

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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**RECOMMENDATION: DISBARMENT AND ORDER ON COSTS**

On May 17, 2016, the Professional Conduct Committee (the “Committee”) deliberated in the above matter. Susan R. Chollet, Richard H. Darling, Scott H. Harris and Georges J. Roy were absent.

Having reviewed the Record consisting of thirteen tabbed entries, including the Notice of Charges, Answer, Hearing Panel Report, and Transcript of the March 3, 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 (“the Panel”) by clear and convincing evidence:

1. The Amended Notice of Charges was filed on October 13, 2015 and is incorporated herein by reference.
2. Based on the Service Summary, the Panel found that the Attorney Discipline Office (“ADO”) made extensive efforts to notify the Respondent of both the Amended Notice of Charges and the original Notice of Charges. The Panel further found that the Respondent had actual notice of the allegations and charges contained in the Amended Notice of Charges. These findings of the Panel are supported by clear and convincing evidence in the Record.
3. By virtue of the fact that the Respondent was duly notified of the Amended Notice of Charges, and by operation of Supreme Court Rule 37A(III)(b)(3)(A), the Panel found that the allegations set forth in the Amended Notice of Charges were deemed admitted. Accordingly, the Panel’s factual findings include all facts alleged in the Amended Notice of

Charges. See Record Tab 2, which is incorporated herein by reference.

## II. RULINGS OF LAW

Following review of the facts alleged in the Amended Notice of Charges, which have been admitted by operation of Supreme Court Rule 37A(III)(b)(3)(A), the Committee concludes that there is clear and convincing evidence that Mr. Tamzarian has violated the following Rules of Professional Conduct:

### **Rule 1.1: Competence**

1. Rule 1.1 states as follows:
  - a. A lawyer shall provide competent representation to a client.
  - b. Legal competence requires at a minimum:
    - (1) specific knowledge about the fields of law in which the lawyer practices;
    - (2) performance of the techniques of practice with skill;
    - (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;
    - (4) proper preparation; and
    - (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.
  - (c) In the performance of client service, a lawyer shall at a minimum:
    - (1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;
    - (2) formulate the material issues raised, determine applicable law and identify alternative legal responses;
    - (3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and
    - (4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.
2. Mr. Tamzarian failed to competently represent Mr. Silver in his guardianship matter by failing to perform any substantive work on his behalf.

3. Mr. Tamzarian did not gather sufficient facts from Mr. Silver, develop any strategy in consultation with him, or undertake action on Mr. Silver's behalf to defend against the guardianship.
4. Mr. Tamzarian performed no work for Mr. Silver regarding any appeal of matters relating to his social security benefits.
5. Mr. Tamzarian performed no work for Ms. Brock.
6. Mr. Tamzarian's conduct constitutes a violation of Rule of Professional Conduct 1.1

Record Tab 2 ¶¶ 95-100.

**Rule 1.3: Diligence**

7. Rule 1.3 states as follows:

A lawyer shall act with reasonable diligence and promptness in representing a client.

8. Mr. Tamzarian failed to diligently represent Mr. Silver in his guardianship matter by failing to perform any substantive work on his behalf.
9. Mr. Tamzarian performed no work for Mr. Silver regarding any appeal of matters relating to his social security benefits.
10. Mr. Tamzarian performed no work for Ms. Brock.
11. Mr. Tamzarian's conduct constitutes a violation of Rule of Professional Conduct 1.3.

Record Tab 2 ¶¶ 102-106.

**Rule 1.7: Conflicts of Interest**

12. Rule 1.7 states as follows:

(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:

- (1) the representation of one client will be directly adverse to another client;  
or
- (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.

- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law;
  - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
  - (4) each affected client gives informed consent, confirmed in writing.
13. By agreeing to represent June Brock regarding potential claims brought against her by Mr. Silver, while at the same time representing Mr. Silver, Mr. Tamzarian was engaged in a concurrent conflict of interest.
14. The representation of Ms. Brock was directly adverse to the representation of Reginald Silver.
15. In the alternative, there was a significant risk that the representation of Mr. Silver would be materially limited by Mr. Tamzarian's responsibilities to Ms. Brock because allegations in the guardianship included allegations that Ms. Brock was essentially misappropriating funds from Mr. Silver and abusing him in other ways.
16. This conflict was not waivable.
17. Even if the conflict was waivable, Mr. Tamzarian did not obtain informed consent, confirmed in writing, from Mr. Silver and Ms. Brock.
18. Mr. Tamzarian's conduct constitutes a violation of Rule of Professional Conduct 1.7.

