

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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

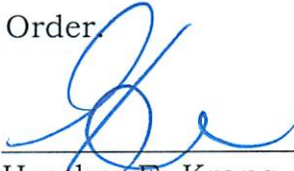
Recommendation: Disbarment and Protective Order

On January 16, 2018, the Professional Conduct Committee (the “Committee”) deliberated the Assented-to Motion to Impose Disbarment (the “Motion”) and the Assented-to Request for Protective Order (collectively, the “Record”).

Having reviewed the Record, the Committee approved the Motion, by clear and convincing evidence. The Committee approved the findings of violations of the New Hampshire Rules of Professional Conduct (the “Rules”) as indicated in paragraph 11 of the Motion and to recommend Disbarment for violations of Rule 8.1(b).

The Committee grants the Protective Order.

January 12, 2018



Heather E. Krans, Vice Chair

Distribution:

Sara S. Greene, Disciplinary Counsel
Cecile B. Hartigan, Esquire
Zachary A. Cross
File

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

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

ASSENTED-TO MOTION TO IMPOSE DISBARMENT

NOW COMES Sara S. Greene, Disciplinary Counsel, and respectfully requests that the Professional Conduct Committee (“PCC”) impose disbarment, in accordance with the PCC’s Order of March 25, 2016 and the parties’ Joint Proposed Order. Mr. Cross assents to the relief requested in this Motion and agrees disbarment is appropriate.

In support of this Motion, Disciplinary Counsel states as follows:

1. In February 2016, Disciplinary Counsel and counsel for Zachary A. Cross signed a Joint Memorandum on Sanction recommending a three-year suspension contingent on the satisfaction of conditions set forth in the Joint Proposed Order. The Joint Proposed Order included as an exhibit a New Hampshire Lawyers Assistance Program (NHLAP) Monitoring Agreement. See Exhibits 1, 2 and 3 (Joint Memorandum on Sanction, Joint Proposed Order and Monitoring Agreement).
2. The Joint Proposed Order contained mandatory conditions, including that Mr. Cross shall:
 - 1) Comply with all conditions set forth in the Monitoring

Agreement that he has signed with the New Hampshire Lawyer's Assistance Program;

- 2) Not engage in any further professional misconduct; and
- 3) Not engage in any further criminal conduct.

3. On March 25, 2016, the PCC accepted the Recommendation along with the Joint Proposed Order. On June 13, 2016, the Supreme Court issued an Order accepting the PCC's Recommendation and suspending Mr. Cross.
4. The underlying misconduct in this matter was Mr. Cross's felony indictment for possession of oxycodone, a controlled drug. Thus, the primary condition of the three-year suspension was that Mr. Cross refrain from using illegal drugs and otherwise comply with all requirements set forth in the NHLAP Monitoring Agreement. *See Exhibit 3 (Monitoring Agreement I(1))*.
5. The PCC Order required that Cecile B. Hartigan, Executive Director of NHLAP, submit Quarterly Reports regarding Mr. Cross's compliance with the Monitoring Agreement to the ADO.
6. The most recent Quarterly Report, submitted on December 13, 2017, disclosed that Mr. Cross had twice tested positive for opioid use. *See Exhibit 4 (December 2017 Report)*.
7. Early on in the monitoring period (September and December 2016), Ms. Hartigan reported that Mr. Cross had relapsed, but she did not find him in violation of the Monitoring Agreement because he

voluntarily disclosed the drug use (at a time when he was not yet subject to random drug testing and could have avoided detection), and later, because he would soon begin physician-administered medication to assist with withdrawal symptoms and had agreed to extend the three-year term of the Monitoring Agreement to five years. Following discussions with Ms. Hartigan in this early part of the monitoring period, the ADO agreed not to seek the disbarment.

8. Thereafter, Mr. Cross was sober, testing negative on all random drug tests, for a year.
9. However, upon receipt of the most recent December 2017 Report, disclosing the third instance of drug use by Mr. Cross, the ADO asserts that he is in breach of the PCC Order and the parties' Joint Proposed Order.¹
10. The Joint Proposed Order requires Mr. Cross not only to comply with the terms of the NHLAP Monitoring Agreement, but also to "not engage in further professional misconduct" and to "not engage in any further criminal conduct."

¹ Ms. Hartigan's December 2017 Report did not find Mr. Cross to be in breach of the Monitoring Agreement: "because of the brief period of time that he was out of compliance, and his honesty and openness about his actions, we do not consider this brief relapse a terminal breach of the monitoring contract."

