

**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**ORDER**

**LD-2008-0002, In the Matter of Thomas J. Tessier**

On December 23, 2008, the Attorney Discipline Office, through disciplinary counsel, and Attorney Thomas J. Tessier, personally and through counsel, filed a Consent to Disbarment in which Attorney Tessier agreed to disbarment by the court. In agreeing to disbarment, Attorney Tessier, voluntarily and with the advice of counsel, waived his right to a hearing on the charges brought against him, waived all of his due process rights on the matters pending against him, and waived all of his procedural rights under Supreme Court Rules 37 and 37A.


Having reviewed the parties' stipulation, the court grants the consent to disbarment and orders that Attorney Tessier be disbarred.

THEREFORE, the court orders that Thomas J. Tessier be disbarred from the practice of law in New Hampshire. Attorney Tessier is hereby assessed all expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

Broderick, C.J., and Dalianis, Galway and Hicks, JJ., concurred.

DATE: December 24, 2008

ATTEST:

  
for **Eileen Fox, Clerk**

Distribution:

Stephen J. Patterson, Esquire  
James L. DeHart, Administrator  
Landya B. McCafferty, Esquire  
Thomas J. Tessier, Esquire  
Robert Christy, Esquire  
Craig A. Calaman, C.P.A.  
File

**STATE OF NEW HAMPSHIRE  
SUPREME COURT**

**In the Matter of Thomas J. Tessier  
LD-2008-0002**

**Tessier, Thomas J. advs. Attorney Discipline Office  
#08-016**

**CONSENT TO DISBARMENT**

NOW COME Landya B. McCafferty, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, along with Thomas J. Tessier, and Mr. Tessier's counsel, David A. Garfunkel, Esq., and stipulate as follows:

1. Thomas J. Tessier was a partner at Christy and Tessier PA, 37 Salmon Street, Manchester, New Hampshire 03104.
2. Mr. Tessier was admitted to practice law in the State of New Hampshire in 1963.
3. Mr. Tessier has been suspended from the practice of law since March 19, 2008, as a result of the allegations underlying this Consent to Disbarment.
4. On October 10, 2008, Disciplinary Counsel issued a Notice of

Charges in matter #08-016. The Notice of Charges is hereto attached as Exhibit 1.

5. On November 12, 2008, Mr. Tessier answered the Notice of Charges by asserting his Fifth Amendment privilege against self-incrimination. A copy of Mr. Tessier's Answer is attached hereto as Exhibit 2.
6. Matters LD-2008-0002 and #08-016 stem from the same set of underlying allegations.
7. The genesis of both matters was a referral to the Attorney Discipline Office dated March 17, 2008, from Gordon J. MacDonald, Esq., of the law firm of Nixon Peabody, LLP, in Manchester, New Hampshire.
8. Ms. Tessier waives his right to a hearing on the Notice of Charges.
9. Mr. Tessier does not contest disbarment from the practice of law. Rather than exercise his right to have a hearing on the charges in the Notice of Charges, Mr. Tessier desires to waive that hearing and agree to his disbarment by the Court.

10. In so doing, Mr. Tessier waives any and all of his due process rights under both the state and federal constitutions on the matters pending against him.
11. Mr. Tessier further waives any and all of his procedural rights under N.H. Sup. Ct. R. 37 and 37A, including but not limited to his rights:
  - (a) to have an evidentiary hearing before the Hearings Committee, at which Mr. Tessier could be represented by counsel and contest the charges and, at which, Disciplinary Counsel would have the burden of proving the charges by clear and convincing evidence, Rule 37A(III)(d);
  - (b) to briefing and oral argument before the Professional Conduct Committee on issues decided by the Hearings Committee, id.; and
  - (c) to briefing and oral argument before the Supreme Court thereafter. Id.
12. Mr. Tessier further waives his rights to challenge on any basis, in this, or in any other jurisdiction, an order of this Court

ordering his disbarment pursuant to this Consent to Disbarment.


13. In deciding to sign this Consent to Disbarment and waive these rights, Mr. Tessier has had the assistance of his counsel, Mr. Garfunkel.
14. Mr. Tessier signs this Consent to Disbarment and waives all of the aforementioned rights knowingly, voluntarily and on the advice of counsel.
15. Mr. Tessier agrees that the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter shall be assessed against him.


WHEREFORE, the Attorney Discipline Office and Mr. Tessier respectfully pray that this Honorable Court:

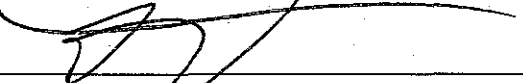
- (A) Grant this Consent to Disbarment;
- (B) Issue an Order disbarring Mr. Tessier; and

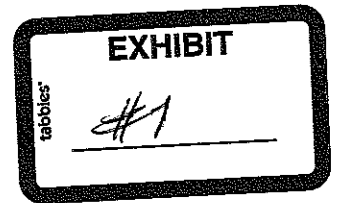
(C) Grant such other relief as is fair and in the public interest.

