

New Hampshire Supreme Court  
**Professional Conduct Committee**

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*Forberg, Lisa B. advs. Attorney Discipline Office # 07-031*

**REPRIMAND**

On November 20, 2007, the Professional Conduct Committee, upon consideration, voted grant the Motion to Permit Waiver of Hearings Committee Process and to issue a Reprimand in the above-captioned matter on the basis of the Stipulation filed by the parties attached hereto and made part thereof.

November 26, 2007

  
Benette Pizzimenti, Vice Chair

**Distribution:**

Thomas V. Trevethick, Deputy General Counsel  
David A. Garfunkel, Esquire  
File



**NEW HAMPSHIRE SUPREME COURT**

**PROFESSIONAL CONDUCT COMMITTEE**

Forberg, Lisa B.

advs.

Attorney Discipline Office

#07-031

**STIPULATION**

Deputy General Counsel, Thomas V. Trevethick, and Respondent, Lisa B.

Forberg, hereby submit this Stipulation in the above-referenced case.

**I. Stipulation of Facts**

1. Ms. Forberg is an attorney licensed to practice law in New Hampshire. Ms. Forberg was admitted to practice in New Hampshire in 1991. At all times material to this proceeding, Ms. Forberg was an associate employed by, and practicing law with,

the Law Office of Amy G. Wolfson, P.L.L.C. That law firm is located at 146 Main Street, Suite 102, Nashua, New Hampshire 03060.

2. At all times relevant to this matter, Ms. Forberg was representing Jane Doe with respect to a divorce filed by Ms. Forberg and a Domestic Violence Petition which was filed by Ms. Doe pro se. Paul J. Bennett, Esquire, represented Mr. Doe in those matters.
3. On January 12, 2007, Ms. Forberg spoke with Mr. Bennett and was informed by Mr. Bennett that Mr. Doe was not working.
4. Ms. Doe had informed Ms. Forberg that up until January, 2001, Mr. Doe had been employed as a Licensed Practical Nurse and had worked primarily for the Belknap County Nursing Home.
5. Ms. Forberg had also been informed by Ms. Doe that Mr. and Ms. Doe had filed for Chapter 7 Bankruptcy and that the bankruptcy case was scheduled to be heard on February 1, 2007.
6. On or about January 12, 2007, Ms. Forberg received a note from Mr. Doe, written by Mr. Doe's doctor indicating that Mr. Doe would be disabled for the following three months.
7. On or about January 22, 2007, Ms. Doe called Ms. Forberg and informed her that Mr. Doe was working through a temporary employment agency called Diversified Staffing. Additionally, Ms.

Doe's sister-in-law informed her that Mr. Doe had worked at Catholic Medical Center during the prior 10 days.

8. On January 24, 2007, Ms. Forberg sent Mr. Doe a letter with a guidelines worksheet and income statement from the bankruptcy case and requested that Mr. Doe pay \$286.00 per week in child support.
9. Ms. Forberg advised Mr. Bennett that Ms. Doe had proof that Mr. Doe was working through Diversified Staffing.
10. Later that day (January 24, 2007), Ms. Forberg received in the mail from Mr. Bennett a check in the amount of \$50.00 as an offer of Mr. Doe's minimum monthly child support payment.
11. Ms. Forberg called Ms. Doe and advised her of the \$50.00 per month offer. At that time, Ms. Doe informed Ms. Forberg that Mr. Doe had requested a 401K disbursement approximately one month earlier. She advised Ms. Forberg that Mr. Doe expected to receive about \$500.00 from this disbursement, and that the check should be coming from the Belknap County Nursing Home.
12. Ms. Forberg sent a fax to Mr. Bennett that same day indicating that Ms. Doe would not accept the offer of \$50.00 per month in child support and requesting half of Mr. Doe's 401K disbursement.

