

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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**RECOMMENDATION: THREE-YEAR SUSPENSION WITH
CONDITIONS AND ORDER ON COSTS**

On June 21, 2016, the Professional Conduct Committee (the “Committee”) deliberated the Stipulation as to Facts, Violations and Sanction (the “Stipulation”) and the Agreement to Pay Costs of Disciplinary Matter (collectively, the “Record”). Members present included David M. Rothstein, Chair, Heather E. Krans, Vice Chair, Elaine Holden, Vice Chair, Peter G. Beeson, Susan R. Chollet, Richard H. Darling, Scott H. Harris, Mona T. Movafaghi, Georges J. Roy, Richard D. Sager and Martha Van Oot. Margaret R. Kerouac was recused.

Having reviewed the Record, the Committee approved the facts as stipulated by clear and convincing evidence. The Committee then approved the findings of violations of the New Hampshire Rules of Professional Conduct (the “Rules”) as stipulated, and voted to approve the agreement to reimburse the Committee for all costs of investigation and prosecution of this matter.

I. FINDINGS OF FACT

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

A. Facts

1. Mr. Nolin is an attorney licensed to practice law in New Hampshire. He was admitted to practice on November 5, 2008. Mr. Nolin is currently administratively suspended for non-payment of his dues (order dated June 22, 2015 in ADM-2015-0025.)
2. Mr. Nolin does not have a disciplinary history.
3. At the time of the events giving rise to this disciplinary matter, Mr. Nolin practiced law at Hanson & Nolin, LLP. Mr. Nolin and Carl D. Hanson, Esq. opened their law firm in August of 2012.
4. By letter dated May 24, 2014, Mr. Hanson referred this matter to the ADO based on his personal knowledge of Mr. Nolin's substance abuse problems and related misconduct stemming from those issues.
5. The case was referred to Disciplinary Counsel on January 27, 2016.
6. Below is a summary of three client matters handled by Mr. Nolin as well as facts regarding his handling of the law firm's operating account.

James M. Silvers, Jr. Representation

7. Mr. Nolin represented James M. Silvers, Jr. in his divorce from Amanda Silvers. *Silvers vs. Silvers*, Case No. 627-2012-DM-00201, 5th Circuit – Family Division – Claremont. Ms. Silvers filed a petition for divorce in December of 2012.
8. Mr. Nolin represented Mr. Silvers during a brief – but critical – time in his divorce proceedings, from approximately April 3, 2014 until May 19, 2014. During this time period, Mr. Silvers' ex-wife sought and received various forms emergency relief, as set forth further below.
9. On April 3, 2014, Mr. Silvers paid Mr. Nolin a \$7,500 retainer, in cash, to take over representation in his divorce matter. Mr. Silvers had previously been represented by Christine Gordon, Esq. of Wadleigh, Starr & Peters.
10. On that date, both Mr. Nolin and Mr. Silvers signed a receipt confirming "\$7500 retainer for Divorce: \$3,500 in operating account rest in escrow."

