

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  
Georges J. Roy\*  
Martha Van Oot  
Daniel E. Will  
\* non attorney member  
Barbara J. Guay, Legal Assistant

*Kasper, Robert J., Jr. advs. Attorney Discipline Office - #16-043*

**REPRIMAND AND ORDER ON COSTS**


On October 16, 2018, the Professional Conduct Committee (“the Committee”) deliberated the Stipulation as to Facts, Violations and Sanction: Reprimand (“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; Heather E. Krans, Vice Chair; Elaine Holden, Vice Chair; Kathleen M. Ames; Ronald K. Ace; Peter G. Beeson; Margaret R. Kerouac; Caroline K. Leonard; Mona T. Movafaghi; Georges J. Roy; Martha Van Oot; and Daniel E. Will.

The Committee approved the facts as stipulated by clear and convincing evidence. It further found that Robert J. Kasper, Jr.’s conduct violated Rules of Professional Conduct 1.15; 8.4(a) and Sup. Ct. R. 50, as stipulated.

The Committee also concluded that a Reprimand 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”).

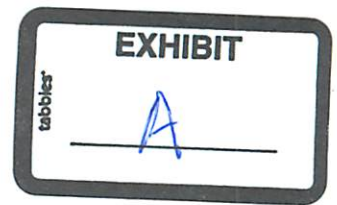
Having approved the stipulated sanction, the Committee approved the agreement that Robert J. Kasper, Jr. shall reimburse the Committee for all costs of investigation and prosecution of this matter.

October 16, 2018



David M. Rothstein  
Chair

cc: Sara S. Greene, Disciplinary Counsel  
William C. Saturley, Esquire  
File



NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE

Kasper, Robert J., Jr.

advs.

Attorney Discipline Office

#16-043

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

Respondent Robert J. Kasper, Jr., Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

**A. Facts**

1. Mr. Kasper is an attorney licensed to practice law in New Hampshire. Mr. Kasper was admitted to practice in 1991.
2. Mr. Kasper was also admitted to practice law in California (December 22, 1976), Massachusetts (September 19, 1990) and Vermont (November 7, 1990). He is currently on active status for the California and Vermont Bars. He is on inactive status in Massachusetts.
3. At all times material to this proceeding, Mr. Kasper practiced law at Kasper and Associates, PLLC, located at 54 Main Street, Walpole, NH.
4. Mr. Kasper does not have a previous disciplinary history.

5. This disciplinary matter was initiated by an overdraft notification (ODN) received from the Savings Bank of Walpole regarding Mr. Kasper's client trust account (CTA). Mr. Kasper cooperated with the ADO, explained how the overdraft occurred, and agreed to have a compliance review performed at his expense.

**Compliance Review and Cooperation with ADO**

6. A compliance review was conducted and a report completed in December 2016 by Kevin Kennedy, CPA, CFE. (hereinafter "the Report," attached hereto as Ex. A). At that time, Mr. Kasper had another disciplinary matter pending at the ADO. That matter went forward to a contested hearing, after which the matter was dismissed. The PCC affirmed the Order dismissing the contested matter on June 19, 2018.
7. The ADO continued to investigate the ODN case pending resolution of the contested matter, and met with Respondent and his counsel, who cooperated with additional requests for further information.
8. The Report did not uncover any instances of misappropriation of client funds by Mr. Kasper. It did note various accounting errors and one isolated instance of commingling.
9. As explained further below, Mr. Kasper has corrected the areas of concern noted in the Report, and since his other disciplinary matter concluded with a finding of no misconduct, Mr. Kasper has provided six months of monthly reconciliations to the ADO which demonstrate compliance with Rules 1.15 and Supreme Court Rule 50.

**The Compliance Report: Accounting Errors and  
One Instance of Commingling**

10. At the time of the audit, Mr. Kasper maintained three bank accounts that held client funds:
  - (a) Mascoma Savings Bank (the CTA)
  - (b) Savings Bank of Walpole
  - (c) TD Bank
  
11. The primary client trust account is the Mascoma account. The other accounts are utilized for specific purposes. The Savings Bank of Walpole account is used exclusively for real estate closings conducted for that institution. The TD Bank account was used for real estate closings for that bank, and was closed in 2016. With regard to real estate closings for both the Savings Bank of Walpole and the TD Bank accounts, Mr. Kasper was acting as settlement agent for the bank and not as the attorney for the borrower. It was Mr. Kasper's practice to provide a letter to every borrower making clear that he was not acting as their attorney at the closing.
  
