

New Hampshire Supreme Court
Professional Conduct Committee
a committee of the attorney discipline system

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PUBLIC CENSURE

On April 21, 2015, the Professional Conduct Committee (the “Committee”) deliberated the Stipulation as to Facts, Violations and Sanction (the “Stipulation”) in the instant case. Members present included David M. Rothstein, Chair, Heather E. Krans, Vice Chair, Elaine Holden, Vice Chair, Richard H. Darling, Mona T. Movafaghi, David W. Ruoff, Richard D. Sager and Martha Van Oot. Peter G. Beeson and Margaret R. Kerouac were recused. Having reviewed the record, the Committee then voted to accept the facts and rule violations as stipulated.

On May 19, 2015, the Committee held oral argument on the issue of whether to accept the stipulated sanction. Attorney Mitchell Simon argued on behalf of the Respondent; Sara S. Greene argued on behalf of the Attorney Discipline Office. Members present included David M. Rothstein, Chair, Heather E. Krans, Vice Chair, Elaine Holden, Vice Chair, Susan R. Chollet, Richard H. Darling, Mona T. Movafaghi, Georges J. Roy, David W. Ruoff, and Martha Van Oot. Peter G. Beeson and Margaret R. Kerouac were recused. After oral argument, the Committee voted to accept the sanction as stipulated.

I. FINDINGS OF FACT

The Committee accepts the facts as contained in the Stipulation. This establishes the following facts by clear and convincing evidence:

1. Mr. Dunn is an attorney licensed to practice law in New Hampshire. Mr. Dunn was admitted to practice in 1990.

2. Mr. Dunn has not been admitted to practice law in any other jurisdiction.
3. Mr. Dunn has no previous disciplinary history.
4. At all times material to this proceeding, Mr. Dunn operated his law office as the Law Office of David C. Dunn, PA, 14 Temple Court, Manchester, New Hampshire 03104. Prior to opening his own practice, Mr. Dunn practiced law for 4½ years at Joseph F. McDowell, III, P.A. Before that, he was with the Wadleigh, Starr, Peters, Dunn & Chiesa law firm for eight years.
5. Mr. Dunn's disciplinary matter came to the attention of the Attorney Discipline Office by way of Mr. Dunn's self-report dated July 16, 2014.
6. The professional misconduct in this matter arises from Mr. Dunn's representation of Danielle Osgood during 2011-2013. Ms. Osgood retained Mr. Dunn around October of 2011 to draft her estate plan.
7. During the process of establishing an estate plan and communicating with Mr. Dunn, Ms. Osgood relied on the help of her friend and Certified Public Accountant, Henry L. Roy. Mr. Roy and Ms. Osgood had been friends since he first began handling her taxes in the late 1970s.
8. Around the same time that he began to represent Ms. Osgood, Mr. Dunn had been feeling unwell for a period of months. He eventually sought treatment because he had lost hearing in his right ear. He was diagnosed with a brain tumor (acoustic neuroma). He worked with his treating physicians and was scheduled for brain surgery to take place in April 2012.
9. Mr. Dunn drafted a Last Will and Testament (the "original Will") and the Danielle L. Osgood Irrevocable Trust Agreement (the "original Trust") for Ms. Osgood's review.¹ The original Trust named four beneficiaries: Henry Roy, Kenneth Phillips, Elaine Levesque, and Karin Weber.
10. On January 6, 2012, Mr. Dunn visited Ms. Osgood at her home to review the documents. Mr. Roy was present during this meeting. Ms. Osgood expressed some doubts about two of the four beneficiaries in the original Trust, noting that perhaps she should only name Mr. Roy and Mr. Phillips as beneficiaries. In the end, however, she approved the documents as drafted and executed them that day.
11. The original Will was duly executed and named Mr. Roy as Executor. The original Trust named Mr. Roy as Trustee and was signed by Ms. Osgood in the

¹ The trust was a living trust, not a testamentary trust. As such, Ms. Osgood's trust would not have been administered or overseen by the probate court.

presence of Mr. Dunn and Mr. Roy, both of whom signed the original Trust. Mr. Roy signed as Trustee. Mr. Dunn notarized Ms. Osgood's signature as well as Mr. Roy's signature on the original Trust.

