

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Ryder, Mark R. advs. Attorney Discipline Office - #17-032

**PUBLIC CENSURE WITH CONDITIONS,
STAYED FOR SIX MONTHS
AND ORDER ON COSTS**

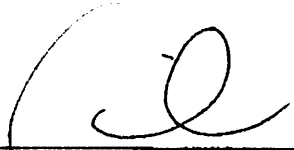
On July 16, 2019, the Professional Conduct Committee (“the Committee”) deliberated the Resubmitted Stipulation as to Facts, Violations and Sanction: Public Censure with Conditions (“the Stipulation,” Exhibit A), and the Agreement to Pay Costs of Disciplinary Matter (Exhibit B). The Committee issued an Order on July 18, 2019, requesting clarification (Exhibit C). The parties have submitted a letter agreeing to the clarification (Exhibit D).

The Committee approved the facts as stipulated by clear and convincing evidence. It further found that Mark R. Ryder's conduct violated Rules of Professional Conduct 1.15; 3.3; 8.4(a) and Supreme Court Rule 50, as stipulated.

The Committee also concluded that a Public Censure With Conditions, Stayed for Six Months 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”).

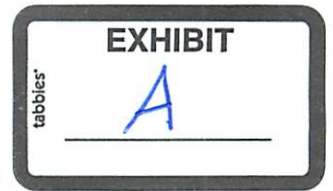
Having approved the stipulated sanction, the Committee approved the agreement that Mark R. Ryder shall reimburse the Committee for all costs of investigation and prosecution of this matter.

September 4, 2019



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Mark R. Ryder, Esquire
File



**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Ryder, Mark R.

advs.

Attorney Discipline Office

#17-032

**RESUBMITTED STIPULATION AS TO FACTS,
VIOLATIONS, AND SANCTION: PUBLIC CENSURE
WITH CONDITIONS**

NOW COMES Elizabeth M. Murphy, Assistant Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office (ADO), and Respondent, Mark R. Ryder, Esquire, and stipulate as follows:

A. Facts

1. Mark R. Ryder ("Mr. Ryder") is an attorney licensed to practice law in New Hampshire. Mr. Ryder was admitted to practice on June 3, 2008.
2. During all times relevant to this matter, Mr. Ryder was practicing law as a solo practitioner with an office located at 185 Wentworth Road Rear, Portsmouth, New Hampshire 03801
3. Mr. Ryder has also been admitted to practice law in Massachusetts since June 16, 2004. He is currently administratively suspended for non-registration.

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4. The Attorney Discipline Office's ("ADO") investigation into this matter was initiated upon receipt of an overdraft notice ("ODN") dated September 1, 2017 from People's United Bank for Mr. Ryder's Client Trust Account (hereinafter "CTA") ending in 6345. The letter stated the overdraft was caused by a "returned deposited item in the amount of \$3750.00."
5. While the reasons for the overdraft notice were due to a bank error, the ADO determined through its investigation that Mr. Ryder was not properly maintaining his client trust records in accordance with Rule 1.15 and Supreme Court Rule 50.
6. However, the ADO and Certified Public Accountant retained to conduct a compliance review did not identify any instances of misappropriation or commingling. There have been no client complaints regarding Attorney Ryder's trust accounting practices and there have not been any claims from clients that Attorney Ryder lost or misappropriated any client funds.

1. The Overdraft

7. On September 14, 2017, General Counsel for the ADO, Janet DeVito, sent a letter to Mr. Ryder requesting a written explanation of the circumstances that resulted in the ODN. The letter also requested that Mr. Ryder provide the ADO copies of bank statements, ledgers, deposit and check information and account reconciliations from May 2017 to September 2017.

8. Mr. Ryder responded on September 19, 2017 explaining that he had represented his brother, Michael Ryder ("Michael"), and ex-sister-in-law, Wendy Ryder ("Wendy"), with regard to a closing. Mr. Ryder did not charge Michael and Wendy for his legal service.
9. Michael and Wendy had been divorced for about a year and were giving up their marital home to foreclosure. Mr. Ryder negotiated a "cash for keys" deal whereby Michael and Wendy would sign over the house to the lender, Select Portfolio Services ("SPS"), and SPS would pay them funds to assist with relocation. The initial check ("first check") from SPS arrived at the lender's real estate agent's office made payable to Mr. Ryder, Michael and Wendy. On August 14, 2017, Mr. Ryder called SPS and requested that they remove his name from the first check because he did not plan to take a legal fee. He was told he would receive a telephone call the following day but did not receive a call back despite additional telephone calls to SPS over the next two days.
10. On August 24, 2017, the real estate agent informed Mr. Ryder that the only check he had was the first check with all three names on it and that Mr. Ryder would need to be present at the final closing for the real estate agent to release the check. Mr. Ryder called SPS and the real estate agent was given permission to release the first check to Michael and Wendy without Mr. Ryder present. Mr. Ryder was not informed that a new check was going to be issued and stop payment placed on the first check.

