

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
Concord, New Hampshire 03301
603-224-5828 • Fax 228-9511

Barbara J. Guay, Legal Assistant

Richard E. Clark advs. Attorney Discipline Office - #18-014

ORDER ON STIPULATION

The Attorney Discipline Office and the Respondent, Richard E. Clark, submitted a stipulation in the above matter. Mr. Clark agreed to facts sufficient to prove that he violated Rules of Professional Conduct 1.1, 1.5, 1.8(a), 1.15, 3.3(a), 8.4(a), and Supreme Court Rule 50, and to a one-year suspension, stayed for one year. The violations stemmed from his handling of real estate and civil matters on behalf of Carol D. Wright.

The Professional Conduct Committee deliberated the Stipulation, which included an Agreement to Mandatory Conditions and Mr. Clark's Agreement to Pay Costs, at a telephonic meeting on April 21, 2020. Participating in the meeting were David M. Rothstein, Chair; Heather E. Krans, Vice Chair; Elaine Holden, Vice Chair; Peter G. Beeson; Martha A. Van Oot, Mona Movafaghi; Caroline K. Leonard; Margaret Kerouac; Richard C. Guerriero; Ronald Ace; Georges Roy; and Kathleen M. Ames.

The Committee found that the facts alleged were sufficient to prove that Mr. Clark violated Rules 1.1, 1.5, 1.8(a), 1.15, 3.3(a), 8.4(a), and Supreme

Court 50. Having reviewed the mandatory conditions of the stayed suspension, and noting that Mr. Clark has no previous disciplinary history, the Committee approved the stipulation and mandatory agreement, and voted to recommend that the New Hampshire Supreme Court impose a one-year suspension, stayed for one year from the date of its imposition. The Attorney Discipline Office may seek to impose all or part of the stayed suspension period if Mr. Clark violates any of the mandatory conditions set forth in that agreement.

The Committee also voted to approve the agreement that Mr. Clark pay the costs associated with the prosecution of this matter.

April 28, 2020



David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Richard E. Clark, Esquire

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Clark, Richard E.

advs.

Attorney Discipline Office

#18-014

STIPULATION AS TO FACTS, VIOLATIONS,
AND SANCTION: STAYED ONE-YEAR SUSPENSION WITH
MANDATORY CONDITIONS

Respondent Richard E. Clark, Esq., and the Attorney Discipline Office (“ADO”) stipulate as follows:

A. Facts

1. Mr. Clark is an attorney licensed to practice law in New Hampshire. Mr. Clark was admitted to practice on November 3, 2009.
2. Mr. Clark was also admitted to practice law in Massachusetts on June 11, 2007. He is currently on active status with the Massachusetts Bar.
3. At all times material to this proceeding, Mr. Clark operated his law office as the Law Office of Richard E. Clark, LLC located at 2425 Lafayette Road, Suite 4, Portsmouth, NH 03801. Mr. Clark also used the name Clark & Associates, LLP for his firm.
4. Mr. Clark does not have a previous disciplinary history.

5. This matter involves competence violations arising out of Mr. Clark handling of the sale of real estate in a probate matter and Rule violations involving Mr. Clark's handling of his client trust account and legal fees invoiced to a client.
6. As a part of the investigation of this matter, on June 18, 2019 and July 3, 2019, the ADO issued subpoenas for Mr. Clark's client trust and operating account records.

Initial Referral Regarding the Trust Revocation and Background Regarding Mr. Clark's Handling of Various Legal Matters on Behalf of Carol D. Wright

7. This disciplinary matter was initiated by a March 7, 2018 grievance filed by Attorneys Edward E. Lawson, Michael J. Persson, and Suzanne Chisholm (collectively "LPC") following a residential real estate transaction for property located at 21 Little Harbor Road, New Castle, New Hampshire. The grievance raised concerns regarding Mr. Clark's representation regarding his client, Carol D. Wright's revocation of a trust. Carol D. Wright ("Ms. Wright") passed away on September 17, 2017.
8. LPC represented the buyer in the real estate transaction.
9. A November 9, 2017 Purchase and Sale Agreement (the "P&S") listed the seller as The Carol D. Wright Revocable Trust of 1998 (the "Trust"). The P&S was signed by Mr. William Wagner ("Mr. Wagner"), without an indication of his authority. LPC eventually determined that Mr. Wagner

was not the Trustee of the Trust but instead was the Executor of the Estate of Carol D. Wright.

