

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

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Laboe, John E. advs. Attorney Discipline Office - #17-022

REPRIMAND AND ORDER ON COSTS

On December 10, 2019, the Professional Conduct Committee (“the Committee”) deliberated the Hearing Panel’s Recommendation; the Stipulation as to Facts and Rules Violations; the Stipulation to Sanction; and the Agreement to Pay Costs of Disciplinary Matter.

The Committee approved the facts as stipulated by clear and convincing evidence. It further found that John E. Laboe’s conduct violated Rules of Professional Conduct 1.15; 5.3; 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 John E. Laboe shall reimburse the Committee for all costs of investigation and prosecution of this matter.

December 10, 2019



David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
William C. Saturley, Esquire
File

New Hampshire Supreme Court
Hearings Committee

a committee of the attorney discipline system

Philip H. Utter, Chair

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Laboe, John E. advs. Attorney Discipline Office - #17-022

RECOMMENDATION:

**APPROVAL OF STIPULATIONS
AND
AGREEMENT TO PAY COSTS**

After reviewing the parties' Stipulation as to Facts and Rule Violations and Stipulation to Sanction: Reprimand, and deliberating thereon the Hearing Panel recommends that the Stipulations be Approved. The Panel is satisfied that the facts admitted support the rule violations. The Panel agrees with the parties that the stipulated sanction is consistent with the *ABA Standards for Imposing Lawyer Discipline* and serves the purposes of discipline.

Date: October 28, 2019


George H. Thompson, Jr.
Hearing Panel Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
William C. Saturley, Esquire
File

NEW HAMPSHIRE SUPREME COURT
HEARINGS COMMITTEE

Laboe, John E.

advs.

Attorney Discipline Office

#17-022

STIPULATION AS TO FACTS AND RULE VIOLATIONS

Respondent John E. Laboe and the Attorney Discipline Office (“ADO”) stipulate as follows:

A. Facts

Background Facts

1. John E. Laboe is an attorney licensed to practice law in New Hampshire. Mr. Laboe was admitted to practice in 1979.
2. Mr. Laboe has no previous disciplinary history.
3. At all times material to this proceeding, Mr. Laboe practiced law at Laboe & Tasker, LLC (“the firm”), 6 Loudon Road, Suite 502, Concord, New Hampshire 03301.
4. This disciplinary matter was initiated following receipt of a self-report letter from Mr. Laboe dated June 29, 2017 regarding the firm’s trust

accounting practices. The matter was referred to Disciplinary Counsel on December 4, 2017.

Self-Report to the ADO

5. Mr. Laboe's June 29, 2017 letter described in detail that he and his law firm partner, Kerri S. Tasker ("Ms. Tasker"), had learned on April 28, 2017 that the firm's client trust account ending in 6385 ("CTA") was "out of trust." The letter explained that, based upon a report dated April 21, 2017 from the firm's newly hired accountant, Katherine Henss ("Ms. Henss"), the firm's CTA was out of trust in the amount of \$12,685.92.
6. Attached to the letter was a spreadsheet detailing the transactions that resulted in the CTA becoming out of trust by \$12,685.92. The spreadsheet reflects that 40 transactions between June 2, 2015 and April 21, 2017 accounted for the shortfall. The majority of these transactions were for amounts under \$100, and related to the withdrawal of credit card fees. There were four transactions (totaling \$10,724.00) that were for amounts over \$1,000 as follows:
 - (a) On June 2, 2015, check #6630, was drafted to the firm operating account in the amount of \$29,019.21. The check should have been for \$26,010.71 for payment on several invoices; a difference of \$3,008.50.

- (b) On June 8, 2015, check #6634 was drafted to the firm operating account for \$20,650.000, but posted in the firm's billing software, PCLaw, as \$16,224.50; a difference of \$4,425.50.
- (c) On September 15, 2015, check #6727, was drafted to the firm operating account in the amount of \$2,200.00 for payment of invoices. However, the transaction was recorded in PC Law with a check amount of \$85.00; a difference of \$2,115.00. The error likely stemmed from the fact that the following check, #6728, was for \$85.00 and was written on the same matter.
- (d) On September 25, 2015, a firm client, M. Austin, made a payment of \$11,175.50 to replenish her retainer and make a payment for an invoice. On the same date, a check was cut to the firm for \$1,175.50 for payment of M. Austin's invoice. On October 2, 2015, M. Austin's check was returned for insufficient funds. The PC Law ledger for the CTA noted that the check was returned for insufficient funds but was credited the CTA in the amount of \$10,000 instead of the full \$11,175.50. The client ledger also noted the check for insufficient funds in the amount of \$10,000.00. The insufficient funds check was not noted on the hand-written client ledger. The error left the CTA out of trust in the amount of \$1,175.00.

