

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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

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Georges J. Roy\*  
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\* non attorney member  
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*Zimmer, Ethan P. advs. Attorney Discipline Office - #18-031*

**RE-ISSUED REPRIMAND AND ORDER ON COSTS**


On July 16, 2019, the Professional Conduct Committee (“the Committee”) deliberated the Resubmitted Stipulation as to Facts, Violations and Sanction: Reprimand (“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 Ethan P. Zimmer's conduct violated Rules of Professional Conduct 5.5 and 8.4(a), as stipulated.

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

Having approved the stipulated sanction, the Committee approved the agreement that Ethan P. Zimmer shall reimburse the Committee for all costs of investigation and prosecution of this matter.

July 19, 2019



David M. Rothstein  
Chair

cc: Andrea Q. Labonte, Assistant General Counsel  
Ethan P. Zimmer, Esquire  
File



**NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE**

Zimmer, Ethan P.

advs.

Attorney Discipline Office

#18-031

**STIPULATION AS TO FACTS, VIOLATIONS,  
AND SANCTION: REPRIMAND**

Respondent, Ethan P. Zimmer, Esquire and the Attorney Discipline Office (ADO), respectfully stipulate as follows:

**A. Facts**

1. Mr. Zimmer is an attorney licensed to practice law in New Hampshire.
2. Mr. Zimmer was admitted to practice in New Hampshire on December 18, 2012.
3. Mr. Zimmer was suspended from the practice of law in New Hampshire on May 26, 2016 for failure to pay annual bar dues pursuant to Supreme Court Rule 42A.
4. Mr. Zimmer was also admitted to practice law in Massachusetts on December 12, 2003. He was on retired status with the Massachusetts Bar at all times material to this proceeding.
5. In 2019, Mr. Zimmer reactivated to active status with the Massachusetts Bar.

6. Mr. Zimmer does not maintain a law office and had been pursuing another career path.
7. At all times material to this proceeding, Mr. Zimmer was suspended from the practice of law in New Hampshire.
8. Mr. Zimmer does not have a previous disciplinary history.
9. This disciplinary matter was initiated by a referral from Jason M. Sullivan, Esquire ("Mr. Sullivan"). Mr. Sullivan is an attorney licensed to practice law in New Hampshire and California.
10. By letter dated August 21, 2018, Mr. Sullivan reported to the ADO what he believed to be Mr. Zimmer's actions in engaging in the "unauthorized practice of law by a non-active Member of the NH Bar."
11. The ADO docketed the grievance on September 13, 2018 and the matter was referred to Disciplinary Counsel on October 12, 2018.
12. Mr. Sullivan represented Attitash Mountain Service Company, Inc. ("Attitash") in a dispute involving Attitash and Emma Jacobs ("Ms. Jacobs").
13. In an email dated August 15, 2018, Mr. Zimmer contacted Mr. Sullivan and stated as follows:

I have been consulted and retained by Ms. Jacobs in the [dispute involving Attitash and Ms. Jacobs]. Kindly forward all communications in this matter to me at the address below. It is my understanding that Ms. Jacobs has already asked for a copy of whatever time share agreement exists between her and Attitash Mountain Service Company, Inc....Neither you, nor your client has provided the same. Kindly forward a copy of said agreement to me as soon as is reasonably practicable. Kindly also provide me with an accounting of any and all sums you state are currently owed by Ms. Jacobs pursuant to said agreement. After reviewing the same,

I will contact you to discuss moving forward with this matter. It is my understanding that Ms. Jacobs has attempted on multiple occasions to pay for whatever amount is owed or past due and that your client has refused to accept her payment. It seems like this matter should be reasonably easy to address, provided everyone involved is reasonable. I do, however, reserve the right to assert a claim pursuant to G.L. c93A in Massachusetts, as well as the sister statute under the appropriate NH RSA section [RSA 358-A].

Very truly yours,

Ethan P. Zimmer, Esq.

