

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

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

4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
603-224-5828 ♦ Fax 228-9511

Margaret R. Kerouac  
Mona T. Movafaghi  
Georges J. Roy\*  
Richard D. Sager  
Martha Van Oot  
\* non attorney member  
Barbara J. Guay, Legal Assistant

*Pearson, Michael T. advs. Attorney Discipline Office - #13-026*  
*Pearson, Michael T. advs. Attorney Discipline Office - #14-032*

**SIX MONTH SUSPENSION STAYED FOR ONE YEAR WITH CONDITIONS**

On April 19, 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, Margaret R. Kerouac, Georges J. Roy, Richard D. Sager, and Martha Van Oot. Mona T. Movafaghi was absent.

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 agreed-upon sanction and the agreement to reimburse the Committee for all costs of investigation and prosecution of this matter.

**I. FINDINGS OF FACT**

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

1. Mr. Pearson is an attorney licensed to practice law in New Hampshire. He was admitted to practice on October 26, 2005. He is currently a solo practitioner.
2. Mr. Pearson has been practicing law for twenty-three years. He was admitted to practice law in Maine (1992) and in Ohio (1993). He is currently administratively suspended in Maine (eligible for reinstatement) and is on inactive status in Ohio.

3. Mr. Pearson has a public censure, issued on September 15, 2015, imposed as reciprocal discipline for conduct arising out of his administrative suspension in Maine.
4. By letter dated June 4, 2013, the Clerk of the New Hampshire Supreme Court referred a matter to the Attorney Discipline Office (Complaint #13-026), arising out of Mr. Pearson's administrative suspension. The case was referred to Disciplinary Counsel on March 13, 2015.
5. On July 28, 2014, Kathleen Flax filed a letter of grievance signed under oath alleging that Mr. Pearson engaged in professional misconduct (Complaint #14-032). The case was referred to Disciplinary Counsel on September 28, 2015.

### **I. Consolidation and Summary**

6. These matters have been consolidated by the ADO because the underlying events occurred during the same time frame (roughly 2013-2014) and because the underlying cause for misconduct in both cases is the same; namely, Mr. Pearson's mental health issues, which were exacerbated by his divorce and subsequent financial troubles.
7. As set forth further below, the first matter (docket #13-026) is not as serious as the second matter from a disciplinary perspective. It involves Mr. Pearson's administrative suspension arising out of his inability to pay child support for a period of time.
8. The second matter (docket #14-031) presents failures of the duties of competence, diligence and client communication with regard to discovery responses in an employment discrimination case filed by Mr. Pearson in federal district court on behalf of four plaintiffs.

### **II. Complaint #13-026 (ADM matter: suspended from June 3, 2013 – July 15, 2013)**

9. The first disciplinary matter arises out of Mr. Pearson's failure to make child support payments pursuant to a Uniform Support Order issued by Concord District Court, Family Division, which resulted in his administrative suspension by the Supreme Court on June 3, 2013 pursuant to RSA § 161-B:11. (ADM 2013-0022.) That statute empowers the Supreme Court to suspend any professional license upon certification from the Division of Child Support Services that an attorney (or other professional carrying a license) is not in compliance with a legal order of child support.
10. The ADO docketed this matter following a referral from the Supreme Court arising out of the administrative suspension.