10. Mr. Clark represented *The Estate of Carol D. Wright* (the “Estate”), Case No. 318-2017-ET-01131, in the 10th Circuit-Probate Division-Brentwood (the “Court”).
11. The Court appointed Mr. Wagner as the Executor of the Estate.
12. Prior to Ms. Wright’s death, Mr. Clark acted as her attorney with regard to a number of matters and issues. Mr. Clark also became close friends with Ms. Wright, particularly after her husband passed away. As a result, he was familiar with the family dynamics between Ms. Wright and her two adult sons, Gary Wright and Glenn Wright.
13. In early November 2015, Ms. Wright fell and broke her hip and was hospitalized at Portsmouth Hospital.
14. During Ms. Wright’s hospitalization, Gary Wright filed a guardianship petition and, as a result of the guardianship litigation, Ms. Wright remained in the hospital through early 2016.
15. Mr. Clark represented Ms. Wright in the guardianship matter. (*In the Matter of Carol Wright*, Case No. 318-2015-GI-01704, 10th Circuit Court – Probate Division - Brentwood.) The guardianship litigation will be discussed further herein. In summary, the petition was ultimately dismissed by the Court on February 11, 2016. The Court found Ms. Wright to be competent.

16. During the course of the guardianship litigation and Ms. Wright's hospitalization, on December 30, 2015, Ms. Wright executed a will prepared by Mr. Clark ("December 30, 2015 Will").
17. The December 30, 2015 Will begins with the following language: "I do make this my Last Will and Testament, revoking all Wills and/or Trusts heretofore made by me." The December 30, 2015 Will made Ms. Wright's nephew, William Wagner ("Mr. Wagner"), an equal one-third beneficiary with Ms. Wright's sons, Gary Wright and Glenn Wright. A minor bequest was made to Ms. Wright's friend and caregiver, Tracy Gagnon.
18. The beneficiaries of the December 30, 2015 Will were different from the beneficiaries of the Trust which included a bequest to a charitable organization.
19. In early 2016, Ms. Wright began planning to sell her New Hampshire house and build a home in South Carolina near her other family members, including her sister and her nephew, Mr. Wagner.
20. In anticipation of building her new home, Ms. Wright (as Trustee of the Trust) took out a mortgage with KEH Investments for \$500,000 on March 23, 2016.
21. Mr. Clark assisted with the arrangements being made for Ms. Wright to move to South Carolina, including the moving of her personal property and the leasing of a home there. Ultimately, Ms. Wright decided not to move.

22. As will be discussed further herein, in February 2016, Mr. Clark also began working on preparing a tort lawsuit on Ms. Wright's behalf to be filed in Superior Court relating to Ms. Wright's long-term hospitalization at Portsmouth Hospital.
23. On July 13, 2016, September 15, 2016 and June 13, 2017, Ms. Wright entered into codicils to the December 30, 2015 Will. Mr. Clark prepared the codicils on Ms. Wright's behalf.
24. On February 9, 2017, Ms. Wright (as Trustee of the Trust) executed a mortgage for \$54,077 to Mr. Clark's law firm, Clark & Assoc, LLP.
25. Mr. Clark prepared the mortgage using the same template as the mortgage from KEH but changed some details, including the amount and mortgagor.
26. Mr. Clark did not advise Ms. Wright to consult with independent counsel prior to executing the mortgage to him.
27. In March of 2017, Ms. Wright refinanced the KEH Investments mortgage to a more conventional loan with TD Bank.
28. With the proceeds from the TD Bank loan, Ms. Wright paid off the KEH Investments mortgage and the \$54,077 mortgage to Mr. Clark.
29. On August 7, 2017, Ms. Wright executed another mortgage loan with KEH Investments for \$250,000.
30. On August 25, 2017, Ms. Wright tore up the original Trust document in front of Mr. Clark.

31. On September 5, 2017, Mr. Clark filed the tort action on Ms. Wright's behalf.
32. In early September 2017, Ms. Wright was again admitted to the hospital. She passed away on September 17, 2017.
33. Mr. Clark filed the Petition for Estate Administration with the Court on September 21, 2017.
34. Mr. Clark listed Ms. Wright's real estate at 21 Little Harbor Road, New Castle, NH ("real estate") as an asset of the Estate and obtained a License to Sell the real estate from the Court.
35. Mr. Clark failed to consider that the real estate was not an asset of the Estate.
36. Mr. Clark never inquired of Ms. Wright and did not look into what assets were in the Trust at the time Ms. Wright allegedly revoked the Trust in 2015.
37. As such, Mr. Clark never advised Ms. Wright that the title to the home needed to be transferred out of the Trust.
38. Mr. Clark admits he did not pay attention to the fact that all of the mortgages after December 2015, including the one he prepared for his firm, cited the Trust as the owner of the real estate and were affirmed by Ms. Wright's signature on the Trustee Certificate for each.
39. As indicated above, LPC represented the buyer of the real estate.
40. Mr. Clark asked LPC to prepare the deed for his review.

