

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

Margaret H. Nelson, Chair
Benette Pizzimenti, Vice Chair
Toni M. Gray,* Vice Chair
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Ward, Brien L. advs. Donald Matthew (Deceased) and Shiela M. Matthew # 10-015

REPRIMAND

On October 16, 2012, the Professional Conduct Committee heard Oral Argument and deliberated the above captioned matter. The following members were present: Margaret H. Nelson, Chair, Benette Pizzimenti, Vice Chair, Toni M. Gray, Vice Chair, Susan R. Chollet, David N. Cole, Thomas P. Connair, Richard H. Darling, James R. Martin, Richard D. Sager and Lisa Wellman-Ally. Alan J. Cronheim and Gerald A. Daley were absent.

Oral Argument was presented by James L. Kruse, Assistant Disciplinary Counsel, and Steven M. Gordon, Esquire for the Respondent. Benjamin Siracusa Hillman, Esquire, Brien L. Ward, Esquire, and Gladys Strickhart, Legal Assistant to Mr. Kruse were also present.

I. FINDINGS OF FACT

The Committee accepts the Stipulation as to the facts, as found by the Hearing Panel.

This establishes the following facts by clear and convincing evidence.

1. Brien L. Ward, is an attorney licensed to practice law in New Hampshire. Mr. Ward was admitted to practice in 1986. At all times material to this proceeding, Mr. Ward operated his law practice at Ward Law Office, 74 Cottage Street, PO Box 1, Littleton, New Hampshire 03561.
2. On or about September 27, 2006, Donald and Sheila Matthew retained Mr. Ward to represent them in connection with a Notice of Foreclosure Sale issued by Harmon Law Offices, P.C., on September 13, 2006, on behalf of Homecomings Financial Network

("Homecomings"). Homecomings held a J.P. Morgan Chase Bank second mortgage on the Matthews' property in Bethlehem, New Hampshire.

3. Mr. Ward immediately contacted Homecomings. Over the next month and following the submission of a financial package, Mr. Ward and David Paul, Loan Counselor at Homecomings, agreed on the terms of a Temporary Repayment Agreement for the Matthews and the foreclosure process was suspended. The temporary repayment agreement signed by the Matthews on October 26, 2006, required three installment payments and a balloon arrearage payment to Homecomings on January 11, 2007.
4. In order to have a record of payments without having to use certified checks, and with Homecomings's assent, Mr. Ward and the Matthews agreed that the Matthews would make their monthly payments to Mr. Ward. Mr. Ward, in turn, would deposit the funds into his client trust account, and then make timely disbursements to Homecomings from that account via UPS. The parties also agreed that Homecomings would continue to directly mail all monthly mortgage payment statements and account payment notices to the Matthews.
5. On November 20, 2006, Mr. Ward wrote to David Paul and requested that Homecomings cease contacting the Matthews directly and requested a final repayment agreement. Mr. Ward followed up on this request for the final repayment agreement on December 6, 2006.
6. By letter dated January 22, 2007, Homecomings notified the Matthews that they were in default; that the repayment agreement was cancelled; and that the foreclosure process would proceed.
7. Mr. Ward wrote to Mr. Paul on January 23, 2007, and February 1, 2007, requesting an explanation of the balance owed on the Matthews' account. Homecomings did not respond to Mr. Ward until February 22, 2007, when it requested that the Matthews execute a revised financial package. Mr. Ward forwarded to Homecomings the Matthews' revised financial package on February 23, 2007, after going to their home to help with the paperwork.
8. In the meantime, by letter dated February 2, 2007, the Harmon Law Offices notified Mr. Matthew that the entire balance of the note, interest, and other charges was due immediately, subject to the Matthews' right within thirty days to dispute the validity of the debt.
9. A Notice of Mortgage Foreclosure Sale dated February 12, 2007, followed, with a Public Auction scheduled for Tuesday, March 13, 2007. On March 9, 2007, Mr. Ward again forwarded to Homecomings the Matthews' revised financial package.