11. The final closing went forward on Friday, August 25, 2017. On Monday, Michael brought Mr. Ryder the first check with his and Wendy's endorsements on the back. Mr. Ryder endorsed it, and deposited it into his CTA on August 28, 2017. At the time of the deposit, the bank teller told Mr. Ryder the funds would be available August 30th.
12. On August 30, 2017, Mr. Ryder went to the bank, withdrew cash, and obtained two bank checks each for \$1,875.00, for Michael and Wendy.
13. On August 31, 2017, the bank manager contacted Mr. Ryder to explain that a stop payment had been put on the first check and he requested the money back from Mr. Ryder. Mr. Ryder called Michael who said he and Wendy had already used their checks to move. Mr. Ryder called SPS and was told that they understood that he wanted a check without his name on it. In order to issue it, SPS had to stop payment on the first check. However, the first department at SPS did not know that a second check was going to be issued and did not tell the Ryders that the check was not going to be honored.

2. Review by General Counsel and Compliance Review by CPA

14. The ADO docketed a complaint against Mr. Ryder on September 21, 2017.
15. The ADO's docketing letter to Mr. Ryder made a second request for complete bank statements for Mr. Ryder's CTA, including check images, client ledgers, IOLTA general ledger, account reconciliations, and deposit

information with regard to the ODN for the period of May 2017 to September 2017.

16. By letter dated October 12, 2017, Mr. Ryder responded, and provided copies of the requested monthly bank statements, but did not provide any check images or documentation of deposits. Mr. Ryder also provided a hand-written general ledger from May 2017 to September 2017 and three hand-written client ledgers.
17. After review of the documentation provided by Mr. Ryder, the ADO noted additional areas of concern. The ADO retained a forensic accountant, Kevin Kennedy, on December 11, 2017. Mr. Kennedy was to conduct a compliance review of Mr. Ryder's CTA for the period of January 1, 2017 to November 30, 2017 ("testing period").
18. The ADO instructed Mr. Kennedy to review the bank statements collected to date from Mr. Ryder, as well as cancelled checks, and supporting documentation for disbursements and deposits for the period of January 1, 2017 to November 30, 2017, and to compare them with client and general ledgers and monthly reconciliations.
19. On January 23, 2018, the ADO issued a Subpoena Duces Tecum to People's United Bank for bank records from January 1, 2017 to December 31, 2017 for Mr. Ryder's CTA and operating account ending in 9238 ("operating account").
20. On January 31, 2018, Mr. Kennedy provided to the ADO a Compliance Review Report ("Report"). (The Report, inclusive of Attachment 1 and

Exhibits A & C, are attached collectively as Exhibit 1.) Mr. Kennedy's findings are incorporated herein fully by reference. Mr. Kennedy did not have the subpoenaed bank records at the time he completed his compliance review.

21. Mr. Kennedy noted that Mr. Ryder did not use a formal or electronic accounting system. Mr. Ryder generally kept records using a green ledger sheet for each client onto which he would manually fill in accounting information. The review was complicated by Mr. Ryder's lack of financial records and supporting documentation.
22. Mr. Kennedy noted that Mr. Ryder's CTA did not have a significant amount of activity, "generally only 10 clients for the test period. Areas of practice include family law, criminal and collection items. Fees can be either hourly or contingency based." Mr. Ryder does not employ any staff members.
23. Mr. Kennedy also noted the following:
 1. In general, client account ledgers are maintained, however most are used primarily to track the time spent for billing purposes. While the initial escrow deposit information is sometimes noted, [the] ledgers often do not show amounts withdrawn from the escrow for that client or the client's running escrow balance is. There are some exceptions to this as it was noted that "Cafarcilla" did seem to keep a running escrow balance.
 2. Bank account reconciliations are not formally documented or prepared.
 3. There is no reconciliation of the bank balance to the client ledgers.

