

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Riley, Peter A. advs. Attorney Discipline Office - #13-035

RECOMMENDATION: DISBARMENT AND ORDER ON COSTS

On March 15, 2016, the Professional Conduct Committee (the “Committee”) deliberated the Record in the above matter. Having reviewed the Record consisting of 19 tabbed entries, including the Notice of Charges, Answer, Hearing Panel Report, and Transcript of the January 22, 2016 hearing, the Committee makes factual findings and rulings as detailed below.

I. FINDINGS OF FACT

The Committee has determined that the Record supports the following factual findings of the Hearing Panel by clear and convincing evidence:

Mr. Riley’s Disciplinary History

1. Mr. Riley was admitted to practice law in New Hampshire on October 30, 1995. He was suspended for two years in *In the Matter of Peter A. Riley* – LD-2012-0009. [Answer¹ ¶ 1; Ex.² 49]
2. On February 3, 2012, Mr. Riley submitted to a Hearing Panel a Stipulation of Facts, Violations and Recommended Sanction, admitting to violations of Rule 8.4(b) (criminal act reflecting adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in

¹ “Answer” signifies Peter Riley’s Answer to the Notice of Charges dated August 19, 2015, which is part of the Record in this matter.

² “Ex.” signifies the previously filed “ADO Exhibits,” a book containing 56 pre-marked exhibits stipulated to by the parties (*see* Case Management Order ¶ 14 and Rule 37A(III)(b)(6)(B)(vii)(providing that, absent timely objections, proposed exhibits are deemed stipulated exhibits)). Page numbers reference the Bates numbers on the bottom right-hand corner of the page. At the hearing on this matter, the Panel admitted a further exhibit marked as Ex. 57.

other respects), Rule 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and Rule 3.5 (Impartiality and Decorum of the Tribunal). [Ex. 44]

3. The Hearing Panel approved the Stipulation, and issued an order on March 20, 2012. [Ex. 45]
4. In the Stipulation, Mr. Riley agreed to a two year suspension from the practice of law, with one year stayed subject to certain conditions. [Ex. 44] Those conditions included that Mr. Riley enter into and comply with a contract with the Lawyer's Assistance Program for an alcohol rehabilitation and monitoring program and abstain from using alcohol. [*Id.*]
5. On May 15, 2012, the Committee approved the two year suspension with one year conditionally stayed, and noted that the one year suspension would take effect starting April 6, 2012. [Ex. 47 at Bates 990] The Attorney Discipline Office ("ADO") agreed to that date based on Mr. Riley's representation that he was winding down his practice and wished to "begin the period of suspension" at that time. [Ex. 46 (Assented-to Motion)].
6. The stayed portion of the suspension was ultimately imposed, however, and Mr. Riley had to serve the entire two-year period based on the Committee's finding, in an order dated February 25, 2013, that he practiced law as late as September 10, 2012 (*i.e.* after his suspension took effect on April 6, 2012) and tested positive for alcohol. [Ex. 48 at Bates 993-994]
7. By Order of the Supreme Court dated October 28, 2013, Mr. Riley was issued a two-year suspension (retroactive to September 10, 2012), for violations of Rules of Professional Conduct 3.5, 8.4(b),(c), and 8.4(a). *In the Matter of Peter A. Riley – LD-2012-0009*. [Answer ¶ 1; Ex. 49]
8. Mr. Riley remains suspended. [Answer ¶ 2]
9. Mr. Riley has been admitted to practice law in Massachusetts, but was reciprocally suspended there on August 25, 2014. [Answer ¶ 3.]
10. Mr. Riley's current address is 148 Ocean Blvd., Seabrook Beach, New Hampshire 03874. [Answer ¶ 4]

Current Disciplinary Matter: Summary of the Riley/Fay Post-Divorce Child Support Proceedings

11. A petition for divorce was filed by Melissa Fay on November 11, 2008. [Ex. 1] The proceedings have been acrimonious and lengthy.
12. The conduct giving rise to this disciplinary matter occurred in the course of Mr. Riley's post-divorce proceedings from Ms. Fay, Case No. 670-2008-DM-00499, 7th Circuit - Family Division – Dover ("the Court"). [Answer ¶ 5] Mr. Riley intentionally

understated his income and failed to disclose significant assets during his post-divorce proceedings regarding child support for his only child with Ms. Fay, Owen, who was six years old at the time Mr. Riley moved to terminate child support.

13. As of December 28, 2011, Mr. Riley had a child support obligation of \$655.00 per month. [Ex. 2; Ex. 3 at Bates 113]
14. On February 7, 2012, Mr. Riley moved to terminate his child support obligations, arguing that he was unemployed and without income. [*Id.*; Ex. 2] By this date, as noted *supra*, a Hearing Panel had approved a Stipulation executed by Mr. Riley and the ADO for a two year suspension from the practice of law, with one year conditionally stayed. [Exs. 44, 45]
15. As of February 7, 2012, Mr. Riley was represented by Keri Marshall. Ms. Fay was represented by William Boc.
16. The Court conducted a hearing on April 6, 2012 and reviewed Mr. Riley's financial affidavit dated the same day. The Court granted Mr. Riley's motion in an Order on Pending Motions dated April 19, 2012, terminating his child support obligation effective February 7, 2012. [Ex. 3]
17. The Court's Final Order on Parenting, Relocation, School Attendance, and Child Support, issued on September 20, 2012, provided that neither party pay child support to the other. [Ex. 4 at Bates 131]
18. On April 3, 2013, Ms. Fay filed a Motion to Bring Forward and Modify. Information had come to her attention from Mr. Riley's second (then estranged) wife, Page,³ that Mr. Riley had assets he was not disclosing to Ms. Fay. [Fay testimony] Ms. Fay's motion alleged that Mr. Riley had been fraudulently understating his income and hiding assets since at least January 1, 2012. [Answer ¶ 11; Exs. 5, 6]
19. The Court held a hearing on Ms. Fay's motion on July 3, 2013, during which it admitted as exhibits bank statements demonstrating the existence of additional, significant undisclosed income and bank accounts of Mr. Riley. [Ex. 6]
20. The Court's Order dated July 26, 2013 (the "2013 Order") granted Ms. Fay's motion, finding that "from April 6, 2012 through July 3, 2013, Mr. Riley . . . has consistently, purposefully, and intentionally understated his income and failed to disclose significant funds held in bank accounts, which he was using for his personal benefit." [Ex. 6 at Bates 332]

