

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

Margaret H. Nelson, Chair  
Benette Pizzimenti, Vice Chair  
Toni M. Gray,\* Vice Chair  
Susan R. Chollet\*  
David N. Cole  
Thomas P. Connair  
Alan J. Cronheim

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

Gerald A. Daley\*  
Richard H. Darling\*  
James R. Martin  
Richard D. Sager  
Lisa Wellman-Ally  
\* non attorney member  
Holly B. Fazzino, Administrator

*Marshall, Keri J. advs. Daniel Shepard # 09-028*

**PUBLIC CENSURE WITH CONDITIONS**

On October 16, 2012, the Professional Conduct Committee (the "Committee") heard Oral Argument and deliberated the above matter. Members present included Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, David N. Cole, Thomas P. Connair, Richard H. Darling, James R. Martin, Richard D. Sager and Lisa Wellman-Ally. Gerald A. Daley was absent. Alan J. Cronheim was recused and was not present.

Oral Argument was presented by James L. Kruse, Assistant Disciplinary Counsel and Richard Y. Uchida, Esquire, Counsel for the Respondent. Keri J. Marshall, Esquire and Gladys Strickhart were also present.

The Committee makes factual findings and rulings as detailed below:

**I. FINDINGS OF FACT**

The Committee voted to accept the findings of fact as found by the Hearing Panel Report. This establishes the facts by clear and convincing evidence. The facts are as follows:

1. The ADO filed a Notice of Charges that included several alleged professional conduct violations against the Respondent, Keri Marshall. On the eve of the hearing, however, the ADO filed an Amended Notice of Charges that reduced the claims to (1) violation of Rule 5.3, concerning Marshall's supervision of her staff so as to ensure they met an attorney's standard of conduct and (2) violation of Rule 8.1 concerning Marshall's submission of an erroneous affidavit as well as her response to a request from the Attorney Discipline Office ("ADO"). The following facts pertain to the remaining charges.
2. The Respondent, Keri Marshall ("Marshall") has been a practicing attorney in New Hampshire for 25 years. Hearing Transcript ("Trans."),

Volume II (“V. II”) at 10). Marshall has spent most of her practice as the sole partner of Marshall Law Office located in East Kingston, New Hampshire. *Id.* at 11-12. Marshall’s practice includes estate planning, marital and civil litigation. *Id.* at 80.

3. In late 2005/early 2006, Marshall undertook to represent [REDACTED] in divorce proceedings against her husband, Daniel. The proceedings grew bitter and became protracted and involved several motions for contempt and sanctions. *Id.* at 16. After January, 2008, Daniel Shepard represented himself. Trans, Volume I (“V.I”), at 221.
4. Among other staff, Marshall employed Kathy Parlatore from 1999 into 2011 and Rebecca Mackey, from 2005 into 2011. Trans, V.I at 6-8, 67. At all relevant times, both served primarily to transcribe Marshall’s dictation. Trans. V.I at 8, 68. On a typical day, Marshall arrived at her office by 4:30 a.m. and spent up to several hours dictating, the fruits of which kept Mackey occupied full time and Parlatore occupied parts of two days per week, per Parlatore’s part-time arrangement with Marshall.
5. Though not formally written, standard office policy generally required that the staff member who transcribed a motion-to-continue bore the responsibility to contact the other side and seek assent. Trans. V.I at 9, 69. A statement of assent within the body of the motion memorialized the staff member’s telephone call; at the time of these events, staff made no other notations of the call, though their billing records for the day might capture that time and describe it. *Id.* at 11, 70. Both Mackey and Parlatore testified that they billed for each task they complete whether it was to be charged or not. *Id.* at 21, 74.

In July 2008, Marshall filed an “Assented to Motion to Continue” in the Portsmouth Family Division, seeking to continue a hearing scheduled for August 20, 2008. Exhibit 19. The motion’s title, as well as the cover letter to the court, reflected the motion as having Daniel Shepard’s assent, though, dissonant with standard office practice, nothing in the body of the motion stated that he had been contacted and did indeed assent. *Id.* At the beginning of the hearing in this proceeding, the parties stipulated that no call to Shepard was ever made. Trans. V. I at 5.