10. Mr. Ward, during the period of February 23, 2007, through March 13, 2007, attempted to negotiate a final repayment agreement with Homecomings and the Harmon Law Firm. These negotiations were unsuccessful.
11. On March 13, 2007, Mr. Ward forwarded to Homecomings's attorney a 49 page proposed Petition to Enjoin Foreclosure with exhibits to be filed in Grafton County Superior Court. In response to the Petition, the foreclosure sale was cancelled.
12. By letter dated March 14, 2007, Kathleen Mcanally, Loan Counselor with Homecomings, sent the Matthews a revised final repayment agreement showing a payment arrearage of \$8,569.72. Under the terms of the revised repayment agreement, the Matthews were required to make an immediate lump sum payment and monthly installments beginning in April 2007. The final installment was due on March 11, 2008. On March 26, 2007, Mr. Ward faxed a message to Ms. Mcanally responding to the revised repayment agreement. Mr. Ward indicated that his clients did not understand how they could be behind in their payments. Mr. Ward requested a detailed accounting.
13. Pending receipt of the accounting requested by Mr. Ward, the Matthews undertook to comply with the revised final repayment agreement by making the required lump sum payment, followed by additional monthly installments of \$1,200 via UPS, disbursed through Mr. Ward's client trust account maintained at Passumpsic Savings Bank.
14. Receipt and deposit of installment payments from the Matthews, and disbursements out of the client trust account to designated representatives of Homecomings, were handled by Mr. Ward's paralegals, Theresa Lockwood and Tammy Towle. A total of 29 checks were forwarded to Homecomings from the Ward Law Firm during the period, October 2006 to October 2008.
15. On June 1, 2007, Ms. Mcanally faxed a "Final Notice" to Mr. Ward, acknowledging receipt of installment payments, but noting that the revised repayment agreement had not been signed and returned to Homecomings. Accordingly, foreclosure fees continued to accrue and, without an immediate response, the plan would be cancelled.
16. Pursuant to Mr. Ward's advice, the Matthews signed and returned the revised repayment agreement on June 5, 2007.
17. Later in 2007, the Matthews began receiving notices from Homecomings claiming that they were in arrears and that they were incurring late fees and penalties. The Matthews notified Mr. Ward and, on September 20, 2007, Mr. Ward wrote to Homecomings asking for an opportunity to discuss the Matthews' account.
18. The Matthews continued to make monthly installment payments through Mr. Ward.

19. On November 13, 2007, Homecomings issued another notice of default.
20. On January 30, 2008, Mr. Ward wrote to Homecomings requesting an updated accounting of the loan payments as soon as possible.
21. On February 14, 2008, Homecomings faxed an accounting to Mr. Ward. Mr. Ward forwarded the material to the Matthews with an invitation to call with questions. Notwithstanding the Matthews' and Mr. Ward's efforts to continue making monthly installment payments, Homecomings issued additional default notices to the Matthews later in February and in March 2008.
22. In or about March 2008, at Mr. Ward's suggestion, the Matthews retained D. Neil Stafford, EA, of White Mountain Business Services, to review the year-to-date account summary of the mortgage as provided by Homecomings, to determine the basis for the arrearage claimed by Homecomings.
23. On May 21, 2008, Mr. Stafford provided Mr. Ward with a report indicating that he was unable to interpret Homecomings's year-to-date summary of the mortgage account and that, in his view, the balance on the loan should be less than Homecomings was reporting.
24. In October 2008, the Matthews and Mr. Ward agreed that, starting in November 2008, payments to Homecomings would be made directly by the Matthews and that Mr. Stafford would continue to review the Homecomings account on behalf of the Matthews.
25. Mr. Ward represents that on December 2, 2008, his office forwarded to Mr. Stafford a copy of a "category report" (a computer-generated snapshot of client trust account activity) documenting client trust account activity on behalf of the Matthews from October 26, 2006, through October 31, 2008.
26. Mr. Stafford later wrote to Mr. Matthew on January 9, 2009, indicating that there were discrepancies in records maintained by Mr. Ward and Homecomings and that it appeared that charges assessed by Homecomings were excessive. Mr. Ward was not copied on this correspondence.
27. Mr. Ward took no further action to research and resolve the issues raised by Mr. Stafford and Homecomings.
28. In or about January 2009, the Matthews retained Gregory M. Sorg, Esq., of Franconia, New Hampshire. Mr. Sorg drafted a consumer complaint for the Matthews to file against Homecomings at the New Hampshire Banking Commission, seeking a full accounting of payments made on the loan account. Mr. Ward was not provided with a copy of the Consumer Complaint, nor was he informed initially of Mr. Sorg's representation.

