

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

David M. Rothstein, Chair
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McGrath, Peter G. advs. Attorney Discipline Office - #15-047

**RE-ISSUED THREE MONTH SUSPENSION,
STAYED FOR ONE YEAR,
AND ORDER ON COSTS**

On September 17, 2019, the Professional Conduct Committee (the “Committee”) deliberated the Hearing Panel Report, hearings transcripts and pleadings (collectively, the “Record”) in the above matter. Members present included David M. Rothstein, Chair, Heather E. Krans, Vice Chair, Elaine Holden, Vice Chair, Ronald K. Ace, Kathleen M. Ames, Mona T. Movafaghi, Georges J. Roy, and Martha Van Oot. Richard C. Guerriero, Jr. was absent. Peter G. Beeson, Margaret R. Kerouac, and Caroline K. Leonard were recused.

Having reviewed the Record, the Committee approved the Hearing Panel’s Recommended facts by clear and convincing evidence. The Committee then approved the Hearing Panel’s findings of violations of the Rules of Professional Conduct. The Committee concluded that there is clear and convincing evidence that Mr. McGrath has violated the following Rules of Professional Conduct by clear and convincing evidence: 1.3; 3.4(d); and 8.4(a). The Panel did not find a violation of Rules 1.1, 3.1, 3.4(a), 3.4(c), or 8.4(c), and the ADO did not contest those findings.

The Hearing Panel determined that a sanction of a three-month suspension, stayed for one year, is appropriate. Both case law and the American Bar Association’s *Standards for Imposing Lawyer Sanctions* (2005)

support the sanction. As noted in the report, Mr. McGrath was negligent¹ and his client suffered no significant harm. The Hearing Panel appropriately weighed aggravating factors, most notably, Mr. McGrath's prior disciplinary history, against mitigating factors, including his cooperation and lack of selfish or dishonest motive. The ADO did not seek review of the Hearing Panel's sanction decision, and this Committee adopts it.

The parties brought to the Committee's attention that the stayed suspension imposed by the Hearing Panel has no associated conditions, nor any procedure governing how the period of suspension should be brought forward in the event of an alleged violation. They assent to incorporating the attached Mandatory Condition and Procedure for Alleged Violation of Condition into this Order.

For all the above reasons, and based on the Hearing Panel's report, the Committee imposes the sanction of a three-month suspension, stayed for a year, and governed by the conditions and procedures set forth in the attached document. Mr. McGrath is also assessed all costs associated with this investigation and prosecution.

December 4, 2019



David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
William C. Saturley, Esquire
Brian Quirk, Esquire
Peter G. McGrath, Esquire
File

¹ The Hearing Panel report states that Rules 1.1, 3.1, 3.4(a), and 8.4(c) do not require a knowing state of mind. This is incorrect. Of the rule violations charged, only Rules 3.3 and 3.4(c) require proof of knowledge.

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

McGrath, Peter G.

advs.

Attorney Discipline Office

#15-047

MANDATORY CONDITION AND PROCEDURE FOR
ALLEGED VIOLATION OF CONDITION

The three-month suspension shall be imposed if the Peter G. McGrath, Esquire, ("Respondent") is found to have violated the following condition:

1. For a period of one year, beginning on the date the Professional Conduct Committee ("PCC") issues its order, Respondent shall not engage in any further professional misconduct ("One-year period").
2. If a new grievance or referral is filed against Respondent during the one-year period, the following shall apply:
 - A. So long as a grievance or referral is filed within the one-year period of monitoring ("the subsequent proceeding"), and the alleged misconduct occurred, at least in part, during the one-year period, the three-month suspension can be imposed at such time as there is a finding of misconduct in the subsequent proceeding, even if such finding occurs beyond the one-year time period referenced above.