Respectfully submitted,

DECEMBER  
Dated: ~~November~~ 19, 2008 By:   
Thomas J. Tessier

DECEMBER  
Dated: ~~November~~ 23, 2008 By:   
David A. Garfunkel, Esquire #900  
Counsel for Mr. Tessier  
Gallagher, Callahan & Gartrell  
214 North Main Street  
P.O. Box 1415  
Concord, New Hampshire 03302  
603-228-1181

DECEMBER  
Dated: ~~November~~ 23, 2008 By:   
Landya B. McCafferty, Bar Id #8869  
Disciplinary Counsel  
New Hampshire Supreme Court  
Attorney Discipline Office  
4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
(603) 224-5828



**NEW HAMPSHIRE SUPREME COURT**  
**ATTORNEY DISCIPLINE OFFICE**

Tessier, Thomas J.

advs.

Attorney Discipline Office

#08-016

**NOTICE OF CHARGES**

This Notice of Charges is issued pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(2). In accordance with that Rule, this Notice of Charges sets forth both the allegations of misconduct against Thomas J. Tessier, as well as the disciplinary rules alleged to have been violated.

In an Order dated March 17, 2008, the New Hampshire Supreme Court appointed Craig A. Calaman, CPA, to conduct an audit of the trust/escrow accounts and operating account of Christy and Tessier, PA. Mr. Calaman has completed his audit and has set forth his conclusions in a report dated September 19, 2008. Mr. Calaman's audit covered the period from January 1, 2001, through March 31, 2008. Mr. Calaman's audit report is attached to this Notice of Charges and is hereby incorporated into, and made a part of, this Notice of Charges. Mr. Calaman's audit report is hereafter referred to as "Audit Report."

## Summary of Allegations

1. Mr. Tessier is an attorney licensed to practice law in New Hampshire. Mr. Tessier was admitted to practice in 1963. At all times material to this proceeding, Mr. Tessier operated his law office as Christy & Tessier, P.A., 37 Salmon Street, Manchester, New Hampshire 03104. Throughout this Notice of Charges, "Mr. Tessier" refers to Thomas J. Tessier.
2. Mr. Tessier and Robert Christy, Esq., have been law partners for over 40 years.
3. In or about August 1987, Frederick A. Jakobiec, M.D., retained Mr. Tessier to draft a will for him.
4. Dr. Jakobiec's mother, Beatrice Jakobiec, was Mr. Tessier's aunt. On May 11, 2001, at the age of 87, Beatrice died. She apparently died intestate.
5. On or about May 14, 2001, Dr. Jakobiec asked Mr. Tessier to handle Beatrice's probate administration. At that time, Dr. Jakobiec was residing in Boston, Massachusetts, and was the Chief of Ophthalmology at the Massachusetts Eye and Ear Infirmary, and a tenured member of the faculty at Harvard Medical School.
6. At the time of her death, Beatrice resided at 560 Candia Road in Manchester. She had only two heirs: her sons, Dr. Jakobiec and Thaddeus Jakobiec, Jr. Thaddeus Jakobiec, Jr. is hereinafter referred to as "Thaddeus."



7. Thaddeus had resided with his mother at the Candia Road property. Thaddeus has been completely blind since birth.
8. At the time of her death, Beatrice owned the Candia Road property with Dr. Jakobiec, as joint tenants with rights of survivorship.

**Mr. Tessier is Appointed to Administer the Estate**

9. In or about June 2002, Mr. Tessier filed the paperwork to administer the Estate of Beatrice Jakobiec and, on June 26, 2002, the Hillsborough County Probate Court appointed him to administer her Estate. The Court assigned docket #2002-1201 to the Estate of Beatrice Jakobiec. The Beatrice Jakobiec Estate is hereinafter referred to as "the Estate."
10. Following his appointment as Administrator of the Estate, Mr. Tessier engaged in various acts which were fraudulent or which facilitated the commission of fraudulent acts.

**Creation of a Fraudulent Power of Attorney (POA1)**

11. In June 2002, as Mr. Tessier was attempting to gain control over the Estate as its lawyer/administrator, Mr. Tessier created a fraudulent health care power of attorney that purported to name Mr. Tessier as power of attorney for Thaddeus.
12. The document was executed on June 24, 2002, and is entitled, "Durable Power of Attorney for Health Care." Thaddeus's initials appear on the document acknowledging each provision of the document. The document bears a signature that purports to be that of Thaddeus. The signature is witnessed by Mr. Christy and Mr. Tessier. The document

was notarized by Debra L. Johnson, a secretary at Mr. Tessier's office.

This document is hereinafter referred to as "POA1."

13. Thaddeus never signed POA1 nor did he put his initials anywhere on the document. Thaddeus never gave anyone permission to sign his name and initials to POA1. Thaddeus's blindness prevents him from being capable of writing a typical signature.

