.

40. Section II of the form provided for an election to disclose an "UNDELETED" or "DELETED Report of Separation" (paragraph 1), "OTHER INFORMATION AND/OR DOCUMENTS REQUESTED" (paragraph 2), and the "PURPOSE" (Optional) of the request (paragraph 3). The form reflects that an Undeleted Report of Separation would have included "information normally needed to verify military service," and a copy of the "full separation document including such sensitive items as the character of separation, authority for separation, reason for separation, reenlistment eligibility code, separation (SPD/SPN) code, and dates of time lost." Ex. 40 p. 9. None of the disclosure options were checked off at the time of execution. Prior to Mr. Ruggiero's execution of the release, his counsel added a notation at the bottom of the form indicating that copies of information obtained with the release must be supplied to Mr. Ruggiero's counsel. Ex. 40 p. 9.

41. On January 30, 2009, the Brentwood Family Division issued a "Notice of Decision" dated January 30, 2009, which enclosed a copy of "the Court's Order dated January 23, 2009, relative to: Uniform Support Order, Scheduling Conference Order and Court Order." Ex. 41 p. 112. The January 23, 2009 Order ruled in part that "Petitioner's Motion for Discovery [presumably referring to Petitioner's January 9, 2009 Motion to Compel] is granted as set forth in the Scheduling Conference

---

<sup>8</sup> Exhibit 40 is a copy of the Military Records Release after it was completed/alterd.

Order and as ordered from the bench on January 13, 2009.” Stipulation ¶ 32; Ex. 41 p. 113. The Scheduling Conference Order, also dated January 23, 2009, provided that discovery was to be completed in 30 days and “Releases (including military) to be signed by Respondent immediately upon receipt.” Stipulation ¶ 32; Ex. 41 p. 115.

42. Mr. Desfosses filed an objection, dated January 21, 2009, to Ms. Theroux’s Motion to Compel, in which he raised objections to the release of certain of Mr. Ruggiero’s privileged records. Mr. Desfosses agreed to a limited release of employment records so as to permit counsel to look into reasons for Mr. Ruggiero’s termination, but he requested a protective order to restrict the use of such information. Mr. Desfosses also reiterated Mr. Ruggiero’s objections to disclosure of medical and mental health records. Mr. Desfosses deferred to the Court regarding discoverability of such records, on condition that disclosure be limited to the GAL under a protective order. He did not file a motion for reconsideration of the Court’s discovery order or a motion for protective order. Stipulation ¶ 33; Ex. 39.

43. On February 3, 2009, at a hearing on a related matter, Mr. Desfosses gave Ms. Theroux the Military Records Release executed by Mr. Ruggiero, without Section II filled in, as well as the other releases authorizing disclosure of employment records, and mental health and protected health information from Spectrum Psychiatric Group. Stipulation ¶ 34.

44. After reviewing the releases, Ms. Theroux wrote to Ms. Christo on February 4, 2009, identifying deficiencies in the medical and mental health records releases. She requested additional releases for mental health and counseling records from two specific health care providers. Also missing, according to Ms. Theroux, were HIPAA-compliant releases for doctors other than the psychiatric group, including a primary care doctor and military doctors seen by Mr. Ruggiero while serving in the Coast Guard. Stipulation ¶ 35; Ex. 46 pp. 35-37.

45. With respect to these releases, Ms. Theroux indicated that Mr. Ruggiero must have seen military doctors while serving in the Coast Guard and “is required to provide a release for each such doctor or medical group who have [sic] provided medical treatment and/or services to him for past [sic] five years. Again, if his objection remains, please so advise so that I may take the appropriate action.” Ex. 46 p. 37.

46. With regard to Mr. Ruggiero’s excuses for not producing releases, Ms. Theroux asserted that the “issue of the releases was litigated on January 13, 2009,” and that Mr. Ruggiero was “instructed to sign the releases as the information requested was ‘discoverable.’” Ex. 46 p. 37. Ms. Theroux also acknowledged receipt of the executed Military Records Release. Stipulation ¶ 36; Ex. 46 p. 35.

