

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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The State of New Hampshire

Supreme Court

In Case No. LD-2023-00014, In The Matter of Theodore M. Cooperstein, Esquire

On June 18, 2024, the Professional Conduct Committee voted on the Supreme Court's April 16, 2024 remand of this matter for issuance of a public censure. The matter was before the Supreme Court on the notification by the Attorney Discipline Office (ADO) of discipline in another jurisdiction and the ADO's recommendation that the misconduct warranted substantially different discipline in New Hampshire.

Attorney Cooperstein's misconduct represented three violations of New Hampshire Rules of Professional Conduct 3.3(a)(1), Candor Towards the Tribunal, and 8.4(c), Misconduct Involving Dishonesty. The Committee reviewed the record in the matter, which included the ADO's initial filing, the Supreme Court's orders, Attorney Cooperstein's Response to the Court's order of notice, a July 7, 2022 sanction order from the United States District Court for the Southern District of Mississippi Northern Division, an August 1, 2023 private reprimand of the Supreme Court of Mississippi Committee on Professional Responsibility, and a December 5, 2023 admonition from the Attorney Grievance Committee of the Supreme Court of New York Appellate Division First Department.

The Court reviewed the matter pursuant to Supreme Court Rule 37(12), found that the misconduct warranted substantially different discipline, and, waiving the provisions of Rule 37(12)(e) and Rule 37(2)(g), remanded to the Committee for issuance of a public censure. *See* Rule 1 ("In the interest of expediting a decision, or for other good cause shown, the supreme court or a single justice thereof may suspend the requirements or provisions of any of these rules in any instance on application of a party or on the court's or a single justice's motion and may

order proceedings in accordance with that direction.”). The Committee issues this public censure incorporating the Court’s findings and conclusions.

On September 25, 2023, the ADO filed with the New Hampshire Supreme Court a certified copy of the August 1, 2023 opinion and judgment of the Supreme Court of Mississippi Committee on Professional Responsibility, which privately reprimanded Attorney Theodore M. Cooperstein following his self-report that he had on three occasions misrepresented his vaccination status to a federal judge in Mississippi during the summer of 2021. At the time of those misrepresentations, the federal court in Mississippi had a standing COVID-mitigation order that required unvaccinated court participants to wear a mask. In the correspondence transmitting the filing, the ADO contended that Attorney Cooperstein’s misconduct warrants substantially different discipline in New Hampshire. In particular, the ADO asserted that the Supreme Court should impose a six-month suspension from the practice of law in New Hampshire, with the entire suspension stayed on the condition that Attorney Cooperstein engage in no further misconduct for one year.

In accordance with Supreme Court Rule 37(12), which governs reciprocal discipline, the Court issued an order of notice giving Attorney Cooperstein an opportunity to advise the Court in writing of his position as to whether the Court should impose discipline identical or substantially similar to that imposed by the Supreme Court of Mississippi Committee on Professional Responsibility. On January 30, 2024, Attorney Cooperstein filed a response in which he contended that the Court should impose substantially similar discipline (in New Hampshire terms, a reprimand). In support of his position, Attorney Cooperstein submitted a certified copy of the disciplinary determination of the Attorney Grievance Committee of the Supreme Court of New York Appellate Division First Department, which formally admonished him for the misconduct.

Supreme Court Rule 37(12)(d) provides for the imposition of reciprocal discipline by the Court unless the respondent attorney or the ADO demonstrates, or the Court finds, based upon the face of the record from which the discipline is predicated, that: (1) the procedure followed by the jurisdiction imposing discipline was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) the imposition of the same or substantially similar discipline by the Court would result in grave injustice; or (3) the misconduct established warrants substantially different discipline in New Hampshire.

After having reviewed the opinion and judgment of the Supreme Court of Mississippi Committee on Professional Responsibility, the ADO’s correspondence, and the response of Attorney Cooperstein to the Court’s order of notice, the Court concluded that neither of the first two factors set forth in Rule 37(12)(d) was present. The Court thus focused on the third factor and agreed with the ADO that Attorney Cooperstein’s misconduct – three instances of a false representation to a tribunal – was sufficiently serious to warrant discipline greater than a reprimand. The Court was persuaded however by the mitigating factors identified by Attorney

Cooperstein and by the ADO that a suspension was not warranted in this case. Those mitigating factors, many of which were noted in the New York disciplinary determination, include Attorney Cooperstein's acknowledgement of misconduct, the absence of a prior disciplinary record, the absence of a selfish motive, his self-report of the misconduct, his expression of regret and apology to the federal court in Mississippi and to his colleagues in the United States Attorney's Office for his lack of candor and poor judgment, and his cooperation with the ADO.

Considering the nature and extent of Attorney Cooperstein's misconduct, the Court determined that a public censure was appropriate discipline.

DATED: July 15, 2024

/s/ Stephanie C. Hausman
Stephanie C. Hausman, Esq.
Chair

cc: Mark P. Cornell, Esq. (via email)
Jeffrey C. Spear, Esq. (via email)
John P. Sneed, Esq. (via email)