

**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**ORDER**

**LD-2021-0012, In the Matter of Robert M. Fojo, Esquire**

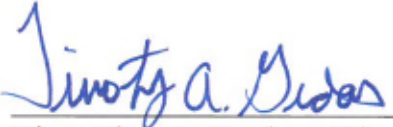
On April 26, 2022, Attorney Robert M. Fojo filed a renewed and assented-to request to resign. The assented-to request was accompanied by his affidavit, which satisfies the requirements of Rule 37(11) and complies with our orders dated March 11 and 22, 2022.

In accordance with Rule 37(11), Attorney Fojo's resignation from the bar is accepted. Attorney Fojo shall reimburse the Attorney Discipline Office for the costs incurred in the investigation and prosecution of this matter.

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

DATE: May 18, 2022

ATTEST:

  
**Timothy A. Gudas, Clerk**

Distribution:

William C. Saturley, Esq.  
Mark P. Cornell, Esq.  
Elizabeth M. Murphy, Esq.  
Andrea Q. Labonte, Esq.  
File

IN THE MATTER OF  
ROBERT M. FOJO, ESQUIRE

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RESPONDENT ROBERT M. FOJO'S  
RESPONSE TO THE COURT'S ORDER OF APRIL 20, 2022  
and RENEWED (AND ASSENTED-TO) REQUEST TO RESIGN

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Respondent Robert M. Fojo asks the Court to accept his resignation in lieu of filing an updated procedural order in his disciplinary matter. The ADO assents to the resignation affidavit.

1. Respondent submitted a request to resign from the practice of law on March 15.
2. The ADO objected to Respondent's affidavit.
3. The Court rejected the request by Order of March 22. In that Order, the Court set conditions for the Respondent's affidavit of resignation.
4. On April 4, 2022, Respondent once again requested that the Court accept his resignation from the New Hampshire Bar and the practice of law.
5. The ADO objected on April 8.
6. By Order of April 20, 2022, the Court rejected Respondent's request and ordered the parties to submit an updated procedural order for the Respondent's disciplinary matter.
7. Respondent wishes to avoid a disciplinary proceeding. He hereby submits *Respondent Robert M. Fojo's Affidavit of Resignation Pursuant to Supreme Court Rule 37(11), Dated April 26, 2022* in lieu of a proposed procedural order.
8. The April 26 Affidavit meets the requirements of Supreme Court Rule 37(11). The Affidavit meets the requirements of the March 22 Order. The Affidavit remedies the objections raised by the ADO on April 8.

9. The ADO was shown the affidavit. Elizabeth Murphy, Assistant Disciplinary Counsel, expressed the ADO's assent to the resignation request contained therein.

WHEREFORE, Respondent asks the Court to accept his affidavit of resignation.

Respectfully submitted,

ROBERT M. FOJO

By his attorneys,

PRETI FLAHERTY BELIVEAU  
& PACHIOS, PLLP

***William C. Saturley***\_\_\_\_\_

William C. Saturley, NH Bar #2256

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Dated: April 26, 2022

A copy of the foregoing *Response to the Court's Order of April 20, 2022 and Renewed Request to Resign* was delivered by electronic mail to Mark P. Cornell, Esq. and Elizabeth M. Murphy, Esq. on this 26th day of April, 2022.

***William C. Saturley***\_\_\_\_\_

William C. Saturley (NH Bar #2256)

IN THE MATTER OF  
ROBERT M. FOJO, ESQUIRE

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RESPONDENT ROBERT M. FOJO'S  
AFFIDAVIT OF RESIGNATION  
PURSUANT TO SUPREME COURT RULE 37(11),  
Dated April 26, 2022

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I, Robert M. Fojo, declare as follows under penalty of perjury.

1. I am the Respondent in this proceeding.
2. I desire to resign my license to practice law in the State of New Hampshire. Per

Sup.Ct.R. 37(11) I state:

- This resignation is freely and voluntarily rendered and is not the product of coercion or duress. I am fully aware of the implications of submitting this resignation. Sup.Ct.R. 37(11)(a)(1).
- There is presently pending an investigation into allegations that I have been guilty of misconduct. The investigation is the result of a grievance filed by Paula Dewey. The ADO docketed the matter as a complaint in July 2021 and filed a petition for my immediate suspension in December 2021, resulting in my suspension from the practice of law on an interim basis. The nature of my misconduct is set forth in the petition. Sup.Ct.R. 37(11)(a)(2).
- I acknowledge that the material facts upon which the petition, the referee's report and recommendations dated January 12, 2022, and this court's order dated February 25, 2022 are predicated are true. Sup.Ct.R. 37(11)(a)(3).
- I know that charges predicated upon the misconduct under investigation cannot be successfully defended. Sup.Ct.R. 37(11)(a)(4).

3. I waive Supreme Court Rule 37(11)(c), which normally requires that the contents of this affidavit shall not be disclosed publicly or made available for use in any other proceeding.

4. I understand that my resignation will be conditioned on my reimbursement of the ADO's costs to date. I understand from the ADO that the total of those costs is presently \$393.92.

Signed and sworn to under the pains and penalties of perjury, this 26th day of April,  
2022.

*Robert M. Fojo*

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Robert M. Fojo

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

In the Matter of Robert M. Fojo, Esquire

LD-2021-

PETITION FOR IMMEDIATE INTERIM SUSPENSION  
FROM THE PRACTICE OF LAW

The New Hampshire Supreme Court Attorney Discipline Office (“ADO”) respectfully petitions this Court to order the immediate interim suspension of the Respondent Robert M. Fojo, Esquire (“Mr. Fojo” or “Respondent”) from the practice of law pursuant to New Hampshire Supreme Court Rule 37(16)(f) (“the court may suspend attorneys . . . upon such terms and conditions as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession.”) and Supreme Court Rule 37(9-A). In support, the ADO states as follows:

1. Respondent, Robert M. Fojo, was admitted to the New Hampshire Bar on May 26, 2010. Mr. Fojo is currently practicing law at Fojo Law, 264 South River Road, Suite 464, Bedford, NH 03110.

Summary

2. The ADO has determined that Respondent has engaged in conduct involving misappropriation of \$14,666.67 from one client and

\$33,350.00 from another client and has engaged in the mishandling of client funds held in trust in his possession or under his control.

3. As set forth below, Mr. Fojo is significantly out of trust in three client matters:
  - a. Paula Dewey: \$14,666.67;
  - b. Shantanu and Satish Jha: \$50,020.00;
  - c. Curtis Pedearo: \$33,350.00.
4. As of December 14, 2021, Mr. Fojo's IOLTA account had a balance of \$100.00.
5. The ADO is bringing this request under Supreme Court Rules 37(16)(f) and 37(9-A).
6. In addition, this Petition for Interim Suspension also requests that the ADO be appointed to conduct an inventory of Mr. Fojo's client files.
7. Respondent's conduct creates a substantial threat of serious harm to the public and substantially impairs his ability to continue to practice in conformity with the Rules of Professional Conduct and Supreme Court Rule 50.

## Factual Allegations

### Background

8. Mr. Fojo is an attorney licensed to practice law in New Hampshire. Mr. Fojo was admitted to practice on May 26, 2010.

9. Mr. Fojo was also admitted to practice law in Massachusetts on December 16, 2014. He is currently on active status for the Massachusetts Bar.
10. Mr. Fojo was also admitted to practice law in Florida on September 21, 2005. He is currently administratively suspended for failure to pay dues in Florida.
11. At all times material to this proceeding, Mr. Fojo operated his law office as Fojo Law PLLC, 264 S. River Road, Suite 464, Bedford, NH 03110.
12. Mr. Fojo has no previous disciplinary history in New Hampshire.

Paula Dewey Matter: Initial Grievance and ADO Investigation

13. On July 19, 2021, Paula Dewey submitted an online grievance to the Attorney Discipline Office (“ADO”). The grievance alleged the following:
  - a. Ms. Dewey had hired Respondent to represent her regarding a slip and fall in which she suffered personal injuries.
  - b. That her personal injury claim had settled on December 4, 2020 and according to the records of Acadia Insurance (“Acadia”), a settlement check payable to Fojo Law PLLC as Attorney(s) for Paula Dewey (“settlement check”) had issued on December 16, 2020 and had cleared on December 24, 2020.
  - c. That as of the date of the grievance, Ms. Dewey had not received any of her settlement proceeds.
  - d. That she had been emailing the Respondent and he told her that Acadia was going “to reissue the check.”

