

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Dargon, Sr., Drake David f/k/a Daniel P. Dargon

Dargon, Daniel P. advs. Megan Douglass - #09-064
Dargon, Daniel P. advs. Attorney Discipline Office - #10-025
Dargon, Daniel P. advs. Kenny W. & Patricia L. Roberts - #10-036
Dargon, Daniel P. advs. Karen Minnifield - #10-050
Dargon, Daniel P. advs. Darlene P. Raymond - #10-051
Dargon, Daniel P. advs. Elizabeth Chicoine &
Gloria Torres-Landa - #10-054
Dargon Daniel P. advs. Attorney Discipline Office - #10-056
Dargon, Daniel P. advs. Arthur L. Normand - #10-059
Dargon, Daniel P. advs. Brenda L. McKelvey - #10-060
Dargon, Daniel P. advs. Michael F. Baumgatner - #10-067
Dargon, Daniel P. advs. Terry & Gloria Mikkelsen - #10-069
Dargon, Daniel P. advs. Darlene L. Kohanski - #10-080
Dargon, Daniel P. advs. Janice S. Weatherspoon-Williams - #11-029

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

On September 20, 2016, the Professional Conduct Committee (the “Committee”) deliberated the Request to Consolidate Global 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, Richard H. Darling, David W. McGrath, Mona T. Movafaghi, Georges J. Roy, Richard D. Sager and Martha Van Oot. Elaine Holden, Vice Chair, Susan R. Chollet, and Margaret R. Kerouac were absent. Peter G. Beeson was recused.

The Committee granted the Request to Consolidate. 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. Background Facts

1. Respondent Drake David Dargon, Sr. (“Mr. Dargon”) is an attorney licensed to practice law in New Hampshire. Mr. Dargon was admitted to practice on November 5, 2008.
2. Mr. Dargon operated Dargon Law Firm, PLLC (herein “Dargon law firm” or “the firm”), from November 14, 2008 through September 2010.
3. On August 18, 2011, Mr. Dargon changed his status with Bar Association to “inactive military.” On April 1, 2014, Mr. Dargon changed his status to “inactive” because he was engaged in further army related training in the United States. On March 23, 2016, Mr. Dargon again changed his status to “inactive military.”
4. Mr. Dargon has not been admitted to practice law in any other jurisdiction.
5. Mr. Dargon’s current address is 134-101 Abbott Street, Wahiwaa, HI 96786. Mr. Dargon is currently stationed at Schofield Brks, Hawaii, based on orders issued on February 22, 2016.

B. Reasons for Consolidation

6. The above-captioned matters arise out of twelve grievances filed with the ADO between December 28, 2009 and November 29, 2010. Two arise out of referrals filed by former employees of the Dargon law firm. One is an ADO generated matter arising out of a client grievance concerning Mr. Dargon’s employment of a suspended Massachusetts attorney, Peter Larkowich. The remaining matters arise from grievances filed by clients of the Dargon firm (“client complaints” or “client complainants”). All

client complaints pertain to the Dargon firm's handling of loan modification matters. All client complaints arise from matters that were handled by employees of the Dargon firm, but Mr. Dargon had supervisory authority over all firm attorneys and staff.

7. The Dargon firm abruptly closed on or about September 1, 2010. Most of the complaints were filed on September 10, 2010. Clients had trouble reaching the attorneys assigned to their cases, in some cases were unhappy with the nature of the work performed, and in some cases sought refunds of the legal fees they had paid to the Dargon firm.
8. In most cases, companion matters were docketed against the attorneys who handled those individual client matters, and those attorneys have already been disciplined or the matters were dismissed.
9. Given that all grievances were filed with the ADO during an eleven-month time-frame, that many of the issues relate to the overall law firm practice model, the abrupt closure of the firm, and that a detailed financial review has been performed by Nancy M. Cavalieri, CFE BSC, the Committee granted the ADO's request for consolidation.

C. Summary of Dargon Law Firm's Practice

10. Dargon Law Firm, PLLC was created on November 14, 2008. Its principal office was in Concord.
11. A satellite office run by Donald P. Lader, Esq. was opened in Gorham and Conway.
12. Mr. Dargon was the registered agent and principal.
13. The firm's Certificate of Formation filed with the New Hampshire Secretary of State describes its primary business purpose as "attorney services to the public."
14. When Mr. Dargon opened the firm, he offered general legal services. Within months, Mr. Dargon developed a business model that included practice areas of loan modification and debt adjustment. During the nationwide housing/financial crisis which began in late 2008, the volume of Mr. Dargon's loan modification practice escalated rapidly. Mr. Dargon's practice was like many loan modification-type law firms opening in other states at that time.

15. At the peak of his business, Mr. Dargon employed several attorneys and paralegals. Mr. Dargon also utilized independent contractors as consultants to screen and engage the clients. Lawyers handled the loan modification applications after the client fee agreement with the firm was executed. It was the consultants' role to obtain clients for the firm. Kevin Hurley, to whom Mr. Dargon paid marketing fees and commissions, generally supervised the consultants.
16. As early as February 2010, Mr. Dargon also began to purchase loan modification leads and/or referrals. Leads targeted those facing foreclosure. While some leads involved property that was not located in New Hampshire, many leads pertained to New Hampshire property. Mr. Dargon also utilized advertising that included mailings, a law firm website, and television commercials.
17. Although Mr. Dargon advertised his firm throughout the United States, he and most other firm attorneys were only licensed to practice law in New Hampshire. Some were not licensed to practice law in New Hampshire, including Patricia Ellis, a New York and Massachusetts licensed attorney, and Mr. Larkowich and Sara Dimitriades, Massachusetts licensed attorneys.
18. All client complainants entered into a contract that set forth a fee-earning schedule, wherein 1/3 of the fee was earned upon intake and processing of the client, 1/3 upon receiving the requested documents necessary for the mortgage modification application, and the final 1/3 upon the firm's submission of the completed application packet to the lender. Client fees ranged from \$1,500 to \$3,000, depending on whether the client required loan modification, bankruptcy, debt settlement, or some combination of the two or three services.
19. The standard Client Flat Fee Agreement provided, in relevant part:

THE DARGON LAW FIRM PLLC (Dargon Law) and (Print Name) _____ (Client) hereby agree that Dargon Law will provide law-related services to Client on the terms set forth below. Client acknowledges that Dargon Law is only licensed to practice law in certain states, and may retain and make use of outside affiliate attorneys licensed in Client's jurisdiction when necessary, at no extra charge to Client.

CONDITIONS. This agreement will not take effect, and neither Dargon Law nor its attorney affiliates will have any obligation to provide any service, until Client returns a

signed copy of this Agreement and pays the requisite fee.

SCOPE OF SERVICES. Client is hiring Dargon Law to represent Client in one or more of the following matters:

- Client's request for negotiation of a loan modification on Client's residential real property.
- Client's request to settle debts with creditors. An attorney will advise Client what legal steps need to be taken to settle, reduce or discharge debts.
- Other, please specify:

CLIENT-ATTORNEY RESPONSIBILITIES. Client agrees to promptly provide all information and documentation requested by Dargon Law, to fully disclose all relevant information to Dargon Law, to be truthful with Dargon Law, to cooperate fully with Dargon Law in all matters related to the preparation and presentation of Client's loan modification request, to keep Dargon Law informed of any information or developments which may come to Client's attention, to abide by this Agreement, and to keep Dargon Law advised of Client's address, telephone number and whereabouts. Client acknowledges that Dargon Law, where necessary, will retain and act through affiliate attorney(s) licensed to practice law in the jurisdiction of the Client, Client agrees that Client owes the same responsibilities to Dargon Law's affiliates as it owes to Dargon Law. Dargon Law will provide legal and/or law-related services reasonably required to fulfill Client's goals. Dargon Law will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. No guarantees have been, nor will be made as to the success of Dargon Law's endeavors on behalf of Client. It is impossible to guarantee success in any legal or law-related venture, and Dargon Law makes no promises regarding voluntary loan modification, interest rates, bankruptcy discharge, the settlement of debts, or the ability of Client to retain a home in the face of foreclosure. A good faith attempt is not a guarantee.

LEGAL FEES. Dargon Law will be paid the sum of ___ for services rendered under this agreement. This is a fixed, flat-fee payment, which must be paid in advance by Client, unless Client is specifically authorized to make planned payments to Dargon Law later in this Agreement. This fee

includes the intake and consultation, processing Client's information, preparing any loan modification request or debt settlement, the retainer of in-house counsel or affiliate attorney(s) in the jurisdiction of the Client, and other services necessary in the view of Dargon Law, and is based upon the average amount of hours and work that Dargon Law believes that it will take to review, prepare, and prosecute Client's case. This fee does not include court filing fees, credit counseling fees, or other fees due to organizations other than Dargon Law.