47. Other than to acknowledge its receipt, Ms. Theroux made no mention in the February 4, 2009 letter of the Military Records Release, the need to elect the options listed on the Release form at Section II, or the need to supplement the Release. Ex. 46 p. 35.

48. Following receipt of the Military Records Release executed by Mr. Ruggiero, Ms. Theroux filled in Section II of the Release. Ms. Theroux selected neither the “UNDELETED Report of Separation” nor the “DELETED Report of Separation.” Instead, Ms. Theroux filled in paragraph 2,

“OTHER INFORMATION AND/OR DOCUMENTS,” as follows: “[E]ntire military file with exception of documents which are classified as ‘Secret’ or ‘Top Secret’ for National Defense Purposes. (See attached letter to Attorney Pruett (CMDR).” Ms. Theroux made these entries in her own handwriting in a different colored ink and identified herself as “attorney for wife.” Ms. Theroux did not provide a date associated with her additions to the document. Ex. 40 p. 9; T-II pp. 74-75, 79.

49. At the hearing, it was undisputed that Ms. Theroux was responsible for making the alterations to the Military Records Release. Ms. Theroux admitted that she made the edits herself, and that she was not trying to conceal that fact from the Coast Guard by pointing out that the handwriting was markedly different, was filled out in a different color pen, and that the handwritten notations referenced her attached cover letter. T-II pp. 78-79. Ms. Theroux believed that the discovery order issued in the divorce proceedings allowed her to request the information she sought in the altered release. T-II p. 5.

50. Ms. Theroux prepared a letter to Commander Pruett, dated February 4, 2009, to accompany the Military Records Release. Ms. Theroux did not attach the Court’s discovery order of January 23, 2009. Stipulation ¶38; Ex. 45 pp. 6-9.

51. In her February 4, 2009 letter to Commander Pruett, Ms. Theroux indicated as follows:

... Pursuant to a Court Order issued from the Bench on January 13, 2009, BM1 Ruggiero has executed the release I had requested in order to obtain his military records.

Enclosed herein is the “Request Pertaining To Military Records” executed by BM1 Ruggiero which authorizes the release of all information or correspondence regarding his employment in the United States Coast Guard. I would ask that you provide to my office the entire employment file of Mr. Ruggiero, including but not limited to, the dates of employment, disciplinary records, any complaints filed against him by fellow employees and/or supervisors, performance evaluations; the reasons for his termination and/resignation, etc.

... I assured the Court that I am not seeking mission specific information that might be classified. I am, however, seeking anything and everything else that is in BM1 Ruggiero’s file.

Ex. 45 p. 6 (emphasis omitted).

52. Later in her letter to Commander Pruett, Ms. Theroux stated that “in addition to the information mentioned in paragraph 2 of this letter, I am specifically requesting the following information and/or documents:” Ms. Theroux then provided a list of specifically requested information including medical and mental health records, psychological and and/or psychiatric evaluations, results of polygraph and DNA testing, information and documents pertaining to certain U.S. Coast Guard investigations, and documentation regarding wages garnished and returned to Mr. Ruggiero. Ex. 45 p. 7-8.

53. The Hearing Panel found by clear and convincing evidence that Ms. Theroux knowingly completed, altered and supplemented the Military Records Release after it was executed by Mr.

Ruggiero, and she presented it to the Coast Guard expecting that the Coast Guard would release the requested information and records based on her presentation of the Release as authentic.

54. Ms. Theroux did not obtain the consent of Mr. Ruggiero or his counsel to alter, supplement, and present the Military Records Release to the Coast Guard.

55. Ms. Theroux did not apprise Mr. Ruggiero or his counsel of her desire or intent to complete, alter and supplement the Military Records Release executed by Mr. Ruggiero.