³ Mr. Riley and Page Riley were married on August 25, 2011 and Mr. Riley filed a petition for divorce on November 21, 2012. *Riley v. Riley*, 670-2012-DM-00452, Rockingham County, 10th Circuit (Fam. Div.), Portsmouth.

21. The 2013 Order further stated that in terminating Mr. Riley's child support obligation, first on April 19, 2012, then later in the Final Order dated September 20, 2012, the Court "relied in part on the truthfulness and accuracy of Mr. Riley's Financial Affidavits." *Id.*
22. The relevant Financial Affidavits discussed in the Court's 2013 Order included those filed by Mr. Riley on April 6, 2012, July 13, 2012, and September 12, 2012. [Ex. 6]
23. All of Mr. Riley's financial affidavits covered monthly amounts. All were signed under oath and notarized, affirming that Mr. Riley had "fully disclosed all income and all assets having any substantial value" and providing that Mr. Riley had a duty to "update the information provided in this financial affidavit for each court hearing." [Ex. 6 (2013 Order); Exs. 7, 8, 9 (Fin. Affidavits)]
24. Mr. Riley did not, in any of financial affidavits he submitted, initial the "Rule 1.25-A Compliance – Family Division Only: Initial One" section set forth on the second page of each financial affidavit. That section requires that the person signing the document confirm, by initialing, that the signer has "complied with Rule 1.25-A regarding mandatory disclosure."
25. Each financial affidavit is discussed in detail separately below.
26. At least three bank accounts in Mr. Riley's name, which he accessed for personal use at all times relevant to this disciplinary action, are pertinent:
 - a. TD Bank "Convenience Checking" Account No. XXXXXX7865 (the "**TD Bank account**") [Ex. 10];
 - b. TD Bank "Convenience Checking" Account for The Riley Family Real Estate Trust (Peter A. Riley, Trustee), TD Bank Account No. XXXXXX1497 (the "**RETA**") [Exs. 11, 12]; and
 - c. Provident Bank "Totally Free Checking" Account No. XXXXXX4053 (the "**Provident account**") [Exs. 13, 14].

Allegations Relating to Mr. Riley's April 6, 2012 Financial Affidavit:

27. Mr. Riley's April 6, 2012 financial affidavit, under the section numbered 7 for "assets"/checking accounts, listed one checking account at "TD Bank" holding \$350.00. [Ex. 7]
28. Under the section numbered 5 for "monthly income before taxes," Mr. Riley disclosed \$350.00 from self-employment and \$475.00 in rental income, for a total of \$825.00 in monthly income. *Id.*
29. Under the section numbered 14 for "additional information," Mr. Riley noted gross rental proceeds of \$27,000 in 2011 for renting out his Seabrook home (with a fair market value

of 1.5 million dollars) “for a portion of the summer to defray expenses.” [*Id.*; see also Exs. 8, 9]

30. Mr. Riley did not disclose a Provident Bank checking account in his name, which he opened the month before filing his April 6, 2012 financial affidavit. [Exs. 7, 13, 14]
31. On March 17, 2012, Mr. Riley opened the Provident account with an initial deposit of \$49,000. *Id.* Mr. Riley made this deposit using nine separate bank checks totaling \$48,000, plus \$1,000 in cash. [Ex. 14]
32. The Provident account was being regularly used by Mr. Riley for personal expenses. [Answer ¶ 22; Ex. 6 at Bates 330]
33. Mr. Riley also failed to disclose on his April 6, 2012 financial affidavit that he had been paid \$67,000, which represented a contingent fee for a chiropractic case he had settled on behalf of a client sometime in 2011. [Answer ¶ 55; Ex. 6 at 331, Ex. 7, Ex. 15 (Affidavit of Riley dated 7/16/13); Ex. 16 (Amended Affidavit of Riley dated November 20, 2014); Ex. 17 (letter Riley to Greene dated October 22, 2014)]
34. In a July 16, 2013 affidavit submitted to the Court, Mr. Riley stated that after the case settled, the clients paid his fee with a cashier’s check. [Ex. 15]
35. Mr. Riley did not promptly deposit the check. Instead, according to testimony before Judge Foley and correspondence to the ADO, Mr. Riley kept the check “for a rainy day.” [Ex. 6 at Bates 331; Ex. 53] Mr. Riley “divided the settlement check into multiple smaller bank checks used over time to pay bills and expenses.” [Ex. 16]
36. The opening deposit of \$49,000 into the Provident account came from this legal fee. [Ex. 17; Ex. 21 at Bates 880]
37. As of March 30, 2012, the account balance in the Provident account was \$46,382.34. [Ex. 13]

Allegations relating to Mr. Riley’s July 13, 2012 Financial Affidavit:

38. Mr. Riley, under the section numbered 7 for “assets”/checking accounts, listed one checking account at “TD Bank” holding \$800.00. [Ex. 8]
39. Under the section numbered 5 for “monthly income before taxes,” Mr. Riley disclosed \$350.00 from self-employment and \$200.00 in rental income, for a total of \$550.00 in monthly income. [*Id.*]
40. Under the section numbered 14 for “additional information,” Mr. Riley noted gross rental proceeds of \$41,000 in 2012 for renting out his Seabrook home “for a portion of the summer to defray expenses.” [*Id.*]

