

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Brown, Jeffrey M. advs. Attorney Discipline Office - #17-027

Recommendation: Disbarment and Order on Costs

On May 21, 2019, the Professional Conduct Committee (the "Committee") deliberated the Amended Stipulation as to Facts, Violations and Sanction: Disbarment 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; 1.5; 1.15; 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.

28
May __, 2019



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Jeffrey M. Brown
File

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Brown, Jeffrey M.

advs.

Attorney Discipline Office

#17-027

**AMENDED STIPULATION AS TO FACTS,
VIOLATIONS, AND SANCTION: DISBARMENT**

Respondent Jeffrey M. Brown, Esq., and the Attorney Discipline Office, through counsel, Elizabeth M. Murphy, Assistant Disciplinary Counsel and stipulate as follows:

A. Facts

1. Mr. Jeffrey Brown ("Mr. Brown") is a suspended New Hampshire attorney. Mr. Brown was admitted to practice on October 31, 2006. Mr. Brown is currently suspended from the practice of law on an interim basis by a New Hampshire Supreme Court Order dated February 6, 2018.
2. Mr. Brown has not been admitted to practice law in any other jurisdiction.
3. At all times material to this proceeding, Mr. Brown operated his law office at 118 Railroad Avenue, Seabrook, NH 03874.
4. Mr. Brown does not have a previous disciplinary history.

Overdraft Notice and Attorney Discipline Office Investigation

5. By letter dated June 26, 2017, TD Bank notified the Attorney Discipline Office (“ADO”) that Respondent’s client trust account ending in 3623 (“IOLTA account”) had been overdrawn in the amount of \$2,500.00.
6. On July 14, 2017, General Counsel Janet F. DeVito (“General Counsel”) sent a letter to Mr. Brown requesting a narrative explanation of how the overdraft occurred, and copies of three months of IOLTA bank statements, corresponding trust account and client ledgers and reconciliation records.
7. In Mr. Brown’s response of July 26, 2017, he explained that he had deposited a \$10,000.00 check on June 20, 2017 for a client into his IOLTA account. According to his online review of the TD Bank website for the account, the entire amount was available for withdrawal. Based on this information, Mr. Brown wrote a check to the same client for \$2,500.00 from the \$10,000.00 amount deposited. This check was returned for insufficient funds.
8. In his response, Mr. Brown further explained:

This account was used to disperse funds from a Trust to one of the beneficiaries of the Trust. The method at the time was to withdraw funds from an investment account, deposit same into my IOLTA account and write checks to the beneficiary/client from that account for record keeping and in order to get funds timely to the client on request.
9. Upon review of Mr. Brown’s response and the documentation submitted, General Counsel docketed this matter on August 22, 2017.

10. On the same day, General Counsel sent a letter to Mr. Brown requesting additional documentation, including a copy of the Trust from which he withdrew funds to disperse to the beneficiaries.
11. Subsequently, Mr. Brown forwarded to General Counsel the Perkins Investment Trust-2013 ("Perkins' Trust"), and other documentation.
12. This matter was referred to Disciplinary Counsel on November 3, 2017.
13. On December 4, 2017, undersigned counsel subpoenaed Mr. Brown's IOLTA account records from TD Bank for the period from January 1, 2014 through December 4, 2017. January 1, 2014 was the date that Mr. Brown accepted the role of Trustee of the Perkins' Trust.
14. On December 4, 2017, undersigned counsel sent a second letter to Mr. Brown requesting additional account ledgers from January 1, 2014 to December 31, 2016. Mr. Brown was unable to provide those ledgers.
15. Mr. Brown met with undersigned counsel on January 31, 2018 and February 2, 2018. Mr. Brown also delivered files requested by undersigned counsel to the ADO on February 2, 2018.
16. On February 2, 2018, Mr. Brown agreed to the filing of an Assented-To Petition for Immediate Interim Suspension from the Practice of Law.
17. On February 1, 2018, undersigned counsel subpoenaed additional financial records for which Mr. Brown had signatory authority, pertaining to the Perkins' Trust, from Scottrade, Inc. ("Scottrade") and Granite State Credit Union ("GSCU"). Additional records were subpoenaed from LPL Financial, Inc. ("LPL") on February 6, 2018.

18. After review of all subpoenaed documentation and the files provided to the ADO, the ADO has determined, as set forth in further detail below, that Mr. Brown:

- a) Misappropriated funds from two clients, the Perkins' Trust and Mr. Robert Fowler ("Mr. Fowler");
- b) Charged unreasonable fees in the Perkins' Trust matter;
- c) Committed a myriad of violations involving his IOLTA account, including record-keeping failures, taking cash withdrawals, misappropriation, commingling, and allowing the Perkins' Trust to be out of trust;
- d) Filed false Trust Account Compliance Certificates for the reporting periods covering June 1, 2014 to May 31, 2017.

