

THE STATE of NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT



Theodore Kamasinski

v.

Hon. Philip McLaughlin, in his official capacity as Attorney General of the State of New Hampshire & Martha Van Oot, in her official capacity as President of the New Hampshire Bar Assn.

Docket No. 2001-E-0386

Final Order

Petitioner Theodore Kamasinski began this action by filing a petition for declaratory judgment, asking the Court to declare that he is not engaged in the unauthorized practice of law. Pursuant to RSA 311:7-a, Respondents filed a cross-petition, seeking to enjoin Mr. Kamasinski "from appearing in any court in the State of New Hampshire on behalf of any person or entity other than himself personally" and "from rendering, offering to render or holding himself out as rendering any legal service or representation which violates RSA 311:7, i.e. 'practicing as an attorney in court' [.]" Resp'ts' Answer and Cross-Pet. at 9.

On October 17, 2002, after repeated decisions relative to the scope of discovery and persistent refusal by the petitioner to provide the ordered discovery¹, the Court issued the following order:

¹ On December 27, 2001, respondent, New Hampshire Bar Association, filed a motion to conditionally default Mr. Kamasinski for failing to answer interrogatories propounded on November 6, 2001. The Court (McGuire, J.) granted this motion. At a structuring conference held (continued)

1. Petitioner shall fully comply with the discovery orders of this court or make arrangements to do so satisfactory to respondents on or before a date 14 days following the clerk's notice of this order.
2. Failure to so comply will result in dismissal of petitioner's petition and all well pleaded facts of respondents shall be deemed confessed by the petitioner.
3. If petitioner does not comply, respondents shall within 10 days of the date established by paragraph 1 submit a proposed decree to the court containing the facts they deem to be confessed and the relief requested upon such confessed facts. Petitioner has 10 days from such submission to object to such order solely on grounds that the facts taken as confessed do not as a matter of law entitle respondents to the relief requested.

It is undisputed that Mr. Kamasinski did not comply with the Court's discovery orders nor did he seek reconsideration of any portion of the October 17, 2002, order. On November 15, 2002, respondents filed a proposed decree and a legal memorandum in accordance with Paragraph 2 of the Court's October 17, 2002 order. Although Mr. Kamasinski asked the Court for additional time to respond to respondents' submissions in accordance with

(1.continued) March 8, 2002, the Court (Fitzgerald, J.) ordered Mr. Kamasinski to either answer or object to the interrogatories by March 22, 2002. Mr. Kamasinski exceeded this deadline and mailed his answers and objection on March 25, 2002. Respondent subsequently moved to compel answers to many of the interrogatories to which Mr. Kamasinski objected, and the Court (Fitzgerald, J.) granted this motion on August 2, 2002. The Court (Fitzgerald, J.) also granted respondent's Motion to Compel Discovery on April 9, 2002. On September 17, 2002, respondent filed a Motion For Evidentiary Hearing and Sanctions, alleging that Mr. Kamasinski had not provided any additional discovery materials since the Court's August 2, 2002 order. Although he appeared for a deposition on August 2, 2002, according to the respondent, he refused to answer questions pertaining to respondent's discovery requests. On September 30, 2002, respondent, Philip McLaughlin, filed a Motion for Conditional Default, alleging that Mr. Kamasinski had failed to answer or object to interrogatories propounded on August 20, 2002. The Court granted this motion on October 2, 2002. In his response to the Motion for Evidentiary Hearing and Sanctions, Mr. Kamasinski did not dispute that he had not complied with discovery as ordered by the Court, but rather disputed the Court's ability to order such discovery. As a result, the Court issued its October 17, 2002 order, concluding that no evidentiary hearing was necessary.

