

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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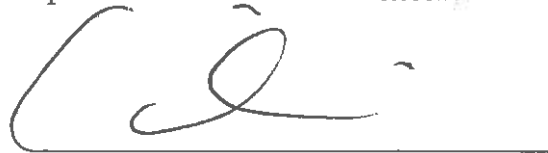
Horan, David A. advs. Attorney Discipline Office - #16-039

Recommendation: Disbarment and Order on Costs

On July 18, 2017, the Professional Conduct Committee (the "Committee") deliberated the Stipulation to Disbarment (the "Stipulation") and the Agreement to Pay Costs of Disciplinary Matter (collectively, the "Record").

Having reviewed the Record, the Committee approved the facts as stipulated, by clear and convincing evidence. The Committee approved the findings of violations of the New Hampshire Rules of Professional Conduct (the "Rules") as stipulated and to recommend Disbarment for violations of Rules 1.1; 1.3; 1.15, 3.3, 8.4(c) and Sup. Ct. R. 50, as well as reimbursement of the Committee for all costs of investigation and prosecution of this matter.

July 18, 2017



David M. Rothstein, Chair

Distribution:

Sara S. Greene, Disciplinary Counsel
David A. Horan, Esquire
File

**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Horan, David A.

advs.

Attorney Discipline Office

#16-039

STIPULATION TO DISBARMENT

NOW COMES Sara S. Greene, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office (ADO), along with David A. Horan, Esquire (Mr. Horan), and stipulate as follows:

1. Mr. Horan was admitted to practice law in New Hampshire in 1977. He is currently practicing law as a solo practitioner at 212 Coolidge Avenue, Manchester, New Hampshire 03102.
2. Mr. Horan has not been admitted to practice law in any other jurisdiction.

Overdraft Notification/ADO Investigation

3. On September 21, 2016, the Bank of America notified the ADO that Mr. Horan's client trust account (CTA) was overdrawn.
4. Mr. Horan provided a response to the ADO dated October 13, 2016. The matter was docketed on October 18, 2016. After further investigation by General Counsel, the matter was forwarded to Disciplinary Counsel by letter dated March 15, 2017.

5. Disciplinary Counsel immediately subpoenaed bank records for Mr. Horan's CTA as well as his operating account. After reviewing those bank records, and meeting with Mr. Horan on May 26, 2017, additional issues arose regarding Mr. Horan's handling of a matter in which Mr. Horan serves as guardian for MB ("the Guardianship"). Case. No. 316-2014-GI-01892 (9th Circuit – Probate Division – Nashua).
6. On May 30, 2017, Disciplinary Counsel subpoenaed bank records for a guardianship account that Mr. Horan created for MB (the "GDN Account"), as well as further records for the CTA and operating account. At the same time, she requested pleadings from the Probate Court for the Guardianship matter.
7. As set forth more fully below Mr. Horan has:
 - a. Misappropriated funds of MB, Mr. Horan's client and later ward;
 - b. Filed false accountings with the Probate Court in the MB guardianship matter, and consistently missed deadlines for such filings;
 - c. Committed myriad violations with regard to his client trust account, including misappropriation, commingling, and being out of trust;
 - d. Filed false Trust Account Compliance Certificates for reporting periods covering June 1, 2014 to May 31, 2016.

