

New Hampshire Supreme Court
Professional Conduct Committee

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Bennett, Robert R. advs. NH Judicial Council # 04-082

Recommendation for Disbarment

On August 15, 2006, the Professional Conduct Committee considered the above-referenced matter. Members present were: Margaret H. Nelson, Esquire, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, James R. Martin, Reporter, Alan Cronheim, Esquire, Ellen L. Arnold, Esquire, Thomas P. Connair, David N. Cole, Gretchen Rule Hamel. Gerald Daly and Richard Darling were recused from the matter and were not present. David N. Page was not present.

The Professional Conduct Committee thoroughly reviewed the record, including the following: Notice of Charges; Correspondence from Respondent; Proposed Findings of Fact and Rulings of Law; Disciplinary Counsel's Memorandum on Sanction; Transcript of June 15, 2006; and Hearing Panel Report dated July 17, 2006.

Robert R. Bennett did not file an Answer to the Notice of Charges. Mr. Bennett received notice of the hearing, but did not attend. Mr. Bennett provided notice that he would not be participating in the disciplinary process. This is therefore a default proceeding. Where, as here, "the respondent fails to file an answer, the allegations set forth in the notice of charges shall be

deemed to be admitted.” Rules and Procedures of the Attorney Discipline System, Rule 37 A.

(III) (3) (A).

The Professional Conduct Committee makes the following factual findings and rulings by clear and convincing evidence:

I. FINDINGS OF FACT

1. Mr. Bennett is an attorney licensed to practice law in New Hampshire. Mr. Bennett was admitted to practice in 1987. At all times material to this proceeding, Mr. Bennett operated his law office as Law Offices of Robert R. Bennett, 42 Crystal Avenue, Derry, New Hampshire 03038. Mr. Bennett’s current address is 304 Clough Road, Pittsfield, New Hampshire 03263-3106.
2. The complainant is Nina C. Gardner, the Executive Director of the New Hampshire Judicial Council. Ms. Gardner filed her grievance against Mr. Bennett on or about June 30, 2004.
3. Pursuant to state law, the Judicial Council (“JC”) is authorized to act on behalf of the State in entering into contracts with attorneys to represent indigent defendants in circumstances where the New Hampshire Public Defender Program is unavailable or unable to provide representation. Such attorneys are known as “contract attorneys” for the State.
4. From 1988 through 2002, Mr. Bennett was such a contract attorney.

5. Mr. Bennett's most recent contract with the JC was effective July 1, 2001, through June 30, 2002.
6. Pursuant to Mr. Bennett's most recent contract with the JC, Mr. Bennett was paid a monthly stipend of \$6,250.00, which totaled \$75,000.00 per year.
7. Under his contract, Mr. Bennett was required annually to perform 300 "units" of work. At the relevant time, each unit was worth \$250.00 and the unit value of a case was determined by the type of crime charged. For instance, a typical misdemeanor was worth one unit (\$250.00), while a typical felony was worth 2.75 units (\$687.50). A more serious felony, such as an aggravated felonious sexual assault, was worth \$2,075.00.
8. As explained in more detail below, the JC determined an attorney's monthly stipend based on what the JC anticipated that attorney's caseload would be.

JC Policies and Procedures re: Payment of Contract Attorney

9. What follows is a description of how the JC determines a contract attorney's stipend and verifies his caseload. The JC's practices and procedures in this regard are outlined in every attorney's contract with the JC. Mr. Bennett's most recent contract with the JC outlined these procedures.
10. After securing a contract with an attorney, the JC notifies the district and superior courts in this State that the attorney is under contract with the JC. Typically, the JC provides the courts with a list of contract attorneys on an annual basis.
11. The courts then appoint contract attorneys to represent indigent defendants where the Public Defender Program cannot accept the case.

