Hoppock, Joseph S. advs. Attorney Discipline Office - #16-027

REPRIMAND AND ORDER ON COSTS

On June 20, 2017, the Professional Conduct Committee ("the Committee") deliberated the Stipulation as to Facts, Violations and Sanction ("the Stipulation," attached as **Exhibit A**), and the Agreement to Pay Costs of Disciplinary Matter (attached as **Exhibit B**). Members present included David M. Rothstein, Chair; Elaine Holden, Vice Chair; Peter G. Beeson; Caroline K. Leonard; David W. McGrath; Georges J. Roy; and Martha Van Oot. Heather E. Krans, Vice Chair; Susan R. Chollet; Richard H. Darling; Margaret R. Kerouac; and Mona T. Movafaghi were absent.

The Committee approved the facts as stipulated by clear and convincing evidence. It further found that Joseph S. Hoppock's conduct violated Rules of Professional Conduct 4.4 and 8.4(a), as stipulated.

The Committee also concluded that a Reprimand is appropriate. Its sanction is in accord with the purposes of attorney discipline. *See e.g., Conner's Case* 158 N.H. 299, 303 (2009); *Richmond's Case*, 152 N.H. 155, 159-60 (2005). The sanction is also in accord with the *ABA Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*").

Having approved the stipulated sanction, the Committee approved the agreement that Joseph S. Hoppock shall reimburse the Committee for all costs of investigation and prosecution of this matter.

June 20, 2017

David M. Rothstein
Chair

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

NEW HAMPSHIRE SUPREME COURT

PROFESSIONAL CONDUCT COMMITTEE

Hoppock, Joseph S.

advs.

Attorney Discipline Office

#16-027

STIPULATION AS TO FACTS, VIOLATIONS, AND SANCTION: REPRIMAND

Respondent Joseph S. Hoppock, Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

I. Facts

This disciplinary matter arises from Mr. Hoppock's communications with opposing counsel in the matter entitled *In the Matter of Wendell Herman and Nancy Herman v. Joanna Herman*,[1] pending in the 8th Circuit-Family Division-Keene. Some of those communications, as set forth fully below, violated Rule 4.4.

A. Respondent's background

1. Mr. Hoppock is an attorney licensed to practice law in New Hampshire. Mr. Hoppock was admitted to practice in 1988.

2. Mr. Hoppock has not been admitted to practice law in any other jurisdiction.

[1] Case No. 649-2015-DM-00235.

3. At all times material to this proceeding, Mr. Hoppock practiced law at the Law Offices of Joseph S. Hoppock, PLLC, 16 Church Street, Suite A, Keene, NH.

4. Mr. Hoppock has no previous disciplinary history.

B. Factual background: the divorce of Shawn and Joanna Herman.

5. Shawn and Joanna Herman were married on October 1, 2005. They had two children. They separated on October 1, 2014.

6. Joanna began to see another man. On February 9, 2015, Shawn forcefully entered the apartment in which Joanna resided with their two children, at a time when Joanna's boyfriend was present, by kicking down the door. Shawn had been drinking. He had in his possession a nine-millimeter handgun and several hollow-point bullets. Joanna alleges that he threatened to kill her, and that after a struggle, she was able to take possession of the gun. Shawn denies he pointed the gun at anyone, and claims that, instead, he took the gun out of his pocket and handed it to Joanna when she demanded it. There is no dispute that she then hit Shawn on the head with the pistol. Thereafter, the police arrived. Shawn exited the house and was arrested.

7. Divorce proceedings began in March 2015.

8. Shawn was incarcerated at the Cheshire County House of Corrections from that date through August 31, 2015. On August 31, he pled guilty to felony domestic violence/criminal threatening for his acts on February

9. He was sentenced to serve four to eight years in the New Hampshire State Prison.

9. This event, and litigation between Shawn's parents (Wendall and Nancy Herman) and Joanna over the equity in the family home and over the Herman'sefforts to exercise their grandparent visitation rights, resulted in extreme discord between Joanna and Shawn and his family.