14. Attached to the grievance, among other documents, was a copy of the negotiated check for \$40,000 from Acadia, the general release signed by Ms. Dewey and two printed screenshots of text messages Ms. Dewey had received from Mr. Fojo prior to filing the grievance.
15. In the first text message, sent on May 11, 2021, Mr. Fojo stated:

Hi Paula:

For whatever reason, the carrier didn't issue the check or it wasn't sent out. They are going to re-issue the check.  
Thanks for your patience.
16. In the second text message sent on June 25, 2021, Mr. Fojo stated: "I have reached out and am determining what happened."
17. After receipt of the grievance, this matter was docketed by the ADO.
18. Deputy General Counsel for the ADO, Mark P. Cornell requested a mandatory response from Mr. Fojo via letter dated July 21, 2021, asking that Mr. Fojo provide a complete copy of Ms. Dewey's file, copies of bank statements for Respondent's IOLTA account from December 2020 to the present, copies of ledger cards for all clients and third party funds held in the Respondent's IOLTA account and copies of all monthly reconciliations for the IOLTA account for the time period of December 2020 to July 2021.
19. Mr. Fojo responded via email on July 28, 2021 to Mr. Cornell, stating in part:

I never misappropriated the funds from Ms. Dewey's Settlement or intended to deprive her of them in any fashion. I would never do that to a client. What occurred was an

internal error that I failed to correct in due time, and I have since taken steps to rectify it.

20. Mr. Fojo's email explained that the aforementioned internal error occurred:

When Ms. Dewey's check came in, I was not in the office, and my new assistant deposited it in the IOLTA account. She did not flag it for me, however, and I then overlooked the fact that the funds were there. There were other funds in the account at the time (some funds were being held for another client for tax purposes, and another set of funds were there that belonged to my firm), so I didn't notice any change.

21. Mr. Fojo further explained:

I did not discover this issue until several months later. I believed for a long time that the check had not arrived.... At some point, we were led to believe that the check was lost and had to be reissued.

22. Mr. Fojo also stated: "I don't keep ledger cards. Rule 50(2)(B)(ii) requires attorneys to keep "ledger or comparable records showing" the relevant information..." Mr. Fojo added: "I don't have monthly reconciliations for every transaction going back to December."

23. In summary, Mr. Fojo advised that he had been using various software programs to maintain record-keeping and reconciliations for the IOLTA account, that he encountered problems with that record-keeping, and that he planned to take steps to rectify the situation.

24. Mr. Fojo also informed Mr. Cornell that he was trying to confirm one of the liens on the Dewey matter with DHHS and hoped to have that done by the next day.

25. Mr. Fojo did not provide a complete copy of Ms. Dewey's file until November 21, 2021.
26. The following day, July 29, 2021, Mr. Fojo supplemented his response to Mr. Cornell by providing via email the requested IOLTA bank statements from the Citizens Bank account ending in 1166 ("Citizens IOLTA 1166 "), along with copies of various emails and other documents on the Dewey matter. No ledger cards, records comparable to ledger cards, or reconciliations were provided.
27. The bank statements for Citizens IOLTA 1166 provided by Mr. Fojo reflected that the settlement check for \$40,000.00 made payable to "FOJO LAW PLLC AS ATTORNEYS FOR PAULA DEWEY" was deposited on December 23, 2020.
28. Nonetheless, as of June 30, 2021, the balance in the IOLTA account was \$5,225.00.
29. As of June 30, 2021, Mr. Fojo had not disbursed any funds to Ms. Dewey from the Citizens IOLTA 1166.
30. As of June 30, 2021, Mr. Fojo had not paid any costs or medical bills on Ms. Dewey's behalf from the Citizens IOLTA 1166.
31. By July 20, 2021, the balance in the Citizens IOLTA 1166 was \$699.
32. Following a request from the ADO to pay Ms. Dewey any amount she was owed consistent with Rule 1.15, Mr. Fojo, by letter dated August 9, 2021, made a partial payment to Ms. Dewey in the amount of \$12,000.00.

33. However, as of that date, Mr. Fojo was not holding sufficient funds in trust for Ms. Dewey to cover such a payment to her.
34. The IOLTA balance as of August 2, 2021 was \$7,163.50.
35. Mr. Fojo received a \$10,000 wire transfer from “Bluebell International, Inc.” into his Citizens IOLTA 1166 on August 5, 2021.
36. Mr. Fojo, in effectuating the \$12,000 payment to Ms. Dewey on August 9, 2021, utilized the funds of other clients, thereby placing other clients out of trust.
37. Mr. Fojo included with his partial payment to Ms. Dewey an invoice for \$20,098.67 in which he itemized his alleged fees and expenses as follows:
  - a) \$1,574.65 Marcam & Associates (Cheshire Medical Center)
  - b) \$32.00 Brattleboro Memorial Hospital - Invoice for Medical Records
  - c) \$280.00 Superior Court - Filing Fee
  - d) \$4,878.69 Other Medical Expenses (not paid by Acadia)
  - e) \$13,333.33 of \$40,000.00 Contingency Fee (33.33333333%)
38. In his August 9, 2021 letter to Ms. Dewey, Mr. Fojo stated, “I am still awaiting word from New Hampshire Healthy Families concerning the amount of a lien it asserted. I will continue to keep you posted.”
39. Ms. Dewey has represented to the ADO that she has been in contact with New Hampshire Healthy Families and she did not owe them anything. They told her that if there was a lien it would be through Rawlings

Group. Ms. Dewey has represented she has never received a bill from Rawlings Group and is in the process of confirming they do not hold a lien.

40. The ADO has contacted representatives of the DHHS regarding any liens relating to Ms. Dewey's injury.
41. DHHS would not release information until Ms. Dewey signed an authorization. Ms. Dewey provided DHHS with the authorization on December 17, 2021. DHHS is reviewing the matter, having received the authorization by email during the afternoon of December 17, 2021.
42. As of the date of this filing DHHS has yet to confirm to the ADO whether there is a lien in place. It is expected that information will be available in the coming days.

#### ADO Further Investigation/Subpoenaed Bank Records

43. On September 27, 2021, Mr. Cornell and Elizabeth Burnett, paralegal for the ADO, met in person with Mr. Fojo.
44. Mr. Fojo provided paper copies of documents from his file for Ms. Dewey. The documents provided contained only a copy of the lien for \$1,574.55 medical bill for the Cheshire Medical Center (now in collections with Marcam & Associates).
45. The documents provided contained no other medical bills for Ms. Dewey.
46. The file did not contain any information on the DHHS lien Mr. Fojo claimed to be attempting to resolve, as he represented in his August 9, 2021 letter to Ms. Dewey and to Mr. Cornell.

47. The ADO has repeatedly requested proof of those medical expenses as well as proof of the alleged DHHS lien. Mr. Fojo has not provided them.
48. As a follow up to the September 27, 2021 meeting, Mr. Cornell requested, and on November 3, 2021, Mr. Fojo produced, a receipt and disbursement journal that included a list of deposits and disbursements for the Citizens IOLTA 1166 from January 2019 to June 2021.
49. The receipt and disbursement journal produced on November 3, 2021, did not identify the clients associated with all of the transactions. In addition, some of the transactions were for more than one client, but the information provided did not indicate the portion of the transaction attributed to each client.
50. This journal was incomplete and missing client reference information that would allow the ADO to attribute specific disbursements from the IOLTA to specific clients.
51. Mr. Fojo stated in his November 3, 2021, email "I will send some explanatory notes in a separate email, likely tomorrow." Mr. Fojo did not send the explanatory notes as promised. On November 9, 2021, Mr. Cornell sent a follow-up email to Mr. Fojo requesting the explanatory notes that had been promised, as well as a list of follow-up questions related to the information previously provided.
52. Mr. Fojo responded with the explanatory notes on November 11, 2021. Mr. Fojo did not respond to the follow-up questions, until November 19, 2021.

