

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*
Barbara J. Guay, Legal Assistant

Reed, Michael J. advs. Attorney Discipline Office - #19-001

**ORDER ON HEARING PANEL RECOMMENDATION:
ONE YEAR SUSPENSION**

On February 18, 2020, the Professional Conduct Committee deliberated the Hearing Panel's recommendation that Attorney Michael J. Reed be suspended one year for violating Rules of Professional Conduct 8.1(b) and (c). Present were David M. Rothstein, Chair; Elaine Holden, Vice-Chair; Ronald K. Ace; Georges J. Roy; Caroline K. Leonard; Kathleen M. Ames; Richard C. Guerriero, Jr.; Martha Van Oot; and Mona T. Movafaghi. Peter G. Beeson participated by telephone.

The Committee considered the record, including the notice of charges, the efforts made to contact and serve Mr. Reed, the transcript of the hearing, and the Hearing Panel's report. It found, by clear and convincing evidence, that Mr. Reed failed to respond to requests for information and documents by General and Disciplinary Counsel. It further found, by clear and convincing evidence, that Mr. Reed's failures to respond violated Rules of Professional Conduct 8.1(b) and (c).

Having made those findings, the Committee adopted the Hearing Panel's conclusion that a one-year suspension is appropriate. Mr. Reed is also suspended from the practice of law based on the Court's interim suspension order dated September 19, 2019. He shall be liable for all costs of the prosecution of this complaint.

March 10, 2020

A handwritten signature in black ink, appearing to read 'DR', is written above a solid horizontal line.

David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Michael J. Reed
File

NEW HAMPSHIRE SUPREME COURT

HEARINGS COMMITTEE

Reed, Michael J.

advs.

Attorney Discipline Office

No. 19-001

HEARINGS COMMITTEE REPORT

The following report is submitted by a panel of the Hearings Committee (the "Committee")¹ to which this matter was referred pursuant to Supreme Court Rule 37(a)(3)(b)(4).

A hearing was held on November 7, 2019. The hearing related solely to the issue of the appropriate sanction to be assessed following Mr. Reed's failure to file an Answer to the Notice of Charges issued by the Attorney Discipline Office ("ADO"). Mr. Reed did not appear at the November 7, 2019, hearing. Because of Mr. Reed's failure to file any Answer and failure to appear at the Hearing, the factual allegations against him, summarized below, are deemed admitted pursuant to Supreme Court Rule 37A(III)(b)(3)(A). Proceedings at the hearing consisted of an offer of proof by Counsel for the ADO setting forth the timeline and efforts to investigate Mr. Reed's circumstances, and oral argument related to the ADO's position on the appropriate disciplinary sanction.

Issues Presented

The sole violation of the Rules of Professional Conduct at issue in this matter relates to Mr. Reed's failure to cooperate with the disciplinary process, in connection with an underlying

¹ The Committee consisted of the following members: Philip H. Utter, Esq., Chair, Jason R.L. Major, Esq., Reporter, Barbara Abbott, Esq., and Marilyn E. Watson.

disciplinary complaint made by a client, and with the instant matter. The underlying disciplinary investigation was initiated by a grievance filed by a client of Mr. Reed, Costas “Con” Papas (“Mr. Papas”), via letter dated December 17, 2018, setting forth possible violations of the Rules of Professional Conduct arising out of Mr. Reed’s representation of Mr. Costas in a breach of contract matter. Per the Notice of Charges² filed in this matter, Mr. Reed was given the opportunity to file a voluntary response to the initial grievance filed by Mr. Papas, which he did on January 28, 2019. His response was summarized by stating that “did the work [he] agreed to do and achieved the settlement [he] set out to achieve, with [his] client’s authorization.”

Thereafter, Mr. Papas’ grievance was docketed, and the ADO’s Deputy General Counsel sent Mr. Reed a letter dated January 30, 2019, giving him 30 days to provide an additional response pursuant to Supreme Court Rule 37A(II)(a)(5)(C), along with requests for communications and other specific records related to Mr. Reed’s representation of Mr. Papas. The letter from the Deputy General Counsel contained the following statement:

YOU ARE REQUIRED TO PROMPTLY RESPOND TO THE REQUESTS OF THIS OFFICE. THE FAILURE TO COOPERATE WITH THE DISCIPLINARY AGENCY COULD RESULT IN THE SCHEDULING OF A PUBLIC HEARING AND A FINDING THAT THE RULES OF PROFESSIONAL CONDUCT HAVE BEEN VIOLATED. RULE 8.1(b).

See Notice of Charges, ¶ 12. Mr. Reed did not respond to this request, or the multitude of follow-up requests made by the ADO, which set the instant disciplinary matter into motion.

The specific provisions of the Rules of Professional Conduct at issue are Rules 8.1(b) and 8.1(c), which provide as follows:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand

² Hearings Committee Record Tab 2

for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

(c) fail to attend a hearing when ordered to do so by a disciplinary authority.