11. Shortly thereafter, Mr. Nolin signed Mr. Silvers' name, without authorization, on a second receipt. This receipt acknowledged payment by Mr. Silvers to Mr. Nolin in the amount of \$3,500 "as a retainer in my divorce matter with another \$4,000 to be given prior to the final hearing."
12. Mr. Nolin never deposited the entire \$7,500 into the firm's client trust account. Instead, he kept \$4,000 for himself, thereby paying himself before he had earned the legal fee. Mr. Nolin deposited the remaining \$3,500 into the firm's client trust account.
13. Mr. Nolin transferred the \$3,500 from the trust account into the firm's operating account approximately one week later, prior to having earned those fees. Although Mr. Nolin did some work for Mr. Silvers, as described herein, he never tracked his time or otherwise submitted invoices to Mr. Silvers.
14. On April 16, 2014, Mr. Nolin picked up Mr. Silvers' entire file from his previous attorney, Ms. Gordon. The file consisted of several bankers' boxes of documents and pleadings.
15. The following day, April 17, 2014, attorneys Judith Fairclough and Jeremy Eggleton, of Orr & Reno, filed the following on behalf of Amanda Silvers:
 - (a) Motion to Compel Respondent's Compliance with Discovery Order, alleging that Mr. Silvers had missed various discovery deadlines.
 - (b) Motion for Orders Regarding [Respondent's] Nonpayment of Alimony and for Funds to be Escrowed. It alleged that Mr. Silvers was \$1,000 behind in alimony. It further alleged that Ms. Silvers had just learned that the former couple's business, and primary asset of the marriage, Recycling Services, Inc. (for which Ms. Silvers was a co-borrower) had suddenly closed.
 - (c) Motion for Ex Parte Relief. In essence, this Motion alleged that Mr. Silvers had mismanaged the Recycling Services to such an extent that it was no longer operational, despite being fully operational as late as January 2014, when Ms. Silvers' expert appraiser had conducted a site visit. The Motion requested an Order vesting complete authority over the business in Ms. Silvers, divesting Mr. Silvers of any authority over it, and compelling Mr. Silvers to turn over all documents, necessary materials, and keys for the business to Ms. Silvers. It also requested a Restraining Order enjoining Mr. Silvers from entering

upon the premises of Recycling Services, communicating with any employee of the business, or coming within 500 feet of Ms. Silvers. The motion was denied on an ex parte basis. Judge Yazinski scheduled a hearing on the motion for April 25, 2014.

- (d) Petition to Attach with Notice, alleging that Mr. Silvers was willfully dissipating the marital assets, in particular the business, and requesting that the Court attach real property (and other property and accounts) of Mr. Silver's to recover \$1,000,000.
16. Mr. Nolin filed an appearance the day of the hearing, April 25, 2014. In anticipation of that hearing, Mr. Nolin reviewed Mr. Silvers' file materials. He did not file any pleadings on Mr. Silvers' behalf.
 17. On April 25, 2014, Mr. Nolin appeared on behalf of Mr. Silvers at the hearing on the motions filed April 17, 2014. The hearing lasted approximately one hour, during which Mr. Nolin made an offer of proof.
 18. The Court issued orders on April 30, 2014 relative to the relief sought by Ms. Silvers. The Court granted the bulk of her requested relief, vesting complete control over Recycling Services, Inc. in her and further:
 - (a) Divesting Mr. Silvers of all control or authority over Recycling Services;
 - (b) Ordering Mr. Silvers to turn over, within 72 hours of the Order, all "keys, passwords, codes and other information [set forth specifically in an Addendum]" necessary for Ms. Silvers to operate the business; and
 - (c) Granting the restraining order.
 19. Mr. Nolin did not inform Mr. Silver of the Court's April 30, 2014 Order.
 20. In the approximately eleven days that followed, Mr. Eggleton, on behalf of Ms. Silvers, attempted without success to get in touch with Mr. Nolin to effectuate the relief granted in the Court's April 30th orders. Mr. Eggleton emailed Mr. Nolin twice and called his office twice in attempt to obtain Mr. Nolin's cooperation.
 21. On May 12, 2014, Ms. Silvers filed a Verified Ex Parte Motion for Contempt and to Compel, setting forth the chronology of counsel's efforts to reach Mr. Nolin in the days following the Court's April 30 orders and

noting that Mr. Silvers had not complied with those orders.