41. Mr. Riley significantly understated the amount in his TD Bank account, which as of July 9, 2012 actually had a balance of \$4,581.62. [*Id.*; Ex. 18 at Bates 710] On July 11, 2012, two days prior to the affidavit, the account had a balance of \$4,481.15. [*Id.*]
42. Mr. Riley made multiple deposits into the TD Bank account in the time between his submission of his April financial affidavit and his July financial affidavit. On May 22, 2012, he deposited \$6,917.00 and on June 8, 2012 he deposited \$1,850.00. [Ex. 57 at Bates 703] On June 20, 2012, Mr. Riley deposited \$806.00 into the TD Bank account, and on June 29, 2012, he deposited \$5,265.00 into this account, for total deposits of \$14,838 in June 2012. [Ex. 57 at bates 707]
43. Mr. Riley again failed to disclose the Provident checking account, even though he deposited \$15,000 into this account on June 25, 2012. [Ex. 8, Exs. 19-20]
44. Mr. Riley again failed to disclose on his July 13, 2012 financial affidavit that he had been paid the contingent fee for the chiropractic case he had settled. [Ex. 8]
45. The \$15,000 deposit came from the fee he was paid from the chiropractic case. [Ex. 17; Ex. 21 at Bates 880]
46. The Provident account held \$13,531.13 as of June 30, 2012. On July 13, 2012, the date the affidavit was signed, the account had a balance of \$8,229.16. [Ex. 22 at Bates 756]
47. As of July 31, 2012, the Provident account held \$23,140.11. [*Id.*]
48. The Provident account was being used almost daily by Mr. Riley for personal purposes. [Answer ¶ 35; Ex. 6 at Bates 330]
49. Mr. Riley failed to disclose another bank account in his July 13, 2012 financial affidavit. Mr. Riley opened the RETA at TD Bank, for which he is trustee, on July 2, 2012. [Exs. 11, 12]
50. As of July 13, 2012, the date that affidavit was signed, that account had a balance of \$10,026.12. [Ex. 12 at Bates 465]
51. Between July 20, 2012 and August 13, 2012, another \$25,995 was deposited into the RETA. [Ex. 23]
52. The Court's Order of July 26, 2013 found that it was this RETA into which Mr. Riley deposited summer rental income from his Seabrook home, and thus the RETA should have been disclosed on his July 2012 financial affidavit. [Ex. 6 at 330; Ex. 21 at Bates 875, 879]⁴

⁴ Although the disclosure of income under Section 14, Additional Information, of the Financial Affidavit might mitigate this omission, Rule 1.25-A requires that all such accounts be disclosed.

53. This RETA was used for Mr. Riley's personal expenses. [Answer ¶ 41; Ex. 6 at Bates 330]

Allegations relating to Mr. Riley's September 12, 2012 Financial Affidavit:

54. Mr. Riley continued to list, in the section numbered 7, a "TD Bank" checking account with \$800. [Ex. 9]

55. Under the section numbered 5 for "monthly income before taxes," Mr. Riley disclosed \$2,100.00 from self-employment and \$475.00 in rental income, for a total of \$2,575.00.

56. Under the section numbered 14 for "additional information," Mr. Riley noted gross rental proceeds of \$41,000 in 2012 for renting out his Seabrook home "for a portion of the summer to defray expenses." [*Id.*]

57. However, by the date of the September 12, 2012 financial affidavit, Mr. Riley had closed the TD Bank account (account no. XXXXXX7865). [Ex. 24] He closed it on August 8, 2012. [*Id.*]

58. Thus, the only TD Bank account in existence at the time of Mr. Riley's September 12, 2012 Financial Affidavit was the RETA.

59. Mr. Riley was using the RETA and the Provident bank account regularly, but failed to adequately disclose either account on his September 12, 2012 financial affidavit. [Ex. 9]

60. Even if by listing a "TD Bank" account on the financial affidavit, Mr. Riley believed he had thereby disclosed the RETA (an account also held at TD Bank, and the only TD Bank account in his name in existence at the time of the September 12, 2012 financial affidavit), Mr. Riley significantly understated the amount held by this account.

61. As of September 10, 2012, two days prior to the affidavit, the RETA held \$14,191.97. [Ex. 28 at Bates 471] On September 13, 2012, the day after the affidavit was signed, the account held a balance of \$13,191.97.

62. Mr. Riley again failed to list the Provident checking account on his September 12, 2012 financial affidavit. [Ex. 9]

63. Mr. Riley continued to use the Provident account for personal expenses. [Answer ¶ 50; Ex. 6 at Bates 330]

64. Mr. Riley failed to list the Provident account on his September 12, 2012 financial affidavit even though he made two large deposits into the Provident account in July and August 2012.

65. On July 26, 2012, Mr. Riley deposited \$22,000 into the Provident account from his law office client trust account. [Ex. 22 at Bates 756; Ex. 25]