14. Mr. Tessier forged Thaddeus's signature on POA1, and forged Thaddeus's initials. Mr. Tessier bore false witness to Thaddeus's signature on POA1.

#### **Creation of Fraudulent Trust for Thaddeus**

15. Also on June 24, 2002, Mr. Tessier created a fraudulent trust and trust agreement naming Thaddeus as the grantor and Michael E. Tessier (Mr. Tessier's brother) as Trustee. The trust was entitled, "The Thaddeus Jakobiec Irrevocable Trust." Michael E. Tessier is hereinafter referred to as "Michael Tessier."

16. The trust agreement bears a signature purporting to be that of Thaddeus. The signature is notarized by Mr. Tessier.

17. The trust agreement also bears the signature of Michael Tessier, as Trustee.

18. This trust is hereinafter referred to as the "TJ Trust," and the trust agreement as the "TJ Trust Agreement."

19. Thaddeus never signed the TJ Trust Agreement.

20. Mr. Tessier forged Thaddeus's signature on the TJ Trust Agreement and then notarized the forged signature.

**Installation of Michael Tessier as Trustee of the Smillie Trust**

21. During this same June 2002 time-frame, Mr. Tessier took certain actions with respect to the control of a legitimate trust that had been previously created for Thaddeus through the estate of Thaddeus's aunt, Lillian M. Smillie. Ms. Smillie died in 1987. Under Ms. Smillie's Will, a portion of her estate was placed in trust for Thaddeus, and Dr. Jakobiec was the designated Trustee. This trust is hereinafter referred to as the "Smillie Trust."
22. The Hillsborough County Probate Court docket number for the Smillie Trust was 1994-2082. As of the Fourth Accounting, which covered the period from September 1, 1997, through January 10, 2001, the income on hand in the Smillie Trust was \$53,955.23. The assets were held in four certificates of deposits and one checking account.
23. On June 11, 2002, Mr. Tessier filed an Ex-Parte Petition to Remove Fiduciary with the Hillsborough County Probate Court.
24. The next day, June 12, 2002, the Court (Cloutier, J.) issued an order removing Dr. Jakobiec as Trustee and appointing Michael Tessier as Successor Trustee. A hearing occurred on June 25, 2006, to review the Smillie Trust assets. Dr. Jakobiec had not received notice of the hearing and was not present at the hearing.
25. As of June 26, 2002, Michael Tessier had full access to the funds in the Smillie Trust.

### **Preparation of Estate Inventory**

26. On September 9, 2002, Mr. Tessier filed the Estate Inventory documents. Those documents listed the value of the Estate at \$250,562.73, consisting of U.S. Savings Bonds with an estimated value of \$66,150.00, and various savings accounts and certificates of deposits worth a total of \$184,412.73.
27. Mr. Christy was listed as the Appraiser for the Estate.

### **Creation of Second Fraudulent Power of Attorney (POA2)**

28. On September 26, 2002, Mr. Tessier created another fraudulent power of attorney with respect to Thaddeus. On that date, a specific power of attorney was executed giving Mr. Tessier the authority to redeem any and all United States Savings Bonds in the name of Thaddeus.
29. This document bears a signature purporting to be that of Thaddeus and is dated September 26, 2002. It is entitled, "Specific Power of Attorney." This document was notarized by Ms. Johnson. This document is hereinafter referred to as "POA2."
30. Thaddeus never signed POA2.
31. Mr. Tessier forged Thaddeus's signature on POA2.
32. Mr. Tessier undertook these actions in order to gain control over and to misappropriate funds belonging to Thaddeus.

### **Creation of a Third Fraudulent Power of Attorney (POA3)**

33. On March 18, 2003, Mr. Tessier created three fraudulent documents.
34. The first was a document entitled "General Durable Power of Attorney (RSA 506:6)." This document is dated March 18, 2003, and is purportedly signed by Dr. Jakobiec and notarized by Mr. Christy. This document is hereinafter referred to as "POA3."
35. The POA3 purports to grant Mr. Tessier "the fullest and broadest powers" to act for Dr. Jakobiec "in all matters. . . ."
36. Dr. Jakobiec never signed POA3, nor did he give Mr. Tessier authority to sign it for him. Mr. Tessier forged Dr. Jakobiec's signature on POA3.
37. Mr. Tessier then took POA3 to his longtime partner and trusted friend, Mr. Christy, and falsely informed Mr. Christy that Dr. Jakobiec's signature was valid and that Mr. Christy should notarize the document. Mr. Christy relied on the false representation of Mr. Tessier and fraudulently notarized the signature of Dr. Jakobiec on POA3.
38. Mr. Tessier undertook these actions in order to gain control over and to misappropriate funds belonging to Dr. Jakobiec.