Because Mr. Reed has failed to respond in any meaningful way to the ADO's requests for information, the factual assertions set forth in the timeline below are deemed admitted. See Supreme Court Rule 37A(III)(b)(3)(A).

Factual Background / Timeline of Violations

Following Mr. Reed's failure to respond to the Deputy General Counsel's letter of January, 2019, the ADO made multiple attempts to contact Mr. Reed. He did not respond to the following efforts to obtain his cooperation with the ADO's investigation:

- A March 7, 2019 letter from the Deputy General Counsel, warning of possible disciplinary charges pursuant to Rule 8.1(b) (see Notice of Charges, ¶ 14);
- An April 8, 2019 letter from ADO Disciplinary Counsel, asking Mr. Reed to schedule a time to meet within the next 30 days ((see Notice of Charges, ¶ 17);
- A May 15, 2019 letter from ADO Disciplinary Counsel, following up on her April 8 letter, requesting that Mr. Reed schedule a meeting within the following 14 days and reminding him of his duty to cooperate under Rule 8.1(b) (see Notice of Charges, ¶ 19);
- Two May 30, 2019 voicemails left by ADO Disciplinary Counsel (see Notice of Charges, ¶ 21);
- A third letter from ADO Disciplinary Counsel, sent on May 30, 2019 via both regular and electronic mail, warning Mr. Reed that disciplinary charges would promptly follow if the requested information was not provided by June 13, 2019 (see Notice of Charges, ¶ 22);
- The Notices of Charges for the instant matter, sent to Mr. Reed's business address on June 27, 2013 (see Hearing Memorandum, ¶ 13; Notice of Charges).

The only contacts Mr. Reed has had with the ADO was a response he sent to ADO Deputy General Counsel, Mark Cornell, on September 12, 2019, a verbal exchange with Mr. Cornell on September 13, 2019, and a meeting with Mr. Cornell and Assistant General Counsel Andrea Labonte on September 26, 2019. See Hearing Memorandum, ¶¶ 8-11. Mr. Reed acknowledged in his communications with Mr. Cornell that he is not currently able to competently represent clients due to “personal and family issues.” Mr. Reed indicated that he was seeking help for those issues and assented to an immediate, interim suspension of his privileges to practice law. See Id. At the November 7, 2019 hearing, the ADO’s counsel indicated that Mr. Reed made contact with the New Hampshire Lawyers’ Assistance Program, but did not engage in any formal assistance program with that agency.

It is worth noting that, in an Order dated September 19, 2019, the Supreme Court suspended Mr. Reed from the practice of law on an interim basis, based in part on the conduct underlying the instant matter, and serious mishandling of client matters that resulted in judicial referrals to the ADO. See Supreme Court Order in In re Reed, LD 2019-0011, Ex. 10, Bates 111.

Mr. Reed met with Mr. Cornell and Ms. Labonte on September 26, 2019, to inventory his files and discuss the disciplinary matters arising out of the judicial referrals. Mr. Reed thereafter ceased communicating with the ADO, despite being notified that the ADO’s counsel would seek to have Mr. Reed suspended from the practice of law for at least one year. See Hearing Memorandum, ¶ 11. As noted, he did not appear for the sanctions hearing held on November 7, 2019.

Based on the foregoing facts, all of which are deemed admitted due to Mr. Reed’s failure to respond, Mr. Reed has violated Rules of Professional Conduct 8.1(b) and 8.1(c) by failing to file a mandatory response to the Notice of Charges, failing to respond to requests for information

made by both the ADO's General Counsel and Disciplinary Counsel, and failing to respond to requests from Disciplinary Counsel to schedule a meeting and attend a hearing.

Sanctions Analysis

The ADO requests that Mr. Reed be suspended from the practice of law for a period of one year. The ADO's counsel argued in its Memorandum on Sanction and at the November 7, 2019 hearing that the *American Bar Association's Standards for Imposing Lawyer Sanctions* (2005) (hereinafter "the *Standards*") and decisions in other similar cases support this recommended sanction.

While the New Hampshire Supreme Court has not formally adopted the *Standards*, it does look to them for guidance in disciplinary matters. Conner's Case, 158 N.H. 299, 303 (2009). The *Standards* set forth a four-part analysis to consider when deciding what sanctions are appropriate: "(a) the duty violated; (b) the lawyers' mental state; (c) the potential for actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors. *Id.* (citations omitted).

Looking at the first factor, Mr. Reed violated his duties owed to the public, to the legal system, and to the legal profession by failing to respond to lawful demands for information from a disciplinary authority. See, e.g., Rule of Professional Conduct 8.1(b); *Standards* Sec 5.1 and 7.0. Examining Mr. Reed's mental state under the second prong, his failures to respond to requests for information were, at a minimum, committed knowingly. The ADO sent multiple requests for compliance to Mr. Reed at his business address, and to a functional email address from which he later responded to inquires about his well-being. See ADO Hearing Memorandum, ¶ 8; Ex. 10 (Assented-To Petition for Interim Suspension), ¶ 7. He also had conversations and at least one meeting with ADO personnel, meaning that he was aware that the ADO was seeking his

compliance with requests for information. See Id. Nevertheless, Mr. Reed did not respond to the ADO's lawful requests.