7. With respect to the credit card transactions, Mr. Laboe explained:

[T]he IOLTA bank account had at one time been tied to a merchant services account which allowed us to accept client credit card payments directly into the IOLTA account. The firm kept extra funds as a reserve in the trust account to absorb the credit card fees withdrawn from the IOLTA. With the use of the merchant services account terminated, our office manager believed that the IOLTA account was wholly disengaged from the card charges; it was not. For an extended time period continuing until April 2, 2017, the bank unwittingly continued to withdraw monthly fees because the Laboe & Tasker IOLTA account still had access to the bank's on-line merchant services processing function.

8. On May 3, 2017, Mr. Laboe replenished the CTA with a check from the firm's operating account in the amount of \$12,685.92.
9. Prior to sending the self-report letter to the ADO, Mr. Laboe and his staff put in place an 8-step procedure of specific tasks to perform on a daily and monthly basis. Mr. Laboe consulted with Dennis Stone, CPA, to review the procedures and Mr. Stone agreed that they are adequate to the firm's circumstances and compliance obligations. Mr. Stone did not perform an independent compliance review of the firm's accounts.
10. After the self-report and as a part of the ADO's investigation, Mr. Laboe provided trust accounting documentation for the time period of April 2015 through June 2017. The documentation included: Santander Bank IOLTA Trust Account statements; the IOLTA account ledger from Quickbooks; the PC Law Client Trust Account Bank journal; reconciliation summaries; the PC Law Client Trust Account ledgers, and

handwritten Client Trust Account ledgers. The ADO's review of the CTA documentation found no misappropriations.

11. Mr. Laboe later provided monthly reconciliations and corresponding bank statements to the ADO for the time period of July through December 2017. With the exception of minor errors which were corrected at the ADO's request, the firm brought itself into compliance with Supreme Court Rule 50 and Rule 1.15 during that time-period.

Events leading to CTA being out of trust

12. Until June 2015, the firm employed Susan Maples ("Ms. Maples") as its office manager and bookkeeper. As part of her duties, Ms. Maples would perform a "three-way" reconciliation of the CTA, as required by Supreme Court Rule 50(2)(c)(vi), and provide Mr. Laboe with a copy of the reconciliation and bank statements for his review. It was Mr. Laboe's practice to review and compare the bank statements and reconciliations, and then initial the bank statements indicating it had been reviewed. Mr. Laboe's reviewed and initialed a reconciliation summary dated May 12, 2015.
13. For various reasons unrelated to Ms. Maples handing of the CTA, the firm terminated her employment on June 10, 2015. At the time, the firm's client base was expanding and the firm was in the process of hiring new attorneys and support staff. As part of that expansion, the

firm was upgrading its computer system, and was in need of an individual who could assist with the upgrade.

14. The firm did not have an immediate replacement for Ms. Maples. For three weeks, the firm did not have a bookkeeper. All trust accounting tasks were performed by Ms. Tasker, working in collaboration with Janet Lechnir (“Ms. Lechnir”), a consultant who periodically provided financial services to the firm, including assistance with Quickbooks.
15. On June 29, 2015, the firm hired a new office manager and bookkeeper, Theresa Leppard (“Ms. Leppard”). Ms. Leppard had excellent references and had worked in the same capacity for two previous law firms. She had experience with client trust accounting, the firm’s billing programs, PC Law (“PC Law”), and Quickbooks. She began employment with the firm on June 29, 2015.
16. After Ms. Leppard joined the firm in June 2015, Mr. Laboe no longer reviewed the reconciliation summaries. A series of events both within and without the firm kept Mr. Laboe focused on other issues. Two newly hired attorneys left the firm, for example, leaving the firm understaffed and Mr. Laboe dealing with more files than he desired. Mr. Laboe also suffered from a serious health concern which was a temporary but real distraction. Finally, he became a guardian for a child of a family member who had passed away in another state.