22. The Court granted the Motion for Contempt that day, finding Mr. Silvers in contempt: "Sanctions will be considered after hearing; however, if this order is not complied with in all aspects, the court may issue a warrant for arrest."
23. Mr. Nolin did share the Court's May 12, 2014 Order with Mr. Silvers.
24. The Court set a hearing on the issue of whether Mr. Silvers had complied, and if not, to determine sanctions, for May 21, 2014.
25. Mr. Hanson likewise had difficulty reaching Mr. Nolin in the early part of May 2014. On May 12, 2014, Mr. Hanson wrote to Mr. Silvers, stating "I saw your email to Tanner this afternoon and am concerned about him. I thought he was meeting with you today at 12:00 noon. **Please call me to discuss.**" (Emphasis in original). Mr. Hanson provided his cell phone number to Mr. Silvers.
26. On or around May 13, 2014, Mr. Nolin was hospitalized. He drank so heavily that he became unconscious and suffered alcohol poisoning. He remained in the hospital for approximately three days.
27. Mr. Hanson corresponded further with Mr. Silvers on May 14, 2014. Mr. Silvers had become concerned because he had received a notice of hearing which referenced the Court's earlier contempt finding based on Mr. Silvers' failure to comply with the April 30, 2014 Order. Mr. Silvers told Mr. Hanson that Mr. Nolin "was not right" at the hearing on April 25, 2014. He stated, "[P]lease call me as soon as you have an opportunity I don't want to get arrested."
28. Mr. Hanson responded the same day, informing Mr. Silvers that Mr. Nolin was in the hospital as of "yesterday afternoon. I am not able to contact him directly." At the time, Mr. Hanson was not handling Mr. Silvers' matter and did not have a copy of the Court's May 12, 2014 Order. He obtained one from Mr. Eggleton later that day, however, and promptly forwarded it to Mr. Silvers.
29. Also on May 14, 2014, Mr. Nolin missed a scheduled teleconference with Ms. Fairclough and an attorney representing Mascoma Savings Bank. The purpose of the teleconference was to arrange for the transfer of signatory authority on the Mascoma bank accounts consistent with the April 30 Order. Ms. Fairclough emailed Mr. Nolin about this, and Mr.

Nolin confirmed the same day that he was “currently hospitalized for quite some time.” Mr. Nolin told Ms. Fairclough that Mr. Hanson would be available and provided Mr. Hanson’s cell phone number.

30. On May 15, 2014, Ms. Fairclough wrote to Mr. Nolin, cc’ing Mr. Hanson, forwarding an email that Ms. Fairclough received directly from Mr. Silvers, who had been unable to reach Mr. Nolin and thus attempted to correspond directly with Ms. Fairclough. She told Mr. Nolin and Mr. Hanson that she obviously could not communicate with Mr. Silvers directly but that she urgently required Mr. Nolin’s cooperation and assistance.
31. In response to this email from Ms. Fairclough, Mr. Nolin emailed Mr. Hanson from the hospital, stating “can you communicate with Judith/Jamie about my withdrawal (you can sign for me in all matters) you are being an absolute saint I am basically on lock down here”
32. On May 16, 2014, Mr. Hanson corresponded with Mr. Silvers attempting to answer certain questions posed by Ms. Fairclough in her email of May 15, 2014. Mr. Hanson did not represent Mr. Silvers, however, and it was quickly becoming evident that the issues surrounding turnover of Recycling Services, Inc. were complex. Mr. Hanson was as responsive to Ms. Fairclough as he could be under the circumstances, but reminded her that “Tanner has a portion of the file at his home.”
33. On May 19, 2014, not having heard from Mr. Nolin about when he would return to work, and concerned about any further prejudice to Mr. Silvers, Mr. Hanson filed a motion to withdraw on Mr. Nolin’s behalf in Mr. Silvers’ matter.
34. Mr. Nolin states that he spent a significant amount of time reviewing Mr. Silvers’ file before the April 25, 2016 hearing and that he appeared for Mr. Silvers on that hearing. He acknowledges, however, that after the hearing on April 25, 2016, he performed little substantive work on Mr. Silvers’ matter, and he admits that he did not earn the entire \$7,500.
35. On May 21, 2014, Mr. Hanson appeared in court because his motion to withdraw had not yet been granted. He and Mr. Eggleton determined that no further sanction or capias was warranted, and no hearing was held. Judge Yazinski, however, did inquire informally of Mr. Hanson and Mr. Eggleton about Mr. Nolin’s well-being. Mr. Hanson informed him that he had referred his concerns about Mr. Nolin to the Lawyers’

Assistance Program (“LAP”) and that he was in the process of drafting a referral to the ADO.