### **Creation of Fraudulent Warranty Deed**

39. The second fraudulent document which Mr. Tessier created on March 18, 2003, was a Warranty Deed conveying the Candia Road property from Dr. Jakobiec to Thaddeus.
40. The Warranty Deed was purportedly signed by Dr. Jakobiec, and the signature was notarized by Mr. Tessier. The Warranty Deed was

recorded at the Hillsborough County Registry of Deeds on March 27, 2003 (Book 6875, Page 1580).

41. Dr. Jakobiec never signed the Warranty Deed, nor did he give Mr. Tessier authority to sign it on his behalf.
42. Mr. Tessier forged the signature of Dr. Jakobiec on the Warranty Deed, and fraudulently notarized that signature.
43. Mr. Tessier undertook these actions in order to gain control over and to misappropriate funds belonging to Dr. Jakobiec.

**Creation and Filing of False Declination Form**

44. The third fraudulent document which Mr. Tessier created on March 18, 2003, was a "Declination" form.
45. Like POA3 and the Warranty Deed, this form purports to be signed by Dr. Jakobiec, and was witnessed and notarized by Mr. Tessier. In the Declination, Dr. Jakobiec purportedly disclaims his share of the inheritance from his mother's Estate, thereby making Thaddeus the sole beneficiary.
46. Mr. Tessier filed the Declination with the Probate Court on or about March 31, 2003.
47. Dr. Jakobiec never signed the Declination, nor did he give Mr. Tessier authority to sign on his behalf. Mr. Tessier forged Dr. Jakobiec's signature on the Declination, falsely bore witness to the signature, and fraudulently notarized the form.

48. Mr. Tessier undertook these actions in order to gain control over and to misappropriate funds belonging to Dr. Jakobiec and Thaddeus.

**Filing of False Accounting and Receipt**

49. On or about April 10, 2003, Mr. Tessier filed a First and Final Account for the Estate with the Probate Court. The date of the Accounting was April 7, 2003. This document is hereinafter referred to as "the Accounting."
50. The Accounting listed the total value of the Estate at \$280,124.00. Attorney's fees and costs totaling \$7,895.00, were paid to Mr. Tessier's law firm.
51. The balance of \$272,229.00 was listed as being in the possession of Mr. Tessier and due the sole beneficiary, Thaddeus.
52. Mr. Tessier filed with the Accounting a Receipt dated April 10, 2003, bearing the purported signature of Thaddeus, acknowledging Thaddeus's receipt of \$272,229.00.
53. Thaddeus never signed the Receipt, and he never received the money.
54. Mr. Tessier forged Thaddeus' signature on the Receipt.
55. On April 11, 2003, check number 6477, drawn on Mr. Tessier's firm's trust account in the amount of \$272,229.00 and made payable to Thaddeus, was deposited into the TJ Trust.
56. On May 11, 2003, the Court allowed the Accounting.
57. Mr. Tessier improperly omitted from the Accounting a significant amount of financial assets owned by the Estate.

58. The Accounting listed four certificates of deposits and U.S. Savings Bonds, having a total value of \$280,124.00.
59. In actuality, the Estate owned cash assets totaling \$576,074.03.
60. Thus, Mr. Tessier neglected to include in the Accounting a total of \$295,950.03 of the Estate's cash assets.
61. These unreported cash assets were held in several different New Hampshire banks and took the form of savings and money market accounts, as well as certificates of deposit.
62. From 2002 through 2003, Mr. Tessier closed out these cash assets and moved them into his law firm's trust and/or operating accounts, or in many instances, misappropriated the cash for his own personal use.

**Examples of Mr. Tessier's Misappropriation of Jakobiec Assets**

63. Examples of Estate cash assets that Mr. Tessier misappropriated for his own personal use include the following certificates of deposit:

Bank	Instrument	Value	Date Closed
Fleet	CD #151410040	\$50,356.23	7-1-02
Fleet	CD #151410163	\$21,571.98	7-1-02
Fleet	CD #703114959	\$53,394.46	7-15-02
Fleet	CD #703701417	\$59,363.03	7-15-02
Fleet	CD #7248844302	\$22,434.28	7-15-02

A detailed explanation of Mr. Tessier's handling of these assets can be found in the Audit Report at pages 8-9.

64. At the time of her death, Beatrice also held a large number of cash assets jointly with or in trust for one of her sons.



- 65. Any assets that Beatrice held jointly or in trust for Thaddeus could and should have been deposited directly into the Smillie Trust, which Trust pre-dated Beatrice's death.
- 66. Rather than deposit the cash assets held in trust for Thaddeus into the Smillie Trust, Mr. Tessier deposited them into his firm's trust or operating accounts, the fraudulent TJ Trust, or in many instances, Mr. Tessier misappropriated the money for his own personal use.
- 67. Examples of funds Beatrice held in trust for Thaddeus, which Mr. Tessier misappropriated for his own use, are as follows:

Bank	Instrument	Value	Date Closed
Fleet	CD #7248879885	\$69,921.25	7-1-02
Citizens	CD #3342-063976	\$35,126.94	8-27-02

A detailed explanation of Mr. Tessier's handling of these assets can be found in the Audit Report at pages 10-14.