24. As such, the compliance review revealed, regarding Mr. Ryder's CTA, that during the testing period:
- A. Mr. Ryder did not perform monthly reconciliations, pursuant to the requirement of Rule 50(2)(C)(vii).
 - B. Mr. Ryder failed to maintain adequate ledgers or comparable records as required by Rule 50(2)(B)(ii) showing, for each separate trust client or beneficiary, the source of all funds deposited in a client trust account for or on their behalf, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals, and the name of all persons or entities to whom such funds were disbursed.
25. During the testing period there were a few instances of incomplete or incorrect ledgers for individual accounts. For example, the June 2017 General Ledger (See Exhibit A contained in Exhibit 1) demonstrates that Mr. Ryder made an entry on June 19th for a \$300.00 deposit on behalf of a client named O'Donoghue. He made another entry on the ledger on June 26th of a \$940.00 deposit from client Lunn. The ending balance for the month of June is \$1,240.52. This would indicate that all funds in the CTA were for O'Donoghue and Lunn.
- i. The starting balance of the July 2017 General ledger was \$1,240.52 (this balance conforms to the beginning balance on the CTA bank statement for July 2017). On July 5, 2017,

Mr. Ryder withdrew \$300.00 on O'Donoghue and \$100.00 on Lunn. On July 10, 2017, Mr. Ryder withdrew \$200.00 on Lunn.

- ii. On July 10, 2017, Mr. Ryder withdrew \$300.00 on behalf of client Sabre. At the time of this withdrawal, Mr. Ryder held no funds on behalf of client Sabre, and had exhausted client O'Donoghue funds. Two weeks later, he deposited \$1,700 on behalf of client Sabre. Nonetheless, he was out of trust in the Sabre matter for that period of time until such time as he replenished the Sabre subaccount with the \$1,700 deposit.¹

26. The compliance review noted additional violations as to the following rules:

- A. Rule 50(2)(C)(vii): Mr. Ryder's record keeping was not always clear, making it difficult to confirm all disbursements were for amounts earned or that clients were notified of amounts withdrawn from their escrow balance.
- B. Rule 50(2)(B): Although Mr. Ryder indicated that his records were kept for six years, Mr. Kennedy noted that certain records from this time period were not provided or available.

¹ Mr. Kennedy's report also discusses issues with the May 2017 Bank Ledger and the client "Duty." Upon further review by the ADO of Mr. Ryder's bank ledger page for the period May 26, 2017 to May 31, 2017, it was determined that the funds for the client "Duty" were earned at the time they were withdrawn.

27. Mr. Kennedy noted that there was “no indication of any commingling of funds with the attorney’s own funds.”

28. Mr. Kennedy also noted:

Attorney Ryder was cooperative though it was noted that several records were not produced, including deposit slips or copies of escrow deposit items, some client ledgers and bank ledgers. Attorney Ryder acknowledged in my interview with him that his record keeping needs improvement and would like to take a class on what would be needed to maintain compliance with the rules regarding escrow accounts. He also indicated that should it be needed, he could conceivably produce updated records which may be more in compliance with the record keeping requirements, including support for amounts withdrawn, however this would require a notable effort on his part.

3. Subpoenaed Bank Records and Further CTA Violations

29. On February 2, 2018, this matter was referred for formal proceedings. The ADO received the subpoenaed bank records in mid-February 2018.

30. On March 30, 2018, Assistant Disciplinary Counsel sent a letter confirming a meeting with Mr. Ryder for April 24, 2018, and requesting that Mr. Ryder forward copies of his CTA and client ledgers for January 1, 2017 to April 30, 2017 and October 1, 2017 to December 31, 2017 prior to the meeting. Undersigned counsel also requested that Mr. Ryder to bring with him to the meeting certain client files with corresponding billing invoices.

31. Although Mr. Ryder brought some client files to the meeting, he was unable to provide the requested ledgers from January 1, 2017 to April 30, 2017 and October 1, 2017 to December 31, 2017.

