

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
Ronald K. Ace*
Kathleen M. Ames*
Peter G. Beeson
Margaret R. Kerouac

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

Caroline K. Leonard
Mona T. Movafaghi
Georges J. Roy*
Martha Van Oot
Daniel E. Will
* non attorney member
Barbara J. Guay, Legal Assistant

Wellman-Ally, Lisa A. advs. Attorney Discipline Office - #18-027

PUBLIC CENSURE AND ORDER ON COSTS

On December 11, 2018, 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**).

The Committee approved the facts as stipulated by clear and convincing evidence. It further found that Lisa A. Wellman-Ally’s conduct violated Rules of Professional Conduct 1.1; 1.3; 1.4; and 8.4(a), as stipulated.

The Committee also concluded that a Public Censure 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”).

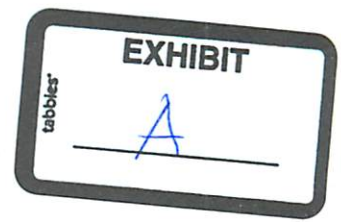
Having approved the stipulated sanction, the Committee approved the agreement that Lisa A. Wellman-Ally shall reimburse the Committee for all costs of investigation and prosecution of this matter.

December 11, 2018



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Lisa A. Wellman-Ally, Esquire
File



**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Wellman-Ally, Lisa A.

advs.

Attorney Discipline Office

#18-027

**STIPULATION AS TO FACTS, VIOLATIONS,
AND SANCTION: PUBLIC CENSURE**

Respondent Lisa A. Wellman-Ally, Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

A. Facts

1. Lisa A. Wellman-Ally is an attorney licensed to practice law in New Hampshire. Ms. Wellman-Ally was admitted to the New Hampshire Bar on October 28, 2002.
2. Ms. Wellman-Ally has also been admitted to practice law in Vermont (admitted on June 16, 2003) and in New York (admitted in 1990). She is currently on active status in both states.
3. At all times material to this proceeding, Ms. Wellman-Ally practiced law at Wellman-Ally Law, PLLC, 98 Charlestown Road, Suite 1, Claremont, NH 03743.
4. This matter was referred to the Attorney Discipline Office pursuant to Rule 8.3(a) (Reporting Professional Misconduct) by D. Chris McLaughlin,

Esquire. Mr. McLaughlin is the County Attorney for Cheshire County, New Hampshire. The referral arose from Ms. Wellman-Ally's representation of Melissa Ann Robinson for a violation of probation ("VOP").

5. On March 7, 2016, Melissa Ann Robinson was arrested for possession of a controlled drug (crack cocaine), a felony, and driving after revocation/suspension of her license, a violation. She ultimately pled guilty and was sentenced to confinement at the House of Corrections ("HOC") for a period of 12 months, all of which was suspended. Furthermore, Ms. Robinson was placed on probation for a period of three (3) years, starting on November 1, 2016.
6. On November 14, 2016, Ms. Robinson signed a document that set forth the terms and conditions of her probation. Among other things, Ms. Robinson was required to "report to the Probation/Parole Office at such times and places as directed" and to be of "good conduct."
7. In June 2017, Ms. Robinson was arrested and arraigned on charges that she violated the terms of her probation. On July 6, 2017, Ms. Robinson pled guilty to a violation of her probation and was sentenced to confinement at the HOC for a period of 180 days. However, Ms. Robinson was permitted to serve the remainder of the sentence (*i.e.*, 180 days minus credit for time served because of her incarceration for that time) on home confinement with electronic monitoring. Ms. Robinson's

term of probation was “stayed from December 21, 2016, through July 6, 2017.”

