THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Docket No. LD-2017-0010

IN THE MATTER OF
JOHN F. GALLANT, ESQUIRE

BRIEF FOR THE NEW HAMPSHIRE SUPREME COURT ATTORNEY DISCIPLINE OFFICE

New Hampshire Supreme Court
Attorney Discipline Office

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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES iii

QUESTIONS PRESENTED 1

STATEMENT OF THE CASE 2-4

STATEMENT OF THE FACTS 5-11

STANDARD OF REVIEW 12

SUMMARY OF THE ARGUMENT 13-14

ARGUMENT 15-31

A. The Referee applied the correct burden of proof in concluding that Mr. Gallant's continued interim suspension was necessary to protect the public and preserve the integrity of the legal profession.. 15

1. *In re Reiner's Case, 152 N.H. 163 (2005) ("Reiner's Case I") sets forth the procedural framework, including the burden of proof, for a post-suspension hearing involving an indicted attorney.* 15

2. *Rule 37(9-A)(d) is inapplicable to Mr. Gallant's case.* 17

B. The Referee's application of the criteria set forth in Reiner's Case I and In re Reiner's Case, 152 N.H. 594 (2005) ("Reiner's Case II"), and not the criteria used to measure whether a preliminary injunction is appropriate, did not constitute an error of law 18

1. *The Referee did not err as a matter of law by relying on the criteria set forth by the Court in Reiner's Case I and Reiner's Case II in determining whether Mr. Gallant's interim suspension was necessary.* 19

2. *The authorities cited by Mr. Gallant in his Notice of Challenge address interim suspension provisions different from those in New Hampshire.* 22

C. The Referee's findings of fact were supported by the record and the Referee's conclusions drawn from the factual findings were reasonable. 23

1. The Referee did not err in concluding what Mr. Gallant said to Ms. Farina.. 24

2. The Referee reasonably rejected Mr. Gallant's characterization of his statements made to Ms. Farina. 25

3. The Referee reasonably concluded that Mr. Gallant represented to Ms. Farina that he had spoken with the judge. 26

4. *The Referee reasonably concluded that Mr. Gallant's June 15, 2017 conversation with the prosecutor partially corroborated Ms. Farina's account of what Mr. Gallant told her on May 24, 2017* 27

5. *Mr. Gallant's various other challenges to the Referee's factual findings and conclusions are unpersuasive* 28

D. The Referee's reasonable findings of fact and proper conclusions of law support the Referee's recommendation that Mr. Gallant's interim suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession. 29

E. Conclusion 30

NEW HAMPSHIRE SUPREME COURT RULE 37 32-35

TABLE OF AUTHORITIES

CASES

In re Discipline of Trujillo, 24 P.3d 972 (Utah 2001) 19, 22, 23
Feld's Case, 149 N.H. 19 (2002) 12
New Hampshire Department of Environmental Services v. Mottolo, 155 N.H. 57 (2007).....21
State v. Merski, 121 N.H. 901, 909 (1981).....21
Reiner's Case I, 152 N.H. 163 (2005). 1, 2, 3, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27
Reiner's Case II, 152 N.H. 594 (2005).....1, 13, 18, 19, 20, 21, 22
In re Richmond's Case, 152 N.H. 155 (2005) 22

NEW HAMPSHIRE SUPREME COURT RULES

N.H. Supreme Court Rule 37(9) 2, 3, 13, 15, 16, 17, 18, 22
N.H. Supreme Court Rule 37(9-A) 15, 17, 18, 22
N.H. Supreme Court Rule 37(16) 2, 3, 13, 15, 16, 17, 18, 19, 21, 22, 23

NEW HAMPSHIRE STATUTES

N.H. RSA 641:5, I(b).....18

ABA Standards for Imposing Lawyer Sanctions, §2.4 (2005).....18, 22, 23

QUESTIONS PRESENTED

A. Whether the appointed referee, retired Supreme Court Justice James E. Duggan (the "Referee"), applied the correct burden of proof in concluding that the continuation of John F. Gallant, Esquire's interim suspension was necessary for the protection of the public and the preservation of the integrity of the legal profession.

B. Whether the Referee's application of the criteria set forth in In re Reiner's Case, 152 N.H. 163 (2005) ("Reiner's Case I") and In re Reiner's Case, 152 N.H. 594 (2005) ("Reiner's Case II"), and not the criteria used to measure whether a preliminary injunction is appropriate, constituted an error of law.

C. Whether the Referee's findings of fact were supported by the record and whether the Referee's conclusions drawn from the factual findings were reasonable.

D. Whether the Referee's findings of fact and application of law supported the Referee's conclusion that the continuation of Mr. Gallant's interim suspension was necessary for the protection of the public and the preservation of the integrity of the legal profession.

STATEMENT OF THE CASE

On August 15, 2017, John F. Gallant, Esquire, was indicted by a Hillsborough County Grand Jury in the Southern District for Witness Tampering (the "Indictment"). Joint Exhibit List ("JEL"), on file with the New Hampshire Supreme Court (the "Court"), Exhibit ("Ex.") 1, page ("p.") 1. Pursuant to the Indictment, Mr. Gallant was alleged to have "purposely attempted to induce or otherwise cause E.F. [Emily Farina] to withhold testimony and/or information from the court by telling E.F. 'I spoke to the judge yesterday; he doesn't want to hear this' and 'Can't you just drop it' or words to that effect...." Id.

On or about September 11, 2017, the New Hampshire Supreme Court Attorney Discipline Office (the "ADO") filed with the Court a certified copy of the Indictment.

On September 13, 2017, the Court ordered that, "considering the nature of the alleged felony, Attorney Gallant's immediate suspension from the practice of law is necessary to protect the public and to preserve the integrity of the legal profession." Court Order dated September ("Sept.") 13, 2017 (citing New Hampshire Supreme Court Rule ("Rule") 37(9)(i) and Rules 37(16)(d) and (f)). The Court further ordered that, "[w]ithin 15 days from the date of this order, Attorney Gallant may request a hearing on the issue of whether the interim suspension should be lifted, which will be promptly scheduled." Id. (citing Reiner's Case I, 152 N.H. 163 (2005)).

On or about September 15, 2017, Mr. Gallant, through his counsel, William C. Saturley, filed with the Court a Request for a Hearing at the Earliest Possible Date (the "Request for Hearing"). See Request for Hearing, on file with the Court.

In an order dated September 20, 2017, the Court appointed retired Supreme Court Justice James E. Duggan to serve as referee in the matter. Court Order dated Sept. 20, 2017. The Court

directed the Referee to "hold a hearing on the issue of whether Attorney Gallant's interim suspension from the practice of law should be lifted." Id. The Court further directed the Referee to "make a recommendation to the court as to whether suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession." Id. (citing Rules 37(9)(i) and 16(f); Reiner's Case I, 152 N.H. 163 (2005).

On September 26, 2017, the Referee held a hearing on whether Mr. Gallant's interim suspension should be lifted, pending resolution of the Indictment. At the hearing, there was no testimony. See Referee's Recommendation dated October ("Oct.") 10, 2017 ("Referee's Recommendation"), on file with the Court, at p. 1. Instead, the parties presented oral argument and submitted an agreed-upon set of exhibits. Id. The parties also filed legal memoranda with the Referee.