66. On August 18, 2012, Mr. Riley deposited \$29,150.74 into the Provident checking account and took out \$1,000 cash back from this deposit. [Ex. 26 at Bates 762; Ex. 27] This amount was deposited using an “Official Check” from TD Bank. The “Re:” on that check reads “Re: Law Office of Peter A. Riley, PL.” [Ex. 27 at Bates 765]
67. The Provident account had a balance of \$20,135.16 as of August 31, 2012. [Ex. 26 at Bates 762] On September 12, 2012, the date of the financial affidavit, the balance in the Provident account was \$14,114.68. [Ex. 40 at Bates 771]
68. The undisclosed RETA had a balance of \$14,467.41 as of August 17, 2012, a balance of \$14,191.97 on September 10, 2012 (two days before the affidavit) and by November 2012, the balance in the RETA was \$72,459.59. [Exs. 28 at Bates 471, 29 at Bates 476] Mr. Riley used the RETA funds for his travel and personal expenses. [Answer ¶ 54; Ex. 6 at Bates 330]
69. Mr. Riley again failed to disclose on his September 12, 2012 financial affidavit that he had been paid the contingent fee for the chiropractic case he had settled on behalf of a client. [Ex. 9]
70. Though not the focus of the Court’s July 26, 2013 Order, Mr. Riley continued to understate his assets in additional financial affidavits as set forth below.
71. The disclosures made by Mr. Riley in his 2012 financial affidavits, compared with the reality of the existence of additional checking accounts, balances, deposits, and income from renting out his Seabrook home are summarized in a Chart attached to the ADO’s Requests for Findings of Fact and Rulings of Law as Exhibit A.
72. Ms. Fay filed her motion to modify on April 3, 2013, seeking to obtain additional child support because Mr. Riley had fraudulently understated his income. [Answer ¶ 11; Exs. 5, 6]

Allegations relating to Mr. Riley’s May 6, 2013 Financial Affidavit:

73. Mr. Riley submitted a Financial Affidavit which was dated April 2, 2013 in the top right corner of all three pages, but which apparently was actually signed on May 6, 2013 according to the Notarial Officer, as well as according to the Case Summary/Docket for the divorce matter. [Ex. 31 at Bates 142-143]⁵
74. Mr. Riley, under the section for “assets”/checking accounts, listed one checking account at “TD Bank” holding \$6,000.00. [Ex. 31 at Bates 142]

⁵The Notice of Charges referenced the affidavit dated April 2, 2013, but the ADO had corrected the record by the time it submitted Proposed Findings and Rulings and by the time of the hearing on January 22, 2016.

75. Under the section numbered 5 for “monthly income before taxes,” Mr. Riley disclosed \$1,500.00 from self-employment and \$475.00 in rental income, for a total of \$1,975.00 in monthly income. [*Id.*]
76. The only “TD Bank” account in existence at the time Mr. Riley filed the May 6, 2013 financial affidavit was the RETA.
77. Mr. Riley failed to accurately disclose the balance in the RETA, which held a balance of \$2,708.68 as of April 30, 2013 [Ex. 57 at Bates 502-504]. This account had a balance of 4,419.33 on May 7, 2013, the day after the affidavit was signed. [*Id.* at Bates 504; Ex. 31, at Bates 143]
78. He failed to disclose the Provident bank account, which as of April 30, 2013 had a balance of \$8.15. [Ex. 34]
79. Mr. Riley used funds in both the Provident account and the RETA for personal expenses.
80. Mr. Riley again failed to disclose the Provident account, even though he was on notice that Ms. Fay asserted he was understating income. Although his disclosure of the balances in the RETA account and the Provident account are inaccurate, they did not understate these balances. The disclosures, however, reflect either lack of care or conscious disregard of Mr. Riley's obligations to investigate and accurately report these balances.

Allegations relating to Mr. Riley’s July 3, 2013 Financial Affidavit:

81. Mr. Riley disclosed, for the first time, the Provident bank account on the July 3, 2013 affidavit, into which a deposit of \$5,000.00 was made on June 3, 2013. [Ex. 37; Ex. 35 at Bates 414] As of June 28, 2013, the balance was \$1,356.00. [Ex. 35 at 416] As of July 3, 2013, the date the affidavit was signed, the account held a balance of \$1,323.01.
82. Mr. Riley also disclosed a checking account at “TD Bank” containing \$700. [Ex. 37]
83. Under the section numbered 5 for “monthly income before taxes,” Mr. Riley disclosed \$1,000.00 from self-employment and \$475.00 in rental income, for a total of \$1,475.00 in monthly income.
84. The only “TD Bank” account in existence at the time Mr. Riley filed his July 3, 2013 financial affidavit was the RETA.
85. Mr. Riley failed to accurately disclose the balance of the RETA, which on June 17, 2013 had a balance of \$984.63, and by July 16, 2013, had a balance of \$12,916.65. [Ex. 38] That account also had a balance of \$8,416.65 on July 12, the day before the affidavit was signed. [*Id.*]

The Court's July 26, 2013 Order and the Appointment of a Commissioner

86. Following a hearing on Ms. Fay's motion to modify child support, the Court found in its 2013 Order that the Riley/Fay divorce file "is fraught with Mr. Riley's fraudulent misrepresentations to the Court" and "based upon Mr. Riley's intentional understatement of his income and failure to disclose associated liquid assets, the Court's identified Orders addressing child support were fraudulently manipulated by Mr. Riley. Those Orders shall be reformed retroactively to January 1, 2012." [Ex. 6 at Bates 333]
87. In the 2013 Order, the Court appointed a Commissioner, to be paid for by Mr. Riley, to make a "recommendation regarding Mr. Riley's income for the identified period." [*Id.*]
88. The Court ordered both parties to cooperate with the Commissioner and his investigation and delegated authority to the Commissioner "to access all financial records which he deems to be likely to assist him in his appointed task." [*Id.*]
89. The Court's Order stated that the Court would hold a hearing once the Commissioner issued a final report. [*Id.*]
90. Richard J. Maloney, Esquire, CPA, was appointed Commissioner. Mr. Maloney submitted a report dated April 3, 2015. [Ex. 39]

The Final Hearing in April 2015, the Final Order on Child Support, and Award of Attorney's Fees to Ms. Fay