41. It was during the title search and its preparation of the deed that LPC determined that the Trust was the record owner of the property.
42. Mr. Clark informed LPC that it was his position that the Trust had been revoked in 2015 and the property was an asset of the Estate.
43. Based on its title search, LPC disagreed, asserting that the record owner was the Trust and the Trust had to be the Seller.
44. In asserting that the Trust was revoked, Mr. Clark relied on the language of Carol Wright's Last Will and Testament, signed December 30, 2015, which began "I do make this my Last Will and Testament, revoking all Wills and/or Trusts heretofore made by me."
45. When LPC further reviewed the records at the Registry of Deeds, they found the following information on record:
 - a) On March 24, 2016, Ms. Wright conveyed a 50% interest she held individually (as an heir of her late husband, whose trust jointly owned the property) to herself as Trustee of the Trust. Mr. Clark witnessed the Deed.
 - b) On the same date, Ms. Wright signed a mortgage on the property to KEH Investments, Inc., as Trustee of the Trust. Mr. Clark witnessed the mortgage.
 - c) On February 9, 2017, Ms. Wright as Trustee of the Trust executed a mortgage to Mr. Clark's law firm for more than \$50,000 in fees.

- d) On March 7, 2017, Ms. Wright executed a mortgage to TD Bank, as Trustee of the Trust. She signed a Trustee's Certificate as part of the mortgage.
 - e) On March 30, 2017, Mr. Clark executed a discharge of the mortgage to his firm, and indicated Ms. Wright was Trustee of the Trust.
 - f) On August 7, 2017, Ms. Wright as Trustee of the Trust mortgaged the property to KEH Investments, Inc.
46. The LPC's grievance noted: "In all of the documents listed, except the deed to herself as Trustee of the Trust, Carol D. Wright executed a Trustee's Certificate stating she was the Trustee of the Trust and the Trust had not been revoked. This includes documents prepared by Clark's law firm."
47. Legal title to the property remained with the Trust, and it was not an asset of the Estate when Ms. Wright died in 2017.
48. Nonetheless, Mr. Clark listed it as an asset of the Estate, and requested a License to Sell Real Estate based on its being an Estate asset.
49. In order to facilitate the sale, the buyers (LPC's clients) requested and Mr. Clark agreed that he would ask the Probate Court to determine if the Trust had been revoked.
50. If the Trust had been revoked, the Estate would sell the property. If it had not, then the Successor Trustee (Carol Wright's son, Gary) would sell the property.

51. Mr. Clark prepared a Motion to Clarify (the “Motion”) that was reviewed by Attorney Michael Persson (from LPC).
52. Several drafts were exchanged between Mr. Clark and Mr. Persson before the Motion was filed with the Court.
53. Mr. Clark filed an Affidavit with the Court where he listed the transactions that referred to the Trust. The Affidavit was more detailed than the Motion to Clarify.
54. The Court had not issued an order on the Motion by the time of the closing, so the proceeds were held in escrow until the order was issued and the period for a Motion for Reconsideration had run.
55. The Court eventually granted Mr. Clark’s Motion to Clarify, based on Mr. Clark’s assertion that the Trust had been revoked and that the property was an asset of the Estate.
56. Mr. Clark did not disclose all five transactions in which Carol Wright referred to herself as the Trustee of the Trust that owned the property following the alleged revocation of the Trust, in the Motion to Clarify, although his Affidavit provided greater detail.
57. Pursuant to New Hampshire RSA 564-B:6-602(c)(1) (Revocation or Amendment to Revocable Trust), the settlor of the Trust “may revoke or amend a revocable trust...by substantial compliance with a method provided in the terms of the trust.” Pursuant to section 18 of the Trust, which was revocable, the grantor of the Trust (i.e., “Ms. Wright”) “reserve[d] the right at any time or from time to time without consent of

any person and without notice to any person other than the Trustee to revoke or modify the trust...created.” In addition to serving as the grantor/settlor of the Trust, Ms. Wright was the trustee of the Trust. Pursuant to the Will dated December 30, 2015, Ms. Wright “revok[ed] all Wills and Trust heretofore by me.” RSA 564-B:6-602(d) states “[u]pon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.” By revoking the Trust in the Will, Ms. Wright received notice of the Trust’s revocation. Based on the foregoing, it can be reasonably argued that, as of December 30, 2015, the Trust was revoked.

58. Notwithstanding the Trust’s apparent revocation, in 2015 and 2017, Ms. Wright entered into a series of transactions involving the Trust. These transactions were recorded with the Registry of Deeds and, in certain instances, witnessed by or involved Mr. Clark. Specifically, on February 9, 2017, Ms. Wright as Trustee of the Trust executed a mortgage to Mr. Clark’s law firm for more than \$50,000 in fees. The mortgage was subsequently discharged after Ms. Wright had paid the outstanding fees owed to Mr. Clark.
59. Mr. Clark has explained that he continued to believe the Trust was revoked and he did not pay attention to the fact that all of the post-revocation mortgages, including the one that he prepared for his firm, cited the Trust as owner and were affirmed by Ms. Wright’s signature on the Trustee Certificate for each. On August 25, 2017, Ms. Wright tore

the trust original in front of Mr. Clark. Pursuant to RSA 564-B:6-602, the foregoing, arguably, also constituted the revocation of the Trust (to the extent that it had not previously been revoked).