On October 10, 2017, the Referee filed his report and recommendation with the Court. See Court Order dated Oct. 12, 2017, at p. 2. In the Referee's Recommendation, the Referee "conclude[d] that the ADO has shown, by a preponderance of the evidence, that suspending Gallant from the practice of law until the indictment against him for witness tampering is resolved is necessary for the protection of the public and the preservation of the integrity of the legal profession." Referee's Recommendation, p. 13 (citations omitted). Based on the foregoing, the Referee recommended, among other things, that "...the Court not lift its September 13, 2017, order, directing Gallant's immediate suspension from the practice of law in New Hampshire." Id. (citing Rule 37(9)(i) and Rules 37(16)(d) and (f)).

In its October 12, 2017 order, the Court instructed "Attorney Gallant and the ADO [to] advise the court whether they intend to challenge the referee's factual findings and rulings of

law, and the referee's recommendation that the suspension not be lifted." Court Order dated Oct. 12, 2017.

In correspondence dated October 17, 2017, the ADO notified the Court that the ADO did not intend to challenge the Referee's factual findings, rulings of law, or recommendation that Mr. Gallant's suspension not be lifted. See ADO correspondence to Court dated Oct. 17, 2017, on file with the Court.

On October 27, 2017, Mr. Gallant, through counsel, filed a Notice of Challenge to the Referee's Recommendations Regarding the Interim Suspension of Attorney John F. Gallant (the "Notice of Challenge"), challenging both the Referee's factual findings and rulings of law. See Notice of Challenge, on file with the Court.

On November 13, 2017, the Court issued an order directing the parties to "file briefs addressing the issues identified in Attorney Gallant's notice of challenge" on or before November 29, 2017, and scheduling oral argument in this matter for December 6, 2017. Court Order dated November 13, 2017, on file with the Court.

STATEMENT OF FACTS

On April 28, 2017, Emily Farina ("Ms. Farina") applied for a Domestic Violence Temporary Order of Protection (the "Restraining Order") with the 9th Circuit Court-Family Division-Nashua (the "Circuit Court") following an incident involving Ms. Farina and Ethan P. Zimmer ("Mr. Zimmer"). JEL, Ex. 2, p. 2; Referee's Recommendation, p. 1. The filing of the Restraining Order initiated the action entitled In the Matter of Emily Farina v. Ethan Zimmer, Case No. 659-2017-DV-00132 (the "Restraining Order Action"). JEL, Ex. 2, p. 2. On April 28, 2017, the Circuit Court (Moore, J.) granted Ms. Farina's request for the Restraining Order and scheduled a final hearing on the Restraining Order for May 24, 2017. JEL, Ex. 2, pp. 2-3; Referee's Recommendation, p. 1, 3.

On May 17, 2017, Mr. Zimmer was arraigned in the Circuit Court (Moore, J.) on four counts of violating the Restraining Order and three counts of theft by unauthorized taking, initiating the matter entitled State v. Ethan P. Zimmer, Case No. 459-2017-CR-02225 (the "Criminal Action"). JEL, Ex. 3, p. 4; Referee's Recommendation, p. 2. The Circuit Court set Mr. Zimmer's bail at $25,000. Referee's Recommendation, p. 2.

On May 18, 2017, the Circuit Court (Moore, J.) held a review hearing on Mr. Zimmer's bail. JEL, Ex. 15, pp. 23-36; Referee's Recommendation, p. 2. At the hearing, Mr. Gallant's partner, Timothy Ervin, represented Mr. Zimmer; William Barry represented Ms. Farina; and Donald C. Topham represented the State of New Hampshire. JEL, Ex. 15, p. 23; Referee's Recommendation, p. 2. Mr. Ervin requested that the Circuit Court reduce Mr. Zimmer's bail so that Mr. Zimmer could attend the closing of the sale of Mr. Zimmer's and Ms. Farina's home. JEL, Ex. 15, p. 24; Referee's Recommendation, p. 2. When the Circuit Court questioned Ms.

Farina whether she believed that Mr. Zimmer "present[ed] a credible threat of harm to [her]," Farina responded, "No. I just want to get the house sold and then we can go from there...I want to get out of that house...We just have to get through tomorrow." JEL, Ex. 15, pp. 28-29; Referee's Recommendation, p. 2. Although the Circuit Court agreed to reduce Mr. Zimmer's bail, so that he could attend the closing, the court scheduled a further hearing regarding bail for May 23, 2017. JEL, Ex. 15, p. 32; Referee's Recommendation, p. 2.

On May 23, 2017, the Circuit Court held the bail review hearing, at which Mr. Gallant represented Mr. Zimmer. JEL, Ex. 16, pp. 37-40; Referee's Recommendation, p. 2. Ms. Farina did not attend the hearing. Id. At the hearing, which lasted less than two minutes, Judge Moore stated:

> ...Mr. Zimmer, look, sir, I want to wish you the best of luck. I mean, I'll tell you something right now that it's not the mistakes in life that...define you and it's how you deal with them. You know that.
>
> And I'm glad that things are back on track. If there's something that I can do to help you down the road, if there's issues, please be proactive. Give me a chance to take care of the issue for you, okay?
>
> ....
>
> I am sure the two of you can resolve this issue and I'll be happy to work with you. I'm here tomorrow, so you can do one of two things on the underlying restraining order. You can certainly sit down with Attorney Barry and see if you can work it out. If for some reason you feel that there's an issue having me hear the case, just let me know and I'll find you a different judge.

JEL, Ex. 16, pp. 38-39; Referee's Recommendation, p. 2-3.

On May 24, 2017, the Circuit Court held what was to be the final hearing in the Restraining Order Action. JEL, Ex. 17, pp. 41-52; Referee's Recommendation, p. 3. Mr. Gallant represented Mr. Zimmer at the hearing. Id. Ms. Farina appeared at the hearing without counsel. Id. According to Ms. Farina, prior to the hearing, Mr. Gallant approached her and

asked her "if she wanted to be there, meaning at court." JEL, Ex. 5, p. 9. After responding "no" to Mr. Gallant, Ms. Farina and Mr. Gallant went into the hallway to speak. Id. According to a police report of a June 29, 2017, interview of Ms. Farina, once in the hallway:

> ...Gallant asked "can't we come to an agreement out of court." Farina responded that she was not comfortable with this because she and Zimmer previously had an agreement outside of court, prior to the restraining order, and Zimmer had not abided by it.

According to the police report, Ms. Farina also stated that:

> Gallant then claimed he had already spoken to Farina's lawyer, Bill Barry, that Gallant had emailed him or left him a message. Farina disagreed and Gallant insisted that he had spoken with her attorney. Farina then spoke with Atty Barry over the phone and confirmed that Atty Barry had not spoken with Gallant. Farina then returned to the courtroom.
>
> Gallant re-approached Farina a short time later and asked her to speak with him in the hallway again. Gallant asked if they could speak in another room, instead of the hallway. Gallant referred to the previous day when there had been a hearing in the criminal matter pending against Ethan Zimmer. Farina advised that she had not been required to be present at this hearing on May 23, 2017. Gallant stated, "I spoke to the judge yesterday; he doesn't want to hear this." Farina questioned this. Gallant then told Farina that this was going to look really bad on Ethan's record.
>
> Farina responded by telling Gallant that chainsaws look really bad (referring to an incident that occurred on April 27, 2017 and documented in her application for DV Temporary Order of Protection). Gallant claimed that this happened a year ago and stated "Can't you just drop it." Farina responded that this just happened a couple of weeks ago. Farina informed Gallant that she would not leave without a judge dismissing the restraining order or Zimmer agreeing to a six month restraining order. Farina advised that Gallant had tried to convince her to agree to a restraining order of only thirty days.
>
> Farina then ended contact with Gallant and walked back to the courtroom where the hearing was held in front of Judge Moore. Farina advised that she never signed any agreement with Gallant.