11. By way of background, Mr. Pearson filed for divorce in July 2011. At that time he had two children, aged fourteen and seventeen. By the time a final order was issued in January 2013, Mr. Pearson was approximately \$19,000 in arrears on child support. The court found Mr. Pearson in contempt of the child support order. As noted above, Mr. Pearson was administratively suspended pursuant to RSA 161-B:11 on June 3, 2013.
12. Mr. Pearson has demonstrated to the satisfaction of the ADO that his income has been in steady decline since January 2009, and the ADO has confirmed that he was terminated from his last position at Backus Meyer in May of 2011 (where his salary had been \$45,000 annually). Thereafter, he attempted to start a solo practice focusing on employment litigation, representing plaintiffs on a contingency basis, but he struggled to generate income.
13. In addition to these financial troubles, Mr. Pearson was dealing with mental health issues during the relevant time frame that he has since come to address head-on. *See infra*, ¶¶ 47-53.
14. Mr. Pearson and his ex-wife settled the issue of child support arrearages on July 11, 2013. Mr. Pearson agreed to forego a portion of his half of the equity in the marital home sufficient to cover the arrearages. His youngest child turned eighteen in September of 2015.
15. Upon notice from DCSS that Mr. Pearson was “now in compliance with the legal order of support,” the Supreme Court reinstated Mr. Pearson on July 15, 2013.

### **III. Complaint #14-032 (Flax matter)**

16. Mr. Pearson’s client, Kathleen Flax, filed her grievance with the ADO on July 30, 2014. Jeffrey Joseph and Melody Bjorkman, also Mr. Pearson’s clients, filed grievances in December 2014. All of the complainants were co-plaintiffs<sup>1</sup> in an employment discrimination lawsuit brought by Mr. Pearson in federal court on their behalf.
17. On November 29, 2012, the parties sued their former employer, Easter Seals, alleging, *inter alia*, that Easter Seals engaged in discriminatory and retaliatory conduct in violation of Title VII (42 U.S.C. § 2000e, *et seq.*), N.H. R.S.A. 354-A, and the Civil Rights Act of 1866 (42 U.S.C. § 1981).<sup>2</sup> Mr. Pearson accepted the case on a contingency basis.
18. Easter Seals was represented by Attorney David W. McGrath of Sheehan Phinney Bass + Green.

---

<sup>1</sup> A fourth client, Aimee Gakwaya, never filed a grievance against Mr. Pearson. She agreed to dismiss her claim with prejudice in March 2014.

<sup>2</sup> *Joseph et. al. v. Easter Seals of New Hampshire*, Case No. 1:12-cv-00459-PB.

19. On March 20, 2013, Easter Seals propounded interrogatories and document requests to each named Plaintiff in the action. Pursuant to Fed. R. Civ. P. 33, Plaintiffs were obligated to respond within 30 days of service. Mr. Pearson obtained a thirty-day extension.
20. On May 27, 2013, Mr. McGrath sent Mr. Pearson an e-mail inquiring when Plaintiffs planned to produce their overdue responses. Mr. Pearson did not respond. When Mr. Pearson failed to respond to another email inquiry from Mr. McGrath on June 21, Mr. McGrath notified Mr. Pearson on June 26 that he intended to file a motion to compel requesting sanctions.
21. On July 1, 2013, Mr. Pearson contacted Mr. McGrath by telephone and notified him that he had been temporarily suspended from the practice of law effective June 3, 2013 pursuant to RSA 161-B:11. This was the first Mr. McGrath had heard of the administrative suspension.<sup>3</sup>
22. That same day, in light of the newly discovered information and the overdue discovery responses, Mr. McGrath withheld filing a motion to compel and instead filed a motion to continue all existing litigation deadlines for not less than 90 days. The Court subsequently granted the motion continuing the deadlines for 60 days.
23. On July 23, Mr. McGrath learned Mr. Pearson had been reinstated. No discovery responses were received in the following weeks, however, and on August 9, Mr. McGrath e-mailed Mr. Pearson notifying him for a second time of his intent to file a motion to compel. Mr. Pearson responded by email on August 12, requesting an extension to produce the overdue discovery by August 19. Mr. McGrath granted the extension and withheld filing the Motion to Compel.
24. On August 20, Mr. Pearson e-mailed Mr. McGrath requesting another week-long extension to answer the discovery propounded in March. Mr. McGrath declined to agree to such extension and later that day he filed a Motion to Compel Plaintiffs to produce their overdue discovery and to pay the attorneys' fees and costs incurred in procuring the requested relief.
25. Mr. Pearson did not respond to the motion.
26. On September 12, then-Magistrate Judge McCafferty ordered Plaintiffs to produce answers to Easter Seals' discovery requests by September 19 or face sanctions.
27. Mr. Pearson did not produce any discovery by September 19.

