

NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE

*a committee of the attorney discipline system*

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Elaine Holden,\* Vice Chair  
\* *non attorney member*  
Barbara J. Guay, Legal Assistant

*Dunn, David C. advs. Attorney Discipline Office - #21-002*

**Recommendation: Disbarment and Order on Costs**

On December 14, 2021, the Professional Conduct Committee (the “Committee”) deliberated the Stipulation to Disbarment and the Agreement to Pay Costs of Disciplinary Matter (collectively, the “Record”).

Having reviewed the Record, the Committee approved the facts as stipulated, by clear and convincing evidence. The Committee approved the findings of violations of the New Hampshire Rules of Professional Conduct (the “Rules”) as stipulated and the recommendation of Disbarment for violations of Rules 1.1; 1.3; 1.15; 3.3; 8.4(a)–(c), and Supreme Court Rules 50 and 50A. In addition, the Committee ordered reimbursement for all costs of investigation and prosecution.

December 14, 2021

David M. Rothstein  
David M. Rothstein  
Chair

cc: Sara S. Greene, Disciplinary Counsel  
Mark D. Morrissette, Esquire  
File

Page 1 of 1

**NEW HAMPSHIRE SUPREME PROBATE COURT**  
**PROFESSIONAL CONDUCT COMMITTEE**

Dunn, David C.

advs.

Attorney Discipline Office

#21-002

**STIPULATION TO DISBARMENT**

NOW COMES Sara S. Greene, Disciplinary Counsel of the New Hampshire Supreme Probate Court Attorney Discipline Office (ADO) along with David C. Dunn, Esq., and stipulate as follows:

**A. Facts**

1. Mr. Dunn was admitted to practice law in New Hampshire in 1990. Mr. Dunn has not been admitted to practice law in any other jurisdiction.
2. By order of the Supreme Court dated June 4, 2021, Mr. Dunn was suspended on an interim basis. *In the Matter of David C. Dunn* – LD-2021-0003.
3. Mr. Dunn remains suspended and has not practiced law since his interim suspension took effect.
4. Mr. Dunn has a previous disciplinary history of a public censure issued on June 14, 2015 in *Dunn, David C. advs. Attorney Discipline Office #14-025*, for violations of Rules 4.1 (Truthfulness in Statements to Others), 8.4(c (Deceit and Misrepresentation), and 8.4(a).

5. Mr. Dunn is currently the subject of formal proceedings of the ADO and wishes to stipulate to disbarment.
6. This disciplinary matter was initiated by a referral filed by Attorney Neil B. Nicholson and a grievance filed by Mr. Nicholson's client, Joseph Byron.
7. The ADO filed a Notice of Charges ("NOC") arising out of this matter on September 28, 2021. The Notice of Charges is attached hereto as Exhibit A.
8. On November 3, 2021, the Mr. Dunn submitted his Answer to the Notice of Charges. The Answer is attached hereto as Exhibit B.
9. Mr. Dunn's Answer admits the following rule violations alleged in the NOC:
  - a. Rule 1.1 (Competence)
  - b. Rule 1.3 (Diligence)
  - c. Rule 1.15 and Sup. Ct. Rules 50 and 50-A (Safekeeping Property)
  - d. Rule 3.3 (Candor Toward the Tribunal)
  - e. Rule 8.4(a) (Violating the Rules of Professional Conduct)
10. The NOC also charged Rule 8.4(c) violations (conduct involving dishonesty, deceit, or misrepresentation) in the Pitcher, Tassie/Blouin, and Martel matters that were handled by Mr. Dunn. To the extent his Answer does not clearly address this Rule violation, for purposes of this proceeding, Mr. Dunn does not contest that the material allegations set forth in the NOC regarding unauthorized transfers from funds held in

trust in the Pitcher, Tassie/Blouin, and Martel matters, violate Rule 8.4(c).

## **B. Sanction**

11. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
12. 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).
13. 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 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.
14. 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”).

15. Under the first prong of the analysis, Mr. Dunn violated duties owed to his clients, to the public and to the system. Mr. Dunn’s representation of his clients caused actual injury to three estates or trusts that were deprived of funds. In the Martel matter, basic services were not rendered by Mr. Dunn, as required by the Trust document and as required given his fiduciary duties as trustee.
16. Given Mr. Dunn’s state of mind and the extent of injury he caused, *Standards* 4.11 and 4.41 apply, and they set forth a baseline sanction of disbarment.
17. Section 4.1 of the *Standards* provides as follows:

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 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 4.13 Reprimand 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<sup>1</sup> 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).

18. Section 4.4 of the *Standards* provides as follows:

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 a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.44 Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

(emphasis added).

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<sup>1</sup>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.

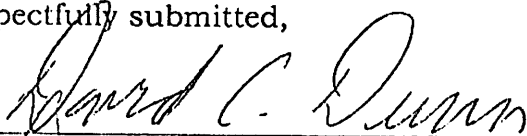
19. Mr. Dunn's conduct in this matter, when considered under *Standards* 4.11 and 4.41(b),(c), would call for a baseline sanction of disbarment
20. No downward departure from this baseline sanction is appropriate. Aggravating factors include a prior disciplinary history, multiple offenses, pattern of misconduct, and substantial experience in the practice of law. Mitigating factors include cooperation with the ADO. These mitigating factors, however, do not outweigh the aggravating factors.
21. Mr. Dunn agrees that disbarment is the appropriate sanction, that it serves the purposes of discipline, and that is proportional to analogous disbarment cases involving unauthorized transfers. *See In the Matter of John L. Allen, Esquire – LD-2020-0010* (February 2, 2021) and *In the Matter of Tamblyn L. Fuller Gosling, Esquire – LD-2017-0016* (March 20, 2018).
22. Mr. Dunn understands that this Stipulation represents a recommended disposition, and that the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).
23. In this proceeding, Mr. Dunn waives his defenses and his right to assert that such prosecution would be barred by the statute of limitations. Mr. Dunn understands that for purposes of this proceeding that he will be bound by his representations and admissions as contained in this Stipulation and related attachments.
24. In so doing, Mr. Dunn waives any and all of his due process rights under both the state and federal constitutions on the matters pending against

him, in this proceeding.

25. Mr. Dunn further waives any and all of his procedural rights under N.H. Sup. Ct. R. 37 and 37A.
26. Mr. Dunn 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
27. Mr. Dunn agrees to pay the costs incurred by the ADO in the investigation and pursuit of this disciplinary matter. His agreement to pay costs is the subject of a separate agreement with the ADO.
28. In deciding both to sign this Stipulation to Disbarment, and to waive these rights, Mr. Dunn has had the advice of counsel.
29. Mr. Dunn consents to disbarment, concedes that disbarment is the appropriate sanction for his misconduct, and asks the Committee to recommend to the New Hampshire Supreme Court to impose an Order of Disbarment in this attorney discipline matter.

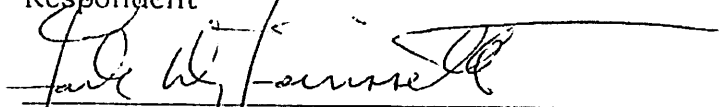
Respectfully submitted,

Dated: 12/3 2021



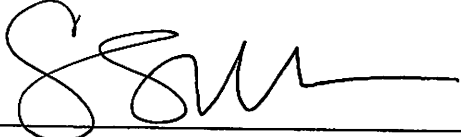
David C. Dunn, Esquire  
Respondent

Dated: 12/3 2021



Mark A. Morrissette, Esquire  
Counsel for Respondent

Dated: Dec. 10 2021

  
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Sara S. Greene, Esquire  
Disciplinary Counsel

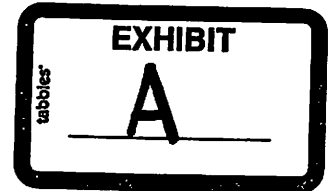
**NEW HAMPSHIRE SUPREME COURT  
ATTORNEY DISCIPLINE OFFICE**

Dunn, David C.

advs.

