

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

David M. Rothstein, Chair
Heather E. Krans, Vice Chair
Elaine Holden,* Vice Chair
Peter G. Beeson
Susan R. Chollet*
Richard H. Darling*
Margaret R. Kerouac

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

Caroline K. Leonard
David W. McGrath
Mona T. Movafaghi
Georges J. Roy*
Martha Van Oot
* non attorney member
Barbara J. Guay, Legal Assistant

Wallace, Edward F. advs. Attorney Discipline Office - #16-049

**PUBLIC CENSURE WITH CONDITIONS
AND ORDER ON COSTS**

On June 20, 2017, the Professional Conduct Committee (“the Committee”) deliberated the Stipulation as to Facts, Violations and Sanction (“the Stipulation,” attached as **Exhibit A**), and the Agreement to Pay Costs of Disciplinary Matter (attached as **Exhibit B**). Members present included David M. Rothstein, Chair; Elaine Holden, Vice Chair; Peter G. Beeson; Caroline K. Leonard; David W. McGrath; Georges J. Roy; and Martha Van Oot. Heather E. Krans, Vice Chair; Susan R. Chollet; Richard H. Darling; Margaret R. Kerouac; and Mona T. Movafaghi were absent.


The Committee grants the Assented-To Motion for Protective Order.

The Committee approved the facts as stipulated by clear and convincing evidence. It further found that Edward F. Wallace’s conduct violated Rules of Professional Conduct 1.15; 5.3; 8.4(a); and Sup. Ct. R. 50, as stipulated.

The Committee also concluded that a Public Censure With Conditions is appropriate. Its sanction is in accord with the purposes of attorney discipline. *See e.g., Conner's Case* 158 N.H. 299, 303 (2009); *Richmond's Case*, 152 N.H. 155, 159-60 (2005). The sanction is also in accord with the *ABA Standards for Imposing Lawyer Sanctions* (2005) ("Standards").

Having approved the stipulated sanction, the Committee approved the agreement that Edward F. Wallace shall reimburse the Committee for all costs of investigation and prosecution of this matter.

June 20, 2017



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Christopher D. Hawkins, Esquire
File



**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Wallace, Edward F.

advs.

Attorney Discipline Office

#16-049

**STIPULATION AS TO FACTS, RULE VIOLATIONS,
AND SANCTION: PUBLIC CENSURE WITH
CONDITIONS**

Respondent Edward F. Wallace and the Attorney Discipline Office (ADO) stipulate as follows:

A. Facts

1. Edward F. Wallace is an attorney licensed to practice law in New Hampshire. Mr. Wallace was admitted to practice on June 5, 1995.
2. Mr. Wallace has also been admitted to practice law in Massachusetts (December 22, 1978) and is currently on active status there.
3. Mr. Wallace does not have a previous disciplinary history.
4. Though Mr. Wallace is on active status in both states, he has essentially retired and has no plans to return to practicing law. He has no New Hampshire client matters and only one matter pending in Massachusetts which is to resolve in the coming months, as described further below.

Events Leading to Grievance and Subsequent Compliance Review

5. At all times material to this proceeding, Mr. Wallace practiced law at the Injury Law Center of New Hampshire, PLLC (“the firm” or “the practice”), 61 Spit Brook Road, Unit 101, Nashua, New Hampshire.
6. This disciplinary matter was initiated by a complaint filed by Joseph J. Russo, Esquire and arises out of Mr. Russo’s purchase of the practice. Mr. Russo had worked as an associate for Mr. Wallace for approximately four years when Mr. Wallace decided to retire and sell the practice to Mr. Russo.
7. Mr. Russo purchased the practice on September 30, 2016, after which time Mr. Wallace had no involvement whatsoever with the firm’s IOLTA client trust account (the “CTA”). Both parties were represented by counsel in the transaction.
8. In November 2016, Mr. Russo received a call from Enterprise Bank indicating that the firm’s CTA was overdrawn (the “overdraft notice” or “ODN”).
9. Mr. Wallace first heard about the ODN on November 22, 2016. He could not determine definitively what had occurred without access to the firm’s financial records. Mr. Wallace promptly attempted to communicate with Mr. Russo to discuss the matter, but Mr. Russo failed to respond. The parties then communicated through counsel, and Mr. Wallace offered to meet with Mr. Russo on December 6, 2016 at the offices of the Injury

Law Center to review the matter. However, Mr. Russo, through counsel, informed Mr. Wallace's counsel he was not welcome on the premises.

10. Mr. Wallace's counsel wrote to counsel for Mr. Russo on December 8, 2016 requesting access to the firm's books and records to investigate the matter, and stating that "if there have been errors in the accounts on Attorney Wallace's watch, then he is prepared to accept personal responsibility for them and take any steps that may be required to rectify the situation, including self-reporting to the Attorney Discipline Office if necessary."
11. Because the ODN was not caused by post-closing activity by Mr. Russo, he reported Mr. Wallace to the ADO, consistent with Rule 8.3(a), in a grievance dated December 9, 2016 which alleged that Mr. Wallace had failed to properly account for client funds in the CTA. The grievance was based on three client transactions, which will be described in detail below.
12. In his timely response to the grievance letter submitted to the ADO, Mr. Wallace explained the three transactions in detail, admitted he made errors with respect to the CTA, took responsibility for those errors, and agreed to submit to and pay for a compliance review. Mr. Wallace also promptly made restitution to the firm in the amount of \$13,797.12 for the overdraft on the IOLTA account. He denied any knowing or intentional misconduct with respect to client funds.