JEL, Ex. 5, p. 9; see Referee's Recommendation, pp. 3-4.

Following their conversation, Mr. Gallant and Ms. Farina returned to the courtroom to attend the hearing. Id. During the hearing, Judge Moore informed Ms. Farina that she could, in

addition to asking to go forward with the matter, "ask the Court to dismiss the matter, or...ask the Court to keep the temporary orders in place for a set period of time." JEL, Ex. 17, p. 44; Referee's Recommendation, p. 4. Mr. Gallant informed the Court that, although they had not finished their conversation, Mr. Gallant and Ms. Farina had discussed "continuing the orders that are in place for a period of time." JEL Ex. 17, p. 45-46. Judge Moore responded that "the Court as a whole kind of frowns on having this happen...[b]ecause there isn't any finality..." JEL, Ex. 17, p. 46; Referee's Recommendation, p. 4. Nevertheless, Judge Moore (with Ms. Farina's agreement) continued the Restraining Order against Mr. Zimmer for up to 180 days, with review hearings scheduled for 90 and 180 days. JEL, Ex. 17, p. 46; Referee's Recommendation, p. 5.

On June 15, 2017, the Circuit Court held a pretrial conference in the Criminal Action. JEL, Ex. 3, p. 5; Referee's Recommendation, p. 5. Prior to the pretrial conference, the prosecutor, Mr. Topham, spoke with the victim/witness advocate (the "Advocate"). JEL, Ex. 6, p. 11; Referee's Recommendation, p. 5. According to a police report, the Advocate represented to Mr. Topham that Ms. Farina had told the Advocate that, "...prior to the start of the Restraining Order Hearing Attorney Gallant asked [Ms. Farina] to speak with him privately" and that, "...once in a conference room Attorney Gallant told [Ms. Farina] that 'I've spoken to the Judge and he wants this to go away.'" Id.

Mr. Gallant represented Mr. Zimmer at the pretrial conference. Referee's Recommendation, p. 5. Mr. Topham alleged that, prior to the pretrial conference, Mr. Gallant told Mr. Topham that "The Judge wants this to go away." JEL, Ex. 6, pp. 11-12; Referee's Recommendation, p. 6. Mr. Topham responded "What?," to which Mr. Gallant purportedly reiterated "The Judge wants this to go away." Id. Mr. Gallant allegedly added that "The victim wants this to go away and won't show up," to which Mr. Topham informed Mr. Gallant that "this

was not going away and that the victim was present and wished the case to go forward." JEL, Ex. 6, p. 12; Referee's Recommendation, p. 6. According to Mr. Topham:

> Attorney Gallant then stated "I've been sitting in the Courtroom and she's not here."
>
> [Mr. Topham] informed Attorney Gallant that the victim was in fact present and had been and was still in a different part of the Courthouse and that [the Advocate] had just spoken with the victim.
>
> Attorney Gallant then requested that [Mr. Topham] [n]olle [p]ross the charges against Mr. Zimmer.
>
> [Mr. Topham] then informed Attorney Gallant that [he] would not be [n]olle [p]rossing the charges.

Id. Following his conversation with Mr. Gallant, Mr. Topham stated that he "was sufficiently concerned about the nature of Attorney Gallant's comments to [him] that [he] immediately notified [his] chain of command regarding the inappropriateness of these statements and possible witness tampering by a licensed New Hampshire Attorney." Id.

On July 12, 2017, Officer Nicole M. Clay ("Officer Clay") of the Nashua Police Department interviewed Judge Moore about the statements that Mr. Gallant purportedly made to Ms. Farina. JEL, Ex. 7, p. 13; Referee's Recommendation, p. 7. Officer Clay reported that Judge Moore "advised that [he] had no independent recollection of having any conversation with Atty Gallant that was not on the court record." JEL, Ex. 7, p. 13. Officer Clay further stated in the report,

> ...J. Moore advised [Officer Clay] that he would never encounter an attorney in the hallway, much less have a conversation with an attorney in that setting. Based on my [Officer Clay's] questions, J. Moore advised he would be recusing himself from all matters involving Emily Farina and Ethan Zimmer. Based on this, [Officer Clay] advised J. Moore of Atty Gallant's statements to Farina that [Officer Clay] was now investigating. J. Moore asked "Why would I say that?" and further stated "I can't ever imagine saying to anyone I want this to go away." J. Moore advised that he never had a

> private, off-the-record conversation with Atty Gallant and never said anything about wanting the case to go away or not wanting to hear the matter in court. Id.

On July 17, 2017, Officer Clay interviewed William Barry regarding the investigation into Mr. Gallant. JEL, Ex. 8, p. 14; Referee's Recommendation, pp. 6-7. In the interview, Mr. Barry confirmed that Ms. Farina had telephoned him from the Circuit Court on May 24, 2017. Id. Mr. Barry further represented:

> Farina advised [him] that Gallant approached her and told her that he had spoken with Atty Barry and that Atty Barry had told Gallant that Farina did not need to be present for the hearing on the temporary restraining order. Farina further advised that Gallant told her he had talked with Judge Moore and Judge Moore said Farina did not need to be at Court. Id.

On July 18, 2017, Officer Clay spoke with Mr. Gallant on the telephone. JEL, Ex. 9, p. 1; Referee's Recommendation, pp. 7-8. During the conversation, Officer Clay informed Mr. Gallant that she would like to speak with him about certain statements that he had made to Ms. Farina on May 24, 2017. Id. Officer Clay stated in her report that Mr. Gallant represented that he did not believe that it was a good idea for him to come to the NPD for questioning, and that he would take Officer Clay's name and phone number so that someone else would contact her regarding the matter. Id.

According to Officer Clay, on July 19, 2017, she received a voice mail from Mr. Ervin (Mr. Gallant's partner) on behalf of Mr. Gallant. JEL, Ex. 10, p. 16; Referee's Recommendation, p. 8. Officer Clay stated that, on July 27, 2017, she returned Mr. Ervin's call, but that, as of August 3, 2017, she had not heard back from Mr. Ervin. Id.

On August 15, 2017, Mr. Gallant was indicted by a Hillsborough County Grand Jury on the charge of Witness Tampering, a Class B felony. JEL, Ex. 1, p. 1 and Ex. 11, p. 17. Pursuant to the Indictment, Mr. Gallant was alleged to have "purposely attempted to induce or otherwise

cause E.F. [Emily Farina] to withhold testimony and/or information from the court by telling E.F. 'I spoke to the judge yesterday; he doesn't want to hear this' and 'Can't you just drop it' or words to that effect...." JEL, Ex. 1, p. 1.

STANDARD OF REVIEW

In determining whether to accept the Referee's recommendation that the continuation of Mr. Gallant's interim suspension is necessary to protect the public and preserve the integrity of the legal profession, the Court's "standard of review for the referee's factual findings...is whether a reasonable person could have reached the same decision as the referee." Reiner's Case I, 152 N.H. at 169 (citing Feld's Case, 149 N.H. 19, 22 (2002)). The Court reviews the Referee's rulings of law "de novo to determine whether the referee committed errors of law." Id.