12. Once the court decides to assign a particular case to a contract attorney, the court then forwards the "appointment" paperwork to the assigned contract attorney.
13. Each month, the contract attorney is required to submit copies of his appointment paperwork to the JC so it can track the units that the attorney is earning.
14. If the JC has paid the attorney an amount that exceeds the unit value of his services, the attorney is required at the end of his contract term to reimburse the JC within 60 days after receiving written notice from the JC that reimbursement is due.
15. As a practical matter, rather than requiring cash reimbursements, the JC simply deducts the overpayment amount from the attorney's stipend for the next pay period.
16. If the attorney is assigned a case but later withdraws before the case reaches a final disposition, the attorney receives credit for the full unit value except in cases where his withdrawal is the result of a conflict of interest.
17. If the attorney withdraws from a case as a result of a conflict of interest, the attorney receives only one-half the unit value of that case. Again, while the contract requires the attorney to reimburse the JC under those circumstances, as a practical matter, the JC simply deducts that one-half unit of value from the attorney's next stipend.
18. In felony cases where a defendant has been charged but not yet indicted, the case begins in district rather than superior court. In certain felony cases, a prosecutor may elect not to seek an indictment. The felony may be reduced to a misdemeanor and resolved in district court. In such instance, a contract attorney is paid for the unit value of a felony (\$687.50) even though the charge is resolved in district court as a misdemeanor.
19. In cases where the felony begins in district court and the defendant is later indicted on

that same felony, the case begins anew in superior court and the superior court typically appoints the same contract attorney who handled the felony (pre-indictment) at the district court level.

20. In such instance, the contract attorney who handled the felony at the district court level does not receive any further unit credit from the superior court appointment. Such attorney would have already received the unit credit and, therefore, full payment from the JC for that same felony at the district court level.
21. Were the attorney to seek unit credit for the felony case at both the district and superior court levels, the attorney would be double-billing the JC for that felony case.
22. The JC requires its contract attorneys to account for their pre-paid unit credits by filing paperwork at the beginning and end of each case.
23. On a monthly basis, contract attorneys are required to submit "Contract Monthly Reports" ("CMR") to inform the JC of appointments accepted during that month. Additionally, at the end of a case, a contract attorney is required to submit a "Closed Case Card" ("CCC") to document his role in the case from appointment to final disposition.
24. An attorney's CMR is essentially a case list for a particular month. The CMR contains a list of the attorney's appointments for the month, and the attorney attaches to the CMR the corresponding appointment paperwork.
25. The CCC, on the other hand, is submitted at the end of a case and contains a record of how every charge is finally resolved in every case handled by the attorney, as well as a record of the attorney's time spent on the case. An attorney is required to submit his CCCs to the JC within 30 days of final disposition of the case.

26. The JC utilizes the CMRs and CCCs to verify the units paid and to determine reimbursement owed.
27. Where an attorney represents a defendant on a pre-indictment felony in district court, the attorney would submit to the JC the district court felony appointment paperwork as part of his CMR that month, thereby allowing the JC to credit him for the full felony unit (\$687.50) for that felony case at that time.
28. However, if that defendant is later indicted and the superior court issues appointment paperwork for that same felony, the attorney would not submit the superior court paperwork to the JC since he has already been fully compensated for that case.
29. Because the district and superior courts typically utilize different docket numbers to identify cases, the JC would not readily be able to identify situations where an attorney double-bills for a felony that was originally brought in district court but is finally disposed of in superior court.

Mr. Bennett's Conduct as a Contract Attorney

30. The State paid contract attorneys in the manner described above for the entire time that Mr. Bennett was under contract with the JC.
31. During the contract period for Mr. Bennett's 2002 contract (July 1, 2001 - June 30, 2002), Mr. Bennett began to accept fewer cases on a monthly basis than contemplated by his contract and monthly stipend.
32. Additionally, Mr. Bennett had failed to file CCCs in hundreds of his cases. The JC was, as a result, experiencing difficulty accounting for Mr. Bennett's performance under his

contract.

33. Mr. Bennett's monthly stipend began to exceed his monthly unit performance. As of Mr. Bennett's CMR for January 2002, the JC had overpaid Mr. Bennett by an amount equal to \$14,900.00.

34. In January 2002, the JC decided to terminate Mr. Bennett's monthly stipend.

35. To that end, in January 2002, Susan M. Reilly, Administrative Assistant to Ms. Gardner, telephoned Mr. Bennett to inform him of the JC's decision.

