

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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*White, Stephen A.S. advs. Attorney Discipline Office - #15-044*

**PUBLIC CENSURE AND ORDER ON COSTS**


On December 10, 2019, the Professional Conduct Committee (“the Committee”) deliberated the Record which included 19 tabbed entries. The Committee reviewed Hearing Panel Reports.

The Committee approved the facts as found by the Hearing Panel by clear and convincing evidence. It further found that Stephen A.S. White’s conduct violated Rules of Professional Conduct 1.1 and 8.4(a).

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

Having approved the Hearing Panel Reports, Stephen A.S. White shall reimburse the Committee for costs of investigation and prosecution. He shall, however, be liable for only costs accrued before May 15, 2019.

December 12, 2019



David M. Rothstein  
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel  
Stephen A.S. White, Esquire  
File

WHITE, STEPHEN

Advs.

ATTORNEY DISCIPLINE OFFICE – No. 15-044 (REMAND)

**HEARING PANEL REPORT**

On May 17, 2019 A hearing panel was appointed to hear the above docketed matter on remand from the Professional Conduct Committee (hereinafter "PCC") regarding appropriate sanctions to be imposed. This "sanctions only" hearing was the result of an October 15, 2018 order from the PCC finding the respondent had, by clear and convincing evidence, violated Rules 1.1 and 8.4(a). The hearing panel was comprised of Stephanie C. Hausman, Esquire, Chair; Andrew F. Cotrupi, Esquire, Reporter; Michael J. Iacopino, Esquire; Leonard Gerzon; and Robert Dabrowski.

The panel convened on October 11, 2019 at the Attorney Discipline Office, 4 Chenell Drive, Concord, New Hampshire. The respondent, Attorney Stephen White, appeared as well as three witnesses' on his behalf: Attorney Peter J. Mathieu, Attorney Hamilton R. Krans, and Attorney Anthony T. Coraine. The Attorney Discipline Office was represented by Attorney Elizabeth M. Murphy.

At the commencement of the hearing, Assistant Disciplinary Counsel presented Exhibits 1 – 11, which had been previously provided to the respondent and the panel members. Pursuant to the June 11, 2019 case management order, as well as Supreme Court Rule 37-A(3)(B)(6)(b)(VII), the ADO's exhibits shall be deemed stipulated exhibits and were admitted into evidence. Assistant Disciplinary Counsel elicited the testimony of the respondent, Stephen White, who offered sworn testimony to the facts and circumstances as alleged in the October 15, 2018 order of the Professional Conduct Committee. Mr. White's testimony was consistent with the ADO's exhibits, confirming Mr. White had been found to have violated Rules 1.1 and 8.4(a) as articulated by the PCC at pages 5 – 7 of its October 15, 2018 order.(hereinafter "Order")

The ADO recommended the sanction of a public censure as well as a recommendation that Mr. White be ordered to pay the costs incurred by the ADO in investigating and enforcement of this disciplinary matter pursuant to Supreme Court Rule 37(19). Respondent, Stephen White, joined in the ADO's recommendation regarding both the sanction as well as the order to pay the cost incurred by the ADO and offered the testimony of the three witnesses noted *supra*. These witnesses testified regarding their knowledge of the Respondent in both a professional and personal capacity in excess of 20 years, in one instance having known him in excess of 40 years. These witnesses primarily testified regarding Respondent's exceptional character

relative to activities within the Bar, willingness to help others and support of various family members.

The panel considered the appropriate sanction for the established violation of the rules of professional conduct articulated in the PCC's Order. In the first instance, the panel considered the findings of the PCC and established violations without the recommendations of either the ADO or the Respondent. Separately, the panel conducted a sanction analysis with input of both the ADO and the Respondent and evidence and argument submitted in support thereof. Under both analyses the panel agrees to the recommendations of both the ADO and the Respondent that the sanction of a public censure as well as the requirement for reimbursement of fees and costs is the appropriate sanction.

It is well settled that the purpose of the attorney disciplinary system is to "protect the public, maintain public confidence of 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 misconduct" Coffey's Case, 152 N.H. 503, 513 (2005). Whether or not adopting the American Bar Association's standards for imposing lawyer sanctions (1992) (hereinafter "standards"), see O-Meara's Case, 164 N.H. 170, 179 (2012); the panel looks to them for guidance.

As articulated in the ADO's memorandum, the standards provide consideration of four areas: 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. The first three factors lead to a baseline sanction and the panel considers whether to depart from the baseline based on aggravating or mitigating factors. Id.