60. To the extent that Mr. Clark failed to pay attention to these details, Mr. Clark agrees that he did not competently represent Ms. Wright when he drafted the December 30, 2015 Will or when he represented the Estate before the Probate Court.

**Mr. Clark's Representation of Ms. Wright in the
Guardianship/Conservatorship and Tort Actions; Billing
Discrepancies with Regard to These Matters**

61. On June 18, 2019 and July 3, 2019, the ADO issued subpoenas for Mr. Clark's client trust and operating account records.
62. Mr. Clark's client trust accounts with numbers ending in 1316, 1870 and 5768 and operating accounts with numbers ending in 1308 and 5776 for the period December 1, 2015 through December 31, 2017 were reviewed by the ADO.
63. Beginning in November 2015 through February 2017, Mr. Clark represented Ms. Wright in three matters: defending the guardianship proceeding; bringing a conservatorship action¹; and researching a possible tort/false imprisonment action on behalf of Ms. Wright. The tort action was the subject of a contingency fee agreement.
64. During that time, Mr. Clark invoiced Ms. Wright a total of \$146,153.61 in legal fees. Mr. Clark invoiced Ms. Wright as follows:

¹ The conservatorship and guardianship proceedings closed by May 26, 2016.

- A. November 23, 2015 = \$5,194.00
 - B. December 21, 2015 = \$13,667.00
 - C. December 31, 2015 = \$23,987.20
 - D. February 10, 2016 = \$42,567.97
 - E. January 10, 2017 to January 28, 2017 = \$6,660.00
 - F. February 6, 2017 = \$54,077.44
65. The actual amount collected appears to have been a total of approximately \$107,396.00.
66. Mr. Clark does not clearly designate on the invoices which matter he was billing Ms. Wright for.
67. The invoices dated November 23, 2015, December 21, 2015, December 31, 2015 and February 10, 2016 are primarily for Mr. Clark's representation in the conservatorship and guardianship proceedings. These invoices total \$85,416.17.
68. In those invoices, many of the time entries include excessive hours billed to Ms. Wright's matters. For example, on more than one day, Mr. Clark billed an entire day's worth of time to Ms. Wright's matters, as follows:
- A. In relevant part, on the December 21, 2015 invoice², Mr. Clark billed:
 - 1. December 15, 2015 = 9.25 hours
 - 2. December 16, 2015 = 8.1 hours
 - 3. December 17, 2015 = 8 hours

² On this invoice, Mr. Clark does note that a personal meeting with the client was not billed and specifically, notes: "Many other calls, emails, texts to/from client and parties were not invoiced as a courtesy."

B. In relevant part, on the December 31, 2015 invoice³, Mr. Clark billed:

1. December 21, 2015 = 7.1 hours
2. December 22, 2015⁴ = 10.4 hours
3. December 23, 2015 = 8.9 hours
4. December 29, 2015 = 12.4 hours
5. December 30, 2015⁵ = 8.6 hours

C. In relevant part, on the February 10, 2016 invoice, Mr. Clark billed:

1. January 5, 2016 = 11.2 hours
2. January 15, 2016 = 8 hours
3. January 21, 2016 = 8.1 hours
4. January 28, 2016 = 8.2 hours
5. January 30, 2016 = 16.7 hours
6. January 31, 2016 = 15.1 hours
7. February 1, 2016 = 12.8 hours
8. February 2, 2016 = 11.2 hours
9. February 3, 2016 = 9 hours

69. The guardianship hearing went forward on February 3, 2016.

³ This invoice also notes: "Many other calls, e-mails, texts to/from client and parties were not invoiced as a courtesy. Thank you. Personal visits of approximately 5 hours were not invoiced."

⁴ This time entry includes research that would likely later have been used for the tort action, *i.e.* "Research hospital liability client recourse for injury, atty fees
Negligence, emotional damages, civil rights violations
Negligent emotional distress, intentional gross emotional distress
False imprisonment, tortious interference of contractual obligations DPOAH
Physical injury, bed sores"

⁵ An additional two hours was billed on this date for "draft changes to estate plan" for \$560. The \$560 is not included in the total billing discussed above.

70. The petitioner and counsel for the hospital called four witnesses, including two medical experts. Mr. Clark called a medical expert to testify on Ms. Wright's behalf.
71. Mr. Clark noted in his February 3, 2016 time entry that the guardianship hearing lasted approximately 3.2 hours.
72. Ultimately, Mr. Clark successfully defended the guardianship action on his client's behalf.
73. On February 12, 2016, Ms. Wright signed a contingency fee agreement for Mr. Clark to bring a medical malpractice action (the "tort action" referenced above). The contingency fee agreement called for a 40% contingency fee.
74. Mr. Clark filed the tort action, a 10 count, 16 page complaint, over 18 months later, on September 5, 2017. *Carol D. Wright v. HCA Health Services of New Hampshire, Inc.*, Case No. 218-2017-CV-01003, Rockingham Superior Court. Ms. Wright passed away on September 17, 2017. Mr. Clark filed the Motion to Withdraw, through the Executor on March 2, 2018.
75. Despite the contingency fee agreement, Mr. Clark sent Ms. Wright the January 10 through January 28, 2017 invoice and the February 6, 2017 invoice, which contained some overlapping billing entries, because at that time she did not want him to work further on the matters. She later changed her mind and requested that he file the tort action.