Client agrees that Dargon Law may reasonably split Client's fee with affiliate attorney(s) to perform legal work in jurisdictions in which Dargon Law is not licensed to practice law.

For Loan Modification Clients: Using the information provided by Client, Dargon Law will prepare and submit a loan modification request to Client's Mortgagee (Lender) on behalf of Client and if accepted by Lender, negotiate reasonable terms of modification. Dargon Law and Client must negotiate a separate agreement if Client and Dargon Law agree that Dargon Law will litigate any issue for Client with Lender. **Please note that Dargon Law is not applying state law to the facts of Client's case, and is only representing Client in a negotiation capacity with the lender. Dargon Law will not enter an appearance or represent the Client in any mediation, foreclosure, or other court proceeding. The loan modification representation will conclude in the event that:**

1. The Lender denies the modification of client's primary mortgage loan due to the fact that no modification programs are available or applicable to the client as verified by Dargon Law. Given such an occurrence, and in the event that the Client chooses to file Chapter 7 bankruptcy utilizing the services of Dargon Law, \$995 of the original loan modification fee will be applied against the attorney's bankruptcy fee.
2. The Lender and client have agreed to a particular loan modification program such that the client is accepted into the trial period of that program.
3. However, if the client has complied with all of the terms of the trial period agreement, and a permanent

modification is not offered by the Lender, Dargon Law will make reasonable, good faith efforts to negotiate an alternative medication with the Lender. Representation will then conclude. . . .

DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this Agreement and nothing in Dargon Law's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Dargon Law makes no such promises or guarantees. Dargon Law's comments about the outcome of the matter are expressions of opinion only. . . .

FEE SCHEDULE. Client has the right to fire Dargon Law or its affiliate attorney(s) at any point and have the unearned portion of the Client's flat fee returned in a commercially reasonable period of time. However, as Dargon Law or its affiliate attorney(s) perform work on Client's case, Dargon Law earns that fee according the following schedule:

<u>Work Performed (Bankruptcy)</u>	<u>Amount of Fee Earned</u>
Client Intake and Processing	1/3
Analysis of Debt	1/3
Filing of Bankruptcy	1/3

<u>Work Performed (Loan Modification)</u>	<u>Amount of Fee Earned</u>
Client Intake and Processing	1/3
Analysis of Debt	1/3
Submission of Lender of Proposal	1/3

<u>Work Performed (Debt Settlement)</u>	<u>Amount of Fee Earned</u>
Client Intake and Processing	1/3
Analysis of Client's Documents	1/3
Submission to Creditor(s) of Proposal	1/3

PAYMENT SCHEDULE. . . .

REFUNDS. Client is not entitled to a refund for any portion of Client's retainer that has been earned by Dargon Law. Client IS entitled to a refund of any unearned portion of Client's retainer. Should Client demand a refund of the unearned portion of the retainer, such a refund will be made by Dargon Law within a commercially reasonable amount of time, not to exceed 30 days from the demand. Demands for refunds must be made in writing to Dargon Law.

DEFAULT. Client is responsible for tendering payment to Dargon Law according to the above schedule. Time is of the

essence for payments. Should Client fail to make timely payments, or otherwise be unwilling to continue making payments, Dargon Law may hold Client in default and withdraw from representation of Client. . . .

20. Loan modification clients were also required to complete a Client Authorization for Credit Report and Attorney Services. The authorization “grants the Dargon Law Firm PLLC and any of its representatives authorization to discuss, negotiate, and accept or reject negotiations for all aspects of the below client’s [loans and debts].”
21. The Secure and Fair Enforcement Mortgage Licensing Act of 2008 (“SAFE Act”) was enacted into federal law on July 30, 2008, as part of the Housing and Economic Recovery Act of 2008. The law directed States to adopt licensing and registration requirements for loan originators that met the minimum standards specified in the SAFE Act, in lieu of HUD establishing and maintaining a licensing system for loan originators.
22. Thereafter, in 2009, New Hampshire enacted RSA 397-A. Mr. Dargon was unaware of the passage of these laws.
23. On April 1, 2010, the State of New Hampshire Banking Department issued an Order to Show Cause and Cease and Desist Order against Dargon Law Firm and Daniel Paul Dargon, Esq., commencing an adjudicative proceeding under the provisions of RSA 397-A and 541-A. *In re the Matter of: State of New Hampshire Banking Department, Petitioner and Dargon Law Firm P.L.L.C (a/k/a www.dargonlaw.com), and Daniel Paul Dargon, Esq., Case No. 10-004.* (“Banking matter”)
24. On or about September 1, 2010, the law firm abruptly ceased operations. By that date, almost all of Mr. Dargon’s employees and attorneys had either left the firm or were laid off. The firm’s telephone numbers were either disconnected, or went unanswered without a message machine or voicemail.
25. In September 2010, Mr. Dargon began to utilize an address of Daniel Dargon, Lader Legal Services, 6 Jonathan Drive, Concord, NH 03303.
26. As part of the winding down of the firm, Mr. Dargon also negotiated a contract with Mr. Lader for his firm to offer legal services to the Dargon firm’s clients. Mr. Lader sent letters dated September 10, 2010 to all active clients who were “fully-paid,” offering them representation at no additional charge and offering them the opportunity to transfer their

contract to his office. An addendum to the contract sent to clients also provided, in relevant part:

If the Dargon Law Firm PLLC contract was for a combination Home Loan Modification and Bankruptcy outside the state of New Hampshire, then Lader Legal Services PLLC will only provide Home Loan Modification services and a Bankruptcy analysis as described in paragraph 2 (1) above. Bankruptcy services will not be provided and the client will be responsible for obtaining their own local Bankruptcy counsel should a Bankruptcy be desired. Any fees paid by the client under the Dargon Law Firm PLLC contract in excess of \$3000.00 will be refunded to the client.

Mr. Lader set a deadline in September for clients to respond to the offer to transfer to his firm.

27. Clients who were not fully-paid were requested to pay the rest of their fee and to transfer upon payment. Those clients who refused to pay, refused to transfer, or who did not respond by the deadline, remained with the Dargon Law Firm.
28. On September 24, 2010, Mr. Lader wrote again to some client complainants, stating:

You were provided a notice regarding the winding down of Dargon Law Firm PLLC. You were also provided a new contract and authorization from either The Law Office or Donald L. Lader, Jr. or it's [sic] successor, Lader Legal Services PLLC. You were informed that if you desired continued representation, a new contract had to be in place by either September 17, 2010 or September 24, 2010 depending on the date of your notification.

As of this date, you have failed to return a contract to continue your case. This is a formal notice that you[r] case is being closed by Lader Legal Services and returned to Dargon Law Firm PLLC for disposition.

29. On October 15, 2010 ("October closing letter"), Mr. Dargon wrote to most of the client complainants, stating:

As you may know, the Dargon Law Firm PLLC is

unfortunately winding down, and is now out of business. No attorneys or paralegals are left in the firm to actively represent mortgage modification clients, and thus we cannot continue any further representation. This is due to primarily to the New Hampshire Banking Department's interpretation of RSA 371-A. If you are a bankruptcy client, you have already been contacted separately.

The Department holds that attorneys may not assist their clients with mortgage modification efforts without special licensing from the Department, and had ordered attorneys to stop helping their clients. The New Hampshire Bar and the Real Estate Section of the Bar oppose the Department, but the law on this matter will not be clear for some time. This had led to the firm being unable to operate or to continue paying attorneys and paralegals to represent clients.

According to our records, we provided all clients with the opportunity to transfer their representation to Lader Legal Services PLLC at no extra charge in August or September, 2010. The cut-off date for accepting that transfer has now passed, and your file is now being closed. If you believe that this was in error, please contact Attorney Lader directly at 603-466-5820.

All former clients are entitled to their client files. If you would like your client file sent to you, please make a request in writing and send it to: Dargon Law Firm, P.O. Box 4131, Concord, NH 03302. No refunds will be given for fees earned by the firm. Please see your firm Agreement for details.

If you were a loan modification client, please be sure to follow up with your lender as soon as possible, make any trial or regular payments due in the event of a modification, and consult with a local bankruptcy attorney if necessary. It has been a pleasure to serve the public these last few years.