C. <u>The fraudulent conveyance action against the Grandparents.</u>

10. Shawn and Joanna had agreed, by themselves, to the terms of a property settlement in November 2014. Wendell and Nancy loaned Shawn $70,000 to allow him to fulfill his obligations to Joanna under the agreement. $50,000 of that went to Joanna: $27,500 as a property settlement for her equity in the family home, and the balance, over time, for Shawn's child support obligations. Following the February 9 incident, Shawn gave his parents a mortgage on the home to secure the loan.

11. Joanna then accused the Hermans of fraud by initiating a fraudulent conveyance action against them. She claimed the mortgage was improper as it deprived her of her share of the home equity (despite her earlier receipt of $27,500). Mr. Hoppock initially represented the Hermans in this matter.

12. The fraudulent conveyance action lasted many months. Eventually, following a hearing, the Superior Court denied Joanna's claims and the matter was dismissed.

D. <u>The Grandparents' efforts to secure visitation rights.</u>

13. The divorce between Shawn and Joanna was concluded in April 2016. In the Final Decree, Joanna made clear that she remained "adamantly opposed to mandated court-ordered contact between the children and ... the paternal grandparents."

14. While the divorce was proceeding, a Guardian *ad Litem* (GAL) was appointed, conducted an investigation, and concluded "the best place to start the reconciliation process is to reconnect the [two children] with their ... extended family members including the paternal grandparents."

15. Mr. Hoppock represented the Hermans in their attempt to secure visitation with their grandchildren (then ages 9 and 2), residing with Joanna. Throughout the proceeding, Joanna has opposed any visitation between her children and any member of the paternal Herman family.

16. Theodore Parent, Esquire, represents Joanna on the visitation issue.

17. Early in the visitation dispute, in a May 8, 2015 email to Mr. Parent, Mr. Hoppock wrote "I look forward to protracted warfare with you and your entitled client." Mr. Hoppock contends this email, which was sent three months from the time of Shawn's forcible entry into Joanna's home, was a prediction of the course the conflict would take, rather than a warning. He already had experience with Joanna in litigation (via the fraudulent conveyance action.)

18. Mr. Parent did not immediately respond. Approximately 40 minutes later, Mr. Hoppock emailed Mr. Parent again, stating, "your client is

deceitful and controlling so I expect protracted litigation (i.e. warfare) because I fully expect we will settle nothing so long as you are her attorney. I need say no more. See you in court."

19. Because Joanna did not agree to visits between the children and the paternal family, on or around May 17, 2015, Mr. Hoppock filed a Petition for Grandparent Visitation Rights ("the Visitation Case") on behalf of the Hermans.

20. On June 24, 2015, in an email exchange over pleadings in the fraudulent conveyance action, Mr. Parent sarcastically commented that the counterclaim filed against Joanna by Mr. Hoppock "sure helps the grandparents' rights claim." In response, Mr. Hoppock emailed Mr. Parent, cc'ing Kathy O'Donnell, attorney for Shawn. His email read in part: "Are you serious? You are despicable, disgraceful and disingenuous for these comments. . . ." Mr. Hoppock went on to say that Joanna "has cut off the entire Herman family for behaviors not attributable to them. It's Shawn's fault, no wait; it's Hoppock's fault; she is a coward and has no ability for introspection. She wants to blame every human on the planet for her circumstances. She needs to look closer to home. . . . She, or you, really want this to be 'protracted warfare.' So don't tell me what 'helps the grandparent's claim.' Your comments are outrageous."

21. On July 9, 2015, Mr. Hoppock emailed Mr. Parent and Ms. O'Donnell, stating "[w]hen she [Joanna] stops pretending to be the victim and

decides to do something to help solve this mess, maybe we can talk. . . . She is the one (or you) who is not moving beyond the past and blaming Shawn for all of the mileage you can manipulate; she and you are indeed disgraceful . . . . [I]n short; when she is done with the entitled victim attitude and wants to participate in the solution, she may well realize progress; until then we will proceed . . . Her behavior is beyond inexplicable; it is indeed disgraceful and so is yours for what you are doing to these children."