---

<sup>3</sup> Mr. Pearson complied with the Supreme Court's Order in the ADM matter, which set July 2, 2013 as the deadline by which to inform clients and opposing parties of the suspension.

28. Throughout this time period, Mr. Pearson was experiencing difficulty in obtaining all the discovery information from his clients. While Ms. Flax was the most prompt and cooperative, Ms. Gakwaya was nearly impossible to reach and had become largely non-communicative. Mr. Pearson states he requested various documents from Mr. Joseph from March through October 2013 with little success.
29. Mr. Pearson's clients state that he did not keep them up-to-date on opposing counsel's discovery-related communications and motions. Mr. Pearson recalls telling his clients how "upset" Mr. McGrath was becoming, but acknowledges that he should have been more thorough and prompt in sharing those communications with his clients as they came in, including in particular any actual motions filed by opposing counsel which might prejudice their case.
30. On October 21, Mr. McGrath filed a Motion to Dismiss (with Prejudice) and Request for Fees for Failure to Produce Discovery and Comply with Court Order.
31. Mr. Pearson filed no response to this dispositive Motion. As set forth further below, *infra* at ¶¶ 55-72, Mr. Pearson acknowledges this was unacceptable conduct that violates the rules, but states he was suffering from acute mental health problems that prevented him from effectively representing his clients.
32. On November 14, Judge Barbadoro issued an order proposing to dismiss the case with prejudice for failure to comply with the Magistrate Judge's September 12 order unless Plaintiffs showed cause within 14 days why a lesser sanction should be imposed.
33. Mr. Pearson, on behalf of Plaintiffs, filed a Response to Order to Show Cause, and on December 2, Mr. Pearson submitted discovery responses to Mr. McGrath. However, the discovery responses were not entirely complete.
34. On January 2, 2014, Mr. Pearson sent Mr. McGrath some additional documents.
35. On January 3, 2014, the Court held a hearing on Easter Seals' Motion to Dismiss and Request for Fees. During the hearing, the Court admonished Mr. Pearson to be timely with regard to discovery.
36. During January and February 2014, further discovery delays developed and Mr. Pearson told Mr. McGrath he was having trouble "corralling" his clients; in particular, he still had not been able to produce Ms. Gakwaya's interrogatory responses.
37. Although Mr. McGrath agreed to one extension, and although Mr. Pearson produced some (but not all) overdue discovery, when further deadlines passed, Mr. McGrath told Mr. Pearson he would request, as suggested by the Court at the January hearing,

a status conference with the Court to deal with the discovery delays.

38. The Court scheduled the status conference for March 26, 2014.
39. At the status conference, the Court scheduled a show cause hearing which was ultimately conducted on May 1, 2014, during which Mr. Pearson was to show cause as to “whether he should not be removed as counsel based on his inability to represent the interests of his clients.”<sup>4</sup>
40. After the May 1 hearing, during which Attorney Tracy Bernson (now Mr. Pearson’s wife) represented Mr. Pearson and submitted affidavits from Mr. Pearson’s four clients stating they wished to remain with him as their attorney, Judge Barbadoro took the pending motions under advisement.
41. On June 10, 2014, Mr. Pearson notified the Court of his intent to withdraw as counsel.
42. On June 24, 2014, Judge Barbadoro denied all pending motions but required that Mr. Pearson take steps to assist his clients in obtaining successor counsel. Mr. Pearson ultimately referred his clients to Attorney Benjamin King, who filed a Notice of Appearance.
43. The Court allowed Mr. Pearson to withdraw on August 29, 2014.
44. Mr. King settled the matter on behalf of his clients in October 2014.
45. Mr. Pearson sincerely regrets his failures with regard to handling the discovery issues in the case and his failure to keep his clients reasonably informed. From 2011, when his divorce proceedings began, thorough 2014, he was dealing with significant mental health challenges that caused him to have an avoidant reaction to conflict and/or any stress-inducing events. He believes in hindsight that he should have withdrawn sooner from the Flax matter given the challenges he was facing.
46. Mr. Pearson has been diligently addressing his mental health issues since 2014 as set forth further below.