53. The Attorney Discipline Office was able to recreate a receipt and disbursement journal for the Citizens IOLTA 1166 and all transactions since June 1, 2019. After associating these transactions with clients, the Attorney Discipline Office was able to create ledger cards for all of the clients who had funds in the Citizens IOLTA 1166.
54. According to the information provided, Mr. Fojo attributed the following online transfers from the Citizens IOLTA 1166 to his Citizens operating account ending in 1169 (“Citizens Operating 1169”) to Ms. Dewey’s matter, from the date of deposit of the settlement check through June 30, 2021:
- a) December 23, 2020 for \$2,000.00
  - b) December 30, 2020 for \$2,000.00
  - c) February 3, 2021 for \$4,000.00
  - d) February 5, 2021 for \$2,000.00
  - e) February 5, 2021 for \$2,000.00
55. Mr. Fojo withdrew funds attributed to Ms. Dewey’s matter from the Citizen IOLTA 1166 account beginning on December 23, 2020. This is inconsistent with his statement in his response to the ADO that he was not aware that the settlement check for Ms. Dewey’s matter had been received and deposited into his IOLTA account.
56. On November 16, 2021, the ADO subpoenaed the records from Mr. Fojo’s Citizens IOLTA 1166 and Citizens Operating 1169 from June 1, 2019 through the present date.

57. The same day, in response to receiving notice of the subpoena, Mr. Fojo advised Mr. Cornell that he had closed his Citizens IOLTA more than two weeks prior, on October 27, 2021.
58. Mr. Fojo represented that he did this at the bank's suggestion, due to fraudulent deposits from an outside source.
59. Mr. Fojo claimed that the only funds remaining in the Citizens IOLTA were earned fees, so he deposited them into his operating account.
60. On October 25, 2021, two days before the Citizens IOLTA was closed, the balance in the account was \$10,451.34.
61. Mr. Fojo provided the ADO a list of clients to whom the \$10,451.34 were attributed as follows:

Nick Consoles	\$1,000.00	Fojo Law Operating Account
Robert Thate	\$3,000.00	Fojo Law Operating Account
Andrea Thurber	\$3,000.00	Fojo Law Operating Account
Thibeault Investments	\$3,250.00	Shepherds Hill Condominium Association
Rose Marte	\$201.00	Fojo Law Operating Account
	\$0.34	Fojo Law Operating Account
<b>TOTAL</b>	<b>\$10,451.34</b>	

62. None of these matters pertained to Ms. Dewey or Ms. Dewey's DHHS lien.
63. When the ADO inquired as to the monies that should be held in Mr. Fojo's IOLTA on behalf of Ms. Dewey's DHHS lien, Mr. Fojo responded via email:

Regarding the funds you are attributing to Ms. Dewey, I did not say I was holding funds for her. Rather, at my meeting

with Attorney Cornell on September 27, I explained that there was a large DHHS lien that has not been confirmed yet, and the remaining funds (the \$7,901.33 figure you mention below) from the settlement will have to be allocated to satisfy that lien. I also mentioned that I likely distributed more money to Ms. Dewey than I should have. It has been a nightmare trying to confirm the amount of the lien with DHHS. After numerous phone calls every other day, we were finally connected with someone with knowledge about this issue. They requested a letter of representation from my firm. I provided it. We have now resumed calling that individual to obtain the necessary information about the lien. I hope to have it clarified any day now, and hopefully by next week. I will continue to update you about this.

64. As of November 18, 2021, Ms. Dewey confirmed to the ADO she had not received any additional payments from Mr. Fojo, nor has she ever received evidence that her medical bills/liens were paid by Mr. Fojo. Ms. Dewey confirmed the same on December 14, 2021.
65. Mr. Cornell met in person a second time with Mr. Fojo along with his attorney, William Saturley, Esq. on December 2, 2021. Assistant Disciplinary Counsel, Elizabeth Murphy and Ms. Burnett were also present for the meeting.
66. Mr. Fojo advised that some of the line items that he had previously provided to Mr. Cornell for the disbursement journal were attributed to incorrect clients and that he needed to make corrections.
67. Mr. Cornell had requested on November 23, 2021, and then again on December 1, 2021, complete copies of the client file for Dewey and for

documentation that Ms. Dewey's medical bills and/or liens were paid by Mr. Fojo.

68. He also requested on these dates the client files for two additional client matters: Santanu and Satish Jha and Curtis Pedearé.
69. Just prior to the December 2, 2021 meeting, Mr. Fojo provided links to the electronic files for clients Dewey, Jha and Curtis Pedearé. Mr. Fojo provided supplemental paper copies of the Curtis Pedearé and Dewey files at the meeting.
70. The electronic Dewey file produced by Mr. Fojo did contain some health insurance claims forms for other smaller medical bills, in an amount totaling \$902.00.
71. The Dewey file included a copy of the lien to Cheshire Medical Center, but no additional documentation regarding the medical bills and/or liens listed in Mr. Fojo's invoice to Ms. Dewey on August 9, 2021.
72. The file did not contain any evidence payments of these medical bills or liens.
73. In an email dated December 13, 2021, Mr. Fojo, through counsel, acknowledged that there were no payments made on medical bill or liens that were not included in the file.
74. The file did not contain evidence of the amount of the DHHS lien, only a letter of representation to the DHHS dated October 8, 2021. This letter was sent months into the ADO investigation. Ms. Dewey was not copied on that letter and confirmed that she was not aware of it.

75. The ADO received the Subpoenaed records from Citizens Bank on December 3, 2021.
76. A review of the Subpoenaed records of the Citizens IOLTA 1166 and confirms the following transactions for the Paula Dewey, Shantanu and Satish Jha, and Curtis Pedearé matters:

Client Paula Dewey

77. On December 23, 2020, a settlement check in the amount of \$40,000.00 was deposited in in the Citizens IOLTA 1166 on behalf of Ms. Dewey.
78. Mr. Fojo's fee agreement with Ms. Dewey entitled him to a 1/3 fee, or \$13,333.33.
79. Between December 23, 2020 to February 5, 2021, Mr. Fojo paid himself via online transfers into his Citizens Operating 1169 the total amount of \$12,000.00.
80. These transfers all occurred prior to Mr. Fojo telling Ms. Dewey that he had not received the settlement check for her case.
81. On August 9, 2021, after Mr. Dewey's grievance was filed with the ADO, Mr. Fojo issued check number 5036 in the amount of \$12,000.00 payable to Ms. Dewey. This check was negotiated on August 19, 2021.
82. There were no other distributions out of the Citizens IOLTA 1166 on behalf of Ms. Dewey.
83. Mr. Fojo should be holding in trust for Ms. Dewey at least \$14,667.67 [(settlement funds of \$40,0000 – (Mr. Fojo's fee of \$13,333.33 + \$12,000 paid to Ms. Dewey)].

84. As of October 27, 2021, Mr. Fojo closed his Citizens IOLTA 1166, leaving a \$0 balance.
85. Mr. Fojo's current IOLTA account has a balance of \$100.00.
86. Mr. Fojo is out of trust in the Dewey matter in the amount of \$14,667.00.

Clients Shantanu Jha and Satish Jha

87. Mr. Fojo represented Satish Jha and Shantanu Jha in a contract dispute with a former employer. Case No. 226-2018-CV-00239, Hillsborough South Superior Court.
88. Messrs. Jha signed a hybrid fee agreement on January 4, 2019 that entitled Mr. Fojo to a \$12,000 flat fee, which Messrs. Jha paid.
89. In addition, the fee agreement provided that in the event of a recovery, Mr. Fojo would receive 30% of any recovery obtained before summary judgment or 40% if obtained after summary judgment.
90. Mr. Fojo filed an appearance on January 15, 2019.
91. The matter settled prior to any summary judgment motions, on or around December 15, 2019, for \$500,000.
92. Mr. Fojo thus would have been entitled to \$150,000, or 30% of the total recovery of \$500,000.
93. According to the bank records, on January 13, 2020, \$500,000 was deposited in the Citizens IOLTA 1166 on behalf of Jha in settlement of their claim.
94. On January 28, 2020, Mr. Fojo wire transferred to his client a total of \$288,000.

