New Hampshire Supreme Court

Professional Conduct Committee

a committee of the attorney discipline system

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PUBLIC CENSURE WITH MANDATORY CONDITIONS

On December 8, 2015, the Professional Conduct Committee (the "Committee") deliberated the Stipulation as to Facts, Violations and Sanction(the "Stipulation"), the Agreement to Mandatory Conditions, and the Agreement to Pay Costs of Disciplinary Matter (collectively, the "Record"). Members present included David M. Rothstein, Chair, Heather E. Krans, Vice Chair, Elaine Holden, Vice Chair, Peter G. Beeson, Scott H. Harris, Margaret R. Kerouac, Mona T. Movafaghi, Georges J. Roy, and Martha Van Oot. Susan R. Chollet, Richard H. Darling and Richard D. Sager were absent.

Having reviewed the Record, the Committee approved the facts as stipulated, by clear and convincing evidence. The Committee then approved the findings of violations of the New Hampshire Rules of Professional Conduct (the "Rules") as stipulated, voted to accept the Diversion Agreement for violation of Rules 1.3 and 8.4(a), and voted to approve the agreement to reimburse the Committee for all costs of investigation and prosecution of this matter.

I. FINDINGS OF FACT

The Committee has determined that the Record supports the following factual findings of the Stipulation by clear and convincing evidence:

1. Danielle L. Richey Santuccio ("Ms. Santuccio") is an attorney licensed to practice law in New Hampshire. She was admitted to practice on October 31, 2006.

2. Ms. Santuccio has not been admitted to practice law in any other jurisdiction.

3. After admission to the New Hampshire bar, Ms. Santuccio began practicing law with the McCletchie [sic] Law Office in November 2006 where she practiced until June 2009. As

an associate in that firm, Ms. Santuccio primarily practiced criminal and family law.

4. From June 2009 to July 2011, Ms. Santuccio was an associate at The Law Offices of Thomas E. Dewhurst, III ("Dewhurst firm") in Conway, New Hampshire where she focused her practice on criminal and family law and civil litigation.

5. Ms. Santuccio currently practices law at Melendy, Lee, & Santuccio, P.A. ("Melendy firm"), 481 White Mountain Highway, P.O. Box 2046, Conway, New Hampshire 03818-2046. Ms. Santuccio moved her law practice to the Melendy firm in July 2011 and continues to focus her practice on criminal and family law and civil litigation. The material facts and underlying matter giving rise to this grievance occurred while Ms. Santuccio practiced at both the Dewhurst and Melendy firms.

6. The ADO's investigation was initiated upon receipt of a grievance filed by Ms. Santuccio's client, Ann M. Haralambie, Esquire ("Ms. Haralambie"). Ms. Haralambie is a licensed attorney in Arizona. She lives most of the year in Arizona but spends her summers in New Hampshire.

7. In August 2008, Ms. Haralambie retained the Dewhurst firm to investigate the possibility of filing various construction defect claims against entities known as D&M Builders and Cameron Builders arising out of allegedly poor construction on the summer house she owns in Silver Lake, New Hampshire.

8. In September 2003, Ms. Haralambie hired D&M Builders to construct a second story on her summer house. D&M Builders was a partnership owned by Doug Gasher and Matthew Cameron. In 2004, the D&M Builders partnership dissolved and Mr. Cameron continued to work on Ms. Haralambie's summer house under the business name, and sole proprietorship, Cameron Builders.

9. The work on the summer house continued through 2007. James Karmozyn, of H.E. Bergeron Builders, completed a structural inspection of the house on August 10, 2006 with Ms. Haralambie and Mr. Cameron present. Mr. Karmozyn issued a report on July 20, 2007 wherein he identified problems with the general framing of the second story, the first floor porch roof, the roof rafters and the foundation.

10. In April 2008, a portion of the roof blew off of the house. After that incident, numerous other problems with the construction work began to emerge.

11. Ms. Haralambie sought legal counsel regarding the construction problems, retaining the Dewhurst firm in August 2008. She agreed to pay an initial retainer of $1,500.00 and to pay legal fees on an hourly basis after the retainer was exhausted. Ms. Haralambie signed an hourly fee agreement on August 21, 2008. The matter was initially assigned to an associate in the Dewhurst firm, James D. Kelly.

12. On August 19, 2008, Ms. Haralambie provided Mr. Kelly with the insurance policy information for Mr. Cameron. She had obtained the information from her insurance agent, who also handled Mr. Cameron's business insurance. She requested that Mr. Kelly contact the insurance company regarding her claim.

13. Ms. Haralambie discussed with Mr. Kelly the need to determine whether there were any insurance policies to pay a recovery in a lawsuit. Ms. Haralambie made it clear to Mr. Kelly that being able to actually receive payment for any judgment obtained was a prerequisite to expending funds to litigate the case.

14. Another consideration was whether Ms. Haralambie's claims were time-barred. RSA 508:4, I sets out the Limitation of Actions for Personal Actions as follows:

> Except as otherwise provided by law, all personal actions, except actions for slander or libel, may be brought only within 3 years of the act or omission complained of, except that when the injury and its causal relationship to the act or omission were not discovered and could not reasonably have been discovered at the time of the act or omission, the action shall be commenced within 3 years of the time the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, the injury and its causal relationship to the act or omission complained of.

15. RSA 508:4-b sets out the Limitation of Actions for Damages from Construction as follows:

> I. Except as otherwise provided in this section, all actions to recover damages for injury to property, injury to the person, wrongful death or economic loss arising out of any deficiency in the creation of an improvement to real property, including without limitation the design, labor, materials, engineering, planning, surveying, construction, observation, supervision or inspection of that improvement, shall be brought within 8 years from the date of substantial completion of the improvement, and not thereafter.
>
> II. The term "substantial completion" means that construction is sufficiently complete so that an improvement may be utilized by its owner or lawful possessor for the purposes intended. In the case of a phased project with more than one substantial completion date, the 8-year period of limitations for actions involving systems designed to serve the entire project shall not begin until all phases of the project are complete.
>
> III. If an improvement to real property is expressly warranted or guaranteed in writing for a period longer than 8 years, the period of

limitation set out in paragraph I shall extend to equal the longer period of warranty or guarantee.

IV. In all actions for negligence in design or construction described in paragraph I, the standard of care used to determine negligence shall be the standard of care applicable to the activity giving rise to the cause of action at the time the activity was performed, rather than a standard applicable to a later time.

V. (a) The limitation set out in paragraph I shall not apply to actions involving fraudulent misrepresentations, or to actions involving the fraudulent concealment of material facts upon which a claim might be based. Such actions shall be brought within 8 years after the date on which all relevant facts are, or with due care ought to be, discovered by the person bringing the action.
(b) The 8-year limitation period in paragraph I shall not apply to actions arising out of any deficiency in the design, labor, materials, planning, engineering, surveying, observation, supervision, inspection or construction of improvements which are for nuclear power generation, nuclear waste storage, or the long-term storage of hazardous materials.