SUMMARY OF THE ARGUMENT

Pursuant to Rule 37(9)(i), Rule 37(16)(f) and Reiner's Case I, 152 N.H. 163 (2005), the Referee applied the correct burden of proof in concluding that the continuation of Mr. Gallant's interim suspension was necessary to protect the public and preserve the integrity of the legal profession. Specifically, Reiner's Case I sets forth the procedural framework, including the burden of proof, in a post-suspension hearing involving an attorney, such as Mr. Gallant, indicted for a serious crime. The Referee's application of the preponderance of the evidence standard in Mr. Gallant's disciplinary case was, therefore, not an error of law.

The Referee's application of the criteria set forth in Reiner's Case I and Reiner's Case II, and not the criteria used to determine whether a preliminary injunctive is appropriate, was not an error of law. Pursuant to Reiner's Case I, the Court set forth what the ADO must prove in order to demonstrate that an indicted attorney's interim suspension is necessary, as well as the evidence that the ADO may use to meet its burden. Reiner's Case I makes the Court's application of preliminary injunction law in such matters, as proposed by Mr. Gallant, incompatible and unwarranted.

The Referee's factual findings were supported by the record and the conclusions drawn therefrom were reasonable. Accordingly, the Referee's findings of fact and related conclusions were not made in error.

Based upon the Referee's reasonable findings of fact and proper application of case law, the Referee properly concluded that Mr. Gallant's continued interim suspension is necessary to protect the public and preserve the integrity of the legal profession.

The ADO, therefore, respectfully requests that the Court adopt the Referee's report and recommendations in its entirety.

ARGUMENT

A. The Referee applied the correct burden of proof in concluding that Mr. Gallant's continued interim suspension was necessary to protect the public and preserve the integrity of the legal profession.

In his report and recommendation to the Court, the Referee concluded that "the ADO has shown, *by a preponderance of the evidence*, that suspending [John F.] Gallant from the practice of law until the indictment against him for witness tampering is resolved is necessary for the protection of the public and the preservation of the integrity of the legal profession." Referee's Recommendation, p. 13 (italics added) (citing Reiner's Case I, 152 N.H. at 167 and Rule 37(16)(f)).

In his Notice of Challenge to the Referee's Recommendations, Mr. Gallant argued that "[a] different standard of proof applies to interim suspension proceedings." Notice of Challenge, p. 5. Mr. Gallant contends that, "[w]hen an attorney is alleged to have engaged in conduct that poses 'a substantial threat of serious harm to the public if the attorney is not suspended on an interim basis,' the ADO 'shall have the burden to prove the need for interim suspension *by clear and convincing evidence.*'" Notice of Challenge, p. 5 (citing Rule 37(9-A)(d) (italics included in original).

By relying on Rule 37(9-A), instead of Rule 37(16)(f), Rule 37(9)(i) and the Court's decision in Reiner's Case I, Mr. Gallant mistakenly concludes that "[i]t was an error for the referee to apply the wrong burden of proof." Id.

1. Reiner's Case I sets forth the procedural framework, including the burden of proof, for a post-suspension hearing involving an indicted attorney.

The Court's decision in Reiner's Case I demonstrates that the Referee applied the correct burden of proof, i.e., preponderance of the evidence, in concluding that Mr. Gallant's interim

suspension should not, until resolution of the Indictment, be lifted. See Reiner's Case I, 152 N.H. at 167-168.

Pursuant to Rule 37(9)(i), "[w]henever an attorney is indicted or bound over for any felony, the court shall take such actions as it deems necessary, including but not limited to the suspension of the attorney." Noting that "Rule 37(9)(i) does not provide a procedural framework for a post-suspension hearing," the Court provided a framework in Reiner's Case I, including setting forth a preponderance of the evidence standard:

> Following an interim suspension order based upon an indictment, the suspended attorney may request a hearing. The hearing will be scheduled within thirty days and held before the court or before a referee, at the court's discretion. At the hearing, the ADO bears the burden of persuading the court that, by a preponderance of the evidence, suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession.

Id. at 167-168.

The procedural framework set forth in Reiner's Case I clearly applies to Mr. Gallant's case. On August 15, 2017, Mr. Gallant was indicted for witness tampering. Joint Exhibit List ("JEL"), Ex. 1, p. 1. The ADO subsequently filed with the Court a certified copy of the Indictment. See Court Order dated September ("Sept."). 13, 2017. "Based on the indictment, the [C]ourt determined that Attorney Gallant's immediate suspension from the practice of law was necessary to protect the public and to preserve the integrity of the legal profession." Court Order dated Sept. 20, 2017. Citing Reiner's Case I, the Court notified Mr. Gallant of his right to "request a hearing on the issue of whether the interim suspension should be lifted, which will be promptly scheduled." Court Order dated Sept. 13, 2017. Upon Mr. Gallant's request for a hearing, the Court "appoint[ed] retired Supreme Court Justice James E. Duggan to serve as the referee in this matter," and directed the Referee to "make a recommendation to the [C]ourt as to

whether the suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession." Court Order dated Sept. 20, 2017 (citing Rule 37(9)(i), Rule 37(16)(f) and Reiner's Case I, 152 N.H. 163 (2005)). Following a September 26, 2017 hearing (held within 30 days of Mr. Gallant's request for a hearing), the Referee issued a report and recommendation to the Court, wherein the Referee concluded that the ADO had demonstrated, by a preponderance of the evidence, that Mr. Gallant's interim suspension from the practice of law was necessary to protect the public and preserve the integrity of the legal profession. Referee's Recommendation, p. 13 (citations omitted).

Given that Mr. Gallant's immediate interim suspension was based upon the Indictment, the Referee correctly followed the framework set forth in Reiner's Case I, including the requirement that the ADO prove by a preponderance of the evidence that Mr. Gallant's suspension was necessary to protect the public and preserve the integrity of the legal profession. Referee's Recommendation, p. 8 (setting forth standard of review). The Referee's application of the preponderance of the evidence standard in Mr. Gallant's case was, therefore, not an error of law.

2. Rule 37(9-A)(d) is inapplicable to Mr. Gallant's case.

Citing Rule 37(9-A)(d), Mr. Gallant contends that the ADO was required to prove by clear and convincing evidence that Mr. Gallant's interim suspension was necessary. See Notice of Challenge, p. 5 (alleging that the Referee used the wrong burden of proof). Mr. Gallant's reliance upon Rule 37(9-A)(d) is misplaced. Rule 37(9-A)(d) addresses the procedure for obtaining a suspension based on conduct that "poses a substantial threat of serious harm to the public." See Rule 37(9-A)(a) ("The attorney discipline office may file a petition for

interim suspension or other relief in this court alleging that an attorney has engaged in conduct that poses a substantial threat of serious harm to the public.").

Pursuant to Rule 37(9-A)(c), "[t]he term 'substantial threat of serious harm' encompasses any *non-serious crime*, conduct or course of conduct...." Id. (italics added). Mr. Gallant was indicted for witness tampering, a Class B felony. See JEL, Ex. 1, p. 1 (Indictment); Ex. 11, p. 17 (N.H. RSA 641:5, I(b)). Mr. Gallant was, therefore, indicted for a "serious crime," as that term is defined by Rule 37(9)(b) (stating that the term "serious crime" includes any felony or any lesser crime a necessary element of which involves the interference with the administration of justice). Rule 37(9-A)(a) is, therefore, inapplicable to Mr. Gallant's case. Rather, Rule 37(9)(i), Rule 37(16)(f) and Reiner's Case I, taken together, dictate the burden of proof in a post-suspension hearing involving an indicted attorney.