Attorney Discipline Office

#21-002



**NOTICE OF CHARGES**

This Notice of Charges is issued pursuant to New Hampshire Supreme Court Rule 37A(III)(b)(2). In accordance with that Rule, this Notice of Charges sets forth both the allegations of misconduct against David C. Dunn, Esq. ("Mr. Dunn"), as well as the disciplinary rules alleged to have been violated.

**Summary of Allegations**

1. Mr. Dunn was admitted to practice law in New Hampshire in 1990.
2. Mr. Dunn was suspended from the practice of law on an interim basis pursuant to a New Hampshire Supreme Court order dated June 4, 2021 (LD-2021-0003).
3. This Notice of Charges repeats the allegations contained in the Petition for Interim Suspension filed by the ADO on June 4, 2021.
4. This Notice of Charges adds additional allegations starting at ¶ 107 based on the ADO's subsequent investigation.

5. Mr. Dunn previously practiced law at 14 Temple Court, Manchester, New Hampshire 03104.
6. Mr. Dunn has not been admitted to practice law in any other jurisdiction.
7. Mr. Dunn has a previous disciplinary history of a public censure issued on June 14, 2015 in the matter of *Dunn, David C. advs. Attorney Discipline Office - #14-025* for violations of Rules 4.1 (Truthfulness in Statements to Others), 8.4(c) (Deceit and Misrepresentation), and 8.4(a).

**The Initial Referral: Estate of Alphonse Pitcher (Unauthorized Interim Distributions, Misappropriation, and False Accountings to Probate Court)**

8. This disciplinary matter was initiated by a referral filed by Attorney Neil B. Nicholson and a grievance filed by Mr. Nicholson's client, Joseph Byron.
9. Mr. Byron is the owner and founder of Honor Flight New England<sup>1</sup> ("Honor Flight"). Honor Flight was a beneficiary of the Pitcher Estate filed with the 9<sup>th</sup> Circuit Probate Court-Probate Division-Nashua ("Probate Court") as Case Number 316-2016-ET-02263.
10. Mr. Dunn was the Administrator of the Estate.
11. As a result of a pleading filed by Mr. Nicholson, the Probate Court removed Mr. Dunn as Executor on November 16, 2020.

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<sup>1</sup> Honor Flight is a non-profit organization dedicated to honoring America's most senior veterans. Through donations, Honor Flight transports veterans to Washington, D.C. to visit and reflect at their memorials at no cost to the veteran.

12. Mr. Pitcher passed away on December 14, 2016, after being hospitalized for some number of weeks.
13. Immediately prior to Mr. Pitcher's death, he signed a Last Will and Testament ("Will") along with a Durable Financial Power of Attorney (DFPOA"), appointing Mr. Dunn as his attorney in fact over his financial matters. The Will also nominated Mr. Dunn as Executor of the Estate. Mr. Dunn drafted these documents.
14. On December 16, 2016, Mr. Dunn filed a Petition for Estate Administration ("Petition") with the Probate Court requesting that he be appointed Executor and included the Will with his filing.
15. On February 8, 2017, the Probate Court appointed Mr. Dunn as administrator of the Estate.
16. According to the Inventory, the assets of the Estate were modest.
17. They contained personal assets of approximately \$42,701.01.
18. This consisted of \$23,340.00 of cash in hand, \$15,986.01 held in Mr. Pitcher's bank account at Bank of America ending in 9668, \$625.00 in personal belongings, a 2006 Jeep Liberty valued at \$2,750.00, and real property located at 2 Rosemont Avenue Manchester, NH valued at approximately \$95,000.00 ("Pitcher property").
19. The Will identified specific bequests to friends of Mr. Pitcher named Richard Swauger ("Mr. Swauger") and Mark Skiathitis ("Mr. Skiathitis").
20. The Will bequeathed the rest, residue and remainder of the Estate to Mr. Swauger (25%), Mr. Skiathitis (25% share) and Honor Flight (50% share).

21. During his tenure as administrator, Mr. Dunn prepared and filed with the Probate Court an Inventory and three Accountings.
22. The inventory was filed on May 6, 2017, the First Accounting on August 23, 2018, the Second Accounting on June 14, 2019, and the Third and Final Accounting on September 25, 2020.
23. All of three of the Accountings were filed late according to Rule 108 of the Rules of Probate Court requiring accountings to be filed within a twelve-month period beginning on the date of appointment of the Executor.
24. This prompted the Probate Court to enter Default Notices on May 15, 2018, May 14, 2019, and June 8, 2020.
25. Due to the delayed filing of the first and second Accountings, and after the Pitcher property sold on December 23, 2019, Mr. Nicholson, as counsel for Honor Flight, began prodding Mr. Dunn to submit the Final Accounting.
26. Attorney Dunn responded on February 2, 2020 and indicated that he intended to file the Final Account that week. Mr. Dunn apologized for the delay and reported that he had become sick.
27. After the Final Account was still not filed in the ensuing months, and after several more emails and a phone call from Mr. Nicholson, Mr. Dunn promised to file the Final Account by June 22, 2020.
28. Mr. Dunn did not file the Third and Final accounting by June 22, 2020.

29. Mr. Dunn did not file the Third and Final Accounting until September 25, 2020, just prior to a Show Cause hearing scheduled by the Probate Court for September 28, 2020.
30. Mr. Nicholson had become suspicious and requested copies of the last twelve months of the Estate bank account statements.
31. After the hearing on September 28, 2020, the Probate Court entered an Order allowing the parties thirty days to file an objection to the Third and Final Account. Additionally, the Probate Court Ordered Mr. Dunn to provide the financial information requested by Mr. Nicholson within seven days.
32. Upon initial review of the Third and Final accounting, Mr. Nicholson noted some irregularities and therefore emailed Mr. Dunn on September 28, 2020, September 29, 2020 and October 14, 2020 regarding the status of the requested financial records.
33. Mr. Dunn did not produce any of the financial records to Mr. Nicholson.
34. On or about October 5, 2020, Mr. Nicholson received a telephone call from Mr. Skiathitis, one of the other beneficiaries of the Estate. Mr. Skiathitis told Mr. Nicholson that Attorney Dunn had provided him with an interim distribution approximately one year before in the amount of \$5,000.00.
35. This distribution was not noted in any Accounting filed by Mr. Dunn.
36. Mr. Nicholson filed an Objection to the Third and Final Accounting on October 19, 2020.

37. The Probate Court scheduled a telephonic hearing for November 12, 2020.
38. Prior to the hearing, Mr. Nicholson had a conversation with Mr. Swauger, the other beneficiary of the Estate. Mr. Swauger told Mr. Nicholson that Mr. Dunn had distributed to him \$25,000.00.
39. This distribution was not noted in any Accounting filed by Mr. Dunn.
40. After the hearing, the Probate Court issued an Order on November 16, 2020:
  - 1) removing Mr. Dunn as administrator of the Estate and appointing Mr. Nicholson as successor administrator;
  - 2) requiring Mr. Dunn to turn over his complete file to Mr. Nicholson by November 26, 2020; and
  - 3) requiring Mr. Nicholson to file a report by January 15, 2021 identifying any Estate expenditures he deemed inappropriate; and
  - 4) requiring Mr. Nicholson to file an amended account that (a) provided information as to any items that were omitted from Attorney Dunn's third and final account; (b) noted the interim distributions that were already made without authorization from the Probate Court and (c) provided a statement as to whether and what expenditure from the account Mr. Nicholson deemed inappropriate.
41. As per the Probate Court's Order, Mr. Dunn provided his file to Mr. Nicholson on November 24, 2020.

