

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Bruzga, Paul W. advs. Sandra Raymond # 07-058

SIX MONTH SUSPENSION

The Professional Conduct Committee (the "PCC") deliberated the above captioned matter following oral argument on May 18, 2010, with the following PCC members present: Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, David N. Cole, Thomas P. Connair, Alan J. Cronheim, Gerald A. Daley, Richard H. Darling, James R. Martin, and Jennifer L. Parent. Julie A. Introcaso was recused. Margaret H. Nelson, Chair, and Susan R. Chollet were absent.

At oral argument James L. Kruse, Assistant Disciplinary Counsel, presented for the Attorney Discipline Office, and David A. Horan, Esquire, presented for the Respondent. Attorney Bruzga was present. Ms. Parent disclosed that her employer, McLane, Graf, Raulerson and Middleton, represented Attorney Bruzga in a matter in the 1990s, but she was not involved in the case. There was no objection to her continued participation.

I. FINDINGS OF FACT

A Hearing Panel of the New Hampshire Supreme Court Hearings Committee held a hearing in this matter on October 14 and 15, 2009. In a Preliminary Report, the Hearing Panel made Findings of Fact that it found had been established by clear and convincing evidence. The PCC adopts the Hearing Panel's Findings of Fact, which follow:

On April 22, 2005, Steven Doherty filed a Petition for Guardian of Incapacitated Person in the Hillsborough County Probate Court, seeking appointment of himself as guardian for his brother George. George suffered a very serious head trauma that had left him largely incapacitated, in need of nursing care, and also in need of a guardian. Steven filed George's guardian petition pro se. On May 13, 2005, the Hillsborough County Probate Court appointed the Respondent to represent George's interests in the guardianship proceeding. The Respondent entered his appearance on May 15, 2006. Steven's sister, Sandra Raymond, objected to Steven's appointment. On May 17, 2005, the Probate Court appointed Steven temporary guardian of George and scheduled a hearing to determine whether Steven would be George's permanent guardian.

Around the time of Respondent's appointment, Steven Doherty first spoke to the Respondent concerning George's situation. Steven informed the Respondent that he had applied for Medicaid benefits on George's behalf. Medicaid is a State administered program that provides health and nursing care benefits, among other things, to those unable to afford them. Typically, an individual must exhaust his or her assets prior to becoming eligible for Medicaid assistance.

George had some personal funds. The Respondent, therefore, recommended the creation of a Special Needs Trust ("SNT") for George. An SNT is a trust into which a Medicaid recipient's assets can be placed, without jeopardizing Medicaid eligibility. Through the SNT, a Medicaid recipient may purchase items incident to the individual's care and comfort that Medicaid does not provide. The quid pro quo is that, as a matter of law, benefits must be repaid and an SNT must contain a clause requiring that any assets remaining in an SNT at the time of Medicaid benefits termination (often the individual's death) must be remitted to Medicaid to offset the cost to the state of the benefits received.

Attorney Discipline Counsel retained the services of John S. Kitchen, Esquire as an expert concerning SNTs. Attorney Kitchen has been involved with SNTs since 1978 and his involvement has occurred through all manner of factual scenarios. Attorney Kitchen testified that he typically represents the Medicaid recipient's family or guardian in preparing an SNT, and generally, no one represents the beneficiary with respect to the creation of an SNT. This is because an SNT is not an entitlement for the Medicaid recipient, but rather an arrangement that the trustee or proposed trustee determines whether to create and on what terms. Attorney Kitchen confirmed that he has never been in a situation in which he has simultaneously represented an SNT trustee and a beneficiary, and testified that, in that situation, his concern would be that he would not want to find himself on both sides of an SNT, though he stopped short of suggesting that to do so would contravene the professional conduct rules.

Though Respondent represented George, the proposed SNT beneficiary, he undertook to draft the SNT for Steven, who was to be the Trustee.¹ From that point forward, the Respondent provided advice and counsel to Steven, and billed Steven on a monthly basis for those services. As mentioned, Sandra filed a pleading in the Probate Court raising concerns about Steven serving as George's guardian. Sandra engaged Attorney Barbara Maloney to represent her. Some days prior to a Probate Court hearing on Sandra's pleading, Attorney Maloney provided Respondent with a draft proposed stipulation to resolve the guardianship issue. The Respondent initially purported to act only as the go-between for Steven and Attorney Maloney, and even emphasized to Steven, in a letter dated June 27, 2005, that he did not represent Steven. Id.

Respondent's conduct, however, belied that assertion. While at the Probate Court, in advance of the hearing, the Respondent and Attorney Maloney negotiated the final terms of the Stipulation, Respondent on Steven's behalf and Attorney Maloney on Sandra's behalf. Respondent ultimately signed the Stipulation (which had been prepared by Attorney Maloney) as Attorney for Steven Doherty. (See DO Ex. 18 (emphasis added)). During his testimony, Respondent stated that he signed the Stipulation in error, in that he failed to notice that it designated him as Attorney for Steven Doherty. Both Attorney Maloney and Steven Doherty unequivocally testified, however, that, by then, they believed Respondent represented Steven. Given the document, how it was negotiated, and the unequivocal testimony of Attorney Maloney and Steven, the Panel found that Respondent's conduct was sufficient to give rise to an understanding that he represented Steven.

George Doherty passed away on September 26, 2005. By that time, Steven had been appointed guardian (pursuant to the Stipulation Respondent negotiated) and was also Trustee of George's SNT. Respondent, whom the Probate Court had appointed to represent George, had no further responsibilities to George. Had he only represented George, the engagement should have concluded. Respondent, however, continued to advise Steven on a variety of issues, and to bill Steven as Trustee of the SNT for that advice. Respondent provided advice with respect to the Accounting required to be filed in the Probate Court concerning the SNT, as well as chronic friction between Steven and Sandra concerning the administration of the SNT and Steven's conduct as trustee of same. The Respondent testified that he repeatedly told Steven (though not in writing) that he did not represent him, yet he nonetheless continued to advise -- and bill -- Steven. To the extent the Respondent tried to minimize his conduct (Respondent testified, for example, that he did nothing other than transcribe Steven's handwritten notes into a typewritten Accounting which he filed with the Probate Court), the Panel found that Steven

¹ Attorney Kitchen testified that the SNT Respondent prepared was adequate, and, in particular, contained the Medicaid pay back provision.

believed the Respondent to be his lawyer and the Respondent, through his contact and billing, acted as such.

