THE STATE OF NEW HAMPSHIRE
SUPREME COURT

LD-2009-0006

IN THE MATTER OF
Lynn D. Morse

BRIEF FOR
THE NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

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(Oral Argument by Landya B. McCafferty)

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QUESTION PRESENTED

Is the Committee's recommendation of a two-year suspension from the practice of law, with conditions for reinstatement, an appropriate sanction in light of Respondent's misconduct?

STATEMENT OF THE CASE

On April 7, 2008, the Attorney Discipline Office issued a Notice of Charges against Mr. Morse. PCC 3.[1] On May 6, 2008, Mr. Morse filed his Answer to the Notice of Charges. PCC 4. On May 15, 2008, a Hearing Panel was appointed. PCC 5. On August 29, 2008, Disciplinary Counsel and Mr. Morse filed a "Stipulation to the Facts." PCC 16. On September 3, 2008, a hearing was held in this matter. PCC 26. In a Report dated September 15, 2008, the Hearing Panel found that Mr. Morse had violated Rules 1.1, 1.3, 1.16(d), 3.3(c)(1), 8.4(c) and 8.4(a), and recommended that Mr. Morse be suspended from the practice of law for two years, with conditions for his reinstatement. PCC 25.

The Committee heard oral argument in the case on October 21, 2008. PCC 29. In a Report dated January 28, 2009, the Committee accepted the Hearing Panel's findings and recommended that this Court suspend Mr. Morse's license to practice law for two years, and place conditions on his reinstatement, including full restitution and the filing of a case management plan. PCC 30.

[1] "PCC" refers to the Committee's "Index of Record" (consisting of 34 tabbed entries) in this attorney discipline case. For instance, "PCC 3" denotes tab 3 of the "Index of Record."

STATEMENT OF FACTS

The facts in this matter are fully stipulated and a matter of public record before this Court. PCC 16.

On September 12, 1998, Bertha McInnes died at the age of 86 years. PCC 16, ¶ 2. Ms. McInnes's Will named her niece, Ruth Ann Mize, as the executrix. PCC 16, ¶ 2. Mr. Morse represented Ms. Mize, as executrix of the McInnes Estate (hereinafter "the Estate"), in Rockingham County Probate Court, for approximately five years, from September 1998 through June 2003. PCC 16, ¶¶ 4, 87. The length of time that Mr. Morse represented Ms. Mize is indicative of the incompetent and dilatory manner in which he handled the Estate.

Mr. Morse's misconduct can be separated into three general categories: (A) his mishandling of the Estate and failure to close it in a timely manner, as well as his failure to file tax returns each year that he allowed the Estate to remain open; (B) his deceit regarding the preparation and filing of tax returns; and (C) his failure to provide the case file to successor counsel in a timely manner. Material evidence in each category is summarized below.

A. Incompetence and lack of diligence with respect to the Estate administration and tax returns (Rules 1.1 and 3.1).

The Estate was not particularly large or complicated. The Petition for Estate Administration listed the total value of the Estate at $461,500.00. PCC 16, ¶ 8. There were four legatees, each elderly relatives of Ms. McInnes. PCC 16, ¶ 80. During the pendency of the Estate, one of the four legatees died. Id.

From the Fall of 1998 through his termination in June 2003, Mr. Morse repeatedly sought extensions of the deadlines for filing critical documents, including the annual Accounting and Inventory. PCC 16, ¶ 7. For instance, with respect to the First Account, Mr. Morse missed the filing deadline of November 24, 1999, and the Court fined the Estate as a result. PCC 16, ¶ 23. Mr. Morse did not seek an extension of that deadline until February 23, 2000. PCC 16, ¶ 24. The Court allowed Mr. Morse's belated first request for an extension, only to be confronted with several more requests for extensions filed by Mr. Morse. Mr. Morse filed the First Account more than six months late, on June 23, 2000. PCC 16, ¶¶ 7, 30. Mr. Morse's stated reasons for the late filings and requests for extensions were the "complex[ity]" of the Estate, and the need for "additional time" to complete it. PCC 16, ¶ 25, 27.