29. On March 17, 2009, Homecomings responded to the consumer complaint and produced an itemized accounting which Messrs. Sorg, Matthew, and Stafford reviewed. This accounting indicated that Homecomings could not locate the July 2007 mortgage payment from Mr. Ward's client trust account. This was the first time that Homecomings notified the Matthews that the July 2007 check had not been received. Mr. Ward was not provided a copy of this information.
30. On January 8, 2010, Mr. Stafford reported to Mr. Matthew in writing that he had completed his review of the records and concluded that "the primary source of the misunderstanding is a check showing as having been disbursed from Brien Ward's [client] Trust Account (#9491 7/6/07 for \$1,200 not shown in the bank's record)." Mr. Stafford also indicated that he had been unable to get any information concerning this payment from Mr. Ward's office. Mr. Ward did not receive a copy of this report.
31. On January 20, 2010, Mr. Sorg wrote to Mr. Ward and advised him of Mr. Stafford's findings regarding check #9491. Mr. Sorg requested that Mr. Ward research his records and verify that the check was tendered to and negotiated by Homecomings. Upon receipt, Mr. Ward instructed his client trust account administrator, Ms. Towle, to research the issue and respond to Mr. Sorg's request.
32. On February 12, 2010, Mr. Sorg wrote to Mr. Ward again, reminding him of the prior request for assistance in accounting for the Matthews' loan payments. Mr. Ward received the letter on February 15, 2010.
33. On February 16, 2010, prior to leaving on vacation, Mr. Ward instructed Ms. Towle to research the records and provide Mr. Sorg with the information he required. Ms. Towle was unable to obtain the information before she left for vacation on February 23, 2010, and forgot to so advise Mr. Ward.
34. On March 11, 2010, Mr. Sorg wrote to Mr. Ward, summarizing the results of his investigation as to the basis for Homecomings's claim that the Matthews were in arrears, "while his and your check registers keep telling him he is not." Mr. Sorg found a copy of check #9491 drawn on the Passumpsic Savings Bank client trust account and Mr. Ward's cover letter of July 6, 2007, forwarding the check to Homecomings. Mr. Sorg located these materials in Mr. Matthew's files. Mr. Sorg concluded his letter with the following:

I would really, really appreciate it if you could produce and send me a copy of a duly redacted monthly statement showing that this check was indeed negotiated by Homecomings, and/or (even better) if you could access this check – through the Passumpsic Bank if necessary – so we can show Homecomings a copy of its endorsement on it.

35. On March 23, 2010, Mr. Matthew filed a grievance with the ADO, alleging that Mr. Ward had violated the New Hampshire Rules of Professional Conduct by failing repeatedly to address the problem with Homecomings and to produce accounting records requested on the Matthews' behalf.
36. On March 25, 2010, the ADO wrote to Mr. Ward informing him of the grievance.
37. Following receipt of the ADO's correspondence and a copy of the Matthews' grievance, Mr. Ward contacted the Passumpsic Savings Bank and requested that the bank research the records of the client trust account to determine whether check #9491 had cleared. Ms. Lockwood reviewed Mr. Ward's office records and confirmed that the check had been sent and delivered to Homecomings via UPS. Ms. Lockwood also confirmed that the check had not cleared and had not been returned.
38. In an additional report from Mr. Stafford to Mr. Matthew, detailing charges for Mr. Stafford's work through March 8, 2010, Mr. Stafford noted the following:

Calls to Attorney Ward's Office -

I called Brian Ward's office on 3 different occasions to get information on the check which was never shown as received by Homecomings. The first 2 times I spoke with a secretary and was assured that the information would be forthcoming. On the 3rd occasion I spoke with Brien and was told the same thing. The information concerning the check was never provided to this office.