#### **IV. Respondent’s Mental Health Background, Personal Problems, and Current Treatment**

---

<sup>4</sup> On March 26, in the lobby area of the court before the status conference, Mr. Pearson advised Mr. McGrath that Ms. Gakwaya had given Mr. Pearson authority to dismiss her case with prejudice, thus obviating the need to produce her overdue discovery.

47. As noted above, Mr. Pearson's marriage fell apart in 2011, on the heels of a deteriorating career path that left him in very difficult financial circumstances. He was administratively suspended in 2013 for being unable to pay child support, but ultimately resolved that issue. The cumulative effect of these events, however, left Mr. Pearson acutely depressed.
48. Mr. Pearson was diagnosed with adult attention deficit disorder ("ADD") as well as an anxiety disorder in the early 2000s when he was living in Ohio. From that point on, Mr. Pearson has taken medication for ADD and has received counseling in the form of talk therapy to address his anxiety.
49. In the year or so leading up to his divorce, and certainly from July 2011 (when he filed for divorce) through 2013, Mr. Pearson's mental health deteriorated and he experienced an acute decline which resulted in debilitating clinical depression.
50. In the summer of 2013, at the urging of his now wife, Mr. Pearson made contact with the Lawyers' Assistance Program ("LAP"). At that time, he was being treated by Dr. George Nowack, a psychiatrist in Portsmouth. Dr. Nowack had been prescribing Mr. Pearson ADD medication and anti-depressants. However, it was clear to Mr. Pearson and those closest to him that he needed additional help and perhaps a change in medication.
51. With the help of LAP, Mr. Pearson began seeing a new psychologist recommended by LAP, David Ceglia, around February of 2014. Other than a recent, brief lapse in therapy with Dr. Ceglia (while Mr. Pearson was uninsured and working out a payment plan with Dr. Ceglia), Mr. Pearson has continued to see Mr. Ceglia weekly since early 2014.
52. Mr. Pearson's current provider for medication is Dr. George Hilton. He prescribed different medications that Mr. Pearson finds more effectively treats his symptoms.
53. As for Mr. Pearson's current work environment, he works with his wife, Tracy A. (Bernson) Pearson, in Dover, NH. He credibly reports that he does only that amount of legal work that he feels he can handle, now that his child support obligations have ended.

## **II. RULINGS OF LAW**

The Committee concludes, based on the stipulated facts set forth above, that there is clear and convincing evidence that Michael T. Pearson has violated the following Rules of Professional Conduct:

### **Rule 1.1: Competence (#14-032)**

54. Mr. Pearson 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 managed with no avoidable harm to their interests, and undertake action on their behalf in a timely and effective manner.
55. Mr. Pearson violated Rule 1.1 when he failed to appropriately and timely respond to Easter Seals' propounded discovery and subsequent communications and motions seeking to compel production.
56. Under these circumstances, there is clear and convincing evidence of a violation of Rule of Professional Conduct 1.1.

**Rule 1.3: Diligence (#14-032)**

57. Mr. Pearson had a duty under Rule 1.3 to act with reasonable diligence and promptness in representing his clients.
58. Mr. Pearson violated Rule 1.3 when he failed to appropriately and timely respond to Easter Seals' propounded discovery and subsequent communications and motions seeking to compel production.
59. Under these circumstances, there is clear and convincing evidence of a violation of Rule of Professional Conduct 1.3.