13. In late December 2016, the ADO contracted with Plodzik & Sanderson, PA to conduct a compliance review of Mr. Wallace's IOLTA account. The compliance review covers a one year period ending on December 15, 2016 and related to "a general review of the maintenance and administration of the [CTA] and specific inquiries relating to matters identified in the grievance"
14. Plodzik issued its Report on March 23, 2017 (the "Report," attached hereto as Exhibit A). Mr. Wallace admits the material findings in the Report, i.e. that he made mistakes in the trust accounting for the three client transactions outlined in the Report.

The Compliance Report/Accounting Errors

15. As set forth more fully below, Mr. Wallace negligently caused an overdraft in the CTA when he made disbursements in three client matters (clients MH, BG, and CP).
16. The compliance review did not uncover any instances of misappropriation of client funds by Mr. Wallace. The Report notes that Mr. Wallace kept individual client ledgers, that his book-keeper performed monthly reconciliations, and that "[i]ndividual client trust account activity was supported by settlement sheets, and related supporting documents identf[ied] the source and disbursement of clients trust funds." [See Exhibit A at page 2.]
17. Appended to the Report is a QuickBooks report showing all client accounts in the CTA. That document reflects that from July 9, 2012

through September 29, 2016, when Mr. Wallace sold the practice, the CTA held over \$9.2 million in funds, with over 1,200 transactions for over 220 clients in that period.

18. As to the three client matters at issue, the Report essentially confirmed the explanation that Mr. Wallace provided in his initial written response to the ADO. The Report notes: “[e]rrors relating to these [three] transactions resulted in an overdraft [of the CTA] . . . [t]he overdrafts related to duplicate payments disbursed from the account related to the MH, BG, and CP trust accounts, which were initiated during the final reconciliation of accounts, prior to September 30, 2016.” [See Ex. A, p. 2].
19. Mr. Wallace utilized QuickBooks software to track his CTA. In the days leading up to the sale on September 30, 2016, Mr. Wallace and his bookkeeper of two years worked together to ensure that all accounts were reconciled. As part of that reconciliation, on September 21, 2016 and September 28, 2016, Mr. Wallace cut three checks to himself: two for earned fees (in the MH and CP matters), and a third check representing funds that he would continue to hold in trust in a Massachusetts IOLTA account for BG, a client that he was taking with him post-sale.
20. The firm’s clients each had a QuickBooks subaccount, arranged alphabetically. In addition, Mr. Wallace utilized a subaccount in QuickBooks called “Other,” which was set up in 2012 by his previous bookkeeper to hold interest on the CTA account. Mr. Wallace was not

aware of this “Other” subaccount at the time it was created, and only came to fully understand how it functioned as a result of the 2016 ODN.

21. The existence of this “Other” subaccount created a “blind spot” of sorts within Mr. Wallace’s accounting practices, in that if someone creating a check for a given client matter failed to properly “link” the disbursement to the client subaccount to which it pertained, the QuickBooks software, by default, would assign the disbursement as an entry in the “Other” subaccount.
22. This would result in a situation where the client ledger would show a larger balance than what was actually held in trust for the client (because the disbursement would show up only in the “Other” account, and not the client’s ledger).
23. As an example, and without repeating the findings in the Report, the following occurred in the case of client MH:
 - On January 16, 2015, two checks were created in QuickBooks for \$1,696.61.¹ One check was linked to the MH client ledger in QuickBooks. The second check was not specifically assigned

¹ Mr. Wallace personally wrote all checks on the IOLTA account and was the only ILC employee authorized to do so. In the normal course of business, Mr. Wallace would only have created one check and then linked the check to a client subaccount/ledger. Mr. Wallace has no memory of the January 16, 2015 transactions. He believes that in the 3 instances in which two checks were created, it was probably the result of his becoming distracted or simply an oversight on his part.

to a client ledger and thus was automatically assigned to the “Other” account.²

- The same day the checks were created, the check assigned to the MH ledger was erroneously deleted, while the check assigned to the “other” subaccount was processed and cleared through QuickBooks. While Mr. Wallace does not specifically recall this transaction, he may have realized he had inadvertently created a duplicate transaction and then erroneously deleted the one linked to the client account. Client MH (as well as CP and BG) received all amounts to which she was entitled.
- As a result, when Mr. Wallace viewed the MH ledger on or around September 28, 2016, the MH ledger showed a (mistaken) balance of \$1,696.91. When he saw this balance, Mr. Wallace believed that he must have failed to take his fee when the case resolved, and thus wrote a check for \$1,696.91 for earned fees to the Injury Law Center of New Hampshire, PLLC.

24. Similar mistakes occurred in the BG and CP matters as noted in the Report at 3-5. Mr. Wallace has no independent recollection of these three transactions. He acknowledges, however, that it was his

² In each instance, checks were not linked to the individual client accounts, but defaulted to the “Other” account. Transactions are assigned to the “Other” account when no other account is specified. There is no function in QuickBooks for a transaction to be assigned to the “Other” account other than by default.

responsibility to ensure accurate accounting for his CTA and each individual client matter, and to supervise his bookkeeper.

