

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

David M. Rothstein, Chair  
Heather E. Krans, Vice Chair  
Elaine Holden,\* Vice Chair  
Peter G. Beeson  
Susan R. Chollet\*  
Richard H. Darling\*  
Scott H. Harris

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

Margaret R. Kerouac  
Mona T. Movafaghi  
Georges J. Roy\*  
Richard D. Sager  
Martha Van Oot  
\* non attorney member  
Barbara J. Guay, Legal Assistant

*In the Matter of Zachary A. Cross*  
*LD-2014-0011*

**RECOMMENDATION: THREE YEAR SUSPENSION WITH CONDITIONS  
AND ORDER ON COSTS**

On March 15, 2016, the Professional Conduct Committee (the “Committee”) deliberated the Record in the above matter. David M. Rothstein, Chair and Peter G. Beeson were recused. Having reviewed the Record consisting of 13 tabbed entries, including Mr. Cross’s convictions (Tab 5), the transcript of the January 19, 2016 oral argument (Tab 12), and the Joint Memorandum on Sanction, the Committee approves the Joint Proposed Order (Tab 13).

**FINDINGS**

1. Mr. Cross violated N.H. R. Prof. Conduct 8.4(b), prohibiting “criminal acts” by a lawyer that reflect adversely on a lawyer’s honesty, trustworthiness or fitness as a lawyer, when he pled guilty to the following crimes:
  - a. Possession of a controlled drug contrary to RSA 318-B:2 (oxycodone), a felony; and
  - b. Official oppression contrary to RSA 643:1, a misdemeanor, when he “placed on file without a finding” the speeding violation of Nicole Van Eden, with whom he had a personal relationship.
2. Each of the crimes set forth in 1.a. and b. above constitute a “serious crime” pursuant to Sup. Ct. R. 37(9)(b). Serious crimes include any felony, as well as any lesser crime a necessary element of which involves interference with the administration of justice.

3. The parties agree that Mr. Cross acted knowingly, that he violated his duty to the profession by committing crimes, and that the conduct caused injury by diminishing public confidence in the Bar and harming the integrity of the profession.

## **RULINGS**

4. The American Bar Association *Standards for Imposing Lawyer Sanctions* (1992) (“*Standards*”),<sup>1</sup> Section 5.1 applies to cases involving failure to maintain personal integrity, such as where lawyers commit crimes or engage in other conduct that “reflects adversely on the lawyer’s fitness to practice law.” *Standards* Section 5.11(a) makes disbarment the presumptive sanction for cases involving serious criminal conduct “a necessary element of which” is “intentional interference with the administration of justice” or the “sale, distribution or importation of controlled substances.”
5. The official oppression plea stated that Mr. Cross acted “knowingly” (not intentionally) in his conduct regarding the speeding violation. His felony plea did not involve the sale, distribution or importation of controlled substances, but rather possession of a small amount (three pills) of oxycodone for his person use.
6. Section 5.1 is instructive in this matter, as the official oppression plea was a misdemeanor and the felony possession was for simple possession. The parties agree that the baseline sanction under the *Standards* could either be disbarment under Section 5.11 or suspension under Section 5.12.

## **MITIGATING AND AGGRAVATING FACTORS**

7. The only aggravating factor is the illegal conduct.
8. The mitigating factors are: Absence of a prior disciplinary record; personal or emotional problems; full and free disclosure to the Attorney Discipline Office; cooperative attitude towards the proceedings; inexperience in the practice of law; and remorse.
9. The mitigating factors outweigh the aggravating factors allowing for a downward departure from the sanction of disbarment.

## **SANCTION**

Having made the aforementioned findings and rulings, the Committee concludes that the appropriate discipline in this matter is a three year suspension with conditions. The conditions include that Mr. Cross (1) comply with all the conditions set forth in the Monitoring Agreement attached to the Joint Proposed Order as Exhibit 1; (2) not engage in any further professional

---

<sup>1</sup> Although the *Standards* have not been adopted by the New Hampshire Supreme Court, it looks to the *Standards* for guidance in disciplinary matters. *Morse's Case*, 160 N.H. 538, 547 (2010).

misconduct; and (3) not engage in any further criminal conduct.<sup>2</sup> The Committee's recommended sanction is in accord with the purposes of attorney discipline. *See e.g., Conner's Case* 158 N.H. 303 (2009); *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).

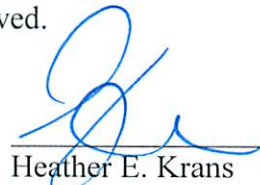
## V. COSTS

The Committee recommends Mr. Cross be responsible for all costs associated with the investigation and prosecution of this matter.

## VI CONCLUSION

For all of the above reasons, the Committee recommends Mr. Cross be suspended for three years with conditions as specified above for violating N.H. R. Prof. Conduct 8.4(b) and 8.4(a). The Joint Proposed Order is therefore approved.

March 25, 2016



---

Heather E. Krans  
Vice Chair

cc: Sara S. Greene, Disciplinary Counsel  
Donald L. Blaszk, Jr., Esquire  
File

---

<sup>2</sup> The Committee concurs that any prosecution or conviction of Mr. Cross regarding an arrest for domestic violence on or about December 2015, which occurred during the pendency of these proceedings, shall not constitute a violation of the Joint Proposed Order.