30. At least one client complainant stated that their letter was post-marked October 26, 2010.

Banking Department Matter and Stay Due to Mr. Dargon's Military Service

31. An Amended Order to Show Cause Notice of Order was issued on October 21, 2010 adding, as respondents in the Banking matter, several Dargon firm employees and attorneys.
32. An adjudicative hearing pertaining to the Dargon law firm and Mr. Dargon was held on December 2, 3, and 6, 2010. Mr. Dargon represented himself.
33. After the hearing, the Banking Department entered into consent orders with the other law firm employees and attorneys, with the exception of Mr. Dargon.
34. The Presiding Officer issued an adjudicative hearing decision on February 14, 2011. In relevant part, claims were granted with respect to Mr. Dargon: 1) acting as a loan originator who was not exempt from licensure under RSA 397-A; 2) collecting advance fees, 3) entering into best efforts contracts; 4) doing actual work as an unlicensed loan originator; 5) violating the Gramm-Leach-Bliley Act (pertaining to how files were kept within the firm); and 6) that the activities of Mr. Larkowich and Ms. Ellis violated RSA 399-D and that Mr. Dargon knew or should have known that they were not licensed New Hampshire attorneys. All other claims were denied.
35. A final order was issued on June 30, 2011, wherein the Presiding Officer found Mr. Dargon and the law firm responsible for \$147,196.99 in restitution to New Hampshire clients of the firm. The firm was also ordered to pay \$129,500.00 in administrative fines. In addition to fines for acting as an unlicensed loan originator, the Presiding Officer found that Mr. Dargon and his firm had violated RSA 397-A14, IV (m) for collecting advance fees for loan modifications. The Final Order noted that the respondents had been unaware of the laws they violated.
36. On August 1, 2011, Mr. Dargon filed a timely Motion for Rehearing. On that same date, the Petitioner filed an Objection to Respondent's Motion for Rehearing and filed additional information regarding restitution.
37. On August 30, 2011, the Presiding Officer ordered that the Final Order, issued June 30, 2011, be suspended pending further consideration of

the Parties' outstanding motions.

38. On or about October 24, 2011, Mr. Dargon left New Hampshire for basic training with the United States Army.
39. On November 16, 2012, the Presiding Officer issued an order regarding the Status of Proceeding in the Banking matter. In relevant part, the status of proceeding was described as follows:

Mr. Dargon informed the Department and the Presiding Officer on October 24, 2011 that he was leaving for basic training with the United States Army. Mr. Dargon stated in writing on July 11, 2012 that he is on active duty with the United States Army. In the same correspondence, Mr. Dargon declined to waive the Servicemembers Civil Relief Act (the "Act"). Counsel for Mr. Dargon confirmed in writing on November 6, 2012 that Mr. Dargon remains on active duty. Under certain circumstances, the Act limits the ability of a tribunal or court to take action while a party is on active duty with the military.

Whether the Act limits the Presiding Officer's ability in this case is a question not yet decided.

Neither Dargon Law Firm nor Mr. Dargon are engaged in any activities regarding N.H. RSA 397-A. Moreover, there is no evidence that either of them is active in any area under the law.

Based on evidence submitted in this case, Mr. Dargon and his firm have no assets to satisfy the award contained in the Final Order. . . .

40. The Banking Department has not issued any further orders. The parties agree that this Stipulation resolves the matters pending before the ADO only and should not be construed in any way to be contrary to future findings and/or a resolution of the Banking Department matter.

Mr. Dargon's Military Service, Procedural History and ADO Audit

41. Since Mr. Dargon left New Hampshire for service in the Army, he has not returned to New Hampshire. He also has not practiced law.
42. Based on several of the complaints filed against Mr. Dargon, on December 10, 2010, the ADO filed an Expedited Petition for Production

of Records, Audit of Trust Accounts and Operating Accounts and Appointment of Auditor. The petition was granted.

43. Given Mr. Dargon's status with the Bar Association, his unavailability, and the status of the Banking Department's matter, the audit was placed on hold. The parties began settlement negotiations in the fall of 2015. After Mr. Dargon retained counsel in October 2015, the ADO removed the investigative hold on this matter in December 2015.
44. On February 3, 2016, the ADO retained Ms. Cavalieri to conduct a financial review of Mr. Dargon's and the law firm's trust accounting procedures. Her report was issued on June 2, 2016.

D. Facts Relating to Financial Report Issued

45. Mr. Dargon admits to all material facts the financial report.
46. Ms. Cavalieri reviewed firm financial records from November 14, 2008 through November 2015. The review included a Bank of America IOLTA Trust account utilized by the firm from November 2008 through October 2009 (BOA Trust 2689) and two Citizens Bank IOLTA Trust accounts (Citizens Trust 3116 and Citizens Trust 3124) utilized by the firm from May 2009 until the firm closed in 2010. In addition, bank records for the firm's operating accounts and other financial records were reviewed.
47. The report demonstrates:
 - (a) From December 23, 2009 through January 4, 2010, Citizens Trust 3116 was overdrawn with a negative balance. The issue appears to have primarily resulted from thirty individual credit card transactions that were processed on December 23, 2009. Deposits on December 24, 2009 and January 5, 2010 brought the account back to a positive balance.
 - (b) A negative balance of -\$1,054.11 in Citizens Trust 3116 on February 12, 2010.
 - (c) A negative balance of -\$58.33 in Citizens Trust 3116 on September 7, 2010.
 - (d) Citizens Trust 3124 was overdrawn in the amount of -\$888.10 on December 31, 2009 resulting from a transfer to the operating account of \$3,080 and a check issued in the amount of \$892.78 payable to a firm employee.
 - (e) A client, Bertha Wilson, was paid \$8,500 for a settlement from a firm operating account when the payment should have come from the trust

account, resulting in commingling of client funds for a minimal time, *i.e.*, less than a day.

- (f) A lack of monthly reconciliations for BOA Trust 2689 for March and April 2009, or a failure to correctly perform the reconciliations.
 - (g) A lack of monthly reconciliations for July-October 2009 for Citizens Trust 3116.
 - (h) Lack of identification for transfers from client trust to operating accounts on March 13, 2009 and March 30, 2009.
 - (i) Mr. Dargon signed a Supreme Court Annual Trust Accounting Compliance Certificate for the period June 1, 2008 through May 31, 2009, wherein he failed to list BOA Trust 2689, a client trust account that was open from November 2008 until October 2009.
 - (j) Clerical issues including:
 - i. A client ledger listing a client payment as deposited on the date it was received, rather than on the date it was actually deposited at the bank;
 - ii. A deposit stamp used for Citizens Trust 3116 stated that the account was an operating account, when it was actually a client trust account.
48. The report also addressed transactions relating to the client complaints that were filed with the ADO. The report demonstrated that:
- (a) In all ten cases, the clients' payments were properly deposited into Citizens Trust 3116 upon receipt.
 - (b) Ms. Cavalieri did not have enough information available to trace individual client transfers from the Citizens Trust 3116 to the firm's operating accounts.
 - (c) There were unidentified transfers of relatively large sums from Citizens Trust 3116 to operating accounts, *i.e.*, on April 23, 2010, a \$16,182 transfer was made to Citizens Operating 3132 and a \$10,000 transfer was made to Citizens Operating 3140.
 - (d) In two instances, client refunds were made from Citizens Trust 3116 to clients as follows:
 - i. Clients Kenny and Patricia Roberts received a \$500 refund on June 1, 2010 from the client trust account.
 - ii. Client Darlene Raymond received a \$510 refund on May 7, 2010 from the client trust account. [Report, pp. 10-11]
 - (e) In two instances, duplicate payments were withdrawn from the client's personal bank account and deposited into the firm client trust account. In both matters, the refunds were made from a firm operating account, as follows:

- i. Darlene Raymond had a duplicate payment of \$3,000 withdrawn from her personal bank account and deposited into Citizens Trust 3116 on April 19, 2010. She received a \$3,000 refund on April 30, 2010 from Citizens Operating 3132.
 - ii. Client Brenda McKelvey had a \$320 duplicate payment withdrawn from her personal checking account and deposited into Citizens Trust 3116 on April 19, 2010. A refund payment of \$320 was made to Ms. McKelvey from Citizen Operating 3132 on April 30, 2010.
49. In addition, the report identified evidence of an embezzlement scheme that the firm's former bookkeeper, Ms. Brittany Boggs, perpetrated against the firm. Funds totaling approximately \$29,643.91 were stolen from two of the firm's operating accounts. Checks totaling \$10,138.37 were stolen from Citizens Operating 3132. Checks totaling \$19,505.54 were stolen from Citizens Operating 3140.
50. The report also identified payments from three law firm operating accounts, totaling \$156,817.08, that were made to Mr. Kevin D. Hurley, and/or his company, Legal Consultants of America. Several of the payments were designated as commissions.