Representation of MB Pre-Guardianship: 2014 Misappropriation

8. As of December 2013, Mr. Horan was representing a client, MB, then age 75, in reviving his corporation, MJB, Inc., which had not been a corporation in good standing for over a decade, “for the purpose of allowing the corporation to collect and dispose of a newly discovered asset.”
9. Mr. Horan and MB never executed fee agreements of any kind.
10. MJB, Inc. owned 489 shares of Prudential stock. Prudential expressed an interest in buying back the shares. Mr. Horan assisted MB in conducting a Meeting of the Board of Directors of MJB, Inc., to conduct new business and authorize the sale of shares.
11. The sale went forward, and on January 6, 2014, Prudential wrote a check for \$32,299.90 made out to “[MB], MJB, Inc.” to consummate the buy-back of Prudential shares of stock.
12. As of January 2014, MB was beginning to exhibit cognitive impairments that concerned Mr. Horan. MB was spending money erratically and unwisely, and thus Mr. Horan convinced MB to sign the Prudential check over to Mr. Horan.
13. MB endorsed the Prudential check and signed the back “pay to the order of David Horan.” Mr. Horan also signed the back of the check.
14. Although there was no written agreement to this effect, Mr. Horan and MB agreed that Mr. Horan would hold the funds from the Prudential sale in his CTA and provide MB with \$2,000 per month. Mr. Horan’s hand-

written notes from a portion of his client file confirm this agreement, stating "client agrees to \$2K monthly allowance from my trust account."

15. The beginning balance of Mr. Horan's CTA as of January 1, 2014, was \$1.00. Mr. Horan deposited the Prudential check for \$32,299.90 into his CTA on January 17, 2014.
16. Other than the Prudential check, there were no deposits into Mr. Horan's CTA at any point from January 1, 2014 through March 31, 2014.
17. From January 1, 2014 through March 31, 2014, Mr. Horan wrote checks to himself (or for his personal expenses) disbursing \$16,080 out of the CTA without authorization of MB, as follows:
 - a. Checks totaling \$13,000 to himself, with no client matter identified in the memo line;
 - b. Checks totaling \$1,000 to himself, for fees allegedly earned in the MB matter; and
 - c. Check for \$2,080 to John Hession towards the purchase of Red Sox season tickets.
18. During the same January to March 2014 time period, Mr. Horan paid MB a total of \$3,800 for incidentals and personal expenses. This \$3,800 included a check for \$2000 to MB dated January 21, 2014. Other than this January payment, Mr. Horan at no point thereafter complied with his agreement to pay MB a \$2,000 monthly allowance out of the CTA.
19. For all of 2014, the total amount that Mr. Horan paid MB was \$6,550.

20. For all of 2014, the total amount Mr. Horan paid himself, in alleged fees for work for MB (*i.e.* where checks out of the CTA identified the MB matter in the memo line) was \$15,400.¹ Many of these fees were not earned. For example, in April 2014 alone, Mr. Horan paid himself \$7,200 for work allegedly performed for MB. His time records for April 2014 in the MB matter note .8 hours spent on the case (*i.e.* \$140 in earned fees). Similarly, in May 2014, he paid himself \$5,700 in fees for the MB matter, but his time records note .8 hours spent on the case.
21. Mr. Horan had not earned \$15,400 in fees for representing MB during 2014. He has never produced to the ADO work product or other underlying file materials which could justify such a payment.
22. The total disbursements related to MB for all of 2014 were \$21,950 (\$6,550 to MB, plus \$15,400 in alleged legal fees). This left at a minimum \$10,349.90 that Mr. Horan should have been holding in his CTA for the MB matter alone at the close of 2014. As of December 31, 2014, however, Mr. Horan's CTA held only \$1,924.40. He was thus out of trust in the MB matter by at least \$8,425.50.
23. Despite these deficiencies in his record-keeping, and being out of trust in the MB matter, Mr. Horan certified on his two Trust Accounting Compliance Certificates for the period covering June 1, 2013 – May 31, 2015 that he performed monthly reconciliations, was never out of trust,

¹ This amount does not represent actual earned fees but rather represents a figure which Mr. Horan *attributed* to the ██████████ matter on checks he wrote out of his CTA. In 2014, Mr. Horan wrote checks out of his CTA to himself, with no client matter noted, for a total of \$28,900.

and maintained all client funds “in full compliance” with Rule 1.15 and Sup. Ct. R. 50.