76. The January 10 through January 28, 2017 invoice is related to on-going work regarding the conservatorship, the tort matter and assisting Ms. Wright with her affairs, although the conservatorship closed on May 26, 2016.
77. The February 6, 2017 invoice is for work primarily related to the tort matter, although some of the research for this potential cause of action was accounted for in earlier invoices.
78. Like the earlier invoices Mr. Clark, at times, billed full days to Ms. Wright's matter.
- A. In relevant part, among other charges, on the February 6, 2017 invoice⁶, Mr. Clark billed:
1. April 1, 2016 = 10.1 hours
 2. April 2, 2016 = 9.1 hours
 3. April 3, 2016⁷ = 10.2 hours
 4. April 4, 2016 = 8.8 hours
 5. April 8, 2016 = 9.25 hours
 6. May 9, 2016 = 7.1 hours
 7. May 10, 2016 = 8.7 hours
 8. July 1, 2016 = 9.7 hours
 9. July 2, 2016 = 8.7 hours
 10. July 4, 2016 = 10 hours
 11. July 7, 2016⁸ = 10.5 hours

⁶ Mr. Clark notes at the end of the invoice, "As a courtesy, a *significant* more work related to this has not been included." (Emphasis in original).

⁷ The April 1-3, 2016 entries reference "Review Medical Records from all Medical Providers."

⁸ In his billing notations for July 2-4, 2016, Mr. Clark notes that the "File is approx. 17,000-20,000 pages."

12. August 4, 2016 = 8.9 hours

13. August 4, 2016 = 8.9 hours

79. A review of the invoices also reflects that Mr. Clark's lack of a staff also played a role in the amount of time he billed to the matter. For example, Mr. Clark billed "attorney time" for administrative tasks such as organizing exhibits and medical records. Ms. Wright also told Mr. Clark that she did not want anyone other than him to review her records.
80. A review of bank records subpoenaed from TD Bank reflects that Ms. Wright paid to Mr. Clark a total of \$107,396.00 for legal fees on the conservatorship/guardianship and tort matters. This amount consists of checks from Ms. Wright totaling \$34,250.00 which Mr. Clark deposited directly into CTAs ending in 1316 and 5768, then paid to himself, and \$73,146.00 in checks that Mr. Clark deposited directly into his operating accounts ending in 1308 and 5776.
81. Of the \$73,146.00 that Mr. Clark deposited directly into his operating accounts, \$54,077.44 was the payoff on the mortgage for legal fees agreed to by Ms. Wright. Mr. Clark deposited this check directly into his operating account ending with 5776 after sending Ms. Wright an invoice for this amount (the February 6, 2017 invoice).
82. The remaining balance of \$19,068.56 (\$73,146.00-\$54,077.44) consisted of three separate payments by Ms. Wright for the invoices. Specifically, there is evidence Ms. Wright paid the November 23, 2015 and December

31, 2015 invoices, as well as potentially, a third invoice. Mr. Clark's records are unclear with regard to this third invoice.

83. Mr. Clark failed to keep a separate client ledger for Ms. Wright's matter and as such the ADO's review of his bank records compared to his invoices revealed that in some instances Mr. Clark billed Ms. Wright a second time for items she had already paid for. Additionally, in one instance, Mr. Clark's failure to keep proper records which resulted in a deposit for fees that had not yet been earned into his operating account.

Billing and Legal Fees; Client Trust Accounting Issues; and Client Trust Account Certificates

84. The ADO's review of Mr. Clark's client trust accounts and subpoenaed records for his bank account revealed that in some instances, Mr. Clark made transfers from his client trust account to his operating account without a client designation on the check.
85. Likewise, Mr. Clark made some cash deposits into his client trust accounts ending in 5768 and 1870 without a client designation.
86. The ADO's review of Mr. Clark's client trust account and bank records reveals and Mr. Clark agrees that he could benefit from further education as to the proper handling of his client trust account and a period of monitoring by the ADO.
87. Mr. Clark filed four client trust certificates for the time period of June 1, 2014 through May 31, 2018. On all four certificates, Mr. Clark certified that he was not out of trust in the designated time period and that he had performed monthly reconciliations. This was not accurate given Mr.

Clark's failure to keep accurate client ledgers and the other errors as noted above.