36. During that telephone call, Ms. Gardner had many conversations regarding the filing of the CCC, and informed Mr. Bennett of the JC's concerns regarding the disparity between his monthly stipend and his unit performance. She also told him of the JC's concerns with respect to his non-compliance with the requirement that he file CCCs in all his cases and requested that he bring his CCCs up-to-date.

37. As of the date of this telephone call, Mr. Bennett was on notice that the JC was requesting that he fulfill his CCC requirements.

38. Mr. Bennett responded to Ms. Reilly's concerns by asking that stipend payments continue so that he could keep his business running, take more cases, and pay down the balance owed to the JC at that point. Mr. Bennett further explained that one of the reasons he had taken fewer cases was because he was having health problems, and that his doctor "suspected Leukemia."

39. Ms. Reilly brought Mr. Bennett's request for continued payments to the attention of Ms. Gardner. Reluctantly, Ms. Gardner agreed to forward to Mr. Bennett a partial payment (\$3,120.00 rather than the usual monthly payment of \$6,250.00).

40. Ms. Gardner made this partial payment in reliance upon Mr. Bennett's representations and promises about keeping his business running and reimbursing the JC.
41. The JC could not calculate the exact overpayment amount at that time because Mr. Bennett had fallen behind in submitting his CCCs. Without his CCCs, the JC could not determine the number of cases from which Mr. Bennett had withdrawn as a result of a conflict of interest and for which Mr. Bennett would therefore owe the JC reimbursement.
42. At some point after Mr. Bennett's January 2002 telephone conversation with Ms. Reilly, Mr. Bennett destroyed all of his JC client files from the years 2000 through 2002.
43. Mr. Bennett destroyed these files despite his awareness that the JC was actively requesting that his CCCs be brought up-to-date.
44. Mr. Bennett destroyed these files despite his awareness that, pursuant to his JC contract, he was required to maintain JC client files for a minimum of three years from the date of his last action on the case, and to notify the JC in advance of destroying any client files.
45. To date, Mr. Bennett owes the JC a total of 289 CCCs. Without those CCCs, the JC is unable to determine exactly how much Mr. Bennett owes the JC for cases from which he withdrew due to a conflict of interest.
46. Mr. Bennett is aware that, by failing to submit his CCCs, the JC is unable to calculate the total amount Mr. Bennett owes the JC.
47. The JC reviewed Mr. Bennett's CMRs to determine if he had engaged in double-billing for any felony cases that originated in district court but ultimately were resolved in superior court.
48. The JC discovered at least nine instances where, as a result of Mr. Bennett's double-

submissions, the JC had paid Mr. Bennett twice for the same felony case.

49. There were several other examples of Mr. Bennett double-billing the JC, but the nine instances discussed here involved submissions that, because of their timing, were difficult for the JC to detect.

50. The chart below contains a list of these nine cases for which Mr. Bennett double-billed the JC. The chart contains the case name, the date of Mr. Bennett's CMR which listed the district court appointment, and the date of Mr. Bennett's CMR which listed the same felony as a superior court appointment.

<u>Defendant's Name</u>	<u>District Court CMR</u>	<u>Superior Court CMR</u>	<u>Overpaid</u>
1. Ralph Baker	10/16/98-11/15/98	7/16/99-8/15/99	\$2,075.00
2. William Digiacomio	2/16/99-3/15/99	9/16/99-10/15/99	\$ 687.50
3. Robert Scarborough	7/1/99-7/15/99	1/16/00-2/15/00	\$ 687.50
4. Curt Wilson	10/16/99-11/15/99	2/16/00-3/15/00	\$ 687.50
5. Thomas Bergen	5/16/00-6/15/00	10/16/00-11/15/00	\$ 687.50
6. John Ellsey	10/16/00-11/15/00	12/16/00-1/15/01	\$ 687.50
7. Lynne Bell	11/16/00-12/15/00	7/1/01-7/15/01	\$ 687.50
8. Douglas Johnson	6/16/01-6/30/01	2/15/02-8/15/02	\$2,075.00
9. Michael Carlson	11/16/01-12/15/01	1/16/02-2/15/02	\$ 687.50

51. As illustrated above, Mr. Bennett double-billed the JC for these nine felony cases. The JC's overpayment to Mr. Bennett as a result of these nine cases totals \$8,962.50.