42. On November 30, 2020, Mr. Nicholson contacted TD Bank and requested they freeze the estate account until he received the Letter of Appointment.
43. After some delays, Mr. Nicholson was finally able to access the full bank records for the Estate.
44. After reviewing copies of deposit slips and checks written out of the Estate account, as well as the Estate file provided by Mr. Dunn, Mr. Nicholson, on February 8, 2021, filed the Administrator's Report Regarding Expenditures ("Report") and a Motion to Approve Amended Accounting, Motion for Distribution and Motion for Approval of Attorney's Fees with the Probate Court.
45. The ADO has reviewed this Report, as well as the bank records for the Estate Account. The Report and bank records demonstrate that:
  - a. Mr. Dunn failed to identify on any of the Accountings filed with the Probate Court, and failed to seek Probate Court approval for payments to himself from the Estate Account in the total amount of \$30,438.62. Those payments to himself were as follows:

6/21/2017	\$692.37
6/22/2017	\$7,425.00
7/8/2017	\$1,121.25
7/15/2019	\$2,632.50
7/18/2019	\$3,022.50
7/26/2019	\$2,437.50
8/6/2019	\$2,100.00
8/8/2019	\$2,047.50

8/19/2019	\$2,193.75
9/12/2019	\$1,550.00
9/30/2019	\$2,827.50
10/2/2019	\$2,388.75

- b. Mr. Dunn later attempted to “reimburse” the Estate for some of his misappropriation by depositing a treasurer’s check, purchased with monies withdrawn from his operating account at Bank of New England in the amount of \$13,068.32, into the Estate account. Mr. Dunn made this deposit on November 12, 2020, knowing his Estate bank records would soon see the light of day. Notably, Mr. Dunn made the deposit *the day of the hearing* in Probate Court on Mr. Nicholson’s Objection to the Third and Final Accounting; and
  - c. Mr. Dunn failed to disclose on any of the Accountings the interim cash distributions to the beneficiaries; specifically, to Mr. Swauger for \$25,132.96, and to Mr. Skiathitis for \$5,000.00.
46. The Probate Court entered an Order on April 1, 2021 granting Mr. Nicholson’s request for relief in the Report and approved his Motions to Approve Amended Accounting, Motion for Distribution and Motion for Approval of Attorney’s Fees and that upon return of the receipts, the Estate may be closed.
  47. The matter was referred to Disciplinary Counsel on April 2, 2021.
  48. On April 15, 2021, Disciplinary Counsel met with Mr. Dunn regarding this matter.

49. At Disciplinary Counsel's request, Mr. Dunn provided a copy of his file regarding the Estate matter.
50. This request included a demand that Mr. Dunn produce all of his time records and billing information regarding all work performed on the Pitcher Estate.
51. Mr. Dunn produced a file that was a thin expandable folder containing some Estate documentation, a folder labeled Quiet Title Action, along with some miscellaneous Elderly Exemption documentation.
52. Mr. Dunn provided no billing, invoices or timesheets for work performed on the Estate when he produced his Estate file to the ADO.
53. Mr. Dunn claims that he lost the folder in his file that contained his billing and time sheets and the invoices for expenses of the Estate.
54. Mr. Dunn represented to Disciplinary Counsel during the in-person meeting that the deposit of \$13,068.32 represented a reimbursement for disbursements from the Estate account that were not actually earned legal fees.
55. Mr. Dunn has not produced time records, file materials, or proof of legal services performed on the Estate to justify \$13,068.32 of legal fees, much less the \$30,438.62 in total that he paid himself from the Estate account.

**Pitcher Estate: Receipt of \$27,797 in Cash and Misappropriation of Same**

56. In the course of its investigation, the ADO discovered that on November

- 29, 2016, Mr. Swauger, one of the beneficiaries of the Pitcher Estate, brought to Mr. Dunn's law office, in cash, the amount of \$25,797.00.
57. Mr. Swauger had discovered this cash at Mr. Pitcher's home shortly after his death. Mr. Swauger represented to the ADO that he and Mr. Dunn sat down at Mr. Dunn's law office and counted the money together.
  58. Mr. Swauger produced to the ADO a receipt in Mr. Dunn's handwriting that Mr. Dunn gave to Mr. Swauger the same day, confirming that Mr. Dunn had received \$27,797.00 in cash from Mr. Pitcher's home and that he was holding it for the Estate.
  59. Though Mr. Dunn received this cash on November 29, 2016, he did not timely deposit this amount into the Estate account, which he did not even open until June 16, 2017.
  60. Rather, on June 1, 2018, over 19 months after receiving the cash, Mr. Dunn deposited not \$25,797.00, but the lesser amount of \$23,340.00, into the Estate Account using a Treasurer's Check. (This date is around the same time that Attorney Nicholson was inquiring about the status of Estate funds on behalf of one of the beneficiaries and was also at a time that the Final Accounting for the Estate was overdue).
  61. The ADO reviewed all of the subpoenaed bank records, and could not identify *any deposit*, in either Mr. Dunn's client trust account or his operating account, of \$25,797.00.
  62. A review of Mr. Dunn's operating account, however, shows that he made a miscellaneous debit of \$23,340.00 on June 1, 2018, purchased a

Treasurer's Check in the same amount, then deposited that check the same day into the Estate account.

63. There is no legitimate reason that Mr. Dunn would be withdrawing his own money to deposit into an Estate account.
64. No documentation, in any of the bank records, demonstrates that Mr. Dunn ever deposited the cash found at Mr. Pitcher's home into a bank.
65. The ADO cannot know how the cash was safeguarded for the 19 months it remained somewhere other than a bank.
66. Mr. Dunn had a duty to safeguard the funds of Mr. Pitcher.
67. The cash should have been immediately deposited into an Estate account, or at a minimum into Mr. Dunn's CTA account.
68. Upon information and belief, Mr. Dunn misappropriated the cash, and then had to make the Estate account whole using money from his operating account once Mr. Nicholson began probing and requesting bank records.

**ADO Subpoenas Bank Records for Mr. Dunn's Client Trust Account, Operating Accounting, and Other Fiduciary Accounts (Time Period 2016-2020)**

69. On April 19, 2021, Disciplinary Counsel subpoenaed bank records for Mr. Dunn's operating account at Bank of New England ending in 9232 as well as his IOLTA ending in 1055 for the time period of November 1, 2016 through and including November 30, 2020.
70. Based on the referral regarding the Pitcher Estate, the time frame for the records request was from November 1, 2016 (the month that Mr. Dunn

received a large amount of cash found at Mr. Pitcher's home) through November 30, 2020 (corresponding with the month Mr. Dunn was removed as Executor of the Pitcher Estate).

71. The ADO subpoena also requested bank records generally for "[a]ll Accounts for Law Office of David C. Dunn, PA and David C. Dunn, Esq."
72. The ADO received bank records on May 19, 2021.
73. Among the fiduciary accounts held at Bank of New England was an account ending in 5424 for the William and Barbara Tassie Revocable Trust ("Tassie Trust"), and an account ending in 5036 for the Stephanie Blouin Special Needs Trust of 2006 ("Blouin Special Needs Trust").
74. Mr. Dunn was Trustee of both the Tassie Trust and Blouin Special Needs Trust and signatory on the associated bank accounts.

**The Tassie Revocable Trust: Misappropriation**

75. Stephanie L. Blouin is the sole beneficiary of the Tassie Trust. Ms. Blouin is the daughter of William and Barbara Tassie.
76. Mr. Dunn was a close family friend of over 35 years to the Tassie family. Ms. Blouin went to high school with Mr. Dunn. She referred her parents to Mr. Dunn for their Estate planning needs.
77. Ms. Blouin suffers from a disability and mental illness. She trusted Mr. Dunn to handle all of the funds from the Tassie Trust, which were held in the account ending in 5424 and also in several investment accounts.
78. It was her understanding at the time of her mother's death in 2011 that her parents left around \$500,000 for her benefit.