25. Mr. Wallace further acknowledges that he did not adequately perform “three-way” reconciliations as required by Rule 50(2)(c)(vi). He believed his bookkeeper was doing so because he reviewed with her a Bar News article on client trust accounting, but he acknowledges it was his responsibility to ensure she was doing so. Had he taken these steps, he would have recognized, for example, that in the BG matter a check remained as an uncleared transaction for nearly a year. Similarly, Mr. Wallace admits that given that the MH case resolved in 2015, it would have been unusual for him to have failed to take his fee when it was earned in 2015, and thus, a balance in the MH subaccount as of September 2016 should have alerted to him to a mistake. He believes he and his bookkeeper were perhaps rushed to wrap up accounting issues in anticipation of the closing for the sale of the firm, which took place on September 30, 2016.
26. Mr. Wallace admits that he should have exercised more diligent oversight over his bookkeeper. In particular, he admits that he should have regularly reviewed QuickBook reports for *all* subaccounts, which would have revealed that the “Other” subaccount carried a negative balance for over a year and a half leading up to the sale of the practice. In addition, although Mr. Wallace’s accounting errors detailed in the Report involved

only a few matters out of hundreds, those matters were “unreconciled” for over a year.

27. Mr. Wallace reimbursed the firm’s CTA by check dated December 26, 2016 in the amount of \$13,797.12, an amount representing the total of the three duplicate payments outlined in the Report for the MH, BG and CP matters.
28. Mr. Wallace has no open IOLTA accounts in New Hampshire and no client matters in New Hampshire. He maintains one IOLTA account in Massachusetts for the sole purpose of finalizing a single Massachusetts matter involving client C.W. That matter should resolve in the next 2-8 months, at which point Mr. Wallace will close his Massachusetts IOLTA account. That matter involved both a personal injury case and a workers’ compensation matter. The personal injury case is settled and all funds have been distributed. The workers’ compensation case remains open as the client is receiving temporary benefits but is making a claim for total disability. Under Massachusetts trust accounting rules, he must maintain a client trust account so long as he maintains any open matters. Once the case is fully resolved and is closed, he will promptly close the Massachusetts IOLTA account. (*See infra*, ¶ 53(b) (condition)).

B. Disciplinary Rules Violated

29. The parties agree that Mr. Wallace's conduct in this case involves violations of the New Hampshire Rules of Professional Conduct, as follows:

Rule 1.15: Safekeeping Property and Supreme Court Rule 50

30. The facts set forth above at ¶¶ 1-28 above are incorporated by reference.
31. Rule 1.15 states as follows:
- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property, in accordance with the provisions of the New Hampshire Supreme Court Rules. The lawyer shall maintain the minimum financial records with respect to the client and third party funds as may be required by the New Hampshire Supreme Court Rules and shall comply with every other aspect of those Rules. Sufficient records of all other property of clients or third persons shall be kept by the lawyer and shall be preserved for a period of six years after final distribution of such other property or any portion thereof. All client and third party property shall be identified as such and appropriately safeguarded.
 - (b) 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.
 - (c) 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.
 - (d) 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.

- (e) 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.
- (f) 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.

32. Mr. Wallace violated Rule 1.15 and Supreme Court Rule 50 by failing to maintain the minimum financial records with respect to the client and third party funds as required by New Hampshire Supreme Court Rule 50, and by failing to properly reconcile all client accounts, which resulted in his being “out of trust” in three client matters.

Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

- 33. The facts set forth at ¶¶ 1-32 above are incorporated by reference.
- 34. 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.

35. Mr. Wallace violated Rule 5.3 by failing to make reasonable efforts to ensure that his bookkeeper's conduct was compatible with his professional obligations in that he failed to exert sufficient oversight over the CTA and thus several client matters were "out of trust" during the reporting period.

Rule 8.4(a): General Rule

36. Having found the foregoing violations, there is clear and convincing evidence that Mr. Wallace's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

C. Recommended Sanction

37. The Attorney Discipline Office and Mr. Wallace jointly recommend a public censure with mandatory conditions as the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.

38. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
39. 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).
40. 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.
41. 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 (stating that "[i]n applying these factors, the first step is to categorize the respondent's misconduct and identify the appropriate sanction"). 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.* (stating that "[a]fter determining the

sanction, [the Court] consider[s] the effect of any aggravating or mitigating factors on the ultimate sanction”).

42. Under the first prong of the analysis, Mr. Wallace violated duties owed to his clients. *See Standards* § 3.0.
43. With respect to Mr. Wallace’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Wallace’s mental state was negligent. Mr. Wallace did not engage in intentional or fraudulent conduct.
44. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Wallace’s misconduct.
45. Mr. Wallace’s conduct caused injury in that it created an overdraft in the CTA. He promptly took remedial action and restored the funds to the CTA.
46. Mr. Wallace’s Rule 1.15 violation implicates Section 4.0 of the *Standards* which provides, in pertinent part:

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

4.14 Admonition³ is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

47. Under the totality of the foregoing circumstances described herein, and given Mr. Wallace's negligent state of mind, the parties agree that the baseline sanction for Mr. Wallace's conduct is a public censure. See *Standards* § 4.13.
48. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
49. In this case there is one aggravating factor present, Mr. Wallace's substantial experience in the practice of law. See *Standards* § 9.22.
50. Mitigating factors include the absence of prior disciplinary record, absence of a dishonest or selfish motive, timely good faith effort to rectify consequences of misconduct, full and free disclosure to ADO, cooperative attitude towards proceedings, and remorse. See *Standards* § 9.32.
51. The parties agree that given the baseline sanction, and consideration of aggravating and mitigating circumstances, a public censure with conditions serves the purposes of discipline and is an appropriate sanction in this case. The ADO has joined in this recommendation, in part, because of Mr. Wallace's retirement, and because of his

