

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

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*Keenan, Christopher W. advs. Attorney Discipline Office - #18-029*

**REPRIMAND AND ORDER ON COSTS**

On December 10, 2019, the Professional Conduct Committee (“the Committee”) deliberated the Stipulation as to Facts, Violations and Sanction (“the Stipulation,” attached as **Exhibit A**), and the Agreement to Pay Costs of Disciplinary Matter (attached as **Exhibit B**).

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

December 17, 2019



David M. Rothstein  
Chair

cc: Sara S. Greene, Disciplinary Counsel  
Russell F. Hilliard, Esquire  
File



**NEW HAMPSHIRE SUPREME COURT**  
**PROFESSIONAL CONDUCT COMMITTEE**

Keenan, Christopher W.

advs.

Attorney Discipline Office

#18-029

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

Respondent Christopher W. Keenan, Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

**A. Summary**

1. Mr. Keenan is an attorney licensed to practice law in New Hampshire. Mr. Keenan was admitted to practice in 1986.
2. Mr. Keenan was also admitted to practice law in Maine on October 1, 1096. He is currently on Active Non-Resident status for the Maine Bar.
3. At all times material to this proceeding, Mr. Keenan operated his law office as Christopher W. Keenan, P.C., 125 Brewery Lane, Suite 7, Portsmouth, NH, with a mailing address of PO Box 882, Portsmouth, NH 03802.
4. Mr. Keenan received a Public Censure issued on June 20, 2017 in *Keenan, Christopher W. advs. ADO- #16-023*. This sanction arose out of misconduct by his paralegal; specifically, her mishandling of his office mail and her diverting and concealing numerous pieces of ADO

correspondence, including a Notice of Charges (NOC) addressed to Mr. Keenan. Mr. Keenan only became aware of her misconduct after he defaulted on the NOC, and only because the ADO contacted him via a separate email to which Ms. Osborne had no access.

5. The conditions of Mr. Keenan's public censure did not include any conditions relating to his client trust account. He completed the conditions of the Docket No. 16-023, and the PCC closed the matter following his compliance with the order.
6. The instant matter was initiated because Mr. Keenan self-reported "errors made in our client trust account in 2017 and prior years" by letter dated July 18, 2018. Some, but not all, of the trust accounting problems were related to Ms. Osborne's conduct.
7. Mr. Keenan submits this Stipulation because he agrees that had he been properly conducting monthly reconciliations, the trust accounting problems would have come to light much sooner.
8. In the course of the ADO investigation, Mr. Keenan produced bank records and has demonstrated that since the time of his self-report, he has brought himself into compliance with the requirements of Rule 1.15 and Supreme Court Rule 50. No client suffered actual financial loss, and Mr. Keenan has been cooperative throughout this matter.
9. Given the nature of this misconduct, including Mr. Keenan's self-report, negligent state of mind, cooperation by way of bank record production and performing proper reconciliations, the ADO awaited recent orders

from the Committee in similar cases, such as those involving Attorneys Ryder, Russell, Chadwick, and Fricano.<sup>1</sup>

**B. Events Leading to Self-Report and Corrective Measures by Respondent**

10. Mr. Keenan's record-keeping system involved a combination of electronic records, using QuickBooks to maintain the check register and for check writing, and paper client ledger cards.
11. After learning of the issues with the CTA in July of 2018 and following Ms. Osborne's termination, Mr. Keenan retained a bookkeeper to identify the errors and properly reconcile the CTA.
12. The bookkeeper determined that there were errors in the CTA records. These errors involved at least one check written from the CTA that was not entered on the appropriate client ledger card, errors with addition and subtraction on client ledger cards, and errors entering transaction amounts on the client ledger cards.
13. Mr. Keenan contacted his accountant and requested that the accountant audit the CTA in order to find all of the errors that had accumulated over the last several years.
14. The accountant determined that an audit was impossible because there were deposits into the CTA which contained more than one client's funds, but the deposit slip did not identify each client. There were also

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<sup>1</sup> *Ryder, Mark R. advs. ADO - #17-032; Russell, Charles A. advs. ADO - #15-031; Chadwick, Roger C., Jr. advs. ADO - #17-044; and Fricano, Joseph C. advs. ADO - #17-038.*

checks written from the CTA that combined payments of multiple clients but did not properly document the amount of each client's payment.

15. Fortunately, Mr. Keenan did not and does not now have a significant number of clients with funds in the CTA. A review of the bank records for the period between January 1, 2017 and August 31, 2018, indicates that there were five or fewer checks written out of the CTA on any given month.
16. There is no evidence that Mr. Keenan or one of his employees misappropriated any money.
17. Mr. Keenan appears to have been out of trust less than \$1,000 when he learned that the CTA was not being properly reconciled.
18. Mr. Keenan immediately brought the CTA back into trust upon discovery of this problem.
19. Although Mr. Keenan has instituted appropriate changes in how he handles the CTA, his system did not comply with Supreme Court Rule 50's requirements at the time of his self-report. For example, Mr. Keenan did not have a ledger card for his own funds in the CTA, and did not track the interest payments and withdrawals correctly. In addition, he did not maintain appropriate records of his monthly reconciliations.

### **C. Disciplinary Rules Violated**

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

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

21. The facts set forth at ¶¶ 20 above are incorporated by reference.
22. 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.

- 23. Mr. Keenan's failure to have a ledger card to track his own funds in the CTA, his failure to track the interest payments and withdrawals correctly, and his failure to maintain appropriate records of his monthly reconciliations violated Rule 1.15 and Supreme Court Rule 50.

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

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

**D. Recommended Sanction**

- 25. The Attorney Discipline Office and Mr. Keenan jointly agree that a Reprimand is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
- 26. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
- 27. 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).

