

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\*  
Margaret R. Kerouac

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

David W. McGrath  
Mona T. Movafaghi  
Georges J. Roy\*  
Richard D. Sager  
Martha Van Oot  
\* non attorney member  
Barbara J. Guay, Legal Assistant

*Grodt, Thomas P. advs. Raymond A. & Pamela F. Gerrior - #10-040;*  
*Grodt, Thomas P. advs. Richard A. Newcomb - #11-050;*  
*Grodt, Thomas P. advs. Attorney Discipline Office - #13-040*

**CASES #10-040 and #11-050**  
**SIX MONTH SUSPENSION (TO RUN CONCURRENT WITH**  
**LD-2010-0005 THREE YEAR SUSPENSION, EFFECTIVE**  
**DECEMBER 6, 2010) AND ORDER ON COSTS**

**CASE #13-040: PUBLIC CENSURE AND ORDER ON COSTS**

On September 20, 2016, the Professional Conduct Committee (the "Committee") deliberated the Assented-To Motion to Permit Waiver of Hearings Committee Process (as to #10-040 and #11-050) and to Consolidate Docket #13-040 With Previously Consolidated #10-040 and #11-050 (the "Motion"); the Stipulation as to Facts, Violations and Sanction (the "Stipulation"); and the Agreement to Pay Costs of Disciplinary Matter (collectively, the "Record"). Members present included David M. Rothstein, Chair, Heather E. Krans, Vice Chair, Peter G. Beeson, Richard H. Darling, David W. McGrath, Mona T. Movafaghi, Georges J. Roy, Richard D. Sager and Martha Van Oot. Elaine Holden, Vice Chair, Susan R. Chollet, and Margaret R. Kerouac were absent.

The Committee approved the Motion. Having reviewed the Record, the Committee approved the facts as stipulated. The Committee then approved the findings of violations of the New Hampshire Rules of Professional Conduct (the "Rules") as stipulated; approved the stipulated sanction for cases 10-040 and

11-050 (“the 2012 cases”), which sanction is a six month suspension to run concurrently, and retroactively, with the three year suspension previously imposed for Case No. LD-2010-0005 (“the 2010 case”); approved a separate sanction of public censure for Case No. 13-040; and voted to approve the agreement to reimburse the Committee for all costs of investigation and prosecution of the three cases.

## **I. FINDINGS OF FACT**

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

### **I. Overview**

1. This case presents a very unusual procedural history. It also presents a Respondent who has dealt with unique mental health and physical health challenges over a period of seven years. For these and other reasons set forth below, the parties submit this global Stipulation to resolve three docketed matters.
2. Respondent’s depression and anxiety contributed to misconduct which resulted in a three-year suspension from the practice of law effective December 2010 (“the 2010 case”).<sup>1</sup> These problems, along with complications of what was later diagnosed as thyroid cancer, also contributed to misconduct in two other cases which occurred around the same time as the 2010 misconduct, but which were not resolved until 2012 (“the 2012 cases”).<sup>2</sup> In 2012, Respondent signed stipulations on the 2012 cases addressing facts and rule violations, but not as to sanction. The sanction on the 2012 cases was “stayed,” to be addressed “prior to or in conjunction with [Respondent’s] request for reinstatement.”<sup>3</sup>
3. Disciplinary Counsel agreed to stay the issue of sanction on the 2012 cases, essentially to give Mr. Grodt time to serve the three-year suspension, hopefully without further disciplinary complaints. Mr. Grodt also planned to use the time to continue to see his therapist and deal with physical symptoms he was experiencing. The thinking behind this

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<sup>1</sup> LD-2010-0005

<sup>2</sup> The manner in which these prosecutions ensued was affected in part by staff turnover at the ADO. Mr. Grodt’s 2010 case was handled by Landya McCafferty, then later by Jennifer Sargent. Ms. Sargent was at the ADO for almost ten months. Upon her departure, Julie Introcaso negotiated the two Stipulations (on facts and rule violations only) in the 2012 cases. (Docket numbers 10-040 and 11-050). Ms. Introcaso left the ADO after approximately 14 months.