Steven confirmed in testimony that he believed the Respondent represented him, and that view was well corroborated. In one case, Steven responded to a request from Sandra for information in a letter that contained the statement "I believe this is about all you are entitled to at this point. Attorney Bruzga will inform me if I'm wrong." In another instance, Steven sent correspondence to the Respondent recounting the status of the issues with Sandra, and describing an Internal Revenue Service lien on George's assets. The letter contained the Respondent's handwritten notes reflecting that he would negotiate the lien with the Internal Revenue Service. In another instance, Steven wrote to the Respondent conveying figures to be included in the Accounting. In that letter, Steven requested Respondent's assistance (1) in the form of a short letter telling him what to write on a mistaken check for George's funeral, (2) concerning certain expenses he sought to charge to George's assets incurred by him as Trustee of the SNT, and (3) how he should divide the balance of the George's assets between him and Sandra. In yet another example, in response to correspondence from Sandra, Steven informed her that he had forwarded her letter to the Respondent. The Respondent's billing records reflect the advice and counsel he continued to provide to Steven.

As mentioned, all valid SNTs must contain a provision requiring the trustee to ensure repayment to Medicaid of any remaining SNT assets to offset the benefits the beneficiary received. Attorney Kitchen testified that standard practice (though not legal mandate) is to provide a copy of an SNT to the Medicaid office once the SNT is funded. Providing an SNT to the Medicaid office serves two functions. First, at that point the Medicaid office will generally advise the trustee of any concerns about the SNT itself. Second, the Medicaid office will then have a record of the SNT so that when the Medicaid benefits terminate, the Medicaid office will be advised of the need to seek payback from the remaining assets of the SNT at issue.

After George died, Respondent advised Steven concerning the winding up of George's affairs and disbursement of George's assets, all of which had been paid into the SNT. The Respondent knew his client, George, had been receiving Medicaid benefits, and knew of the SNT's and applicable law's Medicaid repayment obligation. Neither Respondent nor Steven had ever notified the Medicaid office of the existence of the SNT nor provided a copy to that office.

Steven testified that, through George's nursing home, he advised Medicaid of George's death. Both Steven and Respondent testified, however, that they did not receive a bill or other correspondence from the Medicaid authorities. Respondent advised Steven that, if Steven did not receive a bill, he could distribute the SNT

assets to Sandra and him.

After some months went by without hearing from Medicaid, Respondent helped Steven complete the final Accounting for George's SNT and file it in the Probate Court. The accounting made no provision for Medicaid repayment. Following a hearing on the Accounting, the Probate Court issued an Order which specifically requested "an explanation as to why the State of New Hampshire or any other public benefit authority that may have provided any benefits to the beneficiary of the Trust George Doherty was not reimbursed for any such benefits before final distribution of the Trust Estate" Respondent explained to the Probate Court that, having not heard further from the Medicaid office, the assets could be distributed without further concern, and the Probate Court accepted that explanation.

Attorney Kitchen testified that he has never encountered a situation in which he has not been able to get a response from the Medicaid office concerning the level of payback required from an SNT. To the contrary, Attorney Kitchen testified that the Medicaid office is usually prompt in requesting reimbursement from the SNT once benefits terminate. Attorney Kitchen testified that he has never been in a situation in which, upon the death of a Medicaid recipient, he has advised distribution of the SNT assets to the contingent beneficiaries without ascertaining the payback amounts from the Medicaid office. Attorney Kitchen unequivocally stated that he would not advise distribution of SNT assets until Medicaid had determined what reimbursement was required.

As mentioned, there is no question that Steven Doherty, through George's nursing home, advised the Medicaid office of George's death. There is also no question that the Respondent made no additional efforts to contact the Medicaid office, nor did he advise Steven Doherty to continue to do so. Instead, the Respondent advised Steven to simply wait to see whether he would hear from the Medicaid office. In this fashion, the Respondent advised Steven, as Trustee of the SNT, to disregard the mandates of the SNT and to violate applicable law. Attorney Kitchen emphasized that a Trustee's obligation is to do as the SNT directs. Attorney Kitchen also emphasized that he has never advised a Trustee to distribute the assets of an SNT without first receiving confirmation from Medicaid as to reimbursement requirements if any.

The New Hampshire Attorney General launched an investigation into George Doherty's SNT, and, in particular, the failure of the trustee to reimburse Medicaid upon George's death. In July 2006, as part of that investigation, the Medicaid Fraud Unit of the Attorney General (AG) sent correspondence to the Respondent and to Steven Doherty. A month later, Sandra filed a pleading entitled "Objection of Remainderman" in which she raised a number of issues concerning Steven's conduct as Trustee of the SNT. Respondent filed an Answer and Response to

Sandra's pleading, but Steven did not. Then, on September 20, 2006, a full year after George's death, Respondent filed a motion to withdraw as counsel to George Doherty. Respondent filed his motion to withdraw in both Probate actions pertaining to George -- Docket No. 2005-0845 (the guardian proceedings) and 2005-1739 (the SNT trustee accounting). Thereafter, Respondent continued to advise -- and bill -- Steven with regard to Sandra's complaints and the Attorney General's investigation.

The situation became more heated when, by pleading dated December 12, 2006, Sandra filed a motion to reopen the probate of George Doherty and to impose sanctions. Sandra's motion lodged several complaints about Steven and the Respondent concerning their handling of George's SNT. The Respondent objected to the motion and began to distance himself from Steven: Steven testified that he felt "hung out to dry" by the Respondent. Matters became yet more complicated on January 12, 2007, when the New Hampshire Attorney General also moved to reopen the Trustee's Accounting because Medicaid had not been reimbursed. In the end, both Sandra and Steven resolved the situation by agreeing to reimburse their shares of the assets in George's SNT. Sandra filed a Complaint with the Attorney Discipline Office and these proceedings ensued.

See PCC Record Tabs 14 and 17.

II. RULINGS OF LAW

Based on the above Findings of Fact, the PCC finds clear and convincing evidence that the following Rulings of Law, as made by the Hearing Panel, have been violated:

A. Rule 1.1(a)-(c): Competence

[T]he Respondent had an attorney-client relationship with both George Doherty and with Steven Doherty as Trustee of the SNT. The attorney-client relationship with Steven arose early on, when Respondent prepared the SNT, which, Attorney Kitchen testified is done on behalf of the Trustee of the SNT, and not the beneficiary. From that point, Respondent continued to advise Steven Doherty on a number of issues pertaining to the discharge of his duties as Trustee of the SNT and in connection with becoming George's guardian, including negotiating on Steven's behalf with Attorney Maloney (who represented Sandra).