52. The JC discovered these nine instances of double-billing after Ms. Gardner filed her Professional Conduct Committee complaint.

Resolution of Mr. Bennett's Unrelated Attorney Discipline Matters in 2004

53. In early 2004, Disciplinary Counsel, began investigating five unrelated pending complaints against Mr. Bennett. The five complaints had been filed separately by five different clients of Mr. Bennett. The docket numbers of these professional conduct complaints were 00-N-112, 01-024, 01-027, 01-052, and 02-006.
54. Of these five complaints, three were dismissed due to Disciplinary Counsel's inability to locate the complainants (docket numbers 01-024, 01-052, 02-006).
55. The two remaining complaints (docket numbers 00-N-112 and 01-027) were resolved by stipulation. Each resulted in a Reprimand, both dated July 6, 2004.
56. During Disciplinary Counsel's investigation of these matters, she spoke with Mr. Bennett on several occasions.
57. Mr. Bennett did not deny the material allegations in the two stipulated matters, but he claimed by way of mitigation that, during the relevant time-frame, he had been diagnosed with and was receiving treatment for Leukemia.
58. Specifically, during a telephone conversation with Disciplinary Counsel on March 5, 2004, Mr. Bennett stated that he had been in treatment for Leukemia for five years and had since placed his law license on "inactive status" as a result. The two stipulated matters involved misconduct occurring during 2000 and 2001.
59. In both cases, Disciplinary Counsel included in the stipulations a reference to Mr.

Bennett's medical condition as one of the factors for the Professional Conduct Committee to consider in determining the appropriate sanction.

60. Disciplinary Counsel's first draft of both stipulations had contained a specific reference to Mr. Bennett's diagnosis and ongoing "cancer" treatment.

61. Mr. Bennett requested that Disciplinary Counsel remove the specific reference to "cancer" from the documents and substitute something more generic, like "medical condition." Mr. Bennett explained to Disciplinary Counsel that he did not want his cancer diagnosis to be widely known.

62. In the end, the stipulations both contained the following sentence: "Mr. Bennett is currently on inactive status for medical reasons."

The Attorney Discipline Office's Investigation in 2005-06 of Ms. Gardner's Complaint

63. During the Attorney Discipline Office's ("ADO") investigation of Ms. Gardner's complaint in 2005-06, Mr. Bennett came to the ADO for an interview on two separate occasions.

64. First, on January 5, 2006, Janet F. DeVito, Assistant General Counsel, met with Mr. Bennett to discuss the case. Subsequently, on April 10, 2006, Disciplinary Counsel met with Mr. Bennett to discuss the case.

65. During Mr. Bennett's meeting with Ms. DeVito, Mr. Bennett explained his dilatory conduct toward the JC as due, in large part, to his health problems.

66. With Disciplinary Counsel, Mr. Bennett was more specific. Mr. Bennett explained his dilatory behavior toward the JC as due, in large part, to his having been diagnosed and

treated for Leukemia during the relevant time-frame.

67. Specifically, Mr. Bennett explained to Disciplinary Counsel that he had been diagnosed in December 2001 and had begun cancer treatments shortly thereafter. Mr. Bennett further indicated that he needed to be cancer-free for another 18 months in order to be considered “in remission.”

68. Both Ms. DeVito and Disciplinary Counsel asked Mr. Bennett about his inability to account for his JC case load and otherwise comply with his obligation to file the required CCCs. Mr. Bennett informed both Ms. DeVito and Disciplinary Counsel that his wife, Nancy P. Bennett, had destroyed the relevant files.

69. During its investigation, the ADO was unable to locate Ms. Bennett. Mr. Bennett assured Ms. DeVito that he would have Ms. Bennett contact Ms. DeVito. That did not occur.

70. Disciplinary Counsel requested that Mr. Bennett provide her with Ms. Bennett’s contact information. Mr. Bennett explained that she had recently moved to Nevada, and that he would not provide her telephone number.