56. Ms. Theroux did not provide Mr. Ruggiero or his counsel with a copy of her February 4, 2009 letter to Commander Pruett or the altered Military Records Release, or otherwise notify Mr. Ruggiero or his counsel of her actions in this regard. Ex. 45 p. 8; T-II pp. 10-11. Ms. Theroux failure in this regard was due to the fact that her legal assistant (her daughter) was suffering from a serious illness at the time, so Ms. Theroux was personally responsible for typing her own correspondence and sending out letters. Her failure to “cc” opposing counsel was an oversight. T-II pp. 100, 104-05.

57. Neither Mr. Ruggiero nor Ms. Christo was aware that Ms. Theroux had completed, altered, supplemented and sent the Military Records Release to Commander Pruett until Commander Pruett contacted the Desfosses Law Office on or about February 11, 2009, via e-mail. Ex. 48 p. 4; T-I pp. 67-68.

58. Commander Pruett supplied Ms. Christo with a copy of Ms. Theroux’s submissions. He indicated to Ms. Christo, and later to Ms. Theroux, that Ms. Theroux’s request was “outside the scope of a standard Form 180 request.” Stipulation ¶ 39; Ex. 48 p. 4; Ex. 56 p. 11. Ms. Christo promptly called Commander Pruett, and then sent him an e-mail dated February 12, 2009 (with a copy to Ms. Theroux). T-I pp. 67-68; Ex. 49 p. 10. Ms. Christo wrote the following to Commander Pruett:

Please be advised that I am one of the attorneys handling the representation of Mr. Ruggiero in connection with his divorce action pending in the State of New Hampshire. I am in receipt of your communication to Attorney Desfosses yesterday concerning the release of records to Attorney Linda Theroux. It has been brought to my attention that the Form 180 which was signed by Mr. Ruggiero was altered by Attorney Theroux after his signature was provided. Specifically, Section II, Paragraph 2 was added after he had provided his signature. Attorney Theroux did nto [sic] consulte [sic] with either Mr. Ruggiero or this office prior to altering this form. Additionally, we were not provided, in advance, with a copy of the letter and were not aware of the list of items being requested at the time the form was signed. Mr. Ruggiero did not, in any way, agree to the production of any of those additional items requested. Accordingly, Mr. Ruggiero hereby revokes his authorization to any provide [sic] information to Attorney Theroux until this issue can be addressed through the Court. ...

Stipulation, ¶ 39 Ex. 49 p. 10.

59. As a result of Ms. Christo’s revocation of Mr. Ruggiero’s authorization to release records, none were released. Stipulation ¶ 40.

60. On February 20, 2009, Commander Pruett replied to Ms. Theroux's letter of February 4, 2009. He advised her that he had forwarded Ms. Theroux's correspondence to Mr. Ruggiero's counsel because the request for documents "included records normally outside the scope of a Standard Form 180 request." Ex. 56 p. 11.

61. Shortly after Ms. Christo's letter to Commander Pruett, the parties began negotiating in earnest to settle the divorce case before a scheduled hearing on March 13, 2009. Those negotiations continued for at least two weeks. As a result, Ms. Theroux did not make any attempt to contact Ms. Christo regarding the Military Records Release until she wrote a letter to Ms. Christo, dated March 11, 2009, as the parties' settlement negotiations began to bog down. Stipulation ¶ 41; Ex. 60 pp. 137-38.

62. In her March 11, 2009 letter, Ms. Theroux stated: "I will be filing a motion to compel Mr. Ruggiero to execute an unrestricted military records release, along with a request for additional attorney's fees. We have already litigated this matter and I made it clear to the Court that I did not seek any classified documents that could potentially impact on this country's security, but that I wanted every unclassified document. That was the order that was issued in paragraph 5 of the January 23, 2009 Court Order and paragraph 4 of the Scheduling Conference Order of that same date. Mr. Ruggiero was ordered to provide the military records release immediately . . . ." Ex. 60 p. 138.

63. The parties settled the entire divorce matter with a Stipulated Final Decree executed on March 13, 2009. Therefore, the Family Court did not revisit the issue regarding the release of military records. Stipulation ¶ 42; Ex. 63 pp. 362-68.