Record Tab 2 ¶¶ 108-114.

**Rule 1.15: Safekeeping Property**

19. Rule 1.15 states as follows:
- (a) Property of clients or third persons which a lawyer is holding in the lawyer's possession in connection with a representation shall be held separate from the lawyer's own property. Funds shall be deposited in one or more clearly designated trust accounts in accordance with the provisions of the New Hampshire Supreme Court Rules. All other property shall be identified as property of the client, promptly upon receipt, and safeguarded.

- (b) 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.
- (c) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount appropriate for that purpose.
- (d) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- (e) Funds may be disbursed from lawyer trust accounts upon (A) (i) deposit, receipt of which is acknowledged by the receiving financial institution, of cash, bank cashier's check, certified check, or electronic transfer of funds at least equal to the sum of such disbursements, or (ii) clearance of any other form of deposit by such receiving financial institution, and (B) availability of such funds to the lawyer from the receiving financial institution.
- (f) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and upon request by the client or third person, shall promptly render a full accounting regarding such property.
- (g) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

- 20. Mr. Tamzarian failed to properly safeguard the property of his clients June Brock and Reginald Silver when he failed to deposit any of the funds paid to him for their legal representation into a clearly designated trust account.
- 21. Mr. Tamzarian failed to properly safeguard the property of his clients June Brock and Reginald Silver by depositing the funds paid to him by his clients into a non-IOLTA account prior to having actually earned all of those funds.

22. Mr. Tamzarian's conduct constitutes a violation of Rule of Professional Conduct 1.15.

Record Tab 2 ¶¶ 116-119

**Rule 1.16(a)(1): Declining or Terminating Representation**

23. Rule 1.16(a)(1) states as follows:

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

24. Mr. Tamzarian had a conflict of interest in representing both Mr. Silver and Ms. Brock.

25. Mr. Tamzarian should never have accepted representation of Ms. Brock because representing her would have resulted in an unwaivable conflict of interest.

26. Once he was suspended, Mr. Tamzarian was required to withdraw from his representation of Mr. Silver and Ms. Brock because to continue to represent them would result in unauthorized practice of law in violation of the ethical rules.

27. Mr. Tamzarian's conduct constitutes a violation of Rule of Professional Conduct 1.16(a)(1).

Record Tab 2 ¶¶ 121-125.

**Rule 3.3: Candor Toward the Tribunal**

28. Mr. Tamzarian had a duty not to knowingly make false statements of fact to a tribunal.

29. Mr. Tamzarian breached that duty when he filed Trust Account Compliance Certificates covering the period June 1, 2011 to May 31, 2014 in which he falsely represented that he maintained his IOLTA Accounts in accordance with Supreme Court Rule 50 and Rule 1.15 of the Rules of Professional Conduct.

30. Mr. Tamzarian breached that duty when he filed Trust Account Compliance Certificates covering the periods June 1, 2011 to May 31, 2014 in which he falsely represented that his IOLTA Accounts were never out of trust.

31. The foregoing false statements were of material facts and were made knowingly.
32. Mr. Tamzarian's conduct constitutes a violation of Rule of Professional Conduct 3.3.

Record Tab 2 ¶¶ 127-131.

**Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law**

33. Rule 5.5 states as follows:

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
  - (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
  - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
  - (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
  - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
  - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or
  - (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
- (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

- (1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or
- (2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

34. Mr. Tamzarian represented Mr. Silver while he was suspended from the practice of law.
35. Mr. Tamzarian represented Ms. Brock while he was suspended from the practice of law.
36. Mr. Tamzarian's conduct constitutes a violation of Rule of Professional Conduct 5.5.

Record Tab 2 ¶¶ 133-136.

**Rule 8.4(b): Commission of a Criminal Act**

37. Rule 8.4(b) states as follows:

It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

Theft by Unauthorized Taking or Transfer: RSA 637:3

38. Mr. Tamzarian obtained or exercised unauthorized control over the property of Mr. Silver with a purpose to deprive him thereof when he accepted \$98,000 to represent Mr. Silver and performed little or no legal work to benefit Mr. Silver or earn those fees.
39. Mr. Tamzarian obtained or exercised unauthorized control over the property of Ms. Brock with a purpose to deprive her thereof when he accepted \$8,000 to represent Ms. Brock and performed no legal work to benefit Ms. Brock or earn those fees.
40. Mr. Tamzarian's conduct as described in Paragraphs 38-40 constitutes theft by unauthorized taking or transfer in violation of RSA 637:3.