VI. Nothing in this section shall affect the liabilities of a person having actual possession or control of an improvement to real property as owner or lawful possessor thereof, and nothing contained in this section shall alter or amend the time within which an action in tort may be brought for damages arising out of the negligence in the repair, maintenance or upkeep of an improvement to real property.

16. The annotation to RSA 508:4-b includes a citation to a New Hampshire Supreme Court decision, *Big League Entertainment, Inc. v. Brox Industries, Inc.*, 149 N.H. 480, 484 (2003). That decision provides in relevant part:

> Based upon its method of operation and its underlying purpose, we hold that RSA 508:4-b operates as a statute of repose. Thus, reading RSA 508:4, I and RSA 508:4-b together, we conclude that the plaintiff's claim must have been filed within three years of the accrual of the cause of action but no later than eight years after substantial completion of the construction project.

As such, RSA 508-4-b operates as a statute of repose instead of a statute of limitation.

17. The attorneys at the Dewhurst firm believed that a significant legal issue in the matter involved the questions of when the work on the summer house was "substantially completed" and when construction defects were "reasonably discovered." However, a

formal determination of when the statute of limitations would run, such as a research memorandum to the file, by an attorney in the Dewhurst firm, does not appear to have been undertaken.

18. In September 2008, Ms. Haralambie was in contact with contractors to obtain estimates with respect to the scope and cost of the corrective work.

19. While Ms. Haralambie was pursuing damages for the repair after the roof blew off in April 2008, she was also interested in pursuing a separate claim against the builders for defects in the structural work on the summer house. On September 22, 2008, Ms. Haralambie advised Mr. Kelly that Gordon Cormack was late in getting her an estimate but that the previous estimate had been in the $30,000 to $50,000 range for the structural work. Mr. Kelly continued to work on the matter during the fall of 2008 and the spring of 2009.

20. In May 2009, Mr. Gasher's insurance policy information was obtained.

21. Mr. Kelly left the Dewhurst firm at some time in the late spring of 2009.

22. Ms. Santuccio joined the Dewhurst firm as an associate in June 2009 and the Haralambie matter was reassigned to her. This was the first time Ms. Santuccio handled a construction case of this nature. Ms. Santuccio does not have a specific memory of reviewing the file to determine a specific date or date range of when the statute of limitations would run, but believes at some point she did review the file for that purpose. At the time, Ms. Santuccio was under the impression that RSA 508:4-b provided for an eight-year statute of limitations in construction cases. This was not accurate, however, because RSA 508:4-b has been interpreted to operate as a statute of repose. A three-year statute of limitations is applicable in the first instance.

23. On June 18, 2009, Ms. Santuccio sent a representation letter to D&M Builders. On July 9, 2009, Ms. Santuccio e-mailed Ms. Haralambie to introduce herself. She inquired how Ms. Haralambie wanted her to proceed and whether Ms. Haralambie wanted her to initiate suit against the builders.

24. Ms. Haralambie replied that same day advising that Mr. Cameron and Mr. Gasher had separate insurance policies with different insurance companies. She was still waiting for an estimate of repairs from Mr. Cormack. Ms. Haralambie also forwarded an e-mail that Mr. Kelly had sent her on May 26, 2009, wherein he advised that he would get the specifics about whether the policies would cover Mr. Cameron and Mr. Gasher for the work on Ms. Haralambie's property.

25. On July 15, 2009, Ms. Santuccio e-mailed Ms. Haralambie inquiring whether Ms. Haralambie wanted her to follow up with Mr. Cormack regarding an estimate. Ms. Haralambie responded, copying Mr. Cormack on the email, that she would let Ms.

Santuccio know as soon as she heard from Mr. Cormack.

26. On July 23, 2009, Ms. Haralambie requested that Ms. Santuccio follow up with Mr. Cormack.

27. After Ms. Haralambie received a July 29, 2009 billing statement from the Dewhurst firm, she e-mailed Ms. Santuccio on July 31, 2009 stating that she was unhappy with the some of the charges for Mr. Kelly's time and was unhappy with the lack of notice regarding an increase in the firm's billing rates.

28. Ms. Haralambie was also unhappy with the firm's overall handling of her matter. In pertinent part, Ms. Haralambie also wrote:

> At this point, it seems that I have been doing the majority of the work on getting information, so please do not bill anything more on my case until I have followed up [with] Gordon Cormack and gotten some figures. I don't want to keep incurring fees for multiple communications . . . regarding the estimate. I provided Jim with Matt's insurance policy and claims phone number on August 18, 2008. On December 18, 2008 Jim spoke with the lawyer for my homeowner's insurance company about subrogation issues. On May 12, 2009 Jim spoke with Doug's insurance company, and they opened a claim (and that same day Jim wrote me but didn't recall that Matt had insurance and that I had given him all of the pertinent information already). I don't know if any of the communications with insurance companies was dealt with in writing or only in phone calls. If there have been any letters, I haven't received copies. I would like copies of any correspondence with any of the insurance companies and any notes about the builders' policies (policy number and limits) and whether there has been any indication from the insurance companies about what they were prepared to do. I am assuming that we have not made a demand (lacking Gordon's estimate), but at one point Jim asked me if I wanted the insurance companies to pay me or pay Gordon directly, so I thought there may have been some conversation.
>
> I realize that you are just coming onto the case and are not responsible for the past year's work, but I am not happy with the lack of progress and meaningful communication with me. I realize it makes no sense to file a complaint at this point (while we are still within the statute of limitations and have notified the two insurance companies of our claim) and that we need to make a demand once we have an estimate on what we're looking at. I am just somewhat in the dark regarding formal communications with the insurance companies. It may be easier for me to just look at my file.
>
> Your firm has used up almost all of my $1500 retainer, and I am not

prepared to give you any more money at this point. . . .

Depending on whether in fact the builders' insurance companies have agreed in principle on the liablity issue, or where we stand on that, I don't anticipate needing your services until Gordon actually gets the structural engineer's detailed report and has a better sense of the amount, beyond his initial $30,000-50,000 ballpark estimate. I will follow up on that myself.

29. Ms. Santuccio replied on August 3, 2009 stating:

> I am sorry that you are frustrated with our firm. I have forwarded your email to Attorney Dewhurst. I did not get the opportunity to review your bill before it was mailed to you. I did speak with Gordon on Friday, and he gave me more information regarding and [sic] estimate. I had been calling him everyday attempting to reach him, as I did want to progress on this matter. I will not do anything else regarding this case until instructed to do so.

30. On August 14, 2009, Ms. Santuccio e-mailed Ms. Haralambie stating: "Regarding the status of your case, it was my understanding that, as counsel, I had been moving forward with this claim in the manner you had requested." Ms. Harlambie responded that same day stating:

> That is accurate. However, until Gordon gets his plan and estimate written up, there's nothing much we can do, so that's why we're on hold for now. I do, however, still want to know the status of the communications with the insurance companies and copies of any correspondence in existence. . .

