

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Anderson, Michael E. advs. Attorney Discipline Office - #17-001

REPRIMAND 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 Mr. Anderson’s conduct violated Rules of Professional Conduct 1.2(a) and 8.4(a).

The Committee concluded that a reprimand is appropriate. The 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). It is also in accord with the *ABA Standards for Imposing Lawyer Sanctions* (2005).

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

June 21, 2017



David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Michael E. Anderson, Esquire
File



**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Anderson, Michael E.

advs.

Attorney Discipline Office

#17-001

**STIPULATION AS TO FACTS, VIOLATIONS,
AND SANCTION: REPRIMAND**

Respondent Michael E. Anderson, Esq., and the Attorney Discipline Office (“ADO”) stipulate to the following facts and recommend a reprimand as set forth below:

I. Facts

1. Michael E. Anderson (“Mr. Anderson”) is an attorney licensed to practice law in New Hampshire. He was admitted to practice on October 28, 1996.
2. Mr. Anderson is not admitted to practice in any other jurisdiction.
3. Mr. Anderson has a prior disciplinary history in the form of a six-month suspension from the practice of law that became effective on March 16, 2007, resulting from violations of Rules 8.4(b) and 8.4(a). *See Anderson, Michael E. advs. Attorney Discipline Office, #06-020 (March 15, 2007), attached hereto as Exhibit A.* The Rule 8.4(b)

violations resulted from criminal convictions for two counts of Obstructing Report of Crime or Injury and one count of Default or Breach of Bail Conditions. During the time period associated with his criminal convictions, Mr. Anderson admitted that he was suffering from alcoholism. Mr. Anderson complied with the conditions associated with his six month suspension and was reinstated to the New Hampshire Bar on February 10, 2009. *See In the Matter of Michael E. Anderson*, LD-2006-0003 (February 10, 2009), attached hereto as Exhibit B. Mr. Anderson avers that he has maintained his sobriety.

4. Mr. Anderson also received a diversion in 2016 for violations of Rules 1.1(b)(4)-(5) and 3.1. The events giving rise to the Rule violations occurred in the fall of 2012. *See Anderson, Michael E. advs. ADO*, Docket #12-038 (January 20, 2016), order and corresponding Stipulation attached hereto as Exhibit C. The Professional Conduct Committee (“PCC”) granted an extension of the diversion agreement in the #12-038 matter on March 8, 2017, pending investigation and resolution of this current matter.
5. This matter was initiated by a grievance filed by Wendy Hill and Kelli Pilskaner (“Complainants”), by letter dated October 4, 2016. The Complainants were the co-guardians of their brother, Daniel Kuchinsky (“Mr. Kuchinsky”). The grievance relates to Mr. Anderson’s handling of a post-divorce matter involving Mr. Kuchinsky. The

Complaint Screening Committee referred the matter to Disciplinary Counsel on March 15, 2017.

6. Mr. Anderson was retained by the Complainants, in their capacity as Mr. Kuchinsky's co-guardians. The Complainants sought to reopen Mr. Kuchinsky's divorce case and set aside the property division. The Complainants believed that Mr. Kuchinsky either had been tricked by his former wife or had been subject to undue influence when he signed the stipulation resolving the divorce case (the "Stipulation"). As a result, the Complainants believed that Mr. Kuchinsky did not receive an equitable share of the marital estate. Mr. Kuchinsky was not represented by counsel in the divorce.
7. After the divorce case resolved, Mr. Kuchinsky suffered a traumatic brain injury, making him unable to independently manage his affairs. Mr. Kuchinsky was able to assist in the post-divorce case in a limited manner, but the Complainants made all decisions regarding the objectives of the representation and the means to achieve those objectives.
8. On January 1, 2016, Mr. Kuchinsky passed away. The post-divorce case was still pending, with the family court having taken a request to vacate the divorce ("Petition to Change Order") and a subsequent Motion to Reconsider under advisement. On January 6, 2016, Mr. Anderson spoke with the Complainants regarding the impact of Mr.

- Kuchinsky's death on the post-divorce proceeding and indicated he would research that issue.
9. After Mr. Anderson researched the issue, he determined that the guardianship terminated upon the death of Mr. Kuchinsky. As such, the Complainants no longer had the authority to direct the course of the litigation. Mr. Anderson also became concerned that the family court could enter an order vacating the divorce decree. In his opinion, this would result in Mr. Kuchinsky being legally married to his ex-wife, Ms. Susan Jordan, as of the date of his death.
 10. Under these circumstances, because Mr. Kuchinsky died intestate, all of his assets would pass to Ms. Jordan as if the divorce had not occurred. If this were to happen, the limited assets that Mr. Kuchinsky did receive in the divorce would not pass to his other heirs, including the Complainants. Mr. Anderson was confident that this would not have been consistent with Mr. Kuchinsky's wishes.
 11. Mr. Anderson advised the Complainants that they were no longer Mr. Kuchinsky's guardians and that until they were appointed by the probate court as the administrators of his estate, they did not have the authority to act on behalf of the estate. The Complainants had already begun the process of being appointed as administrators and had retained separate counsel for that purpose.
 12. On January 25, 2016, Mr. Anderson filed a Motion to Withdraw Petition ("Motion to Withdraw"). This pleading sought to withdraw the

post-divorce effort to reopen the divorce. Paragraph 2 of the Motion stated: “The Guardians over the person and estate of Daniel Kuchinsky, who are also Co-Administrators of Mr. Kuchinsky’s estate before the Probate Court, wish to WITHDRAW the February 10th Petition to Change Order.”