Guardianship of MB (October 2014 – Present): Further Misappropriation, False Accountings; Repeated Defaults on Annual Reports and Accountings

24. On October 14, 2014, Earl S. Carrel, Esq. filed a Petition for Guardianship of an Incapacitated Person in Nashua Probate Court regarding MB. This Petition followed MB’s involuntary emergency admission to Elliot Hospital due to his “presentation” as disoriented and being a possible danger to himself or others.
25. Mr. Horan filed an appearance on October 31, 2014, and following a hearing on the same day, the Court appointed Mr. Horan as Guardian over the person and estate of MB, an incapacitated person, on the condition that he obtain a \$50,000 corporate surety bond. By the time Mr. Horan was petitioning to be MB’s guardian, he had already misappropriated significant money from the proposed ward.
26. On January 8, 2015, Mr. Horan filed a Motion to Accept Personal Surety Bond, in which Mr. Horan represented that he had attempted to obtain the bond from two agencies, but was denied coverage. He asked the court to allow him to post a personal surety bond in the amount of \$50,000.
27. The Court granted the Motion and accepted the personal surety bond for \$50,000. The Order granting the Motion stated “Attorney Horan shall

file an affidavit within 30 days stating the status of his professional liability insurance coverage.”

28. Mr. Horan never filed the Affidavit regarding his malpractice coverage.
29. The Guardian’s Inventory was due April 20, 2015. Mr. Horan failed to file the Inventory by that date. The Court issued a Notice of Default and \$25 late fee citation on May 28, 2015. The Notice of Default set a June 27, 2015 deadline for Mr. Horan to file the Inventory.
30. Mr. Horan did not file the Inventory by the new deadline of June 27, 2015. The Court therefore issued a Citation, on Failure to File Inventory, requiring Mr. Horan to personally appear before the Court on July 28, 2015, and fining him an additional \$50.
31. Other than a few life insurance policies (addressed further herein), MB’s only income was social security income of approximately \$2,144 per month. He also owned outright a property on Spruce Street in Manchester, which was appraised in July 2016 with a value of \$93,600, but was vacant and produced no income. MB’s primary ongoing expense was his residence at Evergreen Place,² an assisted living facility, which cost over \$5,500 per month.
32. On July 2, 2015, Mr. Horan wrote to Diane Luszey at Gateways Community Service (Gateways) in Nashua, New Hampshire. At that time, Gateways was receiving MB’s monthly Social Security checks as Representative Payee. Mr. Horan directed Mr. Luszey to use MB’s Social

² MB moved to Evergreen Place around February 2015. Mr. Horan assisted him with this move and the necessary paperwork and application.

Security funds to pay Evergreen Place for an invoice totaling \$5,520.19.

Payment to Evergreen directly by Gateways was required because by this date, MB had no funds in Mr. Horan's CTA due to Mr. Horan's misappropriation.³

33. Mr. Horan filed the overdue Inventory on July 27, 2015. The Court cancelled the July 28, 2015 hearing.
34. On the Inventory filed on July 27, 2015, Mr. Horan represented to the Court that he held in trust for MB \$17,140.90 as "money held by David Horan in his IOLTA account at Bank of America, balance as of 1/20/15."
35. This representation was false. As of January 16, 2015, Mr. Horan's CTA had a balance of \$1,900.63. As of January 21, 2015 the balance was \$2,400.03.
36. On July 31, 2015, Mr. Horan opened a guardianship account to hold funds of MB at TD Bank, Acct. No. XXX-XXX0823, in the name of "[MB] and David A. Horan, GDN." It was opened with an initial deposit in the form of a check for \$257.75, a reimbursement check from Bedford Nursing and Rehabilitation Services LLC, where MB had previously resided.

³ Although Mr. Horan had informed Ms. Luszey on January 26, 2015 that he was now MB's guardian and would "be filing an application with the Social Security Administration to redirect future checks to me as opposed to [Gateways] . . . then closing the account [MB] has with you," Mr. Horan did not effectuate this change until April 2016, at which time he began receiving MB's social security benefit via direct deposit into a guardianship account (addressed *infra*) that he opened in late July 2015.