12. The compliance review covered an 18-month period. It did not uncover any instances of misappropriation of client funds by Mr. Kasper, nor any other instances of overdrafts in any account. The Report notes that Mr. Kasper kept individual client ledgers, that his book-keeper performed monthly reconciliations, and that "[i]n general, client accounts are maintained and the client balances are tracked showing the items of deposits and disbursements." [See Exhibit A at page 4.]

13. As to the overdraft that led to this disciplinary matter, the Report confirmed the explanation that Mr. Kasper provided in his initial written response to the ADO. The overdraft was caused by a check that Mr. Kasper wrote to himself for legal services arising out of a closing. The funds after closing had been deposited into the Mascoma account. However, when he wrote the check to himself for fees, he simply picked up the wrong checkbook and wrote the check out of the Walpole account, which did not have sufficient funds to cover the check.
14. Mr. Kasper now keeps the checkbooks for the Mascoma account and the Savings Bank of Walpole account in separate filing cabinets to ensure this does not happen again. [See Ex. A, p. 3-4].
15. The Report noted other irregularities in Mr. Kasper's accounting procedures. For example:
  - a. Although "[b]ank accounts are reconciled for each month," such reconciliations were not always conducted in timely way at the close of each month . . . . In addition, when the reconciliations were prepared, they were tied to the client balances as of the date of the reconciliation, not balances as of the end of each month." [Ex. A, p. 5-6];
  - b. The Mascoma account reconciliations included outstanding checks that were months or years old; and

- c. Mr. Kasper's long-time paralegal, Kristine Wright, was a signer on the CTA account and the Walpole trust account, but not bonded as required by Rule 50(2)(C)(i)-(iii).
16. The primary issue of concern involved one instance in which Mr. Kasper deposited \$80,000 of his personal funds into his CTA account in 2015. These funds represented a loan to Mr. Kasper that he took out for purposes of the Walpole Creamery, a business in which Mr. Kasper was part-owner (60%) at the time and which is unrelated to his law practice. The funds were used to close on a new site for the Walpole Creamery, as well as for the purchase of additional inventory and equipment.
  17. The \$80,000 was deposited on May 5, 2015, the funds were "good" as of May 6, and the closing occurred on May 15, 2015. The funds from the personal loan were thus "zeroed out" within 13 days of the initial deposit.
  18. The Creamery's attorney for purposes of the real estate and equipment closing was Attorney Jim Callahan. Mr. Callahan was a last-minute substitute for the attorney who had been handling the purchase negotiations for the Creamery up until that point, David Sturm. Attorney Sturm was away on vacation at the time of the closing, and the parties agreed to run the funds through Mr. Kasper's CTA as a matter of convenience.
  19. This was the only instance of commingling in the 18-month period covered by the compliance review, and was occasioned by the somewhat unique circumstances set forth above. Mr. Kasper recognizes, however,

that this violates Rule 1.15, and agrees that the appropriate course would have been to run this loan through his attorney's CTA, as Mr. Kasper was represented by counsel in the transaction.

**Corrective Measures and Production of Monthly Reconciliations to ADO**

20. The Report noted that Mr. Kasper used an outdated (i.e. pre-2000) version of Quicken to track and maintain his CTA. Mr. Kasper updated his Quicken software in November 2016 and is now using the 2015 version.
21. Mr. Kasper's paralegal, Ms. Wright, is no longer a signer on any of his bank accounts. Mr. Kasper revoked this authority shortly after the Compliance Report was issued. The Report did not uncover any instances in which Ms. Wright acted improperly with regard to the CTA.
22. By way of context, Mr. Kasper had added Ms. Wright as a signer under unique circumstances, when he was called up for active duty for Operation Iraqi Freedom, in 2002, with very little notice. At the time, he was the only lawyer in his office. He arranged for a Vermont and New Hampshire attorney to handle the day-to-day needs of his clients, but was able to continue the real estate portion of his practice by overseeing his paralegal's preparation of real estate closing documents. He could not complete the administrative task of actually signing checks from his post, however. Ms. Wright had been his paralegal since 1996 at the time he was called for active duty, and he trusted her without reservation.

