

New Hampshire Supreme Court  
**Professional Conduct Committee**  
*a committee of the attorney discipline system*

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*Bausha, Catherine P. advs. Attorney Discipline Office #10-022*  
*Bausha, Catherine P. advs. Stephen Ward #11-021*  
*Bausha, Catherine P. advs. Virginia Kern #11-071*

**REISSUED RECOMMENDATION FOR DISBARMENT**

On May 21, 2013, the Professional Conduct Committee reviewed the Stipulation and Consent to Disbarment Effective July 1, 2013 (“The Stipulation”), a copy of which is attached as Exhibit A. In the Stipulation, Ms. Bausha waived any and all of her procedural and substantive rights under New Hampshire Supreme Court Rule 37 and 37A, including but not limited to her rights:

- a. To file any further Answers to any charging documents issued by the Attorney Discipline Office (“the ADO”).
- b. To have an evidentiary hearing before the Hearings Committee, at which Ms. Bausha could be represented by counsel and contest the charges, and at which the Attorney Discipline Office would have the burden of proving the charges by clear and convincing evidence, Rule 37A(III)(c);
- c. To a written report of the Hearing Panel setting forth its findings of fact, to be submitted to the Professional Conduct Committee, Rule 37A(III)(d);
- d. To a proceeding before the Professional Conduct Committee on issues decided by the Hearings Committee; and

- e. To a further proceeding before the New Hampshire Supreme Court regarding sanction or to an appeal of the Professional Conduct Committee's disposition.

*See Stipulation ¶¶14-15.*

The Professional Conduct Committee further reviewed the Record and deliberated on the above-referenced matter. Members present were David M. Rothstein, Chair, Toni M. Gray, Vice Chair, Thomas P. Connair, Susan R. Chollet, Alan J. Cronheim, Richard H. Darling, Elaine Holden, Richard D. Sager, and Martha Van Oot. Benette Pizzimenti, Vice Chair was recused. Heather E. Krans and Lisa Wellman-Ally were absent.

After review of the Stipulation the Record and deliberations, the Professional Conduct Committee voted to accept the Stipulation and Consent for Disbarment Effective July 1, 2013, and voted to recommend the disbarment of Catherine P. Bausha effective July 1, 2013. The Professional Conduct Committee makes factual findings and rulings of law as detailed below:

#### **I. FACTUAL FINDINGS**

The Professional Conduct Committee has determined that the Stipulation, executed by Ms. Bausha and her counsel, Stephen L. Tober, and by Deputy General Counsel James L. Kruse, supports the following factual findings by clear and convincing evidence:

1. Ms. Bausha is an attorney licensed to practice law in New Hampshire. Ms. Bausha was admitted to practice in 1997. During most of the time relevant to this proceeding, Ms. Bausha was a minority partner at the law firm of McKenney & Bausha, P.C. with offices in Amherst, New Hampshire.
2. Ms. Bausha was terminated from the McKenney & Bausha law firm on April 21, 2010, following which the firm was dissolved.
3. Since approximately May 2010, Ms. Bausha has been practicing at the Law Office of Catherine P. Bausha, PLLC, P.O. Box 381, New Boston, New Hampshire.
4. Ms. Bausha is not admitted to practice law in any other jurisdictions.
5. On February 9, 2011, the ADO filed a Petition for Production of Records, Audit of Trust Accounts and Operating Accounts and Appointment of Auditor with the New Hampshire Supreme Court. The Court granted the Petition by Order of February 11,

