

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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

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

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

*Brown, Darrin R. advs. Attorney Discipline Office - #17-010*

**PUBLIC CENSURE AND ORDER ON COSTS**

On April 17, 2018, 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**).

The Committee approved the facts as stipulated by clear and convincing evidence. It further found that Darrin R. Brown’s conduct violated Rules of Professional Conduct 1.16; 1.7; and 8.4(a), as stipulated.

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

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

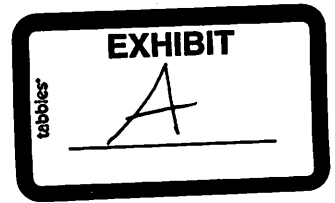
April 17, 2018



---

David M. Rothstein  
Chair

cc: Sara S. Greene, Disciplinary Counsel  
Darrin R. Brown, Esquire  
File



**NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE**

Brown, Darrin R.

advs.

Attorney Discipline Office

#17-010

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

Respondent, Darrin R. Brown, Esq., and the Attorney Discipline Office  
(ADO) stipulate as follows:

**A. Facts**

1. Darrin R. Brown is an attorney licensed to practice law in New Hampshire. Mr. Brown was admitted to practice on May 25, 2005.
2. Mr. Brown has not been admitted to practice law in any other jurisdiction.
3. At all times pertinent to the matters at issue, Mr. Brown worked at 34 Locke Road, Concord, N.H. 03301.
4. Mr. Brown does not have a previous disciplinary history.
5. This matter arises from a grievance against Mr. Brown dated April 14, 2017, submitted by Attorney Megan Hilson, in-house counsel to Brady Sullivan Properties, LLC, and Attorney Emile Bussiere, outside counsel for Brady Sullivan Properties, LLC.

6. Mr. Brown represented Evergreen Condominium Association (“Evergreen”) in litigation against Brady Sullivan Properties, LLC, and Lakeview Condominiums, LLC (collectively, “Brady Sullivan”).<sup>1</sup> That action sought compensation for numerous alleged construction defects. Ms. Hilson represented Brady Sullivan in the case. The case was resolved at a settlement conference in April 2015. The settlement agreement contained the following language:

The Plaintiffs **and their attorneys** in the Lawsuit agree that all terms and conditions of this Agreement, **including the settlement amount thereof**, and all negotiations or discussions of any kind relating to the settlement resulting in or relating to this Agreement have been and **are to be kept strictly confidential**, and have not been and shall not be disclosed, made public, disseminated, released, or otherwise be referenced, alluded to, or suggested to any person, excepting the Plaintiff’s immediate financial and tax advisors, counsel and counsel’s employees, the Association Unit Owner Members and those individuals only as needed and only if they first agree in writing that there shall be no disclosure of any kind or any publicity of any kind concerning this settlement, including the newspaper, radio, television, internet or social media, and that there shall be no disparagement of the Defendants to any person or entity, it being the intention and agreement of the Parties that this settlement of disputes shall be confidential and privileged, and no disparagement of the Defendants is to occur. The Parties expressly acknowledge that the settlement is confidential and that this confidentiality provision is a material term to the settlement. (emphasis added).

---

<sup>1</sup> Lakeview Condominiums, LLC, is an entity related to Brady Sullivan Properties, LLC.

7. At the time that Evergreen entered into the above settlement agreement, Mr. Brown was also representing five unit owners in five similar cases involving a different planned unit development association against Brady Sullivan Properties, LLC, and Brady Sullivan Paugus Woods, LLC. One of his clients in one of those litigation matters, plaintiff Eri Hagberg, subsequently asked Mr. Brown about whether Evergreen had an obligation to disclose the settlement sum in its budget documents. In the course of answering questions regarding mediation and potential settlement outcomes, Mrs. Hagberg noted that the Declaration of The Villas at Paugus Woods mandated disclosure of all financial transactions in the budget documents that are disclosed to Unit Owners. She asked if the Declaration of Evergreen Condominium mandated the same type of disclosure. Mr. Brown informed her that there an identical provision in the Evergreen Condominium Declaration, and that because Evergreen was a condominium and not a land-lease community like hers. N.H. R.S.A. 356-B:58 mandates disclosure of the same budget information to any prospective buyer or their agent(s) upon request.