28. 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.
29. 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”).
30. Under the first prong of the analysis, Mr. Keenan violated duties owed to his clients to safeguard their funds appropriately and abiding by the Rules that govern client funds.

31. With respect to Mr. Keenan's mental state under the second prong of the sanction analysis, the parties agree that Mr. Keenan's mental state was negligent.
32. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Keenan's misconduct.
33. Mr. Keenan's conduct did not cause actual injury to any client, but his failure to conduct properly monthly reconciliations allowed the fact that he was out of trust to persist for months, until such time as he hired an accountant to resolve issues. This creates the possibility of overdraft or of withdrawing an amount on behalf of a client that is in excess of the funds on hand for that client.
34. Mr. Keenan's 1.15 rule violation implicates Section 4.1 of the *Standards*.

That Section provides:

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

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

**4.14 Admonition<sup>2</sup> is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.**

(emphasis added).

35. Mr. Keenan's conduct in this matter, when considered under *Standard* 4.14, would call for a baseline sanction of a reprimand. The parties agree no downward departure is appropriate given Mr. Keenan's prior disciplinary history and the fact that at least some of the trust accounting problems arose at a time when Mr. Keenan was on notice of Ms. Osborne's malfeasance regarding how she handled his mail, and thus, he should have been more closely monitoring his CTA, since Ms. Osborne had at least some responsibilities relative to the CTA.
36. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
37. In this case there are two aggravating factors present: Mr. Keenan's previous disciplinary history, and his substantial experience in practicing law. *See Standards* § 9.22.
38. Mitigating factors include absence of a dishonest or selfish motive, good faith efforts to rectify consequences of his misconduct, full and free disclosure to and cooperation with the ADO, and remorse. In addition, though not set forth in the *Standards*, Mr. Keenan's self-report to the

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<sup>2</sup>The term "admonition," as used in the *ABA Standards*, is analogous to a reprimand in New Hampshire. The term "reprimand," as used in the *ABA Standards*, is analogous to a public censure in New Hampshire.

ADO concerning errors in his client trust account also has a mitigating effect. *See Standards* § 9.32.

39. The parties agree that given the baseline sanction, and consideration of aggravating and mitigating circumstances, a reprimand serves the purposes of discipline and is an appropriate sanction in this case.
40. This sanction is proportional to discipline imposed in other cases involving breaches of the rules that govern client trust accounts, where a lawyer negligently violates the rules, does not cause actual harm to a client, self-reports the conduct, and thereafter remedies the conduct. *See, supra*, f.n. 1.

#### **E. Costs**

41. Subject to the PCC's approval of Mr. Keenan's Stipulation, Mr. Keenan 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. Keenan.

#### **F. Effect of Stipulation**


42. Mr. Keenan 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).
43. Mr. Keenan acknowledges that the admissions of misconduct and the proposed disposition contained in this Stipulation are freely, knowingly, and voluntarily submitted; that he is not entering this Stipulation as a

result of any threats, coercion, or duress, or of any promises or inducements not set forth in the Stipulation.

- 44. Mr. Keenan has been represented by counsel in reaching this Stipulation and he is fully aware of the consequences of the Stipulation.
- 45. Mr. Keenan knowingly and intelligently waives his right to a hearing.

Respectfully submitted,

Dated: Oct 30 2019

  
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Christopher W. Keenan, Esquire  
Respondent

Dated: 10/31 2019

  
\_\_\_\_\_  
Russell F. Hilliard, Esquire  
Counsel for Respondent

Dated: Nov. 1 2019

  
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Sara S. Greene, Esquire  
Disciplinary Counsel



**NEW HAMPSHIRE SUPREME COURT**  
**PROFESSIONAL CONDUCT COMMITTEE**

Keenan, Christopher W.

advs.

Attorney Discipline Office

#18-029

**AGREEMENT TO PAY COSTS**  
**OF DISCIPLINARY MATTER**

1. Subject to the Professional Conduct Committee's approval of the Stipulation of Facts, Rule Violations, and Sanction in the above matter, I agree to pay the expenses incurred by the Committee in the investigation and enforcement of this disciplinary matter. *See* Sup. Ct. R. 37(19)(b). Costs can include, but are not limited to: mileage, stenographers, transcripts, copying, inventory, audit expenses and publication.
2. As of October 10, 2019, I have been informed that the costs are approximately \$111.50. I understand that if the matter results in a sanction, there could be publication costs added to the above amount.
3. I am aware that the Professional Conduct Committee will not issue an invoice until the final disposition in this matter.
4. Should further costs accrue in this disposition of this matter, I understand that the Committee will bill me for these costs. If I dispute the

bill, I will notify the Committee of the specific nature of the dispute in writing within thirty days of my receipt of the bill. I understand that the Committee will consider the disputed item and issue a written decision. If I do not notify the Committee that I dispute the bill, payment will be due upon its receipt.

5. I waive the provisions of Supreme Court Rule 37(19)(b) regarding any further detail of the nature and amount of each expense, and I also waive formal demand for payment.
6. I understand and agree that the assessment of costs is deemed final and shall have the full force and effect of a civil judgment. As a result, it may be enforced in any Superior Court in New Hampshire.
7. The Committee may file a copy of the final assessment with the superior court in any county in the state, where it shall be docketed as a final judgment and shall be subject to all legally-available post-judgment enforcement remedies and procedures. See Sup. Ct. R. 37(19)(c).
8. I also agree to be responsible for all costs incurred as a result of the Attorney Discipline Office's collection efforts.

Respectfully submitted,

Dated: 10-30-19 2019



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Christopher W. Keenan, Esquire  
Respondent