While the Respondent, at some point in the relationship, may or may not have told Steven that he did not represent him, Steven certainly believed that the Respondent represented him. The Respondent's conduct in assisting with the Accounting, advising concerning disbursement of Trust assets, advising concerning disputes with Sandra, all show either the Respondent's assertions to be

false, or, at least, conduct pursuant to which any reasonable recipient of Respondent's advice would have assumed an attorney-client relationship. If Respondent did not represent Steven, then he had no reason to advise Steven at all and, in particular, to continue advising him and billing him after Steven became permanent guardian, much less after George died.

An attorney-client relationship arises "when (1) a person seeks assistance or advice from an attorney, (2) the advice or assistance sought pertains to matters within the attorney's professional competence, and (3) the attorney expressly or impliedly agrees to give or actually gives the desired advice or assistance." *In re: Wyatt's Case*, 2009 WL 2972511 at *10 (N.H. 2009). Steven sought advice from the Respondent within an area at least in which Respondent had held himself out to be competent, Respondent advised Steven -- and billed for that advice -- and Steven relied on it. This began with preparation of the SNT and negotiating the Stipulation with Attorney Maloney, and continued through most of 2006, even after Respondent filed his Withdrawal in the Probate Court. Notably, once Steven became George's permanent guardian, and certainly once George passed away, Respondent had no further work to do on George's behalf. Respondent's only continuing role could have been as counsel to Steven.

As Steven's attorney, the Respondent necessarily undertook the duty of competence set forth in Rule 1.1. In his initial work, the Respondent appears to have demonstrated competence. Attorney Kitchen confirmed that the Respondent's SNT was adequate. In advising Steven Doherty, however, that he could distribute the SNT assets without reimbursing Medicaid, Respondent evinced incompetence that placed Steven Doherty in the position of violating the terms of the Trust he had a fiduciary obligation to administer, violating the law, and, potentially, at risk of criminal liability. The Respondent's legal advice to Steven resulted in a Medicaid fraud investigation and subjected George's estate and its residual beneficiaries (Steven and Sandra) to financial loss.

The Panel concludes that the Disciplinary Office proved by clear and convincing evidence that the Respondent's conduct violated Rule 1.1(a)-(c).

B. Rule 1.7(b): Conflict of Interest

The Respondent compounded the lack of competent advice by allowing his relationship with Steven to become infected with a conflict of interest. At the point in time that the Medicaid Fraud Unit of the New Hampshire Attorney General corresponded with the Respondent concerning its investigation into George Doherty's SNT, the Respondent's interests became adverse to those of his client, Steven Doherty, because Respondent's own interests threatened to collide with Steven's. The Respondent's advice to Steven -- to distribute the SNT assets without reimbursing Medicaid -- lay at the heart of the Attorney General's

investigation. At no time did Respondent inform Steven Doherty of the conflict and his concomitant inability to continue to represent Steven Doherty. Instead, Respondent said nothing, continued sending bills to Steven, and eventually left Steven feeling “like he had been hung out to dry.” In October 2006, more than a year after George’s death, with no notice to Steven, as the fraud investigation began to intensify, Respondent filed a withdrawal in the Probate Court, yet he continued to advise Steven and to bill him for that advice.

Once the Attorney General commenced its investigation and moved to reopen George Doherty’s Probate Accounting, Respondent could not have reasonably believed that his representation of Steven would not be adversely affected by his conduct in defense and pursuant of his own interests. Respondent’s conduct confirms this conclusion.

The Panel finds that the Disciplinary Office proved by clear and convincing evidence that the Respondent violated Rule 1.7(b).

C. Rule 1.5(a): Illegal or Excessive Fees

At the commencement of the hearing, Disciplinary Counsel confirmed that its allegation of illegal or excessive fees charged did not pertain to the amounts the Respondent charged for services, but to the fact that the Respondent illegally charged for services at all once the conflict of interest arose. The Panel found that the Respondent continued to charge Steven Doherty as Trustee of the SNT for fees related to the Administration of the SNT even after the conflict arose in July, 2006. (DO Ex. 76). Those fees were charged in violation of Rule 1.5(a), and the Panel found that Disciplinary Office established this by clear and convincing evidence.

D. Rule 8.4(a): Misconduct

Because there exists clear and convincing evidence of violations of the aforementioned Rules, there is necessarily clear and convincing evidence of a violation of Rule 8.4(a).

III. ANALYSIS

Attorney Bruzga, who has practiced law in New Hampshire since 1978, has the following prior disciplinary record: a One Year Suspension in 2000, a Warning in 2006, and a Six Month Suspension Stayed for One Year with Conditions in 2010. Based on Attorney Bruzga’s prior record and the above Findings of Fact and Rulings of Law, the Hearing Panel recommended a six

month suspension, coupled with a requirement that Attorney Bruzga take and successfully complete an MPRE course and examination as a condition of reinstatement. Attorney Bruzga's counsel argued that Public Censure or, alternatively, a suspended six month suspension, was appropriate. Borrowing liberally from Assistant Disciplinary Counsel's Memorandum on Sanction, who concurs with the Hearing Panel that a six month suspension is appropriate, the PCC finds, for the following reasons, that a six month suspension with conditions of reinstatement is condign given the circumstances of this case.

The purpose of the New Hampshire Supreme Court's disciplinary power "is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *E.g., Conner's Case*, 158 N.H. 299, 303 (2009). Accordingly, any sanction that is imposed "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 American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) (the "*Standards*"), it looks to them for guidance. *Conner's Case*, 158 N.H. at 303. The *Standards* set forth a four part analysis 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*, 155 N.H. 613, 621 (2007)); *Standards* § 3.0.

The first three parts of the analysis create a framework for characterizing a respondent's misconduct and determining a baseline sanction. *Conner's Case*, 158 N.H. at 303. Following that determination the PCC looks to the final part of the analysis: the existence of any aggravating or mitigating factors and whether and to what extent they affect the baseline

sanction. *Id.* If multiple instances of misconduct occurred, the ABA recommends, and the New Hampshire Supreme Court has ruled, that the sanction imposed “should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct.” *Id.* (citing *Richmond’s Case*, 152 N.H. 155, 160 (2005)).