13. On January 30, 2007, Ms. Forberg called Mr. Bennett's office and informed his secretary/receptionist that Mr. Doe's mail was still coming to the marital residence. Mr. Bennett's receptionist informed Ms. Forberg that Mr. Bennett was scheduled to start his vacation, and she requested assent on a motion to continue an upcoming hearing.
14. Later, on January 30, 2007, Ms. Forberg and Mr. Bennett spoke and Ms. Forberg advised him that Ms. Doe was rejecting the offer of \$50.00 per month and that the \$50.00 check would be returned. Mr. Bennett, upon being informed of the proof that Ms. Doe had that Mr. Doe was employed at the time that he was claiming to be disabled, informed Ms. Forberg that he would propose child support based upon any actual employment.
15. On February 1, 2007, Ms. Doe assented to the requested continuance.
16. Ms. Forberg and Mr. Bennett had agreed that any mail that was delivered to the marital home would be delivered by Ms. Doe to Ms. Forberg's office, and that Ms. Forberg would then forward it to Mr. Bennett.
17. On February 5, 2007, Ms. Doe informed Ms. Forberg by email that Mr. Doe's mail, including what looked like a paycheck from

Belknap County Nursing Home but which Ms. Doe thought could have been the 401K disbursement, had been delivered to her home. Ms. Forberg instructed Ms. Doe to bring the mail to her office.

18. Later on February 5, 2007, Ms. Doe came into Ms. Forberg's office with the mail that had been delivered to the marital home. Ms. Forberg greeted Ms. Doe at the front desk of the office.
19. Ms. Forberg thought that the mail from the Belknap County Nursing Home was the 401K check since Ms. Doe had told Ms. Forberg that Mr. Doe had recently been working through a staffing agency and at other facilities, but not at the Belknap County Nursing Home.
20. Ms. Forberg instructed her office receptionist to open the mail from the Belknap County Nursing Home.
21. The receptionist then slit open the envelope and Ms. Forberg removed its contents. Ms. Forberg then saw that the envelope contained a paycheck.
22. Ms. Forberg immediately realized that she had made a mistake. She then called Mr. Bennett's office and informed his secretary that she "had made a big mistake" and asked the secretary to have Mr. Bennett return her call as soon as possible.

23. Although Ms. Forberg had intended to advise Mr. Bennett what she had done when he returned her call, she did not do so. Rather, she advised him that her (Ms. Forberg's) receptionist had inadvertently opened Mr. Doe's mail. She then apologized to Mr. Bennett and forwarded the mail to Mr. Bennett.
24. On February 8, 2007, Mr. Bennett faxed a letter to Ms. Forberg which stated that after reviewing the mail that had been forwarded to him, he believed that the item in question had been opened "to determine the amount of [Mr. Doe's] earnings."
25. Ms. Forberg responded by calling Mr. Bennett. In that telephone conversation she told him that she had opened the envelope because she thought it was a marital asset, the 401K retirement disbursement. She advised him that she would not have opened it if she believed that it was a paycheck. She further advised Mr. Bennett that she did not need proof that Mr. Doe was working since she had already independently confirmed that fact.
26. Ms. Forberg also advised Mr. Bennett in that telephone conversation that she needed to "come clean" with him. She then admitted that she, not her receptionist, had been responsible for opening the envelope. She apologized for her actions and stated that it would never happen again.

27. Later that same day, Mr. Bennett called Attorney Amy Wolfson and advised her that he thought that Ms. Forberg had lied when Ms. Forberg had advised him that the receptionist had inadvertently opened the mail. Following that telephone conversation, Ms. Forberg wrote a letter to Mr. Bennett accepting full responsibility for opening Mr. Doe's mail, and apologized to Mr. Bennett and his client. Ms. Forberg's letter is attached hereto as Exhibit A.

## **II. Stipulation as to Rules Violated**

### **A. Rule 8.4(c): Conduct Involving Deceit and Misrepresentation**

28. Allegations set forth above are incorporated by reference.
29. As explained in detail above, Ms. Forberg informed Mr. Bennett that Mr. Doe's mail was opened inadvertently by the office receptionist.
30. At that time, Ms. Forberg knew that her office receptionist was not the culpable party, but that, by directing the receptionist to open it, Ms. Forberg was solely responsible for opening Mr. Doe's mail.
31. Ms. Forberg's false statements to Mr. Bennett were intended to deceive him into thinking that the opening of Mr. Doe's mail was an inadvertent mistake.

32. Ms. Forberg's conduct in this regard constitutes clear and convincing evidence of deceit and misrepresentation in violation of N.H. R. Prof. Conduct 8.4(c).