**Joan Perkins/Perkins Investment
Trust Representation**

19. On January 2, 2014, the Trustor of the Perkins' Trust, Joan A. Perkins ("Ms. Perkins") removed Joseph R. Russell, Esquire as Trustee ("Mr. Russell"). Mr. Russell was Ms. Perkins' former attorney and had represented her regarding a personal injury matter for which Ms. Perkins had received significant settlement proceeds.
20. Mr. Russell created for Ms. Perkins the Perkins' Trust on September 20, 2013. The terms of the Perkins' Trust provided that Ms. Perkins had the power to change the Trustee without cause.

21. The same day that Ms. Perkins removed Mr. Russell as Trustee, Mr. Brown accepted the appointment as successor Trustee.
22. Mr. Brown had previously known Mr. Perkins through his sister, Yvette Bradley ("Ms. Bradley"), who was a close friend of Ms. Perkins.
23. Ms. Perkins' settlement proceeds from the personal injury matter were initially placed in a financial account with Commonwealth Financial Network in the name of the Perkins' Trust.
24. In April of 2015, Mr. Brown opened a new account with LPL Financial, LLC ("LPL"), and the monies contained in Commonwealth Financial Network were transferred to new account with LPL.
25. In August 25, 2016, Mr. Brown opened a new account with Scottrade ("Scottrade"). The funds contained in the LPL account were transferred to Scottrade. Mr. Brown then closed the LPL account in December of 2017.
26. As Trustee of the Perkins' Trust, Mr. Brown had broad powers to distribute the Perkins' Trust funds at the request of Ms. Perkins.
27. At all times relevant, Ms. Perkins and/or her business, Ledgewood Belgian Farms ("Ledgewood") held an account at Granite State Credit Union ("GSCU.")
28. At the request of Ms. Perkins, Mr. Brown would regularly withdraw monies and/or issue and/or request checks from the LPL and Scottrade investment accounts held in the name of the Perkins' Trust. Mr. Brown would then deposit the cash and/or checks into his IOLTA account and

issue checks from his IOLTA account made payable to Ledgewood and/or himself.

29. Mr. Brown would then deposit the checks made payable to Ledgewood into the account at GSCU. Since GSCU had a funds available policy of \$2,500.00 per a day, Mr. Brown would issue a check made payable to himself, cash it, and deposit the cash into the GSCU. This process would allow him to make the monies available to Ms. Perkins immediately.
30. Mr. Brown would bill Ms. Perkins at his hourly attorney rate of \$200.00 for coordinating her financial requests. Mr. Brown would also bill Ms. Perkins for other non-lawyer tasks at his regular hourly rate of \$200.00.

**Joan Perkins/Perkins Investment
Trust Misappropriation**

31. On the same day of Mr. Brown's acceptance of appointment as Trustee of the Perkins' Trust, he deposited \$88,000.00 in cash into the IOLTA account. The source of this deposit was a checking withdrawal of \$121,000.00 of cash from an account at TD Bank in the name of Yell Family Trust for which Mr. Brown's sister, Yvette Bradley, was the Trustee ("Yell Family Trust").
32. Mr. Brown had represented his sister, Ms. Bradley, regarding a lawsuit filed against her husband, John A. Yell, Jr. who allegedly owed monies to Edgewood Manor, Inc. ("Yell matter"). Edgewood Manor, Inc.'s attorney,

- Pierce Atwood, LLP had successfully obtained a Judgment against Mr. Yell, and an attachment on property owned by the Yell Family Trust.
33. Of the \$121,000.00 withdrawn from the Yell Family Trust account, \$88,000.00 was deposited into the IOLTA account, and \$33,000.00 was deposited into a separate account at TD Bank held in the name of Ms. Perkins.
 34. The balance of the IOLTA account just prior to Mr. Brown's deposit of the \$88,000.00 in cash, on January 1, 2014, was \$200.92.
 35. On January 3, 2014, Mr. Brown issued a check to Pierce Atwood, LLP in full and final settlement of the Yell matter in the amount of \$82,169.96.
 36. On January 22, 2014, Mr. Brown deposited a check in the amount of \$20,000.00 from the Yell Family Trust.
 37. In January of 2014, Mr. Brown issued additional checks to Ms. Bradley totaling \$11,000.00, to himself in the amount of \$7,850.00 and to Mr. Brown's wife, Melba Beckman, for \$700.00.
 38. As of January 31, 2014, the ending balance of the IOLTA account was \$6,497.04.
 39. In February of 2014, Mr. Brown made one deposit of a check for \$1,500.00 from the Yell Family Trust, and issued checks to himself in the amount of \$7,100.00 (of which \$3,800 Mr. Brown claimed as legal fees for work on the Perkins' Trust) and a personal payment and/or donation to Seabrook Emergency Training Associates, a NH non-profit

organization formed by Mr. Brown ("SETA"), in the amount of \$200.00 for CPR training.