79. Ms. Blouin trusted Mr. Dunn with every aspect of handling these funds and has never seen a bank statement or investment account summary.
80. When her mother died in 2011, Ms. Blouin conferred with Mr. Dunn about her living expenses and long-term needs. He determined that \$2,400/month would be advisable for Mr. Blouin to receive from the Trust.
81. The bank records subpoenaed by the ADO, spanning November 1, 2016 through November 30, 2020, demonstrate that 5 deposits from TD Ameritrade were made into the Tassie Account, beginning on December 24, 2016 and continuing through July 14, 2017, for a total of \$112,000.00, as follows:
- |            |             |
|------------|-------------|
| 12/24/2016 | \$40,000.00 |
| 2/17/2017  | \$40,000.00 |
| 4/11/2017  | \$25,000.00 |
| 5/31/2017  | \$5,000.00  |
| 7/14/2017  | \$2,000.00  |
82. The records further demonstrate that Mr. Dunn misappropriated \$106,426.25 from the Tassie account over the next seven months, depleting it entirely by June 30, 2017, via 20 disbursements to his operating account, sometimes as large as \$21,250.00 in a single disbursement.
83. An additional disbursement of \$15,000 on March 3, 2017 was made from the Tassie account but deposited into his CTA, resulting in commingling.
- Id.*

84. These payments to himself began on November 22, 2016 and continued through June 30, 2017, as follows:

<u>Date</u>	<u>Amount</u>	<u>Acct. Deposited</u>
11/22/2016	\$3,412.50	Operating
2/1/2016	\$2,583.75	Operating
12/7/2016	\$2,925.00	Operating
12/13/2016	\$3,607.50	Operating
12/23/2016	\$1,243.75	Operating
12/24/2016	\$2,145.00	Operating
12/28/2016	\$4,095.00	Operating
1/10/2017	\$2,632.50	Operating
1/18/2017	\$3,802.50	Operating
1/28/2017	\$2,145.00	Operating
1/31/2017	\$21,250.00	Operating
2/22/2017	\$17,062.50	Operating
3/3/2017	\$15,000.00	CTA
3/31/2017	\$2,242.50	Operating
5/6/2017	\$4,972.50	Operating
5/24/2017	\$4,095.00	Operating
6/2/2017	\$3,217.50	Operating
6/6/2017	\$2,047.50	Operating
6/17/2017	\$2,193.75	Operating
6/30/2017	\$5,753.50	Operating

85. Because Mr. Dunn had depleted \$106,426.25 of the \$112,000.00 from the Tassie Account by June 30, 2017, Mr. Dunn had little funds left to effectuate required payments to Ms. Blouin.
86. Mr. Dunn made a few payments of \$2,400 to Ms. Blouin from the Tassie Trust until the account was nearing a zero balance.
87. Thereafter, beginning on September 29, 2017, Mr. Dunn began depositing his own funds into the Tassie Account and then paying Ms. Blouin.

88. Specifically, for the years 2017 - 2020, Mr. Dunn would, nearly monthly, but with occasional gaps, withdraw \$2,500 from his operating account, deposit it into the Tassie Account, then withdraw \$2,400 in a treasurer's check payable to Stephanie Blouin.
89. The reason for the difference of \$100 is not evident from the bank records, though it is possible that the extra \$100 was Mr. Dunn's way of incrementally "paying back" the Tassie Trust, over time, the amount he had misappropriated.
90. The ADO's subpoena period ended November 31, 2020. Mr. Dunn had continued his course of "reimbursing" the account at least through November 25, 2020.
91. The bank records demonstrate that from May 1, 2019 through November 14, 2019, there were no deposits into the Tassie Account. The May 1, 2019 balance was \$685.74. During this time period, Mr. Dunn continued to pay Ms. Blouin \$2,400/month via Treasurer's Checks, but Mr. Dunn made these payments by taking "miscellaneous debits" from his CTA or his operating account.
92. Other than the \$112,000 total deposits from Ameritrade in the 2016-2017 time period, the only other legitimate deposits into the Tassie Account (*i.e.* deposits from Tassie investments funds, as opposed to from Mr. Dunn's own funds) totaled \$16,830.81, derived from a Dodge & Cox investment fund, as follows:

- a. On November 14, 2019, Mr. Dunn deposited \$10,000 into the Tassie Account from a redemption check from Dodge & Cox Funds (prior to this deposit, as of October 31, 2019, the balance in the Tassie Account was only \$185.89);
  - b. On January 16, 2020, Mr. Dunn deposited \$5,000 into the Tassie Account from a redemption check from Dodge & Cox Funds; and
  - c. On April 24, 2020, Mr. Dunn deposited \$1,830.81 into the Tassie Account from a redemption check from Dodge & Cox Funds.
93. In April of 2020, Ms. Blouin spoke with a banking representative at Citizen's Bank, who suggested that she refinance to save money given lower interest rates at the time. This representative needed financial documentation from Mr. Dunn regarding her finances in order to move the refinancing process forward.
  94. Ms. Blouin requested this information repeatedly from Mr. Dunn from April 2020 through the fall of 2020. He did not provide it.
  95. By the fall of 2020, Ms. Blouin was distressed given Mr. Dunn's lack of communication, and she asked Mr. Dunn via text message if she needed to get another lawyer.
  96. This time Mr. Dunn called Ms. Blouin back. He told her at that time that she was "fine" financially and had "around \$100,000" held in an account for her benefit as of the fall of 2020.
  97. This representation was false. The Tassie Account balance was never higher than \$3,218.16 in the September – November 2020 time period.

98. In addition, he misappropriated (i.e. converted) the entirety of the Ameritrade funds in the Tassie Account, and thereafter had to pay Ms. Blouin from his own funds as set forth herein.
99. Mr. Dunn also injured Ms. Blouin in that her funds were not held intact so as to gain the greatest interest, and he lied to her about the amount of funds he was holding as fiduciary.
100. On April 30, 2021, Mr. Dunn closed the Tassie Account ending in 5424 and the Blouin Special Needs Trust Account ending in 5036. He withdrew the closing balances of these accounts. The Tassie account held \$781.32, and the Blouin Special Needs Trust held \$134.94.
101. According to Mr. Dunn's Affidavit in Support of his Response to the Petition from Immediate Interim Suspension and dated June 4, 2021, those remaining funds are being held currently in Mr. Dunn's CTA at Bank of New England. As part of the inventory, the ADO has frozen bank accounts of Mr. Dunn at Bank of New England, including the CTA.

**Client Trust Account: Repeated Commingling and Disbursements Without Client Identification**

102. A review of Mr. Dunn's CTA reveals improper commingling, wherein Mr. Dunn deposited his own funds from his operating account into his CTA, as well as instances where Mr. Dunn would deposit funds from a Trust or Estate Account into the CTA, as set forth below:
  - a. On August 22, 2018, check #8061 in the amount of \$2,739.64 was drawn on Mr. Dunn's operating account and deposited into his CTA;

- b. On July 17, 2020, check #9078 in the amount of \$15,000.00 was drawn on Mr. Dunn's operating account and deposited into his CTA.
103. In addition, Mr. Dunn, from 2016 through 2020, regularly failed to identify disbursements from the CTA with a client designation.
104. Mr. Dunn wrote 115 checks, totaling \$651,641.10, made payable to himself ("Law Office of David Dunn") from his CTA into his operating account with no identifying client information (i.e. the "memo" line of the check was blank).

**False Trust Account Compliance Certifications**

105. Mr. Dunn knowingly submitted false Trust Account Compliance Certificates for the reporting periods covering June 1, 2016 through May 31, 2020 (i.e. four Certificates).
106. These Certificates falsely represent that Mr. Dunn was in compliance with Supreme Court Rule 50 and Rule 1.15, given his commingling of his own funds in the CTA, his misappropriation as set forth herein, and his total abdication of the duty to identify disbursements from the CTA as corresponding to individual clients.

**ADO's further investigation into the Tassie Revocable Trust and Blouin Special Needs Trust (Subpoena period covering 2007 - 2016)**

107. As part of its further investigation into the amounts held in trust by Mr. Dunn on behalf of the Tassie Revocable Trust and the Blouin Special Needs Trust, the ADO subpoenaed additional bank records on June 15,

2021 for the accounts ending in 5424 ("Tassie Account") and 5036 ("Blouin Account"), from the date of opening of these accounts (January 30, 2008 and May 17, 2007, respectively) through November 1, 2016.