36. Thereafter, on July 10, 2014, the Court granted Orr & Reno’s request for \$1,089.00 in attorneys’ fees for fees incurred in compelling Mr. Silvers’ cooperation with the Orders of April 30, 2014.
37. Mr. Silvers thereafter retained Anthony DiPadova, Esq.

Neil Kenny Representation

38. Mr. Nolin represented Neil Kenny before the Bureau of Securities Regulation (“the Bureau”). *In the Matter of Kenny and Ttanks Environmental, Ltd.*, No. I-2012000007. Mr. Kenny did not pay Mr. Nolin a legal fee for this representation nor did he sign a fee agreement of any kind. Mr. Kenny and Mr. Nolin agreed (in vague terms) that in exchange for Mr. Nolin’s representation before the Bureau, Mr. Kenny would use Mr. Nolin for future legal work.
39. The Bureau filed a “Staff Petition for Relief” on November 26, 2013, alleging violations of RSA 421-B and requesting a cease and desist order, fines, costs of investigation, and disgorgement. The Bureau alleged that Mr. Kenny, as sole incorporator of Ttanks Environmental, Ltd., offered and sold shares of Ttanks while failing to disclose material information. It further alleged “various suspect transactions” within the Ttanks business checking account, including taking loans from the account without any specific terms of repayment.
40. On January 31, 2014, a Hearings Officer issued a Scheduling Order setting forth discovery deadlines and a final hearing date of April 28, 2014. These deadlines were based on an assented-to motion between Mr. Nolin and staff attorneys for the Bureau.
41. The Bureau propounded discovery requests to Mr. Nolin on February 14, 2014. Responses were due by March 7, 2014. Mr. Nolin did not respond on behalf of Mr. Kenny. The Bureau staff attorney called and emailed Mr. Nolin multiple times without response by Mr. Nolin. Mr. Nolin also failed to submit a preliminary witness list to the Hearings Officer by March 14, 2014 as required by the Scheduling Order.
42. On March 31, 2014, Bureau staff attorney Adrian LaRochelle filed a Motion to Compel Production. Mr. Nolin did not respond to the Motion

or comply with the discovery deadlines.

43. On April 16, 2014, Hearings Officer Kevin B. Moquin granted the Bureau's Motion to Compel.
44. Mr. Nolin produced no discovery on behalf of Mr. Kenny, nor did he inform Mr. Kenny of the Bureau's Motion to Compel and the Order granting it.
45. On April 22, 2014, Ms. LaRoche filed a Motion to Compel and Alternatively for Default because Mr. Nolin had not produced any discovery whatsoever nor responded to her attempts to contact him. By that date, Mr. Nolin had failed to file a final witness and exhibit list for the upcoming April 28, 2014 hearing by the deadline set forth in the Scheduling Order.
46. Mr. Nolin did not appear at the April 28, 2014 hearing and did not inform Mr. Kenny of the hearing date. Thus, Mr. Kenny did not appear either. The Hearings Officer went forward with the hearing and the Bureau presented its evidence.
47. On April 30, 2014, Hearings Officer Moquin issued "Findings, Rulings and Order" which found that the "facts as presented in the Bureau's staff petition and at hearing support the conclusions of law enumerated in the Bureau's Staff Petition for Relief by a preponderance of the evidence."
48. The Hearings Officer ordered, *inter alia*, Mr. Kenny to cease and desist, to disgorge within 30 days \$89,561.00 that he misappropriated from Ttanks, to pay \$10,000 within 30 days to the Bureau for costs of investigation, and to pay \$25,000 as an administrative fine within 30 days. See RSA 421-B:22, 23, 26.
49. On May 2, 2014, Mr. Nolin filed an "Objection to State's Motion for Default and Motion for Late filing." The Bureau objected and the Motion was denied.
50. Mr. Nolin never informed Mr. Kenny of any of these developments in his case. Rather, they came to light following Mr. Nolin's hospitalization, when Mr. Kenny called the office in late May or early June to inquire about the case and reached Mr. Hanson.
51. Mr. Hanson, unable to find any file for Mr. Kenny's matter, called the Office of the Secretary of State to inquire about status. He learned for the