13. The Complainants deny authorizing Mr. Anderson to file the Motion to Withdraw. While Mr. Anderson did not specifically seek the permission of the Complainants, he discussed with them the need to withdraw the Petition to Change Order. At the time, Mr. Anderson believed that in doing so, he obtained the Complainants’ acquiescence to withdraw the petition.
14. In addition, while the Motion to Withdraw references the Complainants as the co-administrators of Mr. Kuchinsky’s estate, the records of the probate court indicate that the Complainants were not appointed as co-administrators until January 29th (approximately four days after the Motion to Withdraw was filed). This appears to have resulted from a miscommunication between Mr. Anderson and the Complainants, as the Complainants were in the process of being appointed as co-administrators.
15. On January 27, 2016, the family court granted the Motion to Withdraw Petition. The Complainants subsequently obtained new counsel and obtained the reinstatement of the Petition to Change Order. After a hearing on all pending motions on September 13, 2016,

the Court denied the Petition to Change Order and the matter is now closed.

16. Mr. Anderson concedes that the better course of action would have been to file a Motion for Instruction, but at the time he was seeking to avoid the result noted in Paragraph 9.

II. Disciplinary Rules Violated

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

Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer)

18. The facts set forth in the above paragraphs are incorporated by reference.
19. Rule 1.2 states in pertinent part:
 - (a) Subject to paragraphs (c), (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.
20. Mr. Anderson violated Rule 1.2(a) when he filed the Motion to Withdraw Petition without the specific consent of the Complainants and at a time when there was no one with authority to make the decision to withdraw. On the date the Motion to Withdraw Petition was filed, Mr. Kuchinsky had passed away, resulting in the

termination of the guardianship. Also the Complainants had not yet been appointed as the administrators of Mr. Kuchinsky's probate estate.

21. The parties agree that there is clear and convincing evidence that Mr. Anderson violated Rule 1.2(a) when he filed the Motion to Withdraw Petition.

Rule 8.4(a): General Rule

22. Having found the foregoing violation, the parties agree there is clear and convincing evidence that Mr. Anderson's conduct, as described herein, violated Rule 8.4(a).

III. Recommended Sanction

23. The Attorney Discipline Office and Mr. Anderson jointly recommend a reprimand as the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
24. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
25. 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).

26. 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.
27. The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner's Case*, 158 N.H. at 303. Once the baseline sanction is determined, the Court then looks to the fourth and final part of the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *See Id.*
28. Under the first prong of the analysis, Mr. Anderson violated duties owed to his clients, in that he filed the Motion to Withdraw Petition without gaining the specific assent of the Complainants and at a time that the Complainants had not yet been appointed as administrators of the estate.
29. With respect to Mr. Anderson's mental state under the second prong of the sanction analysis, the parties agree that Mr. Anderson's mental state was negligent. While Mr. Anderson had the heirs of Mr. Kuchinsky's estate's best interests in mind (i.e. the Complainants and other heirs), he did not obtain the specific authority to file the Motion

and filed it at a time when the Complainants legally could not assent to such a Motion.

30. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Anderson's misconduct. Mr. Anderson's conduct caused actual injury to the Complainants. As a result of Mr. Anderson's action, the Complainants hired replacement counsel to reopen the case and reinstate the Petition to Change Order. In the end, the Complainants did obtain a decision on the merits.
31. Mr. Anderson's violation of Rule 1.2(a) implicates Section 4.4 (Lack of Diligence)¹ of the *Standards*, which provides as follows:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

¹ See *ABA Stds. for Imposing Lawyer Sanctions* appx. 1 (1992)

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 Reprimand² [Public Censure] is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.44 Admonition³ [Reprimand] is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

32. Mr. Anderson's conduct in this matter, when considered under *Standard* 4.43, would call for a baseline sanction of a public censure. *See Standards* § 4.43.
33. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
34. In this case, there are two aggravating factors: prior disciplinary offenses and substantial experience in the practice of law. *See Standards* § 9.22. There are three mitigating factors: remorse, absence of a dishonest or selfish motive, and full and free disclosure to disciplinary board or cooperative attitude toward proceedings. *See Standards* § 9.32. Of note is that the prior disciplinary offenses involved conduct that occurred some time ago, and relate to Rule

² The term "reprimand," as used in the *ABA Standards*, is analogous to a public censure in New Hampshire.

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

violations that are different from the Rule violated in this case.

Additionally, in the #06-020 Matter, Mr. Anderson was experiencing problems with sobriety and in the #12-038 matter, Mr. Anderson was experiencing a number of personal and office management issues.

These issues do not appear to have caused this current Rule violation and the issue here arose from negligence in assessing the parties' situation.

35. The parties agree that the mitigating factors evident in this case warrant a downward departure. The parties agree that a reprimand serves the purposes of discipline and is an appropriate sanction in this case.

IV. Costs

36. Subject to the PCC's approval of Mr. Anderson's Stipulation, Mr. Anderson 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. Anderson.

V. Effect of Stipulation

37. Mr. Anderson understands that this Stipulation represents a recommended disposition, and that the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).

38. Mr. Anderson 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.
39. Mr. Anderson knowingly and intelligently waives his right to a hearing.

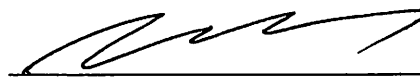
Respectfully submitted,

Dated: 6/15 2017

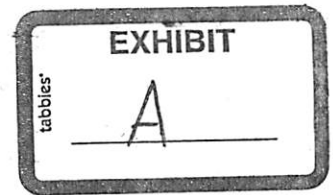


Michael E. Anderson, Esquire
Respondent

Dated: 6/15 2017



Mark P. Cornell
Assistant General Counsel
Elizabeth M. Murphy
Assistant Disciplinary Counsel



New Hampshire Supreme Court

Professional Conduct Committee

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Anderson, Michael E. advs. Attorney Discipline Office # 06-020

SIX MONTH SUSPENSION

On January 16, 2007, the Professional Conduct Committee considered the above referenced matter. The Committee reviewed the Notice of Charges dated August 3, 2006, the Stipulation as to facts and the rules violated dated September 11, 2006, and the Stipulation as to Sanction dated October 16, 2006. In addition, each member of the Committee reviewed the Jointly Submitted Exhibits addressing the incidents leading up to the Notice of Charges and other related documents. All members of the Committee, with the exception of Alan J. Cronheim, were present.