<sup>3</sup> See PCC Order dated March 9, 2012.

stay was that after the term of suspension expired, Mr. Grodt could apply for reinstatement and then-Disciplinary Counsel would not oppose the reinstatement, since the underlying conduct for the 2012 cases occurred near the events leading to the sanction in the 2010 case and was caused in part by the same personal challenges facing Mr. Grodt. However, Mr. Grodt never applied for reinstatement.

4. Respondent would have applied for reinstatement shortly after his three-year suspension expired, as contemplated by the PCC Order in the 2012 cases, but for events which occurred from April 2013 through October 2014. Those events resulted in a complaint filed with the ADO in August 2013 (“the Summerview case”). In the Summerview case, as set forth further below, Respondent negligently engaged in the unauthorized practice of law by representing his own entities (two LLCs) in litigation with two former employees of the entities. In these lawsuits, Respondent signed pleadings as a “member” of the entity.
5. At all times pertinent to the Summerview case, Respondent was suffering from thyroid cancer, diagnosed in April 2013. Since that time, the cancer has metastasized to Respondent’s kidney, skull, lungs, ribs, hips, and liver. The cancer is being managed by medication.

## **II. Previous Discipline: Three-Year Suspension, Expired on December 6, 2013**

6. Respondent Thomas P. Grodt was admitted to the practice of law in New Hampshire on May 27, 1997. He is also admitted to practice law in Massachusetts.
7. Mr. Grodt is currently subject to a three-year suspension from the practice of law, imposed by the Supreme Court on June 28, 2010, as the result of an assented-to petition for suspension. The discipline arose out of violations of Rules 1.3, 1.4, 8.1(b), and 8.4(c).
8. The three-year suspension was originally stayed, upon recommendation of the Professional Conduct Committee. The stay was conditioned upon the implementation of an elaborate, but compassionate, structure for monitoring Mr. Grodt in the practice of law. Mr. Grodt participated in forming the program and agreed to its terms.
9. Unfortunately, Mr. Grodt’s mental health issues continued, and he was unable to maintain compliance with the terms of the stay. Alerted to this by Mr. Grodt’s mentors, the ADO initiated an investigation, in which Mr. Grodt fully participated, and in March 2011, Mr. Grodt and then-Disciplinary Counsel filed a joint motion with the PCC to impose the

suspended discipline. The PCC agreed, and recommended to the Court the imposition of the entire three-year suspension, retroactive to December 6. Mr. Grodt did not object.

10. The Court imposed the recommended term of suspension on September 6, 2011, retroactive to December 6, 2010. The suspension expired on December 6, 2013.

### **III. Sanction for 2012 Cases (Newcomb & Gerrior)**

11. Attached as Exhibits 1 and 2 are the Stipulations in the *Gerrior* and *Newcomb* matters (“the 2012 cases”). Mr. Grodt’s representation in the *Gerrior* matter began in 2009 and concluded in 2010. His representation in the *Newcomb* matter began in 2008 and concluded with his 2010 suspension. All of the misconduct leading to the 2012 Stipulations occurred during the same time period covered by the 2010 case. These stipulations were limited to the facts and rule violations involved in the 2012 cases; there was no stipulated sanction in either case.
12. The misconduct in the 2012 cases was caused in part by the same mental health challenges that Mr. Grodt was facing at the time of the 2010 case, and was exacerbated by other symptoms later attributed to Mr. Grodt’s thyroid cancer, which was then undiagnosed.
13. The 2012 cases, but for unusual staff turnover at the ADO (*supra*, fn. 2), might have been consolidated with the 2010 case. The underlying misconduct in the 2012 cases would likely have warranted a period of suspension.
14. Mr. Grodt cooperated with the ADO in its investigation of the 2012 cases, and voluntarily assented to the relief requested in a motion to the PCC by the ADO.
15. Given the dates of the events that led to the 2012 Stipulations (2008-2010), the underlying personal and health issues Respondent was facing at the time, and both the changes in the Respondent’s health and the length of time since the 2012 Stipulations, the parties agreed, and proposed to the PCC, that the appropriate sanction for the 2012 cases was a six-month suspension, to run concurrently with the retroactively-served suspension in the 2010 case, and that has now concluded. Based on its review of the stipulations for the 2012 cases, which are attached to this Order as Exhibits 1 and 2, the Committee now imposes the sanction of a retroactively-applied six month suspension running concurrently with the three year suspension previously imposed for Case No. LD-