8. On or about July 17, 2017, Ms. Robinson violated the terms of her probation by changing her address without notifying a Probation/Parole Officer. On or about July 18, 2017, Ms. Robinson further violated the terms of her probation by removing her electronic monitoring bracelet and escaping from her home confinement.
9. On September 27, 2017, Ms. Wellman-Ally was appointed by the Court to represent Ms. Robinson. On October 18, 2017, Ms. Robinson pled guilty to violating the terms of her probation and was sentenced to confinement at the HOC for 180 days. Pursuant to the Sentence, the Court ordered that Ms. Robinson’s “probation [was] stayed during any periods of incarceration or absconding from supervision.” Nothing in the sentencing order provides that Ms. Robinson’s probation would be terminated upon her release from confinement.
10. On December 29, 2018, as the HOC was preparing to release Ms. Robinson early for good behavior, a case manager there, Doug Iosue, emailed Ms. Robinson’s Probation Officer, copying Ms. Wellman-Ally, as well as the prosecutor in Ms. Robinson’s case, Mr. McLaughlin. Mr. Iosue stated that a question arose to whether Ms. Robinson would still be on probation upon her upcoming release. Ms. Robinson had been adamant in her communications to Mr. Iosue that a term of her plea on her latest VOP was that her probation would terminate after she served

time at the HOC. Mr. Iosue further stated to the Probation Officer “I’ve copied her attorney (Lisa Wellman-Ally), as well as County Atty McLaughlin (who I understand prosecuted the case) in case their input becomes helpful to resolve the question.”

11. Mr. McLaughlin responded the same day, copying Ms. Wellman-Ally, and stated: “Per her sentence on the VOP [Docket No. 2016-CR-00231], her probation was stayed while incarcerated and during her period of absconding, and all prior orders not inconsistent with her original sentencing order are to remind in full force and effect. Her original sentencing order in 2016-CR-00231 placed her on probation and she will remain on probation upon her release from the CCHOC (Cheshire County House of Corrections).”
12. Ms. Wellman-Ally’s notes taken at the time Ms. Robinson entered her plea had a reference to “terminate probation,” and her recollection was that in fact such a provision was in fact part of the sentencing order. At the time of receiving Mr. Iosue’s December 29 email, however, Ms. Wellman-Ally did not reference the governing documents – the sentencing orders – to determine for certain whether this was the case.
13. Nonetheless, Ms. Wellman-Ally informed her client by phone that she was not on probation upon her release from HOC. Prior to her release, Mr. Iosue advised Ms. Robinson that according to the prosecutor and Ms. Robinson’s Probation Officer, she was in fact on probation upon release,

and told her that if she did not comply with probation requirements she was at risk.

14. On January 14, 2018, the House of Corrections released Ms. Robinson early for good behavior.
15. Thereafter, Ms. Robinson did not report to her probation officer in New Hampshire but instead moved to Vermont.
16. In February 2018, a warrant was issued after the Probation Officer filed a (third) VOP on Ms. Robinson for failing to report and absconding.
17. On April 25, 2018, Ms. Wellman-Ally filed a Motion to Withdraw as Ms. Robinson's attorney, which the Court granted on May 7, 2018.
18. Following a hearing on June 7, 2018 regarding the third VOP, Judge Ruoff issued an Order finding that Ms. Robinson had violated probation and ordering the clerk to schedule a sentencing hearing. His Order dated June 19, 2018, stated:

despite defense counsel's misfeasance and apparent inattentiveness during the plea colloquy and review of the sentencing orders, the defendant was at least on inquiry notice that she had to report to probation until she received clarification from the Court (as the attorney suggested to her may be required). (Underline in the original) The fact that her attorney did not take any initiative to fully resolve such an important issue is not a defense to the VOP in this case. (Footnote omitted).
19. At the sentencing hearing held before Judge Ruoff in July 2018, he ordered that Ms. Robinson receive "time served" and continue on probation. She remains on probation, and due to the third VOP she was incarcerated for 134 days.