Theft by Deception: RSA 637:4

41. Mr. Tamzarian obtained or exercised control over the property of Mr. Silver by deception and with a purpose to deprive him thereof.
42. Mr. Tamzarian created or reinforced an impression which was false and which he did not believe to be true, or he failed to correct a false impression which he previously had created or reinforced and which he did not believe to be true, or which he knew was

influencing Mr. Silver, to whom Mr. Tamzarian stood in a fiduciary or confidential relationship.

43. Mr. Tamzarian told Mr. Silver that he would use the \$98,000 that Mr. Silver gave him to:
  - a. bill against, in the form of a retainer, as he represented Mr. Silver in his guardianship and social security matters;
  - b. hire and pay forensic accountant(s) in the guardianship matter;
  - c. hire and pay a private investigator in the guardianship matter;
  - d. hire and pay medical expert(s) in the guardianship matter;
  - e. appeal certain actions by the Social Security Administration relative to Mr. Silver's social security payments.
44. Contrary to his statements to Mr. Silver, Mr. Tamzarian never hired any outside consultants or paid them any money, but rather kept all funds paid by Mr. Silver for himself.
45. Contrary to his statements to Mr. Silver, Mr. Tamzarian performed no work relating to an appeal of any social security matters.
46. Mr. Tamzarian told Mr. Silver he would return any unearned fees.
47. Despite not earning \$98,000, Mr. Tamzarian never returned to Mr. Silver the unearned fees.
48. Mr. Tamzarian obtained or exercised control over the property of Ms. Brock by deception and with a purpose to deprive her thereof.
49. Mr. Tamzarian created or reinforced an impression which was false and which he did not believe to be true, or he failed to correct a false impression which he previously had created or reinforced and which he did not believe to be true, or which he knew was influencing Ms. Brock, to whom Mr. Tamzarian stood in a fiduciary or confidential relationship.
50. Mr. Tamzarian told Ms. Brock that her payment of \$8,000 would serve as a retainer against which Mr. Tamzarian would bill in representing her in any claims against her by Mr. Silver or his step-daughter.
51. Contrary to that representation, Mr. Tamzarian performed no work for Ms. Brock and kept the \$8,000.

52. Mr. Tamzarian's conduct as described in Paragraphs 41-51 constitutes Theft by Deception under RSA 637:4.
53. Mr. Tamzarian's thefts are felonies because the value of the property in question as to both Ms. Brock and Mr. Silver was over \$1,500. RSA 637:11(I)(a).
54. By committing felony theft, Mr. Tamzarian has violated Rules of Professional Conduct 8.4(b).

Record Tab 2 ¶¶ 138-155.

**Rule 8.4(c): Deceit**

55. 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;

56. Mr. Tamzarian engaged in fraud and deceit when he intentionally made the following affirmative misrepresentations to Mr. Silver with an intent to deceive him:
  - a. That Mr. Tamzarian would represent Mr. Silver in his guardianship action;
  - b. That Mr. Tamzarian would represent Mr. Silver in an appeal of certain decisions by the Social Security Administration;
  - c. That Mr. Tamzarian would use Mr. Silver's money to hire forensic accountant(s), medical expert(s), and a private investigator; and
  - d. That Mr. Tamzarian would bill against all amounts paid to him and return any unearned fees to Mr. Silver.
57. Mr. Tamzarian engaged in fraud and deceit when he, with an intent to deceive his client, failed on two separate occasions to inform Mr. Silver that Mr. Tamzarian had been suspended from the practice of law twice during the time he represented Mr. Silver.
58. Mr. Tamzarian engaged in fraud and deceit when he intentionally made the following affirmative misrepresentations to Ms. Brock with an intent to deceive her:
  - a. That he would represent Ms. Brock in any actions brought against her by Mr. Silver or his step-daughter; and

- b. That he would bill against the \$8,000 she paid him and return to her any unearned fees.
- 59. Mr. Tamzarian engaged in fraud and deceit when he intentionally failed to inform Ms. Brock that Mr. Tamzarian had been suspended during the time he represented Ms. Brock.
- 60. Mr. Tamzarian engaged in a pattern of deceit by lying to his clients, June Brock and Reginald Silver, during an approximately 15-month period in which he stated to them that he was representing them in exchange for a total of \$106,000 in fees, when in fact he was performing little or no legal work on their behalf.
- 61. Mr. Tamzarian's conduct constitutes a violation of Rule of Professional Conduct 8.4(c).

Record Tab 2 ¶¶ 157-163.