14. Following receipt of the email, on August 15, 2018, Mr. Sullivan emailed Mr. Zimmer, asking him “Are you an attorney?” and, [i]f so, are you licensed in NH?” That evening, Mr. Zimmer emailed Mr. Sullivan, stating as follows:

[Y]es, [I]’m an attorney licensed in both MA and NH. My status is currently set to retired because I prefer to pursue my other business at the moment. But as you are aware, license status can be changed on the fly, and is a matter of a few hundred dollars. It is my intention to assist Ms. Jacobs on a relatively informal basis in this matter, unless it proves necessary to activate my license(s)....

Ethan Zimmer, Esq.  
[Massachusetts] BBO 658330

15. On August 21, 2018, Mr. Zimmer sent a third email to Mr. Sullivan, stating:

This is my final request for you to forward a copy of the alleged time share agreement that Ms. Jacobs has repeatedly requested to either her or myself. I expect a response from you one way or another....Professional courtesy requires that you provide me with your position in this matter at the very least. If I don’t hear from you, I will advise Ms. Jacobs to take further action, which will include filing a complaint with the Attorney General’s office, as well as you and your client with demand pursuant to the consumer protection statute....

I trust you will respond in a timely manner. But if I do not hear from you by tomorrow afternoon, I will advise Ms. Jacobs to move forward in order to protect her interests.

[V]ery truly yours,

Ethan P. Zimmer

16. In the third e-mail communication with Mr. Sullivan, Mr. Zimmer ceased adding "Esq." to his name.
17. There was no further e-mail communication from Mr. Zimmer to Mr. Sullivan after August 21, 2018.
18. There was no lawsuit pending between Attitash and Ms. Jacobs at the time of Mr. Zimmer's communication with Mr. Sullivan.
19. At the time of Mr. Zimmer's communication with Mr. Sullivan, Mr. Zimmer and Ms. Jacobs were engaged to be married.
20. Ms. Jacobs owns a time share interest in a condominium in North Conway, NH managed by Attitash.
21. The dispute arose between Ms. Jacobs and Attitash when she got behind in payments due to a loss in employment.
22. Ms. Jacobs knew that Mr. Zimmer's license in New Hampshire was suspended at the time of Mr. Zimmer's communication with Mr. Sullivan.
23. Mr. Zimmer did not charge Ms. Jacobs a fee for his communications with Mr. Sullivan.
24. In Mr. Zimmer's mandatory response to the ADO he apologized for his conduct and stated he was simply trying to help Ms. Jacobs. He stated

that “[i]t was not my intention to practice law, but to assist a family member in resolving a collections matter.”

25. Shortly after the e-mail correspondence between Mr. Zimmer and Mr. Sullivan, Ms. Jacobs resolved the matter by agreement with Attitash.

**B. Disciplinary Rules Violated**

26. The parties agree that Mr. Zimmer’s conduct in this case involves violation of the New Hampshire Rules of Professional Conduct as follows:

**Rule 5.5: Unauthorized Practice of Law**

27. Allegations set forth above are incorporated by reference.
28. Rule 5.5 states: “[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.”
29. On November 5, 2015, Mr. Zimmer was administratively suspended for the nonpayment of his New Hampshire Bar Association dues. See Sup. Ct. R. 42A (Non-payment of Court Fees and Bar Dues by an Attorney).
30. Because Mr. Zimmer is administratively suspended, absent reinstatement, he is prohibited from practicing law in New Hampshire. See Sup. Ct. R. 42A (requiring an administratively suspended attorney to petition for reinstatement).
31. Despite his administrative suspension, Mr. Zimmer’s email communications with Mr. Sullivan demonstrate that he was engaged in the practice of law in New Hampshire. Among other things, Mr. Zimmer communicated with Mr. Sullivan, a New Hampshire attorney, regarding a

legal dispute involving Mr. Sullivan's New Hampshire-based client.

According to Mr. Sullivan, to the extent that a lawsuit was filed, it would have been filed in New Hampshire.

32. In addition, in one of the emails, Mr. Zimmer represented that he had been "retained" by Ms. Jacobs, and in two emails he identified himself as "Ethan Zimmer, Esq."
33. The parties agree that there is clear and convincing evidence that Mr. Zimmer's conduct constitutes a violation of Rule 5.5.

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

34. Having found the foregoing violation, there is clear and convincing evidence that Mr. Zimmer's conduct, as described herein, violated Rule 8.4(a).