**IV. Mr. Grodt's Medical History (2013 – Present)**

16. For the past more than three years, Mr. Grodt has suffered from a variety of forms of cancer. What was diagnosed as thyroid cancer in April 2013 has since metastasized to his kidney, skull, lungs, ribs, hips, and liver. Mr. Grodt has supplied Disciplinary Counsel with medical records confirming the medical history.
17. Fortunately, Mr. Grodt was introduced to a new drug regimen in the summer of 2015, and his condition has stabilized. He has taken a part-time job with FedEx Ground.
18. For years prior to his cancer diagnosis, Mr. Grodt suffered from depression and anxiety. Following surgery to remove his cancerous thyroid gland, and upon initiating thyroid hormone treatment, his depression and anxiety symptoms disappeared. While he still regularly visits a counselor, he no longer takes medication for those conditions.
19. Mr. Grodt refrained from applying for reinstatement as he fought the cancer. As his condition improves, however, he regains hope that he may be able to resume the practice, albeit in a different format.

**V. Overview of Summerview matter (Docket No. 13-040)**

20. Christopher Lee Blanes filed a grievance dated August 19, 2013, in which he alleged, *inter alia*, that Mr. Grodt was engaged in the unauthorized practice of law (“UPL”) by representing Summerview Energy LLC in a lawsuit that Summerview Energy LLC initiated against Blanes. The matter was referred to Disciplinary Counsel in September 2015.
21. This representation took place while Mr. Grodt was suspended from the practice of law. This matter was docketed based on Mr. Grodt’s appearance in court on behalf of Summerview Energy, LLC and Summerview Real Estate, LLC. Mr. Grodt was a member and part owner of both LLCs.
22. Mr. Grodt applied to appear for these entities in various forums as further set forth below. The attempted appearances all concerned litigation between the LLCs and two former employees. Mr. Grodt never signed any pleading as “Esq.,” never represented to a tribunal that he was able to act as a lawyer, and was never paid for the representation. Other than appearing for LLCs in which he held an ownership interest,

he never appeared in litigation for a third party.

23. Rather, he appeared on behalf of Summerview believing at the time that he was entitled to do so as a nonlawyer pursuant to RSA 311:1. That statute provides that “a party in any cause or proceeding . . . may be represented by any citizen of good character.” RSA 311:7, however, prohibits a nonlawyer from representing another “commonly.” The contours of what constitutes practicing “commonly” is not well-defined in the case law interpreting these statutes. Mr. Grodt undertook a good faith effort to review and understand the statute when he represented his own entity in court, and did so only after disclosing his disciplinary history and being permitted by at least one court to proceed. Given the less-than-certain state of law regarding this statute, the parties have agreed that his engaging in UPL was a result of negligence.

## **VI. Background on Summerview Energy, LLC**

24. Summerview Energy LLC (“Summerview Energy”) is a New Hampshire limited liability company created on January 18, 2012 for the purpose of “provid[ing] energy brokerage and aggregation services.”
25. Steve Trefethen is the registered agent and manager of Summerview Energy.
26. Members of Summerview Energy, as of its formation in January 2012, included Trefethen (98% capital percentage interest), James Simpson (1%), and Mr. Grodt (1%).
27. Minutes from a meeting held on January 20, 2012, with Mr. Grodt and Mr. Trefethen in attendance, state that although Mr. Grodt was not licensed to practice law and could not represent the entity “as an attorney,” Mr. Grodt “could loan the company money, review documents, regulations, perform administrative functions, and help in other matters. . . .” Mr. Grodt asked for the resolution to be introduced, adopted, and recorded, so that all members of the LLC understood he could not appear or act as an attorney for the LLC while under suspension.
28. From February to December 2012, Mr. Grodt invested a total of \$55,000 with Summerview Energy.
29. Mr. Grodt eventually came to hold a 50% ownership interest in Summerview Energy. Mr. Simpson eventually relinquished his capital percentage interest in Summerview Energy, LLC. As a result, at all relevant times, there were only two members of the LLC.