Oral Argument was heard. Landya B. McCafferty, Disciplinary Counsel, appeared for the Attorney Discipline Office. Eugene Sullivan, III, Esquire, appeared for the Respondent. Mr. Anderson was also in attendance. After a period of questioning, Ms. McCafferty agreed to revise the language in the Stipulation as to Sanction for the Committee to address issues of accountability in the event of future criminal proceedings. The matter was tabled for counsel to modify the Stipulation as to Sanction and to resubmit it for the Committee's consideration.

On February 20, 2007, the Committee again took up this matter, having received the revised Stipulation as to Sanction on January 17, 2007. James R. Martin was absent.

The Professional Conduct Committee determined that the record supports the following facts, by clear and convincing evidence, and supported by stipulations:

I. FINDINGS OF FACT

1. Mr. Anderson is an attorney licensed to practice law in New Hampshire. Mr. Anderson was admitted to practice on October 28, 1996. At all times material to this proceeding, Mr. Anderson worked at the Runge Law Office, P.C., 141 Airport Road, Concord, New Hampshire, 03301. His current mailing address is 28 Martell Road, Chichester, New Hampshire, 03234.

2. At all relevant times, Mr. Anderson resided with his long-time partner, Patricia Murphy, and their 5 children.
3. On November 24, 2004, Mr. Anderson was convicted in Concord District Court of one count of Obstructing Report of Crime or Injury, a Class B Misdemeanor. The docket number of the case is 04-CR-07936. The body of the complaint states that, on August 14, 2004, at 12:00 p.m., Mr. Anderson did
knowingly commit the crime of obstructing the report of a crime or injury by removing the phone away from Patricia Murphy while she attempted to call the police during a domestic disturbance, the aforesaid offence [sic] constituting a Misdemeanor.
4. On that charge, Mr. Anderson received the following sentence:
 - \$1,200.00 fine, all suspended on condition of good behavior for one year;
 - Successful completion of domestic violence counseling.
5. On January 19, 2006, at approximately 10:43 a.m., Mr. Anderson was arrested and charged with one count of Driving While Intoxicated. Mr. Anderson was released on \$1,200.00 personal recognizance bail.
6. On February 10, 2006, at approximately 3:00 a.m., Mr. Anderson was arrested and charged with five misdemeanors: Obstructing Report of Crime or Injury, Simple Assault, Endangering the Welfare of a Child, Aggravated Driving while Intoxicated, and Driving while Intoxicated.
7. On February 10, 2006, at 3:00 a.m., Mr. Anderson was released on those charges on \$500.00 personal recognizance bail on condition that, inter alia, he have no contact with Ms. Murphy for 96 hours by mail, telephone or otherwise, and that he not go within 100 yards of Ms. Murphy.
8. On February 10, 2006, Mr. Anderson attempted to make telephone contact with Ms. Murphy at 4:29 a.m., 4:30 a.m., 4:31 a.m., 4:35 a.m., 4:47 a.m., 4:59 a.m., and 5:00 a.m. Thereafter, Mr. Anderson took a taxicab to the home where he and Ms. Murphy resided.
9. Later that day on February 10, 2006, Mr. Anderson was arrested on a charge of Default or Breach of Bail Conditions for having had contact with Ms. Murphy in violation of his bail order that same date.
10. On April 11, 2006, Mr. Anderson was convicted in Concord District Court of the following four misdemeanor charges:

Driving while Intoxicated

Alleging that, on January 19, 2006, at 10:43 p.m., Mr. Anderson did

drive a gold colored four door Chevrolet Cavalier bearing New Hampshire Registration number 1978807 upon Main Street in the Town of Pittsfield, a way in the State of New Hampshire, while under the influence of intoxicating liquor.

Obstructing Report of Crime or Injury

Alleging that on February 9, 2006, at 9:35 p.m., Mr. Anderson did

commit the crime of attempted obstructing report of a crime or injury in that he purposely used physical force, by pinning Patricia Murphy against a rail on an outside deck at the residence, and attempted to take the phone from her hand while Patricia was attempting to call the police to report the crime of endangering the welfare of a minor pursuant [sic]

Driving while Intoxicated

Alleging that, on February 9, 2006, at 1:30 a.m., Mr. Anderson did

drive a 1997 Chevy Cavalier being N.H. registration 197880 upon a public way, to-wit, Martel Rd. in the said town of Chichester, N.H. while the said Michael Anderson was under the influence of an intoxicating liquor

Default or Breach of Bail Conditions

Alleging that, on February 10, 2006, at 8:40 a.m., Mr. Anderson,

having been released on \$500 personal recognizance bail conditions by Kimberly Frederickson on 2/10/2006 on the conditions that he not commit a State or Local crime and be of good behavior and to have no contact with Patricia Murphy for 96 hours, the said Michael Anderson knowingly returned to 28 Martel Rd. and had contact with Patricia Murphy violating the conditions of his bail.