11. The drug use disclosed by the Quarterly Reports constitutes professional misconduct because Rule 8.1(b) prohibits lawyers from engaging in criminal conduct, i.e. using illegal substances.
12. Imposition of disbarment is therefore appropriate pursuant to the PCC Order's Order dated March 25, 2016 and the parties' Joint Proposed Order.
13. Mr. Cross does not object to the imposition of disbarment. He continues to work with NHLAP under the terms of the Monitoring Agreement, which as noted above, he has voluntarily extended to five (instead of three) years.

WHEREFORE, Disciplinary Counsel respectfully requests that the Professional Conduct Committee grant the following relief:

- (A) Recommend that Mr. Cross be disbarred; and
- (B) Grant any further relief this Committee deems fair and just.

New Hampshire Supreme Court
Attorney Discipline Office
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
(603) 224-5828

DATED: January 12, 2018

By: _____


Sara S. Greene
Disciplinary Counsel

CERTIFICATION

I, Sara S. Greene, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that a copy of the aforesaid "Assented-to Motion to Impose Disbarment" is being sent on this 12 day of January 2018, to Zachary A. Cross at PO Box 470, Auburn, NH 03032 via regular mail, postage prepaid.



Sara S. Greene
Disciplinary Counsel



**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

In the Matter of Zachary A. Cross

LD-2014-0011

JOINT MEMORANDUM ON SANCTION

NOW COME Sara S. Greene, Disciplinary Counsel, and Donald L. Blaszka, Jr., Esquire, counsel for Zachary A. Cross, and respectfully request that the Professional Conduct Committee issue a three-year suspension with conditions as stated below.

A. Recommended Sanction

1. By Order dated January 20, 2016, the Committee requested a brief joint memorandum addressing the appropriateness of the proposed sanction in this case.
2. Mr. Cross violated Rule 8.4(b), prohibiting “criminal acts” by a lawyer that reflect adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer, when he pled guilty to:
 - 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.

3. These crimes constitute “serious crimes” pursuant to Rule 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.
4. The parties agree that Mr. Cross acted knowingly, that he violated his duty to the profession by committing crimes, and that his conduct caused injury by diminishing public confidence in the Bar and harming the integrity of the profession.
5. The American Bar Association’s *Standards for Imposing Lawyer Sanctions* (2005) (“*Standards*”) provide guidance in imposing lawyer discipline.
6. *Standard 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.” *Standard 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.”
7. Here, 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 personal use. Thus, *Standard 5.11(a)*, while instructive, is not a perfect match for Mr. Cross’ criminal plea.

8. *Standard* 5.12 is also instructive in this matter, as the official oppression plea was a misdemeanor and the felony possession was for simple possession. That *Standard* makes suspension the baseline sanction when a lawyer “knowingly engaged in criminal conduct which does not contain the elements listed in *Standard* 5.11 and that seriously adversely reflects on the lawyer’s fitness to practice.”
9. Given the language of *Standards* 5.11(a) and 5.12, the parties agree that either a baseline sanction of disbarment or suspension could be supported by the *Standards* as set forth above.
10. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g.*, *Conner’s Case*, 158 N.H. 299, 303 (2009).
11. In this case, the only aggravating factor is illegal conduct. *See Standards* § 9.22. Mitigating factors include absence of a prior disciplinary record, personal or emotional problems, full and free disclosure to the ADO and a cooperative attitude towards proceedings, inexperience in the practice of law, and remorse. *See Standards* § 9.32.
12. Mitigating factors outweigh aggravating factors and further support a suspension in this matter rather than a disbarment.
13. New Hampshire case law regarding Rule 8.4(b) violations is sparse. *Grew’s Case* involved a lawyer who was suspended for two years for violating Rules 8.4(b) and 8.4(c) when he committed insurance fraud. 156 N.H. 361 (2007). He pled guilty to a misdemeanor. *Id.* at 362. The Court found that Mr. Grew’s criminal conduct constituted a “serious

crime” under Rule 37(9)(b). *Id.* at 364. The Court applied *Standard 5.11* to determine that the baseline sanction was disbarment, finding that Mr. Grew’s conduct was intentional (the criminal statute on insurance fraud included intent as an element), but departed downward to reach a two year suspension based on mitigating circumstances. *Id.* at 366-67.