95. From January 13, 2020 to February 1, 2021, Mr. Fojo paid himself, according to his own disbursement journal provided to the ADO, via online transfers into Citizens Operating 1169, the total amount of \$195,020.00.
96. This amount is in addition to the \$12,000 flat fee.
97. Mr. Fojo's payments to himself of \$195,020 represents 39% of the \$500,000 recovery. His fee agreement entitled him only to 30%, or \$150,000.
98. In any event, the remaining balance of the funds held in trust for the Jha matter, after the aforementioned disbursements, was \$16,980.00.
99. Despite holding only \$16,980 in trust for the Jha matter, Mr. Fojo issued check number 5033, dated January 15, 2021, payable to the US Treasury in the amount of \$67,000.
100. Effectuating such payment would have required the use of the funds of other clients.
101. Mr. Fojo was out of trust in the Jha matter, at least, in the amount of \$50,020.00
102. On April 16, 2021, check number 5033 was presented to Citizens Bank for payment on April 16, 2021. However, it was subsequently reversed by the bank on April 19, 2021, whereby Citizens Bank credited back the \$67,000.00.
103. There were no additional deposits in the Jha matter from February 1, 2021 through May 5, 2021.

104. Thereafter, on May 5, 2021, Mr. Fojo wire transferred from the Citizens IOLTA 1166 to Jha the amount of \$67,000. Mr. Fojo used the funds of other clients to make this payment. He was out of trust at the time of the wire transfer in the amount of \$50,020.
105. In a meeting with the ADO on December 2, 2021, Mr. Fojo represented to the ADO that Jha had disputed his fee, and that Mr. Fojo agreed to a thirty percent (30%) fee.
106. Mr. Fojo represented to the ADO that he thereafter gave a “credit” to Jha.
107. The IOLTA bank records do not evidence any “credit.” There is no deposit by Mr. Fojo of his own funds into the IOLTA to effectuate any “credit” to client Jha.

Client Curtis Pedearé

108. Mr. Fojo represented Curtis Pedearé in a personal injury matter stemming from an injury on August 25, 2017.
109. The fee agreement in the Pedearé matter provided for a 1/3 attorneys fee of the amount recovered.
110. On August 6, 2020, Mr. Fojo deposited \$50,000 into the Citizens IOLTA 1166 in the Pedearé matter. The payor on the check was Geico General Insurance.
111. On August 10, 2020, Mr. Fojo issued a check in the amount of \$33,584 to Mr. Pedearé.
112. On the same day, Mr. Fojo issued a check in the amount of \$16,416 to himself.

113. These disbursements zeroed out the funds held for Mr. Pedearé.
114. On February 16, 2021, Mr. Fojo deposited an additional \$50,000 into the Citizens IOLTA 1166 on behalf of Mr. Pedearé.
115. The payor on the check was Geico Advantage Insurance Company.
116. The second check was from Geico as part of Mr. Pedearé's uninsured/underinsured motorist coverage.
117. Between February 24, 2021, and May 3, 2021, Mr. Fojo transferred \$39,000 to his operating account attributed to the Pedearé matter, according to his disbursement journal that he re-created during the ADO's investigation.
118. This amount is well over a 1/3 contingency fee. Thirty three percent (33%) of \$50,000 is \$16,665.
119. Mr. Fojo did not disburse any portion of the \$50,000 received on February 16, 2021 to Mr. Pedearé.
120. Mr. Fojo did not disburse any portion of the \$50,000 received on February 16, 2021 to any medical provider on behalf of Mr. Pedearé.
121. Mr. Fojo did not provide Mr. Pedearé with a settlement summary setting forth in writing the remittance to the client from his personal injury matter and the method of its determination.
122. Mr. Fojo appears to be out of trust in the amount of \$33,500 on behalf of Mr. Pedearé.
123. On November 30, 2021, months after the ADO investigation began, Mr. Fojo produced a document entitled "Addendum to Engagement Letter."

124. The document was signed by Mr. Fojo and Curtis Pedearé and is dated November 30, 2021.
125. The Addendum purports to amend the original Engagement Letter entered into by Mr. Pedearé and Mr. Fojo in 2018, which was a standard contingency fee agreement for a personal injury matter.
126. The Addendum does not appear to pertain to a new or distinct legal matter that Mr. Fojo handled for Mr. Pedearé.
127. It states in full:

This addendum is made on November 30, 2021, to the Engagement Letter, dated April 1, 2018, between Fojo Law, P.L.L.C., and Curtis Pedearé. The remaining funds referenced in the Fees and Costs Section of that Engagement Letter (after Fojo Law's Fee, out-of-pocket costs, and any medical liens were deducted from it) are and were paid to Fojo Law as compensation for services rendered by Fojo Law to Mr. Pedearé. These services include, but were not limited to, the following: conferences, advice, court sessions, deposition preparation and participation, correspondence, review and preparation of legal documents and filings, document review and preparation and production, legal research, meetings, and telephone conversations. Fojo Law was also entitled to be reimbursed from those funds for any out-of-pocket costs associated with the aforementioned services, including any of the following: court costs, all out-of-pocket expenses to discover, preserve, and present evidence, reasonable and necessary travel costs, mileage, mail or courier fees, mediation fees, transcription fees, printing fees, other filing fees, and expert fees.

128. Notably, the Addendum does not disclose to Mr. Pedearé, the actual amount or sum of money that Mr. Pedearé is (ex post facto) authorizing Mr. Fojo to keep as fees.

129. The ADO asked Mr. Fojo, during an in-person meeting on December 2, 2021, to describe any other legal matter that Mr. Fojo handled for Mr. Pedearé that would justify the fees he took from the second deposit of \$50,000 deposited on February 16, 2021.
130. Mr. Fojo would not elaborate, claiming that Mr. Pedearé had not waived confidentiality about any other matters.
131. Rule 1.6(b)(3) contains an exception allowing an attorney to disclose otherwise confidential client information to the extent the lawyer reasonably believes necessary “to respond to allegations in any proceeding concerning the lawyer’s representation of the client.”
132. On December 14, 2021, Mr. Fojo was reminded of this exception and asked to produce all Pedearé client matters by the close of business on December 15, 2021.
133. As of the date of this filing, no additional files have been produced.
- December 2021: Mr. Fojo Opens a New IOLTA Account With An Opening Balance of \$100, Despite Being Out of Trust \$98,036.67
134. At the ADO’s urging, given that Mr. Fojo closed his old IOLTA, Mr. Fojo opened a new IOLTA account ending in 6068 at Bank of America on December 13, 2021.
135. That IOLTA has a balance of \$100, consisting solely of Mr. Fojo’s own money (presumably to cover bank costs or fees if necessary).

Client Trust Account Compliance Certificate

136. Mr. Fojo did not perform monthly reconciliations.
137. Mr. Fojo did not maintain client ledgers.

138. Mr. Fojo was out of trust in at least three client matters,
139. Despite the above facts, Mr. Fojo knowingly falsely reported on his trust account compliance certificates for the reporting years covering June 1, 2019 through May 31, 2021 that he was never out of trust, was performing monthly reconciliations, and was compliant with Rule 50.
140. Mr. Fojo's conduct in this case raises questions under the following New Hampshire Rules of Professional Conduct.

### Disciplinary Rules Violated

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

#### Rule 1.3: Diligence

142. Allegations set forth above are incorporated by reference.
143. Rule 1.3 states as follows:

A lawyer shall act with reasonable diligence and promptness in representing a client.
144. Mr. Fojo had a duty to act with reasonable diligence and promptness in representing Ms. Dewey in her personal injury case.
145. Mr. Fojo breached this duty by failing to promptly inform Ms. Dewey of the receipt of her personal injury settlement funds.
146. Mr. Fojo breached this duty when he did not promptly remit to Ms. Dewey the settlement funds she was owed.
147. Mr. Fojo breached this duty when he did not promptly remit payment to third parties entitled to such payments from the settlement funds, which

included, at a minimum, a medical bill due to the Cheshire Medical Center for \$1,574.65.

148. As such, there is clear and convincing evidence that Mr. Fojo failed to diligently represent Ms. Dewey in violation of Rule 1.3.

Rule 1.4: Communication

149. Allegations set forth above are incorporated by reference.

150. Rule 1.4 states as follows:

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter.
- (4) promptly comply with reasonable requests for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain the legal and practical aspects of a matter and alternative courses of action to the extent that such explanation is reasonably necessary to permit the client to make informed decisions regarding the representation.

151. Mr. Fojo had a duty to keep Ms. Dewey reasonably informed as to the status of her matter, including communication regarding the receipt and disbursement of any settlement funds.