- B. Pending the final resolution of the subsequent proceeding, the matter underlying #15-047 matter shall not be closed.
 - C. The ADO agrees to expedite the processing and investigation of any subsequent proceeding and to adjudicate it in a timely manner, either by stipulation of the parties or before a panel appointed by the Hearings Committee.
 - D. Pursuant to New Hampshire Supreme Court Rule 37(19), the Respondent shall bear all costs associated with compliance and enforcement of the terms and condition set forth above.
 - E. If there is a finding of misconduct in the subsequent proceeding (whether by stipulation or after a hearing by a Hearing Panel), then the misconduct found in the #15-047 matter shall be considered “previous discipline” for purposes of the subsequent proceeding.
 - F. In addition, such “previous discipline,” if used in the subsequent proceeding, shall be a sanction of a three-month suspension.
3. Nothing herein shall be construed to limit prosecution of any new complaint involving conduct of Respondent occurring during the referenced one-year time period.
 4. If the Attorney Discipline Office verifies that the Respondent has successfully complied with the condition enumerated in paragraph 1, the PCC shall close the #15-047 matter and no additional discipline beyond the three-month stayed suspension shall be imposed in this case.

**New Hampshire Supreme Court
Hearings Committee**

McGrath, Peter G. advs. Attorney Discipline Office
#15-047
Hearing Panel Report

A Hearing Panel was appointed pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(4) on March 16, 2018, and amended on April 5, 2018 and September 7, 2018. The following Panel was appointed:

Alexander M. Lachiatto, Esq., Chair
Karyl R. Martin, Esq., Reporter
Tara L. Witt, Esq.
Susan R. Chollet
Everett S. Grass

I. Rulings on Proposed Findings of Fact

1. The following paragraphs of the Attorney Discipline Office's Requests for Findings of Fact [Record Tab 65] are granted: 1-20, 23, 25-35, 37-42, 43 (as corrected during hearing), 44-72, 76-78, 80-81.
2. The following paragraphs of the Attorney Discipline Office's Requests for Findings of Fact [Record Tab 65] are denied: 21, 22, 24, 36, 73-75, 79, 82-86.
3. The following paragraphs of the Respondent's Requests for Findings of Fact [Record Tab 62] are granted: 1-5, 8-14, 16, 18, 22-25, 30-31, 34.
4. The following paragraphs of the Respondent's Requests for Findings of Fact [Record Tab 62] are denied: 6-7, 15, 17, 19-21, 26-29, 32-33, 35-39.

II. Findings of Fact

1. The Hearing Panel finds clear and convincing evidence of the following facts.
2. Mr. McGrath has been admitted to practice law in New Hampshire since 1988.
3. Mr. McGrath is the managing partner at McGrath Law Firm, with offices in Concord, New Hampshire and Mount Pleasant, South Carolina.

4. This matter arises from a referral by K. Allen Brooks, Esquire, Senior Assistant Attorney General and Chief, Environmental Protection Bureau. Mr. Brooks represented the State of New Hampshire, Department of Environmental Services, in an enforcement action against Robert C. Brown in the Belknap County Superior Court entitled *New Hampshire Department of Environmental Services v. Robert C. Brown* (the “State Action”).
5. In the underlying matter, the State alleged that Mr. Brown’s renovation of his home in Meredith, New Hampshire, on “Welcome Island” on Lake Winnepesaukee, violated N.H. RSA 482-A.
6. Mr. Brown was represented by David Rayment, Esquire, of Cleveland, Waters and Bass, Professional Association, and then by Steven M. Gordon, Esquire, of Shaheen & Gordon, Professional Association.
7. A bench trial in the State Action was scheduled for several days in February and April, 2014.
8. Leading up to the trial, in January 2014, Mr. Brown frequently visited Shaheen & Gordon’s office to review potential exhibits and prepare for trial.
9. In advance of trial, Mr. Gordon and counsel for the State planned a meeting on January 31, 2014, to discuss exhibits and witness lists for trial.
10. On Wednesday, January 29, 2014, at 8:10 p.m., Mr. Brown emailed Mr. Gordon to tell him that Mr. Brown planned to go to Shaheen & Gordon on Friday, January 31. [Ex. 27 at 563]. Mr. Brown also suggested “making one last attempt” at settlement negotiations or mediation with the State, and he asked Mr. Gordon to raise the suggestion at the end of the attorneys’ meeting on Friday, January 31. [Ex. 27 at 564].