32. During the meeting, undersigned counsel requested that Mr. Ryder provide further supporting documentation for entries made in specific client ledgers by May 7, 2018.
33. On May 23, 2018, Mr. Ryder provided some additional time sheets, invoices and a settlement statement, but was unable to provide all documentation requested by undersigned counsel.
34. After further review of the support documentation provided by Mr. Ryder and the subpoenaed bank records, the ADO noted the following additional violations of the rules with respect to the CTA follows:
 - A. Cash withdrawals in the amount of \$6,110.00 for 8 transactions; \$2,310.00 of that total amount had no client designation;
 - B. Mobile and/or online transfers with no client designation in the amount of \$17,222.74 (total of 46 transactions without a client designation); and
 - C. three cash deposits in the amount of \$3,830.00 with no client designation.
35. These cash withdrawals were technically cash withdrawals prohibited by Rule 50(2)(C)(v) (“withdrawals shall be made only by check payable to a named payee and not to cash”) Mr. Ryder, however, believed at the time of the withdrawals that they did violate the Rule because he never “walked away with actual cash directly out of the IOLTA account.” Because Mr. Ryder had never purchased checks for the CTA, his practice was to go in person to People’s Bank (which held both his CTA and

operating accounts), present a withdrawal slip to a teller for a particular amount out of the CTA (for earned fees²), deposit that amount into his operating account, then take the amount out in cash from his operating account. The withdrawal slips from the IOLTA, however, note “cash” as the nature of the withdrawal (even though no cash was physically handed to Mr. Ryder other than from his operating account).

36. Mr. Ryder filed an Annual Trust Accounting Compliance Certificate (“Certificates”) certifying that, in the reporting periods covering June 1, 2016 to May 31, 2017 and June 1, 2017 to May 31, 2018, he performed monthly reconciliations for each client who had funds in a New Hampshire trust account maintained by him, in accordance with New Hampshire Supreme Court Rule 50(2)(C)(vi), and that all client funds were held in accounts in full compliance with Supreme Court Rule 50 and Rule 1.15.
37. In his Certificates, Mr. Ryder also verified that he had maintained records for the CTA in accordance with New Hampshire Supreme Court Rule 50 and Rule 1.15.
38. Mr. Ryder did explain on his June 1, 2016 to May 31, 2018 Certificate that he had been out of trust during the reporting period.

² Bank records and other documentation provided by Mr. Ryder demonstrates that he properly deposited retainers into the CTA, and disbursed funds to his operating account as he earned fees. The largest retainer was for \$3,000, and Mr. Ryder did not have a high-volume practice.

39. In order to improve his client trust accounting practices and to bring his CTA in compliance with Rule 1.15 and Supreme Court Rule 50, Mr. Ryder voluntarily completed the NHCLE “Avoiding the Problems and Pitfalls of Lawyers’ Trust Accounting” on June 26, 2018.

B Disciplinary Rules Violated

40. The parties agree that Mr. Ryder’s conduct in this case violates New Hampshire Rules of Professional Conduct 1.15; 3.3 and 8.4(a), and Supreme Court Rule 50.

Rule 1.15: Safekeeping Property and Supreme Court Rule 50

41. The facts set forth above at ¶¶ 1-40 above are incorporated by reference.
42. In addition, Mr. Ryder admits the finding as set forth in Mr. Kennedy’s report attached hereto as Exhibit 1.
43. 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.

44. Mr. Ryder failed to properly safeguard client property and violated Rule 1.15 and Supreme Court Rule 50, by failing to:

- A. Perform monthly reconciliations of his client trust accounts;
- B. Maintain adequate ledgers or comparable records showing, for each separate trust client or beneficiary, the source of all funds deposited in a client trust account for or on their behalf, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or

withdrawals, and the name of all persons or entities to whom such funds were disbursed; and

- C. Make all withdrawals from the trust accounts only by check payable to a named payee and not to cash.

Rule 3.3: Candor Toward the Tribunal

45. The facts set forth above at ¶¶ 1-44 above are incorporated by reference
46. Rule 3.3 states, in pertinent part:
- (a) A lawyer shall not knowingly:
- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and comes to know if its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
47. Mr. Ryder had a duty under Rule 3.3(a) not to knowingly make false statements of fact to a tribunal.
48. Mr. Ryder breached that duty when he signed the Certificates for the periods June 1, 2016 through May 31, 2017 and June 1, 2017 through May 31, 2018 but failed to disclose that his records were not maintained in compliance with Supreme Court Rule 50.

Rule 8.4(a): General Rule

49. The parties agree that Mr. Ryder's violations as set forth above, necessarily constitute a violation of N.H. R. Prof. Conduct 8.4(a).