40. As of February 28, 2014, the ending balance of the IOLTA account was \$682.25.
41. In March of 2014, Mr. Brown deposited into the IOLTA account \$1,000.00 from a check from the Yell Family Trust. The source check was payable in the amount of \$1,200.00, but Mr. Brown deposited \$1,000.00 and received cash back of \$200.00.
42. In March of 2014, Mr. Brown issued checks payable to himself in the amount of \$500.00 (listed on the ledger as attorneys' fees for Perkins) and for a personal payment and/or donation of \$500.00 to the Rockingham County Republican Committee ("RCRC").
43. Mr. Brown also made cash debits in March of 2014 in the amount of \$620.00.
44. As of March 31, 2014, the ending balance of the IOLTA account was \$161.26
45. In April of 2014, Mr. Brown made one cash debit in the amount of \$100.00 in the IOLTA account. As of April 30, 2014, the ending balance in the IOLTA was \$60.80.
46. In May of 2014, after interest was credited and debited, the ending balance in the IOLTA account was \$60.78.
47. From June 1, 2014 until April 1, 2015, the IOLTA account ending balance remained at \$60.78.

48. On April 27, 2015, a deposit of \$1.00 was made in the IOLTA account.
49. On the same day, Mr. Brown issued a check made payable to Ms. Perkins' husband, Lloyd Perkins, for \$5,000.00. TD bank returned the check on April 29, 2015 and redeposited it on April 30, 2015, leaving the IOLTA ending balance overdrawn in the amount of -\$4,938.22.
50. Mr. Brown did not report that he was out of trust on his Trust Certificate for the June 30, 2015 to May 31, 2016 reporting period.
51. On May 4, 2015, Mr. Brown deposited a check for \$15,000.00 issued from the Perkins' Trust account at LPL into the IOLTA account.
52. In May of 2015, Mr. Brown issued checks payable to himself totaling \$7,600.00 (of which Mr. Brown claimed \$1,100 was for Perkins' fees and \$6,500.00 represented cash deposited for Ms. Perkins in GSCU), \$400.00 to Ms. Bradley for LNA services for Ms. Perkins, and \$1,500.00 payment and/or donation to RCRC. The ending balance as of May 31, 2015 was \$562.44.
53. From June 1, 2015 to December 1, 2015, the ending IOLTA balance with interest paid and NH Bar Foundation dues debited fluctuated each month between \$562.19 and \$562.21.
54. On December 31, 2015, Mr. Brown issued a check to Sharon Fagan for \$211.95. As of December 31, 2015, the ending balance of the IOLTA account was \$350.11, and as of January 31, 2016, the IOLTA account balance was \$350.08.

Robert Oliver Fowler Representation/Misappropriation

55. On February 9, 2016, Mr. Brown deposited into his IOLTA account a check made payable to Robert Fowler in the amount of \$100,000.00. Mr. Fowler endorsed the back of the check to Mr. Brown.
56. The check represented full and final settlement to Mr. Fowler regarding a personal injury matter. Mr. Brown did not represent Mr. Fowler in the personal injury matter.
57. Mr. Brown had an agreement with Mr. Fowler to maintain the \$100,000.00 for the benefit of Mr. Fowler.
58. On February 1, 2016, the beginning balance of the IOLTA account was \$350.08. After Mr. Brown deposited Mr. Fowler's \$100,000.00 settlement check, and interest was paid of \$.30 cents, the balance in the IOLTA account was \$100,349.78.
59. From February 9, 2016 until October 23, 2016, Mr. Brown made only the following two deposits into the IOLTA account:
 - (a) \$5,000.00 on May 26, 2016 depositing a check written from the Perkins' Trust account at LPL made payable to Jeffrey Brown; and
 - (b) \$2,500.00 on August 25, 2016 depositing a check written from SETA signed by Jeffrey Brown and made payable to Jeffrey M. Brown IOLTA account.
60. Due to a lack of record keeping, Mr. Brown lost track of the funds that were paid to Ms. Perkins in the Perkins' Trust matter. Because Mr. Brown had ceased withdrawing funds from Scottrade in the Perkins'

Trust matter, he began to misappropriate Mr. Fowler's money to pay Ms. Perkins.

