

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

a committee of the attorney discipline system

David M. Rothstein, Chair
Heather E. Krans, Vice Chair
Elaine Holden,* Vice Chair
* non attorney member
Barbara J. Guay, Legal Assistant

Michael J. Reed – Consolidated Matters

Recommendation: Disbarment and Order on Costs

On October 20, 2020, the Professional Conduct Committee deliberated the Hearing Panel Report, as well as the Record in the above matters.

Having reviewed the Record, the Committee approved the Hearing Panel Report as to the Facts by clear and convincing evidence. The Committee approved the findings of violations of the New Hampshire Rules of Professional Conduct as found by the Hearing Panel Report and to recommend Disbarment for violations of Rules 1.1; 1.3; 1.4; 1.16(d); 3.4(c); 8.1 and 8.4(a), as well as reimbursement of the Committee for all costs of investigation and prosecution of this matter.

In adopting the recommended sanction, the Committee took note of the fact that Mr. Reed abandoned his practice, which harms not only his clients but the reputation and standing of the profession. It also took note of the fact that Mr. Reed's complete failure to participate in these proceedings meant that there is no explanation on the record for his conduct, and nothing to mitigate it.

November 5, 2020

/S/ David M. Rothstein
David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Michael J. Reed
File

NEW HAMPSHIRE SUPREME COURT

HEARINGS COMMITTEE

Reed, Michael J. advs. Attorney Discipline Office - #19-021

Reed, Michael J. advs. Attorney Discipline Office - #19-022

Reed, Michael J. advs. Attorney Discipline Office - #19-024

REPORT OF HEARING PANEL

This Report sets forth the findings and recommendations of a hearing panel consisting of Wilbur A. Glahn, III, Esq., Chair, Richard C. Gagliuso, Esq., Reporter, Mark T. Knights, Esq., Rudy Bazelmans, and Sarah Clauss (collectively, the “Panel”) with respect to sanctions in the above-entitled matters.

Procedural History

On April 30, 2020, the Attorney Discipline Office (“ADO”) issued a Notice of Charges against Michael J. Reed (“Reed”) pursuant to Supreme Court Rule 37A(III)(b)(2). The Notice of Charges consolidated three separate disciplinary matters, as set forth in the above caption, all of which raised issues related to Reed’s alleged failure to attend to his law practice in or around September of 2019.

In Docket No. 19-021, the Notice of Charges contained detailed allegations against Reed arising out of a referral by Judge David J. Burns on September 10, 2019 (the “Burns Referral”). The Burns Referral described Reed’s alleged failures to appear at scheduled hearings, to communicate with a client, and to interact with opposing and successor counsel. *See* Notice of Charges, ¶¶ 17, 41-66.

In Docket No. 19-022, the Notice of Charges contained detailed allegations against Reed arising out of a referral by Administrative Judge David D. King on September 12, 2019 (the “King Referral”). The King Referral described Reed’s alleged failure to appear for hearings and the Court’s inability to communicate with Reed. *See* Notice of Charges ¶¶ 20, 68-94.

In Docket No. 19-024, the Notice of Charges contained detailed allegations against Reed arising out of a referral by Judge Richard McNamara on September 24, 2019 (the “McNamara Referral”). The McNamara Referral described Reed’s alleged failures to attend a hearing and to communicate with clients, and the Court’s inability to communicate with Reed. *See* Notice of Charges ¶¶ 24, 95-108.

In addition to the issues raised by the Burns Referral, the King Referral and the McNamara Referral, the Notice of Charges detailed the ADO’s difficulty in communicating with Reed, his failure to provide the Bar Association with an updated address, and his failure generally to cooperate with the ADO with respect to these Referrals. A notable exception to this pattern of failing to respond to the ADO was a meeting on September 26, 2019. Reed met with the ADO on that date and agreed to cooperate with an inventory of his files. *See* Notice of Charges, ¶¶ 27, 28. That was the last time, however, that Reed responded to any correspondence or inquiry from the ADO despite many attempts to contact him.