31. On September 11, 2009, Mr. Cormack provided Ms. Haralambie with an initial estimate for repairs of over $65,000.00. He also outlined two phases for engineering estimates that would cost $6,000 each to complete, after which he would be able to provide a more accurate estimate. Ms. Haralambie forwarded the written estimate and Mr. Cormack's e-mail to Ms. Santuccio on September 15, 2009 and requested: "Please let me know the status of communications with the insurance companies (I still haven't seen anything from your office about that)."

32. On October 19, 2009, Ms. Santuccio e-mailed Ms. Haralambie advising that upon review of the file she "did not find any letters to [i]nsurance companies or any written letters from insurance companies. There is one letter of representation from Attorney Kelly to Phenix Mutual, but no such letters for insurance companies representing Matt or Doug. There are bills that account for various phone calls to insurance companies including Phenix Mutual and Palmer Insurance. . . ."

33. Ms. Haralambie replied, that same day, explaining what she knew, with respect to what had been done previously, including that she had given Mr. Cameron's policy number and coverage dates to Mr. Kelly and that Mr. Kelly had told her he had found Mr. Gasher's insurance information. Ms. Haralambie stated:

> Are there any notes from the phone conversations he had with Matt & Doug's insurance companies? (Phenix is my insurance company, who should have a subrogated claim for the roof part of the problem, which they paid.) I asked Tom for copies of all of the notes in the file, other than notes from conversations with me.

34. Ms. Santuccio sent Ms. Haralambie a letter on December 3, 2009 stating:

> This letter is just a quick follow-up regarding our conversation about an estimate from Gordon Cormack and/or the engineer's [sic] that were evaluating the property. As you know we cannot proceed until we get word from you regarding this estimate and your wishes regarding initiating suit.

35. Ms. Haralambie copied Ms. Santuccio on a follow-up e-mail to Mr. Cormack inquiring as to the status of the estimate on December 23, 2009. On February 3, 2010, Ms. Haralambie advised Ms. Santuccio that she should have an estimate by the end of the month and that they could then proceed with making a claim.

36. On July 21, 2010, Mr. Cormack completed an "Order of Magnitude Estimate." The estimate for structural problems with the summer house totaled $155,050.00. Having received the estimate, Ms. Haralambie wrote to Ms. Santuccio inquiring as to the status of communications with the insurance company and again requested to be copied on any correspondence.

37. Ms. Santuccio responded on July 23, 2010 that she had called but had not spoken to the insurance company yet, that she would copy Ms. Haralambie on any correpondence and offering to e-mail a synopsis of any telephone calls with the insurance companies. Ms. Haralambie reponded that afternoon: "I'm trying not to run up [u]nneccesary billable hours, so I don't need a synopsis of phone calls unless it is something significant."

38. When Ms. Santuccio did not put Mr. Cameron and Mr. Gasher's insurance companies on notice, Ms. Haralambie drafted a sample notice letter and e-mailed it to Ms. Santuccio on August 17, 2010. Ms. Harlambie also stated in her e-mail, in relevant part:

> Here's a draft letter you can use to send to the two insurance companies. I am concerned that our delay in contacting them is impeding their ability to have someone come out and see the structural problems before they are corrected. . . . The insurance information in this draft is only for the

> Cameron policy; you have the information on the Gasher policy. Please note that I provided Jim Kelly of your firm this insurance contact information, as well as a claims telephone number, two years ago.

39. On August 30, 2010, Ms. Santuccio sent a claim letter to Palmer Insurance regarding their insured, Mr. Gasher, and sent a claim letter to National Grange Mutual regarding their insured, Mr. Cameron. She did not copy Ms. Haralambie on the letters at that time. On September 15, 2010, Ms. Santuccio e-mailed scanned copies of the letters to the insurance companies to Ms. Haralambie. She wrote in the e-mail: "I have not marked the time down and you will not be charged as the delay is attributed, ultimately, to me."

40. Ms. Haralambie e-mailed Ms. Santuccio on November 3, 2010. In pertinent part the e-mail stated:

> I have not heard anything about my case since you told me you had calendared it for follow up the end of September, 30 days after sending the letter to the insurance companies which I drafted. It is now November 3rd, and I don't know whether or not there was a follow up. . . . Please give me an honest answer here: is your firm interested in pursuing my case or do I need to find another attorney? With Mr. Dewhurst now having prosecutorial duties, which I understand he intends to do while simultaneously running his private practice, is it likely that my case is going to receive zealous representation? I should not have to draft my own demand letter, and I do not intend to draft a complaint, which I now think needs to be filed if, in fact, the insurance company has just ignore[d] the letter in August. If I wanted to pursue the case pro per [sic], I would not have retained a law firm.
>
> *I need action to be taken because I need the clock to start running on getting a recovery here.* If your firm is too busy or too uninterested in my case to get moving, then please let me know, and do not keep stringing me along. . . . I retained your firm several years ago and gave you the financial information from my new builder early this summer. It is now November. I should not have to be charged for every call or letter I have to write to try to get an update or to encourage a next action to be taken. I believe I have been more than patient. At this point, I need to know that you are going to get moving on my case immediately or that you tell me candidly that it is not of sufficent priority so that I can retain a firm that will pursue my case. . . . (Emphasis added).

41. Ms. Santuccio responded with an e-mail on November 4, 2010. In pertinent part, she stated:

> I did receive a phone message from National Grange Mutual regarding the

> dates for when Matt Cameron was working on your home. The end of last week or beginning of this week I received the letter back from Palmer Insurance as undeliverable. Knowing your stance regarding keeping the costs down I did not contact you as I do understand how everything has become very expensive for you.
>
> That being said the attorneys in this office did meet two weeks ago regarding all open cases moving forward. Your case was discussed, as was the fact that I had not heard from the insurance companies at that time. At that point we discussed the fact that we can become significantly more aggressive, but doing so, I am required to ask for a retainer as significant time and costs would be involved. Of course you would not draft a complaint, I would do that as the firm representing your claim. I would note that there had been significant delays in getting any final estimates regarding the home since I have become involved in this case. I also note that I have not charged you for any phone conversations we have had in the past few months because I understand your position.
>
> If you would like to retain other counsel to pursue this claim I can recommend some very capable attorneys in this area and will be happy to ease any transition. . . .

42. While there is no documented contact regarding whether Ms. Haralambie agreed at that point to continue to retain the Dewhurst firm, she e-mailed Ms. Santuccio on December 1, 2010 again inquiring whether copies of the insurance policies had been obtained. Ms. Haramlabie was also concerned that her case might be barred by the statute of limitations. Specifically, she stated:

> Also, I was told by your firm that NH had a[n] 8 year statute of limitations on construction cases. (I first contacted the firm well within the 3 year period, and I asked specifically about the statute of limitations.) I now understand that NH has a statute of limitations and a statute of repose for construction cases, and that claims must be brought within 3 years of discovery of the building defect. So am I now time-barred from pursuing my claim?