B. Disciplinary Rules Violated

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

Rule 1.1: Competence

89. The facts set forth above are incorporated by reference.
90. Rule 1.1 states as follows:
- (a) A lawyer shall provide competent representation to a client.
 - (b) Legal competence requires at a minimum:
 - (1) specific knowledge about the fields of law in which the lawyer practices;
 - (2) performance of the techniques of practice with skill;
 - (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;
 - (4) proper preparation; and
 - (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.
 - (c) In the performance of client service, a lawyer shall at a minimum:
 - (1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;
 - (2) formulate the material issues raised, determine applicable law and identify alternative legal responses;
 - (3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and
 - (4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating

with another lawyer who possesses the skill and knowledge required to assure competent representation.

91. Mr. Clark violated Rule 1.1 when he failed to provide competent representation with regard to the Estate matter.
92. Mr. Clark violated Rule 1.1 when he failed to provide competent representation to Ms. Wright regarding the revocation of the Trust.
93. Specifically, Mr. Clark violated Rule 1.1 when he failed to inquire of Ms. Wright regarding any assets that may have been held by the Trust and advise Ms. Wright regarding the need to transfer the Trust assets, specifically the real estate, to herself individually or otherwise.
94. Mr. Clark also violated Rule 1.1 when he failed to pay sufficient attention to details when he had Ms. Wright execute the post-revocation mortgages that indicated the property was held by the Trust and that Ms. Wright was the Trustee.
95. Mr. Clark also failed to recognize he should have associated with another lawyer who possesses the skill and knowledge required to assure competent representation for Ms. Wright related to the Trust.
96. This resulted in complications for the Estate in the Probate matter and with the sale of the property.
97. Additionally, Mr. Clark's lack of experience and overall competence with regard to defending a guardianship matter and in bringing the tort action on Ms. Wright's behalf led Mr. Clark to bill Ms. Wright for an

unreasonable amount of hours in alleged research for the tort action and to invoice her an unreasonable amount of legal fees.

98. The parties agree that the foregoing conduct constitutes clear and convincing evidence of a violation of Rule 1.1.

Rule 1.5: Fees

99. The facts set forth above are incorporated by reference.

100. Rule 1.5 states as follows:

- (a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee or expenses include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.
- (b) When the lawyer has not regularly represented the client, the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or these rules. A contingent fee agreement shall be in writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses for which the client will be liable whether or not the client is the prevailing party, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
- (d) (1) A lawyer shall not enter into an arrangement for, charge, or collect any fee in a divorce or other domestic relations matter, which is contingent on:
- a. securing a divorce;
 - b. establishing or modifying a child support, alimony, property division, or other financial order; or
 - c. obtaining any specific non-financial relief.
- (2) However, a contingent fee arrangement is permissible, subject to 1.5(c) above, in domestic relations matters regarding:
- a. enforcing a property division order or an accrued obligation for child support or alimony;
 - b. enforcing any other financial order; or
 - c. obtaining a property division of assets hidden during the divorce.
- (e) A lawyer shall not enter into an arrangement to charge or collect a contingent fee for representing a defendant in a criminal case.
- (f) A division of fee between lawyers who are not in the same firm may be made only if:
- (1) the division is made either:
- a. in reasonable proportion to the services performed or responsibility or risks assumed by each, or
 - b. based on an agreement with the referring lawyer;

- (2) in either case above, the client agrees in a writing signed by the client to the division of fees;
- (3) in either case, the total fee charged by all lawyers is not increased by the division of fees and is reasonable.

- 101. Mr. Clark had a duty not to charge an unreasonable amount for legal fees.
- 102. Mr. Clark charged unreasonable fees for his handling of the guardianship and tort matters on Ms. Wright's behalf in violation of Rule 1.5.
- 103. The parties agree that the foregoing conduct constitutes clear and convincing evidence of a violation of Rule 1.5.

Rule 1.8: Conflict of Interest; Current Clients; Specific Rules

- 104. The facts set forth above are incorporated by reference.
- 105. Rule 1.8(a) states, in pertinent part, as follows:
 - (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
 - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
 - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
 - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

106. Mr. Clark's failure to advise Ms. Wright in writing of the desirability of seeking and giving a reasonable opportunity to seek the advice of independent legal counsel regarding her signing of a mortgage to him for fees or to obtain informed consent from her regarding the mortgage transaction is in violation of 1.8(a).
107. The parties agree that the foregoing conduct constitutes clear and convincing evidence of a violation of Rule 1.8.

Rule 1.15: Safekeeping Property and Supreme Court Rule 50

108. The facts set forth above are incorporated by reference.
109. 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.

110. Mr. Clark failed to properly safeguard client property and violated Rule

1.15 and Supreme Court Rule 50, by failing to:

- A. Maintain clear billing records and invoices for Ms. Wright's matters;
- B. Perform monthly reconciliations of his client trust accounts to disclose: (a) the balance of the account according to the bank's records; (b) the balance of the account according to Mr. Clark's law firm records; (c) a detailed listing of differences between (a) and (b); (d) a listing of all clients' funds in the account as of the reconciliation date; and (e) a detailed listing of differences between (b) and (d); and,

C. 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.

111. Mr. Clark also violated Rule 1.15 by:

A. Making all transfers from his trust accounts to his operating account without client designations on the check.

B. Making cash deposits into his operating accounts without client designations from client trust accounts 5768 and 1870.