11. Pursuant to the terms of a negotiated plea agreement, the State dropped the Simple Assault, Aggravated Driving while Intoxicated, and Endangering the Welfare of a Child charges.
12. Mr. Anderson's sentence on the April 11, 2006, convictions included the following terms:

- 6 months in the House of Corrections, all 6 months suspended for 2 years on Mr. Anderson's good behavior and compliance with the terms of his sentencing order; and
 - 1 year of probation
13. On April 25, 2006, the New Hampshire Supreme Court ordered Mr. Anderson to show cause why he should not be suspended pending disposition of a disciplinary proceeding. The Court also directed the Attorney Discipline Office (hereinafter referred to as "ADO") to commence disciplinary proceedings against Mr. Anderson, and to advise the Court whether it believed that Mr. Anderson should be suspended pending final disposition of the disciplinary hearing. The ADO requested that Mr. Anderson be suspended, but recommended that the suspension be stayed if Mr. Anderson met certain conditions. In his response, Mr. Anderson stated that he was receiving treatment for alcoholism, that he was on probation for one year, and that he was being randomly tested for alcohol and drugs. He requested that, in the exercise of its discretion, the Court decline to suspend him pending final disposition of the disciplinary proceedings.
14. On June 20, 2006, the Court suspended Mr. Anderson from the practice of law on an interim basis pending final disposition of disciplinary proceedings, but stayed the suspension on the condition that Mr. Anderson meaningfully participate in alcohol and/or drug counseling with a certified alcohol and drug abuse counselor, comply with such counselor's recommended treatment plan, submit evidence to the ADO on a regular basis showing his compliance with these conditions and comply with any request made by the ADO for additional evidence of his compliance.
15. In its June 20 Order, the Court also expressly held that Mr. Anderson's convictions for Default or Breach of Bail Conditions and Obstructing Report of Crime or Injury constitute "serious crimes" under Rule 37(9)(b).
16. On that same date, Mr. Anderson's probation officer, James J. Sullivan, filed a Violation of Probation alleging that Mr. Anderson had violated certain rules of his probation as follows:
- Rule #10, 12G:** Failure to abstain from the use of alcohol. On June 15, 2006, the defendant blew .187 on a PBT test which represents over twice the legal limit for intoxication. He later admitted drinking.

Rule #12C: Failure to obtain a batterer's evaluation. Defendant has failed to obtain an evaluation or appointment for an evaluation despite being required to do so.

17. Mr. Sullivan's Supporting Summary for Violation of Probation Report states:

The defendant is an acknowledged alcoholic and the offense is alcohol related. As such, he was required to refrain totally from the use of alcohol He did so when signing the rules of probation.

On June 15, 2006, police were called to his residence because the defendant was drinking. Alcohol was involved in the offense/incident that caused him to be placed on probation. He was peaceful and cooperative with police, submitting to a PBT test that registered a .187. This is over two times the legal limit for intoxication. One of the responding officers noted he initially lied about drinking. In a telephone conversation on June 16 and in a personal interview on June 19, the defendant readily admitted drinking. Prior to that he had four months sobriety.

Rule #12C: Due to the nature of the offense, the defendant was required to obtain a batterer's evaluation and follow any recommended treatment. He has yet to obtain an appointment.

18. While there has been no finding of "true" on the probation violation, Mr. Anderson has conceded to his probation officer, Mr. Sullivan, that the charges are true. Mr. Anderson's hearing on the probation violation is currently scheduled for September 14, 2006.
19. Upon learning of the alleged probation violation, and by Order dated July 7, 2006, the New Hampshire Supreme Court lifted the stay of Mr. Anderson's suspension, resulting in the immediate suspension of Mr. Anderson's law license pending final disposition of this disciplinary proceeding.

II. RULINGS OF LAW:

The Committee found the following violations of the Rules of Professional Conduct by clear and convincing evidence, and supported by a stipulation:

Rule 8.4(b): Serious Crime

20. As described in more detail above, Mr. Anderson has been convicted of two counts of Obstructing Report of Crime or Injury and one count of Default or Breach of Bail Conditions.

21. By Order dated June 20, 2006, the Supreme Court held that “[t]he offenses of default or breach of bail conditions and obstructing the report of a crime or injury constitute ‘serious crimes’ under Rule 37(9)(b). . . .”
22. Rule 37(9)(b) provides:

The term “serious crime” shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a “serious crime.”
23. Mr. Anderson’s convictions for Obstructing Report of Crime or Injury and Default or Breach of Bail Conditions involve a failure to abide by court orders and interference with the administration of justice, and thereby reflect adversely on Mr. Anderson’s trustworthiness and fitness as a lawyer. See Rule 37(9)(b).
24. Mr. Anderson’s other violations of the law and court orders as set forth herein also reflect his indifference to the law.
25. Mr. Anderson’s conduct in this regard constitutes clear and convincing evidence a violation of N.H. R. Prof. Conduct 8.4(b).

Rule 8.4(a): Misconduct

26. Because of the Rule 8.4(b) violation, there is necessarily clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(a).

III. STIPULATION AS TO COSTS:

Mr. Anderson agrees to pay the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter.

IV. STIPULATION AS TO SANCTION:

The Committee orders that Mr. Anderson be suspended from the practice of law for six months.

27. Prior to Mr. Anderson’s reinstatement to the practice of law, Mr. Anderson agrees that he must provide Disciplinary Counsel with satisfactory proof that, during the period of his suspension, (a) he has complied with the terms of his probation in the matter of State v.

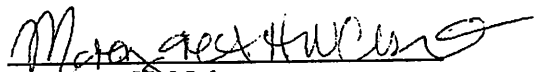
Michael Anderson, (docket numbers 06-CR-1005-661C and 663C), (b) he has had no further personal interactions with the criminal justice system, and (c) he has successfully participated in treatment for alcoholism. In the event that Mr. Anderson is unable to show compliance with the provisions (a), (b), and (c) above by clear and convincing evidence, Mr. Anderson agrees that Disciplinary Counsel may bring the matter to the attention of the Professional Conduct Committee for further orders and conditions which must be met by Mr. Anderson prior to Mr. Anderson's reinstatement to the practice of law.