43. Ms. Santuccio did not immediately respond to the Ms. Haralambie's December 1, 2010 e-mail. Ms. Haralambie forwarded the December 1, 2010 e-mail to Ms. Santuccio on December 23, 2010 stating: "I have not had a response to the e-mail, which I sent more that 3 weeks ago? Could you please respond?" That same day, Ms. Santuccio responded via e-mail stating: "There is an 8 year statute of limitations on construction cases. You have all the insurance paperwork that I have, which were in the file when I came to the

firm. I can request the actual policies from the insurance companies."[1]

44. Ms. Haralambie responded:

> But there is also a statute of repose, which requires that a claim be filed within 3 years of learning of the defect. I think we need the actual policies to know whether the kinds of problems I have had are within the scope of coverage. I would have thought that would have been the first thing to do in evaluting the case, since we knew that the builders themselves were insolvent and any hope of recovery would have to come from the insurance policies.

45. Later in the afternoon on December 23, 2010, Ms. Santuccio, Mr. Dewhurst and Ms. Haralambie had a telephone conference regarding the case. Ms. Haralambie mentioned the possiblity of filing a malpractice claim against the Dewhurst firm. Mr. Dewhurst reassured Ms. Harlambie that the firm would obtain the necessary insurance policies.

46. On December 27, 2010, Ms. Santuccio contacted both insurance companies to request the policies but had to leave messages because both adjusters were out of the office that day.

47. On December 28, 2010, Ms. Haralambie forwarded an e-mail to Ms. Santuccio attaching a copy of *Big League Entertainment*, 149 N.H. at 484, to the e-mail. *See* Paragraph 16, *supra*. Ms. Santuccio recalls responding to this email, but did so while at the Dewhurst firm and does not have a copy of her reply.

48. On January 11, 2011, in follow up to a January 6, 2011 telephone call, Ms. Santuccio wrote to the adjuster at National Grange Mutual providing the copies of the original proposals for Mr. Cameron's work and noting that the company had denied the request to provide a copy of Mr. Cameron's insurance policy.

49. On January 19, 2011, at Mr. Dewhurst's request, Ms. Santuccio wrote to an attorney at another firm seeking a second opinion regarding the Dewhurst firm's liability and whether they were interpreting the law correctly. In relevant part, the letter stated:

> This office undertook representation of Ms. Haralambie in August of 2008. The statute of limitations on construction claims was read to state that there is an eight year statute of limitations. We advised Ms. Haralambie of this statute. In December of 2010 Ms. Haralambie contacted our office regarding the 3 year discovery rule, and would such a rule bar her claim. It was during this phone call that the term "possible malpractice" was mentioned.

[1] This was an incorrect understanding of the statute.

> We received an accurate estimate this summer from Ms. Haralambie regarding the extent of damage from negligent construction. Our argument is that Ms. Haralambie discovered the magnitude of the negligence at that time. There is a case included in these documents that I believe supports that position.

50. Ms. Santuccio does not recall ever hearing back from the other attorney or anyone in his firm. She does recall Mr. Dewhurst asking her if she had heard back.

51. Ms. Santuccio arranged for an insurance adjuster, George Long, from Insurance Adjustment Service, to conduct a site visit of Ms. Haralambie's summer house. The site visit occurred on January 27, 2011. Structural damage and collateral damage were identified.

52. On or about March 1, 2011, Ms. Santuccio wrote to the Dewhurst firm's insurance carrier, stating:

> This letter serves as notice that on December 23, 2010, a client of this firm stated that she is unsure whether she should file a grievance regarding the firm's pursuit of a civil construction claim on her behalf. She further stated that if this office was not to provide her with further information regarding the defendants insurance policies, said policies generally not disseminated by the insurance companies prior to litigation, she may look further into filing said grievance. She expected not to be charged for this work. This discussion arose regarding interpretation of the eight year statute versus the three year statute in construction claims. To that end there were two separate issues. One regarding a leaky roof, which was originally addressed. The next being the significant structural damage thought to be caused by the poor work of the builders. The significant damage referenced here was discovered in July of 2010 and was then attributed to building defects. We then sent those figures to the insurance company of said builders. In this matter there was a significant amount of time that we were unsure what the real damage was, until July of 2010 when the engineer provided us with this information. Throughout our representation communication with the client has been a consistent problem. As of this date there has been no further indication of a potential claim and if there should be we deny any possible claim by Ms. Haralambie in the above matter. We have submitted the claim and damages to the insurance company and they are currently reviewing same for coverage.

53. Mr. Dewhurst left Ms. Santuccio a handwritten note in May 2011 inquiring whether they had heard back from an attorney at the firm they had consulted on their position and noting: "Could you please resolve this this week[.] If the insurance company refused to

respond after Direct contact then we need to resolve with client at this time."

54. With the construction work completed, in early June 2011, Ms. Haralambie called Ms. Santuccio and left her a message stating that the complaint needed to be filed without letting any more time pass. Ms. Santuccio does not recall receiving that message.

55. Ms. Santuccio e-mailed Ms. Haralambie on July 7, 2011 and advised that she would be transitioning to the Melendy firm. In the e-mail, Ms. Santuccio also advised that she still had not received cooperation from Mr. Cameron's insurance company despite a few telephone calls and many messages left with the adjuster. She inquired whether Ms. Haralambie wanted her to continue to pursue the claim and file suit in Superior Court noting: "It seems that is our only option at this point given the lack of communication and cooperation with the insurance adjuster." Ms. Haralambie replied with an e-mail that afternoon, inquiring what she would need to pay to file the suit and stating: "I agree that we aren't going to go anywhere without suing. It is my understanding that you are assuring me that my claim is NOT barred by the statute of limitation, correct? I don't want to throw good money after bad . . ."

56. Ms. Haralambie e-mailed Ms. Santuccio on August 10, 2011, again inquiring what the retainer would be to file suit. On that same day, the insurance adjuster for Mr. Cameron wrote to Ms. Santuccio requesting a telephone interview with her client. Ms. Santuccio recalls discussing that request with Ms. Haralambie.

57. On August 12, 2011, Ms. Santuccio e-mailed Ms. Haralambie, again explaining that she was moving to the Melendy firm and requested that Ms. Haralambie sign a choice of counsel letter. Ms. Santuccio also explained her thoughts on the case:

> I think what we can do is start suit, and under the new Automatic Disclosure rules within 40 days of docketing I should have all of the insurance information. If, when I get the policy (finally) we see that it won't be covered, we can decide not to proceed and spend more money. I do not believe there is a statute problem and the insurance company has your date of loss as July 2010. The statute of repose would be a problem in 2012 or 2013, depending on how you define the job being 'substantially completed.'[2]

58. Ms. Haralambie decided that she wanted Ms. Santuccio to continue to represent her and met with Ms. Santuccio at the Melendy firm in late August 2011. Ms. Haralambie left that meeting with the impression that a complaint would be filed by September 1, 2011.