12. The original Will directs that all of Ms. Osgood's estate pass to the "Danielle L. Osgood Revocable Trust of 2012." This reference to a *revocable* trust was a typographical error, as Ms. Osgood had decided upon and executed an *irrevocable* trust for her estate plan. No one noticed this typographical error at the time.
13. Later the same year, in the spring of 2012, Mr. Dunn underwent nine hours of brain surgery to remove the tumor with which he had been diagnosed the previous fall. Post-surgery, he experienced a variety of complications, including right vocal cord paralysis, total right ear hearing loss, gait and balance difficulties, and facial "droop"/weakness of facial muscles. He required outpatient speech therapy and other treatments to improve his condition.
14. Given this post-operative condition, Mr. Dunn was unable to practice full-time for the remainder of 2012. With the help of an associate, he effectively managed his caseload for the remainder of that year. However, Mr. Dunn's income had dropped significantly in the wake of his surgery, and he was the primary income earner for his family, including three children. Thus, during the next year (2013), he worked seven days a week to try and build back up the practice that had atrophied during his prolonged illness.
15. In hindsight, Mr. Dunn believes that he was extremely overloaded during this time and that he severely underestimated the length of time needed for his recovery from surgery. Mr. Dunn believes his judgment, attention to detail, and concentration were clouded during this recovery period.
16. In the fall of 2013, during this period that Mr. Dunn continued to recover from surgery, Mr. Roy called Mr. Dunn to say that Ms. Osgood wished to make changes to the beneficiaries she identified in the original Trust. Mr. Dunn recalls that he initially informed Mr. Roy that because the original Trust was an irrevocable trust, changes in beneficiaries could only be made under certain narrow circumstances not present in the matter.
17. Nonetheless, Mr. Dunn ultimately drafted a second, altered irrevocable trust agreement and gave it to Mr. Roy. The altered trust agreement included only two beneficiaries: Henry Roy and Kenneth Phillips (the "altered Trust"). He made this change relying on Mr. Roy's representation that it was Ms. Osgood's intention. Mr. Dunn did not speak with Ms. Osgood directly to confirm she

desired these changes.

18. Sometime thereafter, in the fall of 2013, Mr. Roy took the altered Trust to Ms. Osgood and they both signed it. The last page of the altered Trust contains only the signature page, and is falsely dated (type written) the “6th day of January, 2012.” The first page of the altered Trust is also falsely dated January 6, 2012. Mr. Dunn did not notarize anyone’s signature on the altered Trust.
19. Ms. Osgood died on May 21, 2014 at the age of 92. Shortly thereafter, Mr. Roy brought to Mr. Dunn’s attention the typographical error in the original Will executed in January of 2012, which erroneously referenced Ms. Osgood’s “revocable” Trust instead of the “irrevocable” Trust she actually executed.
20. Sometime shortly after Ms. Osgood’s death, Mr. Dunn altered the original Will by correcting a single word – he changed the incorrect reference to Ms. Osgood’s revocable trust to reference the irrevocable trust (the “altered Will”). The altered Will had the original Will’s last page attached to it, and showed a date of January 6, 2012. Mr. Dunn never filed this altered Will with the probate court. Rather, he gave a copy of it to Mr. Roy.
21. All property that would have otherwise passed by the original Will is in the original Trust, meaning the original Will does not need to be probated. Indeed, Mr. Dunn filed the *original* Will with the 9th Circuit Court, Probate Division, on July 9, 2014. Because the original Will did not need to be probated, the Estate opened and closed on July 9, 2014, and has not been re-opened.
22. In early June 2014, Mr. Roy presented Mr. Phillips (the only other beneficiary under the altered Trust) with a copy of the altered Trust and altered Will.² Mr. Phillips, who had found a copy of the original Trust in Ms. Osgood’s home, noticed the difference between the original Trust and the altered Trust.
23. Mr. Phillips hired counsel, who contacted Mr. Dunn about the irregularity. Mr. Dunn immediately disclosed to Mr. Phillips’ counsel that Mr. Dunn had been the person who altered the documents.
24. Mr. Roy obtained counsel, and upon learning of Mr. Dunn’s actions, Mr. Roy, acting as trustee, informed all four beneficiaries named in the original Trust that Mr. Roy did not intend to administer the altered Trust but instead would administer the original, valid Trust naming four beneficiaries.

² At the time he presented the altered Trust to Mr. Phillips, Mr. Roy believed it was a valid and enforceable document based on Mr. Dunn’s agreement to create the altered Trust.