108. The November 2016 date corresponds with the beginning date of the ADO's *first* subpoena regarding the Tassie Account and Blouin Account.
109. These additional bank records, along with those previously subpoenaed by the ADO for the Tassie Account and the Blouin Account, demonstrate that during his time as trustee:
  - a. Mr. Dunn cashed in investments to fund the Tassie Revocable Trust, depositing into the Tassie Account a total amount of \$501,768.36.
  - b. These deposits into the Tassie Account began on July 21, 2011, after Mr. Dunn was added on February 4, 2011 as signatory on the Tassie Account.
  - c. Mr. Dunn made payments directly to Ms. Blouin in the amount of \$139,700.00, as well as additional payments on her behalf to third parties via check or treasurer's check in the amount of \$8,102.00, for a total paid to Ms. Blouin or on her behalf out of the Tassie account in the amount of \$147,802.00.
  - d. Mr. Dunn also transferred \$130,900.00 from the Tassie Account and deposited it into the Blouin Account, from which he made payments directly to Ms. Blouin in the form of treasurer's checks in the total amount of \$127,600.00, as well as payment via treasurer's checks to third parties on her behalf in the amount of \$2,783.00. Mr. Dunn

thus paid Ms. Blouin or others on her behalf a total of \$130,383.00 from the Blouin Trust account.

110. Mr. Dunn thus should have held at least \$223,583.36 in trust for Ms. Blouin: \$501,768.36 (total deposits) - \$278,185.00 (total payments to Ms. Blouin or on her behalf from the Tassie Account and the Blouin Account).
111. However, as of November 30, 2020 (the last date for which the ADO has bank records), the balance in the Tassie Account was only \$818.21, and the balance in the Blouin Account was \$134.96.
112. Moreover, Mr. Dunn misappropriated from the Tassie Account a total of \$234,593.75. This misappropriation occurred from February 15, 2011 (just 11 days after he became signatory on the Tassie Account) through December 26, 2019, in amounts ranging from \$450.00 to \$30,000.00.
113. Specifically, the bank records for the Tassie Account demonstrate the following unauthorized payments made by Mr. Dunn to himself:
  - a. Mr. Dunn made cash withdrawals in the amount of \$23,567.50 from the Tassie Account;
  - b. Mr. Dunn made the following unauthorized transfers from the Tassie Account into his operating account or CTA held at the Bank of New England, as follows:
    - i. \$138,876.25 via checks that Mr. Dunn made payable to himself or his law office;

- ii. \$42,150.00 in online transfers into Mr. Dunn’s operating account; and
  - iii. \$30,000.00 in an online transfer into his CTA (resulting in impermissible commingling).
114. Mr. Dunn attempted to “reimburse” the Tassie Account by depositing the total amount of \$62,250.00, from September 29, 2017 through November 25, 2020, via checks issued from his operating and CTA accounts.
115. Additionally, Mr. Dunn made other disbursements from the Tassie Account which the ADO could not verify as legitimately related to the purposes set forth in the Tassie Trust. Those disbursements were as follows:
- i. Mr. Dunn issued checks from the Tassie Account, from February 17, 2012 through November 7, 2012, payable to the Department of the Treasury and/or US Treasury, in the total amount of \$11,481.40.
  - ii. Mr. Dunn issued checks from the Tassie Account, from April 14, 2012 to September 12, 2012, payable to the William Barbara Tassie Revocable Trust, totaling \$45,000.00.

**Misappropriation of the Funds of Roger J. Martel Revocable Trust  
(Subpoena period beginning June 1, 2017 – June 9, 2021)**

116. The Roger J. Martel Revocable Trust (“Martel Trust”) initially came to the attention of the ADO after review of Mr. Dunn’s operating and CTA accounts from Bank of New England.

117. The ADO discovered checks signed by Mr. Dunn from a Citizens Bank checking account ending in 2739 in the name of the Martel Trust (“Martel Account 2739”) that were deposited into both Mr. Dunn’s operating and CTA accounts.
118. As a result, the ADO, in June 2021, subpoenaed bank records for the Martel Account 2739 from June 1, 2017 to June 9, 2021.
119. The ADO received the bank records for the Martel Account 2739 on July 14, 2021.
120. The bank statements for Martel Account 2739 noted two other accounts: a Money Market at Citizens Bank ending in 2474 (“Martel Account 2474”) and a retirement CD ending in 6008.
121. The ADO subsequently subpoenaed records for Martel Account 2474 from June 1, 2017 to June 9, 2021.
122. By way of background, Mr. Dunn drafted the Martel Trust in 2006 as part of estate planning for Mr. Martel. Thereafter, Mr. Dunn also drafted four amendments to the Martel Trust.
123. The Fourth Amendment (“Fourth Amendment”), dated September 19, 2012, appointed Mr. Dunn to serve as Co-Trustee. It also provided that “[U]pon the death, disability or incompetence of Mr. Martel, David C. Dunn shall serve as sole Trustee.”
124. The Fourth Amendment to the Martel Trust provided in part: “After the death of the Grantor and the payment of the Grantor’s debts, taxes and

expenses, the Successor Trustee(s) shall distribute the following amounts free and clear of all trusts as follows:

- a. I leave to each of the following individuals the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) each: Eleanor Breton of 145 Whipple Street, Manchester, New Hampshire; Priscilla Michaud of 1461 Hastings Road, Spring Hill, Florida 34608-5108 and Janice Esminger of La Quinta, California.
  - b. I leave to Gerard and Alice Champagne of 6 Bow Center, Apt1-244, Bow, New Hampshire, all of the cameras, photo equipment and accessories located in my house at 22 Castle Drive in Hooksett, New Hampshire.
  - c. I leave to Mr. Conrad Lafond the Grandfather clock in my front hallway at 22 Castle Drive, Hooksett, New Hampshire.
  - d. I leave John Riordan of Manchester, New Hampshire my house at 22 Castle Drive, Hooksett, New Hampshire and the contents of the house other than the contents described above, and my car....”
125. In addition, the Fourth Amendment left the “residue and remainder” of Mr. Martel’s estate to the following six individuals and/or married couples (each married couple to take one share), in equal shares:
- a. Mrs. Walter Martel of 625 Brunelle Avenue, Manchester, New Hampshire 03013;
  - b. Barbara Rousseau of 80 Warren Avenue, Goffstown, New Hampshire 03102;

- c. Lorrette Morin of 254 Iron Age Street, Safety Harbor, Florida 34695;
  - d. Joseph Wysocki of 10 Rainbow Drive, Londonderry, New Hampshire 03053;
  - e. Albert Desmarais, (Son of Irene Desmarais), Manchester, New Hampshire;
  - f. Mr. and Mrs. Gerard Champagne, 6 Bow Center, Apt1-244, Bow, New Hampshire.
126. Prior to his death, Mr. Martel transferred the bulk of his assets into the name of the Martel Trust.
127. Mr. Martel died on October 1, 2015.
128. Upon information and belief, at the time of Mr. Martel's death, the Martel Trust contained at least the following assets:
- a. Mr. Martel's home at 22 Castle Drive, Hooksett, New Hampshire;
  - b. \$495,000 face value in United States Government EE and HH Bonds ("Government Bonds");
  - c. 549.00 shares in American International Group, Inc. ("AIG shares") estimated at a value of \$31,249.08; and
  - d. 293.129 share warrants, with an option to purchase shares of AIG by January 19, 2021 at the price of \$22.80 per a share, having an estimated at a value of \$6,706.81.
  - e. Funds held in the Martel account 2739, though the ADO lacks bank records for this account as of the date of death;

- f. Funds held in Martel Account 2747, though the ADO lacks bank records for this account as of the date of death; and
  - g. Citizens Retirement 60-71 Month IRA CD ending in 686008, though the ADO lacks bank records for this account as of the date of death.
129. Although Mr. Martel died on October 1, 2015, Mr. Dunn did not file a Petition for Estate Administration (“Petition”) with the 6<sup>th</sup> Circuit-Probate Division-Concord (Case No. 317-2017-ET-00112) (“Martel Probate”) until February 7, 2017.
130. The only assets remaining of Mr. Martel that were not in the name of the Martel Trust were valued at \$57,758.96.
131. According to the Inventory filed in the Martel Probate on February 12, 2018, these consisted for the following:
- a. a Certificate of Deposit at TD Bank ending in 262 (“TD COD”) containing \$52,493.96;
  - b. a TD Bank checking account ending in 624 containing \$15.00; and
  - c. Mr. Martel’s car valued at \$5250.00.
132. Filed along with the Petition was a copy of the Last Will and Testament of Mr. Martel (“Will”).
133. Paragraph three of the Will provided that “All the rest, residue and remainder of my estate, whether real, personal, or mixed, wherever found and however situated, I give, devise and bequeath to the Roger J. Martel Revocable Trust Agreement.”