B. Rule 8.4(a): General Rule

33. Because there exists clear and convincing evidence that Ms. Forberg violated the above rule, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

**III. Stipulation as to Sanction**

34. Deputy General Counsel Thomas V. Trevethick and Ms. Forberg jointly recommend a Reprimand as the appropriate sanction in this matter. A Reprimand would serve the purposes of attorney discipline.

35. The American Bar Association's Standards for Imposing Lawyer Sanctions (1992) ("Standards") supports the conclusion that Ms. Forberg should receive a Reprimand. The purpose of the Court's disciplinary power "is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." E.g., Coffey's Case, 152 N.H. 503, 513 (2005) (internal quotation marks omitted). "The

sanction must take into account the severity of the misconduct.”

Id.

36. Although the Court has not adopted the Standards, it looks to them for guidance. Coffey’s Case, 152 N.H. at 513. 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.”

Standards § 3.0; Coffey’s Case, 152 N.H. at 513.

37. The first three steps create the framework for characterizing the misconduct and determining a baseline sanction. See Wolterbeek’s Case, 152 N.H. 710, 714 (2005) (“In 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 step in the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. See id. (“After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.”).

38. Under the first prong of the analysis, Ms. Forberg violated a duty to maintain personal integrity when she ordered the receptionist to open the mail belonging to Mr. Doe and when she made a false

statement to Mr. Bennett concerning the circumstances by which mail belonging to Mr. Doe was opened. Under this prong, absent mitigating or aggravating factors, Standard 5.13 states that Reprimand (Public Censure when translated to New Hampshire definitions) is generally appropriate when a lawyer "knowingly engages in any other conduct (not previously enumerated by Standards 5.11 and 5.12) that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law." Here the lack of candor exhibited by Ms. Forberg was not directed to her client so as to implicate Standard 4.6, and it was not a false statement to a Court so as to implicate Standard 6.1.

39. Under the second prong, Ms. Forberg's mental state was knowing rather than intentional.
40. Under the third prong of the analysis, Ms. Forberg's conduct did not cause any actual injury as she acted very quickly to rectify the situation.
41. Having analyzed the nature of the misconduct (i.e., the duty violated, Ms. Forberg's mental state and the injury or lack thereof) under the first three prongs of the Standards, a Reprimand, rather than a Public Censure, appears to be the appropriate baseline sanction.

42. The final step in the analysis, however, is to determine whether there are any aggravating and/or mitigating factors that affect the baseline sanction.
43. There are three mitigating factors in this case: First, Ms. Forberg does not have a prior record of discipline. Second, she made a timely good faith effort to rectify her conduct in "coming clean" with Mr. Bennett concerning her misconduct. And third, she has engaged in full and free disclosure with the Attorney Discipline Office concerning these proceedings.
44. There are no aggravators in this case. As such, the baseline sanction of a Reprimand is appropriate.
45. In sum, taking into consideration both the four-part analysis recommended by the Standards, as well as the purposes of attorney discipline in New Hampshire, the appropriate sanction in this matter is a Reprimand.

#### **IV. Stipulation as to Costs**

46. Ms. Forberg agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.


**V. Effect of Stipulation**

47. Respondent understands that by signing this Stipulation, she is hereby bound to the facts as stipulated. In the event that the Professional Conduct Committee does not agree with the Stipulation as to Rules Violated and/or the Stipulation as to Sanction, the Respondent is nonetheless hereafter bound to the facts as stipulated.

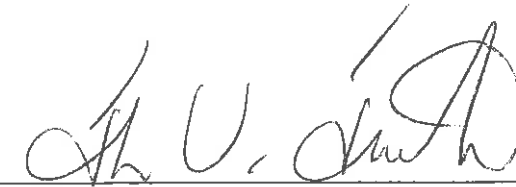
48. While Deputy General Counsel and Respondent agree to be bound by the facts set forth in paragraphs 1 through 27 of this Stipulation, Ms. Forberg reserves the right to be heard on sanctions only if the Professional Conduct Committee does not accept the agreed sanction of Reprimand.

Respectfully submitted,

Dated: October 22, 2007

  
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Lisa B. Forberg, Esquire

Dated: October 24, 2007

  
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Thomas V. Trevethick  
Deputy General Counsel