

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Caputo, Joseph A.

adv.

Attorney Discipline Office - #25-009

ORDER

On October 21, 2025, the Professional Conduct Committee granted the Respondent and Attorney Discipline Office's Stipulation as to Facts, Violations, and Sanction: Reprimand. The parties' Agreement to Pay Costs of Disciplinary Matter was also granted.

DATED: October 27, 2025

/s/ Stephanie C. Hausman
Stephanie C. Hausman, Chair

cc: Sara S. Greene, Esquire, Disciplinary Counsel
Joseph A. Caputo, Esquire (via email and U.S. Mail)

**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Caputo, Joseph A.

advs.

Attorney Discipline Office

#25-009

**STIPULATION AS TO FACTS, VIOLATIONS,
AND SANCTION: REPRIMAND**

Respondent Joseph A. Caputo, Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

A. Facts

1. Joseph A. Caputo (“Mr. Caputo”) is an attorney licensed to practice law in New Hampshire. Mr. Caputo was admitted to practice on October 19, 1983.
2. Mr. Caputo has not been admitted to practice law in any other jurisdiction.
3. At all times material to this proceeding, Mr. Caputo operated his law office as the Law Offices of Joseph A. Caputo, located at 100 Main Street, Unit 213, Pembroke, NH 03275.
4. Mr. Caputo does not have a previous disciplinary history.

The Underlying Divorce Matter and Judicial Referral

5. This disciplinary matter was initiated by a referral from Circuit Court Judge Jennifer A. Lemire. Judge Lemire presided over a Final Hearing on December 31, 2024, in the case entitled *In the Matter of* [REDACTED] *and* [REDACTED] Case No. [REDACTED] (the “Action”). In short, and as discussed in more detail below, Judge Lemire felt obligated to report Mr. Caputo based on his own

representation in a pleading that he was “impaired” during a Final Hearing over which she presided.

6. The issues to be decided at the Final Hearing concerned modifying the parties’ final parenting plan due to the Respondent, Mr. [REDACTED], relocation from New Hampshire to Alabama.
7. Mr. Caputo represented the Petitioner Ms. [REDACTED] at the Final Hearing held on December 31, 2024.¹ Mr. [REDACTED] was represented by Keith Diaz (“Mr. Diaz”).
8. The Court’s referral explained that prior to the start of the hearing, the attorneys requested to meet in chambers. During the meeting, Mr. Caputo informed the Court and Mr. Diaz that Mr. Caputo’s father was expected to pass away imminently. Mr. Caputo had returned from visiting his father in Long Island in the early morning hours of Monday, December 30, 2025. Later that day, [REDACTED]
[REDACTED]
[REDACTED].
9. The Court inquired of Mr. Caputo as to whether he was able to proceed with the hearing under the circumstances. Mr. Diaz expressed a willingness to continue the hearing. Mr. Caputo assured the Court and Mr. Diaz that he was able to proceed.
10. After the chambers conference, the parties negotiated and reached agreement on a partial modified parenting plan, narrowing the issues to be addressed at the Final Hearing.
11. Following the Final Hearing, but prior to any Court order being issued, Ms. [REDACTED] filed a Motion for [REDACTED]
[REDACTED] (“the Motion”). The Motion was signed only by Mr. [REDACTED] not Mr. Caputo, though he was still counsel of record.
12. The Motion states it is “based on the grounds that the presentation of the Petitioner’s case was severely compromised due to ineffective assistance of counsel during the December 31 hearing, which resulted in critical issues not

¹ Mr. Caputo filed his Appearance for Ms. [REDACTED] on December 16, 2024.

being adequately addressed.” The Motion asserted that “[p]etitioner’s counsel failed to adequately present evidence and testimony crucial to the child’s best interests...,” and that “[p]etitioner’s counsel’s performance during the hearing was marked by disorganization, confusion, and an apparent inability to effectively advocate on behalf of the Petitioner.”