first time about the chronology of events, Mr. Nolin's failure to comply with all discovery deadlines or appear at the hearing, and the Court's Order finding against Mr. Kenny issued on April 30, 2014.

52. On July 16, 2014, Mr. Hanson filed a Motion to Set Aside Default Order and to Schedule a Hearing. In this Motion, he informed the Hearings Officer that Mr. Nolin never calendared the April 28, 2014 hearing date, that as of April 2014, Mr. Hanson was aware Mr. Nolin "has a serious substance abuse problem," and that as of the date of the Motion, Mr. Hanson "is unaware of [Mr. Nolin's] current status and of his whereabouts."
53. The Court granted Mr. Hanson's request for a hearing. On September 8, 2014, Mr. Hanson appeared for a hearing on his Motion to Set Aside. The Motion was opposed by the Bureau and it was ultimately denied.
54. Mr. Kenny thereafter settled a malpractice claim against Mr. Nolin.

William LaClair Representation

55. On March 9, 2014, William LaClair paid Mr. Nolin a \$2,000 retainer, in cash, to represent him with regard to a Parenting Petition filed by Ms. Rebecca Parker, the mother of Mr. LaClair's children. *In the Matter of Rebecca Parker and William LaClair*, Case No. 662-2014-DM-00022, 5th Circuit, Family Division, Newport.
56. Mr. Nolin did not deposit the full retainer into the client trust account. He put \$1,000 into the client trust account, and spent the remainder prior to earning it.
57. Mr. Nolin never filed an appearance on behalf of Mr. LaClair. A mediation was scheduled on April 9, 2014 for April 28, 2014. The mediation date was later moved to May 22, 2014.
58. Mr. LaClair attempted to contact Mr. Nolin during March and April of 2014 without success.
59. Mr. LaClair thereafter hired attorney Alice Ranson, who appeared at the May 22, 2014 mediation with Mr. LaClair. Unable to reach Mr. Nolin, Ms. Ranson thereafter contacted Mr. Hanson regarding Mr. LaClair's retainer. Mr. Hanson returned \$1,000 of his own funds to Mr. LaClair in attempt to mitigate the financial harm to Mr. LaClair.

Misappropriation of Funds from Law Firm Operating Account

60. From approximately September 2012 to January 2014, Mr. Nolin withdrew funds, using the law firm's debit card, from the law firm operating account for personal purposes and living expenses. These expenses were not authorized by his partner, Mr. Hanson. They included withdrawals ranging from \$10 to \$603 for a variety of personal expenses such as gas, groceries, restaurants, a gym membership, cash withdrawals, and on at least seven occasions, alcohol.
61. Mr. Hanson was unaware of these withdrawals until approximately December of 2013. He and Mr. Nolin had agreed that Mr. Nolin would handle paying the law office's bills, and although Mr. Hanson was a signatory on the operating account, he simply was not in the habit of checking it. He relied on Mr. Nolin's honesty in handling the firm's operating expenses.
62. In January of 2014, Mr. Hanson confronted Mr. Nolin about the unauthorized withdrawals. Mr. Nolin agreed that he owed Mr. Hanson for these "mini-loans" and that he had been using the funds for his personal expenses.
63. Mr. Nolin admits that he owes Mr. Hanson approximately \$11,000 for these unauthorized withdrawals.