Based on these factual allegations, the Notice of Charges alleged violations by Reed of Rules of Professional Conduct 1.1, 1.3, 1.4, 1.16(d), 3.4(c) and 8.1. *See* Notice of Charges ¶¶ 109-143. The Notice of Charges further advised Reed that he must respond within thirty days as required by Supreme Court Rule 37A(III)(b)(3), among other rights and duties. *Id.* ¶¶ 145-150.

The ADO asserts that Reed failed to respond to the Notice of Charges and that, accordingly, he is deemed to have admitted the factual and legal allegations contained therein. *See* Attorney Discipline Office’s Memorandum on Sanction dated August 18, 2020 (the “ADO Memorandum”).

Given Reed’s failure to respond, the ADO requested that a hearing panel be appointed to consider appropriate sanctions against Reed for the violations alleged in the Notice of Charges. The Panel was appointed in response to this request, and a Hearing on Sanction was scheduled for August 28, 2020. On that date, a hearing was held by Zoom videoconference, with all five members of the Panel participating. The ADO was represented by Assistant Disciplinary Counsel Elizabeth M. Murphy. Reed did not appear either *pro se* or through counsel, despite appropriate notice of the hearing by mail, e-mail and telephone. Accordingly, the Panel heard argument by Attorney Murphy.

The ADO has asked the Panel to recommend a sanction of disbarment. *See* ADO Memorandum, ¶¶ 25, 62. Based on the ADO Memorandum and Attorney Murphy’s argument at the hearing, and after considering the legal and factual allegations contained in the Notice of Charges, the Panel makes the following findings and recommendations.

Findings and Analysis

The Panel adopts the sanction analysis contained in the ADO Memorandum, including its reliance on the American Bar Association’s *Standards for Imposing Lawyer Sanctions* (2005) (the “ABA Standards”), except as set forth below.

Specifically, the Panel finds that Reed violated duties owed to his clients, to the legal system and to the profession. The Panel further finds that Reed’s mental state was “knowing,” as defined by the ABA Standards and the Rules of Professional Conduct, with respect to the

conduct described in the Notice of Charges. *See* Rule 1.0(f). The Panel further finds that Reed's conduct, as described in the Burns Referral, the King Referral and the McNamara Referral, caused serious actual and potential injury to his clients, the legal system and the profession.

As the ADO acknowledges, not all of the violations alleged in the Notice of Charges lead to a baseline sanction of disbarment under the ABA Standards. The alleged violations of Rules 1.3 and 1.4 implicate Section 4.4 of the ABA Standards. The Panel finds that Reed essentially abandoned his practice in September of 2019, that he knowingly failed to perform services for more than one client, and that he engaged in a pattern of neglect with respect to client matters.

The Panel further finds that such conduct caused serious or potentially serious injury to these clients. Specifically, in the O'Neil matter described in the Burns Referral, Reed left his client without representation at multiple court proceedings, which resulted in the client being held responsible for the legal expenses of the opposing party. As a result of his conduct, the court was compelled to assign new counsel for other clients in sensitive family matters, thus avoiding serious injury to these clients.

In the matters described in the King Referral, Reed failed to attend hearings on behalf of two clients and failed to communicate with them. And in the matter described in the McNamara Referral, Reed failed to communicate with his clients for months and permitted a conditional default and an award of legal expenses to be entered against the clients in the amount of \$9,920.00. The Panel considers this actual harm to clients to be serious within the meaning of Section 4.4 of the ABA Standards.

Accordingly, under Section 4.41 of the ABA Standards, disbarment is the appropriate baseline standard for Reed's violations of Rules 1.3 and 1.4.

The Panel notes, however, that the other violations alleged in the Notice of Charges do not lead to a baseline sanction of disbarment. The Panel agrees with the ADO that the ABA Standards call for a baseline sanction of suspension for Reed's violations of Rules 1.1, 1.16(d), 3.4(c) and 8.1.

Under these circumstances, the Panel considered whether an overall baseline sanction of suspension, rather than disbarment, was appropriate. For several reasons, however, the Panel recommends disbarment.

First, the ADO argues, and the Panel agrees, that the sanction for the most serious violation should govern in cases of multiple rule violations which call for different sanctions.