**C. Recommended Sanction**

35. The ADO and Mr. Zimmer jointly agree that a reprimand is the appropriate sanction in this matter. This sanction would serve the purpose of attorney discipline.
36. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
37. 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).

38. 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.
39. 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”).
40. Under the first prong of the analysis, Mr. Zimmer violated duties to the opposing party and to the legal system when he engaged in the practice of law in New Hampshire despite being administratively suspended pursuant to Supreme Court Rule 42A.

41. With respect to the second prong of the sanction analysis, mental state, Mr. Zimmer's conduct was negligent when he engaged in the practice of law through his email communications with Mr. Sullivan.
42. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Zimmer's misconduct.
43. Mr. Zimmer's conduct caused some inconvenience to Mr. Sullivan, who took the time to respond to Mr. Zimmer's communications and research Mr. Zimmer's license status. Ultimately, however, there was little to no actual or potential injury because Mr. Zimmer ceased communication with Mr. Sullivan quickly and nothing was pending in the Court at the time.
44. Mr. Zimmer's violation of Rule 5.5 and 8.4(a) implicate Section 7.0 of the *Standards*. That Section provides:
  - 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
  - 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public or the legal system.
  - 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to the client, the public or the legal system.

7.4 Admonition<sup>1</sup> [reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed to the profession, and causes little or no potential injury to a client, the public, or the legal system.

45. The parties agree that the baseline sanction for Mr. Zimmer's conduct is a reprimand. *See Standards* § 7.4.
46. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
47. In this case, there is one aggravating factor present: Mr. Zimmer's substantial experience in the practice of law. Specifically, he had been a lawyer (since 2003 in Massachusetts) for more than 14 years when the Rule violation occurred. *See Standards* § 9.22.
48. Mitigating factors include: 1) absence of a prior disciplinary record; 2) absence of a dishonest or selfish motive; 3) full and free disclosure to the ADO and cooperative attitude toward proceedings; and 4) remorse. *See Standards* § 9.32.
49. The parties agree that given the baseline sanction, and consideration of aggravating and mitigating circumstances, a reprimand serves the purposes of discipline and is an appropriate sanction in this case.

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<sup>1</sup> The term "admonition," as used in the *ABA Standards*, is analogous to a reprimand in New Hampshire. The term "reprimand," as used in the *ABA Standards*, is analogous to a public censure in New Hampshire.

**D. Costs**


50. Subject to the PCC's approval of Mr. Zimmer's Stipulation, Mr. Zimmer agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. See Sup. Ct. R. 37(19). The agreement to pay the costs incurred by the ADO is the subject of a separate agreement signed by Mr. Zimmer.

**E. Effect of Stipulation**


51. Mr. Zimmer 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).
52. Mr. Zimmer acknowledges that the admissions of misconduct and the proposed disposition contained in this Stipulation are freely, knowingly, and voluntarily submitted; that he is not entering this Stipulation as a result of any threats, coercion, or duress, or of any promises or inducements not set forth in the Stipulation; that he has had the opportunity to consult with counsel regarding this Stipulation and that he is fully aware of the consequences of the Stipulation.
53. Mr. Zimmer knowingly and intelligently waives his right to a hearing.

Respectfully submitted,

Dated: 7/2 2019

  
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Ethan P. Zimmer, Esquire  
Respondent

Dated: 7/8 2019

  
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Andrea Q. Labonte, Esquire  
Assistant General Counsel



**NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE**

Zimmer, Ethan P.

advs.

Attorney Discipline Office

#18-031

**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 May 2, 2019, I have been informed that the costs are approximately \$161.00. I understand that if the matter results in a sanction stronger than a Reprimand, there will be publication costs added to the above amount.
3. I am aware that the Professional Conduct Committee will not issue an invoice until the final disposition of this matter.
4. 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.

5. 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.
6. 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.
7. 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).
8. I also agree to be responsible for all costs incurred as a result of the Attorney Discipline Office's collection efforts.

Respectfully submitted,

Dated: 7/2 2019

  
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Ethan P. Zimmer, Esquire  
Respondent