23. Mr. Kasper gave her authority to sign as an accommodation under these unique circumstances. Two title companies for whom he was acting as agent in the real estate transactions told Mr. Kasper that Ms. Wright did not need to be bonded, and he was not attuned at the time to Rule 50's requirement that she be bonded, an oversight he regrets. Upon his return from active duty, it did not occur to Mr. Kasper to revoke her authority.
24. Regarding the Mascoma account reconciliations, which included outstanding checks that were months or years old [Ex. A, p. 6], Mr. Kasper has reissued the checks in cashier's checks form and forwarded them to the appropriate payee. If those checks are returned, Mr. Kasper will forward the corresponding amounts to the state fund for unclaimed monies.
25. Similarly, he has addressed the issue regarding the "Rockingham Tax Sales" subaccount, which had a balance of \$1,070.81 at the end of 2016. Mr. Kasper has researched closed tax sale files for the Town of Rockingham, Vermont, to recut the expired checks as cashier's checks. He forwarded those checks to the Town to determine if the associated former taxpayers can be located. If that is unsuccessful, the funds will be turned over to the State of Vermont.
26. In addition to these corrective efforts to address specific concerns identified in the Report, Mr. Kasper has produced to the ADO six months of reconciliations that demonstrate his compliance with Rule 1.15 and

Supreme Court Rule 50. He has undertaken a concerted effort to improve his practices. He is now reconciling the CTA in a timely manner, at the close of each month, and uses the correct date for such reconciliations, i.e. the balances at the end of each month.

27. Finally, Mr. Kasper has entered into an agreement to informally merge his practice with another attorney from Keene, New Hampshire. Mr. Kasper will become "Of Counsel" to that firm as of October 1, 2018, and he intends to cease practicing law on or before December 31, 2019.
28. Because Mr. Kasper has already corrected the problems identified in the Report, and has produced reconciliations to the ADO that demonstrate compliance with Rule 1.15 and Rule 50, the parties agree that no conditions are necessary and that this matter should resolve with a reprimand.

### **B. Disciplinary Rules Violated**

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

#### **Rule 1.15: Safekeeping Property and Supreme Court Rule 50**

30. The facts set forth above at ¶¶ 1 - 28 above are incorporated by reference.
31. Rule 1.15 states as follows:
  - (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a

representation separate from the lawyer's own property, in accordance with the provisions of the New Hampshire Supreme Court Rules. The lawyer shall maintain the minimum financial records with respect to the client and third party funds as may be required by the New Hampshire Supreme Court Rules and shall comply with every other aspect of those Rules. Sufficient records of all other property of clients or third persons shall be kept by the lawyer and shall be preserved for a period of six years after final distribution of such other property or any portion thereof. All client and third party property shall be identified as such and appropriately safeguarded.

- (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount appropriate for that purpose.
- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- (d) Funds may be disbursed from lawyer trust accounts upon (A) (i) deposit, receipt of which is acknowledged by the receiving financial institution, of cash, bank cashier's check, certified check, or electronic transfer of funds at least equal to the sum of such disbursements, or (ii) clearance of any other form of deposit by such receiving financial institution, and (B) availability of such funds to the lawyer from the receiving financial institution.
- (e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and upon request by the client or third person, shall promptly render a full accounting regarding such property.
- (f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

32. Mr. Kasper violated Rule 1.15 and Supreme Court Rule 50 by failing to maintain the appropriate financial records with respect to the client funds as required by New Hampshire Supreme Court Rule 50, and by failing to properly reconcile all client accounts, as described herein and as set forth in Exhibit A attached hereto.

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

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

**C. Recommended Sanction**

34. The Attorney Discipline Office and Mr. Kasper jointly agree that a reprimand is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
35. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
36. 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).
37. 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.

38. 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”).
39. Under the first prong of the analysis, Mr. Kasper violated duties owed to his clients. *See Standards* Section I (“Theoretical Framework”).
40. With respect to Mr. Kasper’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Kasper’s mental state was negligent. He knew or should have known of his record-keeping obligations under Rule 1.15 and Rule 50.
41. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Kasper’s misconduct.

