

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

Allen, John L. advs. Attorney Discipline Office - #19-025

Recommendation: Disbarment and Order on Costs

On November 17, 2020, the Professional Conduct Committee deliberated the Hearing Panel Report, as well as the Record in the above matter.

Having reviewed the Record, the Committee approved the Hearing Panel Report as to the facts by clear and convincing evidence. The Committee approved the findings of violations of the New Hampshire Rules of Professional Conduct as found by the Hearing Panel Report and to recommend Disbarment for violations of Rules 1.1; 1.3; 1.4; 1.15; 1.16(d); 8.1(b); 8.4(b); 8.4(c); as well as Supreme Court Rule 50.

The Committee noted the amount of money Mr. Allen misappropriated, as well as his intent to admit guilt in a federal prosecution based on this misconduct and serve a lengthy prison sentence. His conduct deeply injured his clients and the reputation of the profession. Because Mr. Allen did not participate in any of the proceedings leading up to his disbarment, including the hearing, there was no mitigating evidence to consider.

The Committee orders Mr. Allen to pay the costs of the investigation and prosecution of this matter.

November 18, 2020

/S/ David M. Rothstein
David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
John L. Allen
File

New Hampshire Supreme Court
Hearings Committee

Allen, John L. advs. Attorney Discipline Office - #19-025

Hearing Panel Report

A complaint was referred to this Panel pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(4) on July 14, 2020. The following Panel was appointed:

Barbara Keshen, Chair
Brooksley C. Belanger, Esquire
Daniel J. Swegart, Esquire
Michelline Dufort

This Report sets forth the findings and unanimous recommendations of the hearing panel with respect to sanctions in the above-entitled matter. The hearing panel accepts the Attorney Discipline Office's Memorandum on Sanction, which is incorporated below.

A. Procedural Background

1. Mr. Allen was admitted to practice law in New Hampshire in 1988.
2. Mr. Allen was suspended from the practice of law on an interim basis pursuant to a New Hampshire Supreme Court order dated October 9, 2019. *See In the Matter of John L. Allen, Esquire, LD-2019-0012.* [Ex.¹ 12.]
3. Mr. Allen was also admitted to practice law in Illinois on November 6, 1986.
4. Mr. Allen is not authorized to practice law in Illinois having failed to register or meet CLE requirements after 2008.

¹ References to Ex. refer to the Attorney Discipline Office's Exhibits for Sanction Hearing submitted to the Hearing Panel on September 10, 2020.

5. Mr. Allen was admitted to practice law in Massachusetts on March 4, 2006.
6. He was suspended temporarily from the practice of law in Massachusetts on February 20, 2020 on a reciprocal basis pending his reinstatement to the practice of law in New Hampshire.
7. Mr. Allen does not have a previous disciplinary history in New Hampshire.
8. A Notice of Charges was issued on April 24, 2020 to Mr. Allen. The Notice of Charges contained detailed allegations against Mr. Allen arising out of two (2) referrals to the ADO. The initial referral described Mr. Allen's failure to provide any substantive response to clients for over six (6) weeks. The second referral, contained detailed allegations of misappropriation of client funds.
9. In addition to the issues raised by the referrals made to the ADO, the Notice of Charges detailed Mr. Allen's failure to respond to the ADO with respect to the referrals.
10. Mr. Allen did not file an Answer to the Notice of Charges. Mr. Allen is deemed to have admitted the factual and legal allegations set forth in the Notice because of his default in answering the Notice of Charges. Sup. Ct. R. 37A(III)(b)(3)(A).