B. Disciplinary Rules Violated

20. The parties agree that Ms. Wellman-Ally's conduct in this case involves violations of the New Hampshire Rules of Professional Conduct, as follows:

Rule 1.1: Competence

21. The facts set forth at ¶¶ 1-20 above are incorporated by reference.
22. Rule 1.1 states as follows:
- (a) A lawyer shall provide competent representation to a client.
 - (b) Legal competence requires at a minimum:
 - (1) specific knowledge about the fields of law in which the lawyer practices;
 - (2) performance of the techniques of practice with skill;
 - (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;
 - (4) proper preparation; and
 - (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.
 - (c) In the performance of client service, a lawyer shall at a minimum:
 - (1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;
 - (2) formulate the material issues raised, determine applicable law and identify alternative legal responses;
 - (3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and
 - (4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.
23. Ms. Wellman-Ally violated Rule 1.1 when she failed to carefully and immediately review the terms of Ms. Robinson's guilty plea and

sentencing so as to provide accurate information to her client. In failing to do this, Ms. Wellman-Ally failed to properly prepare and attend to the details of Ms. Robinson's matter and failed to undertake actions on her behalf in a timely and effective manner.

Rule 1.3: Diligence

- 24. The facts set forth at ¶¶ 1-23 above are incorporated by reference.
- 25. Rule 1.3 states as follows:

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

- 26. Ms. Wellman-Ally violated Rule 1.3 when she when she failed to carefully and immediately review the terms of Ms. Robinson's guilty plea and sentencing so as to provide accurate information to her client. In failing to do this, Ms. Wellman-Ally failed to properly prepare and attend to the details of Ms. Robinson's matter and failed to undertake actions on her behalf in a timely and effective manner.

Rule 1.4: Communication

- 27. The facts set forth at ¶¶ 1-26 above are incorporated by reference.
- 28. Rule 1.4 states as follows:

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter.

- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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

29. Ms. Wellman-Ally violated Rule 1.4 when she failed to keep Ms. Robinson reasonably informed about the status of her matter by misinforming her about her probationary status upon her release from HOC.

Rule 8.4(a): General Rule

30. Having found the foregoing violations, there is clear and convincing evidence that Ms. Wellman-Ally's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

C. Recommended Sanction

31. The Attorney Discipline Office and Ms. Wellman-Ally jointly agree that a public censure is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
32. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
33. 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).

34. 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.
35. 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”).
36. Under the first prong of the analysis, Ms. Wellman-Ally violated duties owed to her client.

37. With respect to Ms. Wellman-Ally's mental state under the second prong of the sanction analysis, the parties agree that there are elements of both negligent and knowing states of mind. Ms. Wellman Ally's failure to review the pertinent sentencing orders, and to rely instead on her own memory or understanding of events during the plea negotiations and hearing as a basis for advising her client or HOC officials, was at a minimum negligent.
38. Ms. Wellman-Ally, however, also had an "awareness of attendant circumstances" (i.e. knowing state of mind) in that she was clearly on notice that the both the prosecutor's position, and Ms. Robinson's Probation Officer's position, was that Ms. Robinson was on probation after her release, something which a review of the sentencing orders would have confirmed. Ms. Wellman-Ally certainly should have known that under the circumstances, she was required to review those sentencing documents and unambiguously convey to her client the accurate information concerning her probation.
39. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Ms. Wellman-Ally's misconduct.
40. Ms. Wellman-Ally's conduct caused injury to her client. Her ethical failures contributed to her client's probation violation and later incarceration for the same (134 days).
41. The parties agree that the baseline sanction in this matter is a suspension. *See Standards* § 4.42(a).

42. Ms. Wellman-Ally's 1.3 and 1.4 rule violations implicate Section 4.4 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 a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

- (a) **a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or**
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 **Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.**

4.44 Admonition¹ is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

(emphasis added).

¹The 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.

43. Ms. Wellman-Ally's conduct in this matter, when considered under *Standard* 4.42(a), would call for a baseline sanction of suspension.