## II. RULINGS OF LAW

The Committee accepts the rulings of law by the Hearing Committee, and finds that they have been established by clear and convincing evidence. The Committee summarizes those rulings as follows:

1. Ms. Theroux made a knowing material misrepresentation in submitting the altered Release to the Coast Guard. Ms. Theroux, however, did not have the specific intent to commit fraud, or to deceive the Coast Guard or any third party. Ms. Theroux's conduct in the Ruggiero divorce matter violated New Hampshire Rules of Professional Conduct 4.1(a), 8.4(c) and 8.4(a).

2. Rule of Professional Conduct 1.0(f) defines "knowingly" as "denot[ing] actual knowledge of the fact[s] in question. A person's knowledge may be inferred from circumstances." The *ABA Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") define "knowledge" as "conscious awareness of the nature or attendant circumstances of the conduct but *without the conscious objective or purpose to accomplish a particular result.*" *Id.* at 10. (Emphasis added).

3. With respect to "knowing" misconduct, "[w]hat is relevant . . . is the volitional nature of the respondent's acts, and not the external pressures that could potentially have hindered his judgment." See *Wyatt's Case*, 159 N.H. 285, 307 (2009) (citing *Grew's Case*, 156 N.H. 361, 366 (2007)).

**Rule 4.1(a): Truthfulness in Statements to Others**

4. Rule 4.1 states: “In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person.”

5. Ms. Theroux owed a duty to be truthful in statements made on behalf of her client to third parties.

6. Ms. Theroux breached that duty by knowingly misrepresenting to the Coast Guard that the Military Records Release she presented in pursuit of records and information pertaining to Mr. Ruggiero was properly executed and authorized by Mr. Ruggiero.

7. The Release’s apparent authenticity was material to the Coast Guard’s decision to produce the requested information and records. T-I pp. 277-78.

8. Ms. Theroux’s misrepresentation constitutes a misrepresentation of material fact or law to a third person, namely that the entire Release was the act of Mr. Ruggiero, when it was not.

9. There is clear and convincing evidence that Ms. Theroux violated Rule 4.1(a).

**Rule 8.4(c): Misconduct, Deceit or Misrepresentation**

10. Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. “Rule 8.4(c) is disjunctive.” *Welt’s Case*, 136 N.H. 588, 591-92 (1993). Thus, a “finding of misrepresentation alone constitutes misconduct.” *Id.*

11. Ms. Theroux owed a duty to Mr. Ruggiero, his counsel, and Mr. Ruggiero’s employer not to engage in misrepresentation regarding the form, content, and authenticity of the Military Records Release.

12. Ms. Theroux breached that duty by completing, altering, and supplementing the Military Records Release after it was executed by Mr. Ruggiero without notifying Mr. Ruggiero or otherwise obtaining his authority, and presenting said release to the Coast Guard without notifying Mr. Ruggiero or his counsel.

13. In presenting the Release to the Coast Guard, Ms. Theroux knowingly misrepresented that Mr. Ruggiero had executed and authorized the Release in the form presented pursuant to a court order, and that the release was properly executed and authorized by Mr. Ruggiero.

14. While the Family Division allowed discovery of certain military records and directed Mr. Ruggiero to execute a release, Ms. Theroux undertook to induce the Coast Guard to release additional information and records. This is because the Coast Guard was not just Mr. Ruggiero’s employer, but was responsible for providing his medical care and conducting investigatory and disciplinary proceedings. The Court had already ordered – and Mr. Ruggiero had executed – releases of medical information from non-governmental entities. However, that did not authorize Ms. Theroux to alter the Military Records Release.

15. Ms. Theroux knew or should have known that she was not permitted to complete, alter, supplement, and present a release not properly executed and authorized by Mr. Ruggiero. She also knew or should have known that the Coast Guard would reasonably rely on her representations, as to the authority for and authenticity of the Release, in accepting the Release and producing the requested information and records.