³ The term "admonition," as used in the *ABA Standards*, is analogous to a reprimand in New Hampshire. The term "reprimand," as used in the *ABA Standards*, is analogous to a public censure in New Hampshire.

commitment that, should he return to practice in a manner that involves handling client funds, he will take remedial action as set forth in the Mandatory Conditions to ensure that bookkeeping and accounting practices are consistently applied, and monthly client trust account reconciliations are performed in full compliance with Supreme Court Rule 50.

**D. Mandatory Conditions of Public Censure;
Procedures For Alleged Violation of Conditions**

52. As set forth further below, should Mr. Wallace breach a condition of this Stipulation or the Monitoring Agreement, he agrees that a six-month suspension is the appropriate sanction.
53. Mr. Wallace agrees to comply with the following conditions during the one year monitoring period, which shall begin on the date the Professional Conduct Committee accepts this Stipulation:
 - a. Respondent shall watch the CLE presented in part by General Counsel Janet F. DeVito in March of 2016, which is archived and available for viewing through the New Hampshire Bar Association website, and provide proof of compliance to the ADO;
 - b. Provide proof satisfactory to the ADO that he has closed his Massachusetts IOLTA account within 10 days of closing such account;
 - c. Respondent shall pay the expenses incurred by the Professional Conduct Committee in connection with this investigation and

prosecution, including the cost of the compliance review by Plodzik & Sanderson, and if unable to pay in lump sum, shall agree to some form of payment plan with the PCC; and

- d. Respondent will engage in no professional misconduct during the monitoring period.
54. If Mr. Wallace returns to the practice of law in New Hampshire and such practice involves holding client funds, however minimal, the following conditions will apply:
- a. Respondent shall immediately inform the ADO of such return to practice;
 - b. Respondent shall, for a period of one year following his return to practice, submit monthly reconciliations to the ADO. The first submission shall be on the 15th day of the month following his return to practice, and Mr. Wallace shall file with the ADO his monthly client trust account reconciliations on the 15th of each month thereafter for a period of twelve consecutive months.
55. If it is alleged that Mr. Wallace violated any of the conditions enumerated at Paragraphs 53(a)-(c) or 54(a)-(b) above, the following shall apply:
- a. Upon motion by Disciplinary Counsel, the Professional Conduct Committee may determine whether any of the conditions enumerated at Paragraphs 53(a)-(c) or 54(a)-(b) have been violated. If it determines that a condition has been violated, the Committee shall recommend a six-month suspension. If the Committee determines that no condition

of this Stipulation has been violated, the Stipulation shall continue in force and effect pursuant to its terms.

- b. Respondent may request that the Professional Conduct Committee remand the matter to the Hearings Committee so that a Hearing Panel may be appointed to decide the sole issue of whether a condition under Paragraphs 53(a)-(c) or 54(a)-(b) of this Stipulation has been violated. During such hearing, it shall be the burden of Disciplinary Counsel to demonstrate by a preponderance of evidence that a condition listed in Paragraphs 53(a)-(c) or 54(a)-(b) has been violated.
- c. If a Hearing Panel determines that a condition has been violated, the Panel shall recommend a six-month suspension. If the Hearing Panel determines that no condition of the Stipulation has been violated, the Stipulation shall continue in force and effect pursuant to its terms.
The PCC shall review the decision of the Hearing Panel.

56. If a new grievance or referral is filed against Mr. Wallace during the monitoring period, thus implicating the condition at Paragraph 53(d), the following shall apply:

- a. So long as a grievance or referral is filed within the monitoring period (“the subsequent proceeding”), and the alleged misconduct occurred, at least in part, during the monitoring period, a six-month suspension may be imposed at such time as there is a finding of misconduct in the subsequent proceeding, even if such finding occurs beyond the monitoring period.

- b. Pending the final resolution of the subsequent proceeding, the matter underlying this Stipulation shall not be closed.
- c. If the conditions of Paragraphs 53(a)-(c) or 54(a)-(b) have been met, Mr. Wallace will not have to continue to comply with those provisions while the subsequent proceeding is pending.
- d. The Respondent shall bear all costs associated with compliance and enforcement of the terms and conditions of this Stipulation.
- e. Nothing herein shall be construed to limit prosecution of any new grievance or referral involving conduct of Respondent occurring during the monitoring period.

E. Costs

57. Subject to the PCC's approval of Mr. Wallace's Stipulation, Mr. Wallace agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. See Supreme Court Rule 37(19). His agreement to pay the costs incurred by the ADO is the subject of a separate agreement signed by Mr. Wallace.

F. Effect of Stipulation


58. Mr. Wallace understands that this stipulation represents a recommended disposition, and that the Professional Conduct Committee may accept, reject, or conditionally accept the stipulation, pursuant to Rule 37A (III)(aa).