11. On June 10, 2020, Assistant Disciplinary Counsel Elizabeth Murphy filed a Motion for Alternative Service with the Chair of Professional Conduct Committee. [Record,² Tab 3.]
12. On June 11, 2020, the Chair of the Professional Conduct Committee, David M. Rothstein, granted the Motion. [Record, Tab 4.] The Order found that Mr. Allen had defaulted with respect to the Notice of Charges.
Id.
13. As such, the only remaining issue for the Hearing Panel to consider was the appropriate sanction for Mr. Allen's conduct.
14. A Hearing on Sanction was scheduled on September 23, 2020. On that date, a hearing was held by Zoom videoconference, with the above listed four (4) members of the panel participating. The ADO was represented by Assistant Disciplinary Counsel Elizabeth Murphy. Allen did not appear either *pro se* or through counsel, despite appropriate notice of the hearing. Accordingly, the panel heard argument by Attorney Murphy.
15. The ADO asked the panel to recommend a sanction of disbarment. *See* ADO Memorandum. Based on the ADO Memorandum and Attorney Murphy's argument at the hearing, and after considering the legal and factual allegations contained in the Notice of Charges, the Panel makes the following findings and recommendations.

² References to "Record" refer to the Hearing Panel's "Index of the Record."

B. Findings and Analysis

16. Liability is established due to Mr. Allen's default, therefore, this Report will not repeat all of the factual and legal allegations from the Notice of Charges.
17. In summary, the Hearing Panel finds that Mr. Allen violated duties owed to his clients, to the legal system, and to the profession. The Hearing Panel further finds that Mr. Allen's mental state was "intentional" as defined by the ABA Standards and the Rules of Professional Conduct, with respect to the conduct described in the Notice of Charges. The panel further finds that Mr. Allen's conduct caused serious actual and potential injury to his clients, the legal system, and the profession.
18. The Panel finds that Mr. Allen misappropriated at least \$690,444.95 of client funds while serving as settlement agent in two real estate transactions. [Notice of Charges ¶¶76, 100, 101, and 104.]
19. The Panel finds that Mr. Allen also committed a myriad of client trust accounting violations including: depletion of his client trust accounts by October 9, 2019; online transfers without client designation totaling \$943,496.09; commingling; and allowing client matters to be out of trust. [Notice of Charges ¶¶76 and 110-111]
20. The Panel further finds that Mr. Allen knowingly failed to perform services for more than one client and that he abandoned his practice.
21. The Panel finds that Mr. Allen filed a false Trust Account Compliance Certificate for the period covering June 1, 2018 to May 31, 2019.

22. The Panel finds that Mr. Allen failed to cooperate with the ADO's investigation.
23. As a result of Mr. Allen's failure to cooperate with the ADO's investigation and Mr. Allen's failure to appear at the Hearing, no mitigating circumstances were presented to the Panel.
24. Mr. Allen's conduct violates Rules of Professional Conduct ("Rules") 1.1, 1.3, 1.4, 1.15, 1.16(d), 8.1(b), 8.4(b), 8.4(c), 8.4(a) and Supreme Court Rule 50.
25. The Hearing Panel adopts the sanction analysis contained in the ADO Memorandum, including its reliance on case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) (the "Standards").
26. Although the Court has not adopted the *Standards*, it looks to them for guidance. *Conner's Case*, 158 N.H. 299, 303 (2009). 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.
27. Under the first prong of the analysis, Mr. Allen has violated numerous duties that the *Standards* cover. Mr. Allen violated duties that he owed to his clients by violating his duties of diligence and competence, failing to safeguard and preserve client property, and engaging in deceit. Mr.

Allen violated duties he owed to the public by engaging in conduct involving dishonesty or fraud and by engaging in a criminal act, the misappropriation of client funds. He violated the duties he owed to the legal system by failing to act with candor. Mr. Allen violated the duties he owed to the profession by failing to properly withdraw from his representation of clients and in failing to maintain the integrity of the profession by his failures to respond and cooperate with the ADO's requests for information. *See Standards* §§ 4.1, 4.4, 4.5, 5.1, 6.1 and 7.0.