2011. *In the Matter of Catherine P. Bausha, ADM-2011-0026.*

6. Pursuant to the Court's Order, ADO Staff Auditor, Craig Calaman, CPA, performed an audit of records of each of the firm's accounts, covering the period January 1, 2009, to November 30, 2011 (audit period). Mr. Calaman completed the audit and submitted an Audit Report dated July 16, 2012.
7. In addition to the audit report, the ADO conducted its own factual investigation in Bausha, Catherine P. advs. Stephen Ward - #11-021 by collecting the client file, interviewing the Complainant and other witnesses, and obtaining court records from the underlying probate court matter.
8. The facts pertinent to each case which could establish Ms. Bausha's misconduct by clear and convincing evidence in each case are set forth in detail in the Attorney Discipline Office's Notice of Charges issued November 28, 2012, case #10-022 (ADO Complaint docketed May 11, 2010) and #11-071 (Complaint filed by Virginia Kern on September 24, 2011), with incorporated Audit Report dated July 16, 2012, and Amended Notice of Charges issued April 1, 2013, case #11-021 (complaint by Stephen Ward docketed on February 9, 2011).
9. Ms. Bausha has admitted the factual allegations set forth in ¶¶ 4-11 of the Notice of Charges in ADO #10-022 alleging that she transferred funds from the client trust accounts maintained by her law firm to the firm's operating account without proper documentation, prior to the generation of an invoice and/or performing the services, and created false accounting documents and entries to facilitate or conceal the improper transactions.
10. Ms. Bausha has admitted the factual allegations set forth in ¶¶ 12-15 of the Notice of Charges in ADO #11-071, alleging that she improperly failed to disburse funds to her client's spouse, Virginia Kern, from the sale of the marital home, due to a shortfall in her firm's trust account resulting from Ms. Bausha's misuse of client funds by pay operating expenses of her firm.
11. Ms. Bausha has admitted the facts set forth in ¶¶ 3-36 of the Notice of Charges in ADO #11-021, alleging failure to diligently and competently represent her clients, Stephen and Hervey Ward, in administering their mother's estate; that she had misrepresented the status of the Petition for Probate Administration to her clients; that she had prepared and filed pleadings and other documents with the Probate Court, without the knowledge or consent of her clients, and misrepresented the date, manner, and authenticity and authority of their execution; and that she misrepresented the extent to which she altered original documents and/or prepared new documents with false executions to both successor counsel and Attorney Discipline Office.

## II. RULINGS OF LAW

Based upon its review of the Record and the Stipulation, the Professional Conduct Committee concluded that that Ms. Bausha has violated the following Rules of Professional Conduct by clear and convincing evidence:

1. New Hampshire Supreme Court Rule 50 and 50-A, and New Hampshire Rule of Professional Conduct 1.15(a)-(f) and 8.4(a) and 8.4(c) by failing to properly safeguard client funds and maintain trust accounts with respect to #10-022 and #11-071, as outlined in the November 28, 2012 Notice of Charges, attached hereto as Exhibit B and incorporated by reference into the Stipulation.
2. New Hampshire Rule of Professional Conduct 1.1, 1.3, 1.4, 3.3, 3.4(b), 8.1, 8.4(a) and 8.4(c), in connection with her handling of a probate matter for Stephen Ward, and by her conduct in the resulting investigation by the Office of Attorney Discipline as outlined in the April 1, 2013, Amended Notice of Charges, a copy of which is attached hereto as Exhibit C and incorporated by reference into the Stipulation.

## III. ANALYSIS

The purpose of the Court's disciplinary power "is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *Conner's Case*, 158 N.H. 299, 303 (2009). "The sanction must take into account the severity of the misconduct." *Coffey's Case*, 152 N.H. 503, 513 (2005). Ms. Bausha concedes that her disbarment from the practice of law, effective July 1, 2013, is the appropriate sanction for her misconduct. *See* Stipulation ¶ 13. Both case law and the American Bar Association's *Standards for*

*Imposing Lawyer Sanctions* (2005) (“*Standards*”) support the conclusion that Ms. Bausha should be disbarred for the misconduct detailed in Exhibits A, B and C.

Although the Court has not adopted the *Standards*, it looks to them for guidance. *Conner’s Case*, 158 N.H. at 303. The *Standards* set forth a four part analysis for courts to consider in imposing sanctions: “(a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by the lawyer’s misconduct; and (d) the existence of aggravating or mitigating factors.” *Id.* (quoting *Douglas’ Case*, 155 N.H. 613, 621 (2007)); *Standards* § 3.0.

The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner’s Case*, 158 N.H. at 303 (“In applying these factors, the first step is to categorize the respondent’s misconduct and identify the appropriate sanction.”). Once the baseline sanction is determined, the Court then looks to the fourth and final part of the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *See id.* (“After determining the sanction, [the Court] considers the effect of any aggravating or mitigating factors on the ultimate sanction.”). In cases where there are multiple instances of misconduct, “the ABA recommends that the sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct. *Douglas’ Case*, 156 N.H. at 621 (2007) (quoting *Richmond’s Case*, 152 N.H. 155, 160 (2005)).