25. Nonetheless, on August 19, 2014, Mr. Phillips sued Mr. Roy, individually and in his capacity as trustee, for equitable reformation and other relief.³ That litigation is ongoing.
26. Mr. Dunn did not benefit personally in any way from altering the trust document.
27. The physician who directed Mr. Dunn's out-patient, post-operative rehabilitation, Dr. Powen Hsu, serves as director of the Catholic Medical Center ("CMC") Outpatient Rehabilitation program and is Chief of Adult Medicine at CMC. He has treated Mr. Dunn since 2011 when he was diagnosed with the brain tumor.
28. Dr. Hsu's medical opinion is that "David's cranial surgery and the physical and practical difficulties following the surgery contributed to David's lapse of judgment [in this disciplinary matter]. . . . now that he is aware of the lapse of judgment and the likely contributing factors, I expect that the possibility of repeating is extremely low." Dr. Hsu also opines that Mr. Dunn is "medically fine to continue the practice of law based upon recent tests he has undergone."

Stipulation at ¶¶ 1-28.

II. RULINGS OF LAW

The Committee accepts the Stipulation as to the disciplinary rules violated. This establishes by clear and convincing evidence that Respondent violated the following Rules of Professional Conduct:

Rule 4.1: Truthfulness in Statements to Others

29. Rule 4.1 states as follows

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; or
 - (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.
30. Mr. Dunn's conduct in altering the original Trust constitutes a violation of Rule 4.1.

³ *Phillips v. Roy*, Case No. 316-2014-EQ-01537, 9th Circuit Probate Division, Nashua.

31. Mr. Dunn knew that he backdated the altered Trust and that it was unenforceable. He further knew or should have known that under the circumstances others would reasonably rely on the altered Trust as the controlling and valid Trust document of Ms. Osgood's estate.
32. By altering the Trust document and presenting it to Mr. Roy as a valid instrument, knowing Mr. Roy intended to present it to Ms. Osgood for her signature, Mr. Dunn knowingly made a false statement of material fact or law to a third person.
33. Under these circumstances, there is clear and convincing evidence of N.H. R. Prof. Conduct 4.1.

Stipulation at ¶¶ 31-35.

Rule 8.4(c): Deceit or Misrepresentation

34. Rule 8.4(c) states as follows:

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

35. Mr. Dunn's conduct in drafting the altered Trust constitutes a violation of Rule 8.4(c).
36. Mr. Dunn's conduct in drafting the altered Trust with "January 6, 2012" as the date of execution constituted a misrepresentation, since the altered Trust was not drafted or executed until the fall of 2013.
37. Mr. Dunn engaged in misrepresentation because he knew that the altered Trust was not valid and not the controlling Trust document of Ms. Osgood's estate, yet he presented Mr. Roy with the altered Trust knowing Mr. Roy would utilize it as a valid document and present it to Ms. Osgood for her signature, and that she in turn would rely on the altered Trust as a valid document.
38. Mr. Dunn engaged in misrepresentation because he knew that if Mr. Roy, in his capacity as Trustee, attempted to administer the altered Trust, the two beneficiaries (Levesque and Weber) who were omitted under the altered Trust would never receive notice that they were beneficiaries under the original Trust.

39. Under these circumstances, there is clear and convincing evidence of N.H. R. Prof. Conduct 8.4(c).

Stipulation at ¶¶ 37-42.

Rule 8.4(a): General Rule

40. Having found the foregoing violations, there is clear and convincing evidence that Mr. Dunn's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

Stipulation at ¶ 43.

III. ANALYSIS

The Attorney Discipline Office and Mr. Dunn jointly agree, and the Committee accepts, that although the baseline sanction in this matter is a suspension, the appropriate sanction in this matter is a public censure. This sanction would serve the purposes of attorney discipline. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.

The purpose of the Court's disciplinary power is "protecting the public, maintaining public confidence in the bar, preserving the integrity of the legal profession, and preventing similar conduct in the future." *Conner's Case*, 158 N.H. 299, 303 (2009). "The sanction...must take into account the severity of the misconduct." *Coffey's Case*, 152 N.H. 503, 513 (2005).

Although the Court has not adopted the *Standards*, it looks to them for guidance. *Conner's Case*, 158 N.H. at 303. The *Standards* set forth a four part analysis for courts to consider in imposing sanctions: "(a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." *Id.* (quoting *Douglas' Case*, 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.* (stating that “[a]fter determining the sanction, [the Court] consider[s] the effect of any aggravating or mitigating factors on the ultimate sanction”).

Under the first prong of the analysis, Mr. Dunn violated duties owed to his client Ms. Osgood, as well as duties owed to the public and to the legal system. *See Standards* §§ 4.6, 5.1, and 6.1.