Paragraph 3, and the Court granted this request, to date, he has not filed any response. Accordingly, Mr. Kamasinski's petition is **DISMISSED**, and the Court finds the following well-pleaded facts taken as confessed:

Theodore Kamasinski never attended or graduated from law school. Mr. Kamasinski is not currently a member of the New Hampshire Bar, or that of any other state, nor has he ever been. By his own admission, he does "what a lawyer does" including: drafting and filing pleadings; conducting depositions; and "yelling" at judges. Resp'ts' Mem. of Law, Ex. 4 at 48 (Deposition of Theodore Kamasinski). His main source of income comes from "writ[ing] briefs for all the courts, including the Circuit Courts." Resp'ts' Ex. 7 at 102 (Transcript of October 14, 2001 Motions Hearing, Holmes v. Holmes, Hillsborough County North Superior Court Docket No. 00-M-815). He appears in court on behalf of clients, including: Andrew M. Hay; Rebecca Carroll, JoAnn Quinn Foster, Walter H. Foster, III, Judith O'Brien Thayer, Lisa Amy Holmes, Gary and Kim Scott, George LaBrie, and Cecilia de La Rossa. See Resp'ts' Ex. 5 (Mr. Kamasinski's Answer to Interrog. No. 5). Mr. Kamasinski collects fees for his work. Resp'ts' Ex. 7 at 102.

"There exists, in New Hampshire, a strong public policy against the unauthorized practice of law." State v. Settle, 124 N.H. 832, 835 (1984) (citing Bilodeau v. Antal, 123 N.H. 39, 43 (1983)). The importance of preventing unqualified or unethical individuals from rendering legal services was recognized by the New Hampshire Supreme Court as early as 1851:

It would seem to be more for the public good, that when [a man] applies to an attorney for advice he should have security, from the attorney's previous study of his profession, that he is reasonably competent to discharge his trust. There is no class of men whose advice in their particular calling is more generally followed than the class of attorneys. More implicit confidence is reposed in them, for personal honor and devotion of their duties, than in any other persons. Secrets, involving all that renders life valuable are confided in them, upon the mere security and belief that they will not violate professional

confidence. Evidences of debt and of rights to property are placed in their hands, for whose return other security than their professional trust is rarely required. It is even more important for the interest of the public than of the attorneys that this high character should continue to be deserved as it has been.

Bryant's Case, 24 N.H. 149, 158 (1851). This public policy is further embodied in New Hampshire Supreme Court Rule 42, which lists the academic and ethical qualifications applicants must meet before being admitted to the bar, including: graduating from an approved law school; passing the bar examination; establishing good moral character to the Standing Committee on Character and Fitness; satisfactorily completing the Multistate Professional Responsibility Examination; and completing a practical skills course within two years of admission. See generally, N.H. Sup. Ct. R. 42. Moreover, the American Bar Association Code of Professional Responsibility, adopted as the New Hampshire Code of Professional Responsibility, reflects the need to protect the public against the unauthorized practice of law. See also, Bilodeau v. Antal, 123 N.H. at 43. Specifically, Rule 5.5 prohibits lawyers from assisting "a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law." N.H. R. Prof. Conduct, Rule 5.5. The Comment to this rule explains: "limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons."

This strong public policy has been most recently codified in RSA 311:7, which provides that "[n]o person shall be permitted commonly to practice as an attorney in court unless he has been admitted by the court and taken the oath prescribed in RSA 311:6." To enforce RSA 311:7, the Legislature enacted RSA 311:7-a, which authorizes the Attorney General to maintain an action for injunctive relief against anyone who engages in the unauthorized practice of law, and RSA 311:7-b, which authorizes the Attorney General to investigate the same. Whether a person is engaged in the unauthorized practice of law is to be determined on a case-by-case basis. State v. Settle, 124 N.H. at 837 (citing Bilodeau v.

Antal, 123 N.H. at 45.) For the purposes of this case, the Court defines the practice of law to include (but not be limited to) the following:

1. Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for fees or other consideration.
2. Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
3. Representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
4. Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

HB 1420, Chapter 218:1, Laws of 2002, Task Force on the Definition of the Practice of Law.

