

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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

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

Mona T. Movafaghi
Edward D. Philpot, Jr.
Georges J. Roy*
Martha Van Oot

* non attorney member
Barbara J. Guay, Legal Assistant

In the Matter of James R. McDaniel, II, Esquire - LD-2017-0011

PUBLIC CENSURE AND ORDER ON COSTS

In accordance with Supreme Court Rule 37(12), on December 11, 2017, the New Hampshire Supreme Court ruled that the above captioned reciprocal discipline matter from the Grievance Commission of the Maine Board of Overseers of the Bar (“the Board”) warrants the issuance of a public censure. The Court remanded the matter to the Professional Conduct Committee (“the Committee”) for the issuance of a public censure.

James R. McDaniel, II, Esquire was admitted to the Maine Bar in 2010. On September 13, 2017, a panel of the Board found that Mr. McDaniel was retained in May 2015 to represent a client with post-divorce matters then pending in Maine. Following their initial meeting, Mr. McDaniel presented the client with a “flat fee” agreement citing incorrectly to the New Hampshire Rules of Professional Conduct. The client executed that agreement and by June 2015 had paid Mr. McDaniel a \$2,600.00 fee.

According to the complaint, Mr. McDaniel neglected the family matter, failed to communicate and billed excessively for the legal work he performed. While in his initial response to the Maine complaint, Mr. McDaniel contended that he adequately performed the work, communicated with the client, and fully earned his fees. Mr. McDaniel then acknowledged that there were problems which arose during the representation. Mr. McDaniel attributed some of those problems to the demands of his solo practice as well as the difficult attorney-client relationship.

In July 2015, the client discharged Mr. McDaniel. The Maine District Court granted Mr. McDaniel's Motion to Withdraw. Mr. McDaniel and the client then exchanged emails relating to the family matters hearing, Mr. McDaniel's final bill and the client's stated intention to complain to Maine's regulatory agencies. The client filed a petition for fee arbitration. After the November 2016 hearing before the Maine Fee Arbitration Commission, Mr. McDaniel and the client both testified. The Commission determined that Mr. McDaniel had not earned some of the fees he previously charged his former client.

Prior to the client's family matters hearing, Mr. McDaniel failed to conduct discovery; failed to prepare his client for testimony; and failed to prepare claims and/or defenses on the client's behalf. Mr. McDaniel's failures constituted violations of M. R. Prof. Conduct 1.3; 1.4; and 1.5(a). Mr. McDaniel agreed that he engaged in some professional misconduct and that he had undertaken remedial measures geared toward avoiding such future occurrences.

The Maine Fee Arbitration Commission issued a decision awarding the client a \$792 reimbursement of the fees he previously paid to Mr. McDaniel. Mr. McDaniel made a timely reimbursement.

Because the evidence supports a finding that Mr. McDaniel violated the Maine Rules of Professional Conduct, the Board found that a public reprimand was appropriate. The Committee deliberated the matter on October 17, 2017, and recommended to the Court the imposition of public censure, which is the equivalent to a public reprimand imposed by the Board. The Court concluded that a public censure is warranted, and the Committee issues a public censure.

Mr. McDaniel shall be responsible for 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, copying and costs associated with the publication of the censure. The assessment of costs shall become final unless Mr. McDaniel responds in writing, within thirty (30) days of receipt of the Committee's statement of expenses, listing each disputed expense and explaining the reasons for disagreement. Sup. Ct. R. 37(19)(b). The Committee may resolve the disagreement, or enforce the assessment of costs by petition to the superior court in any county in the state. Sup. Ct. R. 37(19)(b).

The Committee may file a copy of the final assessment of costs 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). Mr. McDaniel shall be responsible for any costs incurred as a result of the Attorney Discipline Office's collection efforts.

January 16, 2018



David M. Rothstein, Chair

Distribution:

Brian R. Moushegian, Deputy General Counsel
James R. McDaniel, II, Esquire
File