There is no dispute that the Respondent violated the duty he owed as a professional for his failure to properly present, argue, and potentially preserve for appeal, his client's case. This failure of competence had the potential of harm regarding his clients certification as an habitual offender and the difficulties that certification status entails.

With respect to the Respondent's mental state under the second prong of the analysis, the panel agrees that the Respondent's mental state was negligence in that he failed to properly present and preserve his client's legal issue as found by the PCC. see Order at 5 - 7. As noted by the ADO in dismissing the Rule 3.1 violation, the PCC found that "Mr. White's mens rea argument, while never asserted or developed, was held 'in good faith at the time he filed the motion to vacate". Although held in "good faith" arguments not properly presented or preserved are of little help to the client, and fall below the level of competence reasonably expected of an attorney, particularly one of

the Respondent's years of experience. The Panel does not find intentional or purposeful conduct is supported by the record.

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by the Respondent's misconduct. The PCC noted that the injuries "caused to Mr. Bowie's by Mr. White's inadequate performance" included "the adverse rulings on Mr. White's motion to vacate and the failure to create a record on which an appeal might have been based." Order, page 6. The panel found no other injury or potential injury to his client beyond that found by the PCC. The Respondent's client soon accumulated a further conviction satisfying the requirements to be certified as a Habitual Offender, independent of the conviction that gave rise to this case. The panel found no further actual prejudice to Mr. White's client. Any potential injury would require speculation, not supported by the record.

Mr. White's Rule 1.1 violation implicates § 4.5 of the Standards which articulates the various forms of sanctions appropriate dependent on the violation. It was the unanimous view of the panel that both disbarment or suspension were not warranted based on the facts and circumstances of this case. The bulk of the analysis centered around the panel's view of whether or not a public censure reprimand or an admonition would be appropriate. The panel found that the Respondent's conduct, when considered under standard 4.5 calls for a baseline sanction of public censure with the remaining analysis considered in light of any aggravating and mitigating factors. See, e.g. Conner's Case, 158 N.H. at 303.

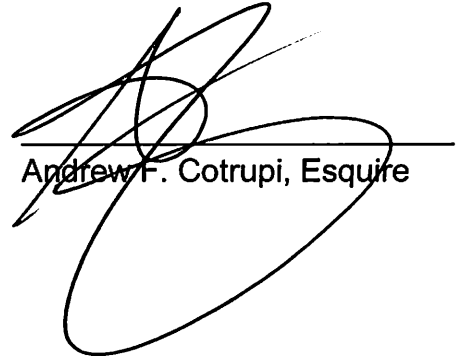
The panel agrees and incorporates the aggravating factors by the ADO. See ADO Memorandum at 7, 8 and 9. The panel also agrees, and finds significant, the mitigating factors found by the ADO of the absence of a dishonest or selfish motive, citing Standards § 9.32. Based on the aggravating and mitigating factors as found by the ADO, the Panel agrees a sanction of public censure is supported by the facts and circumstances of the case.

Further, the panel finds additional mitigating factors supporting the recommendation of the ADO and the respondent. Specifically the panel finds the responded has been exceptionally cooperative and responsive, with full and free disclosure to the disciplinary board and a fully cooperative attitude towards the proceedings. See Standard 9.32 (e); The respondent's character and reputation as articulated by his witnesses and evident during the hearing, his clear remorse and, finally, the delay in disciplinary proceedings which started in December of 2015 are mitigating factors found by the panel. See Standard 9.32 (g),(j),(l).

The panel unanimously concludes that a public reprimand is the appropriate sanction in accordance with New Hampshire Supreme Court Rule 37(A)(III)(d)(1), the

panel unanimously recommends the New Hampshire Supreme Court Professional Conduct Committee impose the sanction of a public reprimand, as well as an order to pay the costs associated with this disciplinary proceeding. This sanction is proportionate to cases involving similar conduct and necessary to effectuate the goals of the attorney discipline system.

Dated: 11/03/19



Andrew F. Cotrupi, Esquire

New Hampshire Supreme Court  
**Hearings Committee**

Hearings Committee  
Record Tab 17

*a committee of the attorney discipline system*

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November 19, 2019

*White, Stephen A.S. advs. ADO - #15-044 (Remand)*

The ADO has filed a Request for Clarification of the Hearing Panel's recommendation. The Request for Clarification is **GRANTED**. It is the Hearing Panel's Recommendation that a **Public Censure** be imposed.



Stephanie C. Hausman  
Hearing Panel Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel  
Stephen A.S. White, Esquire