Between February 2001 and his termination in June 2003, Mr. Morse further neglected to complete the Estate administration in a timely fashion. During this period, Mr. Morse filed a total of 12 petitions to extend the time for filing the Second Account. PCC 16, ¶¶ 34-74. After his twelfth request for an extension, the Court issued an order on June 12, 2003, requiring that Ms. Mize appear in person at a June 23, 2003, hearing, to show cause why she should not be held in contempt for failing to file the Second Account. PCC 16, ¶ 81. Just prior to the hearing, Mr. Morse filed an unsigned copy of the Second Account with a cover letter indicating that a signed copy would be forthcoming. PCC 16, ¶ 85.

Ms. Mize resided in California. PCC 16, ¶ 3. In advance of her trip to New Hampshire to appear at the June 23, 2003, hearing, Ms. Mize wrote to the Court explaining the difficulties she was experiencing with Mr. Morse's representation. PCC 16, ¶ 79.

The hearing took place as scheduled on June 23, 2003. PCC 16, ¶ 86. Ms. Mize appeared; Mr. Morse was not present. PCC 16, ¶ 86. At the hearing, Ms. Mize voiced her frustrations with Mr. Morse, and explained that the legatees were elderly relatives and that she wanted to provide them with their distribution while they were still alive. Id. The Court explained to Ms. Mize that, as executrix of the Estate, she was the party ultimately responsible for the diligent administration of the Estate. The Court withheld a sanction and ordered that a final account be filed "no later than July 31, 2003." Id.

Ms. Mize terminated Mr. Morse on June 23, 2003. PCC 16, ¶ 87. Ms. Mize was not aware at the time she terminated Mr. Morse that, in addition to other concerns about Mr. Morse's performance, he had not filed income tax returns for Ms. McInnes personally, or the Estate, for any of the years that the Estate was open. PCC 16, ¶¶ 116-19.

B. Deceit and misrepresentations regarding the tax returns (Rules 3.3 and 8.4).

Mr. Morse led Ms. Mize to believe that he was handling the outstanding tax issues related to the Estate, and that he was filing the necessary tax returns. PCC 16, ¶ 80. Mr. Morse's assurances in this regard were not true, as Mr. Morse filed neither a personal tax return for Ms. McInnes, nor the returns required for the Estate. PCC 16, ¶¶ 116-19; PCC 25, pp. 3-5.

In addition to misleading Ms. Mize about the tax returns, Mr. Morse falsely informed the Court that he had filed the necessary tax returns. Specifically, in his June 23, 2003, cover letter to the Court enclosing the unsigned Second Account, Mr. Morse falsely stated that the Estate was "awaiting refunds from the Internal Revenue Service . . . ." PCC 16, ¶ 85; PCC 25, p. 5. The Second Account contained the following two questions related to tax returns:

> Have all Federal and State Income Tax Returns of the decedent for the period ending with his/her death been filed and the taxes connected therewith paid?
>
> Have all Federal and State Income Tax Returns of the Estate which are due at the time of filing this account been filed and the taxes connected therewith paid?

PCC 16 ¶ 95. Mr. Morse falsely answered both questions in the affirmative. PCC 25, ¶¶ 3-5.

As a result of Mr. Morse's false assertions with respect to the tax returns, successor counsel for Ms. Mize, Andrea L. Sennott, Esq., and William S. Boesch, Esq., both of Robinson, Boesch, Sennott & Aeschliman, PA, had to expend considerable effort to resolve tax issues for the Estate. Although Mr. Boesch was able to negotiate with the IRS and resolve the tax issues for the Estate, the Estate suffered, as a result of Mr. Morse's misconduct, financial losses, penalties and fines. PCC 16, ¶¶ 121-28; PCC 25, pp. 3-4.

After Ms. Mize filed a complaint against Mr. Morse with the Attorney Discipline Office, Mr. Morse continued to make misrepresentations about the tax returns. In his September 24, 2004, reply to Ms. Mize's complaint, he

wrote: "The returns were prepared for Mrs. Mize['s] signature. I retained copies for my file." PCC 18, p. 399. As found by the Hearing Panel, "In fact, Mr. Morse failed to prepare anything suitable for signature." PCC 25, p. 4.

