

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

ORDER

LD-2021-0009, In the Matter of Daniel W. McKenna, Esquire

On October 5, 2021, the Attorney Discipline Office (ADO) filed a petition for the immediate interim suspension of Attorney Daniel W. McKenna from the practice of law in New Hampshire. The ADO has alleged, among other claims of professional misconduct, that:

- (1) Attorney McKenna misappropriated settlement funds owed to one client to pay another client and to pay his business expenses;
- (2) Attorney McKenna failed to respond to the ADO's requests for information and failed to file a response to the ADO's docketed complaint against him, despite the requirements of Supreme Court Rule 37A(II)(a)(5)(C); and
- (3) Attorney McKenna's conduct violates Supreme Court Rule 50 and Rules of Professional Conduct 1.15 and 8.4;

The ADO cites Supreme Court Rule 37(9-A), (9-B)(b), and (16)(f) as grounds for suspending Attorney McKenna immediately and on an interim basis. Rule 37(9-A) authorizes the court to suspend an attorney, after notice and an opportunity for a hearing, when the court finds that the attorney has engaged in conduct that poses a substantial threat of serious harm to the public. Rule 37(9-B)(b), applicable in cases alleging "serious misconduct," authorizes the court to enter an order of summary suspension and other emergency relief if the ADO establishes by affidavit that the attorney failed to respond to the ADO's request for information. Rule 37(16)(f) authorizes the court to suspend an attorney when it deems a suspension necessary for the protection of the public and the preservation of the integrity of the legal profession. When the court makes such a finding, the attorney may be suspended on a temporary order, with or without hearing. See Rule 37(16)(d).

Based on the information submitted by the ADO in its petition, the court finds that Attorney McKenna's immediate suspension from the practice of law is necessary to protect the public and to preserve the integrity of the legal profession. See Rule 37(16)(d) and (f). Accordingly, it is hereby ordered:

- (1) In accordance with Rule 37(16)(d) and (f), Attorney Daniel W. McKenna is immediately suspended from the practice of law in

New Hampshire pending further order of this court.

- (2) A copy of the petition for immediate suspension and of this order shall be served on Attorney McKenna by first-class mail at the latest address that Attorney McKenna provided to the New Hampshire Bar Association.
- (3) Within 15 days from the date of this order, Attorney McKenna may request a hearing on the issue of whether the interim suspension should be lifted. The hearing will be promptly scheduled. See Reiner's Case, 152 N.H. 163 (2005).
- (4) Within 30 days of the date of this order, Attorney McKenna shall file an answer to the petition for immediate interim suspension.
- (5) Attorney McKenna is enjoined from transferring, assigning, hypothecating, or in any manner disposing of or conveying any assets of clients, whether real, personal, beneficial or mixed.

Pursuant to Rule 37(17), the court appoints Attorney Andrea Q. Labonte, ADO Assistant General Counsel, to take immediate possession of the client files and trust and other fiduciary accounts of Attorney McKenna, and to take the following actions:

- (1) Attorney Labonte shall notify all banks and other entities where Attorney McKenna has trust or fiduciary accounts and operating accounts of Attorney McKenna's suspension from the practice of law and of Attorney Labonte's appointment by the court.
- (2) Attorney Labonte shall notify clients of Attorney McKenna of his suspension, inform them of any scheduled hearings, advise them to obtain the services of other lawyers of their choice, and advise them how they or their new attorneys may obtain their files. Attorney Labonte shall not undertake the representation of any of Attorney McKenna's clients, however.
- (3) Attorney Labonte shall notify the courts in which any hearings are scheduled in the near future of Attorney McKenna's suspension.
- (4) Attorney Labonte shall prepare an inventory of Attorney McKenna's client files and shall file a copy of the inventory with the Supreme Court on or before November 15, 2021, together with a report of her actions taken under this order and recommendations as to what further actions should be taken.

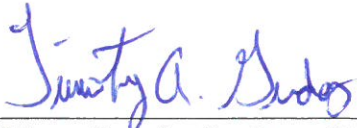
- (5) If Attorney McKenna was in possession of any client funds or property, Attorney Labonte may file an appropriate motion requesting authority to distribute them.

Attorney McKenna is ordered to cooperate with Attorney Labonte in performing the tasks as directed by the court. The expenses of Attorney Labonte shall be paid in the first instance from the funds of the Professional Conduct Committee, which may seek reimbursement from Attorney McKenna.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: October 7, 2021

ATTEST:



Timothy A. Gudas, Clerk

Distribution:

Mark P. Cornell, Esquire
Andrea Q. Labonte, Esquire
Daniel W. McKenna, Esquire
File