In a pleading dated August 18, 2008, Shepard filed his own motion to continue a hearing scheduled for that September. Exhibit 20. In that motion, Shepard contended that he “was neither consulted nor contacted prior to Petitioner’s filing of her ASSENTED TO MOTION TO CONTINUE and, as such, Petitioner’s motion was not “assented to.” *Id.*

6. Marshall responded with an objection, among other things, stating that her staff had contacted Shepard and he assented to the motion, and further, that Kathy Parlature of her office had secured Shepard's assent. Exhibit 20. Parlature testified that Marshall asked her about whether she had obtained assent, but does not recall Marshall questioning her at the time of the objection. Trans. V. I at 86-7. It is out of the dispute concerning Shepard's assent that this matter arises.
7. On March 5, 2009, Shepard contacted the Attorney Discipline Office ("ADO") by letter to file a complaint against Marshall. Exhibit 1. Shepard included among his myriad claims Marshall's prior representations to the Family Division that her staff had contacted Shepard and that he assented. *Id.* Shepard disputed that Parlature or anyone else from Marshall's office had contacted him or that he assented to the motion. *Id.*
8. Marshall responded to Shepard's complaint. Exhibit 1. With respect to the disputed motion to continue, Marshall wrote that:

[m]y staff person, Kathy Parlature, has worked in my office for approximately nine years. She indicates that Mr. Shepard assented to the motion to continue. Mr. Shepard indicates that he did not assent. There is certainly no gain in filing a motion which was not assented.

*Id.*

9. Marshall included with her April 3 letter an affidavit from her client, [REDACTED], paragraph 24 of which reiterated that "a staff member of Marshall Law Office, Kathy Parlature, indicates that she telephoned Mr. Shepard and secured his assent," and, further, that "the staff member indicates that he did assent." *Id.*

[REDACTED]'s affidavit revealed no foundation for the information to which she attested concerning what Parlature did or did not do. Shepard challenged Marshall to provide an affidavit directly from Parlature. Exhibit 2 at Bates 60. In a letter to the ADO dated November 12, 2009 Marshall met his challenge, enclosing an affidavit of Parlature dated November 5, 2009. Exhibit 3. Parlature's affidavit swore: "I telephoned Mr. Shepard on or around the date of July 2, 2008 at the approximate time of 11:30 AM and spoke with Mr. Shepard and secured his assent for the Assented to Motion to Continue." Exhibit 2 at Bates 75, paragraph 2. Parlature signed the November 5 affidavit under penalty and pain of

perjury and Mackey notarized it, but the date Parlatore swore she called Shepard – July 2, 2008 – could not be correct: the notice of the hearing to which the continuance pertained did not issue until July 22, 2008. Exhibit 19.

- a. Parlatore testified that with this affidavit, as with every instance thereafter in which the disputed Shepard motion arose between her and Marshall, Parlatore lacked certainty about the date of the call and had in her mind an association between calling Shepard and needing a continuance based on a client's medical reason. Trans. V. I at 92-3. Parlatore repeatedly testified that she asked Marshall if the continuance at issue pertained to the medical issue. *Id.* Marshall denied any such conversations, e.g., Trans. V. II at 107, however, as set forth below, with respect to at least one of Parlatore's affidavits, Mackey's testimony supported Parlatore's. In any event, Parlatore testified that she assumed Marshall checked the date and she signed the affidavit. Trans. V. I at 94. According to Parlatore, Marshall allayed Parlatore's concerns in part by repeating words to the effect that "it is no big deal." *Id.* at 97.
- b. Janet DeVito serves as Assistant General Counsel for the ADO and her job includes evaluating complaints such as Shepard's. Trans. V. I at 271. DeVito's review typically includes inviting the attorney subject to the complaint to meet with her. *Id.* On April 7, 2010, DeVito and Marshall met at DeVito's office. *Id.* at 278-79. Present also was an extern in the ADO named Mary Beth Misluk who played an active role in the interview to the hindsight consternation of Marshall. *Id.* at 294-96. The interview covered as many as ten to twelve different topics. Trans V. II at 45.
- c. DeVito asked Marshall about the Parlatore Affidavit and, in particular, the discrepancy between the date Parlatore swore to have obtained Shepard's assent and the hearing notice to which the continuance pertained. *Id.*; Trans. V. I at 281. Marshall acknowledged that the date could not be correct given the hearing notice date of July 22, explained her office procedures concerning dictation, reviewed a calendar, and told DeVito that Parlatore had worked on July 23 and 24 and that Marshall would have dictated the instructions for the motion on July 24. Trans. V. I at 28. With all of that, Marshall concluded that Parlatore's call to Shepard must have occurred on July 24. *Id.*
- d. DeVito asked Marshall (1) to have Parlatore correct what DeVito assumed was a typographical error and re-submit her affidavit, and (2) whether Marshall had any other records at her office that might

confirm that a call to Shepard had actually been made. Trans. V. I at 282. Marshall expressed doubt, but DeVito encouraged her to search for any proof that the call to Shepard actually occurred. *Id.* at 283. As DeVito characterized it, “[i]t’s my recollection that I made a very broad request to bring me anything she had.” Trans. V. I at 305.