13. Filed at the same time as the Motion was a separate filing by Mr. Caputo captioned “Statement of Joseph A. Caputo, Counsel for Petitioner dated January 9, 2025” (the “Statement”). In his Statement, Mr. Caputo represented that he noticed a problem with his concentration after he read a text message from his brother regarding his father at 2pm; that he believed he was ineffective during his direct examination of his client at the hearing; that his presence at the hearing was detrimental to her legal interests; and that “[his client] should not be penalized for [his] sudden onset impairment.”
14. The Court issued an Order dated January 31, 2025 (the “Order”) denying the Motion for New Hearing. In the Order, the Court noted its surprise by the contents of the Motion for New Hearing, in particular the representations made by Mr. Caputo in the Statement. In response to the filings, the Court stated as follows:

The undersigned’s recollection of the Final Hearing, which occurred only a month ago, did not align therewith. The undersigned reviewed the extensive notes taken during the Final Hearing and still found nothing therein that caused her to find either that the Final Hearing had been inadequate, or that Attorney Caputo had been ineffective as alleged. The undersigned then reviewed the audio recording of the hearing itself. Doing so only bolstered the undersigned’s belief that the events of the parties’ court appearance on December 31, 2024 were unremarkable...” Order, page 8.
15. In her referral to the ADO, Judge Lemire attached her Order and stated “although I did not find that Attorney Caputo was impaired or committed misconduct such as to cause harm to his client and/or the justice system, he himself represented under oath that he was and/or did, and I do not know whether he has self-reported.”

ADO Investigation and Communications Between Mr. Caputo and His Client

16. Disciplinary Counsel met with Mr. Caputo and requested that he produce all communications with his client during the pertinent period, whether by email, letter, text, or any other form. Mr. Caputo readily produced this information,² and has cooperated fully with the ADO.
17. Reviewing the communications between Mr. Caputo and his client in the first few days after the final hearing demonstrate that the course of action of seeking a new hearing, on a theory that Mr. Caputo was impaired, [REDACTED]
[REDACTED]
18. On the night of December 31, 2024, Ms. [REDACTED] texted Mr. Caputo [REDACTED]
[REDACTED]
[REDACTED]
19. On January 1, 2025 at 9:28 a.m., she [REDACTED]
[REDACTED]
t [REDACTED]
20. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
21. Two hours later, on the same day, Mr. Caputo responded to Ms. [REDACTED]
[REDACTED]
[REDACTED]
22. Mr. Caputo's father was ailing and in extremis at this time. He died on January 3, 2025.

² Mr. Caputo, and his client, were informed that confidential communications may be produced by a lawyer in the course of a disciplinary investigation pursuant to the exceptions in Rule 1.6, and were assured that such communications are never made part of the ADO's public file where the grievance is not initiated by the client. *See* Rule 37(20)(a)(2)(B).

23. On January 2, 2025, Ms. [REDACTED]
24. Upon reviewing it, Mr. Caputo did not feel he could sign it.
25. In his meeting with the undersigned, Mr. Caputo explained that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
26. Ms. [REDACTED] according to Mr. Caputo’s initial response submitted to the ADO, [REDACTED]
[REDACTED]
27. The opposing party did not file a response or objection to the Motion, and the Court denied it on January 31, 2025.
28. At the time Mr. Caputo agreed to [REDACTED], he was deeply stressed and anxious because his father was dying. He acknowledges in retrospect that his refusal [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
29. Mr. Caputo agrees in hindsight that his course of action should have been a substantive discussion with Ms. [REDACTED] during which he could [REDACTED]
[REDACTED]
[REDACTED], without sufficient advice and counsel from him concerning the allocation of authority between client and lawyer. *See* Ethical Rule 1.2, cmt [2].
30. Rule 1.2 provides in pertinent part that “a lawyer shall abide by a client’s decisions concerning the *objectives* of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.” E.R.1.2(a) (emphasis added).

