

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Keenan, Christopher W. advs. Attorney Discipline Office - #16-023

**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 approved the facts as stipulated by clear and convincing evidence. It further found that Christopher W. Keenan’s conduct violated Rules of Professional Conduct 1.15; 5.3; 8.1; 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 Christopher W. Keenan 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
Richard Y. Uchida, Esquire
File



**NEW HAMPSHIRE SUPREME COURT
HEARINGS COMMITTEE**

Keenan, Christopher W.

advs.

Attorney Discipline Office

#16-023

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

Respondent Christopher W. Keenan, Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

A. Background Facts/Summary of Investigation

1. Mr. Keenan is an attorney licensed to practice law in New Hampshire. Mr. Keenan was admitted to practice in 1986.
2. Mr. Keenan was also admitted to practice law in Maine on October 1, 1986. He is currently on Active Non-Resident status for the Maine Bar.
3. At all times material to this proceeding, Mr. Keenan operated his law office as Law Offices of Christopher W. Keenan, P.C., 125 Brewery Lane, Suite 7, Portsmouth, New Hampshire 03801.
4. Mr. Keenan does not have a previous disciplinary history.
5. This case has an unusual procedural background which resulted in Mr. Keenan defaulting on a Notice of Charges issued on September 12, 2016. Upon motion of Mr. Keenan, that default was ultimately vacated by Order

of the Hearing Panel Chair dated December 13, 2016, and he filed an Answer on January 17, 2017. Mr. Keenan thereafter hired counsel and the parties reached this Stipulation.

6. This matter was initiated when the ADO received an overdraft notification (ODN) from TD Bank in May 2016. After Mr. Keenan failed to respond to numerous letters from the ADO, including the Notice of Charges, Mr. Keenan discovered that his legal assistant had been diverting the ADO correspondence from him for at least six (6) months. Upon discovering this misconduct, Mr. Keenan failed to take appropriate remedial measures, resulting in Rule 5.3 and 8.1(b) violations as set forth further below. Although the ODN was the event which caused the initiation of this disciplinary matter, the ODN was the result of bank error for which the bank reversed all overdraft charges. The ADO's review of Mr. Keenan's bank records and relevant file materials demonstrates a few isolated instances of record-keeping failures, but these are minor errors that do not substantially affect the proposed sanction and are not the gravamen of this matter.

**Correspondence from the ADO/Hearings Committee Diverted
by Mr. Keenan's Legal Assistant**

7. Mr. Keenan is a sole practitioner. At all times material to this proceeding, Mr. Keenan employed an individual named Kristen Osborne as his legal assistant. Ms. Osborne was his sole support staff.

8. All correspondence from the ADO to Mr. Keenan was addressed to the mailing address that he kept on file with the New Hampshire Bar Association. At no point during the events described herein was any correspondence from the ADO to Mr. Keenan returned as undeliverable.
9. Mr. Keenan hired Ms. Osborne as a legal assistant on or around ~~August~~ October of 2013. Prior to working for Mr. Keenan, Ms. Osborne had worked as a legal assistant for the Donahue Tucker & Ciandella firm for approximately seven years. Prior to the events leading to this disciplinary matter, Mr. Keenan had not had any personnel or job performance issues with Ms. Osborne.
10. Ms. Osborne was solely responsible for assisting Mr. Keenan with general office and case management, including maintaining files, writing first drafts of pleadings, and transcribing dictated correspondence. Most relevant for this disciplinary matter, Ms. Osborne was responsible for retrieving mail from a locked mailbox, opening it, calendaring any pertinent deadlines, and bringing to Mr. Keenan's attention any matters that were time sensitive. Ms. Osborne kept one of two keys to the mailbox at her desk. The second key was kept by Mr. Keenan in his desk.
11. By letter dated May 2, 2016, TD Bank informed the ADO that Mr. Keenan's IOLTA Client Trust Account (CTA) was overdrawn. Until November, 2016, Mr. Keenan never saw this letter.