Under the first prong of the analysis, the Professional Conduct Committee finds that Ms. Bausha violated duties owed to her clients, including her client, Daniel Kern, to properly safeguard their property and maintain trust accounts as required by Rules 1.15 (a) through (f), 8.4 (a) and 8.4(c), and New Hampshire Supreme Court Rules 50 and 50-A; she violated duties owed to

her clients, Stephen and Hervey Ward, of competence, diligence, and communications in connection with the administration of their mother's estate; she violated duties owed to the court of candor and fairness to the opposing party, in connection with her representation of Stephen and Hervey Ward, before the Hillsborough County Probate Court; and she violated her duties to the legal profession of honesty in disciplinary matters, all in violation of Rules 1.1, 1.3, 1.4, 3.3, 3.4(b), 8.1, and 8.4(c), as more fully set forth in Exhibits A, B, and C. As set forth above, Ms. Bausha has conceded that there is clear and convincing evidence of each of the violations.

With respect to the second prong of the sanction analysis, the Professional Conduct Committee finds that Ms. Bausha's breaches of the aforesaid Rules were knowing and/or intentional.

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Ms. Bausha's misconduct. As set forth in the Audit Report, Ms. Bausha's misconduct with respect to her failure to properly handle client funds and other financial and administrative matters entrusted to her compromised the integrity of her law firm and placed all of the clients' funds at risk. As set forth in Exhibit B, Ms. Bausha's misconduct involved not only the mishandling of clients' funds, but misrepresentations to her clients and to her law firm to conceal from them her unauthorized transfers of client funds into the firm's operating account, and the resultant risk to her clients' funds. As set forth in Exhibit C, Ms. Bausha's misconduct involved not only knowing misrepresentations to her clients regarding the status of a Probate Court proceeding but also, through the filing of false documents prepared by her with the Probate Court, compromising the integrity of the administration of an estate by the Court. Equally seriously, Ms. Bausha knowingly misrepresented to successor counsel and to the Attorney Discipline Office the extent to which she had altered original documents or created and filed new documents with false

executions in order to conceal from her client and the Attorney Discipline Office her filing of false documents with the Probate Court in October of 2009.

Ms. Bausha's failure to properly maintain the client trust account involved breaches of Ms. Bausha's duty to protect the interests and property of her clients. Section 4.11 of the *Standards* provides, in pertinent part, that "[d]isbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."

Ms. Bausha's handling of the Probate Court matter for Stephen and Hervey Ward involved not only serious breaches of her duties of diligence, competence and communication owed to her clients, but also knowing misrepresentations to the Court and to the Attorney Discipline Office. Under these circumstances, disbarment would be the appropriate sanction under *ABA Standard* § 5.11(b), which provides that disbarment is generally appropriate when "(b) lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit or misrepresentation that seriously reflects on the lawyer's fitness to practice."

Although, the baseline sanction must be considered in light of any aggravating and mitigating factors, e.g., *Conner's Case*, 158 N.H. at 303, the Stipulation did not address any aggravating or mitigating factors, and therefore none were considered by the Committee. The parties have stipulated to disbarment as the appropriate sanction, and the Professional Conduct Committee Concludes that disbarment is appropriate due to the gravity and multiple instances of misconduct involved in these matter.

#### **IV. SANCTION**

Having made the aforementioned findings and rulings, the Professional Conduct Committee concludes that the appropriate discipline in this matter is disbarment. The Committee's recommended sanction is in accord with the purposes of attorney discipline. *See, e.g., Conner's*

*Case*, 158 N.H. 303 (2009); *Richmond's Case*, 152 N.H. at 159-60. This sanction is also in accord with the *ABA Standards for Imposing Lawyer Sanctions* (2005). The purpose of the Court's disciplinary power "is not to inflict punishment but rather to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *Grew's Case*, 156 N.H. 361, 365 (2007) (quotation and citation omitted).

**V. COSTS**

The Professional Conduct Committee recommends that Respondent pay all costs associated with the investigation and prosecution of this matter.

**VI. CONCLUSION**

For all of the above reasons, the Committee directs the Attorney Discipline Office to file a Petition for Disbarment.

June 18, 2013



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David M. Rothstein  
Chair

c.c. James L. Kruse, Deputy General Counsel  
Stephen L. Tober, Esquire  
David W. Ruoff, Esquire  
File