[2] Ms. Santuccio believed, without verifying, that the statute of limitations would run from July 2010 because that was when the full extent of the structural damage was known. This was incorrect because Ms. Haralambie was aware of the structural problems, at least, as of April 2008.

59. Ms. Haralambie signed a choice of counsel letter on August 23, 2011. Ms. Haralambie also signed an "Hourly Fee Agreement" and made a $500.00 payment on her account. It was expected that the $500.00 would cover the filing fee and a portion of the time spent to draft the complaint.

60. On September 7, 2011, Ms. Haralambie e-mailed Ms. Santuccio inquiring whether the complaint had been filed. Ms. Santuccio did not respond.

61. Ms. Haralambie e-mailed again on November 29, 2011 stating: "The last I heard you were planning to file our complaint on September 1st. Has it been filed? If so, can you email me a copy? If it hasn't been filed, why not? I really feel very much out of the loop." Ms. Santuccio did not respond.

62. Ms. Haralambie e-mailed again, almost a month later, on December 21, 2011, stating: "Still haven't heard from you."

63. The next day, on December 22, 2011, Ms. Santuccio and Ms. Haralambie discussed the case in a telephone conference. Ms. Santuccio explained that she had not yet filed the complaint.

64. Ms. Santuccio sent an e-mail to Ms. Haralambie on January 3, 2012 attaching an incomplete version of the complaint. In relevant part, she wrote:

> This does not appear to be the completed version as it does not have the Facts section completed. The remainder is, however, accurate. I will attempt to scan and email the completed version with signature or email myself the completed version from my home computer when I go to lunch.
>
> At least this will give you the basic idea and our claims for relief. I am claiming alternate theories of negligent misrepresentation and fraudulent misrepresentation in addition to negligence.

Ms. Haralambie responded on January 3, 2012 stating: "Why isn't there a count for breach of contract? I think that is the stronger claim. One of the express provisions of the contract is that they would construct the building in a structurally sound way." Ms. Santuccio did not respond to that email.

65. Ms. Haralambie e-mailed Ms. Santuccio on April 10, 2012 asking: "What is the status of my case? Was the complaint ever amended to include a count for breach of contract? Has there been service of process? Have answered [sic] been filed?" Ms. Haralambie sent this e-mail to Ms. Santuccio's e-mail address at the Dewhurst firm. As a result, Ms. Santuccio did not receive that e-mail.

66. Having not heard anything further from Ms. Santuccio, Ms. Haralambie called the Melendy firm and left messages for Ms. Santuccio on May 23, 2012 and June 4, 2012. Ms. Santuccio did not return the telephone calls.

67. On June 8, 2012, Ms. Haralambie forwarded her January 3, 2012 e-mail to Ms. Santuccio's e-mail address at the Melendy firm, stating: "You never responded to this email." On that same date, Ms. Haralambie also forwarded the e-mail that she had erroneously sent to Ms. Santuccio's Dewhurst firm e-mail address. Ms. Haralambie wrote in that e-mail: "You never responded to this follow up email. I have left at least half a dozen phone messages in the past 6 months, including two this week. I am frankly bewildered by this lack of contact with a client."

68. On June 11, 2012, Ms. Santuccio sent an e-mail responding in relevant part:

> I'm very sorry I did not get the April email and did get the message about Breach of Contract but did not realize you had called a half dozen times. I was out of the office for most of last week but did get the messages this morning. I can add the breach of contract claim, amendments are liberally allowed and in a similar jury trial in May defendant added a new claim the day of trial. (I won't do that but just allaying your concerns about the delay).
>
> The Carroll County Superior Court is extremely backlogged, just as a heads up. (My trial was a 2008 case.)
>
> I'm again very sorry and ran into a much busier court schedule than originally anticipated upon taking this firm, as well as losing all my staff in February. But you are right, and I do apologize for not doing a better job with client communication.

69. Ms. Santuccio did not communicate with Ms. Haralambie further after the June 11, 2012 e-mail. Ms. Haralambie recalls calling Ms. Santuccio's office and leaving messages for her and stopping by Ms. Santuccio's office twice during the summer when Ms. Santuccio was not in the office. Ms. Haralambie asked Ms. Santuccio's staff for a copy of the complaint, but they checked the file and could not find anything.

70. On August 31, 2012, Ms. Haralambie e-mailed Ms. Santuccio stating: "I have emailed, left phone messages, and personally stopped at your office twice requesting that you contact me. Today I impressed upon the person at your office my need to have you contact me today. It is now 5:07 p.m., and I have heard nothing." Ms. Haralambie wanted to know whether the complaint had been filed, if a breach of contract claim had been added, if the complaint had been served, and if an answer had been filed. Ms. Haralambie also requested: "Please immediately send me a copy of any pleadings, returns of service, etc., that you have (when I stopped by your office today, the pleadings

folder was empty, so I am very concerned – last summer you told me you intended to file the complaint before I left [September 2011][.]"

71. On September 4, 2012, Ms. Santuccio responded with a letter, which she also sent by e-mail to Ms. Haralambie. In relevant part, that letter stated:

> I understand that you had come to my office recently when I was away. I had responded to an email from you in May of this year apologizing for not having been in contact after I received a phone message from you. Prior to that the last time we spoke was in December of last year, and that is unacceptable. You are absolutely right and have every reason to be upset with me. I did draft the complaint and provided a copy of this complaint via email, which was then to be filed in the Carroll County Superior Court. Over the past few days I have been unable to find this complaint in my office which causes me great concern and anxiety that what was to be done was not done.

72. Ms. Santuccio also explained that when she transferred to the Melendy firm, she had acquired the practice of two other attorneys and that two of her paralegals had left in early 2012. Ms. Santuccio also wrote:

> I do have the breach of contract claim that you had requested, and I also thought you had been contacted regarding this. It is my hope and uttermost goal to never feel as though I have let down a client because I take the duties and responsibilities of my profession very seriously. I know I have let you down in regards to communication and finality of your matter, and I offer my sincerest apologies and regrets for this. Because of this situation I am working on ways to more efficiently and substantively respond to clients and keep all clients updated as to the status of their matters through staff members in my office and through seeking advice from outside sources.
>
> I hope you do accept this letter as my apology. I work tirelessly to do the best possible job for all clients and I very much regret that I have not met this standard in this case.
>
> The original course of action discussed in 2011 is still the best course, and my failure of communication has not changed the course I believe you should take nor do I believe it has jeopardized this matter. The law, as I read it, remains on your side just as I discussed with you previously.
>
> That being said, though I do not believe the case itself is jeopardized, the client/attorney relationship has been jeopardized, and this fact I accept as my responsibility.

73. Ms. Haralambie e-mailed on September 6, 2012 stating: "I had requested that a cause of action for breach of contract be added to the tort claim you included. You wrote me back saying it would be easy to amend the complaint. I still do not know whether *any* lawsuit has been filed and served. . . ."