- 68. Any assets that Beatrice held jointly or in trust for Dr. Jakobiec could and should have been directed to the control of Dr. Jakobiec. In the event that Mr. Tessier could not locate Dr. Jakobiec at the time he closed out the accounts, Mr. Tessier had an obligation to properly safeguard Dr. Jakobiec's funds.
- 69. Instead of safeguarding Dr. Jakobiec's funds, Mr. Tessier deposited Dr. Jakobiec's money into his firm's trust or operating accounts and, in several instances, misappropriated the money for his own personal use.
- 70. Examples of funds Beatrice held jointly or in trust for Dr. Jakobiec which Mr. Tessier misappropriated for his own personal use are as follows:

Bank	Instrument	Value	Date Closed
Fleet	CD #7248989092	\$11,263.35	4-16-03
St. Mary's	CD #87112905	\$24,307.40	5-20-03
Citizens	CD #330093-3778-3	\$15,831.34	7-22-03

A detailed explanation of Mr. Tessier's handling of these assets can be found in the Audit Report at pages 10-15.

71. In addition to misappropriating cash assets of the Estate and those Beatrice held jointly with or in trust for her sons, Mr. Tessier also gained access to many of Dr. Jakobiec's personal assets and misappropriated them for his own personal use.
72. Utilizing POA3, which Mr. Tessier fraudulently created on March 18, 2003, Mr. Tessier was able to gain unauthorized access to Dr. Jakobiec's personal bank and investment accounts.
73. Once he had gained unauthorized access to Dr. Jakobiec's money, Mr. Tessier either misappropriated Dr. Jakobiec's money for his own personal use or deposited the money into his firm's trust and operating accounts.
74. Mr. Tessier gained unauthorized access to accounts and cash assets owned by Dr. Jakobiec at the following financial institutions:
  - Citizens Bank (five accounts)
  - Fleet Bank (two accounts)
  - Sovereign Bank (money market account)
  - Bank of America (savings account)
  - MML Investor Services, Inc. (investment account)
  - Oppenheimer Funds (IRA Rollover account)
  - Prudential Life (life insurance policy)

75. Throughout the time that Mr. Tessier was using POA3 to gain access to Dr. Jakobiec's personal accounts and assets, Dr. Jakobiec had no knowledge or awareness of Mr. Tessier's fraudulent activities.
76. Examples of funds owned by Dr. Jakobiec that Mr. Tessier misappropriated for his own personal use are as follows:

Financial Institution	Instrument	Amount of Misappropriation	Date Closed or Withdrawn
Citizens Bank	Savings Account #3342-113612	\$57,100.67	6-3-03
Fleet Bank	Account #150671044	\$46,841.18	5-10-04
Sovereign Bank	Money Market Account #60800033015	\$70,000.00	6-2-04
Sovereign Bank	Money Market Account #6080003015	\$40,000.00	10-6-04
Sovereign Bank	Money Market Account #6080003015	\$125,000.00	9-27-04
Sovereign Bank	Money Market Account #6080003015	\$85,000.00	3-7-06
Bank of America	Savings Account #015-067102-8	\$176,783.21	3-21-05
MML Investor Services, Inc.	Investment Account BMA-073903 (later became Merrill Lynch Account #80942376)	\$10,000.00	5-2-06
Oppenheimer Funds	IRA Account #2302301587575	\$77,307.77	5-10-06
Prudential Life	Life Insurance Policy #21423318	\$2,393.17	7-18-03

A detailed explanation of Mr. Tessier's handling of these assets can be found in the Audit Report at pages 19-27.

### **Creation of False Affidavit for Sovereign Bank**

77. With respect to Dr. Jakobiec's Sovereign Bank Money Market Savings Account, #60800033015, listed above, Mr. Tessier filed a false Affidavit with the Bank to effectuate a name change on that account. Specifically, on October 18, 2004, Mr. Tessier filed an Affidavit for Validation of a Non-Bank POA with the Bank. In that Affidavit, Mr. Tessier falsely asserted that he held a valid power of attorney over the affairs of Dr. Jakobiec.

### **Creation of False Affidavit for Merrill Lynch**

78. With respect to Dr. Jakobiec's MML Investor Services Account #BMA-073903 listed above, Mr. Tessier provided Merrill Lynch with a false Affidavit to effectuate the closing of that account and the opening of a new account with Merrill Lynch, account #80942376. Specifically, on May 2, 2006, Mr. Tessier signed an "Affidavit As to Power of Attorney Being In Full Force" falsely attesting to the fact that POA3 was valid, and that Mr. Tessier had the authority to close one of Dr. Jakobiec's Merrill Lynch accounts and open another.
79. Mr. Christy notarized Mr. Tessier's signature on the May 2, 2006, affidavit.