B. The Referee's application of the criteria set forth in Reiner's Case I and Reiner's Case II, and not the criteria used to measure whether a preliminary injunction is appropriate, did not constitute an error of law.

At the post-suspension hearing, Mr. Gallant argued, among other things, "that whether to impose an interim suspension should be 'measured by the standards for preliminary injunctive relief.'" Referee's Recommendation, p. 8. The Referee rejected Mr. Gallant's argument, stating that "...applying that standard to this proceeding would be inappropriate." Id. at 9. The Referee explained:

> ...First, as a referee, my task is to apply settled New Hampshire law. Cf. Reiner I, 152 N.H. at 169 (stating Court will review de novo whether referee committed errors of law). A referee does not have authority to deviate from settled New Hampshire law.
>
> Second, both authorities cited by Gallant address interim suspension provisions different from those in New Hampshire. See [ABA Standards for Imposing Lawyer Sanctions, §2.4 ("Standards")]...(authorizing interim suspension when

> "lawyer's continuing conduct is or is likely to cause immediate and serious injury to a client or the public"); [In re Discipline of Trujillo, 24 P.3d 972, 977 (Utah 2001) ("Trujillo"),] at 977 (authorizing interim suspension when a lawyer, among other things, "poses a substantial threat of irreparable harm to the public").

Referee's Recommendation, p. 9. The Referee further concluded that "although the preliminary injunction standard includes considerations that are relevant under Reiner I and Reiner II, importing preliminary injunction law into this context would unnecessarily confuse the analysis set forth in Reiner I and Reiner II." Id.

Mr. Gallant contends that the Referee's refusal to consider all of the measures used to determine whether preliminary injunctive relief is appropriate constituted an error of law. Notice of Challenge, pp. 5-7. Specifically, Mr. Gallant disputed the Referee's conclusion that the criteria used to determine whether an indicted attorney's interim suspension is necessary, set forth in Reiner's Case I, constitutes settled New Hampshire law. Id., p. 6 (Mr. Gallant stating that "[e]xisting law on immediate and interim suspension in New Hampshire is extremely limited").

1. The Referee did not err as a matter of law by relying on the criteria set forth by the Court in Reiner's Case I and Reiner's Case II in determining whether Mr. Gallant's interim suspension was necessary.

The Referee's reliance on Reiner's Case I and Reiner's Case II, as opposed to preliminary injunction law, in assessing whether Mr. Gallant's interim suspension should continue was not an error of law. See Referee's Recommendation, pp. 8-9.

In Reiner's Case I, the Court held that, at a post-suspension hearing, "the ADO bears the burden of proving by a preponderance of the evidence that the suspension is necessary pursuant to Rule 37(16)(f)." Reiner's Case I, at 168; Rule 37(16)(f). The Court further held,

> In meeting this burden, the ADO may rely upon the allegations set forth in the indictment, make offers of proof and introduce additional evidence. Although the indicted attorney is presumed innocent of the charges, the allegations set forth in the indictment may nonetheless be considered in determining whether suspension is necessary...The ADO need not prove that the allegations in the indictment are true. Rather, the ADO must establish that, considering the allegations in the indictment, the suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession.

Reiner's Case I, 152 N.H. at 168–69 (citation omitted). The Court applied the same criteria in Reiner's Case II. See generally, Reiner's Case II, 152 N.H. 594. Applying the foregoing standards, the Referee concluded that Mr. Gallant's suspension from the practice of law was necessary to protect the public and preserve the integrity of the legal profession. See generally, Referee's Recommendation.

Mr. Gallant alleges that "[i]t was an error for the referee to conclude jurisprudence from other forums could not be considered in his analysis." Notice of Challenge, p.7. However, as the Referee correctly noted in his recommendation, his "task is to apply settled New Hampshire law." Referee's Recommendation, p. 9 (comparing Reiner's Case I, at 169 (stating Court will review de novo whether referee committed errors of law)). Reiner's Case I sets forth what the ADO must prove in order to demonstrate that an indicted attorney's interim suspension is necessary, as well as the evidence that the ADO may use to meet its burden. Reiner's Case I, at 167-169. Reiner's Case I and Reiner's Case II to date, remain controlling authority. Accordingly, the Referee did not err as a matter of law by applying the analysis set forth in Reiner's Case I and used in Reiner's Case II.

In his report and recommendation, the Referee stated that, "... [a]lthough the preliminary injunction standard includes considerations that are relevant under Reiner I and Reiner II," the wholesale importation of the preliminary injunction standard, as proposed by Mr. Gallant, would

"unnecessarily confuse the analysis set forth in Reiner I and Reiner II." Referee's Recommendation, p. 9. In actuality, the criteria set forth in Reiner's Case I and preliminary injunctive law are incompatible. Pursuant to New Hampshire case law, a preliminary injunction should not issue unless, among other things, the party seeking the injunction is likely to succeed on the merits of the underlying claim. See e.g., New Hampshire Department of Environmental Services v. Mottolo ("Mottolo"), 155 N.H. 57, 63 (2007) (setting forth requirements for obtaining preliminary injunction). If this requirement were applied to Mr. Gallant's case, the ADO would have to prove that the State is likely to convict Mr. Gallant for witness tampering. Such a requirement runs counter to the Court's holding in Reiner's Case I, in which the Court stated that the ADO "need not prove that the allegations in the indictment are true," and that, in order to meet its burden, "the ADO may rely upon the allegations set forth in the indictment..." Reiner's Case I, at 167; see also Reiner's Case II, at 597 (Court noting that "we have recognized that, standing alone, allegations contained within an indictment may warrant suspension").

Furthermore, the measures used to determine if a preliminary injunction is warranted do not address whether the attorney's suspension is necessary to preserve the integrity of the profession, an interest unique to disciplinary matters, which are neither civil nor criminal in nature, but rather are sui generis. See State v. Merski, 121 N.H. 901, 909 (1981); Rule 37(16)(f); see also Mottolo, at 63 ("An injunction should not issue unless there is an immediate danger of irreparable harm to the party seeking injunctive relief, and there is no adequate remedy at law. Also, a party seeking an injunction must show that it would likely succeed on the merits.") (citation omitted).

In the Notice of Challenge, Mr. Gallant also argued that the "limited body of law has yet to resolve the apparent discrepancy between the assigned burdens of proof established by

Reiner's Case, on the one hand, and Rule 37(9-A) on the other." However, for the reasons stated herein above, there is no confusion between the between the burden of proof set forth in Reiner's Case I and Rule 37(9-A). As demonstrated herein above, Reiner's Case I, Rule 37(9)(i) and Rule 37(16)(f) collectively set forth the framework for a post-suspension hearing involving an indicted attorney. Alternatively, Rule 37(9-A)(d) sets forth the burden of proof in matters in which the ADO seeks an attorney's interim suspension based on conduct that the ADO alleges "poses a substantial threat of serious harm to the public," without the existence of an indictment. Rule 37(9-A)(a) and (d) (applying a "clear and convincing" standard).

Based on all of the foregoing, the Referee did not err as a matter of law by applying the criteria set forth in Reiner's Case I and applied in Reiner's Case II, rather than the criteria used to determine if a preliminary injunction is appropriate.