17. Mr. Laboe relied on the assurances of Ms. Leppard that she was properly reconciling the CTA. Although Mr. Laboe would periodically question Ms. Leppard regarding the reconciliations, Ms. Leppard did not provide Mr. Laboe with the copies of the monthly reconciliations to review. As such, Mr. Laboe ceased his practice of reviewing and initialing the reconciliation summaries until April 2017. At that time, Mr. Laboe renewed his practice of reviewing the reconciliation summaries.
18. As a way to maintain the accuracy of the trust account, the firm maintained a manual handwritten log of the client trust accounts in addition to the records kept in Quickbooks and PC law. Mr. Laboe mandated the institution of this system, despite its apparent redundancy, due to his sensitivity to the importance of accurate records concerning client funds.
19. During her employment, Ms. Maples held the responsibility of maintaining this redundant system, which included a manual log of all money deposited or withdrawn from the CTA. She was given a copy of every check deposited into or written from the CTA account. She was also given a copy of the handwritten deposit slip. She would then confirm that the log was accurate compared with PC Law. This was done on a daily basis.
20. Further, every client has a manual ledger page in addition to the computerized version, and every CTA transaction is posted to both the

manual and electronic account. Periodically, a complete trust register is printed for all clients in PC Law (the electronic version) and compared with each client's manually maintained account balance. If there are any discrepancies, the errors were identified and reported to Ms. Tasker. Ms. Tasker was also notified when revisions or corrections were made.

21. When Ms. Leppard's employment began as the office manager, she was responsible for the day-to-day management and reconciliation of the manual log. In hindsight, it appears that the task was performed improperly, at least initially. Specifically, she began work in June 2015, and the four principal errors in the CTA all occurred between June and September 2015.
22. Since September 2015, occasional errors in postings were discovered and corrected by this system, so this practice of manually confirming the electronic records was continued.
23. Over time, the task of manually reconciling the CTA with the associated manual logs was assigned to a legal assistant, Elaine Sylvain ("Ms. Sylvain"). This task was permanently delegated to Ms. Sylvain in September 2016.
24. Ms. Leppard continued her employment with the firm until she gave her notice in the middle of February 2017.
25. Prior to Ms. Leppard giving her notice, the firm had scheduled Janet Lechnir to visit Ms. Leppard at the end of February 2017 to assist her

with reconciling the operating account for the prior year. Mr. Laboe had not reviewed the reconciliation summaries between May 2015 and March 2017 and had relied on assurances from Ms. Leppard that the reconciliations were up to date and that the firm was not out of trust.

26. Ms. Lechnir had worked with the firm in the past assuring that the bookkeeping was balanced and reconciled. Ms. Lechnir had been available to Ms. Leppard on an as-needed basis. Ms. Lechnir also relied on the assurances of Ms. Leppard that the CTA account was reconciled.
27. Following Ms. Leppard's departure, the firm hired a new bookkeeper, Katherine Henss ("Ms. Henss") on March 2, 2017.
28. During the second week of April of 2017, Ms. Henss dedicated her time to reviewing and reconstructing the CTA account.
29. Ms. Henss discovered that the manual reconciliations had been inadequately performed during part of 2015, leading to errors in the CTA.
30. Ms. Henss also discovered that Ms. Leppard had failed to reconcile the CTA account with the monthly bank statements. The last reliable reconciliation of the CTA account was made by the prior bookkeeper, Susan Maples, in May of 2015.
31. As a result of the CTA account not being reconciled with the bank statements, the ongoing merchant bank charges to the CTA went undetected for a number of months.

32. Ms. Leppard appears to have believed the firm was in compliance with the Rules (and so informed Mr. Laboe) because the reconciliation of the manual ledgers was being performed and the total was in agreement with the electronic records in PC Law.
33. Mr. Laboe admits that he should have exercised more diligent oversight over Ms. Leppard to ensure accurate accounting and reconciliation of the CTA account with each individual client record.

B. Disciplinary Rules Violated

34. The parties agree that Mr. Laboe's conduct in this case involves violations of the New Hampshire Rules of Professional Conduct 1.15, 5.3, and 8.4(a), and Supreme Court Rule 50, as follows:

Rule 1.15: Safekeeping Property and Supreme Court Rule 50

35. The facts set forth above at ¶¶ 1-34 above are incorporated by reference.
36. 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.