### **Closing on the Candia Road Property and Creation of Fourth Fraudulent Power of Attorney (POA4)**

80. In May 2006, Mr. Tessier engaged in further acts of fraud with respect to property owned by Dr. Jakobiec. Specifically, Mr. Tessier utilized the fraudulent Warranty Deed (that he had created in March 2003 to

transfer the Candia Road property from Dr. Jakobiec to Thaddeus) to sell the Candia Road property.

81. In order to effectuate the closing, Mr. Tessier created yet another fraudulent power of attorney document. The document is dated May 17, 2005, and it is entitled "Power of Attorney." The document bears a signature purporting to be that of Thaddeus. Mr. Christy notarized the signature. The document purports to grant Mr. Tessier authority to act for Thaddeus in regard to the sale of the Candia Road property. This document is hereinafter referred to as "POA4."
82. Thaddeus never signed POA4, nor did he give anyone authority to sign it on his behalf.
83. Mr. Tessier forged Thaddeus's name on POA4.
84. Mr. Christy falsely notarized Thaddeus's signature on POA4.
85. On May 24, 2005, the closing occurred at Mr. Tessier's law firm. Dr. Jakobiec had no prior knowledge or awareness of this sale.
86. The net proceeds of the sale were \$202,060.98.
87. Mr. Tessier misappropriated for his own personal use \$160,000.00 of the net proceeds from this sale.
88. A detailed explanation of Mr. Tessier's handling of the assets from the May 24, 2005, closing can be found in the Audit Report at pages 16-17.

### **Disciplinary Rules Violated**

89. Mr. Tessier's conduct in this case raises questions under New Hampshire Rules of Professional Conduct **3.3(a)(1); 3.3(a)(3); 8.4(c) and 8.4(a)**.

**Rule 3.3(a)(1): Candor Toward Tribunal**  
**False Statements (The Estate)**

90. Allegations set forth above are incorporated by reference.
91. While representing and administering the Estate, Mr. Tessier made numerous false statements of material fact to the Probate Court.
92. Mr. Tessier made each of these false statements knowingly; he was fully aware that the statements were false and would mislead the Probate Court.
93. Each of these false statements was material because each false statement was capable of influencing the Probate Court's consideration of the Estate administration in general, and the Court's decision on whether to allow the Accounting.
94. The false statements of material fact that Mr. Tessier made to the Probate Court are listed below:
  - (a) In the Accounting, Mr. Tessier failed to inform the Court of the full value of the Estate. Specifically, Mr. Tessier failed to include in the Accounting a total of \$295,950.03 of cash assets belonging to the Estate.
  - (b) Mr. Tessier omitted these cash assets from the Accounting and failed to file any documentation with the Court to explain or otherwise properly account for these Estate assets.
95. If proven by clear and convincing evidence, Mr. Tessier's conduct in these regards would constitute a violation of N.H. R. Prof. Conduct 3.3(a)(1).

**Rule 3.3(a)(3): Candor Toward Tribunal  
Offer False Evidence (The Estate)**

96. Allegations set forth above are incorporated by reference.
97. While representing and administering the Estate, Mr. Tessier offered evidence to the Probate Court that he knew to be false.
98. Mr. Tessier offered this false evidence knowingly; he was fully aware that the evidence was false and would mislead the Probate Court.
99. Mr. Tessier offered false evidence to the Probate Court while administering the Estate, as follows:
  - (a) On or about March 31, 2003, Mr. Tessier filed a fraudulent and forged Declination form, which form falsely declared that Dr. Jakobiec disclaimed his share of the inheritance from the Estate.
  - (b) On or about April 10, 2003, Mr. Tessier filed with the Accounting a fraudulent and forged Receipt dated April 10, 2003, which Receipt falsely declared that Thaddeus had received and was in possession of \$272,229.00 from the Estate.
100. If proven by clear and convincing evidence, Mr. Tessier's conduct in these regards would constitute a violation of N.H. R. Prof. Conduct 3.3(a)(3).

**Rule 8.4(c): Fraud and Deceit**

101. Allegations set forth above are incorporated by reference.
102. From 2002 through 2005, Mr. Tessier engaged in numerous acts of fraud, deceit and misrepresentation with respect to Estate assets, as well

as assets related to the Estate and/or belonging to Dr. Jakobiec and Thaddeus.

103. With respect to each instance of fraud, deceit and misrepresentation, Mr. Tessier's purpose was to induce others to act, or refrain from acting, in reliance upon his acts of fraud, deceit and misrepresentation.