2. The authorities cited by Mr. Gallant in his Notice of Challenge address interim suspension provisions different from those in New Hampshire.

In arguing that whether to impose an interim suspension should be measured by the standards for preliminary injunctive relief, Mr. Gallant relies, in part, on the ABA Standards for Imposing Lawyer Sanctions, §2.4 ("Standards") and In re Trujillo, 24 P.3d 972 (Utah 2001) ("Trujillo"). See Referee's Recommendation, pp. 8-9.

These authorities cited by Mr. Gallant in the Notice of Challenge address interim suspension provisions that are different from those in New Hampshire. Referee's Recommendation, p. 9. The Standards, which New Hampshire has not formally adopted, provide that an interim suspension is appropriate when "the lawyer's continuing conduct is or is likely to cause *immediate and serious injury to a client or the public.*" Standards, §2.4 (emphasis added); see, e.g., In re Richmond's Case, 152 N.H. 155, 160 (2005).

In Trujillo, the Supreme Court of Utah held that, when deciding whether an attorney's interim suspension is appropriate, "the standards governing the issuance of preliminary injunctions, adapted to...a professional disciplinary proceeding" should be applied to "determin[e] whether an attorney poses *a substantial threat of irreparable harm to the public*." Trujillo, 24 P.3d at 979 (emphasis added).

Unlike the authorities cited by Mr. Gallant, Rule 37(16)(f) and Reiner's Case I do not require that the ADO demonstrate that an attorney's continuing conduct is likely to cause "immediate and serious injury to a client or the public," as in the Standards, or that the attorney's conduct poses "a substantial threat of irreparable harm to the public," as in Trujillo. Instead, Rule 37(16)(f) and Reiner's Case I require a demonstration that the suspension is necessary to protect the public and preserve the integrity of the legal profession. The Standards' and Trujillo's provisions are, therefore, not consistent with the criteria used to determine whether an interim suspension is necessary pursuant to Rule 37(16)(f) and Reiner's Case I.

Based on the foregoing, the Referee's decision not to rely on the Standards' and Trujillo's provisions for interim suspensions did not constitute an error of law.

C. The Referee's findings of fact were supported by the record and the Referee's conclusions drawn from the factual findings were reasonable.

The Referee's factual findings are supported by the record and demonstrate that the Referee reasonably concluded that Mr. Gallant's interim suspension was necessary to protect the public and preserve the integrity of the legal profession. See Reiner's Case I, 152 N.H. at 169 ("Our standard of review for the referee's factual findings in a lawyer discipline case is whether a reasonable person could have reached the same decision as the referee.").

1. *The Referee did not err in concluding what Mr. Gallant said to Ms. Farina.*

In his Notice of Challenge, Mr. Gallant argued that "[t]here is no record of what Gallant actually said." Notice of Challenge, p. 3. However, the record provided sufficient evidence about what Mr. Gallant told Ms. Farina to support the Referee's findings and conclusions.

The Indictment evidences, in part, Mr. Gallant's statements to Ms. Farina. JEL, Ex. 1, p. 1. According to the Indictment, Mr. Gallant "purposely attempted to induce or otherwise cause E.F. [Emily Farina] to withhold testimony and/or information from the court by telling E.F. '*I spoke to the judge yesterday; he doesn't want to hear this*' and '*Can't you just drop it*' or words to that effect...." Id. (italics added); Reiner's Case I, at 168 ("In meeting [its] burden [of proof], the ADO may rely upon the allegations set forth in the indictment, make offers of proof and introduce additional evidence."). Ms. Farina's statements to Officer Nicole Clay, made during a June 29, 2017 interview, serve as additional evidence of Mr. Gallant's statements to Ms. Farina. See JEL, Ex. 5, pp. 9-10.

In addition to the Indictment and Ms. Farina's statements to Officer Clay, the Referee relied on evidence partially corroborating Ms. Farina's recollection of Mr. Gallant's statements. See Referee's Recommendation, p. 11. Specifically, the police prosecutor, Donald C. Topham, reported that Mr. Gallant told him prior to the June 15, 2017 pretrial conference that "[t]he Judge wants this to go away." JEL, Ex. 6, p. 11-12; Referee's Recommendation, p. 5-6. As noted by the Referee, Mr. Gallant's statement to Mr. Topham was "substantially similar to the statement that Farina reported Gallant made to her." Referee's Recommendation, pp. 11-12.

The Referee further added:

> Farina's description of Gallant's statements to her is also partially corroborated by [Attorney William] Barry's account. Barry confirmed Farina's statement that she called him from the courthouse when Gallant talked to her. Barry said that Farina told him that Gallant stated falsely, first, that he had talked with Barry and, second, that "he had talked with Judge Moore and Judge Moore said Farina did not need to be at court." Although the statement is not identical to the one that Farina reported to police, it is further evidence that Gallant falsely implied that he had an ex parte communication with Judge Moore.
>
> Finally, the victim/witness advocate's account to the police prosecutor of her conversation with Farina also partially corroborates Farina's description of Gallant's statements. The advocate told the prosecutor that Farina said that Gallant told her, "I've spoken to the Judge and he wants this to go away."

Referee's Recommendation, p. 12.

The foregoing demonstrates that the Referee's findings of fact and resulting conclusions involving what Mr. Gallant said to Ms. Farina were reasonable and warrant the Court's acceptance of the Referee's Recommendation.

2. *The Referee reasonably rejected Mr. Gallant's characterization of his statements made to Ms. Farina.*

In the Notice of Challenge, Mr. Gallant asserts that his remarks "even if made as reported, were made on the fly, in the context of advocacy," and that "[e]ven his supposed recitation of Judge Moore's remarks – 'The judge wants this to go away' – falls within an acceptable range of advocacy." Notice of Challenge, p. 4.

The Referee properly rejected Mr. Gallant's claim that his remarks to Ms. Farina regarding Judge Moore were substantively correct. Referee's Recommendation, p. 10 ("At the hearing before me, Gallant argued that Judge Moore wanted the domestic violence case 'to go away,' and that Gallant's characterization that Judge Moore did not 'want to hear this [case]' was, in substance, accurate."). However, the Referee reasonably concluded that "Gallant's

characterizations were not supported by Judge Moore's statements." Referee's Recommendation, p. 10.

As the Referee concluded, based upon the record, "Judge Moore encouraged the parties to settle; he did not indicate in any way that he was unwilling to hear the case." Id. Furthermore, the record demonstrates that the Referee reasonably concluded that "Gallant's characterizations implied that Judge Moore wanted Farina to take some action to resolve the case without judicial intervention, such as not pursuing her claim," and that, "[i]n fact, Judge Moore simply offered 'to work with' the parties to resolve the case." Referee's Recommendation, p. 11; see also JEL, Ex. 7, p. 13; JEL, Ex. 16, pp. 37-40. The Referee also concluded that "Gallant's statement, 'I spoke with the judge yesterday,' suggests that Gallant was not relying upon what Judge Moore said in the courtroom, but instead that Gallant had met privately with the judge." The Referee stated, "[t]hus, Gallant's argument that he was merely interpreting what the judge said is inconsistent with the implication that he had a private conversation with the judge." Referee's Recommendation, p. 11.

The Referee, therefore, reasonably rejected Mr. Gallant's characterization of the remarks.