59. Mr. Wallace acknowledges that the admissions of misconduct and the proposed disposition contained in this stipulation are freely, knowingly, and voluntarily submitted; that he is not entering this stipulation as a result of any threats, coercion, or duress, or of any promises or inducements not set forth in the stipulation; that he is fully aware of the consequences of the stipulation and that he has been represented by counsel in reaching this Stipulation.

60. Mr. Wallace knowingly and intelligently waives his right to a hearing.

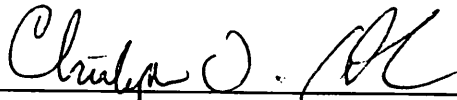
Respectfully submitted,

Dated: June 6, 2017




Edward F. Wallace, Esquire
Respondent

Dated: June 6, 2017

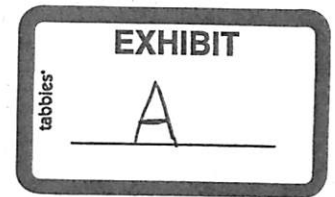


Christopher D. Hawkins, Esquire
Counsel for Respondent

Dated: June 7 2017



Sara S. Greene
Disciplinary Counsel



Edward T. Perry, CPA

James A. Sojka, CPA

Sheryl A. Pratt, CPA

Michael J. Campo, CPA, MACCY

**INDEPENDENT ACCOUNTANT'S REPORT
ON APPLYING AGREED-UPON PROCEDURES**

Janet F. DeVito, General Counsel
New Hampshire Supreme Court
Attorney Discipline Office
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301

Donna M. LaClair, CPA**

Ashley J. Miller, CPA, MSA

Tyler A. Paine, CPA

Kyle G. Gingras, CPA

Susan E. Gauthier, CPA

Scott T. Eagen, CFE

We have performed the procedures enumerated below, which were agreed to by the New Hampshire Supreme Court Attorney Discipline Office (the specified party), on the compliance review of the trust accounts of the Injury Law Center of New Hampshire, PLLC (the ILC), for the one year period ended December 15, 2016. The New Hampshire Supreme Court Attorney Discipline Office's management is responsible for the compliance review of the trust accounts of the ILC. The sufficiency of these procedures is solely the responsibility of the New Hampshire Supreme Court Attorney Discipline Office. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are as follows:

Background

Our procedures included a review of the accounting records, including bank records, documents supporting client trust account activity, and a review of QuickBooks company files, obtained during our on-site review of records at the ILC on December 21, 2016. The ILC maintained two QuickBooks files, one general company file, and a separate IOLTA company file, containing only activity related to the administration and maintenance of client trust accounts. Back-up copies of the QuickBooks files were obtained in order to perform additional review as a part of our procedures. For the purpose of discussion related to the body of this report and the related exhibits, all references to QuickBooks and related reports refer to the IOLTA QuickBooks. Additionally, the term individual client trust account refers to a sub account of the IOLTA bank account maintained in QuickBooks, relating to an individual client, not a trust account separate from the IOLTA accounting.

We reviewed the professional misconduct grievance filed by Attorney Joseph Russo (current owner of the ILC) dated December 9, 2016, concerning the administration of the IOLTA accounts under Attorney Edward Wallace (former owner of the ILC). Additionally, we reviewed the response to the grievance, filed by Devine Millimet, counsel for Attorney Wallace, dated December 26, 2016. Our procedures related to a general review of the maintenance and administration of the NH IOLTA accounts and specific inquiries related to the following matters identified in the grievance and response as the M.H. Matter, B.G. Matter, and C.P. Matter, which relate to trust account activity initiated prior to September 30, 2016.

The following facts pertinent to the compliance review were disclosed in the grievance and response, respectively. Attorney Wallace and Attorney Russo negotiated the sale and purchase of the ILC, effective September 30, 2016, whereby Attorney Wallace sold all outstanding shares of the ILC to Attorney Russo. For the purpose of this report, Attorney Wallace maintained full responsibility for the IOLTA account administration and accounting through September 30, 2016. After September 30, 2016 full responsibility transferred to Attorney Russo. Both Attorneys utilized the same contracted bookkeeper, to perform monthly bookkeeping and bank reconciliation services. The bookkeeper provided services on September 20, 2016 and September 29, 2016 in order to perform a reconciliation of accounts, prior to the sale of the practice on September 30, 2016. After the final reconciliation, Attorney Wallace withdrew \$7,700.00 from the ILC general account, in accordance with the Unit Sales Agreement, representing the

PLODZIK & SANDERSON
Professional Association | Accountants & Auditors

remaining balance of the general account after the various closing transactions were processed. A nominal balance was left in the account for operations. The balance in the NH IOLTA accounts remained in the trust accounts, with the exception of the withdrawals noted in the three matters named above.

General Recordkeeping

We reviewed the trust records in order to document the general recordkeeping procedures to assist you in determining compliance with Supreme Court Rule 50. As part of our procedures we noted that client trust funds were deposited into pooled IOLTA bank accounts and were clearly identifiable as trust accounts. Bank reconciliations for the IOLTA accounts were performed in QuickBooks, on a monthly basis by the outside bookkeeper. Images of previous bank reconciliations were made available through the reports feature in QuickBooks.