37. No funds from the CTA were transferred to the GDN account because there were no funds of MB left in the CTA.
38. For the next approximately four months, other than \$10 monthly withdrawals for routine bank service charges, Mr. Horan made one disbursement for the benefit of MB, a check to Evergreen Place dated August 28, 2015 for \$157.33.
39. As of October 7, 2015, the GDN account balance was \$90.43. Having misappropriated from the CTA a significant portion of MB's funds from the sale of Prudential stock (*supra* ¶¶ 15-22), Mr. Horan found himself with essentially no cash on hand for his ward.
40. Mr. Horan therefore filed a motion with the probate court on October 9, 2015 requesting an order authorizing him to borrow \$20,000 from a Prudential life insurance policy owned by MB, the existence of which Mr. Horan claimed to have discovered sometime between the filing of his inventory (which failed to mention this and two other life insurance policies owned by MB) and the October 2015 motion.
41. The court granted the motion on October 20, 2015, authorizing Mr. Horan to "cash in" the life insurance policy.
42. On November 9, 2015, Mr. Horan deposited a check from Prudential for \$20,000 into the GDN account, bringing the balance to \$20,080.43.
43. From this amount, Mr. Horan immediately made disbursements to Evergreen for a large past-due balance owed, as well as to a treating physician, for a total of \$12,588.51. On November 16, 2015, he also

disbursed \$1,500 from the GDN account to himself, in a check with a memo noting "reimbursement." Mr. Horan had no approval from the Probate Court to make this disbursement.

44. The Annual Report and (First) Accounting were due on January 20, 2016. Mr. Horan did not file them in a timely manner.
45. From November 9, 2015, the date of the \$20,000 deposit, through April 7, 2016, Mr. Horan disbursed from the GDN account, to himself, a total of \$7,750. He had no approval from the Probate Court to make these disbursements. In the same period, he paid out a total of \$13,101.79 for the benefit MB.
46. By April 8, 2016, the balance in the GDN account was \$30.68. In order to immediately "fund" the low-balance GDN account, Mr. Horan deposited \$2,500 of his own funds into the GDN account on April 8, 2016.
47. Having again misappropriated a significant portion of the funds of his ward, Mr. Horan's ward was "illiquid." Mr. Horan had filed with the Probate Court, on March 4, 2016, a Motion to Sell Personal Property. The Motion addressed two additional whole life policies that MB had purchased from Prudential.
48. The Motion to Sell Personal Property was granted on March 15, 2016. On April 15, 2016, Mr. Horan deposited two Prudential checks totaling \$8,589.13 into the GDN account.

49. On April 28, 2016, the Court issued a Notice of Default for the Annual Report and (First) Accounting which were due on January 20, 2015, fined Mr. Horan, and set a deadline of May 28, 2016 for filing them.
50. Mr. Horan did not file the Accounting and Annual Report by that deadline, and on June 14, 2016, the Court issued a Citation on Failure to File Annual Report (and a separate Citation for the Accounting). The Citations set a July 7, 2016 hearing at which Mr. Horan would have to appear and explain why the documents had not been filed.
51. On July 6, 2016, Mr. Horan filed the (First) Accounting and Annual Report and paid \$150 in fines. The Accounting covered reporting period January 20, 2015 through December 31, 2015. The (First) Accounting contained the following misrepresentations:
 - a. That the GDN account had a balance of \$6,103.51 as of December 31, 2015. The actual balance as of that date was \$4,603.51.
 - b. That during the reporting period, Mr. Horan had taken guardian fees of \$1200 and attorney's fees of \$90. The total amount that Mr. Horan paid himself during 2015, in six separate checks noting "MB" in the memo line, was actually \$5,330. Two of these checks were disbursed from the GDN account (total of \$2,700 from November to December 2015); four of the checks were disbursed from his CTA (total of \$2,630 from January to August 2015).