**Rule 1.4: Client Communication (#14-032)**

60. Mr. Pearson 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.
61. Mr. Pearson violated Rule 1.4 when he failed to keep his clients reasonably informed of Easter Seals' demands for production of discovery, threats to file motions to compel, and Easter Seals' ultimate filing of motions to compel as well as a dispositive motion to dismiss with prejudice.
62. Under these circumstances, there is clear and convincing evidence of a violation of Rule of Professional Conduct 1.4.

**Rule 3.4(c): Fairness to Opposing Party and Counsel (#13-026)**

63. Rule 3.4(c) states as follows:

A lawyer shall not:

(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;

64. Mr. Pearson had a duty under Rule 3.4(c) to pay child support as ordered by the court in his divorce matter.
65. Mr. Pearson breached this duty when he failed to pay child support over a period of approximately seventeen months and was held in contempt by the court for such failure.
66. Under these circumstances, there is clear and convincing evidence of a violation of Rule of Professional Conduct 3.4(c).

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

67. Having found the foregoing violations, there is clear and convincing evidence that Mr. Pearson's conduct, as described herein, violated Rule of Professional Conduct 8.4(a).

**III. ANALYSIS**

The Stipulation includes an agreement on recommended sanctions based on the violations of Rules 1.1; 1.3; 1.4; 3.4(c); and 8.4(a). For the reasons set forth below, the Committee agrees with and accepts the recommended sanction of a six month suspension stayed for one year and an order to pay costs of investigation and prosecution. The discussion below is set forth in accordance with the four prong analytical framework of the *ABA Standards for Imposing Lawyer Sanctions* ("*Sanctions*").

**Prong I: Duty Violated**

Under the first prong of the analysis, Mr. Pearson violated duties owed to his clients, as well as duties owed to the legal system. See *ABA Standards* §§ 4.4 and 6.2.

## **Prong II: Mental State: Knowing or Negligent**

With respect to Mr. Pearson's mental state under the second prong of the sanction analysis, the parties agree that Mr. Pearson's mental state was knowing<sup>5</sup> in that he was "aware of attendant circumstances," such as the date of a given discovery deadline, the passage of such deadline without production of discovery, his failure to respond to certain motions, and his failure to inform his clients of such motions within a reasonable time after they were filed. There is no evidence, however, that Mr. Pearson intended to obstruct the process or that he made no effort to obtain discovery from his clients. Rather, his efforts were insufficient under the circumstances, and hampered by his own mental health and personal issues.

## **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. Pearson's misconduct. Mr. Pearson's conduct caused injury to the opposing party and the court in that it delayed proceedings and forced Easter Seals to seek extraordinary relief from the Court with regard to the discovery disputes. In addition, Mr. Pearson's conduct resulted in the threatened dismissal of his clients' claims. The claims were not dismissed, however, and Mr. Pearson referred his clients to an attorney who took over the representation and secured a settlement for them.

Mr. Pearson did not, moreover, keep his clients sufficiently informed as the discovery dispute escalated. Mr. Pearson's failure to properly communicate with his clients, and his failure to diligently work with them to ensure timely production of discovery, 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.

---

<sup>5</sup> Knowing misconduct represents a less culpable mental state than intentional misconduct. Rule of Professional Conduct 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." 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"). An intentional state of mind is defined in the *ABA Standards* as acting with "a conscious objective or purpose to accomplish a particular result."

- 4.44 Admonition<sup>6</sup> 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.

Mr. Pearson's violation of Rule 3.4(c) implicates Section 6.2 of the *Standards*, which provides, in pertinent part:

- 6.21 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.
- 6.22 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
- 6.23 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

The generally appropriate sanction for Mr. Pearson's various violations, under the circumstances set forth in the stipulation, is suspension. This leaves for the Committee only the element of aggravating and mitigating factors.