Second, the Panel is swayed by significant aggravating factors identified by the ADO in this case, including Reed's obstruction of disciplinary proceedings, his pattern of misconduct, and the existence of multiple offenses. Even allowing for the mitigating factor of Reed's relative inexperience, the Panel finds that these aggravating factors outweigh this one mitigating factor and justify an upward adjustment in sanction.


Finally, the Panel accords substantial weight to the fact that Reed did not see fit to contest the Notice of Charges or to participate in the disciplinary process for roughly one year. Despite the fact that Reed is currently serving a suspension of one year for failure to cooperate with a prior disciplinary matter, he chose not to participate in these proceedings, suggesting that Reed's conduct would not be affected by the imposition of a longer term of suspension short of disbarment. At the hearing, Attorney Murphy alluded to the possibility that Reed may have been dealing with personal or family issues when he essentially stopped attending to his professional responsibilities in September of last year. When questioned, Attorney Murphy stated that she had no details to share with the Panel. It is possible that, had Reed come forward and let the

ADO or the Panel know of any personal issues, either the ADO or the Panel would be recommending a more lenient sanction in a case that straddles the line between disbarment and suspension. In the absence of any defense or explanation, however, the Panel finds that disbarment is appropriate.

Conclusion and Recommendation

For the foregoing reasons, the Panel concludes that disbarment is the appropriate sanction for the violations alleged in the Notice of Charges, and respectfully recommends that the Professional Conduct Committee recommend such sanction to the Supreme Court.

Dated: September 29, 2020



Wilbur A. Glahn, III, Esq., Chair
Richard C. Gagliuso, Esq., Reporter
Mark T. Knights, Esq.
Rudy Bazelmans
Sarah Clauss

NEW HAMPSHIRE SUPREME COURT
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Philip H. Utter, Chair
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Reed, Michael J. advs. Attorney Discipline Office - #19-021; #19-022; #19-024

Index of Record

Elizabeth M. Murphy, Assistant Disciplinary Counsel
Michel J. Reed

Hearing Panel
Wilbur A. Glahn, III, Chair
Richard C. Gagliuso, Reporter
Mark T. Knights, Esquire
Rudy Bazelmans
Sarah J. Clauss

	Date Received	Item	Author	Outcome
1.	6/3/20	Letter requesting Hearing Panel and Pre-Hearing Conference	EMM	
2.	6/3/20	Notice of Charges	EMM	
3.	6/3/20	Motion for Approval of Alternative Service	EMM	
4.	6/3/20	Order re: Tab 3 - Granted	DMR	See Tab 3 Granted
5.	6/15/20	Email with Excel Sheet	BJG	
6.	6/18/20	Email: ADO Waives 60 Day Requirement	EMM	
7.	7/6/20	Notice of Pre-Hearing Conference	BJG	
8.	7/10/20	Hearing Panel Appointment	BJG	
9.	7/20/20	Email: Possible Hearing Dates	BJG	
10.	7/21/20	Email: Zoom Pre-Hearing	BJG	
11.	7/21/20	Email: Re: Proposed-Hearing Case Management Orders	EMM	

12.	7/22/20	Notice of Hearing on Sanction Case Management Order	BJG	
13.	8/4/20	Anticipated Witness List	EMM	
14.	8/14/20 8/17/20	Email re: Exhibits Emial re: Index	EMM	
15.	8/18/20	Cover Letter Attorney Discipline Office's Exhibits	EMM	
16.	8/18/20	Cover Letter Disciplinary Counsel's Witness List	EMM	
17.	8/18/20	Cover Letter Attorney Discipline Office's Memorandum on Sanction	EMM	
18.	8/19/20	Cover Letter with Correction to Notice of Charges Page 17, Paragraph 132	EMM	
19.	8/25/20	Cover Letter with Exhibit C to the Memorandum on Sanction	EMM	
20.	9/16/20	Transcript of Hearing on Sanction	Avicore	
21.	9/29/20	Report of Hearing Panel Memo sending Report	WAG BJG	
22.				
23.				
24.				
25.				
26.				
27.				