At the hearing in this attorney discipline matter, Mr. Morse disclosed for the first time a set of tax returns for the Estate that contained his handwritten entries. He introduced those returns as exhibits at the hearing, PCC 20-24, but provided no explanation for having failed to provide these documents to Ms. Sennott when he gave her the file. PCC 25, p. 4.

Mr. Morse explained at the hearing that he thought that the tax issues would have been resolved in a manner consistent with his answers to questions raised in the Second Account, had he remained on the case. That is, Mr. Morse claimed he would have finalized the tax returns had Ms. Mize not terminated him. PCC 26, pp. 46-47.

C. Failure to provide the case file to successor counsel in a timely manner (Rule 1.16).

Mr. Morse persisted with his dilatory conduct after Ms. Mize terminated him by failing to comply with successor counsel's urgent requests for the file. New counsel, who replaced Mr. Morse shortly after he was terminated, immediately requested a copy of the Estate file. However, "despite repeated and ever more urgent requests" for a copy of the file, Mr. Morse delayed handing it over until October 6, 2003. PCC 25, p. 3. When he finally provided the file to Ms. Sennott, the file was incomplete. There was no evidence of any executed tax returns in the file. PCC 16, ¶ 111. Nor did the file contain the

work sheets of tax returns (with handwritten entries) that Mr. Morse claimed he prepared in 2003, but never finalized. PCC 25, p. 3.

Mr. Morse's neglect in this regard was particularly troubling because Mr. Morse was aware that Ms. Mize's new counsel needed to act swiftly to handle the tax problems he had caused. As explained by the Hearing Panel, "The harm caused by these delays was further compounded by his efforts to forestall revelation of his delinquencies, particularly in the area of unfiled tax returns." PCC 25, p. 3.

The Court had extended the deadline to file the Final Account to October 31, 2003. Thus, as of October 6, 2003, the date on which Mr. Morse finally provided the file to Ms. Sennott, Ms. Sennott had less than one month to file the Final Account. PCC 16, ¶ 110. Fortunately, Ms. Sennott was able to complete and file the Final Account with the Court on October 30, 2003. PCC 16, ¶ 114.

Due to the delay in discovering Mr. Morse's failure to file tax returns for the Estate, Ms. Sennott had to file a request with the Court to extend the deadline for filing the Estate tax certification forms. In her request for an extension, Ms. Sennott wrote:

> It has recently come to the attention of counsel for the fiduciary that prior counsel for the Estate failed to file decedent's final federal and state income tax returns and filed no income tax returns for the Estate (calendar years 1999 through 2002).
>
> Prior to finalizing the Estate, the tax returns must be prepared and filed. Counsel for the fiduciary is in the process of communicating with the Internal Revenue Service and the Department of Revenue Administration on these matters. The executrix will amend the

> final account in order to reflect these changes in the taxes before the end of the extension period.

PCC 16, ¶ 119. Ms. Sennott resolved the tax certification issue and filed the required form in mid-March 2004. On or about March 22, 2004, the Court discharged the bond and closed the Estate. PCC 16, ¶¶ 125-26.

SUMMARY OF ARGUMENT

Considering the record before it, the Committee reasonably found that Mr. Morse's misconduct was the product of gross negligence rather than a deliberate intent to harm others. While the Committee found Mr. Morse's misconduct "deplorable," the Committee determined that his misconduct did not warrant the ultimate sanction of disbarment. The Committee's recommended two-year suspension, with reinstatement conditioned on both full restitution to the victims and the submission of a management plan to be approved and monitored by the Committee, is consistent with New Hampshire case law and the ABA Standards, and properly accounts for the goals of attorney discipline, including, most importantly, public protection.

ARGUMENT

THE COMMITTEE'S SANCTION RECOMMENDATION IN THIS CASE IS CONSISTENT WITH NEW HAMPSHIRE CASE LAW, THE ABA STANDARDS, AND THE GOALS OF ATTORNEY DISCIPLINE.

Both case law in New Hampshire and the American Bar Association's Standards for Imposing Lawyer Sanctions (1992) ("Standards") support the conclusion that Mr. Morse should be suspended from the practice of law for two years, with conditions for reinstatement. 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." E.g., 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). "Every case is judged on its own facts and circumstances." Morgan's Case, 143 N.H. 475, 477 (1999).