104. Mr. Tessier engaged in acts of fraud, deceit and misrepresentation as listed below:

- (a) On June 24, 2002, Mr. Tessier created POA1. Mr. Tessier forged Thaddeus's signature and his initials on POA1. Mr. Tessier presented POA1 to others with the fraudulent intent to induce them into believing that Mr. Tessier held a valid power of attorney from Thaddeus.
- (b) On June 24, 2002, Mr. Tessier created the TJ Trust Agreement. Mr. Tessier forged Thaddeus's signature on the TJ Trust Agreement and then notarized the forged signature. Mr. Tessier utilized the TJ Trust Agreement with the fraudulent intent to induce others into believing that the TJ Trust was a valid trust.
- (c) On September 26, 2002, Mr. Tessier created POA2. Mr. Tessier forged Thaddeus's signature on POA2. Mr. Tessier presented POA2 to others to induce them into believing that Mr. Tessier had the authority to redeem savings bonds belonging to Thaddeus.
- (d) On March 18, 2003, Mr. Tessier created POA3. Mr. Tessier forged Dr. Jakobiec's signature on POA3. Mr. Tessier presented POA3 to



others with the fraudulent intent to induce them into believing he had a valid power of attorney over Dr. Jakobiec. Mr. Tessier utilized POA3 in a fraudulent scheme to gain unauthorized access to assets belonging to Dr. Jakobiec and to misappropriate those assets for his own personal use.

- (e) On or about March 18, 2003, Mr. Tessier falsely informed Mr. Christy that Dr. Jakobiec had in fact signed POA3. Mr. Tessier made this false statement with a purpose to induce his longtime partner and friend, Mr. Christy, to provide a false attestation as a notary on POA3.
- (f) On March 18, 2003, Mr. Tessier created a fraudulent Warranty Deed conveying the Candia Road property from Dr. Jakobiec to Thaddeus. Mr. Tessier forged the signature of Dr. Jakobiec on the Warranty Deed and then fraudulently notarized that signature. Mr. Tessier created the fraudulent Warranty Deed to induce others to believe that Thaddeus was the lawful owner of the Candia Road Property.
- (g) On March 18, 2003, Mr. Tessier created a fraudulent Declination form, which he subsequently filed with the Probate Court on or about March 31, 2003. Mr. Tessier forged Dr. Jakobiec's signature on the Declination form, bore false witness to the signature, and then falsely notarized the form. Mr. Tessier created the fraudulent Declination form to induce the Probate Court to believe that Dr.

Jakobiec had disclaimed his share of the inheritance from his mother's Estate, thereby leaving Thaddeus as the sole beneficiary.

- (h) On or about April 10, 2003, Mr. Tessier filed a false and fraudulent Accounting with the Probate Court. The Accounting listed a total value of the Estate at \$280,124.00. At that time, Mr. Tessier knew that the Estate had a value in excess of the value he stated on the Accounting. Mr. Tessier filed a false Accounting with the intent to induce the Probate Court into believing that the value of the Estate's assets equaled the amount that Mr. Tessier had falsely under-represented. Mr. Tessier's fraud on the Court enabled him to misappropriate and misuse assets of the Estate without the Court's oversight or awareness.
- (i) On April 10, 2003, Mr. Tessier created a fraudulent Receipt, which Mr. Tessier filed with the Probate Court on or about that same date. Mr. Tessier forged Thaddeus's signature on the Receipt. Mr. Tessier created and filed the fraudulent Receipt with the intent to induce the Court into believing that \$272,229.00 of the Estate's assets had been properly disbursed to Thaddeus.
- (j) Utilizing POA3, which Mr. Tessier fraudulently created on March 18, 2003, Mr. Tessier was able to gain unauthorized access to Dr. Jakobiec's personal bank and investment accounts. Once he had gained unauthorized access to Dr. Jakobiec's money, Mr. Tessier either misappropriated Dr. Jakobiec's money for his own personal

use or deposited Dr. Jakobiec's money into his firm's trust and operating accounts. Mr. Tessier's unauthorized access to and misuse and misappropriation of Dr. Jakobiec's assets constitute a scheme to defraud.

- (k) On October 18, 2004, Mr. Tessier created a fraudulent Affidavit for Validation of a Non-Bank Power of Attorney. In that Affidavit, Mr. Tessier falsely attested to the fact that he held a valid power of attorney over the affairs of Dr. Jakobiec. Mr. Tessier utilized the fraudulent Affidavit to induce Dr. Jakobiec's bank to believe that Mr. Tessier had a valid power of attorney for Dr. Jakobiec and to allow Mr. Tessier to effectuate a name change on one of Dr. Jakobiec's investment accounts.
- (l) On May 2, 2006, Mr. Tessier created a fraudulent Affidavit as to Power of Attorney Being in Full Force falsely attesting to the validity of POA3. Mr. Tessier utilized this fraudulent Affidavit to induce Merrill Lynch to believe that Mr. Tessier had the authority to close one of Dr. Jakobiec's investment accounts and open another.
- (m) On or about May 17, 2005, Mr. Tessier fraudulently created POA4. Mr. Tessier forged Thaddeus's name on POA4. Mr. Tessier utilized POA4 to induce the buyer, bank and title company to believe that Mr. Tessier had the legal authority to sell the Candia Road property at the closing on May 24, 2005.