With respect to Mr. Dunn’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Dunn’s mental state was knowing.⁴

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Dunn’s misconduct. Mr. Dunn’s conduct caused injury to Ms. Osgood. If her final intention as the settlor of the irrevocable trust was to only have two beneficiaries, then Mr. Dunn failed to properly attempt to effectuate such a change. Although the discrepancies between the original and altered Trusts were discovered by Mr. Phillips, and although Mr. Roy agreed to administer the original Trust as soon as Mr. Dunn disclosed his misconduct, Mr. Dunn caused potential injury to the two beneficiaries Weber and Levesque. But for Mr. Phillips’ discovery, the altered Trust could have been given effect (since Mr. Roy, as trustee, proceeded as if it was the controlling trust document). Because living trusts are not administrated or overseen by a probate court, absent any objection by Mr. Phillips, Mr. Roy would have proceeded to administer the altered Trust, which was not valid.

In this case, no single *Standard* is squarely on point. The Court considers each case on its own facts and circumstances, however, looking to the *Standards* for guidance in determining a baseline sanction. *Connor’s Case*, 158 N.H. at 303. The *Standards* are not designed to fit the

⁴ The *ABA Standards*, as well as New Hampshire’s Rules of Professional Conduct, differentiate between a knowing state of mind and an intentional state of mind. Knowing misconduct represents a less culpable mental state than intentional misconduct. Rule 1.0(f) of the N.H.R. Prof. Conduct 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* 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.” *ABA Standards*, Sec. III (“Definitions”). *See also In Re Wyatt’s Case*, 159 N.H. 285, 307, 982 A.2d 396, 413 (2009) (discussing “knowing” misconduct and stating “[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.”). An intentional state of mind is the most culpable state of mind, defined in the *ABA Standards* as acting with “a conscious objective or purpose to accomplish a particular result.”

specifics of every case; they are to serve as a model for imposing sanctions, with room for flexibility and creativity in determining sanctions in cases of lawyer misconduct. *Linda A. Theroux advs. Attorney Discipline Office*, PCC Docket No. 09-035 (August 22, 2014) (citing *Standards*, I, Preface).

The parties agree, and the Committee accepts, that the baseline sanction in this matter is a suspension. See *Standards* §§ 4.62, 5.12, 5.13, 6.12.

Mr. Dunn's knowing misrepresentation to Ms. Osgood (via Mr. Roy, who took the altered Trust to her for signature) that the altered Trust was a valid Trust document implicates Section 4.6 of the *Standards*, dealing with Lack of Candor toward a client. That Section provides (emphasis added):

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

- 4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.
- 4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.**
- 4.63 Reprimand⁵ is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.
- 4.64 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

The parties agree that under *Standards* § 4.62, as outlined above, the baseline sanction is a suspension.

⁵ A reprimand in the *Standards* is analogous to a public censure in New Hampshire.

Mr. Dunn's knowing misrepresentation in altering the Trust document, while not rising to a level of criminal conduct, implicates Section 5.1 of the *Standards*, dealing with Failure to Maintain Personal Integrity. That Section provides (emphasis added):

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

- 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 is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.**
- 5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

Mr. Dunn's conduct in this matter, when considered under *Standard 5.1*, would call for a baseline sanction of public censure.

Finally, the parties agree, and the Committee accepts, that while not directly on point, *Standard* § 6.12 provides some guidance in this matter and contemplates a baseline sanction of suspension. Although Mr. Dunn did not knowingly submit a false statement or document directly *to a court*, Mr. Dunn knew that the altered Trust could be used to confer rights and benefits. Those issues eventually became the subject of litigation. *See Theroux v. ADO*, No. 09-035 (PCC Order dated August 22, 2014, at pp. 19-20) (looking to *Standard* § 6.12 for guidance, where attorney altered and expanded the scope of medical release after it was executed by opposing party, even though such release was not presented to court).

Under the totality of the circumstances, the parties agree, and the Committee accepts, that the baseline sanction for Mr. Dunn's conduct is a suspension. *See Standards* §§ 4.62, 6.12. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303. In this case, only one aggravating factor is present: Mr. Dunn's substantial experience in the practice of law. *See Standards* § 9.22. In contrast, there is compelling mitigation present, including an absence of a prior disciplinary record, remorse, timely good faith effort to rectify the consequences of misconduct, a cooperative attitude during disciplinary proceedings, good character and reputation, and full and free disclosure to the ADO. *See Standards* § 9.32. Mr. Dunn self-reported his conduct to the ADO.

Particularly significant in mitigation in this case is Mr. Dunn's personal and emotional problems at the time of the misconduct. Mr. Dunn had recently undergone brain surgery and was suffering from post-surgery complications. Mr. Dunn's recovery greatly affected his financial situation and law practice. At the time of his misconduct, Mr. Dunn was working extensively to re-build his practice and maintain his ability to support his family. Mr. Dunn did not self-deal or benefit personally in any way from altering the trust document.