## **VII. Background of Summerview Real Estate, LLC**

30. Summerview Real Estate LLC (“Summerview Real Estate”) is a New Hampshire manager-managed limited liability company created on May 6, 2002 for the purpose of “the brokering of real estate in New Hampshire.”
31. Mr. Trefethen is the sole manager of Summerview Real Estate.
32. As of January 3, 2012, the members of Summerview Real Estate were Trefethen, as trustee of the Steven M. Trefethen Revocable Trust (50%), Laura L. Trefethen, as trustee of the Laura L. Trefethen Revocable Trust (40%), and Mr. Grodt (10%).
33. The offer of membership to Mr. Grodt “would include a 50% payment of any commission for energy sold on behalf of Summerview Energy that is sold through Summerview Real Estate, LLC, excluding energy sold by Agents of Summerview Real Estate, LLC.”
34. Summerview Real Estate also adopted a resolution recognizing that Mr. Grodt could not appear as its attorney while he was under suspension.

## **VIII. *Summerview Energy, LLC v. Blanes*, 10<sup>th</sup> Circuit, District Division, Derry**

35. Mr. Blanes began working for Summerview Energy in May 2012 as a sales representative. As part of his employment, he signed a variety of documents, including a Mutual Non-Disclosure Agreement dated October 18, 2012, as well as an undated Non-Competition Agreement.
36. Mr. Blanes was fired for cause on January 24, 2013.
37. The first symptoms of Mr. Grodt’s cancer appeared in February 2013. He received his diagnosis in April 2013.
38. Mr. Grodt, on behalf of Summerview Energy, filed a Small Claim Complaint on April 2, 2013, alleging that Mr. Blanes breached his employment agreement with Summerview Energy and owed funds to Summerview Energy. Case No. 431-2013-SC-00179, 10<sup>th</sup> Circuit, District Division, Derry.
39. Mr. Grodt signed the Complaint as “Member of Summerview Energy, LLC.”

40. Mr. Grodt filed simultaneously with the Complaint a “Manager’s Certificate” dated April 1, 2012, in which Mr. Trefethen, as Manager for Summerview Energy, confirmed that Mr. Grodt was a member of Summerview and authorized him to “appear on behalf of Summerview Energy, LLC to prosecute any and all small claims matter before the Court . . . ” (the “Small Claims Manager’s Certificate”).
41. Mr. Grodt filed various motions and pleadings on behalf of Summerview Energy, including Objections to Defendant’s Motions to Dismiss and/or Motion for Summary Judgment.
42. Mr. Grodt’s first cancer surgery occurred in June 2013. The surgeons performed a thyroidectomy and removed a large tumor from his neck.
43. During the litigation Mr. Blanes asserted that Mr. Grodt could not represent Summerview Energy because he was a suspended lawyer.
44. On May 16, 2014, in support of his position that he was entitled to appear for Summerview Energy, Mr. Grodt provided the Court with both (1) the Small Claims Manager’s Certificate, and (2) an Affidavit Pursuant to Rule 1.3D dated May 16, 2014.
45. The Rule 1.3D Affidavit is meant to provide the court with information regarding whether the person seeking to appear on behalf of another is of good character, i.e., has not been convicted of felonies or misdemeanors, has not been found to have violated the rules of professional conduct applicable to nonlawyers, and has not appeared on behalf of any party (other than himself, i.e. truly *pro se*), except as disclosed in the Affidavit.
46. The Rule 1.3D Affidavit signed by Mr. Grodt, however, stated at Question 2: “That I have not been found by any court to have violated a court order or any provisions of the Rules of Professional Conduct applicable to lawyers<sup>4</sup> except as follows: . . .”
47. Mr. Grodt completed the affidavit by disclosing his 2010 misconduct and rule violations, which applied to him as a lawyer.
48. The Court accepted the pleadings and allowed Mr. Grodt, now a non-lawyer, to continue to file pleadings for the LLC.
49. Mr. Grodt represented Summerview Energy at the hearing on the merits on October 29, 2014.

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<sup>4</sup>This appears to be a typographical error, or at least is confusing.