Mr. Stafford also informed Mr. Matthew of the following:

Results of the review of Homecomings Paperwork -

From the outset, it was virtually impossible to determine how much or why additional charges were being posted to the account. I attempted to reconstruct the amounts that should have been due, based upon a standard amortization. These were consistently lower amounts than were shown by Homecomings. The discovery of the check (#9491 dated 7/6/07) that was not cashed happened in the fall of 2009 and that occurrence explains much about the confusion. Now, the issue is whether or not the payment was made by Brien's office and whether it should have been his responsibility or the bank's. It appears that, as Brien's paperwork indicated, the check was sent in the same fashion as the previous ones had and it is not clear that Homecomings Financial ever notified them that they had not received the check. However, it is also a little strange that someone in Attorney Ward's office did not discover that the check had never cleared during a regular review of the escrow activity. It seems clear that this is the crux of

the matter at hand and that the Matthews have been unfairly charged for an inadvertent error made by either the bank or Mr. Ward's office.

Mr. Ward did not receive a copy of this report.

39. On April 2, 2010, Mr. Ward sent Mr. Sorg a check in the amount of \$1,200.00 as a replacement for check #9491. Mr. Ward wrote:

After an extensive review of our file and bank records, enclosed please find a check in the amount of \$1,200.00, for replacement of check #9491 drawn on Passumpsic Bank, dated July 6, 2007, which has not cleared from our trust account regarding the above matter.

Passumpsic Bank after review of their bank records determined that the original check never cleared through the bank.

I have also enclosed documentation showing the original check #9491 was overnighted [sic] to Homecoming [sic] Financial on July 7, 2007 and that UPS charged our account for the delivery.

We were never notified by Homecoming [sic] Financial that they did not receive the July, 2007 payment.

40. On April 23, 2010, Ms. Lockwood and Ms. Towle executed affidavits attesting to their respective roles in managing Mr. Matthew's loan payments to Homecomings (including the multiple times they supplied records to Mr. Matthew per his frequent requests) as well as supplying records in response to requests from Mr. Stafford. Ms. Towle stated that she performed monthly reconciliations of the client trust account and that check #9491, dated July 7, 2007, was the only mortgage payment check that did not clear.
41. Each month from and after July 2007, Mr. Ward's record of uncleared checks drawn on the Passumpsic Savings Bank client trust account reflects that Check #9491, dated July 6, 2007, payable to Homecomings on behalf of the Matthews, had not cleared. Similarly, category reports available through Mr. Ward's accounting software program, while lacking a complete history of transactions or a running balance of funds on hand for the Matthews after each transaction, would have consistently revealed that Check #9491 had not cleared.
42. Neither Mr. Ward nor his staff undertook a careful review of the foregoing records at any time prior to March or April 2010 to determine whether Check #9491 had cleared and whether that was the cause of the default claimed by Homecomings.
43. On July 2, 2010, Mr. Sorg responded to a message from Mr. Ward inviting Mr. Sorg to submit a claim for the Matthews' losses which Mr. Ward would present to his insurance

carrier. Mr. Sorg outlined the losses totaling \$12,587, which did not include Mr. Sorg's fees. Out of the total loss claimed, late fees and other charges assessed by Homecomings, consulting accountant fees, and fees paid to Mr. Ward (\$3,000) amounted to approximately \$6,800.