12. By letter dated May 12, 2016, Assistant General Counsel Brian Moushegian requested that Mr. Keenan provide specific banking information and provide a written explanation of how the overdraft occurred. Until November, 2016, Mr. Keenan never saw this letter.
13. As a result, Mr. Keenan did not respond to Mr. Moushegian's May 12 letter.
14. Mr. Moushegian thereafter called Mr. Keenan at his law office seeking information about the ODN. He left a message with Ms. Osborne, stating that he was calling from the ADO and that he urgently needed to speak with Mr. Keenan. Mr. Keenan never received this message.
15. As a result, Mr. Keenan did not return Mr. Moushegian's call.
16. Therefore, the case was docketed by letter to Mr. Keenan dated June 20, 2016. The letter contained the standard language noting that Mr. Keenan was "required" to respond and that failure to do so is a violation of Rule 8.1(b). Until November, 2016, Mr. Keenan never saw this letter.
17. Thus, Mr. Keenan did not respond to the June 20 docketing letter.
18. The matter was forwarded by the Complaint Screening Committee (CSC) to Disciplinary Counsel by letter dated July 20, 2016. Until November, 2016, Mr. Keenan never saw this letter.
19. On July 25, 2016, Disciplinary Counsel sent a letter to Mr. Keenan again requesting that he respond in writing regarding the ODN by August 3, 2016, and reminding him of his duty under Rule 8.1 to cooperate with

the ADO. However, until November, 2016, Mr. Keenan never saw this letter.

20. Thus, Mr. Keenan did not respond by the August 3, 2016 deadline set forth by Disciplinary Counsel. Disciplinary Counsel therefore prepared subpoenas to TD Bank for Mr. Keenan's CTA records.
21. On August 5, 2016, Disciplinary Counsel sent another letter to Mr. Keenan enclosing copies of the subpoenas and noting that he had not filed his Trust Account Compliance Certification (TAC) in a timely manner. This letter also advised Mr. Keenan regarding the services of the Lawyer's Assistance Program. Again, until November, 2016, Mr. Keenan never saw this letter.
22. The ADO received Mr. Keenan's bank records from TD Bank on August 24, 2016. The results of the review of these records is set forth separately below, *infra* ¶¶ 47-56, but in summary, the records showed no evidence of misappropriation or significant failures in record-keeping requirements.
23. On August 24, 2016, Disciplinary Counsel left a message with Ms. Osborne stating that she urgently needed to speak with Mr. Keenan. Mr. Keenan never received this message.
24. As a result, Mr. Keenan did not return the August 24, 2016 phone call.
25. Disciplinary Counsel sent another letter to Mr. Keenan on August 24, 2016. The letter posed various questions about specific client matters based on the bank records received in response to the subpoena, and

requested that Mr. Keenan respond by September 7, 2016. Once again, until November, 2016, Mr. Keenan never saw this letter.

26. Thus, Mr. Keenan did not respond by the September 7, 2016 deadline. Additionally, as of that date, he had not filed his TAC for the period June 1, 2015 through May 31, 2016.
27. The ADO issued a Notice of Charges (NOC) on September 12, 2016. It was sent certified mail to the address Mr. Keenan has kept on file with the Bar Association as required by Rule 37A(III).
28. Ms. Osborne signed for the certified NOC. The NOC was never passed on to Mr. Keenan. When Mr. Keenan did not answer by the deadline, Disciplinary Counsel asked that a Hearing Panel be appointed and noted that Mr. Keenan had defaulted pursuant to Rule 37A(III)(b)(3)(A).
29. Mr. Keenan filed his TAC on or around September 30, 2016. He filed it late because Ms. Osborne misrepresented to him, in the summer of 2016, that she had filed the TAC as he had requested in June 2016. At the time, he found her representations credible because from time to time he could hear her on the phone allegedly speaking with representatives of the New Hampshire Bar Association about her attempts to file the TAC. As it turns out, there were no calls from Ms. Osborne to the Bar Association, and Mr. Keenan is not certain to whom (if anyone) she was talking.
30. The clerk for the Hearings Committee issued and mailed to Mr. Keenan and the ADO a Notice of Hearing Panel Appointment and Notice of Pre-

hearing Conference on October 26, 2016. Like all correspondence from the Hearings Committee, it was mailed to Mr. Keenan's law Office. Until November, 2016, Mr. Keenan never saw these notices.

31. Thereafter, on November 4, 2016, Disciplinary Counsel mailed, and as a courtesy, also emailed, bates-stamped discovery documents to Mr. Keenan.
32. Mr. Keenan did not receive the mailed documents.
33. On November 9, 2016, he did, however, open and read the November 4, 2016 email from Disciplinary Counsel. This was the first correspondence of any kind that Mr. Keenan received from the ADO.