52. The Probate Court had not approved any of these fees at the time they were disbursed, nor had Mr. Horan ever filed any Motion for Interim Fees.
53. On August 8, 2016, the Court allowed both the Annual Report and First Accounting.
54. On October 26, 2016, Mr. Horan paid Evergreen Place \$22,000 on behalf of MB via a bank check. This was a large past-due balance owed because Mr. Horan had not paid Evergreen on a monthly basis. The balance in the GDN account as of October 7, 2016 was \$4,605.01. Thus, in order to pay the \$22,000 to Evergreen, Mr. Horan deposited \$15,570 of his own funds into the GDN: \$13,850 was via electronic transfer from Mr. Horan's operating account, and \$1,720 was cash.
55. Mr. Horan again defaulted in 2017, when he failed to file a timely Annual Report and Second Accounting. The Court issued Default Notices on May 11, 2017.
56. Mr. Horan filed the Second Accounting on June 12, 2017. By this time, he was under investigation by the ADO and was aware that the ADO had subpoenaed bank records for the GDN account. The reporting period for the Second Accounting was January 1, 2016 through December 31, 2016.
57. The Second Accounting contained the following misrepresentations:
 - a. Schedule 4 in the Disbursements section, addressing attorney and guardian fees, was left blank. The clear inference from this is that

Mr. Horan took no fees of any kind in the MB guardianship. In fact, Mr. Horan had, in 2016, paid himself out of the GDN account \$1,700 in “atty fees” (i.e. checks noted fees in the memo line), and had also disbursed to himself an additional \$6,150 through various checks he wrote out to himself with no memo noted in the memo line, for a total of \$7,850.

- b. Mr. Horan “buried” these payments in Schedule G, “Cash received from other sources.” Schedule G should include, per the Court’s form, “all other contributions and income received by the ward’s estate with a description including the date received, the source of the funds and the amount received.” In the Schedule G line item in the Second Accounting, Mr. Horan disclosed an amount of \$13,320. In an explanatory addendum attached to the Second Accounting, he characterized this amount as a “Net Contributions made in to Guardianship Account,” without separately disclosing the *source* of the two contributions to the GDN account (i.e. his own funds), and without disclosing that the *disbursements* from the GDN account were to himself.

- 58. By leaving Schedule 4, which calls for disclosure of fees, blank, and “reporting” payments to himself in Schedule G (which contemplates actual income to the ward, not “net” amounts received after a guardian has made unauthorized disbursements from the guardian’s estate, then

replenished some of them), Mr. Horan engaged in dishonesty and misrepresentation.

59. Mr. Horan never listed the GDN Account on any of his Trust Account Compliance Certificates June 1, 2015 through May 31, 2016.
60. Mr. Horan maintains that he did a substantial amount of work for MB from 2014 through 2016. He produced time slips to the ADO purporting to demonstrate work performed for MB, mostly for the guardianship. The ADO's review of a *portion* of the MB file does evidence some legal work on behalf of MB. For example, he assisted MB in reviving his corporation for purposes of selling the Prudential stock it owned in 2014. Mr. Horan paid medical providers and nursing homes on behalf of Mr. Horan, although as noted herein, having misappropriated some of MB's funds, he had to reimburse the GDN account on multiple occasions in order to make these payments, many of which were consistently late.
61. The ADO requested, but never received, the entire MB file to back up the time entries produced by Mr. Horan.

**Client Trust Account Generally (2015-2016): Commingling
and Misappropriation**

62. Bank records demonstrate that for the time period October 15, 2015 to October 31, 2016, Mr. Horan routinely commingled his personal funds with those of his clients, both by depositing unearned retainers into his operating account, and by depositing his personal funds into his CTA.
63. From October 2015 through October 2016, Mr. Horan deposited over \$100,000 of client retainers (i.e. monies not yet earned) into his operating account rather than into his CTA, in over 50 transactions in amounts ranging from \$1,000 to \$5,000. Sixteen deposits into the operating account were cash deposits totaling \$17,750, none of which identified a client matter to which they pertained.⁴
64. Mr. Horan treated the operating account as a *de facto* client trust account into which he routinely placed client retainers.⁵ By contrast, in the same October 2015 – October 2016 time period, Mr. Horan deposited only a handful of retainers into the CTA.