37. Mr. Laboe failed to properly safeguard client property and violated Rule 1.15 and Supreme Court Rule 50 when his firm failed to properly reconcile all client accounts, which resulted in his firm being “out of trust” for an extended period of time.

Rule 5.3: Responsibilities Regarding Nonlawyer Assistants

38. The facts set forth at ¶¶ 1-34 above are incorporated by reference.

39. Rule 5.3 states as follows:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) Each partner, and each lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) Each lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

40. Mr. Laboe violated Rule 5.3 by failing to ensure that his bookkeeper's conduct was compatible with his professional obligations, in that he failed to exert sufficient oversight over the CTA and thus several client matters were "out of trust" for an extended period of time.

Rule 8.4(a): General Rule

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

C. Costs

42. Subject to the PCC's approval of Mr. Laboe's Stipulation, Mr. Laboe 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. Laboe.

D. Effect of Stipulation

43. Mr. Laboe understands that this Stipulation represents a recommended disposition with respect to Facts and Rule violations, and that the Hearing Panel may accept, reject, or conditionally accept the Stipulation, pursuant to Rule 37A(II)(aa).
44. Mr. Laboe acknowledges that the admissions of misconduct 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.
45. Mr. Laboe has been represented by counsel in reaching this Stipulation.

46. Mr. Laboe hereby waives any rights he may have in connection with the filing and service of a formal Notice of Charges, filing an Answer thereto, discovery, and any hearing process contemplated under N.H. Supreme Court Rule 37A(III), except as such rights relate to the issue of sanction.

47. Mr. Laboe understands that all records and proceedings relating to this matter (other than work product, internal memoranda, and deliberations) shall be available for public inspection, pursuant to N.H. Supreme Court Rule 37(20)(b).

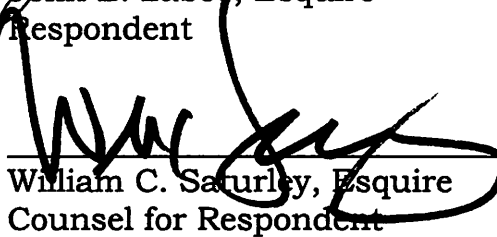
Respectfully submitted,

Dated: May 3, 2019



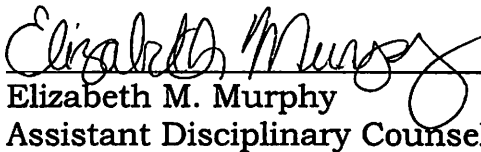
John E. Laboe, Esquire
Respondent

Dated: May 8 2019



William C. Saurley, Esquire
Counsel for Respondent

Dated: May 9 2019



Elizabeth M. Murphy
Assistant Disciplinary Counsel

NEW HAMPSHIRE SUPREME COURT
HEARINGS COMMITTEE

Laboe, John E.

advs.

Attorney Discipline Office

#17-022

STIPULATION TO
SANCTION: REPRIMAND

Respondent John E. Laboe (“Mr. Laboe”) and the Attorney Discipline Office (“ADO”) stipulate as follows:

A. Procedural Background

1. John E. Laboe is an attorney licensed to practice law in New Hampshire. Mr. Laboe was admitted to practice in 1979.
2. Mr. Laboe has no previous disciplinary history.
3. At all times material to this proceeding, Mr. Laboe practiced law at Laboe & Tasker, LLC (“the firm”), 6 Loudon Road, Suite 502, Concord, New Hampshire 03301.
4. This disciplinary matter was initiated following receipt of a self-report letter from Mr. Laboe dated June 29, 2017 regarding the firm’s trust accounting practices. The matter was referred to Disciplinary Counsel on December 4, 2017.

5. On May 9, 2019, the parties filed a Stipulation as to the Facts and Rule Violations (“Stipulation”), along with a request for appointment of a Hearing Panel to schedule a hearing on the issue of sanction only. In the Stipulation, Mr. Laboe admitted to violating N.H. R. Prof. Conduct (“Rules”) 1.15, 5.3 and 8.4(a) and Supreme Court Rule 50. On May 13, 2019, Mr. Laboe’s “Agreement to Pay Costs” was filed with the Hearings Committee.
6. On May 17, 2019 a Hearing Panel was appointed.
7. A hearing on the issue of sanction only is scheduled for October 28, 2019.