E. Facts Arising from Individual Complaints

51. The following is a brief summary of the facts regarding the individual complaints that support the Rule violations cited herein.

Dargon, Daniel P. advs. Megan Douglass, #09-064

52. On December 21, 2009, Megan Douglass, Esq., a former employee of the Dargon firm, filed a grievance/referral with the ADO. Ms. Douglass' complaint focused on her concerns with the business practices of the firm. Ms. Douglass worked as an attorney with the firm from August 2009 until she resigned on November 13, 2009.
53. Ms. Douglass advised that Mr. Dargon shared legal fees with non-lawyers.
54. By the summer of 2009, Mr. Kevin Hurley, a non-lawyer, was identified as "Senior Vice President of Marketing" for the firm, although he was an independent contractor with the firm. Between May 2009 and May 2010, Mr. Hurley or his company was paid approximately \$156,817.08.

Several of the payments were designated as commissions.

Dargon, Daniel P. advs. Attorney Discipline Office, #10-025

55. On May 18, 2010, Ms. Dimitriades, a former employee of the Dargon Law Firm, filed a referral with the ADO. Ms. Dimitriades was employed from February 1, 2010 until she resigned on May 17, 2010. She alleged that the Dargon Law Firm and its bookkeeper had engaged in the mismanagement of client funds. The ADO docketed the matter on May 20, 2010.
56. From late 2009 through April 2010, Ms. Boggs was the firm's bookkeeper.
57. In late April 2010, Assistant Attorney General Karen Gorham, who was prosecuting the Banking matter, informed Mr. Dargon that Ms. Boggs was a convicted felon who was on parole for theft and embezzlement.
58. A month prior, Mr. Dargon had found an article describing the charges against her and her plea bargain. Mr. Dargon confronted Ms. Boggs but she denied that she was the same Brittany Boggs. Mr. Dargon made no further inquiry.
59. After hearing from Assistant Attorney General Gorham, Mr. Dargon confronted Ms. Boggs again, and although she denied the allegation at first, she eventually admitted that she was the same Brittany Boggs that was a convicted felon.
60. Although Ms. Boggs initially denied stealing from the Dargon Law Firm, Mr. Dargon terminated Ms. Boggs' employment in late April 2010.
61. Ms. Stephanie Vangjel, a paralegal in the Dargon law firm, took over the role of bookkeeper. She discovered that the firm records were "a mess . . ." Mr. Justin Conrad (Mr. Conrad), an accountant pursuing his CPA at the time, agreed to audit the firm's financial records.
62. Mr. Conrad concluded that beginning in December 2009 and continuing through March, 2010, Ms. Boggs forged 30-40 checks from the law firm operating account and paid herself \$30,000. She also purchased goods and services with the law firm debit card, tied to the operating account, that totaled less than \$10,000.

63. When Mr. Dargon confronted Ms. Boggs about the theft and fraud sometime in May 2010, Ms. Boggs begged Mr. Dargon not to report her to her parole officer/authorities. Mr. Dargon agreed that he would not report her if she returned all of the stolen funds within 30 days.
64. Plans for repayment were worked out with Ms. Boggs' family.
65. Mr. Dargon reported that the firm had been out of trust on his 2010 Trust Account Compliance Certificate.
66. Ms. Cavellieri's review corroborated Mr. Dargon's description of the embezzlement to the ADO.

Dargon, Daniel P. advs. Kenny W. and Patricia L. Roberts, #10-036

67. In March 2010, the Roberts retained the Dargon Law Firm to submit a loan modification request to their lender. The Roberts live in North Carolina.
68. The Roberts filed a grievance that was received by the ADO on July 6, 2010. The matter was docketed in July 2010.
69. Erik J. Simensen, Esq. was initially assigned to the file, followed by Joseph R. Russell, Esq. Both attorneys are only licensed in New Hampshire and worked on the Roberts' loan modification matter. Like other clients, the Roberts signed a Client Fee Agreement and agreed to pay \$2,500.00 in five installments.
70. Mr. Simensen and Mr. Russell, along with paralegals, appeared to have been diligent in handling the Roberts' matter.
71. The Roberts paid \$1,500.00 to the firm before being told that a "modification" of their mortgage loan would yield, at best, minimal savings. No loan modification was ever completed.
72. Ms. Michelle Preve, Office Manager, wrote to the Roberts on June 1, 2010, outlining in detail the work that had been performed on the file between March 15, 2010 and May 11, 2010. Ms. Preve enclosed a refund check in the amount of \$500.00 "due to your specific circumstances." The \$500 refund was paid from Citizens Trust Account #3116.
73. This is the only client complaint filed before the firm closed.

Dargon, Daniel P. advs. Karen Minnifield, #10-050

74. Ms. Karen Minnifield filed a grievance with the ADO on September 20, 2010. That matter was docketed on September 20, 2010.
75. On July 23, 2010, Ms. Minnifield paid \$1,000.00 for the Dargon Law Firm to negotiate a loan modification.
76. Ms. Minnifield resides in Harrisburg, Pennsylvania. Her matter was assigned to Mr. Larkowich. Little in the way of substantive work was performed on her file by the time the firm closed. After the firm closed, Mr. Larkowich and one of the Dargon firm's consultants, Mr. Charles Hart, offered to transfer her case to their new company, NewEnglandForeclosureRescue.Com LLC (NEFR), a limited liability company created in New Hampshire on August 30, 2010. Ms. Minnifield did not agree to the transfer.
77. Mr. Dargon did not contact Ms. Minnifield to advise that his firm was closing or take steps to protect her interests.

Dargon, Daniel P. adv. Darlene P. Raymond, #10-051

78. Ms. Darlene P. Raymond (Ms. Raymond) submitted a grievance to the ADO on September 23, 2010. The matter was docketed on September 27, 2010. Ms. Raymond hired the Dargon Law Firm to represent her in March 2010. Ms. Raymond resides in Rhode Island. Her matter was assigned to Patricia Ellis, Esq., who was not licensed to practice in Rhode Island. Ms. Ellis handled the matter in a reasonably diligent manner.
79. Ms. Raymond entered into the Client Fee Agreement. Ms. Raymond authorized a \$3,000.00 debit from her personal checking account to the firm on March 30, 2010. The firm processed the payment on March 31, 2010, and deposited it into Citizens Bank IOLTA account #3116.
80. On April 20, 2010, Ms. Raymond's checking account was debited a second time in the amount of \$3,000.00. That payment was also deposited into the Citizens Bank IOLTA account #3116.
81. The law firm refunded the duplicate \$3,000.00 withdrawal from its Citizens Bank operating account #3132.

82. On April 26, 2010, Mr. Dargon wrote to Ms. Raymond stating, in relevant part:

Recently a vendor of ours named Green, Inc., a check processing service, overcharged your account for funds made payable to the Dargon Law Firm PLLC. Please be assured that our firm did not authorize this deduction from your account. We are unsure why Green, Inc. overcharged a number of our clients, but we terminated our relationship with them as soon as we discovered what they had done. We have now moved to a bank check/money order payment system to avoid any future problems. . . .

83. Ms. Raymond was refunded an additional \$510.00 from Citizens Bank IOLTA #3116 on May 7, 2010.
84. On or about September 8, 2010, Ms. Raymond called the Dargon Law Firm and discovered the phone lines had been disconnected.
85. On September 10, 2010, Mr. Lader sent a letter to Ms. Raymond offering to transfer her matter to Lader Legal Services, PLLC. The letter concluded "Please do not delay in making your decision. We need to have the new authorization form sent to your mortgage company and processed before we can continue on your case. If we do not have a response by September 17, then it will be determined that you do not wish to transfer to this firm and your case will be removed from out [sic] active client list." Included with this letter were enclosures including a Debt Services Contract, Addendum to Contract, Client Authorization for Credit Report and Attorney Services.
86. On September 15, 2010, Ms. Amber Meissner of Lader Legal Services emailed Ms. Raymond regarding a new client agreement.
87. On September 24, 2010, Mr. Lader wrote to Ms. Raymond advising:

You were provided a notice regarding the winding down of Dargon Law Firm PLLC. You were also provided a new contract and authorization form from either The Law Office of Donald L. Lader or it's (sic) successor, Lader Legal Services PLLC. . . . As of this date, you have failed to return a contract to continue your case. This is a formal notice that your case is being closed by Lader Legal Services and returned to Dargon Law Firm PLLC for disposition.