C. Recommended Sanction

50. The Attorney Discipline Office and Mr. Ryder jointly agree that public censure with conditions is the appropriate sanction in this matter. However, upon satisfaction of the conditions in this Resubmitted Stipulation, Mr. Ryder shall receive a reprimand.
51. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
52. 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).
53. 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.

54. 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”).
55. In the case of multiple charges of misconduct, the *Standards* recommend that the sanction imposed “should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct.” *Id.* (citing *Richmond's Case*, 152 N.H. 155, 160 (2005)).
56. Under the first prong of the analysis, Mr. Ryder violated duties owed to his clients to preserve his client’s property, to the legal system, and the legal profession. *See Standards* §§ 4.1, 6.1 and 7.0.
57. With respect to Mr. Ryder’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Ryder was negligent in failing to ensure he was in compliance with the record-keeping requirements governing client trust accounts. While Mr. Ryder kept

client ledgers, they were not entirely accurate and some required reconstruction based on the client file. While Mr. Ryder did not have a specific intent to deceive the Court when he filed his trust certificate, he had knowledge, information and opportunity to determine whether he was in compliance with Supreme Court Rule 50. In this respect he was negligent in submitting inaccurate TACs.

58. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Ryder's misconduct.
59. While there is no evidence that Mr. Ryder's conduct caused actual injury to his clients, he risked potential injury to his clients by failing to keep accurate, contemporaneous records as required by the Rules which would confirm specific amounts held in trust for each client. Mr. Ryder also caused harm to the legal profession by leaving the Court and the public in doubt as the viability of trust accounting and certification requirements of Rule 50.
60. Mr. Ryder's violation of Rule 1.15 and Supreme Court Rule 50 implicates Section 4.0 of the *Standards* which provides, in pertinent part, as follows:
 - 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 Reprimand³ [Public Censure] is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

³ Section 4.13 uses the term "Reprimand." The most analogous sanction in New Hampshire is a Public Censure.

61. Mr. Ryder's violation of Rule 3.3 implicates Section 6.1 of the *Standards*, which provides, in pertinent part:

6.11 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

6.12 Reprimand [Public Censure] is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

62. The combined baseline sanction for Mr. Ryder's conduct is a public censure. *See Standards* §§ 4.13.

63. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.

64. In this case, there are no aggravating factors. *See Standards* § 9.22.

While Mr. Ryder had been practicing law since 2008, he first opened his own law practice in April of 2016, a little over a year prior to the ODN that led to this matter. Prior to opening his own practice, he had worked for law firms and as a contract attorney, so he had not previously been in possession of client funds and had not been responsible for reconciling a client trust account. Mr. Ryder never received any training from a mentor or supervising attorney about client trust account record-keeping requirements. Mr. Ryder has taken steps to improve his practice and to

improve his handling of his client trust account, and has taken a CLE on the subject of trust accounts in which former General Counsel Janet DeVito presented.

65. Mitigating factors include absence of a prior disciplinary record, absence of a dishonest or selfish motive, and cooperation with the ADO. *See Standards* § 9.32.
66. The parties agree that while the baseline sanction is public censure, the mitigating factors in this matter outweigh the aggravators factors. For this reason, as well as the reasons stated above, including the context of Mr. Ryder's violations, a public censure, stayed for six months with conditions aimed at ensuring Mr. Ryder complies with Rule 1.15 and Rule 50, serves the purposes of discipline and is an appropriate sanction in this case. It is also proportional to other cases involving similar client trust account violations. *See Russell, Charles A. advs. ADO*, Docket No. 15-031.

**D. Mandatory Conditions; Procedures for
Alleged Violation of Conditions**

67. As set forth further below, should Mr. Ryder breach a condition of this Stipulation, he agrees that a public censure is the appropriate sanction.
68. Mr. Ryder agrees to comply with the following conditions during the six-month monitoring period, which shall begin on the date the Professional Conduct Committee accepts this Stipulation:

- a. Mr. Ryder will engage in no professional misconduct during the monitoring period.
- b. Mr. Ryder shall, for a period of six months:
 1. submit monthly reconciliations that comply with Sup. Ct. Rule 50(2) to the ADO. The first submission shall be on the 15th day of the month following the PCC's approval of the Stipulation, and Mr. Ryder shall file with the ADO his monthly client trust account reconciliations on the 15th of each month thereafter for a period of six consecutive months; and
 2. obtain checks for the CTA and disburse CTA funds by check only, to a named payee, consistent with Rule 50(2)(C)(v).