50. At the hearing, Mr. Blanes again urged the Court to disqualify Mr. Grodt as a representative of Summerview Energy on the grounds that he was not an attorney in good standing, *i.e.*, was still under disciplinary suspension.
51. After hearing the objections, and having reviewed the Rule 1.3D Affidavit, the court allowed Mr. Grodt to proceed at the hearing on the merits as the representative for Summerview Energy.
52. On December 5, 2014, the Court entered judgment in favor of Summerview Energy for \$7,891.08.<sup>5</sup>

**IX. *Summerview Energy, LLC v. Blanes,*  
Rockingham County Superior Court**

53. On August 21, 2013, at Mr. Trefethen's urging, Mr. Grodt filed an *ex parte* petition for injunctive relief against Mr. Blanes on behalf of Summerview Energy in Rockingham Superior Court. Case No. 218-2013-CV-00901. The Small Claims matters had not yet been adjudicated.
54. Mr. Grodt signed the petition as "Member Summerview Energy, LLC."
55. The *ex parte* petition alleged, *inter alia*, that Mr. Blanes had violated the non-compete and non-disclosure provisions of the Sales Rep Agreement, as well as the provisions of the Mutual Non-Disclosure Agreement and Non-Compete Agreement.
56. On August 21, 2013, the petition was denied on an *ex parte* basis as it did not appear "that immediate and irreparable injury . . . will result to the Petitioner prior to a further hearing."
57. Thereafter, Mr. Grodt did not complete service upon Mr. Blanes because he chose not to pursue the matter further.
58. The matter was dismissed on October 29, 2013 for failure to complete service.
59. Superior Court Rule 20 governs Non-Attorney Representatives. The Rule requires any persons seeking to appear on behalf of a party in Superior Court to submit (1) a power of attorney signed by the party, authorizing

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<sup>5</sup> Nearly simultaneous with his small claims complaint against Mr. Blanes, Mr. Grodt, on behalf of Summerview Energy, also filed a Small Claims Complaint against Mr. Blanes' entity, Minority Business Services, on April 8, 2013. Case No. 431-2013-SC-00186, 10<sup>th</sup> Circuit, District Division, Derry. The Court consolidated the two cases.

the appearance, and (2) an affidavit of the person to appear, disclosing information about their past conduct. The Rule sets forth no firm date or event by which these documents must be filed.

60. Mr. Grodt filed neither document with the Superior Court on Summerview's behalf.
61. Under the circumstances – including that he had filed the petition in haste, that the clerk's office required no filing of such documents, Mr. Grodt's belief that the rule was vague, the court's quick denial of the *ex parte* petition, and the decision made to pursue the matter no further – Mr. Grodt concluded there was no need to subsequently file the documents.
62. The parties stipulated that Mr. Mr. Grodt's failure to file documents required by Rule 20 was negligent. In light of these circumstances and the care taken by Mr. Grodt within his LLCs and in the small claims action described above to disclose his suspended status, the Committee has approved this stipulated mental state.

**X. *Summerview Real Estate, LLC and Summerview Energy, LLC v. State of NH Dept. of Labor, in Rockingham Superior Court***

63. Joseph Ferris worked for Summerview Real Estate as a licensed realtor from approximately September 25, 2012 to March 2013.
64. On May 7, 2013, Mr. Ferris filed a wage claim with the New Hampshire Department of Labor ("DOL") against Summerview Real Estate. DOL Case No. 45910. Mr. Ferris claimed that Summerview Real Estate owed him unpaid weekly wages.
65. Mr. Grodt endured a second cancer surgery on September 19, 2013.
66. After a hearing in which Mr. Grodt did not participate, the DOL awarded wages and liquidated damages to Mr. Ferris of \$11,156.
67. Mr. Grodt's third cancer surgery took place in October 2013.
68. On November 8, 2013, Mr. Grodt filed in Rockingham Superior Court a Complaint to Appeal Labor Board Decision regarding Mr. Ferris's claim. Case No. 218-2013-CV-01233.
69. Mr. Grodt signed the Complaint "as member Summerview Energy."