28. Mr. Anderson further agrees that, in the event Disciplinary Counsel learns that, during the term of his suspension, Mr. Anderson has violated a term of probation, has had further personal interaction with the criminal justice system, or has engaged in misconduct attributable to alcohol abuse, Disciplinary Counsel has the authority to bring this matter to the immediate attention of the Professional Conduct Committee for the imposition of further conditions precedent to Mr. Anderson's reinstatement.
29. While Mr. Anderson has no prior disciplinary history, he concedes that his misconduct is serious and justifies a significant sanction. In addition, Mr. Anderson suffers from alcoholism and desires a continued suspension in order to focus on his rehabilitation before resuming the practice of law.

V. CONCLUSION:

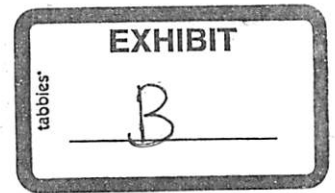
For all of the above reasons, The Professional Conduct Committee suspends Michael E. Anderson from the practice of law for a period of six months for the violations of the Rules of Professional Conduct cited above. This order shall take effect as of the 16th day of March, 2007. At the conclusion of his suspension, Mr. Anderson shall comply with all Rules of the Supreme Court as to application for reinstatement to the practice of law.

March 15, 2007


Margaret H. Nelson
Chair

Distribution:

Landy B. McCafferty, Disciplinary Counsel
Eugene Sullivan, III, Esquire
File



THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. LD-2006-0003, In the Matter of Michael E. Anderson, the court on February 10, 2009, issued the following order:

Michael E. Anderson's motion for reinstatement to the New Hampshire bar is granted.

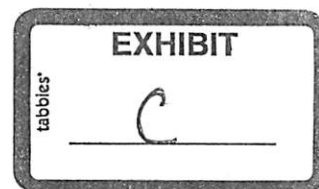
Broderick, C.J., and Dalianis, Duggan and Hicks, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:

James L. DeHart, Esquire
Landya B. McCafferty, Esquire
Eugene F. Sullivan, III, Esquire
Mr. Michael Anderson
Dawnangela Minton, Esquire
Attorney General
NH Bar Association x5
Sherri Kluesener, Supreme Court
File

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



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Anderson, Michael E. advs. Attorney Discipline Office - #12-038

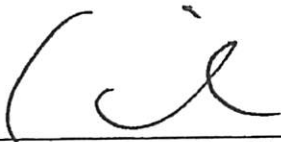
ORDER

On January 19, 2016, the Professional Conduct Committee ("the Committee") held oral argument in the above-captioned matter. David M. Rothstein, Heather E. Krans, Elaine Holden, Susan R. Chollet, Scott H. Harris, Margaret R. Kerouac, Georges J. Roy and Richard D. Sager were present. Richard H. Darling, Mona T. Movafaghi and Martha Van Oot were absent. Peter Beeson did not participate in the oral argument or deliberations.

Elizabeth M. Murphy presented argument on behalf of the Attorney Discipline Office. Sandra A. Kuhn presented argument on behalf of Michael E. Anderson. Michael E. Anderson and his law partner, Michael Bedard, were also present.

After oral argument and deliberation thereon, the Committee approves the Stipulation as to Facts, Violations and Diversion, the Diversion Agreement and the Agreement to Pay Costs of Disciplinary Matter.

January 20, 2016



David M. Rothstein, Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Sandra A. Kuhn, Esq.
File

**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Anderson, Michael E.

advs.

Attorney Discipline Office

#12-038

**STIPULATION AS TO FACTS, VIOLATIONS,
AND DIVERSION**

Respondent Michael E. Anderson, Esq. and the Attorney Discipline Office
(ADO) stipulate as follows:

A. Facts

Background Facts

1. Mr. Anderson is an attorney licensed to practice law in New Hampshire. Mr. Anderson was admitted to practice on October 28, 1996.
2. Mr. Anderson was also admitted to the Massachusetts Bar on December 15, 1997, but was suspended on May 29, 2007 arising out of reciprocal discipline in New Hampshire. He has not applied for reinstatement in Massachusetts.

3. During the time period relevant to this complaint, Mr. Anderson practiced law at The Legal Connection, PC, (the firm) located at 10 Ferry Street, Suite 317, Concord, New Hampshire 03301.
4. Mr. Anderson has a prior disciplinary history in the form of a six-month suspension from the practice of law that became effective on March 16, 2007, resulting from violations of Rules 8.4(b) and 8.4(a). *See Anderson, Michael E. advs. Attorney Discipline Office, #06-020 (March 15, 2007)*, attached hereto as Exhibit A. The Rule 8.4(b) violations resulted from criminal convictions for two counts of Obstructing Report of Crime or Injury and one count of Default or Breach of Bail Conditions. During the time period associated with his criminal convictions, Mr. Anderson admitted that he was suffering from alcoholism. Mr. Anderson complied with the conditions associated with his six month suspension and was reinstated to the New Hampshire Bar on February 10, 2009. *See In the Matter of Michael E. Anderson, LD-2006-0003 (February 10, 2009)*, attached hereto as Exhibit B. Mr. Anderson avers that he has maintained his sobriety since 2006, with one minor relapse for one day in 2010, including during the underlying events associated with the current complaint.
5. This complaint was initiated by way of a letter of referral from Belknap County Superior Court Clerk James M. Warren on October 22, 2012. The referral arose as a result of representations that Mr. Anderson made

at an October 5, 2012 hearing before Judge James D. O'Neill and in motions to continue that Mr. Anderson filed in the same case.