69. If it is alleged that Mr. Ryder violated any of the conditions enumerated at Paragraph 68(b) above, the following shall apply:

- a. Upon motion by the ADO, the Professional Conduct Committee may determine whether any of the conditions enumerated at Paragraph 68(b) have been violated. If it determines that a condition has been violated, the Committee may impose a public censure. If the Committee determines that no condition of this Stipulation has been violated, the Stipulation shall continue in force and effect pursuant to its terms.
- b. Respondent may request that the Professional Conduct Committee remand the matter to the Hearings Committee so that a Hearing Panel may be appointed to decide the sole issue of whether a

condition under Paragraph 68(b) of this Stipulation has been violated. During such hearing, it shall be the burden of the ADO to demonstrate by a preponderance of evidence that a condition listed in Paragraph 68(b) has been violated.

- c. If a Hearing Panel determines that a condition has been violated, the Panel may impose a public censure. If the Hearing Panel determines that no condition of the Stipulation has been violated, the Stipulation shall continue in force and effect pursuant to its terms. The PCC shall review the decision of the Hearing Panel.

70. If a new grievance or referral is filed against Mr. Ryder during the monitoring period, thus implicating the condition at Paragraph 68(a), the following shall apply:

- a. So long as a grievance or referral is filed within the monitoring period (“the subsequent proceeding”), and the alleged misconduct occurred, at least in part, during the monitoring period, a public censure may be imposed at such time as there is a finding of misconduct in the subsequent proceeding, even if such finding occurs beyond the monitoring period.
- b. Pending the final resolution of the subsequent proceeding, the matter underlying this Stipulation shall not be closed.
- c. If the conditions of Paragraph 68(b) have been met, Mr. Ryder will not have to continue to comply with those provisions while the subsequent proceeding is pending.

- d. The Respondent shall bear all costs associated with compliance and enforcement of the terms and conditions of this Stipulation.
- e. Nothing herein shall be construed to limit prosecution of any new grievance or referral involving conduct of Respondent occurring during the monitoring period.

E. Costs

71. Subject to the PCC's approval of Mr. Ryder's Stipulation, Mr. Ryder 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. Ryder.

F. Effect of Stipulation

72. Mr. Ryder 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).
73. Mr. Ryder 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; that he understands that he has a right to obtain counsel regarding this Stipulation; and that he is fully aware of the consequences of the Stipulation.

74. Mr. Ryder knowingly and intelligently waives his right to a hearing.

Respectfully submitted,

Dated: July 1, 2019

MR Ryder
Mark R. Ryder, Esquire
Respondent

Dated: 7/9 2019

EM Murphy for
Elizabeth M. Murphy, Esquire
Assistant Disciplinary Counsel

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE



Ryder, Mark R.

advs.

Attorney Discipline Office

#17-032

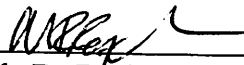
AGREEMENT TO PAY COSTS
OF DISCIPLINARY MATTER

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 January 28, 2019, I have been informed that the costs are approximately \$1,051.75. 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.

3. 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.
4. 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.
5. 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).
6. I also agree to be responsible for all costs incurred as a result of the Attorney Discipline Office's collection efforts.

Respectfully submitted,

Dated: February 8 2019



Mark R. Ryder, Esquire
Respondent

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



David M. Rothstein, Chair
Heather E. Krans, Vice Chair
Elaine Holden,* Vice Chair
Ronald K. Ace*
Kathleen M. Ames*
Peter G. Beeson
Margaret R. Kerouac

4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
603-224-5828 * Fax 228-9511

Caroline K. Leonard
Mona T. Movafaghi
Georges J. Roy*
Martha Van Oot
Daniel E. Will
* non attorney member
Barbara J. Guay, Legal Assistant

Ryder, Mark R. advs. Attorney Discipline Office - #17-032

Order on Resubmitted Stipulation

On July 16, 2019, the Professional Conduct Committee deliberated the Resubmitted Stipulation. Present were David M. Rothstein, Chair; Heather E. Krans, Vice-Chair; Kathleen M. Ames, Peter G. Beeson, Margaret R. Kerouac, Caroline K. Leonard, Martha Van Oot, and Daniel E. Will.