16. Ms. Theroux also knew that the Release and letter she presented to the Coast Guard constituted misrepresented material facts, *i.e.*, that Mr. Ruggiero assented to the Release in its final form.

17. Moreover, Ms. Theroux expected to obtain privileged and confidential information regarding an opposing party by presenting a release to the Coast Guard that she had altered after Mr. Ruggiero signed it and without his authority, knowing that the Coast Guard would rely on the altered document in responding to Ms. Theroux's request.

18. There is clear and convincing evidence of the foregoing conduct undertaken by Ms. Theroux in violation of N.H. R. Prof. Conduct 8.4(c).

19. The Committee agrees with the Hearing Panel that while Ms. Theroux's conduct constituted a knowing misrepresentation, it did not constitute dishonesty, fraud or deceit – all of which is conduct involving specific intent. The ADO did not prove by clear and convincing evidence that Ms. Theroux acted with the intent to deceive.

20. At the time, Ms. Theroux believed that the Court's January 13, 2009 bench rulings and January 23, 2009 Order authorized her alteration of the Military Records Release, even though that belief ultimately proved to be mistaken.

21. Even though she did not act with the specific intent to deceive or defraud, Ms. Theroux's conduct in altering the Release and presenting it to the Coast Guard as authentic was a knowing and material misrepresentation, in violation of Rule 8.4(c).

#### **Rule 8.4(a): General Rule**

22. Where any of the above alleged rule violations is proven by clear and convincing evidence, such violation would also necessarily constitute a violation of N.H. R. Prof. Conduct 8.4(a).

#### **Other Alleged Rule Violations**

23. With respect to the ADO's allegations that Ms. Theroux's conduct constituted a violation of Rule 3.4(c), Fairness to Opposing Party and Counsel, and Rule 4.4(a), Respect for Rights of Third Persons, the ADO has not sustained its burden of proving these allegations by clear and convincing evidence.

24. Specifically, with respect to Rule 3.4(c), there is not clear and convincing evidence that Ms. Theroux knowingly disobeyed an obligation under the rules of a tribunal, in this case, the

Brentwood Family Division.

25. With respect to Rule 4.4(a), there is not clear and convincing evidence that Ms. Theroux took any action with “the primary purpose to embarrass, delay or burden a third person.”

### III. SANCTION

The Committee, in determining an appropriate sanction, recognizes that “the purpose of attorney discipline is not to inflict punishment but rather to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession and prevent similar conduct in the future.” *Grew’s Case*, 156 N.H. at 365 (quoting *Coddington’s Case*, 155 N.H. 66, 68 (2007)). While not binding, the New Hampshire Supreme Court looks to the American Bar Association’s *Standards for Imposing Lawyers Sanctions* (2005) (*Standards*) for guidance. *Coffey’s Case*, 152 N.H. 503, 513 (2005).

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*, 156 N.H. 613, 621 (2007)); *Standards* § 3.0. The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner’s Case*, 158 N.H. at 303 (stating that “[i]n applying these factors, the first step is to categorize the respondent’s misconduct and identify the appropriate sanction”). 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. *See id.*

In the case of more than one finding of misconduct, the ABA recommends that the sanction imposed “should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct.” *Id.* (citing *Richmond’s Case*, 152 N.H. 155, 160 (2005)).

In this case, the Hearing Panel utilized the four-part analysis set forth in the *Standards*, applying § 5.1 of the *Standards* (Failure to Maintain Personal Integrity) to establish public censure as the “baseline sanction.” In deciding to apply § 5.1, the Hearing Panel considered that the misrepresentation at issue was not made to a client or to the court, but to a third party, concluding that misrepresentations to a client or court are “qualitatively different from the conduct at issue, and would warrant a significantly more severe baseline sanction than the misrepresentation made in this case.” Report ¶ 112. In doing so, the Hearing Panel reasoned as follows: “[t]he attorney’s duty with respect to statements made to third parties varies significantly from the attorney’s duty to her client and the court because the attorney owes multiple duties to the client and the court.” *Id.* at ¶ 113. The Hearing Panel further concluded that the fact that the misrepresentation was made to a third party, as opposed to the client or the court, was a “mitigating factor.” *Id.* at ¶ 102.