We reviewed the balances and activity related to the NH IOLTA bank account 582780 held at Enterprise Bank. Accounting records for the IOLTA bank account were maintained in a designated IOLTA QuickBooks company file. Individual client trust accounts had ledger accounts established in the NH IOLTA bank account 582780 in QuickBooks. Ledger accounts were listed alphabetically by client name. A copy of the account quick report showing all transactions posted to all client ledgers in the NH IOLTA bank account 582780 is included this report (Exhibit 1). Individual client trust account activity was supported by settlement sheets, and related supporting documents identify the source and disbursement of client trust funds.

Our procedures identified trust account activity that was not assigned to an individual client and for which an individual client ledger was not created. Unassigned activity was recorded in a default account in QuickBooks listed as, *NH IOLTA 582780 – Other*. A copy of the account quick report of the *NH IOLTA 582780 - Other* account is also located in this report (Exhibit 2). The majority of the activity in this account represents accounting for the interest sweep activity for the IOLTA account.

In addition to the interest sweep the following items were noted. The ledger account activity was opened with three entries dated December 31, 2012, which established a beginning balance in the NH IOLTA 582780 – Other of \$3,792.42. Of the transactions of import in this account, we noted two cleared disbursements, one listed without a check number dated June 30, 2014 in the amount of \$2,647.26 and another, check # 1767, dated January 16, 2015 in the amount of \$1,000.00. These transactions were outside of the scope of the procedures we performed, so we did not review the underlying reasons for the transactions or the related balance in the account, other than the balance and transactions appeared to be related to a trust accounting record that predated the QuickBooks reporting available to us, and they were not identifiable or assignable to another client ledger account included within the account.

Additionally, we identified activity related to an individual trust account relating to D.S. (Exhibit 3), this activity was identifiable as activity pertaining to D.S. and was supported by a settlement sheet, indicating the source and disbursement of the funds. Although the funds were not recorded in a separate sub account within the ledger, the activity and balances related to D.S. were discernable and all activity netted to a zero balance, indicating that all client trust monies related to D.S. were distributed.

Three additional disbursements within the *NH IOLTA 582780 – Other* account, relating to the following matters identified as the M.H. Matter, B.G. Matter, and C.P. Matter in the grievance and response will be discussed in more detail below. Errors related to these transactions resulted in an overdraft of the NH IOLTA bank account 582780 held at Enterprise Bank on November 21, 2016 and November 23, 2016 (Exhibit 4). The overdrafts were covered by two transfers of funds from the Injury Law Center operating account, authorized by Attorney Joseph Russo in the amounts of \$6,113.19 and \$700.00, respectively.

The overdrafts related to duplicate payments disbursed from the account related to the M.H., B.G., and C.P. trust accounts, which were initiated during the final reconciliation of accounts, prior to September 30, 2016. The sum of the three transactions, detailed below, is \$13,797.12. In the response to the grievance, on December 26, 2016 page 1, under the Summary of Response to Alleged Misconduct, it states:

“Based upon the information presented in the grievance, and our investigation to date, Attorney Wallace concedes the firm’s IOLTA account was overdrawn by a total of \$13,797.12 on account of errors, inadvertence and oversight on his part administering the trust accounts of the three clients identified in the grievance.”



Details of the duplicate payments follow.

M.H. Matter

As identified the grievance and response, the M.H. account was overdrawn as a result of the issuance of check #2117 payable to the ILC on September 28, 2016 in the amount of \$1,696.91. A search of the QuickBooks audit trail report for items in the amount of \$1,696.91, reveals that two checks were created in QuickBooks for this amount on January 16, 2015, one check was credited to the M.H. client ledger in QuickBooks; the second check, in the same amount, was not assigned to a client ledger and was automatically assigned to the *NH IOLTA 582780 – Other* account (see Exhibit 5A for a copy of the audit trail report).

A review of the audit trail report shows that the check credited to the M.H. ledger account was voided, while the check assigned to the “other” account was ultimately processed and cleared through QuickBooks. Due to voiding the check assigned to the M.H. ledger account, a review of the M.H. ledger account between January 16, 2015 (the date the check was voided) and September 28, 2016 (the date check #2117 was created) would have shown a balance of \$1,696.91 in the account. An account quick report for the M.H. ledger account as of September 20, 2016 was generated in QuickBooks to show how the M.H. trust account would appear in QuickBooks, prior to the check generation (see Exhibit 5B). Exhibit 5C shows the M.H. ledger account after check #2117 was issued.

As a result, the M.H. ledger account was unreconciled from January 2015 through December 2016, and a duplicate payment of funds in the amount of \$1,696.91 occurred on September 28, 2016 when check #2117 was issued. Additionally, the clearing of the unassigned check created an overdraft in the *NH IOLTA 582780 – Other* ledger account, which persisted through December 2016, when the error was fully identified and reimbursed.

B.G. Matter

As identified the grievance and response the B.G. account was overdrawn as a result of the issuance of check #2116 payable to Edward F. Wallace on September 28, 2016 in the amount of \$4,000.00. On May 20, 2015, check #1845 was issued payable to Neal McGrath, Ph. D. in the amount of \$2,500.00 as payment for expert fees in the B.G. matter. A search of the QuickBooks audit trail report for check #1845, reveals that two checks were created in QuickBooks, one check in the amount of \$2,500.00 was credited to the B.G. ledger account in QuickBooks, the second check, in the same amount was not assigned to a client ledger account and was automatically assigned to the *NH IOLTA 582780 – Other* account by QuickBooks (see Exhibit 6A for a copy of the audit trail report).