- e. By letter dated April 13, 2010, Marshall forwarded to DeVito a second Parlatore affidavit. Exhibit 6. The second affidavit reflected a few revisions from the first, but, in particular, Parlatore swore that “[t]here was a typographical error in my previous affidavit wherein I stated that I contacted Mr. Shepard on July 2, 2008, it was in fact July 24, 2008,” *Id.* at paragraph 2, and “I recall calling Mr. Shepard as it is the office policy to request consent prior to filing motions to continue. I followed the office procedure.” *Id.* at paragraph 4. In her letter enclosing the second Parlatore affidavit, Marshall stated her understanding that DeVito did not require anything further and asked DeVito to advise her if her understanding was not correct. Exhibit 6.
  - f. At the time, DeVito received no corroborating evidence of Parlatore’s call to Shepard other than the second Parlatore affidavit. Trans V. I at 285. Though Marshall acknowledged that such records existed for her to search, Marshall did not review, immediately after the meeting with DeVito, time sheets, billing records or other materials that might have shed light on the issue. In fact, Marshall lacked the capability to review much of her billing records since she does not keep copies of bills in client files and she lacks the facility with computers to allow her to browse her electronic billing records. Trans. V. II at 51-3, 85. Marshall does employ a billing clerk who possesses the facility Marshall lacks, but Marshall did not at that time request such information from her employee; indeed, Marshall was not certain whether her billing clerk could produce the necessary information. *Id.* at 54, 85.
10. Yet Marshall had good reason to turn her office upside down in a search for corroborating evidence. The ADO left no doubt of its focus, among other issues, on the motion to continue and Shepard’s persistent contention that he had never been contacted, much less given his assent. *E.g.*, Trans V. I at 282-83. What is more, though Parlatore’s testimony lacked clarity and even credibility on some issues, Parlatore testified unequivocally that the second affidavit caused her concern because she was not sure of the date of her contact to Shepard. Trans. V. I at 100. Mackey corroborated the testimony, describing how Parlatore expressed concern about the date in the affidavit. Trans V. I at 39. While Parlatore ultimately did sign the

affidavit, Marshall's disinclination to get to the bottom of the issue then and there, even if she remained unaware of Parlatore's concern, is surprising.

11. For her part, Marshall appears to contend, through her counsel's cross examination of DeVito, that DeVito's and her extern's notes of the meeting on the Parlatore affidavit issue reflect only that the ADO asked her to request of Parlatore "any corroborating evidence" of Parlatore's call to Shepard. That contention, however, lacks persuasive force. Not only is "any corroborating evidence" a broad term, but Marshall knew that the ADO was investigating a complaint against her and that the ADO focus included whether Marshall's office ever contacted him for his assent. Presumably, in that situation, an attorney would not take a very limited and technical view of the ADO's request, but would conduct a search in earnest for anything that might bear on the immediate issue.
12. Though Marshall did nothing further to get to the bottom of the Shepard issue, Daniel Shepard continued to agitate, moving from the ADO to the Kingston Police Department where he filed a complaint alleging "false swearing" at Marshall's office. On October 6, 2010, a Kingston Police Officer interviewed Parlatore. Exhibit 13. At first, Parlatore stuck to her story, but, when confronted with certain implausibilities inherent, confessed that in fact she could not confirm that she made the call to Shepard. *Id.* Among other reasons, Parlatore told the officer that she signed the affidavit because she trusted Marshall and also that she feared losing her job should she not comply with Marshall's affidavit requests. *Id.*
13. That revelation, which Marshall learned for the first time in May 2011 when she reviewed the report of Parlatore's police interview, prompted Marshall to finally conduct the investigation that the Panel finds she should have conducted in response to the ADO's April request if not earlier. Trans V. II at 148, 156; Exhibit 9 (Bates 1114-1116). Marshall's investigation revealed that (1) Mackey, not Parlatore, prepared the disputed motion to continue, (2) no billing records or time sheets revealed a telephone call to Shepard, and (3) the phone call Marshall had asserted probably never occurred.