61. In fact, from February 9, 2016 to October 23, 2016, despite only having deposited \$5,000.00 on May 23, 2016 in the Perkins' matter, Mr. Brown issued checks from the IOLTA account as follows:

(a) To Ledgewood Estates in the Perkins' Trust matter in the amount of \$45,000.00;

(b) To himself (and then cashing & depositing the cash into the Perkins' GSCU account) in the amount of \$22,000.00;

(c) To himself for legal fees in the Perkins' Trust matter the amount of \$2,500.00;

(d) For personal payments and/or donations to the RCRC, SETA, and Friends of Seabrook Community (non-profit formed by Mr. Brown along with others) in the amount of \$3,997.59; and

(e) On other client matters in the amount of \$2,564.00.

62. As of October 11, 2016, the balance in the IOLTA account was \$39,888.19.

63. On October 24, 2016, Mr. Brown deposited a check from Scottrade in the amount of \$60,000.00.

64. On October 27, 2016, Mr. Brown made a deposit of \$13,534.31, of which \$11,800.00 were Mr. Brown's personal funds regarding Somersworth Firefighters Local 2320.

65. On the same day, Mr. Brown made a cash withdrawal of \$13,354.51, and purchased a bank check for the same amount made payable to the Somersworth Firefighters Local 2320.
66. As of October 31, 2016, the ending balance in the IOLTA account was \$81,829.09.
67. Thereafter, the only deposits made by Mr. Brown into the IOLTA account were checks obtained from Scottrade as follows:
 - (a) February 7, 2017 for \$50,000.00;
 - (b) June 20, 2017 for \$10,000.00;
 - (c) July 18, 2017 for \$25,000.00.
68. From October 24, 2016 to November 30, 2017, Mr. Brown issued checks from the IOLTA account as follows:
 - (a) To Ledgewood Estate in the amount of \$73,000.00;
 - (b) To himself (and then depositing the cash into the Perkins' GSCU account) in the amount of \$43,500.00;
 - (c) For payments and/or loans on the Perkins' Trust matter in the amount of \$5,963.68;
 - (d) Legal fees to himself in the Perkins' Trust matter in the amount of \$8,500.00;
 - (e) For personal payments and/or donations to the RCRC, Town of Seabrook and the U.S. Treasury for \$7,214.00; and
 - (f) On other client matters for \$4,965.00.

69. From October 24, 2016 to November 30, 2017, Mr. Brown also made cash withdrawals, not including the \$13,534.51 amount to Somersworth Firefighters, in the amount of \$19,509.12.
70. Because Mr. Brown's cash withdrawals and checks issued exceeded his deposits from October 24, 2016 to November 30, 2017, Mr. Brown continued to misappropriate Mr. Fowler's/and/or Perkins' Trust funds contained in the IOLTA account.
71. Additionally, Mr. Brown "borrowed" funds from the Perkins account to pay a \$10,000.00 Medicaid lien on behalf of Mr. Fowler. Mr. Brown admitted he did not advise Ms. Perkins that he used her money to pay Mr. Fowler.
72. As of November 30, 2017, the ending balance in the IOLTA account was \$104.73. However, it should have contained the remaining balance of Mr. Fowler's funds in the amount of \$90,000.00.
73. On January 31, 2018, Mr. Brown resigned as Trustee of the Perkins' Trust. At that time, Mr. Brown did not advise Scottrade that he had resigned as Trustee of the Perkins' Perkins' Trust.
74. Although Mr. Brown had resigned as Trustee, he signed an authorization on February 12, 2018 to issue a check in the amount \$90,000.00 from the Scottrade account payable to Mr. Fowler as Perkins' Trustee of East Mill Pond Trust. The check was mailed to Mr. Fowler at his home address of 22 Nicholas Way, Seabrook, New Hampshire 03874.
75. Mr. Fowler negotiated the Scottrade check on April 20, 2018.

General IOLTA Account Violations

76. From January 2, 2014 to November 30, 2017, Mr. Brown did not conduct monthly reconciliations or keep accurate client ledgers.
77. From January 2, 2014 to November 30, 2017, Mr. Brown regularly failed to note the client matter to which disbursements were made from his IOLTA account.
78. From February 1, 2014 to April 18, 2017, Mr. Brown paid personal expenses including payments to the Town of Seabrook for taxes on real property owned by Mr. Brown, donations to the RCRC, and SETA and the United States Treasury from the IOLTA account in the amount of \$13,311.59.
79. From January 2, 2014 to November 30, 2017, Mr. Brown made unauthorized cash withdrawals from his IOLTA account as follows, for a total of \$ 22,219.53:
 - a) April 9, 2014 for \$100.00;
 - b) October 27, 2016 for \$13,534.51;
 - c) November 13, 2016 for \$2,133.35;
 - d) December 27, 2016 for \$2,614.10;
 - e) March 29, 2017 for \$1,500.00;
 - f) June 16, 2017 for \$1,449.57;
 - g) June 16, 2017 for \$8.00;
 - h) July 3, 2017 for \$350.00; and
 - i) July 6, 2017 for \$550.00.