22. Mr. Hoppock's concerns with Joanna Herman's actions in the Visitation Case were shared in part by the Guardian *ad Litem*. In May 2016, for example, Joanna stated she wanted to relocate to North Carolina. The GAL expressed to Mr. Hoppock her belief that "the move is a blatant attempt to circumvent the court's orders. There is no way the only catering job for someone with no post-secondary education is 850 miles away. You are right this has been the plan from the beginning in order to ... make sure no one from the Herman family ever sees the children again."[2]

23. On April 14, 2016, shortly before a hearing on the Hermans' Petition, Mr. Parent wrote the Guardian *ad Litem* on behalf of Joanna, saying "we are not going to settle the grandparents' case." He further wrote that "any

[2] The GAL's concerns were confirmed in March 2017, when Shawn's counsel filed an Ex Parte Motion to Prevent Relocation of Minor Children. The Court ruled in response to the Motion: "[Joanna] shall not relocate the children without an order of the Court specifically allowing her to do so."

forced contact amongst ... the grandparents and the children ... is going to be anathema to Joanna."

24. Hoppock emailed Mr. Parent, cc'ing Ms. O'Donnell and the Hermans, on April 21, 2016: "I do recall from history that the NAZI's punished relatives for the crimes of family members . . . This is the same manipulative hyperbole we have heard for over a year." Mr. Hoppock states that he made this reference to Nazis as an analogy, i.e. just as Nazis punished people for the crimes of their relatives, Joanna was punishing the Hermans (by contesting the visitation request) for the crime of their son.

25. On April 26, 2016 and April 27, 2016, the Court held the Final Hearing in the Visitation Case.[3] On May 12, 2016, the Court entered an order granting Wendell and Nancy certain visitation rights (the "Order"). In doing so, the Court noted Joanna's efforts to alienate the children from Shawn and the paternal side of the family. The Court found there was "no plausible evidence that grandparental visitation would interfere in any way with Joanna's relationship with her children or her authority over the children."

26. However, the Court also recognized that "[t]here is no question that Joanna was traumatized by the events of February 9, 2015," and that "Joanna's judgment in opposing any contact between the children and

[3] Despite the label "Final Hearing," the parties continue to dispute the issues, before the Family Court.

their grandparents is clouded by the trauma she suffered at the hands of Shawn."

27. Regarding Mr. Hoppock's conduct in the litigation, the Court observed:

> The friction has been further exacerbated by the tone and tenor of emails sent by counsel for the grandparents to counsel for Joanna. Joanna has understandably taken great offense at what she perceives to be personal attacks by the grandparents in the form of these emails from their attorney. It is not unreasonable for her to believe that the grandparents either implicitly or explicitly condoned the offense and unproductive tactics of their attorney. These email communications have not been helpful, and have increased the friction between the parties.

28. Following the Order in the Visitation Case and the denial of Joanna's motion for reconsideration, the contentious communications continued between Mr. Hoppock and Mr. Parent continued.

29. In an email exchange dated June 2, 2016, Mr. Parent wrote, "Thank you for making my day. I laughed aloud at the irony of your bringing up the fact that you could get more bees with honey than vinegar." Mr. Hoppock responded, "Thank you for making my day too; your motion ... was denied and your client will be restrained from running away and hiding the children from their family. Perhaps when you are done laughing, your hypocrisy will be evident even to you and you will see it through the thick blubber of your condescension and presumptuousness."

30. On June 14, 2016, he emailed Mr. Parent, "[Joanna] needs to put her children's best interests ahead of her silly, meaningless feelings. . . . Once she changes her attitude, the entire world will change for her.

Until then we litigate and litigate and litigate and there will be more of the 'protracted warfare' I predicted."

E. <u>The grievance, and an acknowledgement.</u>

31. On July 13, 2016, Joanna filed the grievance against Mr. Hoppock, citing Mr. Hoppock's emails to Mr. Parent and the GAL, which she considered abusive.

32. Mr. Hoppock states that he is a passionate advocate and that he had very strong feelings about the Visitation Case, including his genuinely held belief that Joanna was manipulating the children and making decisions not in their best interest. In his response to the grievance, he argued that his comments were accurate and appropriate, asserting that his purpose in using such language was to advance the litigation by pointing to weaknesses in Joanna's position, and giving Joanna "pause to reflect" on her behavior and "incentive to settle the cases."