11. Mr. Gordon responded to Mr. Brown's email on Thursday, January 30, at 9:13 a.m. [Ex. 29 at 1792]. Mr. Gordon told Mr. Brown that in order to re-initiate settlement discussions with the state, "we need to present a firm proposal." [Ex. 29 at 1792]. Mr. Gordon reminded Mr. Brown that the "prospects of a victory are dim" and said he would reach out to the State's attorney but "needed something to tell him." [Ex. 29 at 1792]. Mr. Gordon concluded the email with the question, "What is it you offer?" [Ex. 29 at 1792].
12. By email on Thursday, January 30, at 3:32 p.m., Attorney Lauren Noether for the State confirmed that the attorney's meeting on January 31 was rescheduled for 9:00 a.m. at Shaheen and Gordon's office. [Ex. 35].
13. Mr. Gordon emailed Mr. Brown on Thursday, January 30, at 5:36 p.m. to update him that the attorneys would be meeting with the State at 9:00 a.m. on Friday, January 31, "to go over stipulations and exhibits." [Ex. 37]. Mr. Gordon also relayed that he had "raised the specter of a possible settlement" in a call with Ms. Noether, and "the [S]tate is interested in a concrete proposal if we have one." [Ex. 37].
14. Mr. Brown responded to Mr. Gordon's email at 8:34 a.m. on Friday, January 31, the morning of the attorneys' meeting. [Ex. 39]. Mr. Brown stated, "Please tell State that we wish to come back Monday with a concrete proposal." [Ex. 39]. Mr. Brown also indicated that it would be helpful to know the amount that DES Administrator Adams thought it would cost to move the house on Welcome Island, as it "could possibly help in coming to a mutually reasonable concrete proposal." [Ex. 39].
15. Upon receiving Mr. Brown's email, Mr. Gordon called Mr. Brown to discuss the possibility of settlement discussions with the State. [T1, p. 203]. Mr. Gordon testified

that he told Mr. Brown to come to Shaheen and Gordon's office that morning to participate in settlement discussions with the State. [T1, p. 204]. Mr. Gordon summarized the conversation with Mr. Brown: "[I]f you want to do this, come down, tell them what you can do, tell them why you can do it, and tell them how you can do it, and let's see if we can get it done." [T1, p. 204, ll. 3-6].

16. Immediately following the phone conversation with Mr. Brown, Mr. Gordon sent an internal email to his colleagues, Maureen Johnston and Karyn Forbes, summarizing his phone call with Mr. Brown: "I told him he could participate in settlement discussions directly with the State and suggested he do so today." [Ex. 39].
17. After Mr. Brown arrived at Shaheen and Gordon's office on January 31, the parties participated in settlement negotiations that culminated in the execution of an "Agreement in Principle in the Settlement of State of New Hampshire v. Robert Brown" (hereafter, the "Agreement in Principle"). [Ex. 42]. Mr. Brown and attorneys for both parties initialed the agreement that day. [Ex. 42]. The Agreement in Principle called for the parties to file a consent decree with the Court. [Ex. 42 at 567].
18. Over the following two months, the parties attempted to negotiate the terms of the consent decree. On April 8, 2014, Mr. Gordon informed the State's attorneys that Shaheen and Gordon would be filing a withdrawal with the court and Mr. Brown had retained Mr. McGrath to represent him in the case. [Ex. 58].
19. On April 9, 2014, Mr. Gordon emailed Mr. McGrath to let him know that Mr. Brown's file was "voluminous" with approximately fourteen boxes, and Mr. McGrath could review the files before they started copying them. [Ex. 59].

