

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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*Gaige, Stephen E. advs. Attorney Discipline Office - #19-016*

**REPRIMAND AND ORDER ON COSTS**


On September 17, 2019, the Professional Conduct Committee (“the Committee”) deliberated the Stipulation as to Facts, Violations and Sanction: Reprimand (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 Stephen E. Gaige’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).

Having approved the stipulated sanction, the Committee approved the agreement that Stephen E. Gaige shall reimburse the Committee for all costs of investigation and prosecution of this matter.

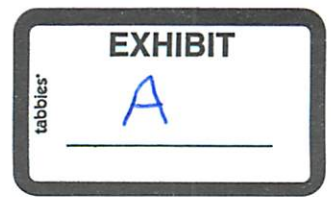
September 18, 2019



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David M. Rothstein  
Chair

cc: Sara S. Greene, Disciplinary Counsel  
Stephen E. Gaige, Esquire  
File



**NEW HAMPSHIRE SUPREME COURT**  
**PROFESSIONAL CONDUCT COMMITTEE**

Gaige, Stephen E.

advs.

Attorney Discipline Office

#19-016

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

Respondent Stephen E. Gaige, Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

**A. Facts**

1. Mr. Gaige is an attorney licensed to practice law in New Hampshire. Mr. Gaige was admitted to practice in 1979.
2. Mr. Gaige requested that the New Hampshire Bar place him on inactive status in May of 2017. He is currently on inactive status.
3. Mr. Gaige has not been admitted to practice law in any other jurisdiction.
4. Mr. Gaige had been employed at the Coolidge Law Firm until November 2016. He left that law firm on November 30, 2016 and now works at Stonewall Kitchen in Dover, New Hampshire.
5. Mr. Gaige does not have a previous disciplinary history.
6. This disciplinary matter was initiated by a referral dated July 9, 2019, submitted by Steven F. Hyde, Esquire.

7. Mr. Hyde became aware of Mr. Gaige's alleged misconduct through a professional acquaintance, Barbara Shiembob. Ms. Shiembob is a real estate agent who was working with Helen and Constantine Phofolos (the "Phofoloses").
8. The Phofoloses own property located at 136 Broadway in Dover, New Hampshire. On July 8, 2019, Ms. Shiembob forwarded to Mr. Hyde a copy of correspondence dated June 19, 2019, from Stephen E. Gaige to the Phofoloses. Ms. Shiembob was concerned because she believed Mr. Gaige to be a disbarred attorney.
9. Mr. Hyde reviewed the New Hampshire Bar Association's ("NHBA") website, as well as contacted the NHBA directly, and confirmed that Mr. Hyde was on inactive status and had not been disbarred. Mr. Hyde also learned that Mr. Gaige had been on inactive status since May 23, 2017.
10. Mr. Gaige's correspondence to the Phofoloses stated, in relevant part:

Stephen E. Gaige

Attorney at Law

June 19, 2019

Dear Helen and Costas ----SENT BY CERTIFIED MAIL

Please be advised that I represent your neighbors at 134 Broadway and they have engaged my services to address and correct the longstanding problems with your retaining wall being on their property and the failure to replace the privacy fence you removed when you put up the new garage. Your neighbors have been more than patient waiting for you to address these

concerns. They have sustained property damage including motor vehicles. . . .

My clients are prepared to take any and all measures to ensure the retaining wall and fence issues are dealt with immediately.

If you wish to discuss this matter with me, please call at 603-742-3491.

Very truly yours,

Stephen E. Gaige, Esq

11. After sending the letter on behalf of his clients, Mr. Gaige did no further work for them. He did not request or receive any legal fee. Mr. Gaige informed his clients that if the matter went any further, he did not intend to represent them in filing a lawsuit but rather would refer them to another attorney, as Mr. Gaige was no longer practicing law.
12. This matter was docketed on July 11, 2019, and forwarded to Disciplinary Counsel for formal proceedings on August 5, 2019.
13. Article II, Section 3 of the New Hampshire Bar Association's Constitution ("NHBA Constitution") is clear that inactive members of the bar cannot practice law in New Hampshire: "No inactive member shall be entitled to practice law in this State...."
14. Section 4 of the NHBA Constitution also states, in relevant part: "...no person other than an active member of this Association shall practice law in this State or in any manner hold himself or herself out as authorized or qualified to practice law in this State."

15. Mr. Gaige admits that sending the letter to the Phofoloses violated Rule 5.5 prohibiting the unauthorized practice of law. At the time of sending the letter, however, he did not understand that an “inactive” status meant he could not practice law. He has expressed remorse and accountability regarding his negligence in this respect.
16. Mr. Gaige has practiced law for nearly 40 years without discipline.