Considering the first prong of the analysis, Attorney Bruzga violated his duty of competence to his client, Steven Doherty, as Trustee of the SNT, in recommending that absent a bill from the State of New Hampshire he could distribute all of the SNT’s assets after George’s death without reimbursing Medicaid. Attorney Bruzga also violated his duty to avoid operating under a conflict of interest. A conflict between Attorney Bruzga and Steven emerged when the AG launched its investigation of possible fraud in connection with the handling and disbursement of assets in the SNT and moved to reopen the Trustee’s accounting to pursue reimbursement. Whether Attorney Bruzga’s advice to Steven regarding disbursement of SNT assets without reimbursing Medicaid was appropriate lay at the heart of the AG’s investigation. Notwithstanding this obvious conflict of interest with his client, Attorney Bruzga continued to advise Steven regarding the SNT and in connection with the AG’s investigation. Finally, Attorney Bruzga breached his duty not to charge illegal or excessive fees by continuing to charge Steven as Trustee of the SNT for fees relating to the administration of the SNT and the defense of the AG’s investigation even after his conflict of interest arose.

The second prong of the three-part analysis requires an assessment of Attorney Bruzga’s mental state. His mental state may be one of intent, knowledge, or negligence. As to the issue of incompetence, Attorney Bruzga claimed that he knew the law relating to SNTs and the

requirements for Medicaid reimbursement. Hearing Transcript (Tr.) 116, 124-25, 178, 251.

Attorney Bruzga knew that at the time of George's death, the SNT was required to reimburse Medicaid for benefits received by George. Attorney Bruzga was also aware of the State's claim for reimbursement before he completed and filed the Trustee's accounting and before Steven issued final checks from the SNT. ADO's Requests for Findings and Rulings (granted) Nos. 32-34, 54, 63.

Based on these facts, the Hearing Panel found and the PCC agrees that Attorney Bruzga "could not have reasonably believed that his representation of Steven would not be adversely affected by his conduct in defense and pursuant to his own interests." Attorney Bruzga must or should have known of the conflict that arose in this case, as it was obvious. *See Wyatt's Case*, 159 N.H. 285, (2009). Attorney Bruzga defends the charge on grounds that he never represented Steven and acted only as a go-between or scribe. However, the Panel found that his conduct "belied that assertion." Further, Attorney Bruzga's conduct in assisting Steven with the SNT accounting, advising Steven concerning disbursement of the SNT's assets, and advising Steven concerning disputes with Sandra Raymond, all "show either the Respondent's assertions to be false, or, at least, [that he engaged in] conduct pursuant to which any reasonable recipient of Respondent's advice would have assumed an attorney-client relationship." Hearing Panel Preliminary Report at 8. Similarly, Attorney Bruzga's charges for legal services when he must have known he was operating under a conflict of interest violate Rule 1.5.

The third prong of the analysis requires consideration of the actual or potential injury caused by Attorney Bruzga's misconduct. Attorney Bruzga's incompetent advice to his client counseling disbursement of the SNT's assets without reimbursing Medicaid placed Steven in the

position of violating the terms of the SNT, breaching his fiduciary duty, and violating the law, in turn causing him to become the target of a criminal investigation and a civil claim. Attorney Bruzga's conduct also caused harm to his attorney-client relationship with Steven and to the reputation and integrity of the legal profession when, after months of advising Steven and before the fraud investigation was resolved, Attorney Bruzga withdrew, causing Steven to feel as though he had been "hung out to dry." Finally, Attorney Bruzga's disinclination to acknowledge limits to his expertise and his apparent propensity to disregard an obvious conflict pose a danger to the public.

Turning to the *Standards*, the following provisions entitled "Lack of Competence" are applicable:

- 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 Reprimand² [public censure] 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 Admonition³ [reprimand] 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.

² Section 4.53 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

³ Section 4.54 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

Given Attorney Bruzga's professed expertise in the area of SNTs, his willingness to draft one for George's benefit, his willingness to advise Steven regarding administration of the SNT, his acknowledgment of the law requiring Medicaid reimbursement, and Attorney Kitchen's expert testimony, Attorney Bruzga is accountable for the consequences of his actions, which placed his client at risk of considerable harm.

As to Attorney Bruzga's breach of duty to avoid a conflict of interest with his client, the following sections of the *Standards* are applicable:

- 4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):
 - (a) engaged in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
- 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.
- 4.33 Reprimand [public censure] is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.
- 4:34 Admonition [reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

The Hearing Panel found by clear and convincing evidence that Attorney Bruzga had, despite his remonstrations otherwise, represented Steven at all relevant times. Attorney Bruzga's failure to acknowledge his role in representing Steven was deliberate, knowing, and disingenuous, and his failure to acknowledge the self-evident conflict constituted either a

knowing or, at best, a grossly negligent failure to competently represent his client. Accordingly, the appropriate baseline sanctions pursuant to the *Standards* are public censure or suspension.

The final step of the sanction analysis is to consider aggravating and mitigating factors. There are no mitigating factors in this case. Aggravating factors include Attorney Bruzga's prior disciplinary record, his refusal to acknowledge the wrongful nature of his conduct, and his substantial experience in the practice of law. *Standards* § 9.22.

Attorney Bruzga's prior disciplinary record is significant. In April 2000 the New Hampshire Supreme Court suspended Attorney Bruzga from practice for one year for pursuing a frivolous claim to harass and injure another and by "knowingly exaggerat[ing] facts and omit[ting] material detail regarding the events underlying his allegations to a point of perverting the truth." *Bruzga's Case*, 145 N.H. 62, 68-69 (2000). An analysis of *Bruzga's Case* reveals that aspects of Attorney Bruzga's behavior that the New Hampshire Supreme Court found particularly troubling—a lack of candor and disingenuousness to the point of misrepresentation—are repeated in this matter.