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, 155 N.H. 613, 621 (2007)); Standard 3.0.

The first three steps create the framework for characterizing the misconduct and determining a baseline sanction. See Conner's Case, 158 N.H. at 303. ("In 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 step in the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. See Conner's Case. ("After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.").

Under the first prong of the analysis, Mr. Morse violated his obligations to his client, the court, and his profession. Most significantly, Mr. Morse misrepresented the status of his client's case to the client and to the court. Mr. Morse also breached his duties to perform for his client with competence and diligence, as well as to cooperate with successor counsel. These are serious breaches of very fundamental obligations.

The second prong of the analysis requires an assessment of Mr. Morse's mental state. While Mr. Morse did not act with an intent to harm his client or to benefit himself, his false and misleading statements regarding tax returns were uttered knowingly. PCC 30, pp. 2, 4. Mr. Morse's incompetence and lack of diligence in serving his client, as well as his failure to cooperate with successor counsel, were the product of gross negligence. Id.

The third prong requires analysis of the actual or potential injury caused by Mr. Morse's misconduct. Mr. Morse's misconduct caused actual monetary and emotional harm to his client. As a result of Mr. Morse's misconduct, Ms. Mize suffered unnecessary stress and aggravation. She had to terminate Mr. Morse and retain new counsel to complete the legal matter for which she had hired Mr. Morse. Additionally, Mr. Morse's failures with respect to the tax

returns caused the Estate to bear unnecessary costs in the form of IRS fines and penalties, as well as additional legal fees for Mr. Boesch's services in addressing the tax problems. Further, Mr. Morse billed the Estate for his incompetent and incomplete work related to the tax returns, requiring the Estate, in effect, to pay twice for work related to the tax returns. PCC 25, pp. 3-4. The injuries in this case were substantial.

In determining a baseline sanction, the Standards provide additional guidance. The applicable standard for the most serious misconduct in this matter, Mr. Morse's deceit, is Standard 6.1, entitled "False Statements, Fraud, and Misrepresentation." Standard 6.1 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 conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:
>
> 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
>
> 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
>
> 6.13 Reprimand[2] is generally appropriate when a lawyer is negligent either in determining whether statements or

[2] Section 6.13 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.14 Admonition[3] is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

The Committee determined that a suspension, as contemplated in Standards § 6.12, was the most appropriate baseline sanction. It found that disbarment was not warranted where, as here, Mr. Morse's misconduct did not involve self-dealing or a specific intent to harm anyone, and was best characterized as grossly negligent rather than intentional. PCC 30, p. 4; PCC 34. Further, while it found Mr. Morse's misconduct "deplorable," the Committee found that his misconduct did not cause "serious" injury, as contemplated under Standards § 6.11. PCC 30, p. 4.

With a baseline sanction of suspension, the Court should next consider whether there are aggravating and/or mitigating factors that affect the ultimate determination of sanction. The Committee found that there were six aggravating factors. First, Mr. Morse has a prior disciplinary record (a Public Censure in 2001), see PCC 17; Standards § 9.22(a). Second, Mr. Morse made a false statement to the Attorney Discipline Office in his September 24, 2004, reply to the complaint. PCC 18; PCC 25, p. 6; Standards § 9.22(f). Third, Mr.

[3] Section 6.14 uses the term "Admonition." The most analogous sanction in New Hampshire is a Reprimand.

Morse refused to accept the wrongful nature of his misconduct. PCC 25, p. 6; Standards § 9.22(g). Fourth, the victims in the case were vulnerable, as they were elderly legatees who needed the assets of the Estate. One of the legatees died during the pendency of the Estate. PCC 25, p. 7; Standards § 9.22(h). Fifth, Mr. Morse has substantial experience in the practice of law. PCC 25, p. 7; Standards § 9.22(i). The sixth, and final aggravator, found by the Committee was that Mr. Morse showed indifference to making restitution, as there was no indication that Mr. Morse had made any effort to compensate the victims for the financial loss. PCC 25, p. 7; Standards § 9.22(j).