**Rule 8.4(a): General Rule**

- 62. Because all of the rule violations set forth above have been proven by clear and convincing evidence, this necessarily constitutes a violation of Rule of Professional Conduct 8.4(a).

Record Tab 2 ¶164.

**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**

The Respondent violated his duties to his clients (by violating his duties of diligence and competence, failing to safeguard client property and engaging in deceit); his duties to the profession (by failing to withdraw under mandatory circumstances, engaging in dishonest and deceitful behavior, engaging in the unauthorized practice of law and failing to maintain the integrity of the profession); and his duties to the legal system (by filing false trust account compliance certificates).

### **Prong II: Mental State**

The *Standards* require consideration of the lawyer's mental state. The Respondent's actions demonstrate that he acted at least knowingly as to each of the rule violations set forth above. Rule 1.0(f) defines "knowingly" as "denot[ing] actual knowledge of the fact[s] in question. A person's knowledge may be inferred from circumstances." In addition, the Hearing Panel found, as to some of the rule violations, that Mr. Tamzarian acted intentionally. An intentional state of mind is defined by the ABA Standards as acting with "a conscious objective or purpose to accomplish a particular result." The Panel found that this most culpable mental state had been proved by clear and convincing evidence with respect to violations of Rules 1.15, 1.16(a)(1), 5.5 and 8.4(c).

More specifically, the Panel found that Mr. Tamzarian acted intentionally when he continued to represent both Mr. Silver and Ms. Brock after he had been suspended from the practice of law, in violation of Rule 5.5. Additionally, the Panel found that Mr. Tamzarian acted intentionally when he accepted funds from both clients that he acknowledged were paid as retainers; told his clients that "if the entire payment is not earned, the unearned portion will be returned to you"; failed to deposit any of these retainers into trust accounts; and did not return any of the funds to his clients; all in violation of Rule 1.15. Additionally, the Panel concluded that Mr. Tamzarian acted intentionally, and in violation of Rule 8.4(c), when he solicited and received funds from Mr. Silver and Ms. Brock that they believed were to be used to pay for legal services and the services of experts--including a medical expert, an accounting and forensic expert; and then provided no significant legal services, retained no forensic experts, and kept the funds rather than returning them to his clients.

The Committee finds that the Panel's findings on mental state are supported by clear and convincing evidence in the record.

### **Prong III: Injury or Potential Injury**

The third prong of the analysis requires a review of the actual or potential injury caused by Mr. Tamzarian's misconduct. In this case, substantial and actual injury was caused to Mr.

Silver and Ms. Brock. Both clients paid large sums of money to Mr. Tamzarian and received virtually nothing in return. In addition, Mr. Tamzarian's conduct has caused profound harm to the legal profession, the justice system and the public's confidence in lawyers by engaging in deceitful conduct, filing false IOLTA compliance certificates with the Court, and stealing substantial sums from his clients.

Based on the foregoing three prongs, the baseline sanction for Mr. Tamzarian is disbarment.

#### **Prong IV: Aggravating and Mitigating Factors**

Finally, the analysis must take into account any aggravating and mitigating factors in order to determine whether the baseline sanction should be increased or lessened. The only mitigating factor identified by the Panel would be the Respondent's lack of any prior disciplinary record. Aggravating factors in this matter include his dishonest and selfish motive, multiple offenses, the vulnerability of the victims, substantial experience in the practice of law, and Mr. Tamzarian's criminal conduct.

The Panel found the Respondent's actions to be particularly troubling given that his clients in this matter were elderly, suffered from limited mental capacity and are among the most vulnerable of our citizens. In addition, it is important to impose the sanction of disbarment to let the public know that the profession does not accept this behavior from its members; and in an effort to restore the public's confidence in the legal profession—confidence that was necessarily damaged as a result of Mr. Tamzarian's behavior. Additionally, while there was no concrete evidence of such in the Record, the Panel was understandably concerned that there may be additional victims that have not yet been identified. That concern was based upon Mr. Tamzarian's persistent rules violations, which show an egregious and reckless disregard for his clients; as well as the fact that there have been no entries in Mr. Tamzarian's trust account records for a four-year period.

#### **IV. SANCTION**

Having made the aforementioned findings and rulings, the 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. 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). In this case, disbarment is essential to accomplish these goals and the Committee recommends this sanction to the Court.

## V. COSTS

The Committee also 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 and 8.4(a); and that the Court order Respondent to pay all costs associated with the investigation and prosecution of this matter.

June 16, 2016



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David M. Rothstein  
Chair

cc: Sara S. Greene, Disciplinary Counsel  
Vaughan Tamzarian  
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