After considering the facts recited above, it is clear that Mr. Kamasinski is engaged in the unauthorized practice of law. He is not a licensed attorney, but by his own admission, he does what a lawyer does. Moreover, the substantial public policy concerns behind RSA 311:7 support prohibiting Mr. Kamasinski from engaging in the unauthorized practice of law. As a non-lawyer, there are no assurances that Mr. Kamasinski has the requisite legal skills and knowledge, since he has not graduated from law school and passed a bar examination. As he is not a member of the New Hampshire Bar Association, he is not required to complete a minimum number of continuing legal education credits per year to ensure that his legal knowledge and skills remain current. Moreover, all licensed attorneys must demonstrate that they completed the Multistate Professional Responsibility Examination, which tests knowledge of the rules of professional responsibility. Since he is not licensed, there is no assurance that he has even a nodding familiarity with these rules.

More importantly, he is not bound by several very important rules of professional conduct.² For instance, there is nothing stopping Mr. Kamasinski from divulging information entrusted to him by those who seek out his legal services, and, conversely, the client using Mr. Kamasinski's services cannot claim the protections of the attorney-client privilege for any information communicated to him. See N.H. R. Prof. Conduct, Rule 1.6. Mr. Kamasinski is not prohibited from representing multiple clients whose interests conflict. See N.H. R. Prof. Conduct, Rules 1.7, 1.8, and 1.9. Nor is he bound by Rule 1.1 of the New Hampshire Rules of Professional Conduct, which requires a lawyer to provide competent representation, including specific knowledge of the field of law in which he is practicing and holds the lawyer responsible when he fails to meet this standard. If an attorney violates these rules, he could be investigated, sanctioned and ultimately prevented from practicing law. If Mr. Kamasinski violates these rules there is no professional disciplinary action that can be taken against him and, importantly, Mr. Kamasinski would be under no obligation to inform his clients of the distinctions between himself and a member of the New Hampshire Bar duly licensed to practice law. The Court is, also, not persuaded by Mr. Kamasinski's contention that he is authorized to appear in court on behalf of others by virtue of RSA 311:1, which contains a narrow exception to RSA 311:7: "A party in any cause or proceeding may appear, plead, prosecute or defend in his proper person or by any citizen of good character." RSA 311:1. The good character exception, however, "merely provides an opportunity for lay counsel to appear in an individual case. It could not provide a blanket exception allowing lay counsel to file appearances as a matter of course" (emphasis added) State v. Settle, 129 N.H. 171, 180 (1987); see also, Bilodeau, 123 N.H. at 44. As Judge Lynn pointed out in the Holmes case, RSA 311:1 does not provide a safe-harbor for

² Rule 8.5(C) of the New Hampshire Rules of Professional Conduct provides: "Rules 1.2, 1.3, 1.4, 1.14, 1.15, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 4.2, 4.3, 4.4, 8.2(a), and 8.4 of the Rules of Professional Conduct shall apply to persons while, not attorneys at law, are permitted to represent other persons before the Courts of this State pursuant to RSA 311:1."

Mr. Kamasinski's activities no matter how small the number of clients he may represent in any given year. It is clearly not intended to allow a non-lawyer to engage in representation of multiple individuals and is to be read in conjunction with the prohibition of RSA 311:7, not as a broad exception to it.

Moreover, even if Mr. Kamasinski's activities were protected by RSA 311:1, the Court finds that the well pleaded facts now taken as confessed establish that Mr. Kamasinski is not of good character, and thus, does not qualify to file an appearance on behalf of another pursuant to RSA 311:1. First, Mr. Kamasinski was convicted of aggravated fraud and misappropriation in Austria. He was imprisoned for these offenses, and upon his release, was deported from Austria to the United States. See Resp'ts' Ex. 1 at 17 and 22 (Publication of the European Court of Human Rights, Kamasinski Case, Judgment of December 19, 1989); see also, State v. Settle, 128 N.H. at 179 (finding that theft and shoplifting convictions were evidence of respondent's "larcenous nature" and "demonstrably bad character"). Further, Mr. Kamasinski has demonstrated a lack of respect for the rules of court which are designed to protect the rights of all litigants and the general public. For instance, despite the clear federal rule that individuals may not be represented by non-lawyers, Mr. Kamasinski recently attempted to circumvent this rule as noted by McAuliffe, J., Ex. 3 (Holmes, et al. v. Lynn, United States District Court for the District of New Hampshire, Docket No. 02-227-M, Order dated June 14, 2002).