Underlying Matters

6. By way of further background, in the early fall of 2012, Mr. Anderson represented defendants Nicholas Robidoux (*State v. Nicholas Robidoux*, 216-2012-CR-00293, Superior Court, Hillsborough County, North) ("Robidoux matter") and Walter Alexis (*State v. Alexis*, 211-2012-CR-00157, Superior Court, Belknap County) ("Alexis matter") in two unrelated criminal matters.
7. At one point, both matters were scheduled for trial on October 9, 2012.
8. On September 27, 2012, Mr. Anderson attended a plea hearing in the Hillsborough County Superior Court in the Robidoux matter during which his client pled guilty before Judge Gillian Abramson.
9. On September 28, 2012, Mr. Anderson filed an Assented-To Motion to Continue ("Motion to Continue") the trial in the Alexis matter, which was scheduled for jury selection on October 9, 2012 on the grounds that he had a jury trial in Hillsborough County, also scheduled for October 9, 2012 in the Robidoux matter. In the motion, Mr. Anderson stated: "That matter appeared for some time to be most likely to settle, but it is now inevitably headed to Trial." Subsequently, Mr. Anderson filed an executed Waiver of Speedy Trial in support of the pending Motion to Continue.

10. Mr. Anderson recalls that on September 27th, while he was in the car, he talked with his assistant, Mr. Adam Boyd, about several matters that had scheduling conflicts, including what he thought was a conflict between trials scheduled in both the Robidoux and Alexis matters. Mr. Anderson asked Mr. Boyd to draft a motion to continue. Mr. Anderson recalls signing the motion but admits that he did not carefully review it or check his files before signing the motion which was dated and filed with the Court on September 28th.
11. At that time, Mr. Anderson relied on an electronic calendar on his cell phone to keep track of where he needed to be. The electronic calendar was synced with an on-line calendar in his office. Mr. Boyd did not remove the Robidoux October 9th trial date from the on-line calendar, after the September 27th plea hearing. He did add an October 29, 2012 sentencing hearing in the Robidoux matter to the calendar.
12. Mr. Anderson admits that, at the time, he and the members of his office were better about adding scheduled appointments/court dates to their calendars than removing them when they were canceled or rescheduled.
13. Upon receipt of Mr. Anderson's first Motion to Continue in the Alexis matter, the following events occurred, as explained in Clerk Warren's referral letter: "Pursuant to Superior Court Rule 49-A, Judge O'Neill asked Deputy Clerk Janelle Hughes to check to see which jury trial had been scheduled first. In checking the Odyssey docketing system for the Hillsborough County case (*State v. Nicholas Robidoux*, 216-2012-00293),

Janelle learned that the defendant pled guilty on September 27, 2012; she confirmed this by phone with Julie Findley, the monitor for Judge Gillian Abramson. As a result of this information, Judge O'Neill on October 5, 2012 denied the motion to continue."

14. Upon learning that the Court denied the first Motion to Continue in the Alexis matter, Mr. Anderson hand-delivered that same day a second motion to continue the Alexis matter, entitled Assented-To Revised/Modified Motion To Continue Trial and Schedule Plea. In relevant part, the motion stated: "Undersigned counsel filed an Assented-to Motion to Continue Trial on or about September 28, 2012. The basis for the Motion was that counsel was scheduled for Trial in Hillsborough County Superior Court that day. Counsel cannot be in two places at the same time." (Emphasis in original).
15. The motion went on to further explain that the defendant intended to plead, that counsel was working with the County Attorney's office on plea terms, opposing counsel had assented to the motion and that counsel intended to file a Notice of Intent to Plead within seven days.
16. Mr. Anderson drafted the second motion to continue himself and admits that he did not verify the status of the Robidoux matter before writing the motion.
17. After Mr. Anderson filed the second motion to continue, a hearing went forward before Judge O'Neil on the motions to continue and the request

to schedule a plea in the Alexis matter. Mr. Anderson and his opposing counsel, Assistant County Attorney Roni M. Karnis, were present.

18. At the hearing Mr. Anderson began to explain that he filed the Motions because he had a scheduling conflict and now his client intended to plead guilty. While the parties were still working on the terms, there was no reason to try the case. After hearing further from Ms. Karnis, the Court inquired as to what Mr. Anderson had meant by "can't be in two places at the same time." Mr. Anderson explained that in the Robidoux matter it was 50/50 whether they would go forward with trial, that they were still talking about a plea and his client was still undecided.
19. The Court then inquired as to the status of the Robidoux matter. Mr. Anderson responded that the case had started out with 15 felonies and had been narrowed down to 5 felonies. After the Court indicated that a plea had been taken already in the Robidoux matter, Mr. Anderson admitted his motion may have been based on "old information." When the Court asked when sentencing was scheduled for, Mr. Anderson stated that he believed the Robidoux matter was still on the docket for October 9th for a scheduling hearing, but there had been some discussion of pushing it out to October 29th for Mr. Robidoux's family members to be present. There was also a chance that Mr. Robidoux may withdraw his plea.
20. A colloquy then ensued between the Court and Mr. Anderson wherein the Court reviewed the fact that a plea was taken on September 27th in the

Robidoux matter before Judge Abramson along with an acknowledgement and waiver of rights and a waiver of sentencing review. Judge Abramson had issued a court order that day continuing sentencing for 30 days. The Court also reviewed the timeline in the Alexis matter with respect to the fact that the first motion to continue had not been filed until September 28th, the day after the plea was taken in the Robidoux matter, and that the second motion to continue, filed on October 5th, still indicated that Robidoux was scheduled for trial on October 9th.

21. During the colloquy, Mr. Anderson twice stated to the Court that he thought the plea hearing in Robidoux had been covered for him by someone else from his office. During this time period, Mr. Anderson had a busy trial practice. The other attorney in the firm, Michael Bedard, Esq., and Mr. Anderson often covered court appearances for each other when conflicts arose. However, it was, in fact, Mr. Anderson who appeared at the plea hearing in the Robidoux matter on September 27, 2012.
22. Mr. Anderson also checked his online calendar on his cell phone and advised the court that his calendar still reflected that the Robidoux matter remained scheduled for October 9th, although he eventually explained that his calendar also showed that sentencing was scheduled for October 29th.