20. On April 23, 2014, the State filed a “Motion to Enforce Settlement Agreement.” [Ex. 69].
21. On May 5, 2014, Mr. McGrath, on behalf of Mr. Brown, filed an Objection to the State’s Motion to Enforce Settlement Agreement. [Ex. 73]. The Objection stated, inter alia, that Mr. Brown “has had, and continues to have, significant mental health issues and is getting treatment.” [Ex. 73 at 689]. The Objection also argued that the Agreement in Principle was vague and that the draft consent decree was not consistent with the Agreement in Principle. [Ex. 73 at 688].
22. Upon receipt of the Objection, the State’s attorney requested depositions of Mr. Gordon, Ms. Forbes, and Mr. Brown. [Ex. 74]. On September 15, 2014, the State filed a motion for discovery of attorney-client material. [Ex. 118].
23. In subsequent pleadings, Mr. McGrath, on behalf of Mr. Brown, raised the issue of whether Mr. Brown had prior notice of the settlement meeting with the State by referring to the meeting as a “non-scheduled ‘meeting’ that occurred without prior notice.” [Ex. 125 at 833]. Mr. McGrath argued that lack of notice concerning the settlement meeting impacted Mr. Brown’s capacity to enter into a binding settlement agreement on January 31.
24. On September 30, 2014, the Shaheen and Gordon law firm notified Mr. McGrath that a compact disk with email and other correspondence from the Brown file was available for him to pick up. The index to the compact disk included “email correspondence” with Bates numbers SG1 to SG-990 and “correspondence” with Bates numbers SG-991 to SG-2290. [Ex. 131 at 1708].

25. In an Order dated October 30, 2014, the Superior Court found that Mr. Brown had waived attorney-client privilege through an “at-issue” waiver, and the Court granted the State’s motion for discovery of attorney-client material, “limited to those materials relating to the respondent’s capacity to enter into a settlement agreement on January 31, 2014.” [Ex. 137 at 1702].
26. The parties continued to litigate the issue of the attorney-client privilege waiver, including an interlocutory appeal to the New Hampshire Supreme Court.
27. On November 17, 2014, Mr. Gordon sent an email to Mr. McGrath noting that there was a “series of emails that question the accuracy of your statement to the court that Mr. Brown was ‘surprised’ to learn of the settlement effort when he arrived at [Shaheen and Gordon’s] office.” Mr. Gordon requested that Mr. McGrath correct the record. [Ex. 146 at 976].
28. On December 15 and 16, 2014, Mr. McGrath and Mr. Brooks exchanged emails about the notice issue and specifically whether Mr. Brown was “surprised” by the settlement meeting on January 31. [Ex. 172 at 1035].
29. On December 18, 2014, D. Michael Noonan, a partner at the Shaheen and Gordon law firm, emailed Mr. McGrath and noted, “[T]here are emails between this firm and Mr. Brown dated January 29-31, 2014 that may be inconsistent with the statements contained in your letter to Mr. Brooks. I understand that these emails have been provided to you.” [Ex. 177 at 1717]. Mr. McGrath responded, inter alia, “In regard to the alleged emails, our position is that any and all information in that regard is sacred and privileged. I have not seen them, do not want them, and do not even want to raise such issues, that is all privileged material and we should not even be discussing them.” [Ex. 177 at 1716].

30. On July 27, 2015, the New Hampshire Supreme Court affirmed the Superior Court's October 30, 2014 Order. [Ex. 186].
31. On August 6, 2015, Mr. Brooks sent a Request for Production of Documents to Mr. McGrath. [Ex. 188]. The Requests included all documents and communications between Mr. Brown and his attorneys between January 17 and January 31, 2014, and documents and communications related to "notice" of the January 31 meeting, among other requests. [Ex. 188 at 2301].
32. In response, Mr. McGrath produced certain emails to the State, including the January 29, 2014 email between Mr. Gordon and Mr. Brown. [Ex. 194]. Mr. McGrath did not produce the January 30, 2014, 5:36 p.m. email Bates numbered SG-2029 [Ex. 37] or the January 31, 2014, 8:44 a.m. email Bates numbered SG-2027 [Ex. 39].
33. On November 17, 2015, the Superior Court issued an order granting the State's request for attorney's fees incurred in litigation the Motion to Enforce Settlement, based in part on Mr. McGrath's representations to the court regarding the settlement meeting on January 31, 2014.
34. Mr. McGrath never produced the January 30, 2014, 5:36 p.m. email [Ex. 37] or the January 31, 2014, 8:44 a.m. email [Ex. 39] to the State. Mr. McGrath testified that he did not recall seeing either document when he reviewed Mr. Brown's file for the response to the State's Request for Production of Documents. [T2, p. 158].
35. Ultimately, Mr. Brown settled the underlying litigation with the State for a settlement that he viewed as more favorable than the Agreement in Principle.