14. Case law from other jurisdictions addressing Rule 8.4(b) violations is instructive. *In re Musto* involved a lawyer who pled guilty to possession of heroin and cocaine as well as to conspiracy to distribute cocaine. 704 A.2d 6 (N.J. 1997). Mr. Musto also had a long history of drug use and had relapsed multiple times. *Id.* at 6-9. The New Jersey Supreme Court imposed a three-year suspension, retroactive to the date of Mr. Musto’s interim suspension.
15. In declining to impose a disbarment, the Court in *Musto* summarized the range of possible sanctions for drug related crimes. The Court noted that three to six month suspensions are generally appropriate for possessory crimes, but a longer suspension period of one year or more is appropriate where, in addition to possessing drugs, a lawyer engages in dishonest conduct such as forging prescriptions. *Id.* at 11. Disbarment is appropriate where, for example, an attorney “participated in a large-scale and prolonged criminal narcotics conspiracy” from which the attorney profited. *Id.* at 12.
16. Mr. Musto, the Court observed, “is not a one-time offender, nor is he a kingpin in a drug cartel . . . there has been no other ethical infraction in

- his career. Respondent's misconduct did not harm his clients." *Id.* at 13. "We are left short of the conclusion that respondent's ethical violations reflect a defect in professional character so grave as to require disbarment." *Id.* at 14. *See also In re Inglimo*, 740 N.W.2d 125 (Wisc. 2007) (three year suspension for drug use by lawyer with clients and supplying drugs to clients, trust account violations, and diligence violations).
17. Mr. Cross' conduct is not as severe as Mr. Musto's, most significantly because Mr. Cross was not engaged in distribution of drugs. Mr. Cross, however, abused his position of public trust as a prosecutor by violating the law and engaging in misdemeanor official oppression.
18. In sum, Mr. Cross is a young lawyer with no disciplinary history who is addicted to drugs but recently completed in-patient treatment to deal with that problem. Mr. Cross moved in to a "sober house" in Boscawen, New Hampshire on or around January 31, 2016 where he will have a support system to assist him in his continued recovery. A lengthy contract with LAP, which contains rigorous drug testing and "meetings" requirements, as well as the use of a mentor and quarterly reports to the ADO, should serve the purposes of discipline in this case while providing Mr. Cross an opportunity to demonstrate a prolonged period of rehabilitation.

B. Request for Costs

19. Undersigned counsel requests that Mr. Cross be assessed the expenses

incurred by the Professional Conduct Committee in the investigation and prosecution of this matter. See N.H. Sup. Ct. R. 37(19).


C. Conclusion and Request for Relief

20. Mr. Cross has violated Rule 8.4(b) and 8.4(a) of the New Hampshire Rules of Professional Conduct.
21. Taking into consideration the four-part analysis recommended by the *Standards* and the purposes of attorney discipline in New Hampshire, the parties respectfully request that this Committee recommend a three-year suspension contingent upon the conditions set forth in the Joint Proposed Order filed simultaneously herewith.

Respectfully submitted,

New Hampshire Supreme Court
Attorney Discipline Office
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
(603) 224-5828

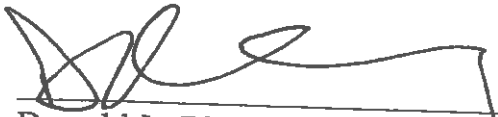
Dated: February 3, 2016

By: 
Sara S. Greene
Disciplinary Counsel

and

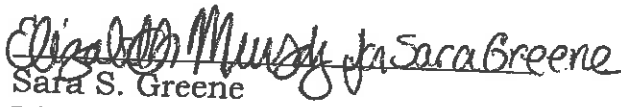
Germaine & Blaszka
23 Birch Street
Derry, NH 03038

Dated: February 5, 2016

By: 
Donald L. Blaszka, Jr., Esquire
Germaine & Blaszka, P.A.
Counsel for Zachary A. Cross

CERTIFICATION

I, Sara S. Greene, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that a copy of the aforesaid "Joint Memorandum on Sanction" is being sent on this 8th day of February 2016, to Donald L. Blaszka, Jr., Esquire, counsel for Zachary A. Cross, at Germaine & Blaszka, 23 Birch Street, Derry, NH 03038, by regular mail postage prepaid.


Sara S. Greene
Disciplinary Counsel



NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

In the Matter of Zachary A. Cross

LD-2014-0011

JOINT PROPOSED ORDER

On February 16, 2016, the Professional Conduct Committee (the "Committee") deliberated regarding the Supreme Court's remand on the issue of sanction in this matter.