44. After filing another consumer complaint against Homecomings with the Banking Department, Mr. Matthew received letters from Homecomings (July 2010) and GMAC (June 2011) confirming that the subject \$1,200 check was never cashed and would not be credited. The lender agreed, however, to waive related penalties and fees.
45. Mr. Ward stopped billing the Matthews for legal services rendered after March 2007. He provided additional services *pro bono* and incurred non-reimbursed costs, including UPS fees.
46. Pursuant to an agreement with the ADO and Mr. Ward's counsel, Mr. Ward sent a letter to Mr. Matthew on February 11, 2011, enclosing a check for restitution in the amount of \$3,201.91.
47. Mr. Ward filed Certificates of Compliance with New Hampshire Supreme Court Rule 50 for each year during the period 2007 to 2010, attesting to the fact that, based upon his own "personal knowledge," client funds had been held in accounts in full compliance with N.H. R. Prof. Conduct 1.15 and N.H. Supreme Court Rule 50.
48. Mr. Ward acknowledges that efforts of his staff to generate monthly lists of uncleared checks drawn on the client trust account at Passumpsic Savings Bank, as well as category reports pertaining to activity on behalf of the Matthews and other clients during the period 2007 to 2010, did not satisfy the requirements of N.H. Supreme Court Rule 50. The category reports, which Mr. Ward represents were generated monthly, did not provide a complete history of transactions or a running balance of funds on hand for the client after every transaction. As a result, the ending balance shown on the report did not necessarily reflect the actual ending balance for the client at the end of that month. Reconciliations, properly undertaken each month, would have revealed such discrepancies.
49. Mr. Ward's aforesaid Certificates of Compliance were not based on his personal review of accounting records pertaining to the client trust account. The Certificates were prepared by his staff and presented for his signature with the assurance that the office was in compliance with Rule 50.
50. Mr. Ward's practice is primarily residential real estate. According to Mr. Ward, during the period 2006 – 2009, his office successfully administered the various IOLTA trust accounts, including 1,041 deposits for a total of \$58,987,875, and disbursement of 5,797

checks.

51. First American Title Insurance Company has conducted annual two-day financial reviews of Mr. Ward's real estate trust accounts to determine whether Mr. Ward has "adequate controls and procedures in place to protect fiduciary funds held for real estate clients," which Mr. Ward understood would include a three-month account reconciliation of all real estate trust accounts. According to Mr. Ward, these accounts consistently reconciled under the First American Title reviews. While Mr. Ward represents that his staff afforded First American Title access to all bank records, he relied in error on these reviews to render him in compliance with N.H. Supreme Court Rule 50.

Stipulation ¶¶ 1-51 at 1-14.

II. RULINGS OF LAW

The Committee accepts the Stipulation and the Hearing Panel Report with regard to the violations of the Rules of Professional Conduct that have been violated, by clear and convincing evidence.

52. Mr. Ward's conduct in this case constitutes clear and convincing evidence of violations of New Hampshire Rules of Professional Conduct 1.1, 1.3, 1.15(b), 5.3 and 8.4(a).

Rule 1.1: Competence

53. The foregoing paragraphs are incorporated herein by reference.
54. Mr. Ward owed a duty to Mr. and Mrs. Matthew to provide competent representation, including the use of a system for holding, accounting and recordkeeping of client funds in compliance with N.H. Supreme Court Rule 50.
55. The Matthews' money was properly held in an IOLTA client trust account maintained by Mr. Ward at Passumpsic Savings Bank. While Mr. Ward's staff generated lists of uncleared checks drawn on the client trust account and "category reports" pertaining to client activity in that account, Mr. Ward breached his duty by failing to understand and implement a system of accounting and recordkeeping for the account, including monthly review and reconciliation of such account as it pertained to each client, in compliance with N.H. Supreme Court Rule 50.
56. Mr. Ward's conduct, constitutes clear and convincing evidence of a violation of Rule 1.1.

Rule 1.3: Diligence

57. Mr. Ward owed a duty to Mr. and Mrs. Matthew to diligently maintain a competent record of the loan payments made by the Matthews, received by Homecomings, and credited to the Matthews' loan account.
58. Mr. Ward had a duty to undertake timely and effective action to research and address accounting issues raised by Homecomings, as well as to respond to requests for information by others in their attempt to assist the Matthews in analyzing and resolving such issues.
59. Mr. Ward also had a duty to implement, maintain, and use a client trust accounting and recordkeeping system in compliance with N.H. Supreme Court Rule 50.
60. Mr. Ward breached these duties by failing to implement, maintain, and use a client trust accounting and recordkeeping system in compliance with N.H. Supreme Court Rule 50. Further, Mr. Ward failed to carefully scrutinize client trust account records for the period 2007 to 2010 in order to respond in a timely fashion to the accounting issues raised by Homecomings and to produce information to others whom the Matthews were compelled to retain to address such issues.
61. The foregoing breaches caused a substantial delay in discovering and rectifying the failure of a loan payment to be properly accounted for and credited to the Matthews' account. These breaches resulted in the unnecessary accrual of fees and penalties (which were waived), notices of default and foreclosure, and consulting costs.
62. Mr. Ward's conduct in this regard constitutes clear and convincing evidence of a violation of Rule 1.3.

Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

63. Mr. Ward owed a duty to Mr. and Mrs. Matthew to make reasonable efforts to ensure that conduct of his non-lawyer employees was compatible with Mr. Ward's professional obligations as a lawyer.
64. Mr. Ward breached that duty by failing to make reasonable and timely efforts to properly train and supervise his staff to ensure that they:
 - a. maintained and consulted records necessary to address the accounting issues raised by Homecomings;
 - b. implemented and understood a proper accounting and recordkeeping system for the client trust account and competently performed monthly reconciliations of

such account, as required under N.H. Supreme Court Rule 50; and

- c. reliably prepared and presented for Mr. Ward's signature Certificates of Compliance under N.H. Supreme Court Rule 50 with assurances of compliance upon which Mr. Ward could reasonably rely.

- 65. As a result of such breaches, timely and effective review of records was not undertaken to address the accounting issues raised by Homecomings; the client trust account was not maintained in compliance with N.H. Supreme Court Rule 50; and Certificates of Compliance with Supreme Court Rule 50 filed by Mr. Ward during the period of 2007 to 2010 were inaccurate.
- 66. The foregoing conduct constitutes clear and convincing evidence of a violation of Rule 5.3(a)-(c).

Rule 1.15(b): Safekeeping Property

- 67. The Committee also accepts the finding of the Hearing Panel that Mr. Ward violated N.H. Rule of Prof. Conduct 1.15(b): Safekeeping Property, which rule reads as follows:

“Records shall be maintained by the lawyer of the handling, maintenance and disposition of all funds and other property of the client at any time in the lawyer’s possession from the time of receipt to the time of final distribution and shall be preserved for a period of six years after final distribution of such funds or other property or any portion thereof. The lawyer shall maintain the minimum financial records specified in the New Hampshire Supreme Court Rules and shall comply with every other aspect of those Rules.”

Based upon the facts above, the Committee finds a violation of this rule by clear and convincing evidence.

Rule 8.4(a): General Rule

- 68. Because there exists clear and convincing evidence that Mr. Ward violated Rules 1.1, 1.3, 1.15(b) and 5.3, there is necessarily clear and convincing evidence that he violated Rule 8.4(a). Stipulation ¶¶ 52-67 at 14-17.

III. ANALYSIS

Although the Court has not adopted the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1992) (*Standards*), the Hearing Panel ("Panel") properly looked to them for guidance in their analysis of an appropriate sanction in this case. *Conner's Case*, 158 N.H. 299, 303 (2009). In accordance with the *Standards*, there is a four-step analysis to determine the appropriate sanction: a) the ethical duty violated; b) the lawyer's mental state; c) the extent of actual or potential injury caused by the lawyer's misconduct; and d) the existence of aggravating or mitigating circumstances. Once the baseline has been determined, the other parts of the analysis are considered in determining whether they affect the baseline sanction. The Panel addressed each step of the analysis and such analysis is incorporated in part herein:

a. Ethical duties violated:

Under the first prong of the analysis, Mr. Ward violated his duty to provide the Matthews with competent and diligent representation with regard to the effective disbursement and accounting of mortgage payments, as well as timely research, analysis, and response to accounting issues raised by Homecomings. Mr. Ward violated his duty to implement and use a system of client trust accounting in compliance with New Hampshire Supreme Court Rule 50. Mr. Ward also violated his duty to properly train and supervise staff upon which he relied to maintain a proper client trust accounting system and to research the aforesaid accounting issues.