A review of the June 30, 2015 QuickBooks reconciliation detail report image, shows that two checks numbered 1845 existed in QuickBooks as of August 31, 2015, the date the June 30, 2015 bank reconciliation was completed in QuickBooks. The check that was cleared on this reconciliation was the check that was credited to the *NH IOLTA 582780 – Other* ledger account. The second check, which was assigned to the B.G. ledger account, remained as an uncleared transaction on the QuickBooks bank reconciliation, until it was voided on April 18, 2016, as evidenced by reviewing the subsequent months bank reconciliation images in QuickBooks (see Exhibit 6B for copies of related QuickBooks reconciliations).

Due to voiding the check assigned to the B.G. ledger account, a review of the B.G. ledger account between April 18, 2016 (the date the check was voided) and September 28, 2016 (the date check #2116 was created) would have shown a balance of \$4,000.00 in the account, an account quick report for the B.G. ledger account as of September 20, 2016 was generated in QuickBooks to show how the B.G. trust account would appear in QuickBooks, prior to the check generation (see Exhibit 6C). Exhibit 6D shows the B.G. trust account after check #2116 was issued.

The clearing of the check #1845 created an additional overdraft in the *NH IOLTA 582780 – Other* account. The uncleared duplicate check #1845 remained on the bank reconciliation until April 2016. As a result, the B.G. sub account was unreconciled from May 2015 through September 2016, and a duplicate payment of funds in the amount of \$2,500.00 occurred on September 28, 2016 when check #2116 was issued.

It was noted in the response to the grievance that these funds were not converted to personal use by Attorney Wallace, but rather were deposited into a Massachusetts IOLTA account, in the custody of Attorney Wallace. The balance available for transfer to the new IOLTA account would have shown as \$1,500.00, not \$4,000.00, had the ledger account been properly reconciled. We did not review this matter further, other than the review of supporting documentation attached at Exhibit T of the grievance response.



C.P. Matter

As identified in the grievance and response, check #2105 made payable to the ILC, was issued on September 21, 2016 for \$9,600.51. This check relates to the C.P. trust account and related activity that occurred on August 20, 2014.

In the response to the grievance, pg. 7, it states:

"On September 20, 2016, Attorney Wallace inspected the accounts to button them up for the closing of the sale transaction scheduled for September 30, 2016. He viewed the C.P. account. The view he saw is reflected on Exhibit D. It appeared to him the fee check on that matter had been written, but not printed. Check #1668 did not appear on the account because it had not been linked to the C.P. account, as it should have been, in August 2014. Attorney Wallace, when he viewed the account on September 20th, concluded he had simply neglected to take the fee in 2014 when the matter settled. He input the next number in the register #2105, and cut the check with the date August 20, 2014, as it appeared to him on the screen at the time. We believe the check date was auto-populated by QuickBooks with the date August 20, 2014. Exhibit E shows a reconciliation report for August 2014 was run to reflect all transactions cleared plus any changes made to those transactions since the original reconciliation. It appears the number "2105" was assigned to the August 2014 transaction that previously bore no number. As reflected in Exhibit 8 and Exhibit D, check #2105 "zeroed out" the account, and did not reflect an overdraft.

We further investigated check #1668 to try and ascertain how it was accounted for in the system. Ms. Greenwoods searched the QuickBooks account for check #1668, but could not locate it. See Exhibit F. We then searched for all checks in the amount of \$9,600.51. The only check that met this description was check #2105 dated August 20, 2014 and associated with the C.P. matter. Exhibit G. Ms. Greenwood ran an audit trail report on check #1668 and obtained no results. We were unable to locate any transaction corresponding to check #1668 in QuickBooks.

Ms. Greenwood then ran an audit trail report on check #2105. Exhibit H. That report reflects it was entered on September 20, 2016 with the date August 20, 2014 and linked to the C.P. account. Id. That check cleared the bank on September 21, 2016. Exhibit 11 to the Grievance. The September 2016 bank statement reflecting the check is appended as Exhibit I.

Finally, Ms. Greenwood ran reports on "Voided/Deleted Transaction Details" for (1) all checks in the amount of \$9,600.51, (2) check #1668, and (3) check #2105, but obtained no results. Exhibit J.

Based upon these reports and analysis, it appears the number "2105" was assigned to the August 2014 check (nominally, #1668) that previously bore no number in QuickBooks and was not linked to the C.P. account."

A copy of check #2105, which cleared the bank on September 21, 2016 with a date of August 20, 2014 is located at Exhibit 7A. Grievance response Exhibits D and E, noted above, have been provided at Exhibit 7B to show the C.P. ledger activity and the referenced August 2014 bank reconciliation noted in the response above. We reprinted the August 2014 bank reconciliation in QuickBooks and selected the option to generate the report with transactions cleared at the time of reconciliation. This election shows the .pdf image generated at the time of the original reconciliation, performed on September 12, 2014, which shows a view of the original transaction, prior to the issuance of the second check in September 2016, see Exhibit 7C. An examination of this report shows a check dated August 20, 2014 made payable to the ILC, in the amount of \$9,600.51, the transaction did not have a check number assigned to it, however it was marked as a cleared transaction on the August 2014 reconciliation.