**Events After Mr. Keenan Was On Notice That His Assistant
Had Diverted Mail from the ADO**

34. On November 9, 2016, when he opened and read the email from Disciplinary Counsel, Mr. Keenan was on notice that he was the subject of a Notice of Charges on which he had been defaulted.
35. On November 10, 2016, Disciplinary Counsel scanned and emailed to Mr. Keenan all of the correspondence from the ADO addressed to him going back to July 2016 (i.e. from the time his matter was in formal proceedings). As noted above, General Counsel had been attempting to reach him since May 2016.
36. Importantly, this correspondence included a scanned version of Ms. Osborne's signature on the Return Receipt for certified mail for the NOC, confirming her receipt of the NOC at 11:23 a.m. on September 13, 2016.

37. Mr. Keenan confronted Ms. Osborne about the correspondence. While agreeing she signed for the NOC, Ms. Osborne told Mr. Keenan that she has no recollection of that document, or any other document, from the ADO. Likewise, Ms. Osborne provided the same response when confronted by Disciplinary Counsel. Mr. Keenan agrees that Ms. Osborne's explanation is insufficient and simply not credible, due to the fact that (a) she was solely responsible for gathering mail and opening it, (b) the sheer volume of correspondence at issue, (c) her signature on a certified (large) package containing the NOC, and (d) no correspondence was ever returned to the sender as undeliverable.

38. After a telephone conversation with Mr. Keenan during which the parties decided he should file a Motion to Vacate Default, Disciplinary Counsel emailed Mr. Keenan on November 14, 2016 and stated:

I remind you of your duties under Rule 5.3 to properly supervise non-lawyers and take corrective action. [Ms. Osborne] seriously jeopardized your career. If she is capable of mishandling something like this (and with so many pieces of correspondence from us, not just a single letter), I would worry about her going forward.

39. Despite being on notice that his assistant had diverted approximately 11 pieces of ADO correspondence from him, including the actual charging document for which she signed and on which he had defaulted, Mr. Keenan did not terminate Ms. Osborne. Mr. Keenan did not, at a minimum, take away from Ms. Osborne her key to his mailbox, which she continued to keep at her desk and use daily. She continued to be responsible for gathering and opening mail until mid-February 2017.

40. Mr. Keenan filed a Motion to Vacate Default, which was granted by Order dated December 13, 2016. The Order set a new deadline of January 12, 2017 for Mr. Keenan to Answer the NOC.
41. Because Mr. Keenan had not adequately addressed Ms. Osborne's misconduct, however, she continued to be responsible for mail. As a result of her continued control over mail, Ms. Osborne diverted the December 13, 2016 Order from Mr. Keenan, and thus he never received it. Having not received the Order, Mr. Keenan did not file his Answer in a timely fashion. Disciplinary Counsel again emailed Mr. Keenan and he filed an Answer five days late, on January 17, 2017.

Remedial Measures/New Hire

42. Mr. Keenan finally took the key to the mailbox from Ms. Osborne on or around February 6, 2017. He gave her notice of her termination on February 15, 2017, after finding a new assistant, and her last day of work (other than some brief ad hoc training sessions of Mr. Keenan's new assistant in the following week) was February 17, 2017.
43. Mr. Keenan would testify that he did not take prompt and decisive action against Ms. Osborne (such as firing her immediately) because he was aware she was in the midst of personal problems, including marital strife and certain medical problems, and he felt badly for her. He provided her health insurance and he felt a friendship with Ms. Osborne. He had also employed Ms. Osborne for 3 ½ years, and felt an allegiance to her because of their long-term employment relationship. He was also

reluctant to release her during and immediately after the holiday season due to her personal situation and the stress it would place on her marital relationship. These factors clouded his judgment. He recognizes in hindsight that despite these personal/friendship concerns, Ms.

Osborne's misconduct was serious. Although her misconduct appears only to have harmed Mr. Keenan himself, he likewise recognizes that continuing to employ Ms. Osborne and utilize her as his "gatekeeper" (i.e. phone calls, voicemails, opening mail, etc.) endangered clients as well.