After considering the oral argument held on January 19, 2016, and having reviewed the Joint Memorandum on Sanction filed by the parties, the Committee recommends a three-year suspension with conditions for violations of Rules 8.4(b) and 8.4(a). For the three year period of his suspension, Mr. Cross shall:

- (1) Comply with all conditions set forth in the Monitoring Agreement that he has signed with the New Hampshire Lawyer's Assistance Program, attached hereto as Exhibit 1;
- (2) Not engage in any further professional misconduct; and
- (3) Not engage in any further criminal conduct.¹

Reinstatement shall be conditioned on his full compliance with the terms of this Order, his payment of costs to the Committee, and such other requirements as are set forth in Rule 37(14).

In the event Mr. Cross violates any condition of the Monitoring Agreement, or any condition set forth in this order, he shall be disbarred. Mr. Cross agrees that should he wish to contest the issue of whether he violated a condition of his suspension, he may request the appointment of a Hearing

¹ The Committee notes that during oral argument on this matter, Attorney Blaszka disclosed that Mr. Cross had been recently arrested on a Domestic Violence related offense. The result of any prosecution relating to this event shall not constitute a violation of this Order or the Monitoring Agreement, as the alleged events preceded this Stipulated sanction.

Panel. At such hearing, Disciplinary Counsel must prove the violation of a condition by a preponderance of the evidence.

_____, 2016

David M. Rothstein
Chair

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



Monitoring Agreement

WHEREAS, the Monitored Attorney, Zachary Cross (the Attorney), has agreed that monitoring services be provided as set forth herein by New Hampshire Lawyers Assistance Program (NHLAP or the Program), in accordance with the recommendations and requirements of the New Hampshire Supreme Court Attorney Discipline Office (ADO) and the Program; and

WHEREAS, this Monitoring Agreement shall be in effect for three (3) years from the date of execution and shall automatically terminate after three years, unless the parties agree to extend the term; and

WHEREAS, this Agreement is governed by New Hampshire Supreme Court Rule 58.4 and 58.9 and shall remain confidential except insofar as required by the processes of the attorney discipline system or as agreed to by the Attorney;

NOW, THEREFORE, the Attorney, the Monitor and Supervisor agree as follows:

I. The Attorney agrees:

- (1) To remain abstinent from all alcohol and other mood-altering substances. This prohibition is not meant to apply to anti-depressants and mood stabilizers, when such drugs are prescribed by a licensed health care provider who is treating the Attorney or supervising such treatment. To remain abstinent from all medications that are classified as controlled substances or otherwise known to be drugs of abuse unless and such medications are approved by the Supervisor in consultation with an addiction psychiatrist chosen by NHLAP. The Monitored Attorney agrees to make known to the Supervisor all medications prescribed to him.
- (2) To attend Intensive Outpatient Treatment, following completion of in-patient treatment.
- (3) To abstain from taking over-the-counter medication that contains alcohol or mind or mood-altering substances.
- (4) To attend a structured recovery support group. He shall attend for the first three months of the contract, 90 meeting in 90 days. For the duration of the monitoring term, he shall attend at least four meetings per week. If required by the Supervisor, the Attorney must keep an attendance log of the time and date of each meeting attended. Attendance at Lawyers Concerned for Lawyers may suffice as one of the required meetings.

- (5) To submit to random alcohol and drug screenings. Screenings will be two times per month on a random basis. The purpose of drug testing is to document contract compliance in order to protect the client and the Program. The Attorney agrees to be present at a specified drug testing site for a random screening within six hours of any request and to fulfill the specimen requirements as soon as possible after arrival at the site.
- (6) To execute the attached Consent to Release of Information form and other similar forms intended to allow the flow of medical and other information between the personal health care providers providing services to the Attorney and the Monitor and Supervisor;
- (7) To advise personal health care providers and other relevant service providers of the terms of the Monitoring Agreement;
- (8) To take all other necessary action to facilitate the communications between the persons providing medical and other related services to the Attorney and the Monitor and Supervisor.
- (9) To contact his Monitor on a weekly basis, and to meet at least monthly in person with the Monitor, on a schedule to be determined by the Monitor and Attorney.
- (10) To notify the Monitor of changes of address or employment.
- (11) To immediately report arrests of any nature to his Monitor.
- (12) If leaving the area where he lives and/or practices (e.g., vacation, etc.) interferes with the terms of the Monitoring Agreement, to obtain consent from the Monitor before leaving.
- (13) To respond to contact made by the Monitor or Supervisor within 24 hours of receiving the contact, and to not avoid contact for any reason.
- (14) To communicate with honesty and without deceit at all times.
- (15) To comply with the terms of the Monitoring Agreement. Failure to comply with the terms of this agreement may be grounds for discharge from the Monitoring Program.
- (16) To agree herein that neither the Monitor nor the Supervisor nor the Lawyer Assistance Program, or its authorized volunteers and agents, are responsible for any act or omission by the Attorney with regard to the Monitoring Agreement.