44. Ms. Wellman-Ally's 1.1. rule violation implicates Section 4.5 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 provide competent representation to a client:

4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

4.53 Reprimand is generally appropriate when a lawyer:

(a) **demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client;** or

(b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

4.54 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

(emphasis added).

45. Ms. Wellman-Ally's conduct in this matter, when considered under *Standard* 4.53(a), would call for at least a baseline sanction of a public censure. *Standard* 4.52, governing suspension as a baseline, does not

apply because Ms. Wellman-Ally did not engage in an area of practice in which she knew she was not competent. She has handled criminal defense cases since 2002, and in the last several years handles dozens of misdemeanors and felonies per year.

46. Considering all of the factors taken together, the parties agree that the baseline sanction is suspension given the mixed state of mind issues and the injury to the client.
47. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
48. In this case there is one aggravating factor present – Ms. Wellman-Ally's substantial experience in the practice of law. *See Standards* § 9.22.
49. Mitigating factors include absence of prior disciplinary record², absence of dishonest or selfish motive, full and free disclosure to the ADO and a cooperative attitude, remorse, and imposition of other penalties or sanctions. Specifically, as a result of this case the Judicial Council declined to renew Ms. Wellman-Ally's contract. This caused her to lose 90% of her criminal practice, and about \$35,000 a year. *See Standards* § 9.32.

² Ms. Wellman-Ally previously entered into a diversion agreement that was approved by the Professional Conduct Committee on November 8, 2014 in the matter of *Wellman-Ally, Lisa A. advs. Attorney Discipline Office*, #14-007. The matter was dismissed on December 8, 2015 based on Ms. Wellman-Ally's compliance with the terms of the diversion agreement.

50. Because the mitigating factors outweigh the aggravating factors, and there is no overlay of self-dealing or dishonesty in this matter, the parties agree a public censure serves the purposes of discipline.

D. Costs

51. Subject to the PCC's approval of Ms. Wellman-Ally's Stipulation, Ms. Wellman-Ally agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. See Supreme Court Rule 37(19). Her agreement to pay the costs incurred by the ADO is the subject of a separate agreement signed by Ms. Wellman-Ally.

E. Effect of Stipulation

52. Ms. Wellman-Ally 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).

53. Ms. Wellman-Ally acknowledges that the admissions of misconduct and the proposed disposition contained in this Stipulation are freely, knowingly, and voluntarily submitted; that she 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

54. Ms. Wellman-Ally understands that she has a right to obtain counsel regarding this Stipulation and, that she is fully aware of the consequences of the Stipulation.

55. Ms. Wellman-Ally knowingly and intelligently waives her right to a hearing.

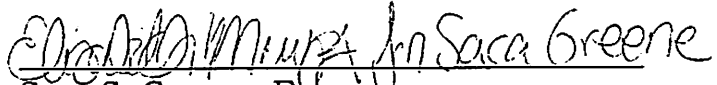
Respectfully submitted,

Dated: Nov 12 2018

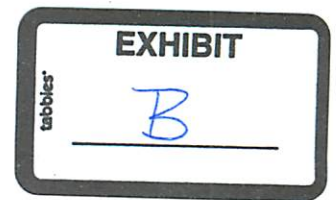


Lisa A. Wellman-Ally, Esquire
Respondent

Dated: 11/19 2018



Sara S. Greene, Esquire
Disciplinary Counsel



**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Wellman-Ally, Lisa A.

advs.

Attorney Discipline Office

#18-027

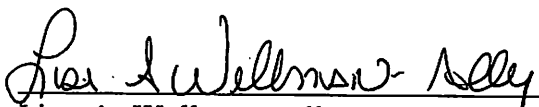
**AGREEMENT TO PAY COSTS
OF DISCIPLINARY MATTER**

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 November 9, 2018, I have been informed that the costs are approximately \$25.75. 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: Nov 12 2018



Lisa A. Wellman-Ally, Esquire
Respondent