After considering New Hampshire law involving Rule 4.1(a) and 8.4 violation, factually similar Committee decisions, and aggravating and mitigating factors, the Hearing Panel recommended public censure. Report ¶ 132.

The ADO filed a limited appeal of the Hearing Panel's Report, arguing that the Hearing Panel committed an error of law in its sanction analysis that affected its determination of a baseline sanction. Specifically, the ADO challenged the Hearing Panel's determination that a misrepresentation to a third party warrants a lesser sanction than a misrepresentation to a client or the court, and challenged the Hearing Panel's consideration of that fact as a "mitigating factor." Attorney Discipline Office's Limited Appeal on Sanctions and Supporting Memorandum of Law dated 4/10/14, at pp. 2-3.

At the hearing before the Committee, neither party disputed the Hearing Panel's findings of fact or rulings of law. The only dispute was the appropriate sanction. The ADO argued that the baseline sanction is suspension, and that after application of aggravating and mitigating factors, suspension is the appropriate sanction. Ms. Theroux argued that public censure is the baseline sanction and the appropriate final sanction.

After a hearing and review of the record, including the parties' memoranda of law, the Committee finds that the baseline sanction in this case should be suspension. Although the Committee disagrees with the Hearing Panel's determination of the baseline sanction, it nonetheless adopts the Hearing Panel's ultimate conclusion that a public censure is the appropriate sanction.

### **Analysis**

The Committee concurs with the Hearings Panel's application of the first three prongs of the *Standards* analysis. Applying the first prong, the Hearing Panel found that Ms. Theroux violated her duty to the general public and her duty to the legal system. Report ¶ 99. With regard to the second prong, the Hearing Panel determined that her mental state was "knowing." *Id.* ¶ 103. Applying the third prong, the Hearing Panel found that Ms. Theroux caused actual harm to the reputation and integrity of the legal profession, and caused actual and potential harm to Mr. Ruggerio. *Id.* ¶¶ 104-05.

### **Baseline sanction**

The Panel found that Ms. Theroux's knowing misrepresentation to the Coast Guard with the expectation that the Coast Guard would rely on her misrepresentation in violation of Rule 8.4(c) implicates *Standards* Section 5.1 and found it to be the most applicable. *Id.*, ¶ 107. In relevant part this Section, provides:

#### **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 Reprimand<sup>9</sup> 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.

The Panel concluded that Section 5.13, calling for a public censure, "would be appropriate in this case because there is no allegation that Ms. Theroux's conduct rose to the level of criminal conduct, but was nonetheless conduct involving a knowing misrepresentation." *Id.* ¶ 109. The Panel determined that Sections 4.6 ("Lack of Candor") and 6.1 ("False Statement, Fraud, and Misrepresentation") provide "context," but declined to apply these sections because they pertain to misrepresentations made to a client or the court, respectively, and Hearing Panel found that the such misrepresentations are "qualitatively different" from Ms. Theroux's conduct. *Id.* ¶ 109. Under Sections 4.6 or 6.1, suspension is the baseline sanction for a "knowing" violation. *See Standards* §§ 4.62 and 6.12.

While the *Standards* offer guidance in determining a baseline sanction, they are not binding, and the Court considers each case on its own facts and circumstances. *Conner's Case*, 158 N.H. at 303. *See also Standards*, I, Preface ("In [drafting the Sanctions] the Committee recognized that any proposed standards should serve as a model which sets forth a comprehensive system of sanctions, but which leaves room for flexibility and creativity in assigning sanctions to particular cases of lawyer misconduct.").