B. Sanction Analysis

8. The Attorney Discipline Office and Mr. Laboe jointly recommend a reprimand as the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
9. Both case law and the American Bar Association’s *Standards for Imposing Lawyer Sanctions* (2005) (“*Standards*”) support this sanction.
10. 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).

11. 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.
12. 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").
13. Supreme Court Rules 50 and 50-A, and Professional Conduct Rule 1.15, are "strict liability" rules, in that a lawyer can be found to have violated the rule without either intent or even carelessness.
14. Under the first prong of the analysis called for under the *Standards*, Mr. Laboe violated duties owed to his clients and the legal system. Mr. Laboe violated duties owed to his clients by failing to properly reconcile the

client trust account (“CTA”). Mr. Laboe also failed to properly supervise Ms. Theresa Leppard’s (“Ms. Leppard”) work. *See Standards* §§ 4.1 and 7.0.

15. With respect to Mr. Laboe’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Laboe was primarily negligent.¹ Although he should have known that a possible Rule violation could occur when he discontinued his previous practice of reviewing the monthly reconciliations, he believed that the procedures he had in place (some of which were intentionally redundant) more than adequately ensured his compliance with the rules on client trust accounts.
16. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Laboe’s misconduct.
17. There is no evidence that Mr. Laboe’s conduct caused actual injury to his clients. Mr Laboe risked potential injury to his clients, however, by failing to ensure that proper monthly reconciliations of his client trust account were performed and failing to adequately supervise Ms. Leppard in that regard.
18. Mr. Laboe’s violation of Rule 1.15 and Supreme Court Rule 50 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

¹ The *ABA Standards* define “Negligence” as “the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in that situation.” *ABA Standards*, Sec. III (“Definitions”).

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 Suspension² 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 [public censure] is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
 - 4.14 Admonition³ [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.
19. Mr. Laboe's 5.3 rule violation implicates Section 7.0 of the *Standards*.

That Section 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 false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or

² *Standard* 4.12 is unique among the Standards because it allows for a baseline suspension under a "should have known" standard, which is essentially a negligence standard. *Standards*, § 4.12; Commentary ("lawyers who are grossly negligent in failing to establish proper accounting procedures should be suspended").

³ 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.

potentially serious injury to a client, the public, or the legal system.

- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.
 - 7.3 Reprimand [public censure] is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
 - 7.4 Admonition [reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.
20. Under the foregoing circumstances, the parties agree that the baseline sanction is either a suspension or a public censure. *See Standards* §§ 4.12 and 7.3.
 21. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
 22. In this case, there is one aggravating factor present: Mr. Laboe's substantial experience in the practice of law. *See Standards* § 9.22.
 23. Mitigating factors include: 1) the absence of prior disciplinary record; 2) absence of a dishonest or selfish motive; 3) full and free disclosure to the ADO; 4) a cooperative attitude toward disciplinary proceedings; 5) timely good faith effort to rectify consequences of misconduct by consulting with Dennis Stone, CPA and changing the office practices; and 6) personal problems including a serious health concern. *See Standards* § 9.32.

24. Although not a recognized mitigating factor under the *Standards*, the ADO has considered the fact that Mr. Laboe self-reported the firm's out-of-trust situation to the ADO to be highly mitigating. An additional consideration included the fact that Mr. Laboe provided additional monthly reconciliations through December 2017 that, with the exception of minor errors (corrected at the ADO's request), were in compliance with Supreme Court Rule 50 and Rule 1.15 for that time-period.
25. The parties agree that given the baseline sanction, and a consideration of aggravating and mitigating circumstances, that a downward departure from the baseline sanction to a reprimand will serve the purposes of discipline and is an appropriate sanction in this case.
26. A reprimand is also consistent and proportional to recent discipline imposed by the Professional Conduct Committee ("PCC") in other cases involving similar Rule violations and comparable facts.⁴ In the companion cases of *Fricano, Joseph C. advs. Attorney Discipline Office*, PCC, Docket #17-038/*Chadwick, Roger C., Jr. advs. Attorney Discipline Office*, PCC, Docket #17-044 (October 7, 2019), a reprimand for violations of Rule 1.15 and Supreme Court Rule 50 was issued to the respondent partners in a law firm who self-reported their out-of-trust situation to the ADO. In that matter, the respondents replenished their client trust account due to accounting and bookkeeping errors on three

⁴ *But see Morgan's Case*, 143 N.H. 475 (1999)(Supreme Court imposed a two-year suspension stayed where the respondent discovered a substantial shortage in his client trust account, supplemented it with his own funds, investigated the matter, and self-reported his conduct.)

occasions. The respondents also took corrective measures including changing bookkeepers and hiring the accounting firm of Melanson Heath to examine their accounts from 2014 forward.