33. Mr. Hoppock now admits that his comments increased the friction between the parties. He acknowledges that his choice of words was counter-productive and that he personally attacked Joanna and Mr. Parent in a way that potentially damaged his clients' interests. The comments were inappropriate and violated Rule 4.4.

34. Mr. Hoppock further understands that the opposing party, Joanna Herman, had *in fact* been the victim of a felony for which her ex-husband was incarcerated. While he sincerely believed at the time of making the statements that she was "pretending to be the victim" and had an

"entitled victim attitude" in the Visitation Case, he now acknowledges that his accusations may have gone beyond the bounds of zealous advocacy.

35. As a result of this disciplinary matter, Mr. Hoppock is well-educated on New Hampshire's Rule 4.4, which "differs substantially" from the ABA Model Rule, in that it uses the word "obvious" to "set a higher objective standard" as to what actions may qualify as having the primary purpose to "embarrass, delay, or burden a third person." *See* Rule 4.4, Ethics Committee Comment. He deeply regrets his communications to Mr. Parent concerning Ms. Herman. He is confident that in the future he can be an effective advocate without resorting to personal attacks.

B. Disciplinary Rules Violated

36. The parties agree that Mr. Hoppock's conduct in this case involves violations of the New Hampshire Rules of Professional Conduct, as follows:

Rule 4.4: Respect for Rights of Third Persons

37. The facts set forth at ¶¶ 1-36 above are incorporated by reference.

38. Rule 4.4 states in pertinent part as follows:

> (a) In representing a client, a lawyer shall not take any action if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, delay or burden a third person.

39. Mr. Hoppock's communications to opposing counsel in the course of representing the Hermans as set forth herein violated Rule 4.4.

Rule 8.4(a): General Rule

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

C. Recommended Sanction

41. The Attorney Discipline Office and Mr. Hoppock jointly agree that a reprimand is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.

42. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.

43. 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).

44. 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.

45. The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner's Case*, 158 N.H. at 303 (stating that "[i]n applying these factors, the first step is to categorize the respondent's misconduct and identify the appropriate sanction"). Once the baseline sanction is determined, the Court then looks to the fourth and final part of the analysis: the existence of any aggravating or mitigating factors, and whether they affect the baseline sanction. *See id.* (stating that "[a]fter determining the sanction, [the Court] consider[s] the effect of any aggravating or mitigating factors on the ultimate sanction").

46. Under the first prong of the analysis, Mr. Hoppock violated duties owed to the public and the legal system. *See Standards* § 6.0.

47. With respect to Mr. Hoppock's mental state under the second prong of the sanction analysis, the parties agree that Mr. Hoppock's mental state was not intentional in that he was acting without a specific intent to harm Joanna. His judgment was clouded by the depth of his desire to vindicate his clients' rights, his belief that Joanna's actions were injuring the children, and his own personal feelings concerning the litigation, including his history with Joanna's counsel. These factors negatively affected his objectivity in the matter.

48. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Hoppock's misconduct.

49. Mr. Hoppock's conduct caused injury in that it increased the friction between the parties, potentially damaging his clients' interest. It also harmed the integrity of the profession as well, by potentially diminishing the parties' confidence in the legal system.

50. Mr. Hoppock's 4.4 rule violation implicates Section 6.2 of the *Standards*. That Section provides:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:
>
> 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
>
> 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.
>
> 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
>
> Admonition[4] is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

[4] The term "admonition," as used in the *ABA Standards*, is analogous to a reprimand in New Hampshire. The term "reprimand," as used in the *ABA Standards*, is analogous to a public censure in New Hampshire.

51. Mr. Hoppock's conduct in this matter, when considered under *Standard* 6.23, would call for a baseline sanction of public censure.

52. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.

53. In this case one aggravating factor is present: Mr. Hoppock's substantial experience in the practice of law. *See Standards* § 9.22.

54. Mitigating factors include the absence of any prior discipline, the absence of a dishonest or selfish motive, full and free disclosure to the ADO, and his cooperative attitude toward proceedings. *See Standards* § 9.32.

55. The parties agree that, given the baseline sanction and consideration of aggravating and mitigating circumstances, a reprimand serves the purposes of discipline and is an appropriate sanction in this case.