3. The Referee reasonably concluded that Mr. Gallant represented to Ms. Farina that he had spoken with the judge.

The allegations in the Indictment and Officer Clay's report of her June 29, 2017 interview of Ms. Farina support the Referee's finding that Mr. Gallant represented to Ms. Farina that he had spoken with the judge. See Referee's Recommendation, p. 11.

In making his finding, the Referee relied, in part, on the Indictment, which alleged that Mr. Gallant "purposely attempted to induce or otherwise cause [Ms. Farina] to withhold

testimony and/or information from the court by telling [Ms. Farina] '*I spoke to the judge yesterday*; he doesn't want to hear this'...." JEL, Ex. 1, p. 1 (italics added); In re Reiner's Case, 152 N.H. 163, 168–69 ("Although the indicted attorney is presumed innocent of the charges, the allegations set forth in the indictment may nonetheless be considered in determining whether suspension is necessary"). Furthermore, the record includes Ms. Farina's representation to Officer Clay that Mr. Gallant told Ms. Farina, prior to the May 24, 2017 hearing, that "I spoke to the judge yesterday; he doesn't want to hear this." JEL, Ex. 5, p. 9. In his Notice of Challenge, Mr. Gallant represented, through counsel, that he "is a very experienced trial lawyer," and "[i]t is extremely unlikely that he used such words under the circumstances in which the statement is alleged to have been made." Notice of Challenge, p. 4. Even if such a defense is taken into consideration, the Referee did not err, based on the information in the Indictment and Officer Clay's report, in finding that Mr. Gallant told Ms. Farina that he had spoken with the judge.

4. The Referee reasonably concluded that Mr. Gallant's June 15, 2017 conversation with the prosecutor partially corroborated Ms. Farina's account of what Mr. Gallant told her on May 24, 2017.

Mr. Gallant challenges the Referee's factual findings and conclusions by arguing that "[t]he indictment conflates [Mr.] Gallant's alleged conversation with [Ms. Farina] concerning the *civil* restraining order, with his subsequent conference with the police prosecutor [Mr. Topham] in the *criminal* matter," adding that "[t]he referee made the same mistake." Notice of Challenge, p. 4. Mr. Gallant's argument is unpersuasive. The Indictment alleged that Mr. Gallant told Ms. Farina that "[he] spoke to the judge yesterday," and that the Judge "...doesn't want to hear this." JEL, Ex. 1, p. 1. Mr. Gallant's alleged statements were made to Ms. Farina prior to the May 24, 2017 hearing on the civil Restraining Order that Ms. Farina obtained against Ethan Zimmer. JEL, Ex. 5, p. 9. Prior to the June 15, 2017, pretrial conference on Mr. Zimmer's alleged

criminal violation of the Restraining Order, Mr. Gallant purportedly stated to the prosecutor that "[t]he Judge wants this to go away" and "[t]he victim wants this to go away...." JEL, Ex. 6, pp. 11-12.

Rather than undermining the Referee's factual findings and conclusions, Mr. Gallant's alleged statements to Ms. Farina and Mr. Topham, which were strikingly similar, increases the likelihood that Mr. Gallant made the statements at issue to Ms. Farina. The Referee, therefore, reasonably concluded that Mr. Gallant's statement to Mr. Topham partially corroborated Ms. Farina's account of what Mr. Gallant said to her prior to the May 24, 2017 hearing.

5. *Mr. Gallant's various other challenges to the Referee's factual findings and conclusions are unpersuasive.*

Mr. Gallant contends that "[t]he referee minimized the weaknesses in the State's case against Gallant, while emphasizing the evidence from three witnesses which only partially corroborated the *pro se* party's account." Notice of Challenge, p. 4. A review of the Referee's Recommendation demonstrates that the Referee adequately considered the alleged weaknesses in the State's case against Mr. Gallant. Referee's Recommendation, p. 11. Without more, Mr. Gallant's disagreement with the Referee's findings and conclusions, after the Referee balanced the alleged weaknesses and strengths of the State's case against Mr. Gallant, does not warrant a reversal of the Referee's factual findings and conclusions.

Mr. Gallant challenges the Referee's findings and conclusions on certain other grounds. Notice of Challenge, pp. 4-5. However, the ADO asserts that, based upon the record, a reasonable person could reach the same findings and conclusions as the Referee did.

D. The Referee's reasonable findings of fact and proper conclusions of law support the Referee's recommendation that Mr. Gallant's interim suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession.

The Referee's reasonable findings of facts and correct conclusions of law support the Referee's recommendation that Mr. Gallant's interim suspension from the practice of law is necessary for the protection of the public and for the preservation of the integrity of the legal profession.

In his report and recommendation, the Referee noted that "[b]oth Gallant and the ADO acknowledge[d]" that the ADO satisfied its burden of proving that Mr. Gallant's suspension was necessary for the preservation of the integrity of the legal profession. Referee's Recommendation, p. 9. Agreeing with the ADO and Mr. Gallant, the Referee stated that "[t]ampering with a witness, particularly one who is self-represented and the victim in a domestic violence dispute, is serious misconduct and serves to undermine the core principles of ethical lawyering and the lawyer's role as an officer of the court." The Referee added that "[a] lawyer charged with such an offense cannot help but be looked upon by the public with untrusting eyes and that perception cannot help but be reflective upon the bar as a whole." Referee's Recommendation, p. 10 (citation omitted).

The Referee also properly concluded that Mr. Gallant's interim suspension was necessary for the protection of the public. Referee's Recommendation, p. 10-13. As set forth herein, the Referee, among other findings, reasonably rejected Mr. Gallant's characterization of his remarks to Ms. Farina regarding Judge Moore's statements, reasonably concluded that Mr. Gallant told Ms. Farina that he spoke with the Judge, adequately balanced the strengths and alleged weaknesses of the State's case against Mr. Gallant, and reasonably took into

consideration Mr. Gallant's alleged statements to others, to reach his recommendation. Based on his findings and conclusions, the Referee properly concluded:

> When viewed in its totality, Gallant's conduct was not only unacceptable, but was detrimental to the administration of justice. The evidence supports that Gallant misrepresented at least three people's statements: he misrepresented to Farina what Judge Moore and [Attorney] Barry had said, and he misrepresented to the police prosecutor what Judge Moore and Farina had said. Particularly troubling is Gallant's false statement that he had talked to Judge Moore, which implied he had had ex parte communications and thereby suggested that he had a special relationship that he could employ to influence the system of justice. Gallant's willingness to make such reckless statements to the police prosecutor and to Farina leads me to conclude that his interim suspension is necessary for the protection of the public.

Referee's Recommendation, p. 12-13.

E. Conclusion

Based upon the Referee's reasonable findings of fact and proper application of case law, the Referee properly concluded that Mr. Gallant's continued interim suspension is necessary to protect the public and preserve the integrity of the legal profession. Accordingly, the ADO respectfully requests that the Court adopt the Referee's report and recommendations in its entirety.

Respectfully submitted,

New Hampshire Supreme Court
Attorney Discipline Office

By its attorneys,

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Date: November 28, 2017

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Certification

I, Brian R. Moushegian, Deputy General Counsel for the New Hampshire Supreme Court Attorney Discipline Office, certify that copies of the New Hampshire Supreme Court Attorney Discipline Office's Brief were mailed on November 28, 2017, to William C. Saturley, Esquire, of Preti, Flaherty, Beliveau & Pachios, PLLP, 57 North Main Street, P. O. Box 1318, Concord, NH 03302-1318 by United States first class mail, postage prepaid.