71. On April 20, 2006, as a result of a newspaper article about Mr. Bennett’s related litigation with the JC, Ms. Bennett became aware of Mr. Bennett’s predicament with the JC. On that date, Ms. Bennett telephoned Disciplinary Counsel.

72. Ms. Bennett informed Disciplinary Counsel that Mr. Bennett was never diagnosed or treated for Leukemia, or any other type of cancer. Ms. Bennett indicated that Mr. Bennett had been diagnosed with Diabetes. Ms. Bennett further informed Disciplinary Counsel that she had never destroyed any of his files. Ms. Bennett was shocked to learn that Mr. Bennett had lied both about having cancer and about her purported destruction of his case files.

II. RULINGS OF LAW

The above-listed facts having been found by clear and convincing evidence, the Professional Conduct Committee concludes that there is clear and convincing evidence that Robert R. Bennett violated the following Rules of Professional Conduct:

Rules 8.1(b) and 8.4(c): Deceit During Resolution in 2004 of Two Unrelated Complaints

73. As explained more fully above, Mr. Bennett informed Disciplinary Counsel that he had been diagnosed and was being treated for Leukemia during the time-period relevant to complaint numbers 00-N-112 and 01-027.
74. Mr. Bennett made these statements to induce Disciplinary Counsel to believe that his cancer diagnosis and treatment were mitigating factors in his attorney discipline cases.
75. Mr. Bennett knew these statements were false at the time he made them.
76. These statements were material to the Disciplinary Counsel's investigation and recommended resolution of complaint numbers 00-N-112 and 01-027.
77. Mr. Bennett's conduct in this regard constitutes false statements of material fact to a disciplinary agency.
78. Mr. Bennett's actions in this regard also constitute conduct involving dishonesty, fraud, deceit or misrepresentation.
79. Mr. Bennett's conduct in this regard constitutes clear and convincing evidence of a violation of both N.H. R. Prof. Conduct 8.1(b) and 8.4(c).

Rules 8.1(b) and 8.4(c): Deceit During Investigation of Ms. Gardner's Complaint

80. As explained more fully above, Mr. Bennett informed the ADO that he had been diagnosed and treated for Leukemia during the time-period relevant to Ms. Gardner's complaint.
81. Additionally, Mr. Bennett explained his inability to account for his case load and file the required CCCs by blaming his wife for destroying his files.
82. Mr. Bennett made these statements to induce the ADO to believe that there were mitigating factors at play which would help explain his dilatory conduct toward the JC, as described in Ms. Gardner's complaint.
83. Mr. Bennett knew these statements were false at the time he made them.
84. These statements were material to the ADO's investigation of Ms. Gardner's complaint.
85. Mr. Bennett's conduct in this regard constitutes false statements of material fact to a disciplinary agency.
86. Mr. Bennett's actions in this regard also constitute conduct involving dishonesty, fraud, deceit or misrepresentation.
87. Mr. Bennett's conduct in this regard constitutes clear and convincing evidence of a violation of both N.H. R. Prof. Conduct 8.1(b) and 8.4(c).

Rule 8.4(c): Deceit in January 2002 Conversation with Ms. Reilly

88. As explained more fully above, Mr. Bennett told Ms. Reilly in January 2002 that he had taken fewer cases than required under the JC contract because his health had taken a turn for the worse. Mr. Bennett told Ms. Reilly that his doctor "suspected Leukemia."

89. Mr. Bennett knew these statements were false at the time he made them.
90. Mr. Bennett made these false statements to induce Ms. Reilly to believe that he had an explanation for his dilatory conduct with respect to fulfilling his contractual obligations with the JC. Mr. Bennett intended further to evoke Ms. Reilly's sympathy so that she would be more likely to recommend that Ms. Gardner approve further payment(s) to him.
91. Mr. Bennett's actions in this regard constitute conduct involving dishonesty, fraud, deceit or misrepresentation.
92. Mr. Bennett's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(c).