8. Mrs. Hagberg inquired if the settlement sum for Evergreen had been published in the Evergreen Condominium budget, and thereby discernible to a person reviewing that same budget information. Given the context, Mr. Brown believed at the time that this a reasonable request for information pursuant to Rule 1.4(a)(4) for the evaluation of her mediation options, and answered her truthfully about the availability

of that information. Ms. Hagberg pressed further, and asked Mr. Brown to simply tell her the settlement amount if in fact it was an amount she could discern on her own. Mr. Brown shared that amount in a “real time” decision he now recognizes was a mistake.

9. At the time he disclosed the information, Mr. Brown believed that the information was no longer confidential. In particular, he believed that state law required that Evergreen report the income from the settlement on its financial records. See N.H. RSA §§ 356-A:9-b; 356-B:58, and 477:4-f. Those financial records were available for inspection by the unit owners of Evergreen, as well as any potential purchasers of units, i.e. members of the public. Evergreen did in fact disclose the amount of the settlement at its annual meeting to the unit owners and others present who attended the meeting.
10. Mr. Brown now understands that confidential information gained in the course of representation remains confidential even if such information can be independently obtained through other public means.<sup>2</sup>

Notwithstanding the limited publication of the settlement amount of the Evergreen case, Mr. Brown had an obligation not to make use of the

---

<sup>2</sup> “[A]n attorney’s duty to protect confidential information gleaned from a client does not disappear simply because portions of that information have been included in public documents or discussed in public forums. Further, even in the absence of any confidences, an attorney owes a duty of loyalty to a former client that prevents that attorney from attacking, or interpreting work she performed, or supervised, for the former client.” *Sullivan County Regional Refuse Disposal District v. Town of Acworth*, 141 NH 479, 484 (1996) (citations omitted).

confidential information from the Evergreen settlement and share that information with another client. At the time he shared the amount with Ms. Hagberg, he was weighing his duty to properly advise her with what he believed to be information available to the public. He recognizes know that his real time decision in that moment violated his duty to Evergreen under Rule 1.6.

11. This disclosure came to the attention of Brady Sullivan during a deposition of Mrs. Hagberg August 11, 2015. Counsel for Brady Sullivan queried Mrs. Hagberg if she had learned of the Evergreen settlement sum “from any source”. When Mrs. Hagberg answered “yes,” she was asked to name her source. Despite his concern that the question ventured into attorney-client privilege, Mr. Brown instructed Mrs. Hagberg to answer the question honestly because she was under oath, regardless of consequences, and preserved an objection.
12. On September 22, 2015, Brady Sullivan filed suit against Evergreen and Mr. Brown for breach of the confidentiality provision of the settlement agreement. *Lakeview Condominiums, LLC, et al v. Evergreen Condominium Ass’n, Inc. & Darrin Brown, Esq.*, Case No. 211-2015-CV-00220, Belknap Superior Court. Attorneys Hilson and Bussiere represented Brady Sullivan in the suit against Evergreen and Mr. Brown.
13. Mr. Brown was served fifteen days prior to Evergreen. He filed an appearance and answer on behalf of himself on November 2, 2015. On November 12, Mr. Brown also filed an appearance and answer on behalf

of Evergreen at their request to avoid default on the time limit for filing an Answer. On December 23, 2015, Attorney Neil Nicholson filed an appearance on behalf of Mr. Brown. The plaintiffs raised concerns about a potential conflict of interest, and Mr. Brown filed a withdrawal of his appearance on behalf of Evergreen on February 3, 2016.

14. Attorney Michael Feniger filed an appearance on behalf of Evergreen on April 4, 2016. (Attorney Feniger was retained by Evergreen's insurance carrier to defend the action, but only after the insurance carrier determined that the claims made in the lawsuit were covered under the insurance policy, which took several months.)
15. By the time Attorney Feniger filed his appearance on behalf of Evergreen, the deadline for Evergreen to file a cross-claim against Mr. Brown had passed. Attorney Feniger therefore filed a Motion to Amend Answer, Affirmative Defenses, and Further File a Cross-Claim Against Darrin Brown, Esq. Mr. Brown, through counsel, filed a responsive pleading that stated that Mr. Brown did not object to allowing Evergreen to file a late cross-claim against him.
16. Evergreen thereafter filed an Answer and Crossclaim against Mr. Brown in May 2016, alleging that Mr. Brown negligently breached his duty of confidentiality to Evergreen, and that as a result, Evergreen was named as a defendant in the lawsuit by Brady Sullivan. Evergreen's request for relief demanded judgment against Mr. Brown for any sums for which

Evergreen may become liable in the litigation commenced by Brady Sullivan.