### **B. Disciplinary Rules Violated**

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

#### **Rule 5.5: Unauthorized Practice of Law**

18. The facts set forth at ¶¶ 17 above are incorporated by reference.
19. Rule 5.5(a) 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.”
20. On May 23, 2017, Mr. Gaige's status was changed to inactive. Because Mr. Gaige is on inactive status, he is prohibited from practicing law in New Hampshire.
21. Mr. Gaige's letter to Mr. and Mrs. Phofolos stated that their neighbors had engaged his services and referred to them as clients. In his letter he advocated a position for his clients and threatened to take legal action on their behalf. He signed the letter “Esq.” and sent the letter on paper that states “Stephen E. Gaige, Attorney at Law.”

22. Mr. Gaige's actions constitute the practice of law in New Hampshire and violate Rule 5.5(a).

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

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

**C. Recommended Sanction**

24. The Attorney Discipline Office and Mr. Gaige jointly agree that a reprimand is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
25. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
26. 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).
27. 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.

28. 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”).
29. Under the first prong of the analysis, Mr. Gaige violated duties owed to the legal profession.
30. With respect to Mr. Gaige’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Gaige’s mental state was negligent.
31. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Gaige’s misconduct.
32. Mr. Gaige’s conduct did not cause any actual injury, and was an isolated incident that Mr. Gaige promptly recognized was his error.
33. The parties agree that the baseline sanction in this matter is a a reprimand. *See Standards* § 7.4.

34. Mr. Gaige's 5.5 rule violation implicates Section 7.0 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 false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, **unauthorized practice of law**, improper withdrawal from representation, or failure to report professional misconduct.

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional 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 as a professional 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 as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition<sup>1</sup> is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.**

(emphasis added).

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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.

35. Mr. Gaige's conduct in this matter, when considered under *Standard 7.4*, would call for a baseline sanction of a reprimand.
36. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
37. In this case there is one aggravating factor present: Mr. Gaige's substantial experience in the practice of law. *See Standards § 9.22*.
38. Mitigating factors include absence of a prior discipline record, absence of a selfish or dishonest motive, full and free disclosure to the ADO, and remorse. *See Standards § 9.32*.
39. 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.
40. This sanction is proportional to discipline imposed in other cases involving breaches of Rules 5.5. Most recently, this Committee rejected a diversion, but approved a reprimand, in *Zimmer, Ethan P. advs. ADO*, #18-031 (July 19, 2019).

#### **D. Costs**

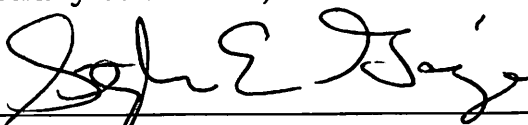
41. Subject to the PCC's approval of Mr. Gaige's Stipulation, Mr. Gaige agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. *See Supreme Court Rule 37(19)*. His agreement to pay the costs incurred by the ADO is the subject of a separate agreement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

### **E. Effect of Stipulation**

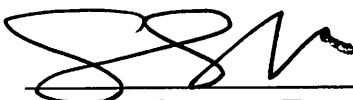
42. Mr. Gaige understands that this Stipulation represents a recommended disposition, and that the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).
43. Mr. Gaige acknowledges that the admissions of misconduct and the proposed disposition contained in this 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
44. Mr. Gaige understands that he has a right to obtain counsel regarding this Stipulation and, that he is fully aware of the consequences of the Stipulation.
45. Mr. Gaige knowingly and intelligently waives his right to a hearing.

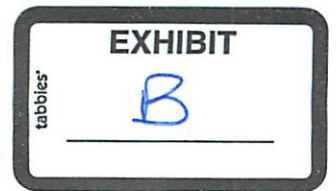
Respectfully submitted,

Dated: 8/25, 2019

  
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Stephen E. Gaige, Esquire  
Respondent

Dated: 8/27 2019

  
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Sara S. Greene, Esquire  
Disciplinary Counsel



**NEW HAMPSHIRE SUPREME COURT**  
**PROFESSIONAL CONDUCT COMMITTEE**

Gaige, Stephen E.

advs.

Attorney Discipline Office

#19-016

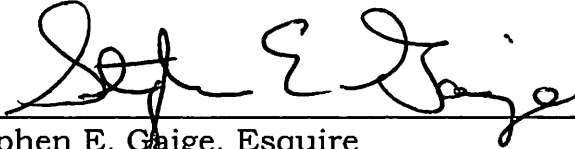
**AGREEMENT TO PAY COSTS**  
**OF DISCIPLINARY MATTER**

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 August 21, 2019, I have been informed that the costs in this disciplinary matter are under \$50. I understand that if the matter results in a sanction, there could 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 in this matter, and will not invoice me if costs do not exceed \$50.

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: 8/25 2019

  
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Stephen E. Gaige, Esquire  
Respondent