91. The Court held a final hearing on April 7, 2015 to determine Mr. Riley's true and accurate income for the years 2012, 2013 and 2014. [Ex. 21 at Bates 873, 877]
92. Mr. Riley testified at the April 7, 2015 hearing, as did Mr. Maloney.
93. The Court issued a Final Child Support Order on April 14, 2015 ("the Final Order"). [Ex. 21]
94. The Final Order reproduced verbatim certain findings from the Court's 2013 Order, and re-emphasized the Court's finding at that time, undisturbed by its Final Order, that Mr. Riley had "consistently, purposefully, and intentionally understated his income and failed to disclose significant amounts held in bank accounts, which he was using for his personal benefit." [*Id.* at Bates 873-877]
95. The Final Order went found that Mr. Riley's true income for 2012 was \$162,745.74. [*Id.* at Bates 881; Ex. 30 at Bates 1007-1016 (Amended 2012 Tax Return)]

96. The Final Order stated that the Court would not impute as income to Mr. Riley, for child support purposes, all funds in the RETA.⁶ [Ex. 21 at Bates 879] It did find, however, that Mr. Riley deposited rental income from summer rental of his Seabrook home into the RETA. [*Id.* at 875] The Court found that such rental income was income to Mr. Riley for purposes of calculating his child support obligations and should have been disclosed on his financial affidavits. [*Id.* at 879]
97. The Final Order imposed a child support obligation on Mr. Riley of \$1,175.00 effective January 1, 2015. [*Id.* at 884]
98. The Final Order required Mr. Riley to pay Ms. Fay all child support arrearages in one lump sum within 60 days of the Notice of the Final Order, an amount totaling \$28,690.00. [*Id.*] Mr. Riley paid that arrearage in a timely manner.
99. The Final Order also found that “based on Mr. Riley’s outrageous and deceptive behavior,” Ms. Fay was awarded that portion of her attorney’s fees “closely connected to the calculation and collection of Mr. Riley’s true child support obligation since 2012.” [*Id.*]
100. Mr. Riley did not appeal the Final Order.
101. On June 19, 2015, Mr. Boc, counsel for Ms. Fay, filed an affidavit of attorneys’ fees attributable to the calculation and collection of Mr. Riley’s true child support obligation since 2012. That affidavit set forth total attorneys’ fees of \$18,195.50. [Ex. 50] Mr. Riley filed an objection on July 1, 2015. [Ex. 51]
102. On November 5, 2015, the Court granted attorneys’ fees to Ms. Fay in the amount of \$16,439.25 and required Mr. Riley to pay this amount within 90 days. [Ex. 52] Mr. Riley has not appealed this Order. He had not paid Ms. Fay. [Fay testimony]

Mr. Riley’s Defenses

103. Mr. Riley informed the ADO and the Hearing Panel Chair on January 1, 2016 that he would not appear at the hearing then scheduled for January 15, 2016. The first hearing date was continued to January 22, 2016.
104. Mr. Riley’s Answer to the Notice of Charges did not dispute that he failed to disclose, on his 2012 Financial Affidavits (or his May 6, 2013 Financial Affidavit), both the existence of the Provident Account and his receipt of a \$67,000 legal fee which constituted a

⁶ For example, Mr. Riley testified before Judge Foley that most of the money in the RETA was comprised of loans to him from his mother (who has since passed away), to whom he owes over \$232,000. Judge Foley noted in his Order dated April 14, 2015 that how much money Mr. Riley’s mother may have loaned him “does not matter. Whether this helpfulness is gifting or a loan, it is not income, regardless of how generous his mother is.” [Ex. 21 at Bates 879] The Panel made no findings as to funds in the RETA, other than those funds comprised of rental income to Mr. Riley from renting out his residence in Seabrook.

portion of the funds in the Provident account. Rather, he asserted that he had no obligation to disclose this information. [Answer ¶¶ 21, 23, 31, 36, 55]

105. Mr. Riley stated that although he deposited the cashier's check for \$67,000 (after splitting it into multiple, smaller checks) in 2012, he *earned* the legal fee in 2011, and thus he was under no obligation to report it on his 2012 Financial Affidavits. [*Id.*] He stated that "[t]he funds supporting [the \$49,000] deposit were earned in 2010-2011 and had nothing to do with current income for the year 2012." According to Mr. Riley, the April 2012 Financial Affidavit "dealt solely with the income associated with the present time of the financial affidavit." [Answer ¶¶ 21, 23]
106. The Hearing Panel rejected these defenses. Putting aside the fact that Judge Foley rejected them in his Order dated April 14, 2015,⁷ Mr. Riley failed to come forth with any support for the assertion that a financial affidavit need not reflect income from a law practice which was actually received/negotiated in the time period covered by the affidavit.
107. Even were the Committee to accept Mr. Riley's interpretation, he should have disclosed the \$67,000 legal fee when it was earned, i.e. in a 2011 Financial Affidavit. He did not do so. Nor did he then disclose that he had an uncashed bank check payable to his law firm in his desk drawer as an asset. [Exs. 54, 55] Nor did he do so on his 2011 tax return. [Ex. 56]
108. Finally, the \$67,000 legal fee did not comprise the entirety of the funds held in the Provident Account. Rather, bank records demonstrate that Mr. Riley deposited \$114,150.74 into the Provident Account in 2012. The difference between those two figures is \$47,150.74, a sum which was income to Mr. Riley in 2012 and thus should have been on his 2012 financial affidavits.
109. Mr. Riley also apparently defended his failure to disclose the Provident account and the legal fee because the financial affidavit has no "section" for "savings accounts" or "cash on hand." [Answer ¶ 26] The Committee rejects this argument because (a) like the two accounts held at TD Bank, the Provident account *was* a "checking," not a savings, account [Ex. 13, new account for "Totally Free Checking"]; (b) all of the relevant Financial Affidavits, under section "7. Assets," request disclosure of "*checking* accounts"; and (c) Mr. Riley cited no authority for the proposition that a litigant in a divorce matter need not disclose cash on hand and/or savings account information.⁸ If one section of the financial affidavit covers "monthly income" (section 5), and another section covers "assets/checking accounts" (section 7), those two categories are not equivalent.