17. Mr. Brown asserts that he filed an appearance on behalf of Evergreen at Evergreen's request, to prevent a default from entering against Evergreen, who had not located other counsel by the time an Answer was due. Mr. Brown acknowledges that despite any defenses he may have had, and despite any courtesies he wished to extend to Evergreen, he had a non-waivable conflict of interest in representing Evergreen, even briefly, because it was his conduct which had exposed Evergreen to liability.
18. The lawsuit brought by Brady Sullivan against Evergreen and Mr. Brown settled in December 2017.

## **B. Disciplinary Rules Violated**

19. The parties agree that Mr. Brown's conduct in this case involves violations of the New Hampshire Rules of Professional Conduct 1.6 and 1.7, as follows:

### **Rule 1.6: Confidentiality of Information**

20. The facts set forth above at ¶¶1 -19 above are incorporated by reference.
21. Rule 1.6 states as follows:
  - (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).
  - (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm or to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another; or
  - (2) to secure legal advice about the lawyer's compliance with these Rules; or
  - (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or
  - (4) to comply with other law or a court order; or
  - (5) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.
- (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client. A lawyer shall provide competent representation to a client.

22. Mr. Brown violated Rule 1.6 when he disclosed to Ms. Hagberg, a plaintiff in another lawsuit against Brady Sullivan, the settlement amount from the Evergreen lawsuit. He did so after informing her that she was correct in deducing that the settlement sum was disclosed in Evergreen budget documents. As explained herein, Mr. Brown's state of mind at the time of the disclosure was that he was explaining the legal and practical aspects of the Hagberg's impending mediation and alternative courses of action. Rule 1.4 (b).

23. This resulted in Brady Sullivan filing suit against Evergreen and Mr. Brown for breach of the confidentiality provision of the settlement agreement.
24. Mr. Brown's conduct, as aforesaid, constitutes clear and convincing evidence of a violation of Rule 1.6.

**Rule 1.7: Conflicts of Interest**

25. The facts set forth at ¶¶ 1-24 above are incorporated by reference.
26. Rule 1.7 states in pertinent part as follows:
  - (a) Except as provided in paragraphs (b) and (c), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
    - (1) the representation of one client will be directly adverse to another client; or
    - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
  - (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
    - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
    - (2) the representation is not prohibited by law;
    - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
    - (4) each affected client gives informed consent, confirmed in writing.

27. Mr. Brown owed a duty to Evergreen to not represent it under circumstances where there was a significant risk that his representation could be materially limited by his own personal interests.
28. In this case, Mr. Brown's conduct was the cause of the litigation against his client Evergreen. He could not act with undivided loyalty to Evergreen under such circumstances, as his personal interest in avoiding liability created a significant risk that he could not advise Evergreen fully and competently.
29. Mr. Brown's conduct, as aforesaid, constitutes clear and convincing evidence of a violation of Rule 1.7.

**Rule 8.4(a): General Rule**

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

**C. Recommended Sanction**

31. The Attorney Discipline Office and Mr. Brown jointly recommend a Public Censure as the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
32. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
33. 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).

34. 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.
35. 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.
36. Under the first prong of the analysis, Mr. Brown violated duties owed to his client, Evergreen. See *Standards* § 4.2 and 4.3.
37. With respect to Mr. Brown’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Brown’s mental state was negligent with respect to Rules 1.6 and 1.7. The parties agree that as to

- the conflict of interest, while not a “knowing” violation of the Rules, Mr. Brown should have known he had a conflict in representing Evergreen.
38. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Brown’s misconduct.
39. Mr. Brown’s conduct caused actual injury to his client Evergreen because his disclosure resulted in his client being sued for violating the confidentiality provision of the settlement agreement with Brady Sullivan. He also represented Evergreen in that lawsuit past the deadline for Evergreen to assert a cross claim. Once Evergreen had new counsel, Mr. Brown did not object to the filing of a late cross claim against him, which Evergreen did in fact initiate, but he acknowledges the potential injury his appearance on behalf of Evergreen caused.
40. The parties agree that the baseline sanction under the *ABA Standards* in this matter is a Reprimand (Public Censure in New Hampshire). See *Standards* § 4.23 and 4.33.
41. Mr. Brown’s Rule 1.6 violation implicates Section 4.2, Failure to Preserve the Client’s Confidences. His violation of Rule 1.7 implicates Section 4.3, Failure to Avoid Conflicts of Interest.
42. *Standard 4.2* provides:
- 4.21 Disbarment is generally appropriate when a lawyer, with the intent to benefit the lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
- 4.22 Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted

to be disclosed, and this disclosure causes injury or potential injury to a client.