134. The Martel Will contained no specific bequests.
135. The Will was a “pour over will” whereby all the assets of Martel Probate would flow into the Martel Trust at the conclusion of the Martel Probate.
136. On June 9, the Probate Court allowed Mr. Dunn’s Motion for Summary Administration (“Summary Administration”) and the case was closed on June 29, 2018.
137. Prior the Probate Court’s granting of the Summary Administration, Mr. Dunn, without authorization from the Probate Court, cashed in the TD COD and deposited \$49,442.94 into the Martel Account 2739 on February 23, 2018.
138. Despite the specific bequests set forth in the Martel Trust, Mr. Dunn’s file (“Martel File”) for the Martel Trust contains no correspondence of any kind to any beneficiary. The Martel file contains very little information at all as to distribution of the specific bequests to the beneficiaries of the Martel Trust by Mr. Dunn.
139. The New Hampshire Trust Code (NHTC) requires, *inter alia*, that Mr. Dunn:
  - a. Administer, invest and manage the trust and distribute the trust property in good faith, in accordance with its terms and the purposes and the interests of the beneficiaries, and in accordance with the NHTC (RSA § 564-B: 8-801);

- b. Keep beneficiaries who have attained 21 years of age reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests (RSA § 564-B:8-813);
  - c. Provide a trustee's report annually to the distributees of trust income;
  - d. Notify beneficiaries within 60 days of Mr. Martel's death of their beneficial interest under the Trust; and
  - e. Notify beneficiaries of his resignation as Trustee with 30 days notice prior to such resignation.
140. In order to verify receipt of their respective distributions by Mr. Dunn, the ADO sent correspondence to every beneficiary named in the Fourth Amendment to the Martel Trust
141. Of the four who responded to the ADO's requests, two reported that they had no idea that they were named as beneficiaries.
142. One of the four, Mr. John Riordan, had heard from Mr. Dunn, who had recorded a Fiduciary Deed transferring the property at 22 Castle Drive in Hooksett, NH to Mr. Riordan as per the Fourth Amendment. Mr. Riordan also confirmed at the conclusion of the Martel Estate that he did receive title to Mr. Martel's car.
143. Mr. Gerard Champagne reported that he was offered the photo equipment at 22 Castle Drive, Hooksett, NH by Mr. Dunn as per the Fourth Amendment, but that he had declined the equipment. Mr. Dunn, however, failed to notify Mr. Champagne and his wife that they were also

residual beneficiaries according to the Fourth Amendment of the Martel Trust.

144. The Martel file did contain evidence of two receipts from the Martel account 2474 for wire transfers dated December 2, 2015 (for \$50,000.00), and December 15, 2015 (for \$100,000.00), to one of the beneficiaries, Janice L. Ensminger, as per the Fourth Amendment to the Martel Trust.
145. As for distributions to the remaining beneficiaries of the Martel Trust, the bank records for the Martel account 2739 demonstrate that only one of the “remainderman” beneficiaries, Albert Desmarais, received payment.
146. On October 28, 2017, Mr. Dunn issued a check for \$4,611.00 to Al Desmarais. The same month, in three separate checks, Mr. Dunn paid Terri Desmarais the same amount of \$4,611.00.
147. All other disbursements during the subpoenaed period from the Martel account 2739 were made by Mr. Dunn to himself as set forth herein.
148. The bank records for the Martel account 2739 revealed the following:
  - a. As of January 30, 2019, the total amount of funds deposited into the Martel account 2739 was \$58,147.02.
  - b. From June 3, 2017 to January 3, 2019, Mr. Dunn made unauthorized payments to himself via checks made out to Law Office of David C. Dunn, P.A., in total amount of \$43,878.05.

- c. From January 30, 2019 to June 9, 2021, Mr. Dunn began to “reimburse” money to this account from his personal funds, in the total amount of \$31,005.00.
  - d. However, during roughly the same time period, Mr. Dunn continued to make unauthorized payments to himself, via checks made out Law Office of David C. Dunn, P.A., in a total amount of \$33,174.50.
149. Mr. Dunn was out of trust for the Martel Trust in the amount of \$48,925.02 at a minimum. (Total deposits of \$58,147.02 minus total of disbursements to beneficiaries of \$9,222.00, equaling \$48,925.02).
150. Mr. Dunn closed the Martel account 2937 on June 9, 2021 after he made two withdrawals of \$1941.49 and \$4.91 leaving the balance of the account as zero.
151. Additionally, the ADO’s investigation determined that Mr. Dunn never liquidated or distributed the Government Bonds.
152. Mr. Dunn never liquidated or distributed the AIG shares.
153. Mr. Dunn failed to excise the option by January 19, 2021 on the 293.129 share warrants to purchase shares of AIG, rendering their value as zero.
154. Mr. Dunn’s misconduct as set forth herein will require the appointment of a successor trustee, the reopening of the Martel Estate, and the apportionment thereafter of Trust funds to those beneficiaries that can be located and that are not deceased.
155. The issues surrounding the Inventory of Mr. Dunn’s client files is the subject of an Order of the Supreme Court dated July 30, 2021.

## **Disciplinary Rules Violated**

156. Mr. Dunn's conduct in this case raises questions under the following New Hampshire Rules of Professional Conduct.

### **Rule 1.1: (Competence) and Rule 1.3 (Diligence)**

157. Allegations set forth above are incorporated by reference.

158. 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.

159. Rule 1.3 states as follows:

A lawyer shall act with reasonable diligence and promptness in representing a client.

160. Mr. Dunn failed to act with reasonable diligence, failed to perform the techniques of practice with skill, failed to properly prepare, failed to attend to the details of Estate and Trust matters so as to assure no avoidable harm occurred therein, and failed to undertake actions in a timely and effect manner, when he, in the Pitcher matter:
  - a. Filed three late Accountings, resulting in default notices and an Order to Show Cause;
  - b. Effectuated unauthorized distributions to beneficiaries Swauger and Skiathitis; and
  - c. Failed to timely deposit and safeguard \$25,979.00 in cash that was part of the Pitcher estate.
  
161. Mr. Dunn failed to act with reasonable diligence, failed to perform the techniques of practice with skill, failed to properly prepare, failed to attend to the details of Estate and Trust matters so as to assure no avoidable harm occurred therein, and failed to undertake actions in a timely and effect manner, when he, in the Martel matter:
  - a. Failed to timely open an Estate matter, waiting 16 months after Mr. Martel's death to file a Petition for Estate Administration;
  - b. Failed to effectuate the terms of the Trust by failing to inform beneficiaries of their beneficial interests under the Trust and by failing to effectuate the distributions per the terms of the Trust;

- c. Failed to liquidate the U.S. Bonds and the AIG account and distribute these assets according to the Trust;
- d. Failed to exercise the right the option on share “warrants” for the AIG stock, allowing these to expire and rendering them valueless; and
- e. Violated the N.H. Trust Code, RSA § 564-B *et seq.*, as set forth herein.

**Rule 1.15: Safekeeping Property**

162. Allegations set forth above are incorporated by reference.

163. 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.

- 164. Mr. Dunn violated Rule 1.15 and Supreme Court Rule 50 by commingling client funds with his own personal funds as set forth herein.
- 165. Mr. Dunn violated Rule 1.15 by regularly failing to identify disbursements from his CTA with a client designation.
- 166. Mr. Dunn violated Rule 1.15 by failing to safeguard \$25,797 that he received in cash in the Pitcher estate and by failing to deposit it into either the Estate account or his CTA.
- 167. Mr. Dunn violated Rule 1.15 by misappropriating the funds of the Tassie Trust, the Pitcher Estate, and the Martel Trust as set forth herein.