88. On October 15, 2010, Mr. Dargon sent Ms. Raymond the standard October closing letter.

**Dargon, Daniel P. advs. Elizabeth Chicoine and Gloria Torres-Landa,
#10-054; and
Dargon, Daniel P. advs. Attorney Discipline Office, #10-056**

89. On September 25, 2010, Ms. Elizabeth Chicoine and Ms. Gloria Torres-Landa filed a consumer complaint form with a signed oath form with the ADO. The matter was docketed on October 7, 2010.¹ Both Ms. Chicoine and Ms. Torres-Landa were residents of Washington.
90. Also on October 7, 2010, the ADO docketed a second matter arising from the materials provided by Ms. Chicoine and Ms. Torres-Landa in that Mr. Larkowich had represented that he was a lawyer at the Dargon Law Firm. Mr. Larkowich was not licensed in New Hampshire and had been administratively suspended from practice in Massachusetts. That matter was docketed as #10-056.
91. Mr. Dargon's employees, including Mr. Larkowich and Ms. Lacie Kinsbury, over whom Mr. Dargon had supervisory authority, handled Ms. Chicoine and Ms. Torres-Landa's matters.
92. Mr. Larkowich had been a member of the Massachusetts bar since June, 1974. In July 2005, Mr. Larkowich was suspended from the practice of law in Massachusetts for failure to comply with Massachusetts S.J.C. Rule 4:02 (1) (non-payment of registration fee). He had not been reinstated at the time he worked for the law firm. Mr. Larkowich was not admitted to the practice of law in New Hampshire when he worked at the law firm in 2010.
93. When accessed on April 18, 2010, the Dargon Law Firm website indicated that "Attorney Peter Larkowich" had been with the firm since January 2010, and that Mr. Larkowich "is licensed to practice law in the

¹ A companion matter was brought against Mr. Larkowich arising out of his representation of these Dargon firm clients and clients at NEFR. See *Larkowich, Peter advs. Attorney Discipline Office, #10-055* and *Larkowich, Peter advs. Brenda L. McKelvey #10-061* (May 15, 2012). (Mr. Larkowich was disciplined with a public censure for violations of Rules 1.16(d); Declining or Terminating Representation, 5.5(a) and 5.5(b)(1); Unauthorized Practice of Law; Multijurisdictional Practice of Law, 7.1(a); Communications Concerning a Lawyer's Services, 7.5(c); Firm Name and Letterheads, 8.1(b); Bar Admission and Disciplinary Matters, and 8.4(a); Misconduct. The Rule 8.1(b) violation was specific to Mr. Larkowich and does not apply to Mr. Dargon.

Commonwealth of Massachusetts in both the state and federal courts.”

94. On or about May 3, 2010, Ms. Chicoine contacted Dargon Law Firm seeking a possible bankruptcy and loan modification.
95. On May 12, 2010, Mr. Larkowich wrote to Ms. Chicoine and Ms. Torres-Landa confirming that their matter had been assigned to “Attorney Peter Larkowich to commence the loan modification process.” He requested that the clients assemble the necessary documents and complete several forms for submission to the lender. Mr. Larkowich signed the letter as “Peter Larkowich, Esq.”
96. Ms. Chicoine and Ms. Torres-Landa signed the standard fee agreement letter on May 14, 2010. The agreement called for a payment of \$2,700.00. The payment schedule provided for three installments of \$900.00 each.
97. On June 17, 2010, Mr. Larkowich submitted a request for a loan modification to the lender. He and the firm paralegals worked in a reasonably diligent manner.
98. On September 8, 2010, Ms. Chicoine called the Dargon Law Firm to inquire as to the status of her case. The telephone line had been disconnected.
99. In the fall of 2010, Mr. Larkowich was working at NEFR. Mr. Larkowich did not take Ms. Chicoine’s and Ms. Torres-Landa’s matter with him to the new company.
100. As with other clients, on September 10, 2010, Mr. Lader wrote to Ms. Chicoine and Ms. Torres-Landa and offered them the opportunity to transfer their contract to his office. The Addendum to Contract, that would have been applicable to these clients, provided:

If the Dargon Law Firm PLLC contract was for a combination Home Loan Modification and Bankruptcy outside the state of New Hampshire, then Lader Legal Services PLLC will only provide Home Loan Modification services and a Bankruptcy analysis as described in paragraph 2 (1) above. Bankruptcy services will not be provided and the client will be responsible for obtaining their own local Bankruptcy counsel should a Bankruptcy be desired. Any fees paid by the client under the Dargon Law Firm PLLC contract in excess of

\$3000.00 will be refunded to the client.

101. The clients did not accept Mr. Lader's offer and after the Dargon firm closed, Ms. Chicoine followed up with her lender herself. Per Ms. Chicoine's handwritten notes, she learned the loan modification was declined on or about October 20, 2010.
102. On October 15, 2010, Mr. Dargon sent Ms. Chicoine his October closing letter.
103. Ms. Chicoine requested the return of her file on November 2, 2010 and December 1, 2010.
104. Ms. Chicoine's and Ms. Torres-Landa's lender offered them a loan modification on November 5, 2010.
105. The ADO returned a copy of Ms. Chicoine's and Ms. Torres-Landa's file to them on December 17, 2010. As of that date, Mr. Dargon had not returned the client file despite their requests.
106. In an October 10, 2010 reply letter to the ADO in the #10-056 matter, Mr. Dargon advised that Mr. Larkowich did not know he was administratively suspended until the Attorney General's Office advised him of such in the summer of 2010. After learning of Mr. Larkowich's suspension he required Mr. Larkowich to tell clients that he was a paralegal.

Daniel Dargon P. advs. Arthur L. Normand, #10-059

107. On October 13, 2010, the ADO received a grievance from Mr. Arthur Normand and his wife, Donna. The matter was docketed on October 20, 2010.
108. In early 2010, the Normands hired the Dargon Law Firm to help them obtain a loan modification on their residence in Massachusetts.
109. The Normands, like other clients, signed the client fee agreement. On February 17, 2010, an electronic payment for \$2,300.00 issued from the Normands' checking account to the Dargon Law Firm.
110. Dargon firm attorneys submitted a loan modification request on the Normand's behalf.

111. On August 16, 2010, the Normand's lender sent them a Notice of Intention to Foreclose on their property.
112. The Normands received Mr. Lader's September 24, 2010 letter advising them he was closing the matter and returning it to Mr. Dargon's firm for disposition.
113. The ADO returned a copy of the Normand file to the clients on January 13, 2010.

Dargon, Daniel P. advs. Brenda L. McKelvey, #10-060

114. On October 18, 2010, Ms. McKelvey filed a Consumer Complaint Form regarding the Dargon Law Firm with the New Hampshire Office of the Attorney General, Consumer Protection Bureau. The Consumer Protection Bureau forwarded Ms. McKelvey's complaint to the ADO. The ADO docketed the complaint on November 2, 2010.
115. In March of 2010, Ms. McKelvey sought out Dargon law firm for legal representation in a home mortgage loan modification. She and her husband, Coy McKelvey, live in Illinois. Their matter was assigned to Mr. Larkowich, who was not licensed to practice law in Illinois.
116. The McKelveys signed the Client Fee Agreement on March 26, 2010.
117. Ms. McKelvey made two payments of \$320.00 each on April 2, 2010. The payments were made to Dargon Law Firm, PLLC, by e-check using an electronic payment service.
118. On April 19, 2010, Ms. McKelvey had a \$320 duplicate payment withdrawn from her personal checking account and deposited into Citizens Trust #3116. On April 26, 2010, Mr. Dargon sent Ms. McKelvey a letter advising of Green Inc.'s processing error. On April 30, 2010, a refund payment of \$320 was made to Ms. McKelvey from Citizens Operating #3132.
119. On May 10, 2010, Mr. Larkowich submitted the McKelveys' request for a loan modification.
120. A copy of this letter was sent to the McKelveys.
121. Ms. McKelvey called the Dargon Law Firm routinely to inquire as to the status of her loan modification. She received reassurances that the

matter was progressing, but she never heard that the modification was complete.