PCC Record Tab 21 (Hearing Panel Report) pp. 1-8.

## II. RULINGS OF LAW

The Committee voted to accept the rulings of law as found by the Hearing Panel Report. This establishes the rules violations by clear and convincing evidence. The violations are as follows:

### **Rule 8.1(b)**

**Rule 8.1(b) comprises two disjunctive components. An attorney violates Rule 8.1(b) by failing to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the disciplinary proceedings, or by knowingly failing to respond to a lawful demand for information from a disciplinary authority.**

**The Amended Notice of Charges refers specifically to an alleged failure to respond to a lawful demand for information from the ADO and the Panel finds that the ADO has proved this violation by clear and convincing evidence. In response to DeVito's request for evidence that would corroborate Parlatore's affidavit, rather than conduct a search for records (which, when finally motivated to search for much later Marshall found and produced) that would have shed light on the alleged Shepard call, Marshall did virtually nothing (other than to have Parlatore prepare a second affidavit and submit that to the ADO). Her after-the-fact defenses, that (1) DeVito's request was very narrow and sought only a corrected Parlatore affidavit, and (2) that the cover letter enclosing the revised Parlatore affidavit asked DeVito to contact her if she needed anything else, are not persuasive.**

**The ADO did not specifically charge Marshall with an 8.1(b) violation based on a failure to disclose a fact necessary to correct a misapprehension, and at the hearing concerning sanctions, Marshall's counsel contended that the absence of a specific charge precludes the Panel from any finding. In response, the ADO observes that it did charge Marshall with a violation of Rule 8.1(a), and takes the position that, through that charge, put Marshall on notice of the alternate Rule 8.1(b) charge. While it may be academic since the Panel has found a violation of the second sentence of Rule 8.1(b), the Panel finds by clear and convincing evidence that Marshall violated Rule 8.1(b) by failing to correct a misapprehension concerning the dates recited in the Parlatore affidavit.**

**In this regard, even if the first Parlatore affidavit did not create a misapprehension "known" to Marshall, the second affidavit did in that by then, Marshall knew of the misapprehension but failed to conduct the type of review of the records in her office that would have led her not to a corrected date, but to the fact that the call never happened at all. While Marshall may have believed the misapprehension to be the product of a typographical error, the error, coupled with ADO's broad request for any other evidence of the call to Shepard, put Marshall in a position to have discovered that the Shepard call never occurred. It does not appear that Marshall, confronted by one mistaken affidavit, took any serious steps to correct the misapprehension. Instead, she simply revised the affidavit or directed Parlatore to do so, and made no serious effort to find other evidence in her records that would have shed light on the alleged Shepard call. As a result, she submitted a second Parlatore affidavit that continued in the fictional assertion**

– a misapprehension – that a call to Shepard ever occurred. In short, Marshall knew of the ADO’s misapprehension and failed to disclose a fact, if not in her consciousness then at her fingertips with some effort, that would have corrected it.<sup>1</sup>

### **Rule 5.3(a)**

Rule 5.3 imposes requirements on managing attorneys with respect to their subordinate non-lawyers, and requires, generally speaking, that a lawyer make efforts to ensure that her staff’s conduct comports with the Rules of Professional Conduct. The Panel finds that Marshall violated Rule 5.3(a) and (b) by clear and convincing evidence as follows.

Rule 5.3(a) provides that a lawyer with managerial authority in a law firm . . . shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer.

Marshall violated Rule 5.3(a) by failing to have in place a system – such as a notation in the file – through which she and her staff could later confirm that they had called for assent. At the time of the Shepard incident, Marshall’s office practice called for staff to make the calls and for the outcomes to be memorialized in the motions themselves. Yet the disputed Shepard motion, while entitled “assented to” lacked any such statement in the body of the motion. The disputed motion itself, in other words, exposes the flaw in Marshall’s system. What is more, those calls did not always occur contemporaneously with the transcribing of the motion, enhancing the likelihood that assent might not be attained or memorialized. Marshall herself expressed surprise at Mackey’s testimony that, at times, Mackey would transcribe an entire tape prior to making a call for assent. Trans. V. II at 50. Marshall acknowledged “I absolutely can see that’s not a good practice . . .” *Id.* The issue is not that the motion was filed in its ambiguous state – any lawyer in a busy office could make that error. The issue is that, when challenged, Marshall could not easily confirm whether a call had actually been made. Had such a system been in place, Marshall would not have perpetuated the misrepresentation in the Family Division and ADO proceedings; indeed, disciplinary proceedings likely would not have occurred at all.