Rule 8.4(c): Destruction of Case Files and Failure to Submit CCCs

93. As detailed more fully above, Mr. Bennett has failed to submit 289 CCCs to the JC.
94. The JC is therefore unable to determine the exact amount that Mr. Bennett owes the JC to date for cases in which Mr. Bennett withdrew as a result of a conflict of interest.
95. During Mr. Bennett's January 2002 telephone conversation with Ms. Reilly, Mr. Bennett was placed on notice of the fact that the JC was troubled by his non-compliance with the CCC requirement and was demanding full compliance from him.
96. Mr. Bennett was also aware that his JC contract required that he retain all JC case files for a minimum of three years from the date of the last action taken on the case and to notify the JC in advance if he intended to destroy his files under this provision of his contract.
97. At some point following Mr. Bennett's January 2002 telephone conversation with Ms. Reilly and without giving prior notice to the JC, Mr. Bennett destroyed his JC case files

for the years 2000-2002.

98. Mr. Bennett destroyed his case files because he knew or should have known that, without them, it would be difficult for the JC to determine how many of the outstanding 289 cases (for which he had filed no CCC) involved Mr. Bennett's withdrawal due to a conflict of interest. Evidence of such withdrawals would, of course, translate into a certain sum of money owed to the JC by Mr. Bennett.
99. Mr. Bennett's purposeful destruction of his JC case files under these circumstances constitutes conduct involving dishonesty, fraud, deceit or misrepresentation.
100. Mr. Bennett's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(c).

Rule 8.4(c): Double-billing

101. As described in more detail above, Mr. Bennett double-billed the JC for at least nine cases.
102. As a result of his double-billing, the JC overpaid Mr. Bennett by an amount totaling at least \$8,962.50.
103. Mr. Bennett was aware in all nine instances that he was not entitled to receive double credit. Nonetheless, in all nine instances, Mr. Bennett submitted paperwork to the JC in such a manner to induce the JC to believe he was entitled to the double credits.
104. At no time subsequent to his double-billings did Mr. Bennett notify the JC of the problem or attempt to reimburse the JC for the amount.
105. Mr. Bennett's actions in this regard constitute conduct involving dishonesty, fraud,

deceit or misrepresentation.

106. Mr. Bennett's conduct in this regard constitutes clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(c).

Rule 8.4(a): General Rule

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

III. DISCUSSION

Mr. Bennett's misconduct can be characterized as a violation of his obligation to the public, the legal system, and the legal profession to exhibit the highest standards of integrity and honesty. Where, as here, such violation involves "intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice," the Standards make clear that disbarment is appropriate. See Standards § 5.11(b).

There can be no dispute about Mr. Bennett's mental state: Mr. Bennett acted intentionally when he falsely informed Ms. Reilly that his failure to comply with his contractual obligations to the New Hampshire Judicial Council ("JC") was due to health issues and that his doctor "suspected leukemia"; he acted intentionally when he deceived members of the Attorney Discipline Office by falsely stating that he suffered from Leukemia, which caused him to neglect his duties to the JC. Mr. Bennett offered these false statements in order to induce the listener to believe that his dilatory behavior was caused, at least in part, by serious health issues. Mr.

Bennett also acted intentionally when he falsely informed members of the Attorney Discipline Office that his wife had destroyed his files.

In addition to the duty violated and his mental state, the Standards require an analysis of the injury caused by Mr. Bennett's misconduct. Mr. Bennett's misconduct in double-billing the JC is quantifiable. The amount the JC overpaid Mr. Bennett totaled \$8,962.50. The greatest harm caused by Mr. Bennett's deceit, however, is the harm to the reputation and integrity of the legal profession. Disbarment is the appropriate sanction to redress the harm caused by Mr. Bennett's deceit.