122. In September 2010, Dargon Law Firm ceased operations.
123. On September 24, 2010, after hearing nothing about the progress of her case, Ms. McKelvey called Mr. Larkowich. He did not tell Ms. McKelvey that the Dargon law firm had ceased operations.
124. The next week, Ms. McKelvey called Mr. Larkowich again, but the phone number she had been given was no longer in service.
125. Mr. Larkowich never discussed with Ms. McKelvey or corresponded with her regarding any action she could take to secure new counsel.
126. Mr. Larkowich did not take the McKelvey file to his new firm. The McKelvey file was transferred to Mr. Lader's firm but the McKelveys did not sign a contract to continue with that firm. At one point, Ms. McKelvey was able to reach a former consultant of the firm, Charles Hart, who emailed her on October 8, 2010 stating: "Please continue to contact Dan Dargon and call every hour if you have to. His voicemail system gives him the ability to listen to your message without him picking up."
127. She did not hear further from Mr. Dargon. Mr. Dargon noted in a response letter to the ADO that her file was closed after she did not accept the Lader contract because the legal fee was contractually earned.

Dargon, Daniel P. advs. Michael F. Baumgartner, #10-067

128. On November 16, 2010, Mr. Michael Baumgartner filed a grievance with the ADO. The matter was docketed on November 22, 2010. Mr. Baumgartner hired the Dargon Law Firm to assist him with a loan modification for his home in Ohio. He entered into the standard client fee agreement, agreeing to pay \$2,500. Between May 5 and August 11, 2010, he paid four installment payments totaling \$2,000. A fifth installment was due in September 2010.
129. Mr. Simensen and Mr. Russell, neither of whom were licensed in Ohio, handled Mr. Baumgartner's matter. A request for a loan modification was filed on May 27, 2010. Mr. Baumgartner was unable to reach anyone at the Dargon firm after it closed and was unable to reach Mr. Lader's firm. He received standard letters from Mr. Lader about

transferring his file to Mr. Lader's firm. However, Mr. Lader was only offering services for bankruptcies in New Hampshire.

130. Mr. Dargon sent Mr. Baumgartner the October closing letter, after the firm was already closed.

Dargon, Daniel P. advs. Terry and Gloria Mikkelsen, #10-069

131. Terry and Gloria Mikkelsen filed a grievance with the ADO on November 23, 2010. The matter was docketed on November 29, 2010. Like other client complainants, they sought a loan modification and signed the client fee agreement. The Mikkelsens resided in Rhode Island. Ms. Dimitriades and Mr. Lader filed and followed up on the Mikkelsen's loan modification request. Neither attorney was licensed to practice law in Rhode Island.
132. The Mikkelsens were offered an opportunity to transfer to the Lader firm but did not. They worked with their lender and obtained a loan modification based on the application that Ms. Dimitriades submitted.
133. The Mikkelsens received Mr. Dargon's October closing letter after the firm was closed.

Dargon, Daniel P. advs. Darlene L. Kohanski, #10-080

134. Ms. Darlene Kohanski filed her grievance with the ADO on November 15, 2010. The matter was docketed on December 21, 2010. Ms. Kohanski and her husband, Karl, residents of New Hampshire, hired the Dargon firm on November 13, 2010 for assistance with a possible loan modification and credit card debt. They signed the client fee agreement and paid the firm \$2,500. Their matter was assigned to Mr. Lader, then Ms. Dimitriades and then Mr. Larkowich. Ms. Dimitriades did most of the work on their case including negotiating credit card debt and halting an impending foreclosure. When an initial loan modification request was denied she followed up with another program.
135. The Kohanskis received Mr. Dargon's October 15, 2010 closing letter after the firm had closed and, thereafter, negotiated a loan modification themselves.

Dargon, Daniel P. advs. Janice C. Weatherspoon-Williams, #11-029

136. The ADO received Ms. Janice Weatherspoon-Williams's grievance on March 4, 2011. The matter was docketed on March 7, 2011.
137. Ms. Weatherspoon-Williams and her husband, residents of Waycross, Georgia, signed the client fee agreement on May 3, 2010 and made a first payment to the firm in the amount of \$590.00 on June 30, 2010. The matter was assigned to Mr. Larkowich. She had trouble reaching the Dargon firm in the summer of 2010 and did not send a second payment.
138. Ms. Weatherspoon-Williams received a letter from Mr. Lader advising that her matter was closed because she had not responded to his first letter. She also received Mr. Dargon's October closing letter. Thereafter, she sought a loan modification on her own.

II. RULINGS OF LAW

The Committee concludes that there is clear and convincing evidence that Drake David Dargon, Sr. has violated the following Rules of Professional Conduct by clear and convincing evidence:

Rule 1.4: Communication

139. Rule 1.4 states as follows:

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter.
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain the legal and practical aspects of a

matter and alternative courses of action to the extent that such explanation is reasonably necessary to permit the client to make informed decisions regarding the representation.

140. Mr. Dargon owed his clients a duty to keep them reasonably informed about the status of their matters and to promptly comply with reasonable requests for information.
141. Mr. Dargon breached that duty when no one in his firm could be reached during a one-week period in September 2010 because the telephone lines were disconnected. Mr. Dargon also breached that duty when clients could not reach him, and could not reach Mr. Lader, to whom some of their files had been transferred after the firm closed.
 - (a) On or about September 8, 2010, Ms. Raymond called the firm and discovered the phone lines had been disconnected.
 - (b) Ms. Chicoine called the firm to inquire as to the status of her case on September 8, 2010 and the telephone number was disconnected.
 - (c) Ms. McKelvey was unable to reach Mr. Dargon after the law firm closed.
 - (d) Mr. Baumgartner was unable to reach either the Dargon firm or Mr. Lader's firm after the Dargon firm closed.
142. Ms. Minnifield had trouble reaching the firm to find out the status of her matter and was not advised by Mr. Dargon that the firm was closing.
143. Ms. Weatherspoon-Williams had trouble reaching the Dargon firm after her matter was assigned to Mr. Larkowich on or about May 24, 2010.
144. Mr. Dargon also breached his duty under Rule 1.4 when he did not advise clients that the firm was closing until October 15, 2010, when the firm had, in fact, been closed before that date.

Rule 1.5: Fees

145. Rule 1.5 states as follows:
 - (a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or unreasonable fee or an unreasonable amount for expenses. . . .

146. Effective July 1, 2009, RSA 397-A:14 IV (m) prohibited the collection of an advanced fee for a loan modification.
147. The client fee agreements into which the client complainants entered called for payments prior to Mr. Dargon's attorneys and staff submitting their loan modification applications to their lender.
148. Mr. Dargon had a duty to comply with applicable statutory requirements, and as such collected illegal fees in his loan modification practice.

**Rule 1.15: Safekeeping Property; and Supreme Court Rule 50:
Trust Accounts (2009)**

149. 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.

150. Supreme Court Rule 50(2) states as follows:

(2) *Attorney's Financial Records:*

A. *Every attorney* shall maintain records of the handling, maintenance and disposition of all funds or securities of a client at any time in his possession from the time of receipt to the time of final distribution and shall preserve such records for a period of six (6) years after final distribution of such funds or securities or any portion thereof. Specifically, every attorney or the firm organization shall maintain a trust accounting system that shall include at the minimum, (1) a ledger or system showing all receipts and disbursements from the trust account or accounts with appropriate entries identifying the source of the receipts and the nature of the disbursement, and (2) a separate accounting page or columns for each client for whom property is held, which shall show all receipts and disbursements and carry a running account balance. Any other system that preserves the above-mentioned features and sufficiently accounts for trust funds may also be used.

In addition there shall be maintained an index, or equivalent single source for identification of all trust accounts, including special interest-bearing trust accounts, probate accounts, custodial accounts and client agency accounts.

B. All cash property of clients received by attorneys shall be deposited in one or more clearly designated trust accounts (separate from the attorney's own funds) in financial institutions. Any attorney depositing client funds into an out-of-state financial institution shall file a written authorization with the Clerk of the Supreme Court authorizing the Court or its agents to examine and copy such out-of-state account records. Under no circumstances may any attorney use out-of-state banks other than those located in Maine, Vermont, Massachusetts, or the state in which the attorney's office is situated, without obtaining prior written approval from the Supreme Court.

C. Only those retainer fees, that are refundable if not earned, and as to which the attorney has so informed the client, shall be deposited in the trust account(s) described above. These shall not be withdrawn from the account of the attorney or firm organization until earned. All other retainer fees may be deposited in the attorney's general operating account.

D. All funds received as proceeds of collections or awards on behalf of a client shall be deposited in gross in the trust account(s) required above, and shall not be charged with a fee until distribution.

E. The practice of law in the form of a partnership or a professional association shall not relieve an attorney from the obligation of compliance with this Supreme Court Rule.