Kamasinski personally appeared at the clerk's office on Friday last to file an appearance by Sven Wiberg, Esq., in this case along with a letter from Attorney Wiberg requesting that the clerk "provide the messenger who is delivering this letter [i.e., Kamasinski] with summonses for service upon the defendant [Judge Lynn]." The appearance filed by Wiberg and the accompanying request to provide Kamasinski with an executed summons seems like a rather transparent effort to avoid pro se review and permit Kamasinski to serve a meritless complaint upon Judge Lynn. The complaint, by the way, is not only without legal merit, but also contains a number of

irrelevant and scandalous allegations that seem designed to harass rather than inform

Furthermore, as discussed above, despite being given repeated opportunities to do so, Mr. Kamasinski has failed to comply with this Court's discovery orders. Finally, the Court takes judicial notice of Mr. Kamasinski's conduct in a case currently pending in this county, Foster v. Kamasinski, Docket No. 01-C-087, in which the Fosters sued Mr. Kamasinski for \$380,000 they loaned him and which he allegedly failed to repay. Mr. Kamasinski counterclaimed that the Fosters owed him money for legal services. On September 4, 2001, Mr. Kamasinski moved to amend his counterclaim to add several additional allegations, many of which were allegations of drug use and impropriety against a member of the New Hampshire Bar who was not a party to the litigation. See, e.g., Motion to Amend Counterclaim at ¶s 16, 17, and 19. The Court (McGuire, J.) noted these allegations in its October 24, 2001 order denying the motion to amend. The Court finds that such conduct is not indicative of a person of good character.

Accordingly, the respondents' cross-petition for injunctive relief is **GRANTED**, and Mr. Kamasinski is hereby enjoined from the unauthorized practice of law. Specifically, Theodore Kamasinski shall not engage or offer to engage in any of the following acts:

1. Give legal advice to any person or legal entity whether for a fee or otherwise;
or
2. File an appearance on behalf of another individual or legal entity in any court of this state. Any appearances he has filed currently shall be stricken by the clerk of the respective court and the party whom Mr. Kamasinski represents and Mr. Kamasinski shall be sent a notice of the striking of appearance and be required to appear *pro se* or through counsel within thirty days of the clerk's notice. Upon a party's failure to so appear, the court shall take such action as justice may require. Super. Ct. Rule 20, District & Municipal Court Rule 1.3 (G), Probate Court Rule 20; or

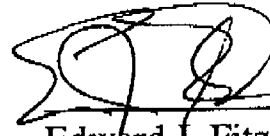
3. Appear on behalf of another individual or legal entity at any administrative adjudicative proceedings; or
4. Draft or participate in drafting pleadings, memoranda or briefs on behalf of any person other than himself for filing in any court in this state; or
5. Draft or participate in drafting legal documents that affect the rights of any individual or legal entity; or
6. Negotiate legal rights or responsibilities on behalf of another individual or legal entity.

The protections afforded the public by requiring legal representation to be provided only by licensed attorneys subject to the provisions of the Code of Professional Conduct are significant and essential to the administration of justice. The court, therefore, also finds that the interests of justice and public policy strongly require that the statutes and rules precluding the practice of law by non-attorneys be strictly enforced to protect the public from the provision of legal services by other than a licensed attorney. Therefore, neither a timely Motion for Reconsideration in this court nor a timely appeal to the Supreme Court shall stay any provision of this order unless so ordered by the respective court. This provision is made contrary to Superior Court Rule 74 pursuant to the court's authority to suspend such rules as justice may require and order that all or any part of a decree may be effective pending appeal. See 5 R. Weibusch, New Hampshire Practice, Civil Practice & Procedure, §59.07, at 451 (1984).

The clerk is directed to provide a copy of this order to the clerks of all Superior Courts and to the administrative justices of the District and Probate Courts and of the Grafton and Rockingham Family Division.

So Ordered.

Dated: January 30, 2003

A handwritten signature in black ink, appearing to read 'E. J. Fitzgerald, III', written over a horizontal line.

Edward J. Fitzgerald, III
Presiding Justice