152. Mr. Fojo breached his duty to Ms. Dewey by failing to adequately and accurately communicate with Ms. Dewey with regard to the receipt and disbursement of her settlement funds.
153. Mr. Fojo's failure to adequately and accurately communicate with Ms. Dewey violated Rule 1.4.
154. Mr. Fojo had a duty to keep Mr. Pedearé reasonably informed as to the status of his matter, including communication regarding the receipt and disbursement of any settlement funds.
155. Mr. Fojo breached his duty to Mr. Pedearé by failing to adequately and accurately communicate with Mr. Pedearé, in particular, with regard to the receipt and disbursement of his second settlement check.
156. Mr. Fojo's failure to adequately and accurately communicate with Mr. Pedearé violated Rule 1.4.
157. As such, there is clear and convincing evidence that Mr. Fojo's failure to accurately communicate with his clients violated Rule 1.4.

#### Rule 1.5: Fees

158. Allegations set forth above are incorporated by reference.
159. Rule 1.5 states in pertinent part as follows:
  - (a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee or expenses include the following:
    - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent.
- (b) When the lawyer has not regularly represented the client, the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or these rules. A contingent fee agreement shall be in writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses for which the client will be liable whether or not the client is the prevailing party, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

160. Mr. Fojo had a duty to provide his clients with settlement statements as set forth in Rule 1.5(a)(c).

161. Mr. Fojo breached that duty when he failed to provide Ms. Dewey, at the conclusion of her contingent fee matter, with a written statement stating

the outcome of the matter and showing the remittance to the client and the method of its determination.

162. The “invoice” Mr. Fojo provided more than 8 months after Ms. Dewey’s settlement funds were deposited into Mr. Fojo’s IOLTA did not satisfy this duty because such invoice did not state what funds were actually due and payable to her and, based on the client file as provided by Mr. Fojo, it lists as “other” medical bills a total that cannot be verified and is not documented in the client file.
163. Mr. Fojo breached that duty when he failed to provide Mr. Pedearé, at the conclusion of his contingent fee matter, with a written statement stating the outcome of the matter and showing the remittance to the client and the method of its determination.
164. As such, there is clear and convincing evidence that Mr. Fojo’s failure to provide settlement statements violates Rule 1.5.

Rule 1.15: Safekeeping Property and Supreme Court Rule 50

165. Allegations set forth above are incorporated by reference.
166. 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.

167. Mr. Fojo had a duty to handle all client funds in a manner consistent with Rule 1.15 and Supreme Court Rule 50.

168. Mr. Fojo breached that duty to his clients when he:

- a. Misappropriated approximately \$14,666.67 in settlement funds either owed to Ms. Dewey or that should have been used to satisfy Ms. Dewey's medical expenses or liens;
- b. Was out of trust in the amount of \$14,666.67 in Ms. Dewey's matter;
- c. Used the funds of other clients to pay Ms. Dewey \$12,000 in August 2021;
- d. Was out of trust in the amount of \$50,020 in the Shantanu and Satish Jha matter;
- e. Used other clients' funds to issue check no. 5033, dated January 15, 2021, payable to the U.S. Treasury in the amount of \$67,000, in the Jha matter;
- f. Used funds of other clients to make a wire transfer on May 5, 2021 in the Jha matter in the amount of \$67,000;
- g. Misappropriated \$33,350 from Curtis Pedearé;
- h. Was out of trust in the Curtis Pedearé matter in the amount of the \$33,350;
- i. Failed to disburse any portion of the \$50,000 received on February 16, 2021 to Mr. Pedearé or to any medical provider on behalf of Mr. Pedearé;
- j. Left earned fees for extended periods of time in his client trust account, resulting in commingling;

- k. Commingled by leaving 30% of the \$500,000 (the legal fee portion) Jha settlement in his client trust account for more than a year;
  - l. Failed to maintain client ledgers or comparable records; and
  - m. Failed to reconcile his client trust account on a monthly basis.
169. As such there is clear and convincing evidence of violations of Rule 1.15 and Supreme Court Rule 50.

Rule 3.3: Candor Toward the Tribunal

170. Allegations set forth above are incorporated by reference.
171. Rule 3.3 states as follows:
- (a) A lawyer shall not knowingly:
    - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
    - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
    - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and comes to know if its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
  - (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
  - (c) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

172. Mr. Fojo violated Rule 3.3 by knowingly submitting false Trust Account Compliance Certificates for the reporting periods covering June 1, 2019 through May 31, 2021 falsely representing that he was never out of trust in his client trust account and that he performs monthly reconciliations of his client trust account.

173. As such, there is clear and convincing evidence of a violation of Rule 3.3.

Rule 8.4(c): Deceit

174. Allegations set forth above are incorporated by reference.

175. 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;

176. Mr. Fojo had a duty to not engage in dishonesty, fraud, deceit or misrepresentation.

177. Mr. Fojo breached that duty when he informed Ms. Dewey that Acadia Insurance was going to reissue the settlement check at a time he knew that Acadia had already issued a check, such check was deposited in his IOLTA, and he had taken legal fees from the settlement.

178. Mr. Fojo breached that duty when he failed to inform Mr. Pedearé of the actual sum of money Mr. Pedearé was authorizing Mr. Fojo to keep as legal fees at the time Mr. Pedearé signed the “Addendum.”

179. As such, Mr. Fojo's deceit and misrepresentations constitute violations of Rule 8.4(c).

Rule 8.4(a): General Rule

180. 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).

181. The conduct as set forth above demonstrates that continuing to allow Mr. Fojo to practice law poses a substantial threat of serious harm to the public.

182. The ADO will continue to investigate this matter.

183. Under the foregoing circumstances, an interim suspension is necessary to protect the public and maintain the integrity of the legal profession. The suspension should remain in effect pending completion of the disciplinary process for Mr. Fojo's docketed matter.

Mr. Fojo Should be Summarily Suspended Pursuant to Supreme Court Rule 37(16)(f)

184. The ADO requests that Mr. Fojo be suspended under Rule 37(16)(f).

185. Supreme Court Rule 37(16)(f) states:

The court may suspend attorneys or disbar New Hampshire licensed attorneys or publicly censure attorneys upon such terms and conditions as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession. The court may remand the matter to the professional conduct committee for such discipline as the court may deem appropriate.

186. Immediate summary suspension under Rule 37(16)(f) is appropriate under these circumstances for the protection of the public and the

preservation of the integrity of the legal profession, subject to Mr. Fojo requesting a hearing.

Mr. Fojo Should be Suspended Pursuant to Supreme Court Rule 37(9-A)

187. In the alternative to the relief requested under Rule 37(16)(f), the ADO requests that Mr. Fojo be suspended under 37(9-A).

188. Mr. Fojo has engaged in conduct that poses a threat of serious harm to the public by misappropriating two client's personal injury settlements and well of being significantly out of trust in another client matter.

There is a danger that Mr. Fojo will continue this course of conduct if he is not suspended from the practice of law.

Appointment of Inventory Counsel

189. The ADO requests that it be appointed to conduct an inventory of Mr. Fojo's client files and other client property in Mr. Fojo's possession, including all funds held by Mr. Fojo in any IOLTA accounts, and to take such other actions as may be necessary to protect the interests of Mr. Fojo's clients.