II. The duties and responsibilities of the Monitor are:

- (1) To have regular and periodic contact with the Supervisor and if requested, to file written progress reports with the Supervisor.
- (2) To report to the Supervisor:
 - (a) Any arrest of the Attorney;
 - (b) Any drug or alcohol use by the Attorney;
 - (c) Any failure by the Attorney to comply with the terms of the Monitoring Agreement.

III. The duties and responsibilities of the Supervisor are:

- (1) Upon information that the Attorney has used alcohol or any other drug during the Monitoring Agreement term, the Supervisor, in consultation with the Monitor, may change the terms of the Agreement and require the Attorney to participate in detoxification, in-patient rehabilitation or an outpatient intensive treatment program or to take other appropriate action.
- (2) To report quarterly to the New Hampshire Attorney Discipline Office (ADO) regarding compliance by the Attorney with the terms of the Monitoring Agreement.
- (3) To report any Monitoring Agreement violation to the ADO.
- (4) The Supervisor shall have sole discretion to determine whether any breach of the Contract by the Monitored Attorney shall result in termination from the Program.

Monitored Attorney	
Signature	
Address	
Phone Number & Email address	
Monitor	
Signature	
Address	

Phone Number & Email address	
Supervisor	Cecile B. Hartigan
Signature	
Address	2 ½ Beacon Street, Concord, NH 03301
Phone Number & Email address	877-224-6060; 603-491-0282 (c) cecieh@lapnh.org

Dated: 2/11/16


Zachary Cross (Monitored Attorney)


Dated: 2/11/16


Wayne Coull (Monitor)

Dated: 2/1/16


Cecile Hartigan, Director, LAP (Supervisor)

Dated: 2/13/16


Sara S. Greene, Esq., Disciplinary Counsel

Dated: 02/05/16


Don Blaszk, Esq., Attorney for Mr. Cross

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

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

ASSENTED-TO
REQUEST FOR PROTECTIVE ORDER

NOW COMES Sara S. Greene, Disciplinary Counsel, and respectfully requests that a Protective Order be issued in the above captioned matter.

In support thereof, Disciplinary Counsel states as follows:

1. In February 2016, Disciplinary Counsel and counsel for Zachary A. Cross signed a Joint Memorandum on Sanction recommending a three-year suspension contingent on the satisfaction of conditions set forth in the Joint Proposed Order.
2. The Joint Proposed Order was approved by the PCC on March 25, 2016.
3. As set forth in the parties Assented-to Motion to Impose Disbarment, Mr. Cross violated the conditions of his three-year suspension by using opioids, and he agrees he should be disbarred.
4. The most recent Quarterly Report, submitted on December 13, 2017, and attached to the Motion to Impose Disbarment as Exhibit

4, discloses medical and other personal information which the parties agree should remain confidential and sealed from the public file. The Motion to Impose Disbarment sets forth the material facts leading to Mr. Cross's disbarment. The Motion itself thus serves the purposes of public access to disciplinary files.

5. The parties make this request pursuant to Rule 37(20)(g).

WHEREFORE, Disciplinary Counsel and Mr. Cross respectfully request that the Professional Conduct Committee grant the following relief:

- (A) Grant the Protective Order Sealing Exhibit 4 to the Assented-to Motion to Impose Disbarment (Cecile B. Hartigan's December 2017 Quarterly Report); and
- (B) Grant such other relief as is fair and in the public interest.

Respectfully Submitted,

New Hampshire Supreme Court
Attorney Discipline Office
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
(603) 224-5828

DATED: 1-12-18

By: _____


Sara S. Greene
Disciplinary Counsel

CERTIFICATION

I, Sara S. Greene, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that a copy of the aforesaid "Assented-to Request for Protective Order" is being sent on this 12 day of January 2018, to Zachary A. Cross at PO Box 470, Auburn, NH 03032, via regular mail, postage prepaid.



Sara S. Greene
Disciplinary Counsel