III. Rulings of Law

1. The following paragraphs of the Attorney Discipline Office's proposed Rulings of Law [Record Tab 65] are granted: 88-90, 93-94, 101-104, 106-111, 114, 117-119, 122, 128-130, 133, 136, 139-148, 151, 157-158.
2. The following paragraphs of the Attorney Discipline Office's proposed Rulings of Law [Record Tab 65] are denied: 87, 91-92, 95, 96-97 (withdrawn by ADO), 98-100, 105, 112-113, 115-116, 120-121, 123-124, 125-126 (withdrawn by ADO), 127, 131-132, 134-135, 137-138, 149-150, 152-153, 154-155 (withdrawn by ADO), 156.
3. The ADO charged Mr. McGrath with violations of Rule 1.1 (competence), Rule 1.3 (diligence), Rule 3.1 (meritorious claims and contentions), Rule 3.3 (candor toward the tribunal), Rule 3.4 (fairness to opposing party and counsel), Rule 8.4(c) (misrepresentation), and Rule 8.4(a) (general rule). The panel finds clear and convincing evidence that Mr. McGrath violated Rules 1.3, 3.4(d), and 8.4(a).
4. Rule 1.3 states as follows:

A lawyer shall act with reasonable diligence and promptness in representing a client.
5. There is clear and convincing evidence that Mr. McGrath violated Rule 1.3 by failing to conduct a complete and diligent review of the correspondence in the Brown file prior to making representations to the court regarding the scheduling and "notice" of the January 31 settlement meeting.
6. Mr. McGrath also failed to conduct a diligent review of the file after Mr. Gordon and Mr. Noonan brought to his attention that there may be relevant email correspondence in the file that directly related to the "notice" issue.

7. In addition, Mr. McGrath failed to conduct a diligent review of the file when he responded to the State's Request for Production of Documents, despite having access to the complete Brown file for over a year. Although Mr. McGrath argued that the documents at issue (Ex. 37 and Ex. 39) did not bear directly upon the issue of Mr. Brown's capacity to enter into a settlement agreement on January 31, 2014, the panel finds that they were relevant to the notice issue as it had been presented to the court by Mr. McGrath and thus were within the scope of permissible discovery.
8. These failures to conduct a diligent review of the file contributed to confusion created by Mr. McGrath's pleadings over the notice issue. Although the panel did not find clear and convincing evidence that Mr. McGrath knowingly misled the court or opposing counsel about the extent to which Mr. Brown had notice that he would be meeting with the State to discuss settlement on January 31, 2014, the additional emails [Ex. 37 and Ex. 39] that were not discovered or produced could have helped to clarify the timing of when Mr. Brown received notice. Those emails could have helped to more clearly differentiate between the attorneys' meeting that was scheduled for 9:00 a.m. on January 31 to prepare for trial and the subsequent meeting that unfolded to discuss settlement after Mr. Brown arrived at Shaheen and Gordon's office.
9. The panel also finds clear and convincing evidence of a violation of Rule 3.4(d). Rule 3.4(d) states:

A lawyer shall not:

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

10. There is clear and convincing evidence that Mr. McGrath did not make a reasonably diligent effort to comply with the State's Request for Production of Documents after the New Hampshire Supreme Court affirmed the Superior Court's order on the State's motion for discovery of attorney-client material. By his own admission, Mr. McGrath did not undertake a review of the "correspondence" section of the compact disk containing Mr. Brown's file, and instead limited his review to the "email correspondence" section, even after Mr. Gordon and Mr. Noonan brought to his attention that additional relevant email correspondence existed. Mr. McGrath could have undertaken additional steps to locate the relevant documents if he was unable to find them in the file. Instead, he told Mr. Noonan that he had no interest in locating or reviewing the pertinent emails.
11. The remaining charges of rule violations require a "knowing" state of mind for the panel to find clear and convincing evidence of a violation. Although Mr. McGrath could have been more precise in differentiating between notice of the attorneys' meeting on January 31, 2014 (which Mr. Brown did not attend) and notice of the subsequent settlement meeting on January 31 – which Mr. Brown first learned about that morning, and which had not been scheduled previously – the panel does not find that Mr. McGrath knowingly or intentionally misled the court or opposing counsel in his representations or pleadings. Mr. McGrath testified that he made his representations to the court and opposing counsel based on information provided by his client, and the panel finds that the documents which were not discovered or produced (Ex. 37 and 39) would have supported those representations if he had discovered them sooner.

IV. Recommended Sanction

The final issue before the Panel is the determination of the appropriate sanction. The Attorney Discipline Office (“ADO”) recommends a six-month suspension (served).¹ The Respondent believes that reprimand is the appropriate sanction. The panel reviewed and considered the Respondent’s Memorandum on Sanctions and the Attorney Discipline Office’s Memorandum on Sanction as well as argument by counsel for both parties. No additional witness testimony was offered.

Although the New Hampshire Supreme Court has not adopted the *American Bar Associations Standards for Imposing Lawyer Sanctions (1992) (Standards)*, the panel looked to them for guidance. *Connors Case*, 158 N.H 299, 303 (2009). The *Standards* set forth a four-part analysis for courts to consider when 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.

(a) Duty Violated

In this matter, Mr. McGrath violated his duties to his client by failing to act with diligence in his representation of Mr. Brown. Given that he was in the position of taking over a significant litigation matter after several years of representation by the prior law firm, Mr. McGrath should have acted with greater diligence in analyzing and reviewing his client’s file to ascertain whether there were any relevant documents relevant to the issue of enforcing the Agreement in Principle. It was not reasonable for Mr. McGrath to claim that the attorney-client privileged prevented him from reviewing the correspondence between Mr. Brown and his prior

¹ Although the ADO’s Memorandum on Sanctions recommended a one-year suspension as the appropriate sanction if the panel had found violations of all of the rules charged, disciplinary counsel revised this recommendation to a minimum of six months at the sanctions hearing.

counsel. At a minimum, once alerted to the existence of additional relevant documents, Mr. McGrath should have undertaken a more thorough review of the file.

(b) Mental State

The *Standards* then require us to consider Mr. McGrath's mental state. Mr. McGrath's actions were, at a minimum, a negligent violation of the rules in question. The *Standards* distinguish between a knowing state of mind and an intentional state of mind. "Knowledge" is the "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." With respect to both the Rule 1.3 and Rule 3.4(d) violations, the panel finds that Mr. McGrath consciously chose not to undertake a more thorough review of his client's file from prior counsel, relying instead upon his client's own representations and recollections to support the argument that Mr. Brown lacked sufficient notice of the settlement meeting to be able to enter into a binding resolution.

(c) Injury

The third prong of the analysis requires a review of the actual or potential injury caused by Mr. McGrath's misconduct. In this case, there was no actual injury caused to Mr. McGrath's client because shortly after Mr. McGrath made his document production in response to the State's requests, the trial court issued orders that ended the litigation over discovery issues. Ultimately, Mr. Brown testified that he was able to reach a more favorable settlement with the State than the Agreement in Principle had provided. Although the Superior Court issued an order awarding attorney's fees to the State due to Mr. McGrath's representations to the court, the panel did not find that Mr. McGrath's conduct significantly harmed his client.

Analysis

The panel finds that the baseline sanction in this matter is suspension.

Mr. McGrath's violation of Rule 1.3 and Rule 3.4(d) implicate Section 4.4 of the

Standards, which provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

...

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect [and] causes injury or potential injury to a client.

Although the panel did not find that Mr. Brown suffered significant injury from Mr. McGrath's lack of diligence in his representation of his client, the panel found that Mr. McGrath's conduct prolonged the underlying litigation and could have caused Mr. Brown significant injury due to the Superior Court's decision to award attorney's fees to the State. Had Mr. McGrath undertaken a thorough review of the file earlier in the case, the undiscovered documents could have been used to clarify and strengthen Mr. Brown's arguments on the lack of notice and he might have avoided the award of attorney's fees in favor of the State.