112. The parties agree that the foregoing constitutes violations of Rule 1.15 and Supreme Court Rule 50.

Rule 3.3: Candor Toward the Tribunal

113. The facts as set forth above are incorporated by reference.

114. Rule 3.3 states as follows:

(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.

115. Mr. Clark had a duty under Rule 3.3(a) not to knowingly make false statements of fact to a tribunal.
116. Mr. Clark breached that duty when he signed four Certificates for the reporting periods beginning June 1, 2014 and ending May 31, 2018 and failed to disclose that his records were not maintained in compliance with Supreme Court Rule 50.
117. The parties agree that the foregoing conduct constitutes clear and convincing evidence of a violation of Rule 3.3.

Rule 8.4(a): General Rule

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

C. Recommended Sanction

119. The Attorney Discipline Office and Mr. Clark jointly agree that a suspension, stayed for one year, with mandatory conditions is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
120. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.

121. 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).
122. 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.
123. 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").

124. 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)).
125. Under the first prong of the analysis, Mr. Clark violated duties owed to his clients, including the duty of loyalty to preserve property of clients; to avoid conflicts of interest and the duty of competence. Mr. Clark also violated his duties owed to the legal profession and legal system. *See Standards* §§ 4.1, 4.3, 4.5, 4.6, 6.1 and 7.2.
126. With respect to Mr. Clark’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Clark’s mental state was both knowing and negligent. Mr. Clark knew that he lacked experience in certain areas of practice such as the real estate transaction and in handling the guardianship matter. Mr. Clark knew or should have known he was not properly maintaining his client trust accounts in accordance with Rule 50. Mr. Clark was negligent in properly addressing the trust revocation and in handling the subsequent probate and real estate transaction. Mr. Clark knew how much he was billing Ms. Wright in the guardianship and tort matters. He did ultimately prevail on Ms. Wright’s behalf in the guardianship matter.

127. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Clark's misconduct.
128. With respect to his competence violations, Mr. Clark caused actual and potential injury because his lack of competence led to problems with probating the Estate and a delay with respect to the sale of the Estate real property. It further actual caused injury to Ms. Wright in that Mr. Clark's lack of experience in handling the guardianship and tort matters led Mr. Clark to overbill Ms. Wright for her matters.
129. Mr. Clark caused potential injury to Ms. Wright when she signed the mortgage to his firm for legal fees without offering her the opportunity to consult with independent counsel.
130. Mr. Clark also risked potential injury to his clients by failing to keep accurate, contemporaneous records as required by the Rules. Mr. Clark also caused harm to the legal profession by leaving the Court and the public in doubt as to the viability of trust accounting and certification requirements of Rule 50.
131. Mr. Clark's Rule 1.15 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 Suspension⁹ 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 Reprimand¹⁰ [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 Admonition [reprimand] 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).

132. Mr. Clark's conduct in this matter, when considered under *Standard*

4.12, would call for a baseline sanction of suspension.

133. Mr. Clark's Rule 1.8 violation implicates Section 4.3 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 conflicts of interest:

4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
- (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
- (c) represents a client in a matter substantially related to a matter in which the interests of a present or former

⁹ *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").

¹⁰ 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.

client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

4.33 [Public censure] is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

4.34 [Reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

(emphasis added).

134. Mr. Clark's conduct in this matter, when considered under *Standard* 4.32, would call for a baseline sanction of a suspension.

135. Mr. Clark's Rule 1.1. violation implicates Section 4.5 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 failure to provide competent representation to a client:

4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows

he or she is not competent, and causes injury or potential injury to a client.

- 4.53 [Public censure] is generally appropriate when a lawyer:
- (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
 - (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.
- 4.54 [Reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

(emphasis added).

136. Mr. Clark's conduct in this matter, when considered under *Standard* 4.52, would call for a baseline sanction of a suspension.
137. Ms. Clark's Rule 1.5 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 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 [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 [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.

(Emphasis added.)

138. Mr. Clark's conduct in this matter, when considered under *Standard 7.2*, would call for a baseline sanction of a suspension.

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

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

6.12 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.

6.13 [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.

6.14 [Reprimand] is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or

causes little or no adverse or potentially adverse effect on the legal proceeding.