**Rule 3.3: Candor Toward the Tribunal**

- 168. Allegations set forth above are incorporated by reference.
- 169. Rule 3.3 states, in pertinent part:

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

170. Mr. Dunn violated Rule 3.3 when he knowingly submitted false Trust Account Compliance Certificates for the reporting periods covering June 1, 2016 through May 31, 2020 (*i.e.* four Certificates).
171. These Certificates falsely represent that Mr. Dunn was in compliance with Supreme Court Rule 50 and Rule 1.15, given his commingling of his own funds in the CTA, his misappropriation as set forth herein, and his total abdication of the duty to identify disbursements from the CTA as corresponding to individual clients.
172. Mr. Dunn violated Rule 3.3 when he knowingly filed false Accountings in Probate Court in the Pitcher Estate, which failed to note his distributions of Estate funds to beneficiaries Swauger and Skiathitis, and which failed to note his receipt of \$25,797 in cash from the Pitcher Estate.

**Rule 8.4(b): Commission of a Criminal Act**

173. Allegations set forth above are incorporated by reference.
174. Rule 8.4(b) states as follows:

It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

175. Mr. Dunn violated Rule 8.4(b) because he engaged in criminal acts when he misappropriated the funds of the Tassie Trust, the Pitcher Estate, and the Martel Trust as set forth herein.

176. Mr. Dunn's criminal acts in misappropriating the funds of the Tassie Trust, the Pitcher Estate, and the Martel Trust as set forth herein constitute theft by unauthorized taking as defined by N.H. RSA § 637-3 because Mr. Dunn exercised unauthorized control over the property of another with a purpose to deprive him thereof.

**Rule 8.4(c): Deceit**

177. Allegations set forth above are incorporated by reference.

178. Rule 8.4(c) states as follows:

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

179. Mr. Dunn violated Rule 8.4(c) when he represented to Stephanie Blouin that he maintained "around \$100,000" in trust for her benefit in the fall of 2020, when in fact he never held more than \$3,218.16 on her behalf in that time period.

180. Mr. Dunn violated Rule 8.4(c) when he misappropriated \$30,438.62 from the Pitcher Estate account, and when he misappropriated \$25,797 in cash from the Pitcher estate as set forth herein.

181. Mr. Dunn violated Rule 8.4(c) when he misappropriated \$234,593.75 from the Tassie Trust as set forth herein.

182. Mr. Dunn violated Rule 8.4(c) when he misappropriated \$48,925.02 from the Martel account as set forth herein.

### **Rule 8.4(a): General Rule**

183. In the event that any one of the above alleged rule violations is proven by clear and convincing evidence, this would necessarily constitute a violation of N.H. R. Prof. Conduct 8.4(a).

### **Conclusion**


184. Mr. Dunn is advised that he must answer this Notice of Charges within 30 days of the date of his receipt of this Notice of Charges. See Sup. Ct. R. 37A(III)(b)(3)(A). Mr. Dunn's answer must be in writing, must respond specifically to each allegation of this Notice of Charges, and must assert all affirmative defenses. See Sup. Ct. R. 37A(III)(b)(3)(B).
185. **In the event Mr. Dunn fails to file an answer, the allegations set forth in this Notice of Charges "shall be deemed to be admitted."** See Sup. Ct. R. 37A(III)(b)(3)(A).
186. It is the duty of Disciplinary Counsel to request that the chair of the Hearings Committee appoint a hearing panel in this matter either upon receiving an answer from Mr. Dunn, or upon the expiration of the 30-day period for him to file an answer. See Sup. Ct. R. 37A(III)(b)(4).
187. Mr. Dunn is advised that he has the right to be represented by counsel, and to testify and present evidence on his own behalf. See Sup. Ct. R. 37A(III)(b)(2).
188. This Notice of Charges and the file of Disciplinary Counsel (other than work product and internal memoranda of the Attorney Discipline Office) is now a public file. Further, the proceedings related to this Notice of

Charges that take place before the Hearings Committee and Professional Conduct Committee, as well as the written decisions (other than work product, internal memoranda, and deliberations) of both, shall be public. See Sup. Ct. R. 37(20)(b)(2).

189. Mr. Dunn's attention is also directed to Supreme Court Rule 37A(III)(b)(5), which governs discovery in this matter, as well as subsection (6) of that Rule, which provides for a pre-hearing conference.

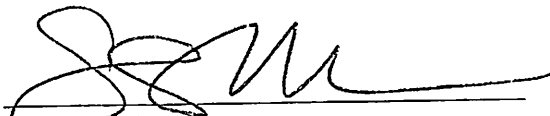
New Hampshire Supreme Court  
Attorney Discipline Office  
4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
(603) 224-5828

Date: September 28, 2021

By:   
Sara S. Greene  
Disciplinary Counsel

CERTIFICATION

I, Sara S. Greene, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that the original of the aforesaid Notice of Charges is being sent on this 28<sup>th</sup> day of September 2021, to David C. Dunn, Esquire at the Law Office of David C. Dunn, PA, 14 Temple Ct, Manchester, NH 03014 and Mr. Dunn's counsel, Mark D. Morrissette, Esquire, at McDowell-Morrissette, PA, 282 River Road, PO Box 3360, Manchester, NH 03105-3360, by certified mail #7017 0660 0000 7121 2420, and #7017 0660 0000 7121 2437 return receipt requested and a copy to both by regular mail postage prepaid. A copy has also been sent to Mr. Joseph F. Byron.

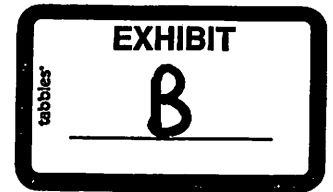
  
Sara S. Greene  
Disciplinary Counsel

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In the Matter of David C. Dunn, Esquire

#LD-2021-0003



**RESPONDENT'S ANSWER TO THE NOTICE OF CHARGES**  
**PURSUANT TO RULE 37A(III)(b)(3)(A) and (B)**

NOW COMES the Respondent, David C. Dunn, by and through his attorneys, McDowell and Morrissette, P.A., and respectfully files an Answer to the Notice of Charges Pursuant to Rule 37A(III)(b)(3)(A) and (B). The Respondent provides the following:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. Admitted.
14. Admitted.
15. Admitted.

16. Admitted.
17. Admitted.
18. Admitted, but the respondent believes the cash in-hand was \$25,797.00.
19. Admitted.
20. Admitted.
21. Admitted.
22. Admitted.
23. Admitted.
24. Admitted.
25. Admitted.
26. Admitted.
27. Admitted.
28. Admitted.
29. Admitted.
30. Admitted.
31. Admitted.
32. Admitted.
33. Admitted.
34. Admitted.
35. Admitted.
36. Admitted.
37. Admitted.
38. Admitted.

39. Admitted.

40. Admitted.

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted.

45. Admitted, but with respect to 45(a), the Respondent, for the purpose of this proceeding, does not contest the information set out in the bank records, but would point out that the payments were made to the law firm as opposed to Respondent individually.

With regard to 45(b), for purposes of this proceeding, while the Respondent has no precise memory of the details in this subparagraph, Mr. Dunn does not contest the allegations relating to the repayment to the Estate.

With respect to 45(c), for purposes of this proceeding, admitted.

46. Admitted.

47. Admitted.

48. Admitted.

49. Admitted.

50. Admitted.

51. Admitted.

52. For the purpose of this proceeding, the Respondent admits that he did not provide billing, invoices or time sheets for the work performed on the Estate. The billing sub-file has not been located through the present time.

53. For the purpose of this proceeding, the Respondent admits that it was possible that the referenced amount was not earned as legal fees.

54. For the purpose of this proceeding, the Respondent admits that he has not provided proof of the legal services provided to the Estate. Nevertheless, the Respondent acknowledges that he did not keep contemporaneous time records to verify his work efforts in the amount of the legal fees.

55. For the purpose of this proceeding, the Respondent does not contest the allegations.

56. The Respondent does not take a position as to what Mr. Swauger produced to the ADO, but the Respondent has an understanding that the cash received from Mr. Swauger was \$25,797.00.

57. Admitted.

58. The Respondent does not take a position what Mr. Swauger provided to the ADO but the Respondent has an understanding that the cash received from Mr. Swauger was \$25,797.00.