IV. CONCLUSION

Taking into consideration the above four-part *Standards* analysis, New Hampshire case law, and the purposes of attorney discipline in New Hampshire, the PCC finds that suspension is the appropriate sanction in this matter. Therefore, the PCC orders that Attorney Bruzga is suspended from the practice of law for a period of six months and required to take and successfully complete an MPRE course and examination as a condition of reinstatement. This order shall take effect on September 1, 2010. In connection with his suspension, Attorney Bruzga shall take the following actions:

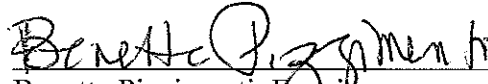
- a. Attorney Bruzga shall cease all practice of law on or before September 1, 2010. From the time Attorney Bruzga receives notice of this order until he closes his practice Attorney Bruzga shall not take on any new matters for new or existing clients.
- b. Attorney Bruzga shall comply with the provisions of Supreme Court Rule 37(13)(a) within fourteen calendar days of the date of the PCC's transmittal of this Order. In his written notice to clients Attorney Bruzga shall apprise his clients of their need to obtain new counsel, instruct them regarding the handling and transfer of their files, and make available to all clients being represented in pending matters all original file contents and other property to which they are entitled, calling attention to any urgency for obtaining the files or property.
- c. Within fourteen calendar days of the date of the PCC's transmittal of this Order Attorney Bruzga shall provide written notification of his suspension to all appropriate courts, agencies, and tribunals in which proceedings are pending, and to opposing counsel in all pending matters, withdraw from all pending proceedings, and resign effective September 1, 2010, from all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary.
- d. On or before thirty days of the date of the PCC's transmittal of this Order Attorney Bruzga shall:
 - (1) Provide the Attorney Discipline Office (ADO) with (i) copies of all notice letters issued to clients, opposing counsel, courts, and others pursuant to Paragraphs (b) and (c) above, (ii) a list of all open case files still in his

possession with a status report on each matter, (iii) a list of all firm and IOLTA accounts maintained by Attorney Bruzga as of the date of this Order, and (iv) a list of all state, federal, and administrative jurisdictions in which Attorney Bruzga is admitted to practice as of the date of this Order.

- (2) Return all client trust funds to the clients that entrusted Trust funds to him, and provide the ADO with a current bank statement for each institution at which client trust funds are held showing that all such accounts have zero balances.
 - (3) Surrender all case files and records in his possession to an attorney to be appointed by the New Hampshire Supreme Court to make an inventory of his remaining files and trust accounts pursuant to Supreme Court Rule 37(17).
 - (4) Provide the ADO with an affidavit pursuant to Supreme Court Rule 37(13)(d).
 - (5) Retain copies of all notice letters issued to clients, opposing counsel, courts, and others, and maintain complete and organized records of the steps taken by Attorney Bruzga to comply with the above requirements.
- e. Attorney Bruzga shall pay all costs associated with the investigation and prosecution of this matter and actions taken in connection with the surrender, inventory, and handling of his client files by assigned counsel.
- f. Provided that Attorney Bruzga has timely complied with each of the above requirements and paid all of the above referenced costs, Attorney Bruzga may

apply for reinstatement pursuant to Supreme Court Rule 37(14)(f) without further hearing before this Committee.

July 22, 2010


Benette Pizzimenti, Esquire
Vice Chair

Distribution:

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David A. Horan, Esquire
Paul W. Bruzga, Esquire
File

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Charles Doe Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by E-mail at the following address: reporter@courts.state.nh.us. Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: <http://www.courts.state.nh.us/supreme>.

THE SUPREME COURT OF NEW HAMPSHIRE

Professional Conduct Committee
No. LD-2010-012

BRUZGA'S CASE

Argued: March 17, 2011
Opinion Issued: May 12, 2011

James L. Kruse, assistant disciplinary counsel, of Concord, on the brief and orally, for the professional conduct committee.

David Horan, of Manchester, by brief and orally, for the respondent.

DUGGAN, J. The Supreme Court Professional Conduct Committee (PCC) filed a petition recommending that the respondent, Paul W. Bruzga, be suspended from the practice of law for six months. We agree and order Bruzga suspended for six months.

The record and the PCC's findings support the following facts. The violations at issue arise from Bruzga's representation of an incapacitated client, George Doherty, while also advising Doherty's brother, who served as Doherty's guardian and trustee of Doherty's special needs trust.

In April 2005, Steven Doherty (the brother) filed a petition in Hillsborough County Probate Court seeking appointment of himself as guardian for Doherty, who had suffered serious head trauma that left him legally incapacitated. Doherty's sister objected to the brother's appointment, but the court appointed him temporary guardian and scheduled a hearing to

determine permanent guardianship. The court appointed Bruzga to represent Doherty's interests in the guardianship proceeding. Around this time, the brother first spoke to Bruzga and told him that he had applied for Medicaid benefits on Doherty's behalf.

Because an individual typically must exhaust his personal funds prior to becoming eligible for Medicaid, Bruzga recommended the creation of a special needs trust (SNT), which protects an individual's assets without jeopardizing Medicaid eligibility. However, as a matter of law, the SNT must contain a clause providing that any assets remaining at the time of the recipient's death be repaid to Medicaid to offset the cost of benefits received.

Bruzga then drafted the SNT for the brother, who was named trustee. The PCC found that after drafting the SNT, Bruzga continued to provide advice and counsel to the brother and billed him on a monthly basis. Additionally, around this time, Bruzga and an attorney for the sister negotiated the final terms of a stipulation granting the brother guardianship over Doherty. Bruzga purported to act only as an intermediary between the sister's attorney and the brother and emphasized to the brother in a letter dated June 27, 2005, that he did not represent him. However, he signed the stipulation as "Attorney for Steven Doherty."

Doherty passed away in September 2005. Following Doherty's death, Bruzga advised the brother regarding the disbursement of the SNT. Bruzga knew that Doherty had received Medicaid benefits and also knew of the Medicaid repayment obligation. Nonetheless, neither Bruzga nor the brother ever notified Medicaid of the existence of the SNT or of Doherty's death. The brother testified that he attempted to notify Medicaid of Doherty's death through Doherty's nursing home, but never received a bill or other correspondence from Medicaid. Bruzga advised the brother that if he did not receive a bill, he could distribute the SNT assets to himself and the sister.

Several months passed and Medicaid did not seek reimbursement. Bruzga then helped the brother complete the final accounting for the SNT, which made no provision for Medicaid repayment. All disbursements, including payments to the brother and sister and attorney's fees were completed by June 27, 2006. A few days prior to these distributions, the New Hampshire Attorney General's Medicaid Fraud Unit (Medicaid Fraud Unit) had written to the brother and contacted Bruzga requesting records pertaining to Doherty's Medicaid benefits and an accounting of disbursements from the SNT. The brother conferred with Bruzga regarding this inquiry. Bruzga contacted the Medicaid Fraud Unit's Chief Investigator (the investigator) and left him a voicemail on June 21.