WHEREFORE, the Attorney Discipline Office respectfully prays that this Court:

- A. That this Court find and rule pursuant to New Hampshire Supreme Court Rule 37(16)(f) that Mr. Fojo should be summarily suspended from the practice of law to protect the public and to preserve the integrity of the legal profession; or

- B. In the alternative that this Court find and rule pursuant to New Hampshire Supreme Court Rule 37(9-A) that Mr. Fojo has engaged in the course of conduct that substantially impairs his ability to continue to practice in conformity with the Rules of Professional Conduct, and that his course of conduct creates a substantial risk of harm to the public and that this Court suspend Mr. Fojo from the practice of law on an immediate, interim basis, pending completion of the disciplinary process;
- C. Order Mr. Fojo to immediately cease all use of his IOLTA;
- D. Order Mr. Fojo to inform all clients of his suspension, and submit an affidavit attesting to same, as set forth in Supreme Court Rule 37(13)(b),(d);
- E. Enjoin Respondent from transferring, assigning, hypothecating, or in any manner disposing of or conveying any assets of clients, whether real, personal, beneficial or mixed;
- F. Appoint the ADO in accordance with Supreme Court Rule 37(17) to take possession of Mr. Fojo's files and accounts and to take such action as is necessary to protect the interests of his clients;
- G. Assess all expenses that may be incurred by the ADO in the investigation and prosecution of this matter; and

H. Enter such further orders as it may deem just and necessary to protect the public.

Respectfully submitted,

NEW HAMPSHIRE SUPREME COURT  
ATTORNEY DISCIPLINE OFFICE

Mark P. Cornell, Esquire  
NH Bar ID No. 9971  
and  
Elizabeth M. Murphy, Esquire  
NH Bar ID No. 16478  
4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
(603) 224-5828

Dated: December 17, 2021 By: /s/Mark P. Cornell  
Mark P. Cornell  
Assistant General Counsel

Dated: December 17, 2021 By: /s/Elizabeth M. Murphy  
Elizabeth M. Murphy  
Assistant Disciplinary Counsel

CERTIFICATE OF SERVICE

I, Elizabeth M. Murphy, Assistant Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that a copy of the aforesaid "Petition for Immediate Interim Suspension from the Practice of Law" was delivered on this 17<sup>th</sup> day of December 2021, to Robert M. Fojo, via the email and first class mail with a copy to his counsel, William C. Saturley, Esquire, at Preti Flaherty Beliveau & Pachios, PO Box 1318, Concord, NH 03302.

/s/Elizabeth M. Murphy  
Elizabeth M. Murphy  
Assistant Disciplinary Counsel

The State of New Hampshire  
Supreme Court

Case No. LD-2021-0012

In the Matter of Robert M. Fojo, Esquire

Referee's Recommendations

On December 17, 2021, the Attorney Discipline Office (ADO) filed a petition for the immediate interim suspension of Attorney Robert M. Fojo from the practice of law, pursuant to Supreme Court Rules 37(16)(f) and 37(9-A). On December 21, 2021, the New Hampshire Supreme Court granted the petition. On the same day, Fojo requested a hearing. *See* Sup. Ct. R. 37(16)(d); *Reiner's Case*, 152 N.H. 163, 167 (2005) (*Reiner I*); *Reiner's Case*, 152 N.H. 594, 595 (2005) (*Reiner II*). He also moved to stay the interim suspension pending the hearing. On December 22, 2021, the court granted Fojo's request for a hearing, and temporarily stayed his suspension to permit him to represent a client at a criminal sentencing hearing scheduled for that day. The court otherwise denied Fojo's motion.

The hearing on the interim suspension was held before the undersigned retired Justice, as referee, on January 4, 2022. Fojo was represented by William C. Saturley, Esq., of Preti, Flaherty, Beliveau & Pachios, PLLP. The ADO was represented by Mark P. Cornell, Esq., and Elizabeth M. Murphy, Esq. Both parties proceeded by offers of proof. In support of its proffer, the ADO submitted two three-ring binders containing documentary evidence. Fojo submitted several exhibits, as well as a hearing memorandum. Because the ADO has sustained its burden of demonstrating by a preponderance of the evidence that an interim suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession, I recommend that the interim suspension remain in place.

## **Facts**

In or about October 2017, Paula Dewey retained Fojo to represent her in a personal injury matter. The matter settled on December 14, 2020. On December 16, 2020, the defendant's insurer issued a check payable to "FOJO LAW PLLC AS ATTORNEY(S) FOR PAULA DEWEY" in the amount of \$40,000. The check was deposited into Fojo's IOLTA account on December 23, 2020. Pursuant to their fee agreement, Fojo was entitled to a one-third share of the proceeds, or \$13,333.33. Between December 23, 2020, and February 5, 2021, Fojo paid himself a total of \$12,000 in the Dewey matter by making a series of transfers from his IOLTA account to his operating account.

On February 14, 2021, Dewey—unaware that Fojo had received the settlement check—emailed a request for an update on the status of the settlement: "What's happening with my case. You told me it would probably be a few weeks. It's been 2 months. I just want to be kept informed." Fojo emailed an out-of-office response: "I will be out of the office traveling from Monday, February 22, through Wednesday, February 24. I will check email sporadically, and I will respond to any messages in the evening." There was no further response. In early May 2021, Dewey again requested an update:

I've been waiting for quite a long time, without you responding. Like I said before, I drive by that location daily reminding me of the pain I endured. You are "hoping for a response" ????. Could this have anything to do with you not following up on the case in a timely fashion. You told me in December it would be maybe 2 weeks before i would receive my settlement. Now add 4 months. And still you know nothing regarding this matter.

Fojo responded that, "[f]or whatever reason, the carrier didn't issue the check or it wasn't sent out. They are going to re-issue the check. Thanks for your patience."

On June 25, 2021, Dewey sent Fojo the following email:

I've tried just about everything to get your attention, with no results. I NEED my money that was supposed to be here way back

in December. If I do not hear from you I will do everything in my power to get my money. I wouldn't even care if you would answer an email and say the money is on the way. I've been more than patient with this matter. I was told by YOU, back in December, maybe a couple weeks. Over 6 months and still no money???? And not any answer from you at all.

Fojo emailed back, stating that "I have reached out and am determining what happened." Dewey responded that the "[l]ast message I received ... from you was that they were reissuing the check. Long time ago. I NEED my money."

In July 2021, Dewey contacted the defendant's insurer. She was informed that the settlement check had in fact been issued and had cleared in December 2020. Thereafter, Dewey filed a grievance with the ADO, and the matter was docketed as a complaint. On July 21, 2021, the ADO directed Fojo to provide, by July 28, 2021, *inter alia*, a response to Dewey's complaint, a complete copy of Dewey's client file, and copies of documentation related to Fojo's IOLTA account—including bank statements, client ledger cards, and monthly reconciliations for the time period December 2020 through July 2021.

On July 28, 2021, Fojo responded to the ADO, denying that he had misappropriated Dewey's settlement funds, and contending that "[w]hat occurred was an internal error that I failed to correct in due time, and I have since taken steps to rectify it." Fojo explained that because of the COVID-19 pandemic he had to hire a new, part-time assistant. "When Ms. Dewey's settlement check came in, I was not in the office, and my new assistant deposited it in the IOLTA account." He further explained that the new assistant "did not flag it for me, however, and I then overlooked the fact that the funds were there," noting that "[t]here were other funds in the account at the time (some funds were being held for another client for tax purposes, and another set of funds were there that belonged to my firm), so I did not notice the change." He stated that he "did not discover this issue until several months later," and "believed for a long time that the check had not arrived ... At some point, we were led to believe the check was lost and had to be re-issued."

Fojo also informed the ADO that he had been using various software programs to maintain his IOLTA account records, and that he planned to take steps to rectify the bookkeeping problems that had occurred. He provided the requested bank statements but acknowledged that he did not have monthly reconciliations for every IOLTA transaction, and that he does not keep client ledger cards. He observed that Supreme Court Rule 50 allows for the maintenance of client ledgers or “comparable records” showing the relevant information. *See* Sup. Ct. R. 50(2)(B)(ii). Over the course of the ADO investigation, no such comparable records were provided. Instead, after considerable back and forth between the ADO and Fojo, the ADO was able to piece together and recreate a receipt and disbursement journal for the IOLTA account, as well as client ledger cards, detailing the transactions from June 2019 through October 2021. Although Fojo initially provided several documents from his client file for the Dewey matter, he did not provide a complete copy of the file until nearly the end of November 2021.

In his July 2021 response to the ADO, Fojo also represented that he was preparing an invoice in the Dewey matter and that he would issue her a check once he was able to confirm a purported lien held by the New Hampshire Department of Health and Human Services (DHHS). In the event that the maximum amount of the purported lien would be less than the amount owed to Dewey, the ADO urged Fojo to issue her a partial payment. By letter dated August 9, 2021, Fojo did so, enclosing a check to Dewey in the amount of \$12,000, along with an invoice detailing his fee and certain medical expenses and court filing fees, totaling \$20,098.67. With respect to the DHHS lien, Fojo noted that he was “still awaiting word ... concerning the amount of the lien,” and “will continue to keep you posted.”