42. Mr. Kasper's conduct did not cause actual injury to any client, except to the extent that until the overdraft was corrected, client funds from the CTA were used for a purpose not authorized by the client(s). Mr. Kasper's conduct caused potential injury in that for a short period of time his funds were commingled with client funds, which can put client funds at risk of attachment in certain instances. See Commentary, *Standards*, Section 4.12. However, the commingling which occurred in this case was an isolated instance in which Mr. Kasper's funds were in his CTA for a very short period of time pending a real estate closing. Finally, any time an attorney fails to comply with the trust accounting rules, there is harm to the reputation of lawyers and the integrity of the profession.
43. The parties agree that the baseline sanction in this matter would be a public censure or a reprimand. See *Standards* §§ 4.13, 4.14.
44. Mr. Kasper's 1.15 rule violation implicates Section 4.1 of the *Standards*.

That Section provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

**4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.**

**4.14 Admonition<sup>1</sup> is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.**

(emphasis added).

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 there is only one aggravating factor present, Mr. Kasper's substantial experience in the practice of law. *See Standards* § 9.22.
47. Mitigating factors include absence of a prior disciplinary history, absence of a dishonest or selfish motive, full and free disclosure to the ADO, a cooperative attitude, and remorse. *See Standards* § 9.32.
48. The parties agree that given the baseline sanction, and consideration of aggravating and mitigating circumstances, a reprimand serves the purposes of discipline and is an appropriate sanction in this case. As explained above, Mr. Kasper has cooperated fully throughout the investigation of this matter, and has provided reconciliations demonstrating his compliance with the Rules.

#### **D. Costs**

49. Subject to the PCC's approval of Mr. Kasper's Stipulation, Mr. Kasper agrees to pay the costs incurred by the ADO in the investigation and

---

<sup>1</sup>The 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.

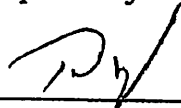
enforcement of this disciplinary matter. See Supreme Court Rule 37(19). His agreement to pay the costs incurred by the ADO is the subject of a separate agreement signed by Mr. Kasper.

**E. Effect of Stipulation**

- 50. Mr. Kasper 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).
- 51. Mr. Kasper 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.
- 52. Mr. Kasper has been represented by counsel in reaching this Stipulation, and he is fully aware of the consequences of the Stipulation.
- 53. Mr. Kasper knowingly and intelligently waives his right to a hearing.

Respectfully submitted,

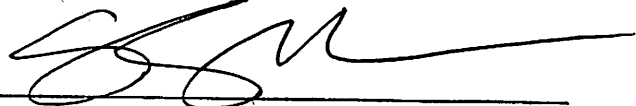
Dated: Oct. 7 2018

  
\_\_\_\_\_  
Robert J. Kasper, Jr., Esquire  
Respondent

Dated: \_\_\_\_\_ 2018

\_\_\_\_\_  
William C. Saturley, Esquire  
Counsel for Respondent

Dated: Oct. 9 2018

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

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. Kasper.

**E. Effect of Stipulation**

- 50. Mr. Kasper 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).
- 51. Mr. Kasper 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.
- 52. Mr. Kasper has been represented by counsel in reaching this Stipulation, and he is fully aware of the consequences of the Stipulation.
- 53. Mr. Kasper knowingly and intelligently waives his right to a hearing.

Respectfully submitted,

Dated: \_\_\_\_\_ 2018

\_\_\_\_\_  
Robert J. Kasper, Jr., Esquire  
Respondent

Dated: Oct. 9 2018

\_\_\_\_\_  
William C. Saturley, Esquire  
Counsel for Respondent

Dated: \_\_\_\_\_ 2018

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



**NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE**

Kasper, Robert J., Jr.

advs.

Attorney Discipline Office

#16-043

**AGREEMENT TO PAY COSTS  
OF DISCIPLINARY MATTER**


1. Subject to the Professional Conduct Committee's approval of the Stipulation of Facts, 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 August 7, 2018, I have been informed that the costs are approximately \$3,894.00. 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: October 7 2018

  
\_\_\_\_\_  
Robert J. Kasper, Jr., Esquire  
Respondent