23. In summary, Mr. Anderson sounded confused as to the status of the Robidoux case and was not clear on whether he was the one at the plea hearing. It took approximately five minutes of discussion before Mr. Anderson agreed with the Court that he did not have a conflict on October 9th.
24. At the close of the hearing, the Court denied the motion to continue and request to schedule a plea. The Alexis matter remained scheduled for jury selection on October 9, 2012, unless the parties could reach a plea agreement.
25. Ultimately, a plea, disposition and sentencing hearing went forward on October 19, 2012 in the Alexis matter.

Subsequent Events

26. Beginning in December 2012, Mr. Anderson began to reduce the number of new clients and matters he took on, to keep his case load at more manageable levels and to prevent the type of issue that arose in this matter from happening again.
27. On January 7, 2013, Mr. Anderson wrote a letter to Clerk Warren at the Belknap Superior Court which stated in relevant part:

First, please communicate to Judge O'Neil that I apologize for the confusion and inaccuracies that have resulted from my representations to the Court in Motions dated September 28, 2012, and October 5, 2012, as well as during the Hearing on October 5, 2012. It was never my intention to mislead the Court. I was mistaken regarding the underlying cases that posed a conflict. I was also mistaken regarding coverage for certain hearings in the underlying cases. In this regard, I have been diligently endeavoring to return my

practice to a more manageable level of administrative efficiency and reliability.

I should have more carefully reviewed and researched the situation before filing these Motions. I also apologize for the apparently flippant remark that I could 'not be in two places at the same time.' I meant no disrespect to the Court, but I certainly should have chosen my words more prudently.

28. On March 4, 2013, Mr. Anderson suffered a stroke that left him physically impaired and without the ability to speak for the first 24 hours after the stroke. Mr. Anderson had previously presented to his doctor with numbness on February 2, 2012. It appeared as of March 4, 2013 that the February 2, 2012 event was a TIA which often occurs as a warning sign prior to a stroke. Mr. Bedard covered Mr. Anderson's matters while he was out of work in 2013. Mr. Anderson underwent extensive physical therapy and returned to work part-time for the first two to three months after the stroke.
29. Mr. Anderson attended an online CLE entitled "Time Management for Lawyers (Part One): Getting and Staying Organized" on May 10, 2013 and submitted a Uniform Certificate of Attendance to the ADO.
30. Since the court appearance on October 5, 2012, the firm has improved its calendaring systems. The calendaring system was redone by a professional computer programmer sometime in 2013. The programmer assisted the office in better formulating a way to track hearings, remove hearings as necessary from the calendar and have it synchronize to the attorney's cellular telephone. Mr. Anderson now does his own data entry and calendar management to keep better track of his own schedule. He

also scans all of his Orders and Court notices to his computer that he can access readily to avoid issues such as this one in the future.

B. Disciplinary Rules Violated

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

Rule 1.1(b)(4)-(5): Competence

32. The facts set forth at ¶¶ 1-30 above are incorporated by reference.

33. Rule 1.1 states as follows:

- (a) A lawyer shall provide competent representation to a client.
- (b) Legal competence requires at a minimum:
 - (1) specific knowledge about the fields of law in which the lawyer practices;
 - (2) performance of the techniques of practice with skill;
 - (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;
 - (4) proper preparation; and
 - (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.
- (c) In the performance of client service, a lawyer shall at a minimum:
 - (1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;
 - (2) formulate the material issues raised, determine applicable law and identify alternative legal responses;
 - (3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and
 - (4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.

34. Mr. Anderson owed a duty to his client, Mr. Alexis, to file appropriate motions on his behalf and to prepare for any hearings at court that

would affect the outcome of Mr. Alexis's case. Mr. Anderson's failure to review his files, in particular the status of the Robidoux matter, prior to filing the motions and attending the hearing on October 5, 2012 breached his duty to properly prepare for the hearing and pay attention to details and schedules necessary to avoid harm to his client. While Mr. Alexis was not harmed by Mr. Anderson's conduct and the outcome in his case was not affected, Mr. Anderson agrees that the motions to continue should not have been filed.

35. Mr. Anderson's failure to properly prepare constitutes a violation of Rule 1.1(b)(4)-(5).
36. There is clear and convincing evidence that Mr. Anderson's conduct, as described herein, constitutes of a violation of Rule 1.1.

Rule 3.1: Meritorious Claims and Contentions

37. The facts set forth at ¶¶ 1-30 above are incorporated by reference.
38. Rule 3.1 states as follows:

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration or institutionalization, may nevertheless so defend the proceeding as to require that every element of the case be established.

39. Mr. Anderson owed a duty to the court and to opposing counsel to refrain from filing frivolous motions. Mr. Anderson breached that duty when he filed the second motion to continue without reviewing his files or

verifying whether a hearing remained scheduled for October 9, 2012 in the Robidoux matter.

40. There is clear and convincing evidence that the motions to continue that Mr. Anderson filed in the Alexis matter were frivolous and constitute a violation of Rule 3.1.

Rule 8.4(a): General Rule

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

C. Sanction Analysis and Reasons for A Diversion

42. The Attorney Discipline Office and Mr. Anderson jointly recommend a diversion as the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
43. The American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") supports this sanction.
44. 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).

45. 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.
46. 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").
47. Under the first prong of the analysis, Mr. Anderson violated duties owed to his client and to the legal system. *See Standards* §§ 4.5 and 6.2. Specifically, Mr. Anderson breached his duties to his client when he failed to properly prepare for a hearing on his client's behalf. Mr. Anderson breached the duty he owed to the legal system when he failed

to review his files and calendars, particularly when he filed the second motion to continue in the Alexis case.