59. For the purpose of this proceeding, the Respondent does not contest the allegations.

60. Admitted, but it is not clear that the Final Accounting was overdue as the quiet title action was pending.

61. The Respondent does not contest the allegation.

62. The Respondent, for purpose of this proceeding, does not contest the allegations.

63. For the purpose of this proceeding, the Respondent does not contest the allegations.

64. For the purpose of this proceeding, the Respondent does not contest the allegations.

65. For the purpose of this proceeding, the Respondent does not contest the allegations.

66. Admitted.

67. Admitted.

68. For the purpose of this proceeding, the Respondent does not contest the allegations.

69. Admitted.

70. Admitted.

71. Admitted.

72. Admitted.

73. Admitted.

74. Admitted.

75. Admitted.

76. Admitted.

77. Admitted in a general sense. Mr. Dunn did not have a specific understanding of the mental health status of Ms. Blouin, but the Respondent was aware that Ms. Blouin had had health issues that kept her from working.

78. The Respondent cannot confirm the precise value of the assets that was left for the benefit of Ms. Blouin, however, the Respondent does not contest that assets were left for the benefit of Ms. Blouin, but the Respondent does not have a memory of providing statements to Ms. Blouin and the Respondent does believe that meetings were held with Ms. Blouin where documentation was shown (but not provided) to Ms. Blouin.

79. Admitted.

80. Admitted; however, discussions were had with Ms. Blouin where Ms. Blouin shared information about the amount of monies that would be necessary to provide for her monthly living expenses.

81. For the purpose of this proceeding, the Respondent does not contest the information set out within the bank records subpoenaed by the ADO.

82. For the purpose of this proceeding, the Respondent does not contest the allegations with regard to withdrawals and deposits into his law firm's operating account, but cannot independently verify the amounts referenced.

83. For the purpose of this proceeding, the Respondent does not contest the allegations, however, the Respondent does not have a recollection with regard to the March 3, 2017 deposit into his Client Trust Account, but does not contest the information in the bank records.

84. For the purpose of this proceeding, the Respondent does not contest the information regarding the deposits into the law firm's Operating Account or the Client Trust Account as previously detailed, though the Respondent has no independent memory of the amount of the deposits.

85. For the purpose of this proceeding, the Respondent does not contest the withdrawals but does not have an independent memory as to when the funds were depleted.

86. The Respondent admits that he paid Ms. Blouin from monies that originated from his Operating Account, but he has not independently confirmed the dates set out in the Notice of Charges.

87. For the purpose of this proceeding, the Respondent admits that he made payments to Ms. Blouin from his operating account.

88. For the purpose of this proceeding, the Respondent admits that he continued to pay Ms. Blouin, but he does not have a memory of a different approach with regard to the payment of Ms. Blouin with regard to use of his Operating Account or Client Trust Account.

89. For the purpose of this proceeding, the Respondent admits that he paid Ms. Blouin from monies that originated from his Operating Account, but he has not independently confirmed the dates set out within the referenced paragraphs.

90. The Respondent admits that he continued to pay Ms. Blouin.

91. The Respondent admits that he continued to pay Ms. Blouin, but he does not have a memory of a different approach with regard to the payment of Ms. Blouin with regard to the use of his Operating Account or Client Trust Account.

92. Admitted.

93. For the purpose of this proceeding, the Respondent does not contest the allegations.

94. Admitted.

95. Admitted.

96. The Respondent admits that he informed Ms. Blouin that he estimated that the value of the monies held or owed to her were around \$100,000.

97. For the purpose of this proceeding, the Respondent does not contest the allegations, and Respondent has always had the intent to provide the monies that were owed to Ms. Blouin.

98. For the purpose of this proceeding, the Respondent does not contest the allegations.

99. For the purpose of this proceeding, the Respondent does not contest the allegations.

100. Admitted.

101. Admitted.

102. The Respondent has no independent memory of the deposits referenced within this paragraph. For the purpose of this proceeding, the Respondent has no reason to contest the bank records referenced.

103. Denied: the Respondent consistently documented disbursements from the Client Trust Account where appropriate within the QuickBooks database.

104. The Respondent has no basis to challenge the accuracy of the bank records obtained but the client did identify his clients in QuickBooks in the prompt for client reference.

105. For the purpose of this proceeding, the Respondent does not contest the allegations.

106. For the purpose of this proceeding, the Respondent does not contest the allegations.

107. The Respondent has no basis to challenge the efforts of the subpoenaed bank records.

108. The Respondent has no basis to challenge the efforts of the ADO.

109. For the purpose of this proceeding, the Respondent has no basis to challenge the bank records, and without access to the client file, which has been produced to the ADO, the Respondent cannot confirm the delineation of the amounts set out within this paragraph.

110. The Respondent cannot confirm the amounts set out in this paragraph but he does not have access to the file and cannot confirm the information without an accounting.

111. The Respondent cannot confirm the amounts detailed in this paragraph without access to the file and an ability to do an accounting.

112. The Respondent cannot confirm the amounts detailed in this paragraph without access to the file and an ability to do an accounting.

113. The Respondent cannot confirm the accounting detailed in this paragraph without access to the file materials and the ability to do a formal accounting.

114. The Respondent cannot confirm the accounting detailed in this paragraph without access to the file materials and the ability to do a formal accounting.

115. The Respondent cannot confirm the accounting detailed in this paragraph without access to the file materials and the ability to do a formal accounting.

116 – 155. The Respondent cannot confirm the numbers set out but agrees that the timeline, as referenced, seems accurate. With respect to the duties delineated within paragraphs 116 – 155, for purposes of this proceeding, the Respondent does not contest the allegations.

156 – 174. For purposes of this proceeding, the Respondent agrees with the obligations that were imposed by the New Hampshire Rules of Professional Conduct and he does not contest the allegations.

175. The Respondent had no intention to and did not knowingly deprive any person, client or entity of funds or assets.

176. The Respondent had no intention to and did not knowingly deprive any person, client or entity of funds or assets.

177. The Respondent had no intention to and did not knowingly deprive any person, client or entity of funds or assets.

178. The Respondent had no intention to and did not knowingly deprive any person, client or entity of funds or assets.

179. The Respondent had every intention to honor all monies that were to be held in trust for Ms. Blouin.

180. The Respondent has no ability to confirm the monies detailed in paragraphs 180 to 182 without a formal accounting, and the Respondent had no intention to deprive any person or entity of any value, property or monies.

181. The Respondent has no ability to confirm the monies detailed in paragraphs 180 to 182 without a formal accounting, and the Respondent had no intention to deprive any person or entity of any value, property or monies.

182. The Respondent has no ability to confirm the monies detailed in paragraphs 180 to 182 without a formal accounting, and the Respondent had no intention to deprive any person or entity of any value, property or monies.

183. Admitted.

184. Admitted.

185. Admitted.

186. Admitted.

187. Admitted.

188. Admitted.

189. Admitted.

Respectfully submitted,

DAVID C. DUNN  
By and Through His Attorneys

DATED: November 3, 2021

By: /s/ Mark D. Morrissette  
Mark D. Morrissette, #10033  
McDOWELL & MORRISSETTE, P. A.  
282 River Road, P.O. Box 3360  
Manchester, NH 03105-3360  
(603) 623-9300  
[mmorrissette@mcdowell-morrissette.com](mailto:mmorrissette@mcdowell-morrissette.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2021 a true copy of the foregoing has been emailed to:

Sara Greene, Esquire ([sgreene@nhattyreg.org](mailto:sgreene@nhattyreg.org))  
Attorney Discipline Office  
4 Chenell Drive, Unit 102  
Concord, NH 03301

Andrea Labonte, Esquire ([alabonte@nhattyreg.org](mailto:alabonte@nhattyreg.org))  
Attorney Discipline Office  
4 Chenell Drive, Unit 102  
Concord, NH 03301

David C. Dunn ([davidcdunn@comcast.net](mailto:davidcdunn@comcast.net))  
14 Temple Court  
Manchester, NH 03104

By: /s/ Mark D. Morrissette