F. Each bank account required by Rule 50, except those accounts excluded by Rule 50-A(3), shall be reconciled by the lawyer or law firm on a monthly basis. Such reconciliation shall disclose (a) the balance of the account according to the bank's records; (b) the balance of the account according to the lawyer or law firm's records; (c) a detailed listing of all differences between items (a) and (b); (d) a listing of all clients' funds in the accounts as of the reconciliation date; and (e) a detailed listing of all differences between items (b) and (d);

151. Mr. Dargon owed various duties to the public, the Bar, and to his clients to safeguard their funds and to ensure that his firm complied with Rule 1.15 and Supreme Court Rule 50, to protect his clients' interests.
152. Mr. Dargon breached his duties to his clients when:
- (a) The firm's client trust account, Citizens Trust #3116, was overdrawn, and therefore "out of trust" from December 23, 2009 through January 5, 2010, on February 12, 2010 and on September 7, 2010.
 - (b) The firm's client trust account, Citizens Trust #3124 was overdrawn, and therefore "out of trust" on December 31, 2009.
 - (c) Client funds were commingled when a firm client, Bertha Wilson, was paid \$8,500, her portion of a settlement, from the operating account rather than the client trust account.
 - (d) Mr. Dargon or his staff failed to perform monthly reconciliations for client trust accounts, BOA Trust 2689 in March and April 2009, and Citizens Trust #3116 in July through October 2009.
 - (e) Mr. Dargon or his staff failed to identify transfers from client trust to operating accounts on March 13, 2009 and March 30, 2009.
 - (f) The firm failed to identify individual client transfers from Citizens Trust #3116 to the firm's operating account, often transferring large sums of client payments at once without identifying client information.
 - (g) Firm clients, Ms. Raymond and Ms. McKelvey, were paid refunds from operating accounts, rather than trust accounts.
 - (h) After enacting a payment system, wherein clients' payments were rapidly considered "earned" and quickly transferred into operating accounts, the firm's bookkeeper embezzled large sums of money from the firm's operating accounts, placing client funds at risk.

Rule 1.16: Declining or Terminating Representation

153. Rule 1.16 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;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

- (3) the lawyer is discharged.
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
 - (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
 - (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (7) other good cause for withdrawal exists.
- (c) A lawyer must comply with the applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d) As a condition to termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice of the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by law.
- (e) The representation of a lawyer having entered a limited appearance as authorized by the tribunal under a limited representation agreement under Rule 1.2(f)(1), shall terminate upon completion of the agreed representation,

without the necessity of leave of court, upon providing notice of completion of the limited representation to the court.

154. Mr. Dargon did not provide adequate notice of his firm's closure. In some cases, clients did not provide permission for their files to be transferred to Mr. Lader's firm, *i.e.*, Ms. Raymond did not give permission for the transfer of her file to Mr. Lader's office.
155. Other clients were not provided with their files, despite requests, until after the ADO took possession of some of the client files and returned them to the requesting complainants in December 2010.
156. Ms. Chicoine requested the return of her file on November 2, 2010 and December 1, 2010. The ADO returned it to her on December 17, 2010.
157. The McKelveys' file was closed after it was transferred to Mr. Lader's firm and the McKelveys did not sign a contract to continue with that firm.
158. In Ms. Minnifield's case, Mr. Dargon did not advise her that his firm was closing and did not take steps to protect her interests, after she made an initial payment of \$1,000 to the firm and little substantive work was done on her matter.
159. In Mr. Normand's case, although Dargon firm attorneys had submitted a request for a loan modification prior to the firm's closure, the Normands had also received a Notice of Intention to Foreclose on August 16, 2010, shortly before the firm closed. Mr. Dargon failed to take necessary steps to protect his client's interest.
160. In Mr. Baumgartner's case, Mr. Dargon failed to take necessary steps to protect the client's interests. Mr. Baumgartner paid \$2,000 to the law firm, for a loan modification request that was submitted, but was not completed at the time the office closed. Although Mr. Lader sent information to Mr. Baumgartner to transfer his file to that firm, Mr. Lader made it clear that he would only help clients with bankruptcies in New Hampshire. Mr. Dargon breached his duty to Mr. Baumgartner when he informed his client on October 15, 2010 that the firm was "winding down" when it was in fact closed. Mr. Dargon failed to take necessary steps to protect his client's interest, including providing him with reasonable notice of the firm's closing.

161. The Mikkelsens were offered an opportunity to transfer their matter to the Lader firm. They were informed on October 15, 2010 that the Dargon firm was “winding down,” when it was closed by that date. They worked with their lender to obtain a loan modification themselves, based on the application that Ms. Dimitriades had submitted on their behalf. Mr. Dargon failed to take necessary steps to protect his clients’ interest, including providing them with reasonable notice.
162. In Ms. Kohanski’s case, she was not provided with reasonable notice that the representation was being terminated and her file was not returned to her.
163. In Ms. Weatherspoon-William’s case, she was not provided with reasonable notice of the Dargon firm’s closing.

Rule 3.3: Candor Toward the Tribunal

164. Rule 3.3 states as follows:

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and comes to know if its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- (c) In an *ex parte* proceeding, a lawyer shall inform the tribunal

of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

- (d) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

165. Mr. Dargon had a duty under Rule 3.3(a) not to knowingly make false statements of fact to a tribunal.

166. Mr. Dargon breached that duty when he signed a Trust Accounting Compliance Certificate for the period June 1, 2008 through May 31, 2009, wherein he failed to list a client trust account, BOA Trust #2689, an account that was open from November 2008 until October 2009.

Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

167. Rule 5.3 states as follows:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) Each partner, and each lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) Each lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its

consequences can be avoided or mitigated but fails to take reasonable remedial action.

Financial Matters

168. Mr. Dargon owed a duty to his clients, to the public, and to the Bar to make reasonable efforts to have measures in effect at his law firm that provided reasonable assurance that non-lawyer assistants employed or retained by Mr. Dargon or his law firm conducted themselves in a manner compatible with Mr. Dargon's professional obligations.
169. With respect to the financial management of the firm, Mr. Dargon breached that duty by engaging in both negligent and knowing conduct, as follows.
170. Mr. Dargon employed Ms. Boggs, a convicted felon, as a firm bookkeeper from late 2009 until late April 2010. As of March 2010, Mr. Dargon had suspicions regarding Ms. Boggs's criminal history but failed to conduct further research after Ms. Boggs denied that a story found on the Internet regarding her criminal history was about her. Mr. Dargon did not terminate her employment until late April 2010.
171. Mr. Dargon failed to have measures in place that would have allowed him or other members of the staff to have discovered Ms. Bogg's embezzlement from the firm's operating accounts, which placed his clients' funds in serious potential danger of theft.
172. Mr. Dargon failed to employ, train, and/or properly supervise his non-lawyer assistants charged with record keeping, handling, and maintenance of his client trust accounts, resulting in the violations of Rules 1.15 and Supreme Court Rule 50 as outlined at paragraphs 152 to 157 above and further detailed in the financial report attached as Exhibit A.
173. To the extent Mr. Dargon's non-lawyer assistants contributed to the foregoing misconduct, Mr. Dargon knew or should have known of his employees' poor conduct.

Peter Larkowich Acting as an Attorney

174. Mr. Dargon owed a duty to his firm's clients to ensure that attorneys working for him were properly licensed. Mr. Larkowich represented to

firm clients that he was an attorney and was held out as such to clients.

175. Mr. Dargon breached that duty when he allowed Mr. Larkowich to work on client matters as an attorney.

Rule 5.4: Professional Independence of a Lawyer

176. Rule 5.4 states as follows:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
- (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
- (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
- (4) a lawyer may share legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

- (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
- (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

177. Mr. Dargon had a duty not to share legal fees with non-attorneys.

178. Mr. Dargon breached that duty when he paid consultants of the law firm “commissions,” including significant payments to Mr. Hurley.

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

179. 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.

180. Under Rule of Professional Conduct 5.5 (a), a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession of that jurisdiction.

181. Mr. Dargon had a duty to ensure that attorneys practicing in his firm only practiced law in the jurisdictions where they were licensed. Due to the nature of loan modification practice and the national advertising from which client leads were generated, this did not occur.

182. Mr. Dargon breached this duty when he allowed attorneys working in his firm to engage in the unauthorized practice of law, as follows:

(a) Mr. Simensen and Mr. Russell, both licensed New Hampshire attorneys, handled the matter for Mr. and Mrs. Roberts, residents of North Carolina. Neither attorney was licensed to practice law in North Carolina. Both attorneys also worked on Mr. Normand's loan modification matter. Mr. Normand's property was located in Massachusetts. Neither attorney was licensed to practice law in Massachusetts at the time they handled Mr. Normand's matter. Both attorneys also handled a loan modification matter for Mr. Baumgartner, an Ohio resident, despite the fact they were not licensed there.