80. Mr. Brown failed to identify on his Trust Certificate for the reporting period of June 1, 2017-May 31, 2017 that he had signatory authority on the bank account for the Estate of Cornelius Sylvester Porter.

B. Disciplinary Rules Violated

81. Mr. Brown agrees that the following Rule violations could be proven by clear and convincing evidence based on the facts stipulated to herein:

82. Rules 1.1 and 1.3 (Competence and Diligence), by:

(a) Failing to competently manage and account for funds he held from the Perkins' Trust and for Robert Fowler;

(b) Failing to perform his duties as fiduciary for the Perkins' Trust.

83. Rule 1.15 (Safekeeping property) and Sup. Ct. Rule 50 (Record-keeping Requirements) regarding his clients Perkins' Trust and Robert Fowler and in general by:

(a) Misappropriating funds of Ms. Perkins and the Perkins' Trust;

(b) Misappropriating funds of Robert Fowler;

(c) Commingling his own funds with client funds;

(d) Failing to maintain accurate client ledgers in the Ms.

Perkins/Perkins' Trust and Robert Fowler matters;

(e) Failing to perform monthly reconciliations;

(f) Making cash withdrawals; and

(g) Failing to identify the client matter to which disbursements and/or withdrawals pertained.

84. Rule 3.3 (Candor to the Tribunal), by submitting knowingly false Trust Accounting Certificates for periods covering June 1, 2014 to May 31, 2017, which failed to identify the bank account for the Estate of Cornelius Sylvester Porter in 2016, 2017, and which falsely represented that Mr. Brown was performing monthly reconciliations and that he was not out of trust during the accounting periods.
85. Rule 1.5 (Unreasonable Fees), by charging and collecting unreasonable fees in the Ms. Perkins/Perkins Trust matter in that he billed his client at an hourly attorney rate for cashing checks in a manner that violated the Rules of Professional Conduct.
86. Rule 8.4(c) (Conduct involving Dishonesty, Deceit, Fraud, or Misrepresentation) by:
- (a) misappropriating the funds of Joan Perkins/Perkins' Trust as set forth (*supra*, ¶¶ 31-54);
 - (b) misappropriating the funds of Robert Fowler (*supra*, ¶¶ 55-75);
 - (c) filing false Trust Account Compliance Certificates as set forth (*supra*, ¶ 84).

C. Recommended Sanction

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

89. Mr. Brown agrees that he violated duties to his clients, to the public, and to the legal system. He agrees his conduct was intentional misconduct that caused significant harm to his clients and to the integrity of the profession. Under these circumstances, Mr. Brown agrees that the *Standards* provide for a baseline sanction of disbarment. *See Standards* §§ 4.11, 4.41, 5.11(b), 6.11.
90. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
91. In this case there are several aggravating factors present. *See Standards* § 9.22. They include a dishonest and selfish motive, a pattern of misconduct, multiple offenses, and the vulnerability of the victim.
92. The absence of a prior discipline record is a mitigating factor in this matter. *See Standards* § 9.32.
93. The parties agree that given the baseline sanction, and consideration of aggravating and mitigating circumstances, a disbarment serves the purposes of discipline and is the appropriate sanction in this case.

D. Costs

94. Subject to the PCC's approval of this 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

95. Mr. Brown 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). Mr. Brown understands that the Supreme Court has ultimate authority to accept or reject this Stipulation.


F. Waiver of Formal Proceedings

96. Mr. Brown 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.
97. In so doing, Mr. Brown waives any and all of his due process rights under both the state and federal constitutions on the matters pending against him.
98. Mr. Brown further waives any and all of his procedural rights under N.H. Sup. Ct. R. 37 and 37A, **including specifically the procedures under Rule 37(16).**
99. In deciding both to sign this Stipulation to Disbarment, and to waive these rights, Mr. Brown 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.
100. Mr. Brown 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: April 22 2019



Jeffrey M. Brown, Esquire
Respondent

Dated: April 17, 2019



Elizabeth M. Murphy, Esquire
Assistant Disciplinary Counsel