⁷ "There is nothing in RSA 458-C which restricts me from considering as income for a given year a check that was earned and received in a prior year and then tucked in a desk 'for a rainy day' or to avoid disclosure on a tax return." [Ex. 21 at Bates 879]

⁸ Form NHJB-2065-FS (5-25-10) also requires disclosure of "Additional Assets" that includes money owed to Affiant from any source.

110. As to the failures to disclose the existence of the RETA and to accurately disclose balances held in the TD Bank Account and/or RETA, Mr. Riley's Answer did two things. First, Mr. Riley denied certain allegations addressing balances in the RETA and TD Bank Account as of a given day. [See, e.g. ¶¶ 28, 59 of the Notice of Charges; Answer ¶¶ 30, 62] But as to the existence of and balance of various bank accounts, those are plainly evidenced by bank records and contradict Mr. Riley's denials.
111. Second, Mr. Riley stated that the ADO "confused" the two TD Bank Accounts, another argument which must fail based on the bank records. For example, Mr. Riley's Answer to ¶41 of the Notice of Charges affirmatively alleged that the ADO "is confused and is confusing the two TD Bank accounts. . . . [a]t all times, there was effectively only one TD bank account open."
112. His assertions are incorrect. First, there were *two* TD Bank accounts (the RETA, account no. XXXXXX1497, and the "other" TD Bank account, account no. XXXXXX7865) for the period of time covering July 2, 2012 (when Mr. Riley opened the RETA and the other TD Bank account already existed) until August 8, 2012 (when Mr. Riley closed the other TD Bank account no. XXXXXX7865). Thus, at a minimum, Mr. Riley's July 2012 affidavit should have disclosed *both* TD Bank Accounts. More importantly, however, whether there were two TD bank accounts or one, Mr. Riley *never* disclosed correct balances for the sole "TD Bank" checking account he disclosed on his financial affidavits under section 7. This is true whether one compares the disclosed amount either to the RETA *or* to the other TD Bank account.

Mr. Riley's State of Mind

113. A knowing state of mind is an essential element for a Rule 3.3 (Candor to the Tribunal) and a Rule 3.4(c) (Fairness to Opposing Party and Counsel) violation.
114. Rule 1.0(f) of the Rule of Professional Conduct defines "knowingly" as "denot[ing] actual knowledge of the fact[s] in question. A person's knowledge may be inferred from circumstances." The *ABA Standards* define "knowledge" as "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." *ABA Standards*, Sec. III ("Definitions"). See also *In Re Wyatt's Case*, 159 N.H. 285, 307 (2009) (discussing "knowing" misconduct and stating "[w]hat is relevant ... is the volitional nature of the respondent's acts, and not the external pressures that could potentially have hindered his judgment.").
115. An intentional state of mind is defined in the *ABA Standards* as acting with "a conscious objective or purpose to accomplish a particular result." This state of mind is more culpable than a "knowing" state of mind.
116. For the reasons outlined below, the Committee finds that Mr. Riley's conduct was knowing and intentional.

117. Based on the Panel’s findings as noted *supra* (§§ 12-103), and as set forth further below, the Committee finds that Mr. Riley acted intentionally (and thus as a matter of law his conduct was also “knowing”), when he failed to disclose in his financial affidavits:
- a. The \$67,000 legal fee;
 - b. The existence of the Provident account and balances held therein;
 - c. The existence of the RETA, into which Mr. Riley deposited summer rental income from renting out his home, and correct balances held therein; and
 - d. Correct and accurate balances for the TD Bank Account.
118. Intent may be inferred from the circumstances. Here, the documentary evidence demonstrates that Mr. Riley failed to accurately disclose financial information throughout a period of more than a year, in order to conceal income from his ex-wife and thereby avoid paying child support. [Ex. 2 at Bates 930]
119. The chronology supports this finding. On February 6, 2012, three days after a Hearing Panel approved his Stipulation in his previous disciplinary matter to a two-year suspension partially stayed [Exs. 44, 45], Mr. Riley moved to terminate his child support obligation. He claimed he was “unemployed, without any present monthly income,” and no longer able to afford child support or health insurance for his young son.
120. One month later, however, on March 7, 2012, he opened a *new* checking account at a *new* bank not previously disclosed to or known by his ex-wife (Provident Bank), by depositing *nine* bank checks totaling \$48,000 as well as \$1,000 in cash. [Exs. 13, 14]
121. Less than one month after making this large initial deposit at a new banking institution, Mr. Riley filed the April 2012 financial affidavit representing that he had \$350 in the TD Bank account. He testified before Judge Foley that he forgot about the Provident account at the time he filled out and signed his April 2012 financial affidavit. [Ex. 6 at Bates 329] The Committee, like Judge Foley, finds that assertion “counterintuitive and lacking in credibility. Just opening an account with nearly \$50,000 would make the account more memorable, not less.” *Id.*
122. The opening balance for the Provident account came from a portion of the \$67,000 legal fee Mr. Riley received. Mr. Riley’s response to the ADO illustrates just how singular an event this was; he makes a point of stating that the chiropractic settlement fee “was not a case I would have typically taken, and was a one-time settlement different and larger *than any other case I can recall having*

in my 18 years as an attorney.” [Ex. 53 (emphasis added) at Bates 6] The Committee thus does not credit Mr. Riley’s claim that he forgot the largest settlement amount of his career, which he deposited into a new bank account, via nine separate official bank checks, less than a month before he filed the relevant financial affidavit.