The investigator responded by letter dated July 13, which confirmed an earlier request for a copy of the SNT's most recent accounting and expressed

concern that Doherty had received Medicaid benefits without disclosing the SNT. Bruzga called the investigator the next day and told him that all funds from the SNT had been disbursed and that he was unaware of any bill or claim by the State for Medicaid reimbursement. He then continued to communicate with the investigator on behalf of the brother. Despite his knowledge regarding the State's ongoing investigation, Bruzga completed preparation of the final accounting for the SNT and filed it with the probate court on July 21. He subsequently billed the brother for legal services associated with the trustee accounting and disbursements from the SNT and communications with the investigator.

In August 2006, the sister filed an objection to the accounting, claiming that the brother had breached his fiduciary duty as trustee of the SNT and that Bruzga had received excessive fees. After the brother consulted with Bruzga about these issues, Bruzga filed an answer defending his own conduct. The brother did not file his own answer. Bruzga, in his answer, acknowledged that at the brother's request and with the permission of the court, he had prepared the final accounting.

Following a September hearing, the probate court issued an order that requested "an explanation as to why the State of New Hampshire, or any other public benefit authority, that may have provided any benefits to the beneficiary of the trust, George Doherty, was not reimburse [sic] for any such benefits, before final distribution of the trust estate." The brother then conferred with Bruzga regarding documents he needed to supply to the court and the investigator. Bruzga billed the brother for this advice. Based upon the advice he received from Bruzga, the brother represented to the court that the assets could be distributed because the Medicaid office had not contacted the brother. On October 17, the court conditionally approved the trustee accounting and accepted the brother's explanation regarding his failure to reimburse Medicaid.

Bruzga formally withdrew as Doherty's counsel on October 5, but continued to advise the brother regarding the probate court proceedings and the Medicaid Fraud Unit's investigation. He later sent an invoice to the brother, dated March 5, 2007, which included more than seventeen billable hours.

In November 2006, the Medicaid Fraud Unit formally demanded repayment from the brother and sister because the distributions they received from the SNT violated federal and state law. Bruzga reviewed this correspondence and billed the brother for his services. In December, the sister filed a motion to re-open Doherty's probate estate and impose sanctions against Bruzga and the brother. Bruzga again conferred with and billed the brother, but they both filed their own responsive pleadings. In his answer, Bruzga claimed that "[t]he Final Accounting information was provided by [the brother] and merely typed by . . . Bruzga."

Finally, in January 2007, the State filed a motion to re-open the trustee accounting, demanded Medicaid reimbursement and requested court review of Bruzga's and the brother's conduct. Bruzga conferred with and billed the brother, but they again filed their own responsive pleadings. The probate court subsequently held a structuring conference and ordered the State and the sister to file a summary of the proceedings in the case and the brother and Bruzga to file their responses. While Bruzga did not represent the brother at this conference, he also made no mention to the court of his potential conflict of interest. Bruzga filed his response in July and claimed that he only "type[d] [the brother's] numbers onto forms for the Court." Additionally, he sought leave to withdraw from the case. The brother and sister ultimately resolved the State's claim for reimbursement through mediation.

In June 2007, the sister filed a grievance concerning Bruzga's conduct with the Attorney Discipline Office (ADO). The ADO issued a notice of charges in May 2009, alleging violations of New Hampshire Rules of Professional Conduct (Rules) 1.1(a)-(c), 1.5(a), 1.7(b), 1.9(a), and 8.4(a). The ADO filed an amended notice of charges in August 2009, which omitted the alleged violation of Rule 1.9(a) and revised the factual allegations regarding the violation of Rule 1.7(b). The charges were heard by the PCC's Hearing Panel (Hearing Panel) in October 2009, which found by clear and convincing evidence that Bruzga violated Rules 1.1(a)-(c), 1.7(b), and 1.5(a), and recommended a six-month suspension. In July 2010, the PCC adopted the Hearing Panel's recommendation and also found that he violated Rule 8.4(a). Bruzga appealed.

In attorney discipline matters, we defer to the PCC's factual findings if supported by the record, but retain ultimate authority to determine whether, on the facts found, a violation of the rules governing attorney conduct has occurred and, if so, the sanction. Wyatt's Case, 159 N.H. 285, 297 (2009). The PCC's findings of violations of the Rules must be supported by clear and convincing evidence. Sup. Ct. R. 37A(III)(d)(2)(C).

I

We first consider whether Bruzga violated the Rules. Bruzga does not contest that he violated Rules 1.1(a)-(c) (competence) and 8.4(a) (misconduct), and therefore we need only consider whether he violated Rules 1.7(b) and 1.5(a).

At the relevant time, Rule 1.7(b) provided that:

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

- (1) the lawyer reasonably believes the representation will not be adversely affected; and
- (2) the client consents after consultation and with knowledge of the consequences.

N.H. R. Prof. Conduct 1.7(b) (amended 2007).

Bruzga first disputes that he represented the brother at all. We note that the PCC did not find that Bruzga violated Rule 1.7(b) by concurrently representing the brother, as trustee, and Doherty. The sole issue before us is whether Bruzga violated Rule 1.7(b) by representing the brother while they were both subjects of a Medicaid Fraud Unit probe. Accordingly, our inquiry focuses primarily upon Bruzga's relationship with the brother during the period of time after the Medicaid Fraud Unit first contacted them.

"An attorney-client relationship is created when (1) a person seeks advice or assistance from an attorney, (2) the advice or assistance sought pertains to matters within the attorney's professional competence, and (3) the attorney expressly or impliedly agrees to give or actually gives the desired advice or assistance." Wyatt's Case, 159 N.H. at 300 (quotation omitted).

The record supports the finding that Bruzga formed an attorney-client relationship with the brother. "Consultation with the intent of seeking legal advice is the fundamental basis of the attorney-client relationship." Id. at 301. "The manifestation of intent may be implied by surrounding circumstances or ratification of the attorney's actions." Id. In this case, the brother sought and received advice from Bruzga on numerous occasions, both before and after the Medicaid Fraud Unit launched its investigation.

In May 2005 Bruzga first suggested creating a SNT for Doherty's benefit. Over the course of the next two years, the brother solicited, received and was billed for advice from Bruzga regarding a variety of matters, including the stipulation granting the brother guardianship over Doherty, the sister's complaint about the brother's performance as trustee and the winding up of Doherty's affairs and disbursement of his assets.