On November 16, 2021, the ADO issued a subpoena to Citizens Bank for records related to Fojo’s IOLTA and operating accounts. In response, Fojo informed the ADO that he had closed his IOLTA account on October 27, 2021,

stating that he had done so at the bank's urging due to suspicious activity with respect to the account. Fojo represented to the ADO that the only remaining funds in the IOLTA account were earned fees related to other clients, and that he had transferred those funds to his operating account. When the ADO asked Fojo about the status of the funds that should be held in trust for Dewey to cover the purported DHHS lien, Fojo stated:

Regarding the funds you are attributing to Ms. Dewey, I did not say I was holding funds for her. Rather, at my meeting with Attorney Cornell [of the ADO] on September 27, I explained that there was a large DHHS lien that has not been confirmed yet, and the remaining funds (the \$7,901.33 figure you mention below) from the settlement will have to be allocated to satisfy that lien. I also mentioned that I likely distributed more money to Ms. Dewey than I should have. It has been a nightmare trying to confirm the amount of the lien with DHHS. After numerous phone calls every other day, we were finally connected with someone with knowledge about this issue. They requested a letter of representation from my firm. I provided it. We have now resumed calling that individual to obtain the necessary information about the lien. I hope to have it clarified any day now, and hopefully by next week. I will continue to update you about this.

Eventually, at the ADO's urging, Fojo opened a new IOLTA account on December 13, 2021. He deposited \$100 of his own money to do so.

Based on its review of the bank records, and the information provided by Fojo and Dewey, the ADO determined that, as of August 9, 2021, Fojo was not holding sufficient funds in trust for Dewey to cover the \$12,000 partial payment. Prior to August 9, aside from the \$12,000 that Fojo had paid himself, no other disbursements had been made from the IOLTA account on behalf of Dewey. On July 20, the balance in Fojo's IOLTA account was \$300. Between July 20 and August 9, several deposits were made with respect to other clients, but none attributed to Dewey. Accordingly, not only was Fojo "out of trust" with respect to Dewey, but he placed other clients "out of trust" when he utilized their funds to issue Dewey the \$12,000 partial payment. Moreover, because, as

of December 13, 2021, Fojo's new IOLTA account contained only \$100 of his own money, and because no other transactions had been made on behalf of Dewey, Fojo remained "out of trust" with respect to Dewey by approximately \$14,666.67.<sup>1</sup>

Separately, during the course of its investigation into the Dewey matter, the ADO noticed and investigated discrepancies in Fojo's trust accounting with respect to two other clients: Shantanu and Satish Jha, and Curtis Pedearé.

Fojo represented Shantanu and Satish Jha in a contract dispute with a former employer. The matter settled prior to summary judgment for \$500,000. Pursuant to a hybrid contingency fee agreement, Fojo was entitled to 30% of the recovery, or \$150,000, plus a \$12,000 flat fee.<sup>2</sup> On January 13, 2020, the \$500,000 settlement was deposited into Fojo's IOLTA account. Thereafter, Fojo paid himself a total of \$195,020 in connection with the Jha matter—in addition to the flat fee that he had already received. On January 28, 2020, Fojo transferred \$288,000 to the Jhas, leaving a balance of \$16,980 in trust. Nonetheless, on May 4, 2021, Fojo wire transferred \$67,000 to the Jhas—after previously issuing, and then reversing, a check in that amount to the U.S. Treasury on their behalf. Accordingly, it appears that not only did Fojo overpay himself under the fee agreement, but he used other client funds to make the \$67,000 payment to the Jhas, and was therefore "out of trust" in the amount of \$50,020.<sup>3</sup>

Fojo represented Curtis Pedearé in a personal injury matter arising out of a motor vehicle accident. Under the fee agreement, Fojo was entitled to one-third of any recovery. On August 6, 2020, Fojo deposited a \$50,000 check from

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<sup>1</sup> This number represents the \$40,000 settlement deposited in the IOLTA account in December 2020, less Fojo's \$13,333.33 fee and the \$12,000 partial payment made to Dewey in August 2021.

<sup>2</sup> Under the fee agreement, Fojo would have been entitled to 40% of any recovery obtained **after** summary judgment.

<sup>3</sup> The ADO represents that the \$12,000 flat fee was paid; however, the record only documents a payment of \$8,900. *See* Exh. 116, 117. I assume that the rest was paid before June 2019, but this cannot be confirmed because the spreadsheets do not go back that far.

Geico General Insurance into his IOLTA account on behalf of Pedearé, and, on August 10, he distributed \$33,584 to Pedearé, and the remainder, \$16,416, to himself. On February 16, 2021, Fojo deposited an additional \$50,000 check from Geico Advantage Insurance into his IOLTA account on behalf of Pedearé. This payment was in settlement of any claims related to the accident under Pedearé's underinsured motorist coverage. Thereafter, Fojo paid himself a total of \$39,000, but made no other distributions from the IOLTA account to or on behalf of Pedearé. This amount is more than double the one-third fee (\$16,666.67) to which Fojo was entitled under the fee agreement.

On November 30, 2021, shortly after the ADO requested documents related to the Pedearé matter, Fojo and Pedearé entered into an addendum to the original engagement letter. The addendum provides, in relevant part, that “[t]he remaining funds referenced in the Fees and Costs Section of that Engagement Letter ... are and were paid to Fojo Law as compensation for services rendered by Fojo Law to Mr. Pedearé.” The addendum does not state the amount of the remaining funds, nor the amount of any such costs or fees that Pedearé agreed, after the fact, to pay Fojo.

On December 1, 2021, Fojo provided the ADO with the Pedearé matter client file. According to the ADO's proffer, during an in-person meeting on December 2, 2021, the ADO asked Fojo to describe any other legal matter that he may have handled for Pedearé that would justify the \$39,000 fee drawn from the second Geico payment. According to the ADO, Fojo declined to answer, claiming that Pedearé had not waived client confidentiality with respect to any other matters. Accordingly, Fojo appears to have overpaid himself in the Pedearé matter and is “out of trust” by approximately \$33,333.33.

On December 17, 2021, the ADO filed the instant petition for Fojo's immediate interim suspension from the practice of law.

## Analysis

“The court may suspend attorneys or disbar New Hampshire licensed attorneys or publicly censure attorneys upon such terms and conditions as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession.” Sup. Ct. R. 37(16)(f). “[T]he court may take such action on its own motion as it deems necessary,” Sup. Ct. R. 37(16)(h), and “may make such temporary orders as justice may require either with or without a hearing,” provided that the “[r]espondent attorney shall be entitled to be heard after any ex parte order,” Sup. Ct. R. 37(16)(d). The ADO has the burden of demonstrating, by a preponderance of the evidence, that the interim suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession. *See Gallant’s Case*, 170 N.H. 528, 535 (2017); *Reiner I*, 152 N.H. at 167; Sup. Ct. R. 37(16)(f).

“The injury to the public and to the profession is substantial whenever an attorney is dishonest.” *Gallant*, 170 N.H. at 538. “No single transgression reflects more negatively on the legal profession and erodes public confidence in the bar more completely than a lie.” *Id.* (quotations omitted). “This is because the privilege of practicing law includes the concomitant responsibilities of truth, candor and honesty.” *Id.* (quotation omitted). “Lawyering involves a public trust and requires an unswerving allegiance to honesty and integrity.” *Id.* (quotation omitted). “Accordingly, it is the responsibility of every attorney at all times to be truthful.” *Id.* (quotation omitted). Additionally, “[i]n cases involving an attorney’s misuse of client funds, we often take severe disciplinary action.” *Coddington’s Case*, 155 N.H. 66, 70 (2007) (quotation omitted). “This is because a lawyer’s obligation to refrain, at the least, from misuse of a client’s property must stand among the most insistent of professional norms.” *Id.* (quotation and brackets omitted). Indeed, the court has even disbarred attorneys in cases involving dishonesty, the misuse of client funds, and “out of trust” IOLTA accounts. *See id.* (compiling cases); *Nardi’s Case*, 142 N.H. 602,

606 (1998) (“An attorney’s misuse of funds entrusted to him demonstrates such lack of common honesty as to clearly justify an attorney’s disbarment. In addition, because no single transgression reflects more negatively on the legal profession than a lie, attorney misconduct involving dishonesty also justifies disbarment.”) (citations, quotations and brackets omitted).