70. During the months of November and December 2013, Mr. Grodt received 37 radiation treatments. The treatments were administered five days per week.
71. On February 6, 2014 Mr. Grodt filed an appearance “as member of Summerview Energy, LLC and authorized by a valid Manager’s Certificate.”
72. The aforesaid Manager’s Certificate was executed on May 15, 2013 and authorized Mr. Grodt to act on Summerview’s behalf for purposes of the wage claim.
73. Mr. Grodt filed a “Nonlawyer Affidavit as Required by Superior Court Rule 20 Appearance on Behalf of a Corporation” on February 6, 2014.
74. Mr. Grodt inaccurately answered two questions on the Rule 20 Affidavit.
75. First, Mr. Grodt answered “none” to Question 3 on the Rule 20 Affidavit. Question 3 asks whether the individual executing the Affidavit has been found by a court to have violated “any of the rules of professional conduct applicable to nonlawyer representatives.”
76. This form, *unlike* the Rule 1.3D Affidavit Mr. Grodt signed in the small claims matters, correctly references rules of professional conduct applicable to *nonlawyer* representatives. Mr. Grodt would testify that he believed a “none” answer was correct, as he assumed the inquiry concerned Rules other than those which applied to him and which he had previously violated, *i.e.*, those applying to him in his capacity when he was a lawyer.
77. But Rule 8.5 of the Rules of Professional Conduct applies certain rules to nonlawyer representatives, including Rules 1.3, 1.4 and 8.4. Mr. Grodt had previously admitted to violating Rules 1.3, 1.4, and 8.4(c) pursuant to the terms of the Stipulation he submitted to a Hearing Panel. Accordingly, even as a non-lawyer, he should have disclosed his prior violations. Mr. Grodt was unaware of the broad applicability of the rules via Rule 8.5 at the time he completed the Rule 20 Affidavit.
78. Second, Mr. Grodt inaccurately answered “none” to the question on the Rule 20 affidavit asking whether he had appeared, pled, or prosecuted any action for any party, other than himself, in any court.<sup>6</sup>

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<sup>6</sup> This statement was inaccurate to the extent this question seeks information regarding appearances for anyone or anything other than the individual himself or herself. By February 2014, Mr. Grodt had appeared on behalf of Summerview in the two small claims actions in

79. The parties stipulated that the inaccuracies were negligent.
80. Mr. Grodt told disciplinary counsel that he regrets these oversights, and explained that at the time, he was on the heels of 37 radiation treatments and not at his best. He further was unaware that Rule 8.5 “sweeps in” certain rules applicable to nonlawyers.
81. The Superior Court ordered on February 12, 2014 that Mr. Grodt could not appear on behalf of Summerview because, based on Mr. Grodt’s own statements to the Court, he was not medically stable and could not comply with the obligations of representing Summerview.
82. Thereafter, Mr. Trefethen appeared on behalf of Summerview for purposes of the Ferris wage claim.
83. The Court held a hearing on February 20, 2014, after which it issued an Order dated April 23, 2014 affirming the DOL’s award and awarding attorney’s fees to Mr. Ferris.
84. Mr. Grodt endured a partial nephrectomy in April 2014.
85. In July 2014, Mr. Grodt experienced his first radioactive iodine treatment.

**XI. *Summerview Real Estate, LLC v. Ferris*, No. 2014-0468,  
Notice of Appeal filed with the Supreme Court**

86. On behalf of Summerview Real Estate and Summerview Energy, Mr. Grodt filed a Notice of Appeal in the Supreme Court on July 15, 2014, appealing the Superior Court’s Order of April 23, 2014.
87. The Notice of Appeal was accompanied by two Manager’s Certificates, both dated June 16, 2014, authorizing Mr. Grodt to act on behalf of Summerview Real Estate and Summerview Energy to appeal the Ferris wage claim.
88. Mr. Grodt filed a Rule 33(2) Affidavit noting his previous discipline and his appearance in most of the other Summerview matters.

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Derry District Court, as well as in the Rockingham Superior Court action seeking injunctive relief. Mr. Grodt would testify that he believed the question sought information on filings he made for parties other than himself and entities in which he held an ownership interest.

89. Mr. Grodt's Rule 33(2) Affidavit inaccurately stated that he had never violated any of the provisions of the rules of professional conduct applicable to a non-lawyer representative. Again, Mr. Grodt contends the answer was a mistaken understanding on his part of Rule 8.5 and the nature of the inquiry. *See supra* at ¶¶ 76-77. Moreover, his disclosure of his 2010 lawyer discipline negates any notion that he was attempting to conceal his overall disciplinary history from the Court. The parties stipulated, and this Committee agrees, that any violation of the Supreme Court Rules was negligent.
90. In an Order dated September 26, 2014, the Supreme Court denied Mr. Grodt's request to appear as the non-attorney representative of Summerview because, given his disciplinary history, Mr. Grodt had not demonstrated good character.