Mr. Nolin's Alcohol Addiction, Recovery, and Current Status

64. Mr. Nolin is a recovering alcoholic. The nadir of Mr. Nolin's drinking problem occurred in May of 2014, when he drank so heavily that he required hospitalization for a number of days. It was in this relatively short period of time (March – May 2014) that the specific client matters outlined above were prejudiced as a result of Mr. Nolin's addiction.
65. Mr. Nolin has been sober since June 9, 2015, following in-patient treatment for 25 days at the Phoenix House in Keene, New Hampshire. He signed a three-year Monitoring Agreement with Cecie Hartigan and the LAP on May 6, 2016.
66. Mr. Nolin is currently employed at Watts Water Technology in Franklin, New Hampshire. He lives with his wife and young pre-school aged daughter.

II. RULINGS OF LAW

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

Rules 1.1 and 1.3: Competence and Diligence

67. Mr. Nolin had a duty under Rule 1.1 to perform the techniques of practice with skill, prepare properly, attend to details and schedules sufficiently to assure that his clients' matter was undertaken with no avoidable harm to their interests, and undertake action on their behalf in a timely and effective manner.
68. Mr. Nolin had a duty under Rule 1.3 to act with reasonable diligence and promptness in representing his clients.
69. Mr. Nolin violated Rule 1.1 and Rule 1.3 in the Silvers, Kenny, and LaClair matters when he:
 - (a) Failed to inform Mr. Silvers of the Court's April 30, 2014 Order and assist him in responding to and effectuating same;
 - (b) Failed to effectively represent Mr. Silvers with regard to subsequent contempt motions and requests for fees filed by opposing counsel;
 - (c) Failed to respond to or conduct any discovery in the Kenny matter, respond to opposing counsel's motions, appear at the April 28, 2014 hearing, or respond to/effectively address the Hearings Officer's Findings issued on April 30, 2014; and
 - (d) Failed to perform any work on behalf of Mr. LaClair.

Rule 1.4: Client Communication

70. Mr. Nolin had a duty under Rule 1.4 to keep his clients reasonably informed about the status of their matter and to reasonably consult with them about the means by which their objectives were to be accomplished.
71. Mr. Nolin violated Rule 1.4 when he:

- (a) In the Silvers matter, failed to inform Mr. Silvers of the Court's April 30 and May 12, 2014 Orders, the demands being made by opposing counsel, and the developments in general in Mr. Silvers' divorce matter;
- (b) In the Kenny matter, failed to inform his client of the Scheduling Order, hearing date, motions of opposing counsel (including the motion seeking default), and judgment issued against his client; and
- (c) In the LaClair matter, failed to communicate with Mr. LaClair completely after receiving the \$2,000 retainer.

**Rule 1.15: Safekeeping Property; and
Supreme Court Rule 50**

72. Rule 1.15 states in pertinent part 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.

73. Mr. Nolin violated Rule 1.15 when he failed to deposit client retainer funds (\$4,000 paid by Mr. Silvers and \$1,000 paid by Mr. LaClair) into his client trust account.
74. Mr. Nolin violated Rule 1.15 when he withdrew client funds from the client trust account prior to having earned them (\$3,500 of Mr. Silvers' funds and \$1,000 of Mr. LaClair's funds). In withdrawing these funds before they were earned, he commingled client money with his own in violation of Rule 1.15.

Rule 8.4(c): Deceit

75. 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;

76. Mr. Nolin violated Rule 8.4(c) when he signed Mr. Silvers' name without authorization to a receipt noting payment of \$4,000, when in fact he had been paid \$7,500 by Mr. Silvers.
77. Mr. Nolin violated Rule 8.4(c) when he deposited into the law firm trust account only a portion of retainers received by him, keeping the balance for himself, without disclosing the full retainer received by him to his law partner Mr. Hanson. Specifically, Mr. Nolin received a \$2,000 retainer from Mr. LaClair but only deposited \$1,000 into the client trust account, and he received \$7,500 from Mr. Silvers but only deposited \$3,500 into the client trust account.
78. Mr. Nolin violated Rule 8.4(c) when he misappropriated approximately \$11,000 from his partner Mr. Hanson by repeatedly paying his personal expenses from the firm operating account without disclosure to or authorization from Mr. Hanson.