Additionally, the brother continued to rely upon Bruzga for advice when the Medicaid Fraud Unit began its investigation in June 2006. From that point forward, the brother consulted with Bruzga numerous times regarding the failure to reimburse the State for Doherty's Medicaid benefits. For example, Bruzga billed the brother for services provided in September 2006, when the probate court requested an explanation regarding why the brother had not reimbursed the State for Doherty's Medicaid benefits; in November 2006, when the Medicaid Fraud Unit sent the brother correspondence demanding payment toward Doherty's Medicaid benefits; in December 2006, when the sister filed a motion to re-open Doherty's probate estate; and in January 2007, when the

State filed a “Motion to Reopen Trustee’s Accounting” and demanded Medicaid reimbursement. Moreover, despite formally withdrawing as Doherty’s counsel on October 5, 2006, Bruzga continued to bill the brother for “Special Needs Trust Issues” from October 6, 2006 through March 5, 2007, and did not request leave to withdraw from the case entirely until July 25, 2007. See Bilodeau v. Antal, 123 N.H. 39, 45 (1983) (stating that compensation may be evidence of practicing law in representative capacity).

The brother’s testimony confirms that he relied upon Bruzga for legal advice throughout the probate court proceedings and through most of the Medicaid Fraud Unit’s investigation. The brother testified that he “relied on [Bruzga’s] expertise in everything,” that he “used [Bruzga] as much as [he] could as for legal advice, and [that he] relied on his information,” and that, after Doherty died, Bruzga told him, “I will stay to the end, and I won’t let you go alone through the trial.” He also testified that he relied upon Bruzga for advice in responding to the Medicaid Fraud Unit. While the brother also testified that Bruzga repeatedly told him that he was not his attorney, this testimony referred only to the time period after December 2006, during which the brother felt “hung out to dry” because Bruzga “denied everything.”

Furthermore, to the extent that Bruzga argues that he merely acted as a “go-between” between the brother and sister or as a “scribe” to assist the brother with filling out court-related paperwork, we agree with the PCC that Bruzga’s conduct “belied that assertion.” Accordingly, we conclude, as did the PCC, that “any reasonable recipient of [the] [r]espondent’s advice would have assumed an attorney-client relationship.” (Quotation omitted.)

Bruzga next contends that providing some advice and counsel to the brother throughout the guardianship proceeding was permissible in light of Rule 1.14, which at the time provided that:

(a) When a client’s ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. The client’s impairment shall also be considered in determining the adequacy of consultation.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client’s own interest.

N.H. R. Prof. Conduct 1.14 (amended 2007).

Bruzga is incorrect in his assertion that Rule 1.14 applies to this case. The charged violation of Rule 1.7(b) related to his conduct following Doherty's death and his withdrawal as Doherty's counsel. Following Doherty's death, any shared interests between Bruzga, as Doherty's counsel, and the brother, as Doherty's guardian, dissipated and Rule 1.14 does not shield Bruzga from an ethical violation. Therefore, we conclude that representing the brother during the course of the Medicaid Fraud Unit's investigation was a conflict of interest that violated Rule 1.7(b) because both Bruzga and the brother were subjects of that investigation.

II

The PCC determined that Bruzga violated Rule 1.5(a) by charging the brother for legal services after a conflict of interest arose in July 2006. Bruzga acknowledges in his brief that whether he violated Rule 1.5(a) "rises or falls on the PCC decision as to whether or not the Hearing Panel could reasonably conclude that [he] had knowingly violated Rule 1.7(b)." Having concluded that Bruzga violated Rule 1.7(b), we also conclude that he violated Rule 1.5(a) because he continued to charge the brother legal fees long after the conflict of interest arose.

As noted above, Bruzga does not challenge the PCC's determination that he violated Rule 1.1(a)-(c). We agree that he violated Rule 1.1(a)-(c) because he breached the duty of competence by advising the brother that he could disburse the remaining SNT assets without reimbursing Medicaid. We note that the ADO did not charge Bruzga with a violation of Rule 1.2(d) (counseling a client to engage in "criminal or fraudulent" conduct).

III

Having concluded that Bruzga violated the Rules, we turn to the sanction. We retain the ultimate authority to determine the sanction for a violation of the rules governing attorney conduct. Wyatt's Case, 159 N.H. at 306.

"In deciding the appropriate sanction, we consider the case on its own facts and circumstances." Id. (quotation omitted). We look to the ABA Standards for Imposing Lawyer Sanctions (2005) (Standards) for guidance. Id. Under the Standards, we consider: (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.

We first consider Bruzga's breach of the duty of competence because we consider it to be his most serious violation. Bruzga failed to give competent legal advice in violation of Rule 1.1(a)-(c) by failing to advise the brother that he needed to reimburse Medicaid prior to disbursing Doherty's SNT. Not only did

Bruzga fail to advise the brother of the repayment requirement, but he affirmatively told the brother to disburse the corpus of the SNT without first contacting Medicaid.

We next review Bruzga's mental state at the time of the violation. The mental state may be one of intent, knowledge, or negligence. Conner's Case, 158 N.H. 299, 304 (2009). "What is relevant is the volitional nature of [Bruzga's] acts, and not the external pressures that could potentially have hindered his judgment." Id. (quotation and ellipsis omitted). We agree with the PCC that Bruzga knowingly violated the Rule because he knew that the SNT was required to reimburse Medicaid for benefits received by Doherty and was aware of the State's claim for reimbursement before he filed the trustee accounting. Bruzga competently prepared the SNT and included the required clause regarding Medicaid reimbursement. Nonetheless, despite his knowledge that Doherty received Medicaid benefits and that the State was entitled to reimbursement for those benefits, Bruzga inexplicably advised the brother to disburse the SNT's assets.

Next, we review the actual or potential injury caused by Bruzga's conduct. "The Standards define 'injury' as 'harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct.'" Id. (quotation omitted). Bruzga contends that his actions did not harm the brother because the brother and sister were both paid money that they never should have received. Contrary to Bruzga's narrow view of his actions, we agree with the PCC that Bruzga caused the brother to violate the terms of the SNT, breach his fiduciary duty, break the law, and become the subject of a criminal probe. Thus, Bruzga's conduct inflicted injury upon the brother.

Reviewing these factors, we conclude the baseline sanction to be suspension. Suspension is appropriate for a breach of the duty of competence "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." Standards, supra § 4.52. Public censure is appropriate if 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.