## **XII. Further Medical Developments**

91. In September 2014, Mr. Grodt experienced double vision caused by metastasis of the cancer. He wore an eye patch for more than one year.
92. In October and November 2014, Mr. Grodt underwent a second set of radiation treatments.
93. By the Spring of 2015, the cancer had metastasized to Mr. Grodt's lungs, ribs, hip, liver, skull, and possibly to his spleen.
94. In July 2015, Mr. Grodt underwent a second treatment with radioactive iodine.
95. Mr. Grodt also started a new drug regimen, which seems to have stabilized his condition.
96. Mr. Grodt hopes to reapply for admission to the bar. Resolving these disciplinary issues is therefore extremely important to him. If successful, he plans to start a practice focusing on health-care proxy and end-of-life directive documents for cancer patients. Based on his own experience and observations, he believes this is an underserved population.
97. The ADO has indicated that if the Committee accepts the parties' Stipulation, and Mr. Grodt applies for readmission with no other grievances or violations, the ADO will not oppose his application. Because the question of readmission is not before the Committee, the Committee will not address the ADO's position.

## II. RULINGS OF LAW

The Committee concludes that there is clear and convincing evidence that Thomas P. Grodt has violated the following Rules of Professional Conduct by clear and convincing evidence:

### XIII. Disciplinary Rules Violated (Summerview)

#### Rule 5.5: Unauthorized Practice of Law

98. Rule 5.5 states in pertinent part as follows:
- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
  - (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
    - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
    - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
99. Mr. Grodt admits that his conduct, as set forth herein *supra* ¶¶ 35-90, constituted the unauthorized practice of law; and that the violation was negligent.
100. New Hampshire case law clarifies that RSA 311:1 allows lay counsel to appear only (a) on his personal behalf, *i.e.*, truly *pro se*, or (b) on behalf of another person or entity in an individual case – but not “commonly” or as a matter of course for others. *See* RSA 311:7; *State v. Settle*, 129 N.H. 171 (1987); *Appeal of Campaign for Ratepayers’ Rights*, 137 N.H. 707, 714-716 (1993); *New England Capital Corp. v. The Finlay Company, Inc.*, 137 N.H. 226 (1987).
101. What constitutes practicing “commonly” has not been established. In *Settle*, the nonlawyer representative had appeared many times on behalf of an unincorporated association and stated openly that he intended to continue to appear “as a matter of course” in courts on behalf of that organization. 129 N.H. at 180. *Settle* is therefore distinguishable.
102. Mr. Grodt’s conduct is also distinguishable from that of another administratively-suspended lawyer who, unlike Mr. Grodt, “filed

pleadings on behalf of a number of different clients in which he identified himself as an attorney, drafted letters on behalf of clients, and represented to others that he was a practicing attorney.” *Tocci’s Case*, 140 N.H. 68, 70 (1995). Tocci was representing third parties and being paid as an attorney. He also failed in any of the matters to file the required Rule 1.3D affidavits. *Id.* at 71.

103. The parties agree that although it may have been permissible under RSA 311:1 for Mr. Grodt to appear in an isolated instance, he ventured into “commonly” practicing when he went on to appear in Superior Court for the (short-lived) petition for injunctive relief, before the DOL for the Ferris wage claim, before the Superior Court appealing that claim, and then before the Supreme Court in filing the Notice of Appeal.
104. Given the case law and the totality of the circumstances, the parties have stipulated, and this Committee agrees, that representing two different Summerview entities against two individuals in six matters, over approximately 16 months and in four separate forums, is not an isolated instance. Rather, this crossed the line into “commonly” representing the LLCs in violation of RSA 311:7.
105. The parties have further agreed that Mr. Grodt was gravely ill throughout the pertinent time period, and that his conduct was negligent. The Committee agrees both due to Mr. Grodt’s recurrent medical problems during the relevant timeframe, and because there is no definitive authority regarding the meaning of “commonly” as used in RSA 311:7.

**Rule 3.3 and 3.4: Candor to the Tribunal and Violation of Court Rules**

106. Because Mr. Grodt filed appearances in Rockingham County Superior Court that either failed to include documents required by Superior Court Rule 20, or that inaccurately answered questions in the Rule 20 Affidavit, the ADO also considered whether Mr. Grodt’s conduct violated Rule 3.3 and 3.4. Disciplinary Counsel concluded that clear and convincing evidence of “knowing” misconduct—required under each of these rules—did not exist. The Committee agrees that the record does not provide clear and convincing evidence of a knowing violation of either rule. Accordingly, these rules are not considered in the Committee’s determination of the appropriate sanction in Case No. 13-040.