(Emphasis added)

140. Mr. Clark's conduct in this matter, when considered under *Standard* 6.12, would call for a baseline sanction of suspension.
141. The parties agree that the combined baseline sanction for Mr. Clark's conduct is a suspension. *See Standard* §§ 4.12, 4.32, 4.52, 6.12 and 7.2.
142. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
143. In this case, there are no aggravating factors present. *See Standards* § 9.22.
144. There are two mitigating factors, including: 1) an absence of prior disciplinary record; and 2) full and free disclosure to disciplinary board and cooperative attitude toward proceedings. *See Standards* § 9.32.
145. Moreover, although the ADO reviewed Mr. Clark client trust accounting practices for a lengthy time period, the original complaint did not raise concerns with respect to Mr. Clark's billing practices and neither Ms. Wright (before her death) nor her Estate filed a complaint with the ADO. Likewise, no other client has complained to the ADO regarding Mr. Clark's handling of client trust accounting practices.
146. The parties agree that given the baseline sanction, and consideration of aggravating and mitigating circumstances, a stayed suspension with

mandatory conditions, designed to ensure implementation of effective remedial measures, is an appropriate sanction.

D. Conditions of Imposed Discipline and Procedures For Alleged Violation of Conditions

147. Mr. Clark agrees to comply with the following conditions for one year, which shall begin on the date the New Hampshire Supreme Court (“Court”) accepts this Stipulation. The conditions are the subject of a separate agreement and are summarized as follows:

- A. Mr. Clark shall provide written fee agreements to clients for all matters that he undertakes. Those agreements shall set forth: scope of representation, hourly rate, his procedure for billing clients, and, in cases in which he accepts a retainer, the method for replenishing such retainer. Mr. Clark will provide the ADO with a proposed written fee agreement within 30 days of the date the Court approves this Stipulation.
- B. Mr. Clark shall contemporaneously track time spent on client matters. He shall bill clients monthly and send with such bill an accounting of time spent on the matter. Where he holds a retainer, such bill shall set forth deposits to, disbursements from, and the balance of such retainer.
- C. Mr. Clark shall perform monthly reconciliations of his client trust account in full compliance with Supreme Court Rule 50.

- D. Mr. Clark will report to the ADO on a quarterly basis describing his progress in further improving his client trust accounting procedures and will attach to the report copies of three written fee agreements; three client invoices and complete copies of his monthly reconciliations, account ledgers and individual client ledgers along with the corresponding bank statements.
 - E. Mr. Clark agrees to attend a three credit CLE regarding client trust accounting in New Hampshire and will submit a certificate for his attendance to Disciplinary Counsel within 90 days of the date the Court approves this Stipulation.
 - F. Mr. Clark shall pay the expenses incurred by the Professional Conduct Committee in connection with this investigation and prosecution of this matter.
 - G. For a period of one year, beginning on the date the Court approves the Agreement, Mr. Clark shall not engage in any further professional misconduct.
148. If it is alleged that Mr. Clark violated any of the conditions enumerated at Paragraph 148 above, the following shall apply:
- A. Upon motion by Disciplinary Counsel, the Court may determine whether any of the conditions enumerated at Paragraph 148 have been violated. If it determines that a condition has been violated, the Court may lift the stay and impose a one-year suspension. If the Court 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 Court through 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 148 of this Stipulation has been violated. During such hearing, it shall be the burden of Disciplinary Counsel to demonstrate by a preponderance of evidence that a condition listed in Paragraph 148 has been violated.
 - C. If a Hearing Panel determines that a condition has been violated, the Panel may recommend imposition of a one-year suspension. 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 and make a recommendation to the Court.
149. If a new grievance or referral is filed against Mr. Clark during the one-year period of the stay, thus implicating the condition at Paragraph 148(g), the following shall apply:
- A. So long as a grievance or referral is filed within the one-year period of the stay (“the subsequent proceeding”), and the alleged misconduct occurred, at least in part, during the one-year period, the stay can be lifted and the suspension imposed at such time as

there is a finding of misconduct in the subsequent proceeding, even if such finding occurs beyond the one-year period of the stay.

- B. Pending the final resolution of the subsequent proceeding, the matter underlying this Stipulation shall not be closed.
- C. If the conditions of Paragraph 148 have been met, Mr. Clark 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 one year period of stay.
- F. If a grievance or referral is filed within the one-year period of the stay, Mr. Clark shall provide written notice to Disciplinary Counsel within thirty (30) days of receipt of notice of the grievance or referral, *time being of the essence*, along with supporting information or documentation.

E. Costs


- 150. Subject to the Court's approval of Mr. Clark's Stipulation, Mr. Clark 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. Clark.

F. Effect of Stipulation

151. Mr. Clark understands that this Stipulation represents a recommended disposition, and that the Court may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).
152. Mr. Clark 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
153. Mr. Clark understands that he has a right to obtain counsel regarding this Stipulation and, that he is fully aware of the consequences of the Stipulation.
154. Mr. Clark knowingly and intelligently waives his right to a hearing.


Respectfully submitted,

Dated: 4/10 2020



Richard E. Clark, Esquire
Respondent

Dated: 4/13 2020



Elizabeth M. Murphy
Assistant Disciplinary Counsel