The Committee approved the Resubmitted Stipulation in so far as the facts and rule violations it alleged. There was some ambiguity in the statement of the sanction and procedures for alleged violation of the conditions of the agreement. In Paragraph 50, the parties acknowledge that if Mr. Ryder satisfies the conditions set forth in the agreement, his sanction will be recorded as a reprimand. However, in Paragraph 66, the agreement characterizes the sanction as a public censure without reference to the possible reduction to a reprimand. Nor is the potential for a reduction to a reprimand upon satisfaction of the conditions mentioned in Paragraphs 67-69, which describe the conditions and the consequences of their violation.

If the parties submit, as an addendum to the Resubmitted Stipulation, a letter stating that if the conditions of the agreement are satisfied, the sanction will be recorded as a reprimand, the Committee will accept it. The letter should be signed by both parties, and it will become part of the Resubmitted Stipulation.

July 18, 2019



David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Mark R. Ryder, Esquire
File

EXHIBIT

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D

New Hampshire Supreme Court

Attorney Discipline Office

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Brian R. Moushegian
General Counsel

Mark P. Cornell
Deputy General Counsel

Andrea Q. Labonte
Assistant General Counsel

Sara S. Greene
Disciplinary Counsel

Elizabeth M. Murphy
Assistant Disciplinary Counsel

July 24, 2019

Hand-Delivered

Barbara J. Guay, Legal Assistant
New Hampshire Supreme Court
Professional Conduct Committee
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301

Re: Ryder, Mark R. advs. Attorney Discipline Office - #17-032

Dear Ms. Guay:

The parties submit this letter in response to the Committee's Order dated July 18, 2019.

The parties agree that if Mr. Ryder complies with all of the conditions set forth in the Resubmitted Stipulation filed by the parties on July 9, 2019, Mr. Ryder shall receive ~~a~~ a reprimand.

Sincerely,



Sara S. Greene
Disciplinary Counsel



Mark R. Ryder, Esquire
Respondent

SSG/ges

NEW HAMPSHIRE SUPREME COURT
ATTORNEY DISCIPLINE OFFICE

Brian R. Moushegian
General Counsel

Mark P. Cornell
Deputy General Counsel

Andrea Q. Labonte
Assistant General Counsel

Sara S. Greene
Disciplinary Counsel

Elizabeth M. Murphy
Assistant Disciplinary Counsel

June 3, 2020

Sent Via Email Only

Barbara J. Guay
New Hampshire Supreme Court
Professional Conduct Committee
4 Chenell Drive, Suite 102
Concord, New Hampshire 03301

Re: Ryder, Mark R. advs. Attorney Discipline Office - #17-032

Dear Ms. Guay:

I am writing to inform the Professional Conduct Committee that Mark R. Ryder, Esquire has completed the terms of the mandatory conditions listed in the Order issued by the Professional Conduct Committee on July 18, 2019.

Additionally, there have been no further complaints docketed against Mr. Ryder by the Attorney Discipline Office since the July 18, 2019 Order was issued.

At this time, it is my understanding that Mr. Ryder still owes \$948.25 in costs but that he has been compliant with a payment arrangement entered into on May 8, 2020. It is my expectation that Mr. Ryder will continue to with comply with that payment agreement.

As such, I am requesting that the Committee approve that Mr. Ryder's sanction be recorded as a reprimand as agreed by the parties and set forth in a letter to the Committee dated July 24, 2019 and close this matter at this time.

Sincerely,

/s/Elizabeth M. Murphy
Elizabeth M. Murphy
Assistant Disciplinary Counsel

cc: Mark R. Ryder via email mrryderlaw@comcast.net

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

David M. Rothstein, Chair
Heather E. Krans, Vice Chair
Elaine Holden,* Vice Chair
* non attorney member

4 Chenell Drive, Suite 102
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Barbara J. Guay, Legal Assistant

Ryder, Mark R. advs. Attorney Discipline Office - #17-032

ORDER

On July 18, 2019, the Committee issued a Public Censure With Conditions, Stayed for Six Months. Assistant Disciplinary Counsel has indicated that there have been no further complaints docketed by the Attorney Discipline Office since the July 18, 2019, Order was issued. Mark R. Ryder has completed the terms and conditions of the Stay.

Upon consideration, the matter is closed.

June 9, 2020

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

Distribution:

Elizabeth M. Murphy, Assistant Disciplinary Counsel
Mark R. Ryder, Esquire
File