As noted in the grievance and response, this disbursement cleared the bank via check #1668. We performed the same searches for check #1668 in the audit trail report and the voided/deleted transaction details reports, noted above, and also received no results in QuickBooks. We reviewed the check image for check #1668 (see Exhibit 7D), and upon further examination of the check image (obtained from the grievance), it appears that the check was likely printed outside of the QuickBooks software, as noted by the different font and formatting of this check as compared to other disbursement images reviewed. This could account for the absence of a record for check #1668 in QuickBooks.

At Exhibit 7E we recreated the August 2014 bank reconciliation showing the transactions cleared plus any changes made to those transactions since the reconciliation (same report as Exhibit 7B). We displayed the date entered/last modified on this report to determine when this transaction was last modified. As noted in Exhibit 7E the disbursement in the amount of \$9,600.51 was last modified in 9/20/2016 at 14:20:00 and it now appears with check # 2105 assigned to it. This report assists us in identifying the original transaction from August 2014 in additional reports.



We performed an audit trail search for the amount of the check, \$9,600.51, which yielded 2 results (see Exhibit 7F), both checks were numbered 2105. As noted above, the transaction that originated in August 2014, was last modified on 9/20/2016 at 14:20:00. A review of the audit trail report shows the first transaction for check #2105 as last modified on 9/20/2016 at 14:20:00, this transaction is assigned to the C.P. ledger. An account quick report for the C.P. ledger account as of September 20, 2016 was generated in QuickBooks to show how the C.P. trust account would appear in QuickBooks on September 20, 2016 (see Exhibit 7G). As noted in this report C.P. ledger shows a zero balance, with all funds having been disbursed. The original payment of \$9,600.51 was properly credited to the C.P. ledger at the time of processing in August 2014.

As noted in the audit trail report, a separate transaction with a date of September 21, 2016 was created and the check was credited to the NH IOLTA 582780 – Other ledger account, not the C.P. account. Had the transaction been classified to the C.P. ledger account, it would have shown the ledger account as overdrawn. As a result of this not being assigned to the account the duplicate check created an additional overdraft of the *NH IOLTA 582780 – Other* ledger account which persisted through December 2016, when the error was fully identified and reimbursed.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on the compliance review of the trust accounts of the ILC. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

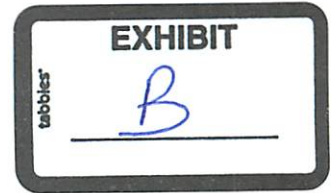
This report is intended solely for the information and use of the New Hampshire Supreme Court Attorney Discipline Office, and is not intended to be and should not be used by anyone other than the specified party.

Plodzik & Sanderson

PLODZIK & SANDERSON,
Professional Association

March 23, 2017





**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Wallace, Edward F.

advs.

Attorney Discipline Office

#16-049

**AGREEMENT TO PAY COSTS
OF DISCIPLINARY MATTER**


1. Subject to the Professional Conduct Committee's approval of the Stipulation of Facts, Rule Violations, and Sanction: Public Censure with Conditions in the above matter, I agree to pay the expenses incurred by the Committee in the investigation and enforcement of this disciplinary matter. *See* Sup. Ct. R. 37(19)(b). Costs can include, but are not limited to: mileage, stenographers, transcripts, copying, inventory, audit expenses and publication.
2. As of May 23, 2017, I have been informed that the costs are approximately \$6,791.00. Should further costs accrue in this disposition of this matter, I understand that the Committee will bill me for these costs. If I dispute the bill, I will notify the Committee of the specific nature of the dispute in writing within thirty days of my receipt of the bill. I understand that the Committee will consider the disputed item and issue a written decision. If

I do not notify the committee that I dispute the bill, payment will be due upon its receipt.

3. I waive the provisions of Supreme Court Rule 37(19)(b) regarding any further detail of the nature and amount of each expense, and I also waive formal demand for payment.
4. I understand and agree that the assessment of costs is deemed final and shall have the full force and effect of a civil judgment. As a result, it may be enforced in any Superior Court in New Hampshire.
5. The Committee may file a copy of the final assessment with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures. See Sup. Ct. R. 37(19)(c).
6. I also agree to be responsible for all costs incurred as a result of the Attorney Discipline Office's collection efforts.
7. I also agree to be responsible for all future costs that would result from the enforcement of compliance to the terms of the Stipulation and related conditions.

Respectfully submitted,

Dated: June 6, 2017



Edward F. Wallace, Esquire
Respondent

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

David M. Rothstein, Chair
Heather E. Krans, Vice Chair
Elaine Holden,* Vice Chair
Ronald K. Ace*
Kathleen M. Ames*
Peter G. Beeson
Margaret R. Kerouac

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

Caroline K. Leonard
Mona T. Movafaghi
Edward D. Philpot, Jr.
Georges J. Roy*
Martha Van Oot
* non attorney member
Barbara J. Guay, Legal Assistant

Wallace, Edward F. advs. Attorney Discipline Office - #16-049

ORDER

On July 17, 2018, the Professional Conduct Committee deliberated the above captioned matter.

On June 20, 2017, the Committee issued an Order accepting the monitoring requirements. Disciplinary Counsel has indicated that there have been no further complaints docketed by the Attorney Discipline Office since the June 20, 2017, Order was issued. Mr. Wallace has complied with the terms and conditions of the monitoring requirements.

Upon consideration, the Committee voted to close the matter.

July 17, 2018



David M. Rothstein
Chair

Distribution:

Sara S. Greene, Disciplinary Counsel
Edward F. Wallace, Esquire
File