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

107. There is clear and convincing evidence that Mr. Grodt’s conduct, as described herein, violated Rule of Professional Conduct 8.4(a).

### III. SANCTION ANALYSIS

The 2012 Cases: As indicated previously, *see paragraph 15, supra*, the parties stipulated, and the Committee has now agreed, that the appropriate sanction for the 2012 cases is a retroactively-applied six month suspension to run concurrently with the three-year suspension imposed in Case No. LD-2010-0005. The Supreme Court imposed the three year suspension for Case No. LD-2010-0005 on September 6, 2011, retroactive to December 6, 2010. Accordingly, the three year suspension, and the retroactively-applied six-month suspension for the 2012 cases, expired on December 6, 2013.

Case No. 13-040: The parties have stipulated that a public censure is the appropriate sanction for the Rule 5.5 violation found in this case. 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. 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.*

#### **Prong I: Duty Violated**

Under the first prong of the analysis, Mr. Grodt's unauthorized practice of law violated duties owed to public.

## **Prong II: Mental State: Intent/ Knowing or Negligent**

With respect to Mr. Grodt's mental state under the second prong of the sanction analysis, the parties have stipulated that Mr. Grodt's mental state was negligent. Given the serious medical and emotional problems suffered by the Respondent, and the unclear guidance provided by RSA 311:7 regarding the point at which the representation of the LLCs by a non-lawyer was occurring "commonly", the Committee has approved this finding.

## **Prong III: Injury or Potential Injury**

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Grodt's misconduct. Mr. Grodt's conduct did not cause actual injury. While Mr. Blanes objected to Mr. Grodt appearing on behalf of Summerview, the Court permitted the appearance, with full knowledge of Mr. Grodt's disciplinary background and an airing of all issues. Mr. Grodt did not charge anyone for his representation of the Summerview entities, but viewed the representation almost as a form of *pro se* appearance because he is one of the owners.

There is a dearth of case law addressing UPL in this particular context, *i.e.*, where a statute empowers nonlawyers to appear on behalf of another. There was potential injury, however, in that by crossing the line into "commonly practicing," Mr. Grodt circumvented the policy reasons behind RSA 311:1. While an ancient rule, the statute can be seen as one guaranteeing access to justice. The court system operates as smoothly as it does by relying on lawyers, but it must also be open to those who cannot find or afford an attorney. Mr. Grodt's behavior potentially disturbed that balance.

Based on the foregoing, the Committee concludes that Mr. Grodt's conduct falls within Section 7.3 of the *Standards*: "Reprimand (public censure in New Hampshire) is generally appropriate when a lawyer *negligently* engages in conduct that is a violation of a duty owed as a professional and causes *injury or potential injury* to a client, the public or the legal system." The baseline sanction in Case No. 13-040 is public censure.

## **Aggravating Factors:**

In this case, one aggravating factor is present: Mr. Grodt's disciplinary history. *See Standards* § 9.22.

## **Mitigating Factors:**

Mitigating factors include full and free disclosure to the ADO, absence of a dishonest or selfish motive, physical disability, remorse, and personal and emotional problems. *See Standards* § 9.32.


Although there are more mitigating factors than aggravating factors, the parties agree that no downward departure from public censure is merited, given Mr. Grodt's previous discipline. A public censure serves the purposes of discipline and is an appropriate sanction in case #13-040.

In sum, the Committee concludes that the appropriate discipline in this matter for the 2012 cases is a six month suspension, retroactive to December 6, 2010 (in #10-040 and #11-050), and a public censure in #13-040. 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*"). 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**

Mr. Grodt has signed an agreement to pay costs of the investigation and prosecution of this disciplinary matter. The Committee approves this agreement. Mr. Grodt shall be responsible for all costs associated with the investigation and prosecution of all of the consolidated cases.

November 29, 2016

  
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David M. Rothstein  
Chair

cc: Sara S. Greene, Disciplinary Counsel  
William C. Saturley, Esquire  
File