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

In this case, two aggravating factors are present: Mr. Pearson's previous discipline (reciprocal) and his substantial experience in the practice of law. *See Standards* § 9.22.

However, five mitigating factors are present, including absence of a dishonest motive, personal and emotional problems, his cooperative attitude towards disciplinary proceedings, remorse, and imposition of other penalties or sanctions. *See Standards* § 9.32. The parties agreed that the aggravating and mitigating factors, combined with the baseline sanction analysis, indicate that a six-month suspension stayed for one year, combined with conditions designed to prevent similar lapses in the future, is an appropriate sanction.

With regard to the Rule 3.4(c) violation, New Hampshire has not addressed the discipline appropriate when an attorney violates Rule 3.4(c) by failing to pay child support. Other jurisdictions find that failure to pay court-ordered child support violates the Rule and merits a baseline sanction of suspension. Courts imposing suspensions, however, do so where the case

---

<sup>6</sup>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.

presents elements of bad faith, dishonesty, or self-serving conduct.<sup>7</sup>

Where an attorney fails to pay child support, but ultimately cures such failure, and has not purposely understated income or otherwise engaged in deceit or self-dealing, courts have departed from a suspension to a censure, even in cases where an attorney had a disciplinary history. *See, e.g., In re Primavera*, 904 P.2d 883 (Colo. 1995) (imposing censure on attorney, with history of six “admonitions,” held in contempt for failure to pay child support; noting that ordinarily a period of suspension would be appropriate in such circumstances but censure appropriate because attorney did not have a selfish or dishonest motive, other penalties and sanctions were imposed, respondent cooperated throughout the disciplinary process, and respondent ultimately paid in full); *In re Cantrell*, 900 P.2d 126 (Colo. 1995) (imposing censure where attorney was in contempt of order to pay child support but had no dishonest or selfish motive; lawyer settled with wife and court dismissed the contempt citations).

Here, Mr. Pearson already has a previous public censure. Even so, given the authority noted above, and the similar mitigating facts present in the child support case,<sup>8</sup> a public censure would have served the purposes of discipline if considered in isolation. However, the facts as presented in the Flax matter compound Mr. Pearson’s misconduct, hence the parties’ stipulation to a stayed suspension.

With regard to the Flax matter, case law from other jurisdictions is instructive in that other courts have imposed censures where a lawyer’s lack of diligence was due to mental health issues and did not present self-dealing. *See, e.g., In re Young*, 84 A.D.3d 29, 32 (N.Y. App. Div. 2011) (imposing public censure “in light of nonvenal nature of respondent’s misconduct” and underlying attention deficit disorder of respondent); *In re Cohen*, 8 P.3d 953, 964 (Or. 2000) (public reprimand rather than suspension warranted for lawyer who “aggressively and successfully address[ed] his mental health problems,” notwithstanding repeated instances of neglect, and noting only actual injury to client was anxiety and frustration). Given that this Stipulation presents two consolidated cases, the parties are not suggesting a censure is appropriate to resolve both, but rather note the case law as illustrative of the mitigating effect of underlying mental health problems.

---

<sup>7</sup> *See, e.g., In re Vanderbilt*, 253 P.3d 774 (Kan. 2011) (indefinite suspension for attorney, who had serious previous discipline, was \$76,000 in arrears, failed to appear at a hearing for a motion for sanction in his divorce, and continued to be in contempt of court at the time of final order of discipline); *In re Anderson*, 795 P.2d 64 (Kan. 1990) (indefinite suspension for attorney who never made a single payment of child support and who admitted under oath he resigned from gainful employment specifically to avoid making payment to his ex-wife); *In re Ring*, 692 N.E.2d 35 (Mass. 1998) (three month suspension for attorney held in contempt on seven separate adjudications, where attorney had ability to pay but refused, refused to pay court -ordered attorneys’ fees incurred by his ex-wife, and transferred over \$400,000 in marital assets, the day after receiving notice of wife’s divorce filing, to an account in his name alone in Saint Maarten in the Netherlands Antilles).