4.23 Reprimand is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client.

4.24 Admonition is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes little or no actual or potential injury to a client.

43. *Standard 4.3* provides:

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
- (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

4.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

4:34 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in

determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

44. Given Mr. Brown's negligent conduct, the parties agree that the baseline sanction for Mr. Brown's conduct is a Public Censure. *See Standards* § 4.23 and 4.33.
45. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
46. In this case the aggravating factor is substantial experience in the practice of law. *See Standards* § 9.22.
47. Mitigating factors include absence of prior disciplinary record, absence of selfish motive, and full and free disclosure to the ADO. *See Standards* § 9.32.
48. The parties agree that given the baseline sanction, and consideration of aggravating and mitigating circumstances, a public censure serves the purposes of discipline and is an appropriate sanction in this case.

#### **D. Costs**

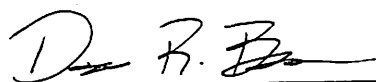
49. Subject to the PCC's approval of Mr. Brown's Stipulation, Mr. Brown agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. *See Supreme Court Rule 37(19)*. His agreement to pay the costs incurred by the ADO is the subject of a separate agreement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

### **E. Effect of Stipulation**

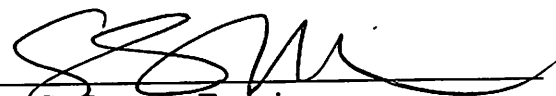
50. Mr. Brown understands that this stipulation represents a recommended disposition, and that the Professional Conduct Committee may accept, reject, or conditionally accept the stipulation, pursuant to Rule 37A (III)(aa).
51. Mr. Brown acknowledges that the admissions of misconduct and the proposed disposition contained in this stipulation are freely, knowingly, and voluntarily submitted; that he is not entering this stipulation as a result of any threats, coercion, or duress, or of any promises or inducements not set forth in the stipulation; that he is fully aware of the consequences of the stipulation and that he has been represented by counsel in reaching this Stipulation.
52. Mr. Brown knowingly and intelligently waives his right to a hearing.

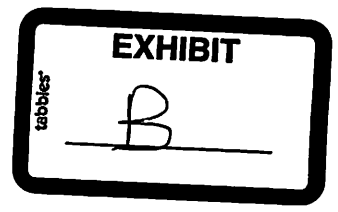
Respectfully submitted,

Dated: 3/21 2018

  
\_\_\_\_\_  
Darrin R. Brown, Esquire  
Respondent

Dated: 3/29 2018

  
\_\_\_\_\_  
Sara S. Greene, Esquire  
Disciplinary Counsel



**NEW HAMPSHIRE SUPREME COURT**  
**PROFESSIONAL CONDUCT COMMITTEE**

Brown, Darrin R.

advs.

Attorney Discipline Office

#17-010

**AGREEMENT TO PAY COSTS**  
**OF DISCIPLINARY MATTER**

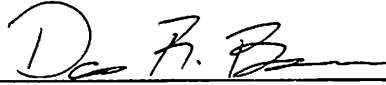
1. Subject to the Professional Conduct Committee's approval of the Stipulation of Facts, Rule Violations, and Sanction: Public Censure in the above matter, I agree to pay the expenses incurred by the Committee in the investigation and enforcement of this disciplinary matter. See Sup. Ct. R. 37(19)(b). Costs can include, but are not limited to: mileage, stenographers, transcripts, copying, inventory, audit expenses and publication.
2. As of January 17, 2018, I have been informed that the costs are approximately \$207.00. Should further costs accrue in this disposition of this matter, I understand that the Committee will bill me for these costs. If I dispute the bill, I will notify the Committee of the specific nature of the dispute in writing within thirty days of my receipt of the bill. I understand that the Committee will consider the disputed item and issue a written

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

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

Respectfully submitted,

Dated: 3/21/ 2018

  
\_\_\_\_\_  
Darrin R. Brown, Esquire  
Respondent