Brian R. Moushegian, Esquire
Deputy General Counsel

New Hampshire Supreme Court Rule 37

(9) ***Attorneys Convicted of Serious Crime:***

(a) Upon the filing with the court of a certified copy of any court record establishing that an attorney has been convicted of a serious crime as hereinafter defined, the court may enter an order suspending the attorney, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. Any order of suspension entered pursuant to this provision shall be effective immediately.

(b) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

(c) A certified copy of any court record establishing the conviction of an attorney for any "serious crime" shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction. The certified copy shall constitute evidence sufficient to issue an order of immediate suspension under subparagraph (a) without further hearing.

(d) Upon the receipt of a certificate of conviction of an attorney for a "serious crime," the court may, and shall if suspension has been ordered pursuant to subsection (a) above, institute a formal disciplinary proceeding by issuing an order to the attorney to show cause why the attorney should not be disbarred as a result of the conviction. If the court determines that no such good cause has been shown, the court shall issue an order of disbarment, or such other discipline as the court shall deem appropriate. If the court determines that the attorney has shown cause why disbarment may not be appropriate, the court shall refer the matter to the professional conduct committee, in which the sole issue to be determined shall be the extent of the final discipline to be imposed. Provided, however, that final discipline will not be imposed until all appeals from the conviction are concluded.

(e) Upon receipt of a certificate of conviction of an attorney for a crime not constituting a "serious crime," the court shall refer the matter to the attorney discipline office for such action as it deems appropriate. Referral to the attorney discipline office hereunder does not preclude the court from taking whatever further action it deems appropriate.

(f) An attorney suspended under the provisions of subsection (a) above may be reinstated upon the filing of a certificate demonstrating that the underlying conviction for a serious crime has been reversed but the reinstatement will not terminate any proceeding then pending against the attorney.

(g) Any attorney who has been convicted of a crime in this state or in any other state shall notify the court, in writing, within ten (10) days of sentencing on said conviction. The notice shall inform the court of the crime, the criminal statute violated, the court of conviction, the date of conviction, and the sentence imposed. The clerk of any court within the State in which an attorney is convicted of any crime shall, within ten (10) days of said conviction, transmit a certificate thereof to this court.

(h) Upon being advised that an attorney has been convicted of a crime within this State, the attorney discipline office shall determine whether the clerk of the court where the conviction occurred has forwarded a certificate to this court in accordance with the provisions of subsection (g) above. If the certificate has not been forwarded by the clerk or if the conviction occurred in another jurisdiction, it shall be the responsibility of the attorney discipline office to obtain a certificate of conviction and to transmit it to this court.

(i) Whenever an attorney is indicted or bound over for any felony, the court shall take such actions as it deems necessary, including but not limited to the suspension of the attorney.

(9-A) ***Proceedings Where an Attorney is Alleged to have Engaged in Conduct that Poses a Substantial Threat of Serious Harm.***

(a) The attorney discipline office may file a petition for interim suspension or other relief in this court alleging that an attorney has engaged in conduct that poses a substantial threat of serious harm to the public.

(b) The term "substantial threat of serious harm" encompasses any non-serious crime, conduct, or course of conduct that substantially impairs the attorney's ability to continue to practice in conformity with the Rules of Professional Conduct and Rule 50, or creates a substantial risk of harm to the public if the attorney is not suspended on an interim basis.

(c) The petition must state with particularity the conduct alleged as well as why the interim suspension is necessary to prevent a threat of serious harm to the public. The attorney discipline office shall serve the petition on the attorney by first-class mail, and service shall be deemed complete upon mailing. Service upon the respondent attorney at the latest address provided to the New Hampshire Bar Association shall be deemed to be sufficient. The attorney shall have twenty (20) days from the date of mailing to respond. If the attorney contests the interim suspension, the court will convene a hearing before a judicial referee or a hearing panel of the professional conduct committee. If the attorney consents to the interim suspension, the court may issue an order of interim suspension which will be effective immediately. If the attorney fails to respond to the petition, the allegations of the petition shall be deemed to be admitted, and no hearing shall be required.

(d) The hearing on the petition shall be recorded. The parties shall have thirty (30) days to prepare for the hearing, but no continuance of the hearing shall be granted absent extraordinary circumstances. The attorney discipline office shall have the burden to prove the need for interim suspension by clear and convincing evidence. The referee or panel may consider whether measures short of interim suspension adequately safeguard the public against the threat of substantial harm.

(e) After the hearing, the referee or panel shall issue a recommendation with regard to the need for interim suspension within ten (10) days, and shall forward that recommendation, with the record of the hearing, to the court. The court shall review the recommendation and the record. It may enter an order of interim suspension, dismiss the petition for interim suspension, issue an order directing the attorney to abide by specific conditions in lieu of interim suspension, or remand the matter for further proceedings. Any order issued by the court shall be effective immediately, and shall remain in effect unless it is modified by the court, or it is superseded by an order stemming from disciplinary proceedings arising out of the same or related conduct.

(16) ***Procedure:***

(a) Either a respondent attorney or disciplinary counsel may appeal findings of the professional conduct committee and the imposition of a reprimand, public censure or a suspension of six (6) months or less by filing a notice of appeal with the supreme court. The appeal shall not be a mandatory appeal. If the appeal is accepted by the court, the court may affirm, reverse or modify the findings of the professional conduct committee.

The filing of an appeal by the respondent shall stay the disciplinary order being appealed unless the professional conduct committee orders otherwise. If the professional conduct committee orders otherwise, it shall set forth in its order its reasons for doing so. In all cases, however, the supreme court may on motion for good cause shown stay the disciplinary order.

(b) The professional conduct committee shall initiate disciplinary proceedings requesting a discipline of greater than six (6) months in this court by filing the professional conduct committee's recommendation and the record of the proceedings with this court.

(c) Following receipt of the recommendation and the record, this court shall serve the respondent attorney with the recommendation at the latest address provided to the New Hampshire Bar Association. Simultaneously, the court shall notify the parties that the parties must, within 30 days of this court's order thereon, identify any legal or factual issues the parties wish this court to review. Thereafter, this court may issue a scheduling order setting forth a briefing schedule and any other matters as shall be deemed desirable or necessary. There shall not be a de novo evidentiary hearing.

(d) The court may make such temporary orders as justice may require either with or without a hearing. Respondent attorney shall be entitled to be heard after any ex parte order.

(e) The court shall, after filing of any briefs and oral arguments, make such order as justice may require.

(f) The court may suspend attorneys or disbar New Hampshire licensed attorneys or publicly censure attorneys upon such terms and conditions as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession. The court may remand the matter to the professional conduct committee for such other discipline as the court may deem appropriate.

(g) In the event of suspension or disbarment, a copy of the court's order or the professional conduct committee's order, shall be sent to the clerk of every court in the State and to each State in which the respondent attorney is admitted to practice. The professional conduct committee shall continue to be responsible to insure respondent attorney's compliance

with the order of suspension or disbarment, in the case of a New Hampshire licensed attorney, and to notify the court as to any violations for such action as the court deems necessary.

(h) In addition to the procedure described herein, the court may take such action on its own motion as it deems necessary.

(i) Appeals to the court shall be in the form prescribed by Rule 10, unless otherwise ordered by the court. Such appeals shall be based on the record and there shall not be a *de novo* evidentiary hearing.