74. Ms. Haralambie called Ms. Santuccio later in the day on September 6, 2012, and e-mailed again on September 14, 2012, still unclear as to whether the complaint had actually been filed. She called Ms. Santuccio's office and left additional messages with staff on September 28, 2012 and October 23, 2012. Ms. Haralambie sent another e-mail requesting an update on October 25, 2012. Ms. Santuccio did not respond to any of these requests for information.

75. Ms. Haralambie filed a grievance with the ADO on October 29, 2012. She eventually hired Daniel A. Laufer, Esquire to represent her in a possible malpractice claim. Mr. Laufer determined that the three-year statute of limitations most likely expired in the spring of 2011 before Ms. Santuccio moved her practice to the Melendy firm. The malpractice claim was settled with the Dewhurst firm prior to a lawsuit being filed. Ms. Santuccio arranged her own independent settlement as well, for $2,500.

76. At all times material to this case, Ms. Santuccio believed, without undertaking further legal research or outreach to colleagues outside the office to verify her understanding, that either an eight-year statute of limitations would apply to Ms. Haralambie's claim or, in the alternative, that a three-year statute of limitations would run from the date in July 2010 that she put Ms. Haralambie's insurance company on notice of the structural claims. Although these assumptions were incorrect, Ms. Santuccio believed she had not allowed the statute of limitations to run and that there was still time to file suit.

77. After Ms. Santuccio moved her law practice to the Melendy firm, in July 2011, she became overwhelmed with her case load. Ms. Santuccio took on more responsibility within the firm as senior partners, Fay Melendy and Susan Lee, who planned to retire in 2012, began to wind down their practices. Additionally, two experienced paralegals left the firm as of February 1, 2012. Based on her assumption that she still had more time to file the Haralambie lawsuit, Ms. Santuccio attended to the burdens of the transition.

78. On July 1, 2015, Ms. Santuccio returned the remainder of Ms. Haralambie's funds ($176.00) that had been held in her client trust account to Ms. Haralambie.

Stipulation ¶¶ 1-78.

II. RULINGS OF LAW

The Committee concludes that there is clear and convincing evidence that Danielle

Richey Santuccio has violated the following Rules of Professional Conduct by clear and convincing evidence:

Rule 1.1: Competence

79. Rule 1.1 states as follows:

(a) A lawyer shall provide competent representation to a client.

(b) Legal competence requires at a minimum:

(1) specific knowledge about the fields of law in which the lawyer practices;

(2) performance of the techniques of practice with skill;

(3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;

(4) proper preparation; and

(5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.

(c) In the performance of client service, a lawyer shall at a minimum:

(1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;

(2) formulate the material issues raised, determine applicable law and identify alternative legal responses;

(3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and

(4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.

80. Ms. Santuccio owed a duty to Ms. Haralambie to provide competent representation.

81. Ms. Santuccio erroneously believed that there was an eight-year statute of limitations applicable to Ms. Santuccio's construction claims relying on RSA 508:4-b which, rather than a statute of limitations, sets forth a statute of repose.

82. In fact, a three-year limitation period, as set forth in RSA 508:4, I, applied to Ms. Haralambie's cause of action. Ms. Santuccio failed to aquire specific knowledge about construction law to practice in that area and to competently advise Ms. Haralambie with respect to the applicable statute of limitations and to provide advice on the best course of

action to pursue Ms. Haralambie's claims.

83. Ms. Santuccio failed to undertake an appropriate analysis to determine the date or date range for when the statute of limitations would run with respect to the summer house's structural problems. Likewise, she failed to seek out the advice of another lawyer or associate with another lawyer outside of the office who possessed the skill and knowledge required to assure competent representation.

84. Ms. Santuccio failed to pay attention to details and schedules necessary to assure that the matter undertaken was completed with no avoidable harm to her client's interest. At the time Ms. Haralambie filed her grievance with the ADO in October 2012, her claims were time-barred. In fact, the three-year statute of limitations most likely expired in the spring of 2011, before Ms. Santuccio moved her practice to the Melendy firm.

85. Ms. Santuccio did not file a lawsuit against the builders during the more than three years that she represented Ms. Haralambie, in part, because she believed, without verifying, that an eight-year statute of limitations applied to Ms. Haralambie's claims. Failing to appreciate that the eight-year time period set forth in RSA 508:4-b is a statute of repose rather than a statute of limitations, Ms. Santuccio failed to file a lawsuit on Ms. Haralambie's behalf within the required limitations period. As such, Ms. Santuccio failed to undertake actions on the client's behalf in a timely and effective manner.

86. Early in her handling of the Haralambie matter, Ms. Santuccio faced difficulty in obtaining the insurance policies from the builders' insurance companies. Without the insurance policy information, neither Ms. Santuccio nor Ms. Haralambie felt that they could evaluate whether there was a chance of receiving any recovery for the structural defects that had been discovered on the property. Ms. Santuccio failed to develop a strategy, in consultation with Ms. Haralambie, for addressing her client's legal problems and that specific issue.

87. Ms. Santuccio failed to develop a strategy for obtaining the policies and for establishing a date within the applicable statute of limitations that Ms. Haralambie's claims needed to be filed by.

88. Ms. Santuccio's conduct, as aforesaid, constitutes clear and convincing evidence of a violation of Rule 1.1

Stipulation ¶¶ 82-91.

Rule 1.3: Diligence

89. Rule 1.3 states as follows:

A lawyer shall act with reasonable diligence and promptness in representing a client.

90. Ms. Santuccio had a duty to act with reasonable promptness and diligence on behalf of her client.

91. Ms. Santuccio failed to move Ms. Haralambie's case forward despite repeated requests from Ms. Haralambie to obtain the builders' insurance policies, to place the insurance companies on notice of a possible claim and specific requests to file the lawsuit between November 2010 and October 2012.

92. In November 2010, Ms. Haralambie advised Ms. Santuccio in an e-mail that she thought the complaint should be filed. In early June 2011, Ms. Haralambie left Ms. Santuccio a message requesting that the lawsuit be filed. Despite a request in November 2010 to file the lawsuit, in June 2011 the lawsuit was still not filed.

93. On July 11, 2011, Ms. Santuccio e-mailed Ms. Haralambie advising that the best way to move the case forward would be to file suit against the builders. Ms. Haralambie agreed with the suggestion to file suit that afternoon. Despite Ms. Haralambie's inquiries regarding the status of the matter and inquiries as to whether the suit was filed after that date, Ms. Santuccio failed to file the lawsuit on her client's behalf during the remainder of the representation.

94. Ms. Santuccio's conduct as described above constitutes a failure to act with reasonable promptness and diligence on behalf of her clients.

95. Ms. Santuccio's failure to act with reasonable promptness and diligence on her client's behalf caused harm to Ms. Haralambie, because Ms. Haralambie's potential claims against the builders became time-barred and Ms. Haralambie was required to retain other counsel to pursue her legal malpractice claims.