The Committee found three mitigating factors. First, Mr. Morse lacked a selfish motive. PCC 25, p. 7; Standards § 9.32(a). Second, Mr. Morse had a reputation for being of good character. PCC 25, p. 7; Standards § 9.32(g). Third, although tempered by his tendency to minimize his misconduct, Mr. Morse expressed remorse and regret for his professional failings. PCC 25, p. 7; Standards § 9.32(l).

Considering the particular circumstances of this case and weighing the aggravating and mitigating factors against the baseline sanction, the Committee reasonably concluded that a two-year suspension was appropriate, and that any public protection concerns could be addressed by imposing conditions on his reinstatement. PCC 30, 34. To that end, the Committee has recommended that the Court include in its suspension order a requirement that Mr. Morse's reinstatement following suspension shall be conditioned on the following:

- Submission of a case-management plan for approval by the Committee, with which Mr. Morse will comply for one year following reinstatement with periodic reports to the Committee; and
- Full restitution to the victims.

PCC 30, p. 7

This Court has repeatedly stated that punishment is not a goal of attorney discipline. See, e.g., Grew's Case, 156 N.H. at 365. Rather, the purposes of attorney discipline are primarily to restore public confidence and to protect the public. See, e.g., id. The Committee's recommended sanction of a two-year suspension with conditions serves these purposes.

The Committee's recommendation is supported by the record, is consistent with New Hampshire case law and the Standards, and serves the purposes of attorney discipline in New Hampshire. Accordingly, this Court should adopt the Committee's recommendation and suspend Mr. Morse from the practice of law for two years, and impose conditions on his reinstatement.

CONCLUSION

In sum, this Court should adopt the Committee's recommendation and suspend Mr. Morse from the practice of law for two years, with conditions on his reinstatement. The Court should further order Mr. Morse to reimburse the Committee for the costs attributable to him of prosecuting this matter.

Respectfully submitted,
New Hampshire Supreme Court
Professional Conduct Committee
By its counsel:

Dated: January 27, 2010

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CERTIFICATE OF SERVICE

I hereby certify that two copies of this Brief are being mailed on this 27th day of January 2010, to Lynn D. Morse at P.O. Box 373, Exeter, New Hampshire 03833, by first class mail postage prepaid.

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APPENDIX TO
BRIEF FOR
THE NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

RULES OF PROFESSIONAL CONDUCT

Rule 1.1. Competence

(a) A lawyer shall provide competent representation to a client.

(b) Legal competence requires at a minimum:

(1) specific knowledge about the fields of law in which the lawyer practices;

(2) performance of the techniques of practice with skill;

(3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;

(4) proper preparation; and

(5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.

(c) In the performance of client service, a lawyer shall at a minimum:

(1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;

(2) formulate the material issues raised, determine applicable law and identify alternative legal responses;

(3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and

(4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) the client has used the lawyer's services to perpetrate a crime or fraud;

(3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled, provided that a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled in complying with applicable rules and laws;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know if its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraphs (a) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) state or imply an ability to influence improperly a government agency or official; or

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

STANDARDS

Section 3.0: Generally

In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:

(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.

Section 6.1: False Statements, Fraud, and Misrepresentation

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

Section 9.0: Aggravation and Mitigation

9.1 Generally

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

9.2 Aggravation

9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors which may be considered in aggravation.

Aggravating factors include:

(a) prior disciplinary offenses;
(b) dishonest or selfish motive;
(c) a pattern of misconduct;
(d) multiple offenses;
(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
(g) refusal to acknowledge wrongful nature of conduct;
(h) vulnerability of victim;
(i) substantial experience in the practice of law;
(j) indifference to making restitution;
(k) illegal conduct, including that involving the use of controlled substances.

9.3 Mitigation

9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors which may be considered in mitigation.

Mitigating factors include:

(a) absence of a prior disciplinary record;
(b) absence of a dishonest or selfish motive;
(c) personal or emotional problems;
(d) timely good faith effort to make restitution or to rectify consequences of misconduct;

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
(f) inexperience in the practice of law;
(g) character or reputation;
(h) physical disability;
(i) mental disability or chemical dependency including alcoholism or drug abuse when:
    (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
    (2) the chemical dependency or mental disability caused the misconduct;
    (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
    (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
(j) delay in disciplinary proceedings;
(k) imposition of other penalties or sanctions;
(l) remorse;
(m) remoteness of prior offenses.