b. The lawyer's mental state:

The Panel determined the Respondent acted knowingly and negligently when he failed to immediately ascertain that the root cause of the Matthew's foreclosure woes was a check written on his client trust account. He could and should have known that something was amiss when Homecomings placed the Matthews in default for failure to make a monthly payment – a payment for which the Respondent had assumed responsibility. The Respondent could and should have undertaken to immediately reconcile his client trust account for the Matthews, which would have identified the source of the problem. The Panel found it difficult to comprehend how such a simple accounting problem took three years to uncover. Equally as disturbing was the fact that the Respondent signed the New Hampshire Supreme Court Annual Trust Account

Compliance Certificate annually, knowing he was not in compliance by virtue of the fact that he had not reconciled his IOLTA client trust account (Interest on Lawyers Trust Accounts program) on a monthly basis as required by Rule 50.

c. The extent of the actual or potential injury caused by the lawyer's misconduct:

While the parties agreed that there was little to no actual financial injury to the Matthews as a result of the Respondent's inadequate client trust accounting practices, the potential for financial harm was significant, i.e., foreclosure of the second mortgage held on the Matthew's home. The fact that the dollar amount in this case might be considered *deminimus* does not negate the seriousness of the misconduct. The Panel found that actual or potential injury also included harm to the client-attorney relationship, loan defaults with threat of disclosure, potential harm to the Matthew's credit rating, as well as potential harm to the legal profession.

d. Aggravating or mitigating circumstances:

The Panel found the Respondent's substantial experience in the practice of law to be the sole aggravating factor. The mitigating factors are as follows:

- i. The Respondent is a well-respected attorney with an unblemished record;
- ii. There are no allegations of deceit or dishonesty;
- iii. Full disclosure and full cooperation with the Attorney Discipline Office;
- iv. Acceptance of responsibility for misconduct; and,
- v. Voluntary determination to retain the services of a Certified Public Accountant to advise on measures to ensure proper and effective handling of client funds in compliance with the Rules.

Here, the Professional Conduct Committee concludes that the baseline sanction is a Reprimand based upon *Cox's Case*, 148 N.H. 565 (2002). The Committee concurs with the Panel's conclusion that while the Respondent's position in his community and the minimal degree of financial harm weighted toward a lesser sanction, the acts complained of warrant a Reprimand, because "the duty to provide a full, detailed and accurate accounting of a client's money is absolute." *Cox's Case*, 148. As in *Cox's Case*, the problem at hand "could have been easily resolved had the Respondent maintained appropriate trust accounting." *Id.*, at 564. The mitigating factors in *Cox's Case* were virtually identical to the matter before the Panel: "As

mitigating factors, we recognize the Respondent is a well-respected attorney with an unblemished record . . . we ascribe no selfish or dishonest motive . . . the respondent attempted to satisfy [the client's] requests but was unable to do so apparently because of inadequate record keeping." *Id.*, at 565. In *Cox's Case*, a letter of reprimand was ordered. *Id.*

IV. SANCTION

Having made the aforementioned findings and rulings, and based upon the record and oral argument before the Professional Conduct Committee, the Committee concludes that the appropriate discipline in this matter is a Reprimand with the following conditions:

- Mr. Ward shall retain at his own expense an independent financial consultant (a CPA approved by the ADO) to review Mr. Ward's office practices relating to the handling of client funds and to make detailed recommendations for the implementation of satisfactory accounting practices and procedures designed to ensure compliance with N.H. Supreme Court Rule 50, including acquisition and training of staff.
- Mr. Ward shall comply with the financial consultant's recommendations.
- Within 60 days of the date of the Committee's order adopting these or similar conditions, Mr. Ward shall obtain and file with the ADO a detailed report prepared and issued by the financial consultant, identifying relevant recommendations and confirming satisfactory implementation of all of the consultant's recommendations.
- Commencing in the month following the Committee's order, Mr. Ward and his staff shall perform monthly reconciliations in connection with all of Mr. Ward's client trust accounts, under the guidance of the consultant and in compliance with N.H. Supreme Court Rule 50.
- Mr. Ward shall file with the ADO such monthly reconciliations by the 15th of each month for a period of 6 months.
- For purposes of monitoring and ensuring compliance with these conditions, the ADO shall have complete access to Mr. Ward's accounting records, as well as complete access to the financial consultant and his/her files pertaining to Mr. Ward's

with the consultant's recommendations and N.H. Supreme Court Rule 50 for no less than one year following the Committee's final order.