48. With respect Mr. Anderson's mental state under the second prong of the sanction analysis, the parties agree that Mr. Anderson's mental state was negligent with respect to the rule violations.
49. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Anderson's misconduct.
50. Mr. Anderson's conduct caused injury to the Court system, specifically causing an unnecessary use of time and resources of the court and opposing counsel when Mr. Anderson filed the second motion to continue and proceeded to be heard on the motion. Mr. Anderson's conduct had potential to harm his client, Walter Alexis. The Court denied the motion to continue and to schedule a plea. Such a denial may have prejudiced his client's interests, particularly because Mr. Anderson and the prosecutor had an interest in scheduling a date for the plea hearing. Ultimately, Mr. Alexis was not harmed in that the plea, disposition and sentencing hearing occurred on October 19, 2012.
51. Mr. Anderson's violation of Rule 1.1 implicates Section 4.5 of the *Standards*, which provides, in pertinent part:
- 4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.
- 4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

-
- 4.53 Reprimand is generally appropriate when a lawyer:
- (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
 - (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.
- 4.54 Admonition¹ is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.
52. Mr. Anderson's violation of Rule 3.1 implicates Section 6.2 of the *Standards*, which provides, in pertinent part:
- 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
 - 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.
 - 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
 - 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

¹The 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.

53. Under the foregoing circumstances, the parties agree that the baseline sanction for Mr. Anderson's conduct is a reprimand. *See Standards* §§ 4.54 and 6.24.
54. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
55. In this case, two aggravating factors are present: Mr. Anderson's prior disciplinary history and his substantial experience in the practice of law. *See Standards* § 9.22. However, the parties note that Mr. Anderson's disciplinary history arose out of problems in his personal life, including alcoholism, and were not similar to the caseload management problems presented in this complaint.
56. Several mitigating factors are also present, including the absence of a dishonest or selfish motive; personal problems involving serious family issues at the time of his actions (including a serious heart condition his wife was facing; health problems with two of his five sons in that one son was diagnosed with autism, gastrointestinal issues, and kidney reflux and as a result had multiple medical appointments/procedures; and another son was dealing with neurological issues and tests; additionally Mr. Anderson's mother and grandmother had recently passed away) and involving his own health issues as evidenced by the February 2, 2012 TIA); a good faith effort to rectify the consequences of misconduct (including an apology letter to the Court; a reduction of his caseload to prevent such problems from occurring again; and attending a CLE

program entitled "Time Management for Lawyers (Part One): Getting and Staying Organized" on May 10, 2013 to improve his time management skills). *See Standards* § 9.3.

57. The parties agree that the aggravating and mitigating factors evident in this case, combined with the baseline sanction analysis, indicate that a downward departure from the baseline reprimand is warranted.
58. The parties jointly recommend discretionary diversion in this matter. N.H. Sup. Ct. R. 37A(I)(g)(3).
59. The parties agree that this matter qualifies for discretionary diversion because the misconduct in this matter was the result of negligence, failure to review a file prior to filing a motion, and miscommunication between Mr. Anderson and his assistant at the time. Mr. Anderson has voluntarily worked to improve his practice, including taking a 1.5 credit hour CLE. Because he could in the future increase his caseload, there is thus a reasonable likelihood that Mr. Anderson's successful completion of additional Continuing Legal Education ("CLE") will further educate him and prevent similar conduct in the future.
60. Additionally, this matter qualifies for diversion because Mr. Anderson's conduct occurred more than five years after his prior disciplinary suspension and does not involve conduct of the same nature. *See Rule 37A(c)(Definition of Minor Misconduct)*.
61. Mr. Anderson submits his Diversion Agreement (the "Agreement") simultaneously and in conjunction with this Stipulation. The Diversion

Agreement is attached to this Stipulation and sets forth the conditions with which Mr. Anderson must comply in order to have this matter diverted.

62. In short, the Diversion Agreement requires that Mr. Anderson, within one year from the date that the Committee approves the Agreement:
- (a) Complete six (6) additional credits of CLE beyond the minimum required by the New Hampshire Supreme Court Rule 53, as set forth in the Agreement;
 - (b) Not engage in any professional misconduct.
63. For all of these reasons, the parties request that the Committee recommend a discretionary diversion.

D. Costs

64. Subject to the PCC's approval of Mr. Anderson's Stipulation, Mr. Anderson 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. Anderson.


E. Effect of Stipulation

65. Mr. Anderson 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).

66. Mr. Anderson 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; and, that he has been represented by counsel and is fully aware of the consequences of the stipulation.
67. Mr. Anderson knowingly and intelligently waives his right to a hearing.

Respectfully submitted,

Dated: 11/24 2015



Michael E. Anderson, Esquire
Respondent

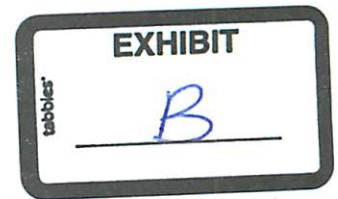
Dated: 11/24 2015

Sandra A. Kuhn, Esquire
Counsel for Respondent

Dated: 11/30 2015



Elizabeth M. Murphy
Assistant Disciplinary Counsel



NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Anderson, Michael E.

advs.

Attorney Discipline Office

#17-001

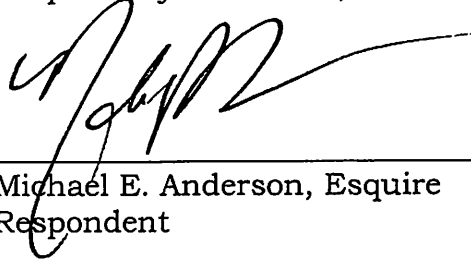
AGREEMENT TO PAY COSTS
OF DISCIPLINARY MATTER

1. Subject to the Professional Conduct Committee's approval of the Stipulation of Facts, Rule Violations, and Sanction: Reprimand 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 June 5, 2017, I have been informed that the costs are approximately \$39.25. 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,



Michael E. Anderson, Esquire
Respondent

Dated: June 15, 2017