---

<sup>1</sup> Notably, by its terms, the first sentence of Rule 8.1(b) does not include a “knowing” component with respect to the failure to correct. Thus, one construction of the rule would not require a lawyer to “knowingly” fail to disclose a fact necessary. It would be enough if the lawyer knows that the misapprehension has arisen in the matter. Under that construction, Marshall’s failure to correct the misapprehension, even if through her own lack of diligence, falls within the plain language of the rule.



### **Rule 5.3(b)**

Rule 5.3(b) requires a lawyer with supervisory authority over a non-lawyer to make “reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.”

Marshall violated Rule 5.3(b) because she failed to make any real effort to ensure that Parlatore’s conduct was compatible with Marshall’s own professional obligations. Marshall could not comply with her professional obligations to the Court and opposing parties by claiming assent when she could not be sure assent had been obtained. Yet in her supervisory capacity she did just that by failing to put in place a system that would have allowed Parlatore or any other of Marshall’s staff to confirm that they actually did contact the other side for assent and documented those measures when responding to an allegation that no assent had been obtained. Marshall could not comply with her own professional obligations by signing an affidavit – a sworn document – in which she was not absolutely certain of the contents, even dates. Yet, in her supervisory capacity she did just that by failing to take reasonable measures to ensure that what Parlatore swore to was accurate to the best of Parlatore’s understanding. Instead, the process that led to the various Parlatore affidavits was rushed and not designed to ensure accuracy.

### **Rule 8.4(a)**

By virtue of the above violations, the Panel also finds that Marshall violated Rule 8.4(a).

PCC Record Tab 21, Hearing Panel Report pp. 9-13.

### **III. ANALYSIS**

In accordance with the American Bar Association’s Center for Professional Responsibility, *Standards for Imposing Lawyer Sanctions* (1992) (“*Standards*”), there is a four-step analysis, namely:

1. What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system, or the profession?);
2. What was the lawyer’s mental state? (Did the lawyer act intentionally, knowingly, or negligently?);
3. What was the extent of the actual or potential injury caused by the lawyer’s misconduct? (Was there a serious or potentially serious injury?); and
4. Are there any aggravating or mitigating circumstances?

During its deliberations, the Committee considered all levels of possible sanctions. Assistant Disciplinary Counsel Kruse recommends suspension. Mr. Uchida advocates for a public censure, with the condition that she engage an office management consultant, provide an affidavit of clarification/explanation to the relevant Circuit Court, and reimburse the ADO for its expenses in investigating and prosecuting this matter.

The Committee generally concurs with the analysis and arguments proffered by Mr. Uchida in his October 16, 2012 memorandum<sup>2</sup> ("Memorandum") to the Committee, with the following numbered caveats.

1. As to the extent of the actual or potential injury caused by the lawyer's misconduct, the Committee finds Marshall's actions caused harm to the legal profession, and Mr. Shepard in particular. Marshall's arguably lackadaisical approach to researching her own readily-available records and failure to properly question her office staff lead to the existence of an air of doubt regarding Mr. Shepard's honesty and integrity. Clearly if the court deemed her story to be the more accurate, then Mr. Shepard would have been deemed a liar, especially within the context of the heated divorce proceedings in which they were both embroiled.

2. **Aggravating Factors.**

- a. Marshall has substantial experience in the practice of law, having 25 years in the profession. Clearly any lawyer with this tenure is skilled to the extent of being precluded from claiming ignorance or inexperience.
- b. Her failure to fully cooperate with the ADO is evident from the record. It is apparent she treated her dealings with the ADO as more of an annoyance than a matter of professional responsibility, which was augmented by her demeanor at the hearing before the Committee.
- c. Finally, Marshall appeared to fail to take responsibility for her misconduct. Although not required by the Rules, she should have apologized to Mr. Shepard well before she was likely advised to do so by her learned counsel. Similarly, her expression of remorse over her resistance to the ADO's investigation is not to be construed as a substitute for her required cooperation.