- Mr. Ward shall be responsible for paying all expenses associated with the consultant's work as described herein, as well as expenses incurred by the Committee in connection with measures required to enforce the foregoing conditions.

In the event Mr. Ward fails to comply with any of the foregoing conditions, he will be subject to further disciplinary action.


V. COSTS

The Committee assesses all costs associated with the investigation and prosecution of this matter.

VI. CONCLUSION

For all of the above reasons, the Professional Conduct Committee Reprimands Brien L. Ward for violating N.H. R. Prof. Conduct 1.1, 1.3, 1.15(b), 5.3 and 8.4(a).

December 11, 2012


Margaret H. Nelson
Chair

Distribution:

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New Hampshire Supreme Court

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December 19, 2013

Hand Delivered

Holly B. Fazzino, Administrator
New Hampshire Supreme Court
Professional Conduct Committee
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301

Re: Ward, Brien L. advs. Donald Matthew - #10-015

Dear Ms. Fazzino:

I am writing to inform the Committee that Brien L. Ward, Esq. has completed the monitoring requirements listed in the order issued by the Professional Conduct Committee on December 11, 2012.

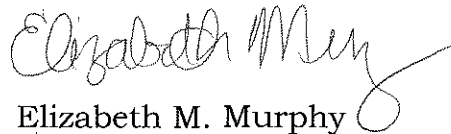
In compliance with that order Mr. Ward retained Rhonda Rosand, CPA of New Business Directions, PO Box 2173, North Conway, NH 03860 to review Mr. Ward's office practices relating to the handling of client fund and to make recommendations for the implementation of accounting practices and procedures that would comply with N.H. Supreme Court Rule 50. Mr. Ward also retained Dennis R. Stone of Davidson & Stone, PLLC for a brief period to provide assistance with the process for complying with Rule 50.

Mr. Ward and his staff have filed appropriate reports with the ADO including filing monthly reconciliations for six months with the ADO. Mr. Ward has also allowed the ADO access to his accounting records until December 11, 2013. It is also my understanding that Mr. Ward has paid all costs associated with the matter.

Holly B. Fazzino, Administrator
December 19, 2013
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I am asking that the Committee give its approval for the above referenced file to now be closed.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth M. Murphy". The signature is written in black ink and is positioned above the printed name and title.

Elizabeth M. Murphy
Assistant Disciplinary Counsel

EMM/ges

cc: Brien L. Ward, Esquire
Rhonda Rosand, CPA
Benjamin Siracusa Hillman, Esquire
Steven M. Gordon, Esquire

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

David M. Rothstein, Chair
Benette Pizzimenti, Vice Chair
Elaine Holden, * Vice Chair
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Susan R. Chollet*
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Holly B. Fazzino, Administrator


Ward, Brien L. advs. Donald Matthew # 10-015

CLOSED

On February 18, 2014, the Professional Conduct Committee deliberated the above captioned matter. Members present included: David M. Rothstein, Chair, Benette Pizzimenti, Vice Chair, Elaine Holden, Vice Chair, Alan J. Cronheim, Richard H. Darling, Heather E. Krans, Richard D. Sager, Martha Van Oot and Mary Elizabeth Tenn. Peter G. Beeson and Susan R. Chollet were absent.

Upon consideration, the Committee voted to close the matter.

February 18, 2014



David M. Rothstein
Chair

Distribution:

Elizabeth M. Murphy, Assistant Disciplinary Counsel
Brien L. Ward, Esquire
Rhonda Rosand, CPA
Benjamin Siracusa Hillman, Esquire
Steven M. Gordon, Esquire
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