Rule 8.4(a): General Rule

79. There is clear and convincing evidence that Mr. Nolin's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

III. ANALYSIS

Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support the sanction of a three-year suspension with conditions.

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).

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.

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. 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.*

Prong I: Duty Violated

Under the first prong of the analysis, Mr. Nolin violated duties owed to his clients, as well as duties owed as to public. *See Standards* §§ 4.1, 4.4, and 5.1.

Prong II: Mental State: Intent/ Knowing or Negligent

With respect to Mr. Nolin's mental state under the second prong of the sanction analysis, the parties agree that Mr. Nolin's mental state was knowing and intentional.

Prong III: Injury or Potential Injury

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Nolin's misconduct.

80. Mr. Nolin's conduct caused injury to his clients, in particular Mr. Kenny and Mr. Silvers. As a result of Mr. Nolin's misconduct, the Bureau issued a judgment against Mr. Kenny of over \$124,000 representing fees, costs, and disgorgement. Mr. Silvers likewise was prejudiced by Mr. Nolin's misconduct. The Court found Mr. Silvers in contempt and sanctioned his noncompliance by ordering that he pay Orr & Reno's legal fees. Mr. Hanson was injured financially by Mr. Nolin's misappropriations. Moreover, Mr. Nolin harmed the integrity of the legal profession and the public's confidence in the bar by engaging in dishonest conduct.
81. The following *Standards* are instructive regarding Mr. Nolin's misconduct.
82. Mr. Nolin's violations of Rule 1.15 and Supreme Court Rule 50, implicate Section 4.1 of the *Standards*, which provides, in pertinent part:
 - 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
 - 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
 - 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
 - 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.
83. Mr. Nolin's failure to be diligent on behalf of his clients and his failure to properly communicate with his clients implicates Section 4.4 of the

Standards, which provides, in pertinent part:

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 Admonition¹ 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.

84. Mr. Nolin's violation of Rule 8.4(c), implicates Section 5.1 of the *Standards*, which provides, in pertinent part:

5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that

¹ 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.

seriously adversely reflects on the lawyer's fitness to practice.

- 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.
 - 5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.
85. Under the foregoing circumstances, the parties agree that the baseline sanction for Mr. Nolin's conduct is disbarment. *See Standards* §§ 4.11, 4.41, and 5.11(b).
 86. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
 87. In this case, there are two aggravating factors present: Mr. Nolin's dishonest or selfish motive and multiple offenses. *See Standards* § 9.22.
 88. However, five mitigating factors are also present, including absence of a prior disciplinary record, personal and emotional problems, timely good faith effort to rectify consequences of misconduct, full and free disclosure to ADO and cooperative attitude toward proceedings and remorse. *See Standards* § 9.32. Moreover, the ADO and the Respondent agree that his demonstrated sobriety of nearly one year, his voluntary execution of the three-year LAP Monitoring Agreement, and his continued commitment to staying sober weigh in favor of a downward departure from disbarment.
 89. The parties agree that the aggravating and mitigating factors evident in this case, combined with the baseline sanction analysis, indicate that a three-year suspension, with conditions designed to rehabilitate Mr. Nolin and prevent similar lapses in the future, is an appropriate sanction.
 90. As set forth further below, should Mr. Nolin breach a condition of this Stipulation or the Monitoring Agreement, he agrees that disbarment is the appropriate sanction.

IV. SANCTION

The Committee concludes that the appropriate discipline in this matter is a three-year suspension with conditions. 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 *ABA Standards for Imposing Lawyer Sanctions* (2005) ("*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. 361, 365 (2007) (quotation and citation omitted).