123. Shortly after receiving Mr. Riley’s April 2012 financial affidavit, the Court terminated his child support obligation, by Order dated April 19, 2012. This action was not surprising given that, as far as the Court was aware, Mr. Riley had been suspended from the practice of law and Mr. Riley represented that in his April 2012 financial affidavit that he had only \$350 in a single checking account.
124. However, Mr. Riley continued in the ensuing months to (a) use the account almost daily, and (b) deposit the following significant amounts into the Provident account without disclosing the account or its balance on the pertinent financial affidavits:
 - a. \$15,000 on June 25, 2012 (undisclosed on his July 13, 2012 financial affidavit);
 - b. \$22,000 on July 26, 2012 (undisclosed on his September 12, 2012 financial affidavit); and
 - c. \$29,150.74 on August 18, 2012 (undisclosed on his September 12, 2012 financial affidavit)
125. Mr. Riley’s failure to disclose over a five month period four separate deposits totaling \$115,150.74, into an account he used frequently, while submitting three separate financial affidavits covering that same period demonstrates his intent to deceive the court and the opposing party with an objective to understate income, avoid a legal obligation (*i.e.* child support), and benefit himself. The same is true of Mr. Riley’s failure to disclose the RETA. The omissions on his Financial Affidavits were glaring, substantial, and occurred over the course of more than a year.⁹
126. Furthermore, Mr. Riley engaged in these acts while “on probation” for his previous disciplinary matter, which also involved dishonest conduct.

⁹ Mr. Riley’s conduct was also knowing because he had actual knowledge of the relevant facts in question as well as a “conscious awareness of the nature or attendant circumstances of his conduct,” *i.e.* he was aware of and knew that the financial affidavits were signed under oath, that the court and the opposing party would rely on them as truthful, aware that he was opening bank accounts on a given day with a given deposit, aware that he was depositing further significant funds in the months thereafter, and aware that the existence of the RETA and Provident Account were undisclosed, and the balances in the TD Bank account inaccurate.

127. Litigants have a duty to be honest with the Court, and financial affidavits are notarized, requiring the party signing to affirm the information contained therein is true to best of his knowledge. The financial affidavits further required that Mr. Riley confirm, by initialing, that he had “complied with [Family Division] Rule 1.25-A regarding mandatory disclosure” or if he did not comply, that he set forth why. Mr. Riley did not initial either portion of the Rule 1.25-A certification.
128. Mr. Riley, given his training and experience as a lawyer, should have been aware of his obligation of candor. Ms. Fay’s testimony about Mr. Riley’s family law experience reinforces this finding.
129. In Mr. Riley’s initial response to the ADO, he took responsibility at least as to the \$67,000 settlement income which he did not disclose (“I did not disclose that income at that time and should have”). [Ex. 53] He further admitted to being “careless” (though not intentionally withholding) with regard to the other failures to disclose. [*Id.*] His Answer maintains, however, that he was under no duty to disclose any of the undisclosed information. This assertion demonstrates a lack of remorse and accountability.

Injury to Ms. Fay and the Legal System

130. Melissa Fay testified on the issue of sanction. The Committee finds that Mr. Riley’s conduct injured Ms. Fay. Because of the misrepresentations by Mr. Riley on numerous financial affidavits, Ms. Fay went without child support for their young son for more than three years and was forced to borrow money from her family to make ends meet. Ms. Fay was also injured in that she incurred significant attorneys’ fees litigating an issue (namely, Mr. Riley’s income) that should have been a straightforward matter of affirmative disclosure by Mr. Riley in accurate financial affidavits.
131. Mr. Riley’s conduct also injured the legal system because his dishonest conduct significantly delayed proceedings and wasted the resources of the Family Division.
132. Finally, Mr. Riley’s conduct harmed the integrity of the profession. A lawyer is an officer of the court. His financial affidavits, though signed under oath, were inaccurate and dishonest. Such conduct harms the public’s confidence in lawyers and in the judicial process.

II. RULINGS OF LAW

The Committee concludes that there is clear and convincing evidence that Mr. Riley has violated the following Rules of Professional Conduct by clear and convincing evidence:

Rule 3.3: Candor Toward the Tribunal

133. Factual findings set forth above are incorporated by reference.
134. Rule 3.3 states in pertinent part:
- (a) A lawyer shall not knowingly:
- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; or
- ...
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
135. Mr. Riley opened each checking account and deposited additional sums thereafter, deposited opening balances, and regularly utilized each account during the relevant time frame. He therefore knew about the TD Bank account, the Provident account, and the RETA.
136. Mr. Riley knew that these accounts held substantial sums and that he was accessing those funds for his personal use throughout the time period covered by his financial affidavits.
137. Mr. Riley knew that he had a duty to be truthful in such financial affidavits and to update them in the event any information was inaccurate.
138. Mr. Riley knowingly and intentionally failed to adequately disclose, in the financial affidavits he filed in his post-divorce matter with Ms. Fay, the existence of and/or accurate amounts in the Provident account, the TD Bank account, and the RETA account as set forth above.
139. Mr. Riley knowingly and intentionally understated what was in his TD Bank account (No. XXXXXX7865) on his financial affidavit dated July 13, 2012.
140. In knowingly and intentionally providing inaccurate financial affidavits to the Family Division, Mr. Riley offered evidence he knew to be false. Furthermore, he failed to correct the material misinformation contained in the financial affidavits as filed.

141. The foregoing represents clear and convincing evidence of a violation of Rule of Professional Conduct 3.3.

Rule 3.4: Fairness to Opposing Party and Counsel

142. Factual findings set forth above are incorporated by reference.

143. Rule 3.4 states, in pertinent part, as follows:

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
 - (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
 - (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
 - (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.
144. Rule 1.25-A (Mandatory Initial Self Disclosure) of the Family Division Rules requires that current financial affidavits be submitted in the format required by Rule 2.16 for any petitions to change court orders in parenting matters, such as the motion to terminate child support filed by Mr. Riley in February 2012. *See* Rules 1.25-A, 1.25(B)(1)(a). Rule 2.16 addresses financial affidavits and requires that they “contain the information requested on the family division financial affidavit.” Parties are “under a continuing order to make full and complete disclosure to each other of the identification and value of all assets of the parties . . . [i]ntentional failure to disclose any asset at the time of the scheduling conference, or any time thereafter . . . shall be considered a violation of this rule subject to appropriate action by the Court. . . .” Rule 2.16(B).
145. Mr. Riley violated Rule 3.4(c) when he knowingly disobeyed his obligation to be accurate and truthful in his financial affidavits as required by Family Division Rules 1.25-A and 2.16.
146. Mr. Riley’s failure to undertake reasonably diligent efforts to ascertain the true balances of all bank accounts which he was using so that his submission to the court in his post-divorce proceedings would be accurate constitutes a violation of Rule 3.4(d).