Under the third prong of the sanctions analysis, it is apparent that Mr. Reed's refusal to cooperate with the ADO's requests for information has caused injury to the legal profession and the legal system. A lawyer's knowing failure to cooperate with a disciplinary investigation undermines the disciplinary process and the ADO's ability to investigate a claim of lawyer misconduct. Public confidence in the ADO is put at risk when a lawyer ignores requests for information relating to disciplinary complaints. In this case, Mr. Reed's refusal to cooperate with the ADO's investigation arguably delayed the determination that he was, as he admits, unable to competently engage in the practice of law. That delay led to injury to clients, resulting in judicial referrals for further disciplinary action against Mr. Reed and, ultimately, his interim suspension by the Supreme Court.

Turning to the fourth factor, aggravating and mitigating circumstances, the primary aggravating circumstance is simply Mr. Reed's knowing and ongoing refusal, over such a significant period of time, to cooperate with the efforts of the ADO to contact him and obtain information from him. The length of time over which Mr. Reed has ignored the requests made of him by the ADO has frustrated and delayed the resolution of this matter. Determining the existence of mitigating factors is made difficult by Mr. Reed's failure to respond and refusal to appear at the hearing. It is apparent that Mr. Reed is dealing with some difficult personal problem but, without his input, the members of the Hearings Committee can do little more than speculate about the cause of those difficulties and whether Mr. Reed's conduct is any way excused by those circumstances. The panel members did consider Mr. Reed's short period of time as a practicing member of the bar as a potentially mitigating factor in its analysis of the appropriate sanction.

Committee Decision

The Committee found that the appropriate sanction in this case was that recommended by the ADO – a one year suspension from the practice of law. Section 7.2 of the *Standards* provides that:

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.

As set forth in the preceding section, Mr. Reed's failure to respond to the ADO's requests for information was, at a minimum, a knowing violation of Rule 8.1(b). Mr. Reed clearly violated his duty as a professional as codified in Rule 8.1(b) and 8.1(c), by refusing to cooperate with the ADO's requests for information and failing to appear at meetings requested by the ADO as well as the November 7, 2019, Sanctions Hearing. His violations of Rule 8.1(b) caused injury to the legal profession, the legal system and, arguably, to clients. Some length of suspension from the practice of law is therefore appropriate as baseline sanction. While Mr. Reed may be experiencing difficult personal circumstances, his refusal to inform the ADO about what those circumstances are and what he is doing about them makes it impossible for the Committee to conclude that a lesser sanction is appropriate.

The Committee determined a one-year period of suspension is appropriate for several reasons. First, Mr. Reed's complete disregard for and refusal to engage in any meaningful way with the ADO, despite the multitude of attempts to obtain his cooperation, over a period of many months, with the resultant injury to the profession and legal system, mandates a significant suspension period.

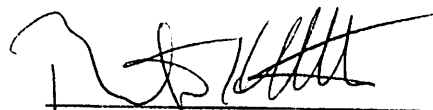
Second, Mr. Reed's own assent to the interim suspension issued by the Supreme Court, which was sought and granted as a result of Mr. Reed's admitted inability to competently practice

law, demonstrates that permitting him to continue practicing would present a danger to the public and risk further, potentially much more serious injuries to the legal profession and legal system. Third, the Committee's review of the case law cited by the ADO in its Memorandum on Sanction suggests that a one-year suspension from practice is appropriate on the circumstances presented. Fourth, Mr. Reed was notified that the ADO intended to seek a one-year suspension of his privilege to practice law, and Mr. Reed did not object or deem it necessary to attend the Sanctions Hearing.

The final deciding factor that ultimately governed the Committee's determination was Mr. Reed's admission that his difficult personal circumstances, whatever they may be, have rendered him unable to competently practice law over a significant period of time. A one-year suspension from the practice of law will require Mr. Reed to petition the Supreme Court for reinstatement pursuant to Supreme Court Rule 37(14)(b). Given Mr. Reed's demonstrated failure to comply with his professional conduct responsibilities and the risk of further injury to the public and profession, the Committee determined that, should Mr. Reed desire to return to the practice of law after his one-year suspension, his return should be supervised and that appropriate oversight and examination should be conducted to ensure that Mr. Reed is ready to return to practice and no longer presents a danger to the public and the profession.

In conclusion, the Committee finds that the appropriate sanction in this matter is to suspend Mr. Reed from the practice of law for a period of one year.

Dated: December 5, 2019



Philip H. Utter, Esq., Chairperson
Jason R.L. Major, Esq., Reporter
Barbara Abbott, Esq.
Marilyn E. Watson