Finally, the panel must review any aggravating and mitigating factors. The ADO asserts that Mr. McGrath's substantial experience in the practice of law and his prior disciplinary history are aggravating factors. The Respondent argues that mitigating factors should include: (1) absence of a dishonest or selfish motive; (2) Mr. McGrath's cooperation throughout the ADO proceedings; and (3) the remoteness in time and relevance of Mr. McGrath's prior offenses.

The panel finds that Mr. McGrath's prior disciplinary record is an aggravating factor in this matter. Although Mr. McGrath argues that there was a significant period of time between the underlying events in both disciplinary matters, the panel notes that Mr. McGrath's prior

discipline (six months suspension, stayed for one year) concluded in 2012, not long before the underlying actions in this matter. In addition, both matters implicated representations to the court which were alleged to have been misleading or false. For mitigating factors, the panel finds that there was no evidence of a dishonest or selfish motive in Mr. McGrath's actions and he appears to have cooperated with disciplinary proceedings. The panel finds that the aggravating factors outweigh, or at least equal, the mitigating factors in this matter.

In weighing the length of suspension and whether or not it should be stayed, the panel notes that Mr. McGrath was not found to be in violation of the significant charges by the ADO relating to candor to the tribunal and opposing counsel. For this reason, the panel finds that the recommended sanction should be less than that imposed in *Feld's Case*, 149 N.H. 19 (2002) (one year suspension for multiple violations of Rule 3.4 where respondent intentionally provided false answers during discovery), and *Mesmer advs. Attorney Discipline Office*, #16-044 (Feb. 19, 2019) (Professional Conduct Committee recommended three year suspension, stayed eighteen months, for repeated and consistent neglect in representation on a client matter and knowing deception causing substantial injury to the client). The panel also found that the rule violations in this case appear to be less significant than those found in Mr. McGrath's prior disciplinary matter, and thus the panel recommends a shorter suspension period (totaling three months), stayed for one year.

This sanction is in accord with the purpose of attorney discipline as described by the New Hampshire Supreme Court and with the ABA Center for Professional Responsibility, *Standards for Imposing Lawyer Sanctions* (1991). See, e.g., *Shillen's Case*, 149 N.H. 132, 139 (2003) (noting that although the Court has never formally adopted these *Standards*, the Court has considered them when imposing sanctions).

In accordance with New Hampshire Supreme Court Rule 37(A)(III)(d)(1), the Hearing Panel recommends that the New Hampshire Supreme Court Professional Conduct Committee impose a three (3)-month suspension, stayed for one (1) year, upon Peter G. McGrath for violation of the New Hampshire Rules of Professional Conduct: Rules 1.3, 3.4(d), and 8.4(a).

The panel also recommends that Mr. McGrath be ordered to reimburse the Professional Conduct Committee for all costs associated with the investigation and prosecution of this matter.

Respectfully submitted,



Alexander M. Lachiatto, Esq.
Hearing Panel Chair

29 July, 2019

Distribution:

Elizabeth M. Murphy, Assistant Disciplinary Counsel
William C. Saturley
Brian M. Quirk
File

New Hampshire Supreme Court
Professional Conduct Committee

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Barbara J. Guay, Legal Assistant

McGrath, Peter G. advs. Attorney Discipline Office - #15-047

ORDER

On December 4, 2019, the Committee issued a Three Month Suspension, Stayed for One Year, and Order On Costs. Assistant Disciplinary Counsel has indicated that there have been no further complaints docketed by the Attorney Discipline Office since the December 4, 2019, Order was issued. Peter G. McGrath has completed the terms and conditions of the Stay.

Upon consideration, the matter is closed.

December 9, 2020

/s/ David M. Rothstein
David M. Rothstein
Chair

Distribution:

Elizabeth M. Murphy, Assistant Disciplinary Counsel
William C> Staurley, Esquire
File