56. Sanctions for Rule 4.4 vary. *See Kalil's Case*, 146 N.H. 466 (2001) (three-month suspension where respondent told opposing party he would "rip his face off" if he violated a court order, then lied to the judge about the threat in violation of Rules 3.3, 4.4 and 8.4(c)); *Robertson's Case*, 137 N.H. 113 (1993) (imposing public censure under previous version of Rule 4.4 where attorney called opposing counsel "psychotic" and repeatedly alleged commission of felonies by opposing counsel).

57. The parties note that Mr. Hoppock's case presents a "stand alone" Rule 4.4 violation, unlike *Kalil's Case*, which included other serious ethical

violations. The parties also note that the magnitude of the violations in *Robertson's Case* was significantly greater – in that case, the respondent accused the other lawyers with serious crimes (25 felonies), violations of multiple court orders, and with "usurping the power and defying the authority of the Superior Court."

58. The PCC has previously approved a reprimand for a Rule 4.4 violation, in *Ganz, Alan H. advs. Jennifer A. Lubeski* - #05-072 (2007).

59. For all of the reasons noted herein, the parties request that the Committee approve a reprimand in this matter.

D. Costs

60. Subject to the PCC's approval of Mr. Hoppock's Stipulation, Mr. Hoppock agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. *See* Supreme Court Rule 37(19). His agreement to pay the costs incurred by the ADO is the subject of a separate agreement signed by Mr. Hoppock.

E. Effect of Stipulation

61. Mr. Hoppock understands that this Stipulation represents a recommended disposition, and that the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).

62. Mr. Hoppock acknowledges that the admissions of misconduct and the proposed disposition contained in this Stipulation are freely, knowingly, and voluntarily submitted; that he is not entering this Stipulation as a result of any threats, coercion, or duress, or of any promises or

inducements not set forth in the Stipulation. He understands that he is bound to the facts and rule violations as stipulated, subject to the PCC's approval of this Stipulation as presented.

63. Mr. Hoppock has been represented by counsel in reaching this Stipulation.

64. Mr. Hoppock knowingly and intelligently waives his right to a hearing, subject to the PCC's approval of this Stipulation as presented.

Respectfully submitted,

Dated: 9 June 2017

Joseph S. Hoppock, Esquire
Respondent

Dated: June 12, 2017

for Abby. Saturley

William C. Saturley, Esquire
Counsel for Respondent

Dated: June 12 2017

Sara S. Greene, Esquire
Disciplinary Counsel

NEW HAMPSHIRE SUPREME COURT

PROFESSIONAL CONDUCT COMMITTEE

Hoppock, Joseph S.

advs.

Attorney Discipline Office

#16-027

AGREEMENT TO PAY COSTS OF DISCIPLINARY MATTER

1. Subject to the Professional Conduct Committee's approval of the Stipulation of Facts, Rule Violations, and Sanction in the above matter, I agree to pay the expenses incurred by the Committee in the investigation and enforcement of this disciplinary matter. *See* Sup. Ct. R. 37(19)(b). Costs can include, but are not limited to: mileage, stenographers, transcripts, copying, inventory, audit expenses and publication.

2. As of June 5, 2017, I have been informed that the costs are approximately $130.25. Should further costs accrue in this disposition of this matter, I understand that the Committee will bill me for these costs. If I dispute the bill, I will notify the Committee of the specific nature of the dispute in writing within thirty days of my receipt of the bill. I understand that the Committee will consider the disputed item and issue a written decision. If I do not notify the committee that I dispute the bill, payment will be due upon its receipt.

3. I waive the provisions of Supreme Court Rule 37(19)(b) regarding any further detail of the nature and amount of each expense, and I also waive formal demand for payment.

4. I understand and agree that the assessment of costs is deemed final and shall have the full force and effect of a civil judgment. As a result, it may be enforced in any Superior Court in New Hampshire.

5. The Committee may file a copy of the final assessment with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures. *See* Sup. Ct. R. 37(19)(c).

6. I also agree to be responsible for all costs incurred as a result of the Attorney Discipline Office's collection efforts.

Respectfully submitted,

Dated: 9 June 2017

Joseph S. Hoppock, Esquire
Respondent