

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

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Michalik, James E. advs. Attorney Discipline Office - #17-049

ORDER ON SANCTION

The Attorney Discipline Office (“the ADO”) filed a Notice of Charges (“Notice”) alleging that the Respondent, James E. Michalik, violated Rules of Professional Conduct 8.1, 8.4(a), 8.4(b), and Supreme Court Rule 42(XIV). The Notice alleged that Mr. Michalik was twice convicted of the crime of violating a domestic violence restraining order involving the same victim, his wife Sharon. *RSA 173-B:9, III*. It further alleged that he failed to respond to the Notice. By virtue of his failure to respond, Mr. Michalik was deemed to have admitted to the charges, *Sup. Ct. R. 37A(III)(b)(3)(A)*, and a Hearing Panel (“Panel”) was convened to fix a sanction.

Mr. Michalik failed to appear for the sanction hearing. After the hearing, the Panel issued an order recommending that he be suspended from the practice of law for two years and be assessed the costs incurred by the ADO in

the investigation and prosecution of the matter.

The Committee considered the Panel's recommendation at its meeting on December 11, 2018. Present were: David M. Rothstein, Chair; Heather E. Krans, Vice-Chair; Elaine Holden, Vice-Chair; Ronald K. Ace; Kathleen M. Ames; Peter G. Beeson; Caroline K. Leonard; Mona T. Movafaghi; Martha Van Oot; and Daniel E. Will. Margaret R. Kerouac and Georges J. Roy were absent.

After deliberation, and having reviewed the Record, the Committee accepted the Panel's findings of fact, rule violations, and recommended sanction. Accordingly, the Committee recommends that the New Hampshire Supreme Court suspend Mr. Michalik's license to practice law for two years.

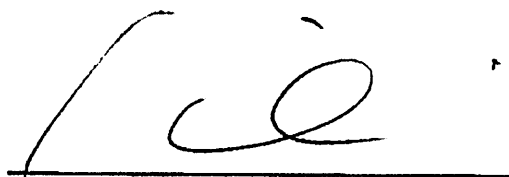
In accepting that recommendation, the Committee noted the seriousness of Mr. Michalik's conduct. His inability to abide by an order of a court, issued to protect his wife's safety and well-being, was greatly concerning. As an aggravating factor, he violated the same order twice within the span of less than eight months. Such disregard for an order of that nature raises questions about his ability to abide by the rules and orders of courts in cases he might handle as counsel. It also decreases the public's confidence in the legal profession and demands a significant sanction.

Moreover, for reasons unknown to the Committee or the ADO, Mr. Michalik chose to disregard his obligation to respond to the Notice of Charges, or any other communication sent by the ADO. That conduct reflects poorly on his fitness to serve as counsel and demands a sanction.

The Committee agrees with the ADO that the baseline sanction is suspension. Mr. Michalik acted knowingly and caused injury to the profession. It agrees that aggravating factors include the nature of the criminal offenses he committed and his substantial experience in the practice of law. The ADO noted as mitigating factors Mr. Michalik's lack of a prior disciplinary record and "personal problems." In light of his conduct, Mr. Michalik's lack of a record does not weigh heavily. His alleged "personal problems" are not sufficiently developed in the record to merit any weight in the sanction analysis. The aggravating factors outweigh any mitigating factors in this case. No downward departure from suspension is warranted, especially given that Mr. Michalik chose not to offer any evidence on his behalf.

For these reasons, the Committee recommends that the Court suspend Mr. Michalik from the practice of law for two years. It also orders that he reimburse the Committee for all costs of investigation and prosecution of this matter.

December 14, 2018



David M. Rothstein, Chair

Distribution:

Sara S. Greene, Disciplinary Counsel
James E. Michalik (via email)
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