147. The foregoing represents clear and convincing evidence of violations of Rule of Professional Conduct 3.4.

Rule 8.4(c): Deceit

148. Factual findings set forth above are incorporated by reference.

149. Rule 8.4(c) states as follows:

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

150. By intentionally and knowingly filing false financial affidavits with the family court division Mr. Riley engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

151. The foregoing represents clear and convincing evidence of a violation of Rule of Professional Conduct 8.4(c).

Rule 8.4(a): General Rule

152. In light of the foregoing, there is clear and convincing evidence that Mr. Riley's conduct violated Rule of Professional Conduct 8.4(a).

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); *see also, Grew's Case*, 156 N.H. 361, 365 (2007). Although the Court has not formally adopted the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*"), it does look to the *Standards* for guidance in determining appropriate sanctions. *Conner's Case*, 158 N.H. at 303. The *Standards* set forth a four-prong analysis as a framework for determining the appropriate sanction to be imposed in a particular case: "(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)); *see Standards*, §3.0.

Analysis of the lawyer's misconduct under the first three prongs results in the establishment of a baseline sanction. *Conner's Case*, 158 N.H. at 303. Consideration of aggravating and mitigating factors may result in an upward or downward adjustment of the baseline sanction.

Prong I: Duty Violated

Mr. Riley violated his duty of candor to the tribunal by providing inaccurate financial affidavits to the Family Division and failing to correct the material misinformation he provided; he violated his duty of fairness to opposing party and counsel by failing to be truthful and accurate in his financial affidavits as required by the rules of the Family Division; and he engaged in deceit by filing false financial affidavits with the Family Division. Mr. Riley's knowing violations of Rules 3.3, 3.4 and 8.4 (c) implicates § 6.0 of the *Standards* (Violation of Duties Owed to the Legal System). In particular, § 6.1 of the *Standards* sets forth the sanctions that are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court.

Prong II: Mental State: Intent/ Knowing or Negligent

The sanction to be imposed under the *Standards* depends, in part, on the lawyer's mental state: "The most culpable mental state is that of intent, when the lawyer acts with the conscious objective to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct but without the conscious objective to accomplish a particular result." *See Standards* at 7.

Mr. Riley's mental state was, at a minimum, "knowing," sufficient to establish the Rule 3.3 and 3.4 violations, and also intentional, as evidenced by the finding that his failure to disclose four separate deposits totaling over \$115,000 over a five month period in three separate financial affidavits "on the heels of moving to terminate child support on the basis of lack of income" and his failure to disclose the RETA demonstrated "Mr. Riley's intent to deceive the court and the opposing party with an objective to understate income, avoid a legal obligation (*i.e.* child support), and benefit himself."

Prong III: Injury or Potential Injury

"Injury" is defined as the harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from "serious" injury to "little or no" injury; a reference to "injury" alone indicates any level of injury greater than "little or no" injury.

Mr. Riley's misconduct caused serious injury to the opposing party, Melissa Fay, to the legal system and to the profession. Specifically, Mr. Riley's misrepresentations as to his financial condition deprived Ms. Fay of the child support to which she was entitled for the parties' young son for more than three years, and she was forced to incur substantial attorneys' fees litigating the issue of Mr. Riley's ability to pay. The integrity of the legal system was damaged by Mr. Riley's misrepresentations to the Court regarding his income, which significantly delayed the proceedings in the Family Division and needlessly wasted the court's

resources. Mr. Riley's submission of false affidavits, signed under oath and as an officer of the court, harmed the integrity of the profession by undermining the public's confidence in the profession and the judicial system.

Prong IV: Aggravating and Mitigating Factors

A. Baseline Sanction

Based upon the foregoing analysis of the first three prongs, and before consideration of any aggravating or mitigating factors, § 6.11 of the *Standards* indicates that disbarment is the appropriate sanction for Mr. Riley's proven violations of Rules 3.3, 3.4 and 8.4. Section 6.11 provides, in pertinent part, that disbarment is generally appropriate "when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious... injury to a party, or causes a significant... adverse effect on the legal proceeding."

B. Aggravating and Mitigating Factors

The aggravating factors were detailed by the Hearing Panel in its discussion of the specific Rule violations, and included Mr. Riley's prior disciplinary record, his selfish motive, his substantial experience, and his lack of remorse. There were no mitigating factors warranting a downward departure from the baseline sanction of disbarment.

IV. SANCTION

Having made the aforementioned findings and rulings, the Committee concludes that the appropriate discipline in this matter is a disbarment. The Committee's recommended sanction is in accord with the purposes of attorney discipline. *See e.g., Conner's Case* 158 N.H. at 303; *Richmond's Case*, 152 N.H. 155, 159-60 (2005). This sanction is also in accord with the *Standards*. 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. at 365 (quotation and citation omitted).


V. COSTS

The Committee recommends that the Respondent be held responsible for all costs associated with the investigation and prosecution of this matter.

VI CONCLUSION

For all of the above reasons, the Committee recommends that Respondent be disbarred for violating Rules of Professional Conduct 3.3; 3.4; 8.4(c) and 8.4(a).

April 4, 2016



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Peter A. Riley
File