27. In *Ryder, Mark R. advs. Attorney Discipline Office*, PCC, Docket #17-032 (September 4, 2019), a public censure with conditions stayed for six-months (public censure to become a reprimand if all conditions are complied with) was issued to the respondent for violations of Rules 1.15 3.3; 8.4(a) and Supreme Court Rule 50 where the respondent failed to perform monthly reconciliations, maintain adequate ledgers and made withdrawals to cash in a small solo practice.
28. In *Kasper, Robert J., Jr. advs. Attorney Discipline Office*, PCC, Docket #16-043 (October 16, 2018), the respondent was issued a reprimand for violations of Rules of 1.15; 8.4(a) and Supreme Court Rule 50 for failing to maintain the appropriate financial records for client funds and failing to properly reconcile all client accounts.
29. In *Russell, Charles A. advs. Attorney Discipline Office*, PCC, Docket #15-031 (July 2, 2018), a public censure with conditions was issued to the respondent for violations of Rule 1.15, 3.3, 8.4(a) and Supreme Court Rule 50 after the ADO received two overdraft notices from the bank where the respondent held his client trust account.
30. In *Matttocks, Cory R. advs. Attorney Discipline Office*, PCC, Docket #16-009/#17-007 (September 19, 2017), the respondent was issued a public censure with conditions for violations of Rules 1.2; 1.4; 1.15; 8.4(a); and

Supreme Court Rule 50. In that matter, the respondent deposited legal fees into a non-IOLTA account prior to having earned the fees; made cash disbursements from the client trust account and did not maintain client ledgers.

31. Considering the aforementioned decisions, the parties agree that a reprimand is proportional discipline.

C. Costs

32. Mr. Laboe has already signed an Agreement to Pay Costs of disciplinary matter which was submitted on May 9, 2019.

D. Effect of Stipulation

33. Mr. Laboe has been represented by counsel in reaching this Stipulation.
34. Mr. Laboe understands that this Stipulation represents a recommended disposition, and that the Hearing Panel and/or the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(3).
35. Mr. Laboe acknowledges that the proposed sanction contained in this Stipulation is 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; and, that he is fully aware of the consequences of the Stipulation.
36. Mr. Laboe knowingly and intelligently waives his right to a sanction hearing.

37. Mr. Laboe understands that all records and proceedings relating to this matter (other than work product, internal memoranda, and deliberations) shall be available for public inspection, pursuant to N.H. Supreme Court Rule 37(20)(b).

Respectfully submitted,

Dated: _____ 2019

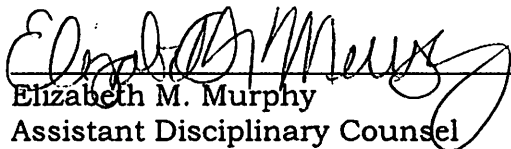
John E. Laboe, Esquire
Respondent

Dated: 09/24 2019



William C. Saturex, Esquire
Counsel for Respondent

Dated: 10/04 2019

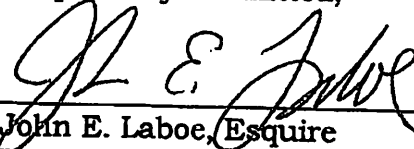


Elizabeth M. Murphy
Assistant Disciplinary Counsel

37. Mr. Laboe understands that all records and proceedings relating to this matter (other than work product, internal memoranda, and deliberations) shall be available for public inspection, pursuant to N.H. Supreme Court Rule 37(20)(b).

Dated: October 24 2019

Respectfully submitted,



John E. Laboe, Esquire
Respondent

Dated: _____ 2019

William C. Saturley, Esquire
Counsel for Respondent

Dated: _____ 2019

Elizabeth M. Murphy
Assistant Disciplinary Counsel