⁴ Mr. Horan produced a hand-written Receipt Book purporting to document cash received by his firm from clients. Many of the cash transactions evidenced by the bank records, and which were the subjects of inquiry by the ADO, however, were not documented in this Receipt Book.

⁵ The ADO reviewed a sampling of client files and related time slips for several of the cases for which Mr. Horan received retainers and deposited them immediately into his operating account. That review generally confirmed that Mr. Horan ultimately earned the retainers at issue. This does not alter the fact, however, that he improperly deposited entire retainers into his operating accounting before they were earned, nor has the ADO conducted an exhaustive review of *all* client files for which retainers were placed in the operating account.

65. Mr. Horan further commingled client and personal funds by depositing his own funds into the CTA as follows:
 - a. He wrote a check for \$1,000 from his operating account and deposited it into his CTA on July 20, 2016;
 - b. He wrote a check for \$3,000 from his operating account and deposited it into his CTA on September 2, 2016.
66. In addition, Mr. Horan deposited personal funds into the CTA, and issued payment for a personal expense out of the CTA, when in 2015 and 2016 he deposited his own funds, as well as the funds of various friends (*i.e.* non-client monies), into the CTA for the purpose of paying for a personal expense, *i.e.* Red Sox season tickets.
67. Mr. Horan had an arrangement whereby his friends would contribute to the purchase price of Red Sox tickets, he would purchase the tickets, and thereafter he and his friends would divide up tickets for particular game days.
68. On December 17, 2015, Mr. Horan wrote a check out of the CTA for \$12,500 to the Boston Red Sox for 2016 season tickets. As set forth further below, he wrote this check at a point in time when there were insufficient personal funds (*i.e.* whether friends' personal funds or earned fees that Mr. Horan failed to timely transfer out of the CTA) on hand in the CTA to cover the amount, thereby utilizing clients' funds to satisfy the obligation. Specifically:

- a. the beginning balance in Mr. Horan's CTA as of December 1, 2015 was \$1,423.69;
- b. On December 2, 2015, he wrote a check out of CTA to himself for \$1,000. This check did not identify the client matter (or matters) to which this disbursement pertained. The balance in the CTA was now \$423.69;
- c. Mr. Horan deposited funds into the CTA on three dates thereafter: December 7, December 16 and December 17;
- d. On December 7, 2015, Mr. Horan deposited three checks into the CTA for three client matters, for a total of \$1,700. Two hundred dollars (\$200) of these funds was actually a payment towards a back balance owed by client TF (and thus should have been deposited in Mr. Horan's operating account as earned fees);
- e. The same day, December 7, 2015, Mr. Horan wrote a check out of the CTA to himself for \$1,500. This check did not identify the client matter (or matters) to which this disbursement pertained. The balance in the CTA was now \$623.69;
- f. On December 16 and 17, 2015, Mr. Horan made two cash deposits totaling \$3,600 into the CTA. He did not at that time, and could not for purposes of this disciplinary matter, identify the client (or clients) to whom these funds pertained;
- g. On December 17, 2015, Mr. Horan deposited four checks from friends totaling \$7,336 for the purpose of buying Red Sox tickets;

- h. On December 17, 2015, Mr. Horan deposited \$1,200 from the MB GDN account into the CTA with a memo line reading "attys fees;"
 - i. The total amount of "non-client" funds in the CTA as of December 17, 2015 was \$7,536. This figure is the sum of the four checks from friends for Red Sox tickets plus the \$200 of earned fees in the TF matter;
 - j. This leaves \$4,964 of client funds in the CTA that were misappropriated to satisfy the \$12,500 check to the Red Sox. Even if Mr. Horan ultimately earned the \$4,964, lawyers cannot use client money as an "advance."
69. In 2016, Mr. Horan again deposited his and his friends' funds into the CTA, this time to hold funds for the purpose of buying Red Sox playoff tickets. In this instance, Mr. Horan placed enough of his own funds into the CTA to cover the entire check to the Red Sox, but nonetheless commingled personal funds with client funds in so doing.
- a. The beginning balance in the CTA on September 1, 2016 was \$109.69;
 - b. On September 2, 2016, Mr. Horan deposited \$3,000 of his personal funds into the client trust account. He stated to the ADO the purpose of this deposit was to ensure that a check to the Red Sox, due on September 15, 2016, would clear;
 - c. Between September 13 and September 14, 2016, Mr. Horan deposited three checks totaling \$1,000 into the CTA. The funds

were from friends who were contributing towards the cost of Red Sox playoff tickets;