(b) Ms. Ellis, a New York and Massachusetts licensed attorney, handled Ms. Raymond's loan modification matter. Ms. Raymond lived in Rhode Island and Ms. Ellis was not licensed there.

- (c) Mr. Larkowich, an attorney suspended from the practice of law in Massachusetts, represented Ms. Chicoine and Ms. Torres-Landa, residents of the state of Washington, in their loan modification matter. He also represented the McKelveys, who were residents of Illinois, in their matter. Mr. Larkowich was also assigned to Ms. Minnifield's matter, despite the fact he was not licensed to practice law in Pennsylvania. He was also assigned to Ms. Weatherspoon-William's matter, despite the fact he was not licensed to practice law in Georgia.
- (d) Ms. Dimitriades and Mr. Lader worked on Ms. Mikkelsen's matter. Ms. Mikkelsen's property was in Rhode Island. Neither attorney was licensed to practice law in Rhode Island.

Rule 7.1: Communications Concerning a Lawyer's Services

183. Rule 7.1 states as follows:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. Without limiting the generality of the foregoing, a communication is false or misleading if it:

- (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement, considered in light of all of the circumstances, not materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law; or
- (c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

184. Mr. Dargon had a duty to ensure that his law firm's advertising did not result in false or misleading communications. The Dargon law firm's website led clients to believe that Mr. Larkowich was a licensed Massachusetts attorney when he was in fact suspended.

Rule 8.4(a): General Rule

185. There is clear and convincing evidence that Mr. Dargon's conduct violated Rule of Professional 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. Dargon violated duties owed to his firm's clients, to the public, and to the court, as well as duties owed as a professional.

Prong II: Mental State: Intent/ Knowing or Negligent

With respect to Mr. Dargon's mental state under the second prong of the sanction analysis, the parties have stipulated that Mr. Dargon's mental state was knowing² or negligent with respect to the Rule violations as explained further below.

² The *Standards*, as well as New Hampshire's Rules of Professional Conduct, differentiate between a knowing state of mind and an intentional state of mind. 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

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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. Dargon's misconduct. In this case, Mr. Dargon's conduct caused both injury and potential injury to clients who had paid his firm to seek loan modifications on their behalf. Although Mr. Dargon made some arrangements for Mr. Lader's firm to take on clients and offered to transfer contracts to that firm, that solution did not help clients who were not located in New Hampshire, the only state where Mr. Lader was licensed to practice. In at least one case, clients had received a notice of foreclosure and therefore risked losing their home, and were depending on Mr. Dargon's firm to assist them. In other cases, clients did not know the status of their matters for several weeks and were unable to obtain their files, which they likely needed if they were going to pursue their loan modifications for themselves. In some cases, it was several months before files were returned and it occurred only after the ADO facilitated the return of the files.

Mr. Dargon's employment of Ms. Boggs, a person with a criminal history of theft, as the firm's bookkeeper, could have caused serious injury to clients whose funds were put at risk of being stolen prior to being earned. Mr. Dargon's conduct implicates Section 4.42 of the *Standards* and a suspension, in that he knew that the abrupt closure of his law firm would create communication problems for his clients causing injury and potential injury to his clients.

Mr. Dargon was negligent in adopting a client fee agreement for loan modification services that violated RSA 397-A. Mr. Dargon's violation of Rule 1.5 implicates Section 4.63 of the *Standards* and a public censure.

Mr. Dargon knew or should have known that his bookkeeping staff, including Ms. Boggs, was not properly following the rules for safeguarding client property. Mr. Dargon's conduct implicates Section 4.12 of the *Standards* and provides for a baseline suspension.

person's knowledge may be inferred from circumstances." The *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." *Standards*, Sec. III ("Definitions"). See also *In Re Wyatt's Case*, 159 N.H. 285, 307, 982 A.2d 396, 413 (2009) (discussing "knowing" misconduct and stating "[w]hat is relevant ... is the volitional nature of the respondent's acts, and not the external pressures that could potentially have hindered his judgment."). An intentional state of mind is the most culpable state of mind, defined in the *Standards* as acting with "a conscious objective or purpose to accomplish a particular result."

Mr. Dargon knew that the closure of his firm and the failure to take adequate steps to protect his clients' interests could cause potential injury to his clients. Likewise, Mr. Dargon's lack of supervision of his employees also could and did cause injury to his clients. Mr. Dargon also acted negligently in agreeing to share fees with a non-lawyer and in allowing Mr. Larkowich to be held out to clients and to the public as a licensed attorney when he was suspended. Mr. Dargon's conduct with respect to these rule violations implicates Sections 7.2 and 7.3 of the *Standards*.

Mr. Dargon should have known of the failure to list a bank account on his client trust account. Mr. Dargon's conduct implicates Section 6.13 of the *ABA Standards*. Mr. Dargon's conduct in paying commissions to non-employees was knowing and implicates Section 4.32 of the *Standards*. Under the foregoing circumstances, the parties agree that the baseline sanction for Mr. Dargon's conduct is either a disbarment (given the numerous rule violations) or a suspension, considering the analysis for each Rule violation. *See Standards* § 4.32.

Aggravating Factors:

In this case, two aggravating factors are present: Mr. Dargon's multiple offenses and the vulnerability of the victims. The client complainants, by and large, were clients who were behind on their mortgage payments and paid the firm to assist them, when they could have been using that money towards mortgage payments or could have sought the same result without the assistance of an attorney. *See Standards* § 9.22.

Mitigating Factors:

However, three mitigating factors are also present, including the absence of a prior disciplinary record, inexperience in the practice of law, and the imposition of other penalties and sanctions, pursuant to the Banking matter. By way of additional mitigating factors, Mr. Dargon opened his law practice within six months of graduating from law school and passing the New Hampshire bar exam. He had been practicing law less than two years when he closed his firm. Mr. Dargon also believed that there was a need for his firm's services, in that lawyers could be effective advocates in negotiating loan modifications for clients during a period when many people were falling behind on their mortgage payments or were potentially facing foreclosure. He employed a large staff to handle the volume of business. Mr. Dargon has also served with the United States Army for several years now, and has been promoted during that period.

The parties agree that the aggravating and mitigating factors evident in this case, combined with the baseline sanction analysis, indicate that long term suspension is warranted. Given the relevant factors, the parties agree a three-year suspension from the practice of law is an appropriate sanction.

Between approximately 2009 and 2011, many law firms began loan modification practices like Mr. Dargon's. Many followed a similar pattern of law firm development. Such development included the practices of large scale advertising, rapid growth of the firm, unauthorized practice of law by firm attorneys, and the collection of advanced fees that were ultimately deemed illegal. With the passage of the SAFE Act, state banking departments also sought to regulate this practice. The relevant regulations did not provide full guidance as to the extent to which attorneys could assist clients in obtaining loan modifications. In some cases, particularly where there was intent to defraud clients and little work was performed, in conjunction with other aggravating factors, attorneys have been disbarred for operating this type of loan modification practice. For example, disbarment resulted where there were repeated violations involving loan modification and foreclosure clients, working in conjunction with non-lawyers over a substantial period of time. *See e.g. In re: David Zak*, Commonwealth of Massachusetts, Supreme Judicial Court for Suffolk County, No. BD-2015-080 (March 17, 2016) (citing *Matter of Lapin*, No. 10-O-03758-LMA (Cal. State Bar Ct. S.F. Hearing Dept., Nov 7, 2012)). In cases where there was a pattern of conduct similar to Mr. Dargon's, suspensions have resulted. *See, e.g., North Carolina State Bar v. Marlon Brent Messer*, 15 DHC 53 (May 4, 2016) (two year stayed suspension based on conditions).

IV. SANCTION

The Committee concludes that the appropriate discipline in this matter is a three-year suspension. 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. 361, 365 (2007) (quotation and citation omitted).

V. COSTS


Drake David Dargon, Sr. has signed an agreement to pay costs of the investigation and prosecution of this disciplinary matter. The Committee

approves this agreement. Mr. Dargon 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 Rules of Professional Conduct 1.4; 1.5; 1.15; 1.16; 3.3; 5.3; 5.4; 5.5; 7.1; and 8.4(a); and Supreme Court Rule 50.

February 6, 2017



David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
James D. Gleason, Esquire
File