44. Mr. Keenan hired a new legal assistant, Caroline A. Epperson, in March of 2017. Moreover, she is a member of the Massachusetts bar since 2015 and was recently admitted to the New Hampshire Bar. Mr. Keenan is personally retrieving his mail at this time, opening it himself in order to calendar important deadlines or "to-do's," and then handing the mail off to Ms. Epperson.

45. Mr. Keenan also opened a post office box on February 14, 2017 to use for receiving mail. He timely updated the Bar Association regarding the P.O. Box as his mailing address. Mr. Keenan keeps the keys to the physical mailbox in his possession. Mr. Keenan updated his website as of March 24, 2017 to include his new post office box as his mailing address. It has also been updated with the Maine Bar Association and with the various insurance agencies which issue insurance for his law practice.

46. Since Ms. Osborne's departure, Mr. Keenan has discovered other tasks which he assigned to her that were never accomplished. Mr. Keenan and Ms. Epperson have undertaken a case-by-case/matter-by-matter review of Mr. Keenan's files to (a) ensure that no acts or omissions by Ms. Osborne have prejudiced a client; to (b) undertake any follow-up actions to protect client interests; and (c) to ensure any administrative matters and obligations for which Ms. Osborne had responsibility have been fully performed. To date, they have not discovered any harm caused by Ms. Osborne which cannot be readily remedied.¹

The Cause of the Overdraft & Mr. Keenan's Bank Records

47. The overdraft occurred, essentially, due to bank error. Mr. Keenan deposited a bank check from York County Federal Credit Union for \$13,000 on April 28, 2016. These funds were settlement monies for a client named James Dugan.
48. Under TD Bank's policies, funds from bank checks are normally immediately available. Unknown to Mr. Keenan, however, TD Bank made only \$100 of the \$13,000 immediately available. At the time of the deposit, the beginning available balance in the IOLTA account was \$107.20. Because only \$100.00 of the \$13,000.00 deposited was made available immediately, this left a total available balance for withdrawals or posted items of \$207.20 on April 28, 2016.

¹To date, the ADO has not received any other grievances involving Mr. Keenan arising out of any acts or omissions by Ms. Osborne.

49. On the same date, check number 1258 in the amount of \$3,333.33 and check number 1259 in the amount of \$308.31 representing Mr. Keenan's fees and costs, respectively, in the Dugan case, were presented to the bank for payment out of the CTA. Both checks were made payable to Christopher W. Keenan, P.C, and returned for insufficient funds.
50. These checks created an overdraft in Mr. Keenan's IOLTA Trust Account generating a negative balance, resulting in TD Bank's ODN to the ADO dated May 2, 2016.
51. After receiving notice of the overdraft, Mr. Keenan immediately notified TD Bank of its error. TD Bank, upon acknowledging the error, reversed all of the fees and charges for the overdraft. By the time Mr. Keenan learned of the overdraft, the York County Federal Credit Union bank check had cleared. Thereafter, Mr. Keenan's office, on May 9, 2016, issued check number 1261 in the amount of \$3,641.64 from his CTA to the operating account representing the fee earned and costs incurred in representing Mr. Dugan.
52. Had Mr. Keenan received the first letter from Deputy General Counsel Mr. Moushegian, and had he been able to avail himself of the opportunity to respond as set forth herein, the ADO likely would have dismissed the ODN, as it has done in various other matters under similar circumstances, i.e. bank error or an isolated instance of an attorney misunderstanding their bank's available funds policy for bank or cashier's checks.

53. The only other record-keeping failure that the bank records demonstrate is that Mr. Keenan wrote four (4) checks from his IOLTA account which contain no identifying information on the "memo" line indicating the client matter to which those disbursements pertained or the purpose of the disbursement.
54. Mr. Keenan produced client ledgers, however, that accurately tracked deposits and disbursements, with a running balance, for each client matter. The client ledgers for these clients properly account for funds he is holding for them and accurately reflect running balances.
55. The bank records, client ledgers, and file materials reviewed by the ADO demonstrate no evidence of misappropriation or self-dealing by Mr. Keenan.
56. Although Ms. Osborne has offered no credible explanation for her failure to provide Mr. Keenan with the many communications from the ADO, Mr. Keenan believes that Ms. Osborne felt she was the cause of the overdraft, and that rather than deal with the issue, she concealed it. His belief is based on his investigation of office and client matters and his finding that she similarly concealed or filed away other matters assigned to her which she failed to address or satisfactorily complete when complications arose in those matters. He has also come to believe that Ms. Osborne may have encountered mental health issues.