With that being said, the Committee is deferring to the findings of the Panel wherein it determined the actions of Marshall were not "knowingly" for the purpose of violations of N.H. R. Prof. Conduct 8.1(b) and 5.3(a) and (b), but rather "Marshall acted more out of negligence than knowingly as the standard reflects it." *Hearing Panel Report at 15*. Yet, the Panel determined Marshall knowingly failed to respond to a lawful demand for information from a disciplinary Authority. *See Hearing Panel Report, pp. 10-12*.

---

<sup>2</sup> Entitled "Keri J. Marshall's Memorandum to the Professional Conduct Committee.

The Committee defers to the Panel on the issue of credibility, as the Panel is in a much better position to assess witness demeanor and other indicia of trustworthiness. However, the Committee was skeptical of the degree of diligence employed by Marshall in dealing with the Parlatore/Shepard incident in the first instance, and subsequently dealing with the ADO by failing to provide requested records when, in fact, such records were within her control at all times. Although Marshall apparently did not possess sufficient computer acumen to retrieve such records, it remains a mystery to the Committee why others having greater proficiency in using the Timeslips billing program software were not consulted earlier in the ADO investigative process.

This lack of attention Marshall gave to the ADO's inquiry was clearly a source of frustration for the ADO, especially when the records were discovered, and found to have been relatively easily produced at any time, given a reasonable level of competency and knowledge of the workings of the Timeslips program software.

Nonetheless, the Committee concurs the facts in this case, combined with a balance of aggravating and mitigating factors, suggest that the sanction of Public Censure, along with certain remedial measure, is appropriate.

#### **IV. SANCTION**

Based upon the reasons set forth above, the Committee issues the following sanction against Marshall:

Public Censure pursuant to Sup. Ct. R. 37A, I(E)(1)(d).

Marshall shall engage, at her expense and within 30 days of the date of this public censure, an office management consultant approved by Assistant Disciplinary Counsel. Marshall has voluntarily agreed to this remedial measure, and the Committee concurs the need for such a measure is indicated. The Committee specifically finds Marshall's office management oversight – specifically with regard to communications with opposing counsel and the court system, and later with the ADO - to be lacking. Therefore, the office management consultant shall be engaged for a period of not less than six months, and shall concentrate on the development of office management techniques to ensure Marshall – especially being a sole practitioner – is proficient in operation of her office billing program, and achieve a level of competency in the operation of all software upon which her office and staff rely for day-to-day operations. The office management consultant shall provide a report to the ADO at the conclusion of the 6 month period indicating Marshall's compliance with this paragraph. If the ADO is not satisfied Marshall has achieved the proficiency or competency required, the ADO may require up to another sixth month engagement of the office management consultant on the same terms and conditions. The ADO shall report to this Committee at the end of the initial or extended term of the office management consultant's engagement to indicate whether Marshall has achieved satisfactory results, or whether further involvement of this Committee, and possibly further remedial measures and/or sanctions, are indicated.

Marshall shall file, within 30 days of the date of this public censure, an affidavit of explanation to the 10<sup>th</sup> Circuit Court, Portsmouth Family Division *In the Matter of* [REDACTED] and Daniel Shepard 670-2005DM-[REDACTED]. The affidavit shall be written with candor and shall correct the record as to Mr. Shepard's lack of assent to the relevant motion to continue. A copy of the affidavit shall be transmitted to the ADO and Mr. Shepard concurrent with its filing with the court.

This sanction is in accord with the purpose of attorney discipline as described by the New Hampshire Supreme Court and with the *Standards*. See, e.g., *Shillen's Case*, 149 N.H. 132, 139 (2003) (noting that although the Court has never formally adopted these Standards, the Court has considered them when imposing sanctions).


## V. COSTS

The Respondent has voluntarily agreed to pay all costs associated with the investigation and prosecution of this matter. The Committee concurs, and hereby orders costs to be paid by the Respondent for the investigation and prosecution of this matter.

## VI. CONCLUSION

For all of the above reasons, the Professional Conduct Committee publicly censures Keri J. Marshall for violating N.H. R. Prof. Conduct 8.1(b), 5.3(a), 5.3(b), and 8.4(a).

November 27, 2012

  
Margaret H. Nelson  
Chair

### Distribution:

James L. Kruse, Assistant Disciplinary Counsel  
Richard Y. Uchida, Esquire  
File