96. Under the foregoing circumstances, there is clear and convincing evidence of a violation of Rule 1.3.

Stipulation ¶¶ 93-100.

Rule 1.4: Communication

97. Rule 1.4 states as follows:

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter.

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain the legal and practical aspects of a matter and alternative courses of action to the extent that such explanation is reasonably necessary to permit the client to make informed decisions regarding the representation.

98. Ms. Santuccio owed Ms. Haralambie a duty to keep her reasonably informed about the status of her matter and to promptly comply with reasonable requests for information. Rule 1.4(a)(3)-(4).

99. Ms. Santuccio breached that duty by: (1) failing to update Ms. Haralambie with respect to her efforts to obtain the insurance policies from the builders; (2) failing to keep Ms. Haralambie apprised of the status of the matter and failing to respond in a prompt manner to reasonable requests for information regarding whether the builders' insurance policies were or could be obtained, and whether Ms. Haralambie's claims were time-barred; (3) failing to keep Ms. Haralambie apprised of the status of litigation and failing to respond in a prompt manner to inquiries as to whether the lawsuit had, in fact, been filed.

100. After Ms. Haralambie's request in November 2010 for Ms. Santuccio to file suit, Ms. Santuccio knew she had not filed the complaint and she failed to keep Ms. Haralambie informed of that status.

101. Under the foregoing circumstances, there is clear and convincing evidence of a Rule 1.4 violation.

Stipulation ¶¶ 102-106.

Rule 8.4(a): General Rule

102. Having found the foregoing violations, there is clear and convincing evidence that Ms. Santuccio's conduct, as described herein, violated Rule of Professional Conduct 8.4(a).

Stipulation ¶ 107.

III. ANALYSIS

The Stipulation included an agreement on recommended sanctions based on the violations of Rules 1.1, 1.3, 1.4 and 8.4(a). For the reasons set forth below, the Committee agrees with and accepts the recommended sanction of a public censure with mandatory conditions and an order to pay costs of investigation and prosecution.

Prong I: Duty Violated

Under the first prong of the analysis, Ms. Santuccio engaged in conduct that violated several of her duties as a lawyer. First, she did not act with the requisite competence insofar as she failed to determine relevant statute of limitations or to distinguish between a statute of limitation and a statute of repose. This failure of competence is complicated by her seeming continued misunderstanding and application of these concepts despite her client alerting her to a leading case discussing both concepts. *See ABA Standards for Imposing Lawyer Sanctions* (the "*Standards*"), § 4.53. Second, Ms. Santuccio displayed a lack of diligence in securing or otherwise devising to secure information about the proposed defendants' insurance coverage or other ability to pay any judgment secured. *Id.* at § 4.42. Third, Ms. Santuccio seems to have been less than candid in her representations to her client about her intention to file a Complaint and her filing of the Complaint. *Id.* at § 4.63. Fourth, counsel violated the duties owed as a professional insofar as by no later than early 2011, she knew or should have known that she had committed malpractice and she should have informed the client of that fact at that time. She did not. *Id.* at § 7.3.

Prong II: Mental State: Knowing or Negligent

With respect to Ms. Santuccio's mental state under the second prong of the sanction analysis, the parties agree that her mental state was predominantly negligent. At least initially, Ms. Santuccio seems to have misunderstood the applicable statute of limitations and the distinction in the context of a construction defect case between the governing statute of limitation and statute of repose. Given that Ms. Santuccio's client provided her with case law and written notice highlighting the meaning and significance of these two legal concepts and their proper application and that counsel still proceeded as though she misunderstood their significance suggests at least a reckless disregard for the governing law.

Prong III: Injury or Potential Injury

Ms. Santuccio's professional misconduct led to her client's loss of a potential cause of action. Depending on the proposed defendants' insurance coverage and financial status, that failure may have resulted in financial loss as well.

Prong IV: Aggravating and Mitigating Factors

The baseline sanction must be considered in light of any aggravating and mitigating

factors. *Conner's Case*, 158 N.H. 299, 303 (2009). In determining the sanction in this case, Ms. Santuccio's lack of prior record weighs in her favor. There are no other distinctly mitigating or aggravating circumstances.

In light of the *Standards* and the factors noted above, a public censure is an appropriate sanction in this matter, although a short suspension would also be warranted. In order to bridge the gap between these two potentially appropriate sanctions, and to allow for a more targeted, granular and appropriate level of discipline, the imposition of the following agreed-to sanction of public censure with conditions (that if unfulfilled will yield a suspension) was determined by the Committee to be the most appropriate resolution.

IV. SANCTION

Having made the aforementioned findings and rulings, the Committee concludes that the appropriate discipline in this matter is a public censure. The Committee's recommended sanction is in accord with the purposes of attorney discipline. *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 *Standards*. 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).

V. AGREEMENT TO MANDATORY CONDITIONS

The Stipulation included an agreement on recommended diversion based on the violations of Rules 1.1, 1.3, 1.4 and 8.4(a). For the reasons set forth below, the Committee agrees with and accepts the recommended discretionary diversion and an order to pay costs of investigation and prosecution.

1. The Respondent was admitted to the Bar of the New Hampshire Supreme Court on October 31, 2006 (Bar number 17750). Respondent is subject to the jurisdiction of the New Hampshire Supreme Court in these proceedings.

2. The Respondent enters into this Agreement freely, intelligently and voluntarily, and understands the consequences of this Agreement.

3. This Agreement is a product of the Respondent's personal decision, and the Respondent affirms that she has been subjected to no coercion or other intimidating acts by any person or agency concerning this matter. Respondent has had the assistance of competent counsel in connection with this matter.

4. The Respondent is familiar with the rules of the New Hampshire Supreme Court regarding the procedures for discipline of attorneys and with her rights under those rules.

Sup. Ct. R. 37 and 37A.

5. Respondent understands that this Agreement, subject to approval by the Professional Conduct Committee, is in accordance with Rule 37(3)(c)(3) and Rule 37A(III)(2)(C)(ii).

6. The underlying complaint in this matter involves allegations that Respondent engaged in professional misconduct by violating rules pertaining to her competence, diligence, and client communication.

7. As part of this Agreement, Respondent shall sign the Stipulation as to Facts, Rule Violations and Sanction.

8. Respondent agrees that, in the event she fails to comply with the terms of this Agreement, the factual admissions and admissions of rule violations contained in the Stipulation as to Facts, Rule Violations and Sanction shall be deemed true in any subsequent disciplinary proceedings.

9. The Respondent acknowledges that she has the right to a full and complete evidentiary hearing in this matter. At any such hearing, Respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by Disciplinary Counsel. The Respondent understands that at such evidentiary hearing, Disciplinary Counsel would bear the burden of proving each material allegation of fact by clear and convincing evidence. Nonetheless, having full knowledge of her right to such evidentiary hearing, the Respondent waives that right.

10. Respondent understands and agrees that, in the event she fails to comply with any term or condition of this Agreement, the Agreement shall be terminated.