B. Rule Violations

57. The parties agree that Mr. Keenan's conduct in this case involves

violations of the New Hampshire Rules of Professional Conduct, as follows:

Rule 1.15 and Sup. Ct. Rule 50: Safekeeping Property

58. The facts set forth above are incorporated by reference.
59. 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.

60. In failing to note the client matter to which a particular disbursement related on four checks during an eight month period, Mr. Keenan violated Rule 1.15(b)/Sup. Ct. Rule 50(2)(B). This violation is relatively minor, being in the nature of a simple oversight. Had this been the only Rule violation, it likely would have been dismissed, as noted above.

Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

61. The facts set forth above are incorporated by reference.
62. 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.

63. Mr. Keenan violated Rule 5.3 when he failed to make reasonable efforts to ensure that Ms. Osborne's conduct was compatible with his professional obligations and failed to take remedial action regarding Ms. Osborne after he was on notice, as of November 9, 2016, that she had been systematically diverting his correspondence from the ADO.
64. It was not reasonable to continue to employ Ms. Osborne as his only support staff, and to continue to allow her to be in charge of mail, once Mr. Keenan was on notice that she had diverted numerous pieces of ADO correspondence from him.
65. This failure resulted in further problems in his disciplinary matter, including his failure to timely file an Answer after the Hearing Panel Chair granted his requested relief by lifting the default.

Rule 8.1: Bar Admission and Disciplinary Matters

66. The facts set forth above are incorporated by reference.
67. Rule 8.1 states as follows:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or

- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or
- (c) fail to attend a hearing when ordered to do so by a disciplinary authority.

68. The term “knowingly” not only includes actual knowledge, but knowledge inferred from the circumstances. See Rule 1.0(f).
69. Mr. Keenan violated Rule 8.1(b) by knowingly failing to respond to demands for information from the ADO after November 9, 2016, the date he was on notice (and thus, could infer from such notice and the circumstances of this matter) that his employee Ms. Osborne had been diverting ADO correspondence from him.
70. Mr. Keenan agrees that Ms. Osborne’s acts of diverting mail (i.e. ignoring requests for information from the disciplinary authority) can be imputed to him under Rule 5.3(c)(2), which provides that a lawyer is responsible for the conduct of a non-lawyer where the lawyer has direct supervisory authority over the non-lawyer and “knows of the misconduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.”

Rule 8.4(a): General Rule

71. Having found the foregoing violation, there is clear and convincing evidence that Mr. Keenan’s conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

C. Dismissed Rule Violations: Overdraft Issue and Rule 3.4(c)

72. Rule 3.4(c) provides that a lawyer shall not “knowingly disobey an obligation under the rules of a tribunal” The Rule thus includes state of mind as an essential element, i.e. it may only be violated “knowingly.”
73. The ADO has agreed to dismiss the Rule 3.4(c) violation arising out of Mr. Keenan’s failure to file his TAC because he did not “knowingly” fail to file it. As described above, Ms. Osborne lied to Mr. Keenan that she had filed the TAC in a timely fashion. Importantly, for purposes of the state of mind question, she was lying to him and engaging in active concealment of her misconduct throughout the summer of 2016 and into the early fall, at a time when he was not actually on notice that she had been engaging in misconduct or dishonesty, nor at a time when he was presented with circumstances under which he “should have known” she was lying.
74. That said, Mr. Keenan acknowledges that he should have required confirmation from Ms. Osborne that the TAC had been filed, i.e. by requiring that she print out a confirmation from the State Bar website of the filing. Mr. Keenan will be personally seeing to his on-line TAC filing going forward.

D. Recommended Sanction

75. The Attorney Discipline Office and Mr. Keenan jointly agree that a public censure with conditions is the appropriate sanction in this matter. This

- sanction would serve the purposes of attorney discipline.
76. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
 77. 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).
 78. 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.
 79. 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”).