The final step in the analysis is to consider whether there are mitigating and/or aggravating factors that justify either increasing or decreasing the baseline sanction. In this case, there are no mitigating factors. There are, however, many aggravating factors. First, Mr. Bennett has a prior disciplinary history. See Standards § 9.32(a). On April 22, 1998, Mr. Bennett received a Warning (a copy of the Warning is attached as Exhibit 1). On July 6, 2004, Mr. Bennett received two Reprimands, one for case #00-N-112 (a copy of this Reprimand is attached as Exhibit 2); another in case #01-027 (a copy of this Reprimand is attached as Exhibit 3). Second, Mr. Bennett acted with both a dishonest and selfish motive. See Standards § 9.22(b). Third, Mr. Bennett has exhibited a pattern of misconduct, beginning with his lies about Leukemia during the Attorney Discipline Office's 2004 investigation of him and continuing through its more recent investigation of Ms. Gardner's complaint. Id. § 9.22(c). Indeed, Mr. Bennett has, in this proceeding, been found to have committed three violations of Rule 8.1 b; six violations of Rule 8.4 c and violations of Rule 8.4 a. Fourth, Mr. Bennett submitted "false statements . . . during the disciplinary process." Id. § 9.22(f). Fifth, Mr. Bennett showed no

remorse which is another aggravating factor. *See Standards, supra*, Section 9.22(g), *Wolterbeek's Case*, 152 N.H. at 717. Finally, Mr. Bennett has refused to participate in the disciplinary process.

Taking into consideration both the multi-part analysis recommended by the Standards, as well as the purposes of attorney discipline in New Hampshire, the appropriate sanction in this matter is disbarment. "The privilege of practicing law does not come without the concomitant responsibility of truth, candor and honesty. . . . [B]ecause no single transgression reflects more negatively on the legal profession than a lie, attorney misconduct involving dishonesty . . . justifies disbarment." Nardi's Case, 142 N.H. 602, 606 (1998) (quotations and brackets omitted).

Mr. Bennett's acts of deceit toward the JC and the Attorney Discipline Office strike at the core of the justice system and render him unfit to be a licensed member of the legal profession. No sanction short of disbarment would adequately address the goals of preserving the integrity of the profession and protecting the public.

IV. SANCTION

Lawyer discipline is not intended to be punishment, e.g., *Coffey's Case*, 152 N.H. 503, 513 (2005). Rather the purpose of the 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." *Id.* (internal quotation marks omitted). "The sanction must take into account the severity of the misconduct." *Id.*

Although the Court has not adopted the Standards, it looks to them for guidance. *Coffey's Case*, 152 N.H. at 513. 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." Standards Section 3.0; *Coffey's Case*, 152 N.H. at 153. "In applying these factors, the first step is to categorize the respondent's misconduct and identify the appropriate sanction. After determining the sanction. [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction." See *Wolterbeeks' Case*, 152 N.H. 710, 714 (2005). "each case is judged on its own facts and circumstances, and the sanction [the Court] impose[s] must take into account both the severity of the misconduct and any mitigating circumstances in t the record." *O'Meara's Case*, 150 N.H. 157, 159 (2003). *Richmond's Case*, ___ N.H. ___ (2006), slip op. at 12.

Mr. Bennett's misconduct is characterized by multiple violations of his obligation to the public, the legal system, and the legal profession to exhibit the highest standards of integrity and honesty. He has a history of misconduct, has committed multiple violations as found in this proceeding, and he has a long list of aggravating factors while presenting nothing in mitigation.

The Professional Conduct Committee concludes that the appropriate sanction called for based on Mr. Bennett's multiple violations of multiple Rules of Professional Conduct, including intentional conduct involving dishonesty, fraud, deceit and misrepresentation, his refusal to participate in, or cooperate with, the disciplinary process, his prior disciplinary record, the


presence of aggravating factors and the absence of any mitigating factors, is disbarment from the practice of law.

V. CONCLUSION

After consideration of the appropriate sanction, the Professional Conduct Committee hereby directs Disciplinary Counsel to file a Petition with the New Hampshire Supreme Court seeking the disbarment of Robert R. Bennett.

The Committee also recommends that Robert R. Bennett be ordered to reimburse the Professional Conduct Committee for all costs associated with the investigation and prosecution of this matter and that an attorney be appointed to inventory Mr. Bennett's cases and take such further action as seems necessary to protect the interests of Mr. Bennett's clients as well as his interests. Sup. Ct. R. 37(14) (2003).

September 6, 2006


Margaret H. Nelson
Chair

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