31. The comments to the rule elaborate that where a lawyer and client disagree about the *means* to be used to accomplish the client's stated objective, the lawyer should consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from representation Conversely, the client may resolve the disagreement by discharging the lawyer.
32. Mr. Caputo agrees that rather than [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
33. In addition, Mr. Caputo's refusal to sign Mr. [REDACTED] Motion demonstrates that a conflict had developed between Mr. Caputo and his client. Mr. Caputo's personal interest in defending his performance at the Final Hearing, or at a minimum, in accurately describing such performance from his own perspective, materially limited his representation of Ms. [REDACTED] – [REDACTED]
[REDACTED]
[REDACTED].
34. Mr. Caputo refusal to sign and file the Motion for New Hearing on her behalf, even though he was her counsel of record, demonstrates this conflict of interest.
35. Given this situation, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Because the Final Hearing had occurred, such withdrawal would not have been prejudicial to her interests.³

³ Mr. Caputo could have ensured that in the course of withdrawing after the Final Hearing, he took such action as necessary to limit prejudice to his client, such as noting any deadlines for a motion for reconsideration, promptly providing her file, and returning any unearned retainer.

B. Disciplinary Rules Violated

36. The parties agree that Mr. Caputo’s conduct in this case involves violations of the New Hampshire Rules of Professional Conduct, as follows:

Rule 1.2: Scope of Representation

37. The facts set forth at ¶¶ 1 - 35 above are incorporated by reference.

38. Rule 1.2 states in pertinent part as follows:

(a) Subject to paragraphs (c), (d), and (e), a lawyer shall abide by a client’s decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

39. Mr. Caputo violated Rule 1.2(a) by improperly delegating to his client a responsibility that should have been Mr. Caputo’s responsibility as the attorney of record, *i.e.*,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Rule 1.7: Conflicts of Interest

40. The facts set forth at ¶¶ 1 - 35 above are incorporated by reference.

41. Rule 1.7 states in pertinent part:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

42. Mr. Caputo violated Rule 1.7 because his personal interests — in defending his

performance at the Final Hearing [REDACTED]

[REDACTED] —
created a significant risk that his representation of his client was materially limited.

Rule 8.4(a): General Rule

43. Having found the foregoing violations, there is clear and convincing evidence that Mr. Caputo's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

C. Recommended Sanction

44. The Attorney Discipline Office and Mr. Caputo jointly agree that a reprimand is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
45. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
46. The purpose of the Court's disciplinary power is "protecting the public, maintaining public confidence in the bar, preserving the integrity of the legal profession, and preventing 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).
47. 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*, 156 N.H. 613, 621 (2007)); *Standards* § 3.0.
48. 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 (stating that "[i]n 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.* (stating that “[a]fter determining the sanction, [the Court] consider[s] the effect of any aggravating or mitigating factors on the ultimate sanction”).

49. Under the first prong of the analysis, Mr. Caputo violated duties owed to the client.
50. With respect to Mr. Caputo’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Caputo’s mental state was negligent. In the pertinent period of time, as [REDACTED] Mr. Caputo was navigating the imminent death of his father. As such, he found himself very stressed and anxious. Mr. Caputo would testify that his own assessment of his performance at the Final Hearing in the days that followed the hearing was not sufficiently careful and considered, and [REDACTED] o [REDACTED].
51. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Caputo’s misconduct.
52. Mr. Caputo’s conduct caused some injury in this matter. The Court utilized its judicial resources to address a Motion that Mr. Caputo, though counsel, [REDACTED] [REDACTED] This injected a live issue into the divorce after the Final Hearing, and Judge Lemire had to address that instead of turning immediately to the substantive issues presented at the Final Hearing. That said, the issue was resolved relatively quickly, without further hearing on the motion nor a response from the opposing party.
53. Mr. Caputo’s conduct did not injure Ms. [REDACTED] who received competent counsel at the Final Hearing, as noted in the Judge’s Order denying the Motion for New Hearing. Judge Lemire stated that the Court “did not observe or suspect on December 31, 2024 that Attorney Caputo was suffering from any impairment that caused him on that date to be unable to effectively represent his client.”