- d. On September 14, 2016, Mr. Horan wrote a check to the Red Sox out of the CTA for \$2,852.50 for playoff tickets.

Client Trust Account Generally (2015-2016): Unidentified Cash Withdrawals and Deposits, Out of Trust in Client Matters, and General Record-Keeping Violations

70. On September 6, 2016, Mr. Horan wrote a check to himself out of the CTA for \$1,000. The memo line on the check read "Rumph." Mr. Rumph was a client, but Mr. Horan had never deposited any of Mr. Rumph's funds into his CTA. Rather, he deposited a \$2,000 retainer paid by Mr. Rumph into his operating account on April 6, 2016.
71. Mr. Horan was thus "out of trust" as to the Rumph matter, and utilized the funds of other clients to satisfy the \$1,000 payment on September 6, 2016.
72. Mr. Horan withdrew \$700 in cash from his CTA on September 13, 2016 without identifying any client matter pertaining to this disbursement.
73. Mr. Horan repeatedly wrote checks to himself out of the CTA without identifying a client matter to which the disbursement pertained, as follows:
 - a. On December 2, 2015, Mr. Horan wrote a check to himself for \$1,000;
 - b. On December 7, 2015, Mr. Horan wrote a check to himself for \$1,500;

- c. On July 28, 2016, Mr. Horan wrote a check to himself for \$1,500;
 - d. On July 29, 2016, Mr. Horan wrote a check to himself for \$750;
and
 - e. On August 2, 2016, Mr. Horan wrote a check to himself for \$750.
74. From October 1, 2015 through October 31, 2016, Mr. Horan deposited a total of \$13,600 cash into his CTA without attributing these deposits to any client matter as follows:
- a. On October 1, 2015, Mr. Horan deposited \$500.00 in cash into the CTA;
 - b. On October 13, 2015, Mr. Horan deposited \$5,000.00 in cash into the CTA;
 - c. On December 16, 2015, Mr. Horan deposited \$2,000.00 in cash into the CTA;
 - d. On December 17, 2015, Mr. Horan deposited \$1,600.00 in cash into the CTA;
 - e. On April 20, 2016, Mr. Horan deposited \$2,000.00 in cash into the CTA;
 - f. On July 20, 2016, Mr. Horan deposited \$2,000.00 in cash into the CTA;
 - g. On September 14, 2016, Mr. Horan deposited \$100.00 in cash into the CTA;
 - h. On September 15, 2016, Mr. Horan deposited \$300.00 in cash into the CTA; and

- i. On September 26, 2016, Mr. Horan deposited \$100.00 in cash into the CTA.
75. Mr. Horan did not keep individual client ledgers of any kind which recorded deposits to and withdrawals from each client trust account, and failed to perform monthly reconciliations of his firm's CTA at any point. Mr. Horan has abdicated all of his duties of record-keeping required by Sup. Ct. Rule 50(2)(B).
76. Despite these deficiencies in his record-keeping, and being out of trust on client matters, Mr. Horan certified on his Trust Accounting Compliance Certificate for the period covering June 1, 2015 – May 31, 2016 that he performed monthly reconciliations, was never out of trust, and maintained all client funds "in full compliance" with Rule 1.15 and Sup. Ct. R. 50.