Despite Mr. Dunn's substantial experience in the practice of law, the mitigation in this case is more compelling and should be given greater weight in the final sanction analysis. *See Timothy G. Sheedy advs. Nicholas & Astrid Pishon*, PCC Docket No. 05-089 (October 25, 2007). Consistent with the above, a downward departure to public censure is appropriate.

A public censure is proportional to discipline imposed in other New Hampshire cases involving breaches of Rules 4.1, and 8.4(c) where significant mitigation is present. For example,

in *Welt's Case*, the Supreme Court imposed a public censure where Respondent violated Rules 1.1, 1.3, 1.4 and 8.4(c) by falsely informing his clients that he had filed a lawsuit on their behalf when he had not. *See Welts' Case*, 136 N.H. 588, 592-93 (1993). The Court declined to impose the suspension recommended by the Committee, noting that although misrepresentation is a "substantial" violation, the Respondent had made a "persuasive case for mitigation." *Id.* In particular, Respondent was experiencing personal and emotional problems, had no disciplinary history, "did not act for personal gain," and the violations "flow[ed] essentially from an isolated course of conduct." *Id.* The Court distinguished other misrepresentation cases resulting in disbarment, noting that such cases usually "involved additional and repeated misconduct, including respondents' failure to cooperate with the professional conduct committee." *Id.* at 592.

Similar to the facts in *Welt's Case*, Mr. Dunn's conduct involves misrepresentation stemming from a single episode and presents similar significant mitigating factors. *See also O'Meara's Case*, 150 N.H. 157, 160 (2003) (finding Respondent violated Rules 3.1, 3.3 and 8.4(c), but deciding "that in the absence of factors that justified imposing suspension, such as 'engag[ing] in a concerted course of unethical conduct that involved multiple incidents occurring over an extended period of time,' and because of the presence of mitigating factors, public censure was the proper sanction").

Neither *Welt's Case* nor *O'Meara's Case* analyzed the four prongs under the *ABA Standards* except with respect to aggravating and mitigating factors; neither analyzed the sanction by first identifying a baseline sanction. Nonetheless, those cases demonstrate that a public censure can be an appropriate sanction, even for cases involving misrepresentation, where significant mitigation – in particular lack of a disciplinary history, personal and emotional problems, and lack of a personal gain – is present.

Theroux is a more recent 4.1/8.4(c) case and contains a full analysis under the *Standards*. *Theroux*, PCC Docket No. 09-035. Like Mr. Dunn, Ms. Theroux violated Rules 4.1 and 8.4(c) by altering a document and presenting it as valid to a third person. The Hearing Panel imposed a public censure after finding that the public censure was the baseline sanction under *Standard* 5.13 (baseline public censure where respondent knowingly engages in any other conduct [*i.e.* not

criminal] that involves dishonesty or misrepresentation and reflects adversely on lawyer's fitness to practice).

On review, the Committee found that the baseline sanction was a suspension, looking to *Standards* §§ 4.62 (candor to client) and 6.12 (candor to the court) in addition to *Standard* 5.1, and noting that the *Standards* almost uniformly provide a baseline sanction where the lawyer's misconduct was knowing as opposing to negligent. *Theroux* at 18-21.

Ms. Theroux's mitigation was less compelling than the mitigating factors present in Mr. Dunn's case. As in this case, in *Theroux* the Committee took guidance from three of the *ABA Standards*, determined that the baseline sanction was a suspension, but upheld the downward departure to a public censure based on significant mitigating factors.

In light of the *ABA Standards* and the factors and case law noted above, a public censure is the appropriate sanction in this matter.

IV. SANCTION

Having accepted the aforementioned findings and rulings, the Committee concludes that the appropriate discipline in this matter is a public censure. The purpose of the Court's disciplinary power "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. 361, 365 (2007) (quotation and citation omitted). The Committee's recommended sanction is in accord with the purposes of attorney discipline. See e.g., *Conner's Case* 158 N.H. at 303; *Richmond's Case*, 152 N.H. 155, 159-60 (2005). This sanction is also in accord with the *ABA Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*").

V. COSTS

The Committee accepts Mr. Dunn's Agreement to Pay Costs of Disciplinary Matter with regard to the investigation and prosecution of this matter.

VI. CONCLUSION

For all of the above reasons, the Professional Conduct Committee issues this public censure to David C. Dunn for violating Rules of Professional Conduct 4.1; 8.4(c), and 8.4(a).

Dated: June 4, 2015



David M. Rothstein, Chair

cc: Sara S. Greene, Disciplinary Counsel
Mitchell M. Simon, Esquire
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