Id. § 4.53.

Bruzga contends that public censure is the baseline sanction for his breach. We acknowledge that Bruzga's course of conduct does not fit neatly into any of the proposed sanctions under the Standards. However, having

concluded that he knowingly breached the duty of competence, it is clear that his actions go beyond a mere “failure to understand relevant legal doctrines.” Bruzga understood the duty of an SNT trustee to reimburse Medicaid, yet knowingly advised the brother to ignore the requirement. In fact, Bruzga’s conduct was arguably more reprehensible than that required for a suspension because he was undoubtedly competent to handle matters related to an SNT, but still knowingly rendered incompetent advice. Accordingly, taking into consideration the purpose of attorney discipline and the guidelines for punishment set out by the Standards, we conclude that the baseline sanction for Bruzga’s breach of the duty of competence is suspension. See Coffey’s Case, 152 N.H. 503, 513 (2005) (describing the purpose of attorney discipline as protecting the public, maintaining public confidence in the bar, preserving the legal profession, and preventing similar conduct in the future); Wyatt’s Case, 159 N.H. at 306 (explaining that we look to the Standards for guidance).

Because we conclude that Bruzga’s most serious offense warrants a baseline sanction of suspension, we need not consider the baseline sanctions for his violations of Rules 1.5(a) and 1.7(b). However, we take these violations into account in determining the actual sanction to be imposed. See Wyatt’s Case, 159 N.H. at 306 (explaining that in the case of multiple misconduct charges, “the sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct” (quotation omitted)).

We next consider the effect of aggravating and mitigating factors upon the baseline sanction of suspension. The PCC identified the following aggravating factors: Bruzga’s prior disciplinary record, which includes a one-year suspension in 2000, a warning in 2006, and a six-month suspension stayed for one year with conditions in 2010, his refusal to acknowledge his wrongful conduct, and his substantial experience practicing law. See Standards, supra § 9.22 (a), (g), (i).

Bruzga disputes the PCC’s application of his prior disciplinary record and his refusal to acknowledge his wrongful conduct as aggravating factors. Although the facts underlying Bruzga’s 2000 suspension occurred in 1993, we agree with the PCC that his prior offense is relevant to the present conduct because Bruzga again showed a “lack of candor and disingenuousness to the point of misrepresentation.” See Bruzga’s Case, 145 N.H. 62, 71 (2000) (noting that Bruzga “engaged in semantical word play” to explain his actions during his discipline hearing). Additionally, while Bruzga was certainly entitled to contest the allegations against him, he has repeatedly sought to minimize his conduct by characterizing his relationship with the brother merely as that of a “go-between” or “scribe.”

Thus, we agree with the PCC's application of these aggravating factors. Bruzga continues to exhibit many of the same behaviors that troubled us in 2000 by refusing to accept any responsibility for his wrongful conduct. Moreover, not only has Bruzga engaged in a pattern of misconduct, resulting in four disciplinary proceedings against him since 2000, but he also committed multiple offenses with respect to the current disciplinary proceeding. See Wyatt's Case, 159 N.H. at 306 (in the case of multiple violations, the discipline imposed "might well be and generally should be greater than the sanction for the most serious misconduct" (quotation omitted)).

The PCC did not find any mitigating factors. Bruzga urges us to consider the absence of any dishonest or selfish motive, the delay in his disciplinary proceedings, and his cooperative attitude throughout the proceedings. See Standards, supra § 9.32 (b), (e), (j). Even taking these mitigating factors into account, we cannot ignore the totality of Bruzga's conduct and his continued refusal to accept any responsibility for his actions. As we noted with regard to his 2000 suspension, his actions again "raise[] a question as to the likelihood that he would modify his conduct in the future." Bruzga's Case, 145 N.H. at 72. Accordingly, we conclude, as did the PCC, that the proper sanction is a six-month suspension. The suspension begins upon the date that this order becomes final. We further order Bruzga to reimburse the committee for its expenses in investigating and prosecuting this matter, see Sup. Ct. R. 37(19)(a), and to comply with all other requirements in connection with his suspension as ordered by the PCC.

So ordered.

DALIANIS, C.J., and HICKS, CONBOY and LYNN, JJ., concurred.

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. LD-2010-0012, In the Matter of Paul W. Bruzga, the court on June 15, 2011, issued the following order:

Respondent's motion for reconsideration is denied. In accordance with Rule 24(1), the court's decision imposing a six-month suspension is now final. The six-month suspension imposed by the Professional Conduct Committee shall be considered to commence on this date.

The slip opinion dated May 12, 2011, is modified in the following two respects:

1. The first paragraph of the opinion is modified to state as follows:

The respondent, Paul W. Bruzga, appeals an order of the Supreme Court Professional Conduct Committee (PCC) suspending him from the practice of law for six months. We order that Bruzga be suspended for six months.

2. The third paragraph on page 4 of the slip opinion, which begins with the phrase "In attorney discipline matters," is modified to state as follows:

Because the parties do not argue for a different review standard in this appeal from a decision of the PCC, see Sup. Ct. R. 37(16)(g), than we apply when considering a petition for sanctions filed by the PCC, see Sup. Ct. R. 37(16)(e), we will assume, without deciding, that our usual standard of review applies. In attorney discipline matters, we defer to the PCC's factual findings if supported by the record, but retain ultimate authority to determine whether, on the facts found, a violation of the rules governing attorney conduct has occurred and, if so, the sanction. Wyatt's Case, 159 N.H. 285, 297 (2009). The PCC's findings of violations of the Rules must be supported by clear and convincing evidence. Sup. Ct. R. 37A(III)(d)(2)(C).

Slip opinion modified;
reconsideration denied.

Dalianis, C.J., and Duggan, Hicks, Conboy and Lynn, JJ., concurred.

Eileen Fox,
Clerk

Distribution:

Professional Conduct Committee

James L. Kruse, Esquire ✓

Paul W. Bruzga, Esquire

David A. Horan, Esquire

Attorney General's Office

File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

**In Case No. LD-2010-0012, In the Matter of Paul W. Bruzga,
the court on January 13, 2012, issued the following order:**

Attorney Paul W. Bruzga's motion for reinstatement to the practice of law is granted. Attorney Bruzga is reinstated to the practice of law effective immediately.

Dalianis, C.J., and Duggan, Hicks, Conboy and Lynn, JJ., concurred.

**Eileen Fox,
Clerk**

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