V. CONDITIONS

Conditions of Suspension and Procedures For Alleged Violation of Conditions

91. Mr. Nolin agrees to comply with the following conditions during the three years of suspension, which shall begin on the date the Professional Conduct Committee accepts this Stipulation:
 - a. Respondent shall comply with all requirements set forth in the LAP Monitoring Agreement. Those requirements, in brief, are that Mr. Nolin abstain from alcohol or drug use for a period of three years, attend three support group (such as Alcoholics Anonymous) meetings per week, submit to random alcohol and drug tests at the request of LAP Executive Director Cecile Hartigan, contact his Monitor weekly, and meet with his Monitor periodically as required by Ms. Hartigan.
 - b. Ms. Hartigan shall supply Disciplinary Counsel with quarterly reports regarding Mr. Nolin's compliance with the Monitoring Agreement, with the first report to be provided to Disciplinary Counsel within 60 days of the date that the Committee accepts the Stipulation.
 - c. Respondent shall pay the expenses incurred by the Professional Conduct Committee in connection with this investigation and prosecution, and if unable to pay in lump sum, shall agree to some form of payment plan with the PCC.
 - d. Respondent will engage in no professional misconduct during the period of the suspension.

92. If it is alleged that Mr. Nolin violated any of the conditions enumerated at Paragraphs 91(a)-(c) above, the following shall apply:
- (a) Upon motion by Disciplinary Counsel, the Committee may determine whether any of the conditions enumerated at Paragraphs 91 (a)-(c) have been violated. If it determines that a condition has been violated, the Committee shall recommend a disbarment. If the Committee determines that no condition of this Stipulation has been violated, the Stipulation shall continue in force and effect pursuant to its terms.
 - (b) Respondent may request that the Committee remand the matter to the Hearings Committee so that a Hearing Panel may be appointed to decide the sole issue of whether a condition under Paragraphs 91 (a)-(c) of this Stipulation has been violated. During such hearing, it shall be the burden of Disciplinary Counsel to demonstrate by a preponderance of evidence that a condition listed in Paragraphs 104 (a)-(c) has been violated.
 - (c) If a Hearing Panel determines that a condition has been violated, the Panel shall recommend a disbarment. If the Hearing Panel determines that no condition of the Stipulation has been violated, the Stipulation shall continue in force and effect pursuant to its terms. The PCC shall review the decision of the Hearing Panel.
93. If a new grievance or referral is filed against Mr. Nolin during the three year period of suspension, thus implicating the condition at Paragraph 91(d), the following shall apply:
- (a) So long as a grievance or referral is filed within the three-year period of suspension (“the subsequent proceeding”), and the alleged misconduct occurred, at least in part, during the three-year period of suspension, a disbarment may be imposed at such time as there is a finding of misconduct in the subsequent proceeding, even if such finding occurs beyond the three-year suspension period.
 - (b) Pending the final resolution of the subsequent proceeding, the matter underlying this Stipulation shall not be closed.
 - (c) If the conditions of Paragraphs 91(a)-(c) have been met, Mr. Nolin will not have to continue to comply with those provisions while the subsequent proceeding is pending.

- (d) The Respondent shall bear all costs associated with compliance and enforcement of the terms and conditions of this Stipulation.
- (e) Nothing herein shall be construed to limit prosecution of any new grievance or referral involving conduct of Respondent occurring during the three-year period of suspension.

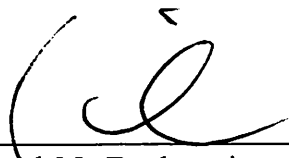
VI. COSTS

Tanner Z. Nolin has signed an agreement to pay costs of the investigation and prosecution of this disciplinary matter. The Committee approves this agreement. Mr. Nolin shall be responsible for all costs associated with the investigation and prosecution of this matter.

VI CONCLUSION

For all of the above reasons, the Committee recommends a three-year suspension with conditions for violating N.H. Rules of Professional Conduct 1.1; 1.3; 1.4; 1.15; 8.4(c); 8.4(a) and Supreme Court Rule 50.

August 8, 2016



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Tanner Z. Nolin
File