The Committee rejects the Hearing Panel's conclusion that a misrepresentation to third party presumptively warrants a lesser sanction by virtue of the fact that it is made to a third party instead of a court or a client. Ms. Theroux violated the bedrock professional duty of honesty. One purpose of attorney discipline is to protect the public. *See, e.g., Grew's Case*, 156 N.H. at 365 (quoting *Coddington's Case*, 155 N.H. at 68). A holding that a misrepresentation made to a third party "varies significantly" from a misrepresentation to the court or a client, and operates as a mitigating factor in the sanction analysis, resulting in a lower sanction, does not properly serve to protect the public and the integrity of the profession. The creation of such a distinction sends the wrong message to the public and to members of the bar. Under this analysis, absent a misrepresentation to the Court or to a client, the most severe sanction for a knowing misrepresentation, without aggravating factors, would be a public censure. New Hampshire law does not support such a distinction.

The Court has treated all acts of attorney dishonesty equally seriously, regardless of to whom the misrepresentation is made. "A basic premise of Rule 8.4(c) is that a lawyer may not make misrepresentations to a client, tribunal, or others." *Douglas' Case*, 156 N.H. at 620 (quotation omitted) (citing *ABA/BNA Lawyers' Manual on Professional Conduct* 101:402 (January 21, 1998)) (emphasis

---

<sup>9</sup> The term "reprimand," as used in the *Standards*, is analogous to a public censure in New Hampshire.

added).

In cases involving Rule 8.4(c) violations, the Court has issued a variety of sanctions, from public censure, see, e.g., *O'Meara's Case*, 150 N.H. 157 (2003) (made false statements to the court while representing himself in his own divorce), to disbarment. See, e.g., *Basbane's Case*, 141 N.H. 1, 8 (1996) (intentional misrepresentation to a marital master). Likewise, in cases involving Rule 4.1(a) violations, sanctions have ranged from a six month suspension, see *Christine Desmarais-Gordon advs. Professional Conduct Committee*, PCC docket 00-N-125 (January 1, 2005) (instructed staff to alter signed medical authorizations prior to submission to a third party); *Kasmar, Stephen R. advs. Attorney Discipline Office*, PCC docket 07-037 (April 15, 2009) (misrepresentation to the court and opposing counsel and failure to correct the misrepresentation in violation of Rules 3.3(a)(1), 4.1(a), and 8.4(c)) to disbarment. See, e.g., *Tanya Pardo advs. Attorney Discipline Office*, PCC Docket No. LD-2008-0008 (October 6, 2008) (Respondent violated Rules 3.3, 4.1(a) and 8.4(c) when she created and backdated an objection to a motion to compel discovery and advised her employer that she had filed that objection when she had not).

In *Astles' Case*, 134 N.H. 602, 604 (1991), the Court also stressed that misrepresentations to third parties may carry more serious sanctions than public censure. The Respondent made various misrepresentations to third parties to obtain mortgage financing and in response to a request for information from the Professional Conduct Committee. In imposing disbarment, the Court did not consider as mitigating that the Respondent's initial misconduct involved dishonesty with respect to a personal matter, and not in his role as an attorney. *Id.* at 605-06.

In today's society, more than ever before, the legal profession touches and affects nearly every facet of private and public life. Without debating the merits of this pervasiveness, one indisputable consequence of such an increase has occurred: the need for maintaining and requiring the highest possible levels of honesty and trustworthiness from the legal practitioners in this State. No single transgression reflects more negatively on the legal profession than a lie. As well as being the most fundamental of dishonesties, a lie is the most pernicious; it is easily and readily concealed and as evidenced by the actions of this respondent, it serves as the seed for a growth of future dishonesty."

*Id.* at 606.