28. The second prong of the three-part test requires an assessment of Mr. Allen's mental state. In this case, for the vast majority of Rule violations, Mr. Allen's state of mind was, at a minimum, knowing, and was likely intentional.
29. The *Standards*, as well as New Hampshire's Rules of Professional Conduct, differentiate between a knowing state of mind and an intentional state of mind. Rule 1.0(f) of the N.H.R. Prof. Conduct defines "knowingly" as "denot[ing] actual knowledge of the fact[s] in question. A person's knowledge may be inferred from circumstances." The *Standards* define an intentional state of as acting with "a conscious objective or purpose to accomplish a particular result."
30. The Panel found, based on the facts as set forth in the Notice of Charges and deemed admitted due to Mr. Allen's default, that Mr. Allen's conduct

“intentional,” that is, he acted with a conscious objective to achieve a particular result, *i.e.*, using client funds to his own benefit.

31. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Allen’s misconduct.
32. In this case, Mr. Allen’s conduct caused actual harm that is significant in scope, as well as significant potential injury.
33. Mr. Allen misappropriated a significant amount of money from multiple clients. In addition, by October 2019, Mr. Allen had completely depleted both of his IOLTA accounts of all but \$1.00 of client funds [Ex. 13 and 15] and had also emptied his operating accounts. [Ex. 14 and 16.]
34. At the time he abandoned his practice, Mr. Allen had approximately 20 active clients and was working on more than one matter for some clients. Mr. Allen’s conduct injured his clients by abandoning his practice and leaving his paralegal, without a way to reach him for a substantive response to pressing client demands and inquiries for more than six weeks. [Ex. 2].
35. Mr. Allen caused significant actual injury to Charles R. Sargent, Jr. and Charles R. Sargent, Sr. and their entity, Autumn Frost Realty. The Sargents expected that Mr. Allen was holding \$525,000 in trust for Autumn Frost Realty and beginning on September 19, 2019, their counsel, William S. Gannon, Esq. began to request the return of those funds, which by then, was the property of a bankruptcy estate. [Ex. 1].

36. Mr. Allen also caused actual injury to numerous other clients when he transferred approximately \$943,496.09 from his IOLTA 4834 into his operating account without client designation. [Notice of Charges ¶76.]
37. Mr. Allen caused significant potential injury when he commingled his own funds with those of clients by transferring funds totaling \$246,850.00 from Operating 0506 into IOLTA 4834 and when he transferred funds totaling \$108,295.00 from Operating 8527 into IOLTA 4834. [Notice of Charges ¶¶110-111.] The commingling of his own funds put client funds at risk because his IOLTA accounts could have been frozen.
38. Mr. Allen harmed other clients when he misappropriated other funds, was out of trust on multiple matters, withdrew funds from IOLTA that were not earned as fees or expenses; when he failed to maintain records in accordance with the Supreme Court Rule 50 and when he failed to perform monthly reconciliations.
39. Mr. Allen 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 required by Rule 50.
40. Mr. Allen harmed clients when he failed to return client files and when he failed to cooperate with the ADO's investigation, including his failure to cooperate with an extensive inventory of his files that remains ongoing.

41. In addition, Mr. Allen's conduct harmed the integrity of the legal profession and the public's confidence in the bar.
42. The baseline sanction in this matter is a disbarment. *See Standards*, §§ 4.11, 4.41, 4.51, 4.61, 5.1, 6.12 and 7.1.

Conclusion & Recommendation

43. For the foregoing reasons, the Hearing Panel concludes that disbarment is the appropriate sanction for the violations alleged in the Notice of Charges, and respectfully recommends that the Professional Conduct Committee recommend such sanction to the Supreme Court.
44. The Panel also recommends that John L. Allen be ordered to reimburse the Professional Conduct Committee for all costs associated with the investigation and prosecution of this matter.

Respectfully submitted,

November 5, 2020

Barbara Keshen, Esquire, Chair
Brooksley C. Belanger, Esquire, Reporter
Daniel Swegart, Esquire
Michelline Dufort