Rule Violations

77. Mr. Horan agrees that the following Rule violations could be proven by clear and convincing evidence based on the facts stipulated to herein:
78. Rule 1.1 (competence) and Rule 1.3 (diligence):
 - a. by failing in the MB guardianship to act with reasonable diligence and promptness, and by failing to attend to the details and schedules of the matter or undertake action on MB's behalf in a timely and effective manner when Mr. Horan defaulted multiple times due to his filing the following pleadings in an untimely

fashion: the Inventory, the Annual Report and (First) Accounting, and the Annual Report and (Second) Accounting;

79. Rule 1.15 (safekeeping property) and Sup. Ct. Rule 50 (record-keeping requirements):
 - a. by engaging in the following conduct with regard to his CTA:
taking fees before they were earned, commingling his own funds with client funds, being out of trust on a client matter, misappropriating client funds to purchase Red Sox tickets, engaging in many cash withdrawals and deposits without identifying the client matter to which such withdrawals and deposits pertained, and failing to maintain client ledgers or perform monthly reconciliations;
 - b. by misappropriating the funds of MB from the GDN account and the CTA, and by commingling his personal funds with those of MB;
80. Rule 3.3 (Candor to the Tribunal):
 - a. By filing three (3) knowingly false Trust Accounting Certificates covering periods June 1, 2013 – May 31, 2016;
 - b. By filing a knowingly false Inventory and two knowingly false Accountings with the Probate Court in the MB matter;
81. Rule 8.4(c) (conduct involving dishonesty, deceit, fraud, or misrepresentation):

- a. By misappropriating the funds of MB, first from the CTA and then from the GDN account, from January 2014 through at least March 2017;
 - b. By filing false pleadings with the Probate Court as set forth herein;
 - c. By misappropriating client funds by issuing payments to himself from the client trust account that were not attributable to a client or matter;
 - d. By misappropriating client funds by depositing directly into his operating account retainers not yet earned.
82. Mr. Horan understands that he will be bound by his representations and admissions as contained in this Stipulation for purposes of any disciplinary matter, including any application for readmission, in which case this matter may be presented to the Committee on Character and Fitness.
83. Mr. Horan agrees to pay the costs incurred by the ADO in the investigation and pursuit of this disciplinary matter. His agreement to pay costs is the subject of a separate agreement with the ADO.
84. In so doing, Mr. Horan waives any and all of his due process rights under both the state and federal constitutions on the matters pending against him.
85. Mr. Horan further waives any and all of his procedural rights under N.H. Sup. Ct. R. 37 and 37A, including specifically Rule 37(16).
86. In deciding both to sign this Stipulation to Disbarment, and to waive

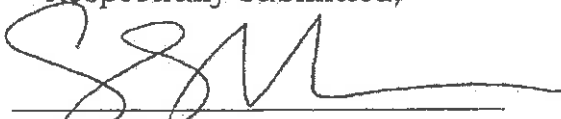
these rights, Mr. Horan has been informed that he may seek the advice of counsel. He signs this Stipulation knowingly and intelligently, without coercion or inducement of any kind.

87. Mr. Horan consents to disbarment, concedes that disbarment is the appropriate sanction for his intentional misconduct, and asks the Committee to recommend to the New Hampshire Supreme Court that the Supreme Court impose an Order of Disbarment in this attorney discipline matter.

Respectfully submitted,

Dated: June 30, 2017

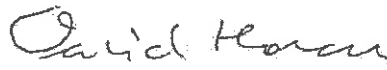
By:



Sara S. Greene
Disciplinary Counsel

Dated: June 30, 2017

By:



David A. Horan, Esquire
Respondent

**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Horan, David A.

advs.

Attorney Discipline Office

#16-039

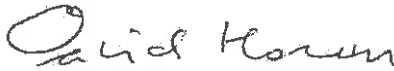
**AGREEMENT TO PAY COSTS
OF DISCIPLINARY MATTER**

1. Subject to the Professional Conduct Committee's approval of the Stipulation to Disbarment 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 23, 2017, I have been informed that the costs are approximately \$766.56. 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: June 30 2017



David A. Horan, Esquire
Respondent