<sup>8</sup> As noted in the fact section, Mr. Pearson’s suspension was brief and was lifted because he and his ex-wife settled the child support issue, and his conduct did not involve any dishonesty, self-dealing, or understating income.

#### IV. SANCTION

Having made the aforementioned findings and rulings, the Committee concludes that the appropriate discipline in this matter is a six month suspension, stayed for one year, combined with conditions imposed to minimize the possibility that similar lapses will occur in the future. The Committee's recommended sanction is in accord with the purposes of attorney discipline. *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. 361, 365 (2007) (quotation and citation omitted).

#### V. CONDITIONS

##### **Conditions of Stayed Suspension and Procedures For Alleged Violation of Conditions**

1. Mr. Pearson agrees to comply with the following conditions during the year of stayed suspension, which shall begin on the date the Committee accepts this Stipulation:
  - a. Respondent shall continue to seek care and counseling with his psychologist, Mr. Ceglia, including compliance with and meaningful participation in any regimen required by Mr. Ceglia (including any medication prescribed by Dr. Hilton). Respondent has signed a release authorizing Disciplinary Counsel to speak with Mr. Ceglia and will sign such release as to Dr. Hilton regarding Respondent's treatment and progress.
  - b. Mr. Ceglia shall supply Disciplinary Counsel with periodic reports, no less frequently than quarterly, with the first report to be provided to Disciplinary Counsel within 60 days of the date that the Professional Conduct Committee accepts the Stipulation. The reports shall demonstrate compliance with sub-paragraph V-1(a), above, and shall be submitted directly from Mr. Ceglia to Disciplinary Counsel.
  - 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 stayed suspension.
2. If it is alleged that Mr. Pearson violated any of the conditions enumerated at sub-paragraphs V-1(a-c) above, the following shall apply:

- a. Upon motion by Disciplinary Counsel, the Professional Conduct Committee may determine whether any of the conditions enumerated at sub-paragraphs V-1(a-c) have been violated. If it determines that a condition has been violated, the Committee shall lift the stay and impose the six-month suspension. 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 Professional Conduct 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 sub-paragraphs V-1(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 sub-paragraphs V-1(a-c) has been violated.
  - c. If a Hearing Panel determines that a condition has been violated, the Panel shall lift the stay and impose a six-month suspension. 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.
3. If a new grievance or referral is filed against Mr. Pearson during the one-year period of the stay, thus implicating the condition at sub-paragraph V-1(d) above, the following shall apply:
  - (a) So long as a grievance or referral is filed within the one-year period of the stay (“the subsequent proceeding”), and the alleged misconduct occurred, at least in part, during the one-year period of the stay, the stay can be lifted and the six-month suspension imposed at such time as there is a finding of misconduct in the subsequent proceeding, even if such finding occurs beyond the one-year period of the stay.
  - (b) Pending the final resolution of the subsequent proceeding, the matter underlying this Stipulation shall not be closed.
  - (c) If the conditions of Paragraph V-1(a-c) have been met, Mr. Pearson 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 one year period of stay.

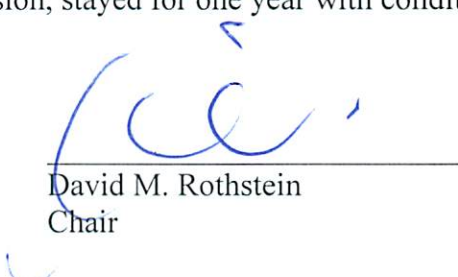
## VI. COSTS

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

## VII. CONCLUSION

For all of the above reasons, the Committee approves the stipulation and conditions in its entirety and issues this six month suspension, stayed for one year with conditions.

May 4, 2016



---

David M. Rothstein  
Chair

cc: Sara S. Greene, Disciplinary Counsel  
Michael T. Pearson, Esquire  
File