11. The parties agree to arrange for a law practice mentor within 30 days of the date the Professional Conduct Committee approves this proposal.

12. Respondent agrees to the following terms and conditions for a period of one year, or as long as it takes to complete the conditions set forth herein, beginning on the date that the Professional Conduct Committee approves the Stipulation and Agreement to Mandatory Conditions:

    a. Respondent shall arrange, at her own expense, to have an attorney who is an active member of the New Hampshire Bar serve as a law practice mentor for a period of one year, within thirty days of the Committee's approval of the Stipulation and Agreement. The choice of mentor shall be subject to the approval of the Attorney Discipline Office (ADO). The Respondent's mentor shall execute a mentoring agreement, confirming the mentor's agreement to perform the services described herein.

b. Respondent shall meet monthly, in person, with the mentor who will serve as a practice mentor in the areas of criminal, family law and civil litigation. The mentor shall be available during those meetings to discuss specific issues of law and practice procedure involving matters the Respondent is working on and to make recommendations for improvements in handling client communication and maintenance of the respondent's caseload. Respondent agrees that client confidentiality should be maintained during these meetings and that she bears the ultimate responsibility for decisions she makes in her practice.

c. The mentor shall supply Disciplinary Counsel with periodic reports, no less frequently than quarterly, with the first report to be provided to Disciplinary Counsel within 90 days of the date the ADO approves the law practice mentor. The reports shall be submitted directly from the mentor to Disciplinary Counsel.

d. The periodic reports shall articulate those measures being taken by the Respondent to manage her law practice and carry out her professional responsibilities, as well as any apparent problems that have come to the attention of the mentor. The reports shall describe Respondent's case load and identify any issues of concern to the mentor.

e. The Respondent shall execute a release permitting the mentor to discuss with Disciplinary Counsel any matter relating to the Respondent's practice.

f. The Respondent shall supply Disciplinary Counsel with periodic reports, no less frequently than quarterly, with the first report to be provided to Disciplinary Counsel within 90 days of the date that the ADO approves the law practice mentor. The Respondent's reports shall be submitted directly to Disciplinary Counsel.

g. The periodic reports shall articulate those measures being taken by the Respondent to manage her law practice and carry out her professional responsibilities.

h. Other than what may be presently docketed, the Respondent, agrees for a period of one year, beginning on the date the Professional Conduct Committee approves the Agreement, not to engage in any professional misconduct.

13. If, however, Respondent fails to comply with any term or condition of this Agreement as set forth in paragraphs 12(a)-(h), *supra*, the Agreement shall be terminated. The Attorney Discipline Office shall notify the Professional Conduct Committee that the condition(s) have been violated.

    a. The Professional Conduct Committee may determine whether any condition of this Agreement has been violated. If it determines that a condition has been violated, the Committee shall impose the agreed-upon sanction of a six-month suspension. If the Committee determines that no condition of this Agreement has been violated, the Agreement shall continue in force and effect pursuant to its

terms.

b. Respondent may request that the Professional Conduct Committee remand the matter to the Hearings Committee so that a Hearing Panel may be appointed to decide the sole issue of whether a condition of this Agreement has been violated. During such hearing, it shall be the burden of Disciplinary Counsel to demonstrate by a preponderance of the evidence that a condition listed in paragraphs 12(a)-(h) has been violated.

c. If a Hearing Panel determines that a condition has been violated, the Panel shall impose the agreed-upon sanction of a six-month suspension. If the Hearing Panel determines that no condition of the Agreement has been violated, the Agreement shall continue in force and effect pursuant to its terms.

14. This Agreement shall be terminated in the event Respondent engages in misconduct during a period of one year commencing on the date the Professional Conduct Committee accepts this Agreement.

a. The timing of any finding of such misconduct is not dispositive of the question of termination of this Agreement. Rather, so long as a grievance is filed with the ADO within the one-year period referenced above ("the subsequent proceeding"), and the misconduct alleged occurred, at least in part, during the one-year period referenced above, this Agreement is subject to termination at such time as there is a finding of misconduct, even if such finding occurs beyond the one-year time period referenced above.

b. The Attorney Discipline Office agrees to expedite the processing and investigation of the subsequent proceeding and to adjudicate it in a timely manner, either by stipulation of the parties or before a panel appointed by the Hearings Committee.

c. Pursuant to New Hampshire Supreme Court Rule 37(19), the Respondent shall bear all costs associated with compliance and enforcement of the terms and conditions of this Agreement.

d. If there is a finding of misconduct in the subsequent proceeding (whether by stipulation or after a hearing by a Hearing Panel), then the misconduct admitted as part of this Agreement shall be considered "previous discipline" for purposes of the subsequent proceeding.

e. In addition, Respondent agrees that such "previous discipline," if used in the subsequent proceeding, shall be sanctioned with a six-month suspension. Respondent agrees that a six-month suspension is an appropriate sanction under the *ABA Standards* for the conduct admitted as part of this Agreement.

15. Nothing herein shall be construed to limit prosecution of any new complaint involving conduct of Respondent occurring during the referenced one-year time period.

16. The parties agree that if the Attorney Discipline Office verifies that the Respondent has successfully complied with the conditions enumerated in paragraphs 12(a)-(h) and paragraphs 14(a)-(e), *supra*, the Professional Conduct Committee shall close this matter and no additional discipline beyond the agreed upon sanction of public censure as set forth in the Stipulation as to Facts, Rule Violations and Sanction shall be imposed in this case.

17. The Respondent acknowledges by signing this Agreement that she understands and accepts all of the terms and conditions of this Agreement.

VI. COSTS

Danielle L. Richey Santuccio has signed an agreement to pay costs of the investigation and prosecution of this disciplinary matter. The Committee approves this agreement. Ms. Santuccio shall be responsible for all costs associated with the investigation and prosecution of this matter.

VII. CONCLUSION

For all of the above reasons, the Committee approves the stipulation and mandatory conditions agreement in its entirety and issues this public censure with mandatory conditions.

January 11, 2016

David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Stephen L. Tober, Esquire
File

New Hampshire Supreme Court

Professional Conduct Committee

a committee of the attorney discipline system

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603-224-5828 • Fax 228-9511

Santuccio, Danielle Richey advs. Attorney Discipline Office - #12-042
Santuccio, Danielle Richey advs. Attorney Discipline Office - #13-043

Order

Danielle L. Richey (formerly Santuccio) was suspended from the practice of law on June 17, 2019. While Attorney Richey has been the subject of other professional conduct matters, none could be used to trigger the imposition of additional sanctions in the above cases. Even if they could, she is already suspended. The Attorney Discipline Office has, therefore, asked to close these matters. The Professional Conduct Committee grants that requests.

Cases 12-042 and 13-043 are closed.

August 8, 2019

David M. Rothstein
Chair

Distribution:
Elizabeth M. Murphy, Assistant Disciplinary Counsel
William C. Saturley, Esquire
File