54. The parties agree that the baseline sanction in this matter is a public censure. *See Standards* § 4.43 and § 4.33.

55. Mr. Caputo’s 1.2 rule violation implicates Section 4.4 of the *Standards*. That Section provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 **Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.**

4.44 Admonition⁴ is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

(emphasis added).

56. Mr. Caputo’s conduct in this matter, when considered under *Standard* 4.43, would call for a baseline sanction of a public censure.

⁴ The term “admonition,” as used in the *ABA Standards*, is analogous to a reprimand in New Hampshire. The term “reprimand,” as used in the *ABA Standards*, is analogous to a public censure in New Hampshire.

57. Mr. Caputo's 1.7 rule violation implicates Section 4.3 of the *Standards*. That Section provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest:

- 4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):
- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
 - (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
 - (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.
- 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.
- 4.33 **Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.**
- 4.34 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

(emphasis added).

58. Mr. Caputo's conduct in this matter, when considered under *Standard* 4.33, would call for a baseline sanction of public censure.
59. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g.*, *Conner's Case*, 158 N.H. at 303.
60. In this case there is one aggravating factor present – Mr. Caputo's substantial experience in the practice of law. *See Standards* § 9.22.
61. Mitigating factors include absence of a prior disciplinary record, personal and emotional problems, full and free disclosure to the ADO, a cooperative attitude towards the proceedings, and remorse. *See Standards* § 9.32.
62. The parties agree that given the baseline sanction, and because mitigating factors outweigh the single aggravating factor, a downward departure to a reprimand is appropriate and serves the purposes of discipline.
63. This sanction is proportional to discipline imposed in other cases involving breaches of Rule 1.2. Though there are few such cases, relatively recent cases address a violation of this Rule, noting a baseline censure with a downward departure to reprimand based on mitigators. *See Brannen, Barney L. advs. ADO - #23-011; Anderson, Michael E advs. ADO - #17-001.*⁵

D. Costs

64. Subject to the PCC's approval of Mr. Caputo's Stipulation, Mr. Caputo agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. *See Supreme Court Rule 37(19)*. His agreement to pay the

⁵ Mr. Brannen violated Rule 1.2 because he filed a Motion that his client had drafted, even though he disagreed with some of the allegations therein, due to the fact that he was very pressed for time. Mr. Brannen thereafter remonstrated with his client and urged him to withdraw or correct the pleading. When his client refused, Mr. Brannen withdrew and then apologized to opposing counsel. Unlike Mr. Caputo, Mr. Brannen had no extenuating personal or emotional problems at the time of his misconduct. However, Mr. Brannen self-reported his conduct, and though self-reporting is not a mitigator listed in the *Standards*, this Committee has recognized it as such.


costs incurred by the ADO is the subject of a separate agreement signed by Mr. Caputo.

E. Effect of Stipulation

- 65. Mr. Caputo understands that this Stipulation represents a recommended disposition, and that the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).
- 66. Mr. Caputo acknowledges that the admissions of misconduct and the proposed disposition contained in this Stipulation are freely, knowingly, and voluntarily submitted; that he is not entering this Stipulation as a result of any threats, coercion, or duress, or of any promises or inducements not set forth in the Stipulation.
- 67. Mr. Caputo understands that he has a right to obtain counsel regarding this Stipulation and, that he is fully aware of the consequences of the Stipulation.
- 68. Mr. Caputo knowingly and intelligently waives his right to a hearing.

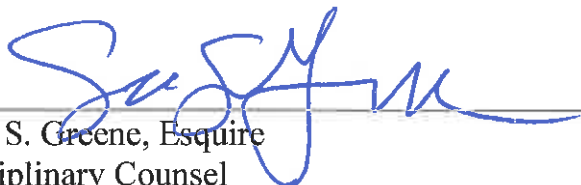
Respectfully submitted,

Dated: September 16 2025



Joseph A. Caputo, Esquire
Respondent

Dated: 9-18 2025



Sara S. Greene, Esquire
Disciplinary Counsel