(n) On May 24, 2005, Mr. Tessier acted under the authority of POA4 to sell the Candia Road property without giving any notice to Dr. Jakobiec, the rightful owner of the property. In so doing Mr. Tessier perpetrated a fraud on Dr. Jakobiec. As a result of his fraudulent scheme to sell the Candia Road property without legal authority and without providing any notice to Dr. Jakobiec, Mr. Tessier was able to gain unauthorized access to the proceeds of the sale, \$160,000.00 of which Mr. Tessier appropriated for his own (and Michael Tessier's) personal use.

105. If proven by clear and convincing evidence, Mr. Tessier's conduct in these regards would constitute a violation of N.H. R. Prof. Conduct 8.4(c).

#### **Rule 8.4(a): General Rule**

106. In the event that any one of the above alleged rule violations is proven by clear and convincing evidence, this would necessarily constitute a violation of N.H. R. Prof. Conduct 8.4(a).

### **Conclusion**

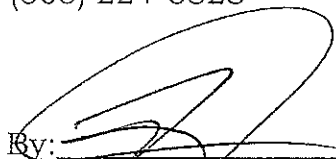
107. Mr. Tessier is advised that he must answer this Notice of Charges within 30 days of the date of his receipt of this Notice of Charges. See Sup. Ct. R. 37A(III)(b)(3)(A). Mr. Tessier's answer must be in writing, must respond specifically to each allegation of this Notice of Charges, and must assert all affirmative defenses. See Sup. Ct. R. 37A(III)(b)(3)(B).

108. **In the event Mr. Tessier fails to file an answer, the allegations set forth in this Notice of Charges “shall be deemed to be admitted.”**  
See Sup. Ct. R. 37A(III)(b)(3)(A).
109. It is the duty of Disciplinary Counsel to request that the chair of the Hearings Committee appoint a hearing panel in this matter either upon receiving an answer from Mr. Tessier, or upon the expiration of the 30-day period for him to file an answer. See Sup. Ct. R. 37A(III)(b)(4).
110. Mr. Tessier is advised that he has the right to be represented by counsel, and to testify and present evidence on his own behalf. See Sup. Ct. R. 37A(III)(b)(2).
111. This Notice of Charges and the file of Disciplinary Counsel (other than work product and internal memoranda of the Attorney Discipline Office) is now a public file. Further, the proceedings related to this Notice of Charges that take place before the Hearings Committee and Professional Conduct Committee, as well as the written decisions (other than work product, internal memoranda, and deliberations) of both, shall be public. See Sup. Ct. R. 37(20)(b)(2).
112. Mr. Tessier’s attention is also directed to Supreme Court Rule 37A(III)(b)(5), which governs discovery in this matter, as well as subsection (6) of that Rule, which provides for a pre-hearing conference. In the absence of “good cause,” such pre-hearing conference must be requested within 30 days of the appointment of a hearing panel in this

matter. See Sup. Ct. R. 37A(III)(b)(6)(A).


New Hampshire Supreme Court  
Attorney Discipline Office  
4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
(603) 224-5828

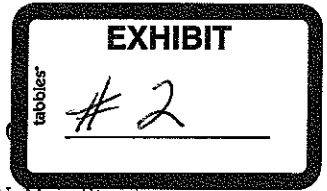
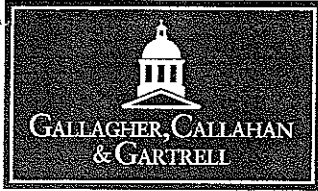
Date: October 10<sup>th</sup>, 2008

By:   
Landya B. McCafferty  
Disciplinary Counsel

CERTIFICATION

I, Landya B. McCafferty, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that the original of the aforesaid Notice of Charges is being sent on this 10<sup>th</sup> day of October 2008, to Thomas J. Tessier, Esquire, at 265 North Bend Drive, Manchester, New Hampshire 03104, and a copy to his attorney, David A. Garfunkel, Esquire, at Gallagher, Callahan & Gartrell, P.O. Box 1415, Concord, New Hampshire 03302 by certified mail #7006 0100 0005 8155 9937 and #7006 0100 0005 8155 9944, return receipt requested and a copy to both by regular mail postage prepaid.

  
Landya B. McCafferty  
Disciplinary Counsel



DAVID A. GARFUNKEL

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VIA FACSIMILE & US MAIL

November 12, 2008

Landya B. McCafferty, Esq.  
Attorney Discipline Office  
4 Chenell Dr.  
Concord, NH 03301

Re: Tessier, Thomas J. advs. Attorney Discipline Office - #08-016

Dear Attorney McCafferty:

As per our discussions and agreement today, I am writing to advise that my client, Thomas Tessier, answers the Notice of Charges by asserting his rights against self-incrimination under the Fifth Amendment to the United States Constitution and Part 1, Article 15 of the New Hampshire Constitution in response to each separately numbered paragraph in the Notice of Charges.

Very truly yours,

  
David A. Garfunkel

DAG/msk

cc: Thomas Tessier