Moreover, Ms. Theroux's mental state was "knowingly." This is significant because the *Standards* almost uniformly set the baseline sanction as suspension where conduct is done knowingly. With the exception of the recommendation in *Standards* § 5.13, in all other circumstances, the *Standards* recommend a baseline sanction of suspension for knowing misconduct. See *Standards* §§ 4.12, 4.22, 4.32, 4.42(a), 4.52, 4.62, 5.22, 6.12, 6.22, 6.32, and 7.2. Under the *Standards*, public censure is generally recommended only for negligent conduct. See *Standards* §§ 4.13, 4.23, 4.33, 4.43, 4.53(b), 4.63, 5.23, 6.13, 6.23, 6.33, and 7.3. This is essentially a gap in the *Standards* which at least one jurisdiction has sought to correct.<sup>10</sup> Courts have applied Section 5.13 to misrepresentations that a

---

<sup>10</sup> "We have observed elsewhere that apparent gaps in the intended coverage of Standard 5.1 render it somewhat difficult to apply, and that it is likely that ABA Standard 5.12 was intended to apply to certain dishonest conduct

lawyer may make outside of the practice of law. *See In Re Lamberis*, 93 Ill. 2d 222, 443 N.E. 2d 549 (1982) (censure for lawyer who knowingly plagiarized two published works in a thesis submitted for a master's degree.) In this case, Ms. Theroux was acting in her capacity as an attorney litigating on behalf of her client.

For the above stated reasons, the Committee takes guidance from Sections 4.62 and 6.12 and determines that the baseline sanction in this matter is a suspension. *See Standards* §§ 4.62 and 6.12.

### **Aggravating and Mitigating Factors**

As stated above, the Committee finds that the baseline sanction in this matter is suspension. The baseline sanction must be considered in light of any aggravating and mitigating factors. *See Conner's Case*, 158 N.H. at 303. *See also Standards* § 9.1 ("After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.").

The Committee does not agree with the Hearing Panel's determination that the fact that the misrepresentation was made to a third party, as opposed to a client or the court, is a mitigating factor to be considered in applying the fourth prong of the *Standards*.

The Committee does, however, accept the other mitigating factors identified by the Hearing Panel, and finds the following mitigating factors to be particularly persuasive: (1) Ms. Theroux's lack of prior disciplinary record, (2) the absence of a selfish or dishonest motive, and (3) the factual finding that at the time she altered the Military Records Release, Ms. Theroux believed the court's orders authorized her to do so. Report ¶ 89. The Committee further finds that these three mitigating factors, along with the other mitigating factors identified by the Hearing Panel, warrant a downward departure from the baseline sanction of suspension to a public censure.

### **IV. COSTS**

Ms. Theroux shall be responsible for the expenses incurred by the Committee in the investigation and enforcement of this disciplinary matter. *See Sup. Ct. R. 37(19)(b)*. Costs can include, but are not limited to: copying and costs associated with the publication of the censure, transcripts, conference calls and outside copying. The assessment of costs shall become final unless Ms. Theroux responds in writing, within thirty (30) days of receipt of the Committee's statement of expenses, listing each disputed expense and explaining the reasons for disagreement. *Sup. Ct. R. 37(19)(b)*. The Committee may resolve the disagreement, or enforce the assessment of costs by petition to the superior court in any county in the state. *Sup. Ct. R. 37(19)(b)*.

The Committee may file a copy of the final assessment of costs with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally available post-judgment enforcement remedies and procedures. *See Sup. Ct. R. 37(19)(c)*. Ms. Theroux shall be responsible for any costs incurred as a result of the Attorney Discipline Office's

---


as well as the criminal conduct mentioned therein. Our proposed Standard 5.12 would cover dishonest conduct. . . ." *Grievance Administrator v. Kenneth P. Williams*, Michigan Attorney Discipline Board, Case No. 03-80-GA (July 6, 2005) (identifying issues with applying Standard 5.1) (citations omitted).

collection efforts.

## V. CONCLUSION

For all of the above reasons, the Professional Conduct Committee issues a Public Censure to Linda A. Theroux for violating N.H. Rules of Professional Conduct 4.1(a), 8.4(c) and 8.4(a).

August 22, 2014



---

David M. Rothstein  
Chair

### Distribution:

Elizabeth M. Murphy, Assistant Disciplinary Counsel  
Linda A. Theroux  
Jeffrey R. Ruggiero  
File