80. Under the first prong of the analysis, Mr. Keenan violated duties owed to the legal profession.
81. With respect to Mr. Keenan’s mental state under the second prong of the sanction analysis, the parties agree that, as of November 9, 2016, Mr. Keenan’s mental state was knowing. Before that date he had no knowledge that Ms. Osborne was diverting mail or telephone messages from the ADO.
82. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Keenan’s misconduct.
83. Mr. Keenan’s conduct resulted in actual injury. His failure to adequately supervise Ms. Osborne resulted in serious injury to himself, but it also injured the legal system and the profession in that it diverted the resources of the ADO, which was forced to subpoena and review bank records, draft a Notice of Charges, and empanel a Hearing Panel -- for a case that based on the ODN alone would likely have been diverted. Mr. Keenan’s misconduct also caused potentially significant harm to clients, because all mail (including court orders) went through Ms. Osborne, who he knew to be (at least of November 9, 2016) a dishonest employee that had already caused him serious harm.

84. The parties agree that the baseline sanction in this matter is a suspension. *See Standards § 7.2.*
85. Mr. Keenan's 5.3 and 8.1 rule violations implicate Section 7.0 of the *Standards*. That Section is entitled "Violations of Duties Owed as a Professional." Although the examples of misconduct enumerated in Section 7.0 do not specifically include the ethical supervision of non-legal assistants, the parties agree that Section 7.2 is the appropriate section under which to analyze sanctions in this matter. If an attorney engages in conduct which is a violation of the attorney's duties as a professional, the following sanctions are recommended:

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.**
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

(emphasis added).

86. The baseline sanction of suspension must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303; *Standard* § 7.2.
87. In this case there is one aggravating factor present: Mr. Keenan's substantial experience in the practice of law. *See Standards* § 9.22.
88. Mitigating factors include the absence of prior discipline, absence of a dishonest or selfish motive, full and free disclosure to Disciplinary Counsel, and remorse. *See Standards* § 9.32.
89. The parties agree that given the baseline sanction, as well as the aggravating and mitigating circumstances present in this case (including Mr. Keenan's 30+ years of practice with no disciplinary history), a public censure, with conditions aimed to prevent a recurrence of similar misconduct, will serve the purposes of discipline and is an appropriate sanction in this case.

**E. Conditions of Imposed Discipline and Procedures
For Alleged Violation of Conditions**

90. Mr. Keenan agrees to comply with the following conditions for one year, which shall begin on the date the Professional Conduct Committee accepts this Stipulation:
 - a. Respondent shall supply Disciplinary Counsel with quarterly reports, with the first report to be provided to Disciplinary Counsel within 60 days of the date that the Professional Conduct Committee accepts the Stipulation, and subsequent reports

thereafter at quarterly intervals/deadlines thereafter as set forth by the ADO. The reports shall set forth in detail how Mr. Keenan's employment of Ms. Epperson is progressing and shall describe any personnel, job performance or supervision problems which implicate the rules of professional conduct that may have arisen. The reports shall confirm that the mail policy remains in effect, and shall report any incidents or problems with the mail (or alternatively shall certify to the absence of such problems). The quarterly reports shall be submitted directly to Disciplinary Counsel by Mr. Keenan.

- b. Respondent shall pay the expenses incurred by the Professional Conduct Committee in connection with this investigation and prosecution, and if unable to pay in lump sum, shall agree to some form of payment plan with the PCC within 60 days of receiving an invoice from the PCC.
 - c. Respondent will engage in no professional misconduct during the one year period.
91. If it is alleged that Mr. Keenan violated any of the conditions enumerated at Paragraphs 90(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 Paragraph 90(a)-(b) have been violated. If it determines that a condition has been violated, the Committee shall

lift the stay and impose the six-month suspension. If the Committee determines that no condition of this Stipulation has been violated, the Stipulation shall continue in force and effect pursuant to its terms.

- b. Respondent may request that the Professional Conduct Committee remand the matter to the Hearings Committee so that a Hearing Panel may be appointed to decide the sole issue of whether a condition under Paragraphs 90(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 90(a)-(b) has been violated.
- c. If a Hearing Panel determines that a condition has been violated, the Panel shall lift the stay and impose a six-month suspension. If the Hearing Panel determines that no condition of the Stipulation has been violated, the Stipulation shall continue in force and effect pursuant to its terms. The PCC shall review the decision of the Hearing Panel.

92. If a new grievance or referral is filed against Mr. Keenan during the one-year period of the stay, thus implicating the condition at Paragraph 90(c), the following shall apply:

- a. So long as a grievance or referral is filed within the one-year period of the stay (“the subsequent proceeding”), and the alleged

misconduct occurred, at least in part, during the one-year period, the stay can be lifted and the six-month suspension imposed at such time as there is a finding of misconduct in the subsequent proceeding, even if such finding occurs beyond the one-year period of the stay.

- b. Pending the final resolution of the subsequent proceeding, the matter underlying this Stipulation shall not be closed.
- c. If the conditions of Paragraphs 90(a)-(b) have been met, Mr. Keenan will not have to continue to comply with those provisions while the subsequent proceeding is pending.
- d. The Respondent shall bear all costs associated with compliance and enforcement of the terms and conditions of this Stipulation.
- e. Nothing herein shall be construed to limit prosecution of any new grievance or referral involving conduct of Respondent occurring during the one year period of stay.
- f. If a grievance or referral is filed within the one-year period of the stay, and such grievance or referral arose out of the acts or omissions by Ms. Osborne, Mr. Keenan shall provide written notice to Disciplinary Counsel within thirty (30) days of receipt of notice of the grievance or referral, *time being of the essence*, along with supporting information or documentation. If, in fact, such grievance or referral arose out of the acts or omissions by Ms. Osborne, and such acts were undertaken at a time when Mr.

Keenan was not on notice of any personnel issues regarding Ms. Osborne, whether as determined by Disciplinary Counsel or in the course of a hearing, such grievance or referral shall not result in any discipline.

F. Costs

93. Subject to the PCC's approval of Mr. Keenan's Stipulation, Mr. Keenan 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. Keenan.

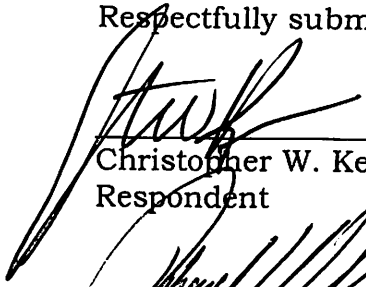
G. Effect of Stipulation

94. Mr. Keenan understands that this Stipulation represents a recommended disposition, and that the Hearing Panel (and thereafter, the Professional Conduct Committee) may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).
95. Mr. Keenan 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 understands that he has a right to obtain counsel regarding this Stipulation and, that he is fully aware of the consequences of the Stipulation.

96. Mr. Keenan knowingly and intelligently waives his right to a hearing.

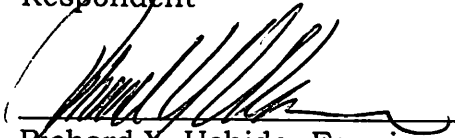
Respectfully submitted,

Dated: April 4 2017



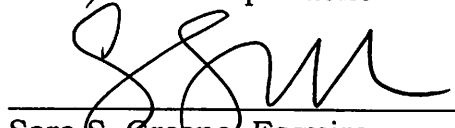
Christopher W. Keenan, Esquire
Respondent

Dated: April 7, 2017 2017



Richard Y. Uchida, Esquire
Counsel for Respondent

Dated: April 10 2017



Sara S. Greene, Esquire
Disciplinary Counsel



NEW HAMPSHIRE SUPREME COURT
HEARINGS COMMITTEE

Keenan, Christopher W.

advs.

Attorney Discipline Office

#16-023

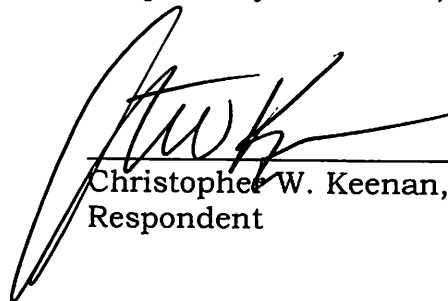
AGREEMENT TO PAY COSTS
OF DISCIPLINARY MATTER

1. Subject to the Professional Conduct Committee's approval of the Stipulation of Facts, Rule Violations, and Sanction 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 March 20, 2017, I have been informed that the costs are approximately \$187.00. 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.

Respectfully submitted,

Dated: April 4 2017



Christopher W. Keenan, Esquire
Respondent