In this case, the ADO has carried its burden of demonstrating, by a preponderance of the evidence, that Fojo’s interim suspension from the practice of law is necessary for the protection of the public and the preservation of the integrity of the legal profession.<sup>4</sup> The evidence clearly supports the ADO’s petition, and demonstrates that Fojo’s conduct violated Supreme Court Rule 50, as well as Rules of Professional Conduct 1.3, 1.4, 1.5, 1.15, 3.3, and 8.4(a) and (c). Among other things, Fojo failed to perform monthly reconciliations of his IOLTA account, failed to maintain client ledgers, was significantly “out of trust” in at least three client matters, and regularly left earned fees in his IOLTA account for extended periods of time, resulting in commingling. *See* Sup. Ct. R. 50; N.H. R. Prof. Conduct 1.15. Nonetheless, Fojo annually certified to the New Hampshire Bar Association that he performed such monthly reconciliations, that he was not “out of trust” at any point, and that he was otherwise compliant with Rules 50 and 1.15.

In addition, Fojo failed to keep his clients reasonably informed about the status of their cases and failed to act with reasonable diligence by not promptly disbursing funds due to them or their creditors. More important, Fojo misappropriated client funds and then lied about it to his clients and to the ADO. Most notably, after Dewey’s numerous requests for information Fojo told her that the insurer was going to re-issue the purportedly missing settlement check, when it had already been deposited into his IOLTA account and when he had already withdrawn substantial legal fees. This was dishonest. As of the

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<sup>4</sup> To the extent that the “clear and convincing evidence” standard of proof applies to this case, *see* Sup. Ct. R. 37(9-A), I find that the evidence is also sufficient to meet that higher standard.

December 21, 2021 date of the court’s suspension order—five days more than a year after the settlement check was issued and two days less than a year after Fojo deposited it into his account—Fojo still had not paid Dewey the balance of the settlement funds owed her,<sup>5</sup> nor did he provide any evidence to substantiate the existence or amount of the purported DHHS lien for which he apparently is holding back those funds. Fojo told the ADO that he has been diligent in his attempt to ascertain the amount, if any, of the DHHS lien. While there is some documentation of contact between Fojo’s office and DHHS, the record does not support this claim. DHHS notified Fojo by email that it requires proof of representation and a HIPAA waiver to allow it to respond. Fojo did provide proof of representation, but never supplied a HIPAA waiver.

Fojo does not dispute the facts. He acknowledges that he made bookkeeping errors, that his IOLTA account was “out of trust,” and that “he expects and will accept some form of discipline.” Fojo’s argument is directed at the inferences that should be drawn from the facts. He claims that he did not act intentionally or knowingly and, therefore, an immediate interim suspension for such negligent conduct is both disproportionate and premature. In support, he notes that, among other things, he has no history of discipline, he cooperated with the ADO’s investigation, has made remedial efforts, the suspension harms not only him but his clients as well, and there is no public emergency. On this basis, Fojo asserts that his interim suspension should be lifted and that he should be reinstated pending the resolution of the disciplinary process. I am not persuaded.

The evidence supports the ADO’s position that Fojo’s conduct was not merely a series of unintentional bookkeeping errors. For example, if—as Fojo represented to both Dewey and the ADO—he was unaware that his new

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<sup>5</sup> Fojo represents that he set aside the funds at issue on January 3, 2022—one day prior to the hearing before me. If I take Fojo at his word, he should have done this in July of 2021, the time when he claims he discovered his error. See Fojo Hearing Memorandum at 6. Consequently, I cannot put any weight on this “too little, too late” action.

assistant had received Dewey's settlement check and deposited it into his IOLTA account, then there should have been \$40,000 held in that account for Dewey, waiting to be disbursed. There was not. Instead, beginning on the day of the deposit, Fojo proceeded to pay himself \$12,000 for his work on the matter, disbursing nothing to Dewey until the ADO expressly encouraged him to do so.<sup>6</sup> Additionally, even months into the ADO investigation, Fojo, knowing that he was "out of trust," closed his IOLTA account without notice to the ADO, and transferred the remaining balance to his operating account based on a claim that the entirety of those funds were earned fees. Fojo did not open a new IOLTA account for several weeks, and only after the ADO repeatedly encouraged him to do so. Even then, he deposited a mere \$100 of his own money into the account.

With respect to the Jha matter, Fojo argues that the ADO rushed to judgment and erroneously concluded that he had misappropriated client funds. He argues that the Jhas sought a partial refund of their fees, and that "[r]ather than dispute the issue, [Fojo] agreed to return \$67,000—the remaining funds due them and a partial rebate of funds already earned and transferred to his operating account." There is no evidence, however, that Fojo ever transferred any funds from his operating account to his IOLTA account to cover the "rebate"; rather, the evidence supports the ADO's position that, at the very least, Fojo issued the "rebate" using other clients' funds.

Similarly, with respect to the Pedearé matter, Fojo argues that the ADO erroneously concluded that he had misappropriated funds from the second Geico settlement check. He contends that those funds "became earned funds to which [he] was entitled," because he "provided representation on other matters to Mr. Pedearé." There is, however, no evidence to support this assertion. The addendum to the original engagement letter—created only after the ADO

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<sup>6</sup> Fojo does not contend that his assistant also **withdrew** those funds from his IOLTA account without his knowledge.

expressed an interest in the Pedearé client file—does not reference any other matters, nor does it specify the amount of fees to which Fojo was entitled. Furthermore, Fojo has refused to disclose any information about these purported other matters to the ADO. He argues that, because Pedearé has not authorized him to disclose that information, it would be a violation of Rule 1.6 of the Rules of Professional Conduct for him to do so. To the contrary, Rule 1.6(b)(3) expressly provides that “[a] lawyer may reveal such information to the extent the lawyer reasonably believes necessary ... to respond to allegations in any proceeding concerning the lawyer’s representation of the client.” N.H. R. Prof. Conduct 1.6(b)(3). I recognize that Fojo cannot be compelled to disclose this information but, in light of the rule, I am permitted to draw adverse inferences from Fojo’s refusal to disclose, especially when those inferences are corroborated by the evidence and Fojo’s conduct with respect to other clients. The evidence, properly construed, supports the ADO’s position that Fojo misappropriated those funds.

Simply put, Fojo’s conduct is not the conduct of an attorney who has made unintentional bookkeeping errors and who has earnestly sought to prevent harm to his clients by correcting those errors. Nonetheless, even if Fojo’s conduct could fairly be construed as a series of negligent bookkeeping errors, a suspension would still be appropriate. *See Coddington’s Case*, 155 N.H. at 68-70, 72 (suspending attorney for failing to safeguard client funds by commingling, failing to maintain proper financial records, and failing to cooperate with the professional conduct committee’s investigation). Indeed, in *Morgan’s Case*, 143 N.H. 475, 476-78 (1999), the court imposed a two-year suspension on an attorney because of his “poor accounting methods, numerous bookkeeping errors, inaccurate client trust reporting, and commingling of funds.” *Id.* (explaining that such errors are “patently unacceptable” and justify a two-year suspension). The court, however, conditionally delayed the suspension because the attorney, upon discovering

the substantial shortage in his trust account, supplemented the account with his personal funds to cover the shortage and prevent actual harm to his clients, investigated the matter, reported himself to the professional conduct committee, accepted responsibility for his actions, and made good faith remedial efforts. *Id.* The court also observed that the attorney was not motivated by dishonesty and had no prior disciplinary record. *Id.*

This is not that case. Indeed, although Fojo contends that he “cooperated fully and completely with the ADO throughout its investigation,” the evidence demonstrates that his cooperation was, at best, less than complete. For example, the record is replete with missed deadlines, incomplete responses, and multiple excuses. Fojo has also, at times, strongly resisted providing the ADO with the information it requested, including, for example, the initial Pedearé client file and, to date, any information regarding the purported other matters in which he represented Pedearé.

Fojo argues that his interim suspension is inappropriate because of the harm done to his clients by his inability to continue to represent them. I agree that this is unfortunate, but this circumstance exists in most, if not all, cases involving the immediate suspension of an attorney. The harm to those clients of delay caused by the need to seek alternative counsel is outweighed by the need to protect those same clients and the broader public from potentially more significant harm arising out of Fojo’s misconduct or future misconduct and by the need to preserve the integrity of the legal profession. *See Sup. Ct. R. 37(16)(d), (f), (h).*

Last, Fojo argues that the process by which he was suspended did not comply with Supreme Court Rules 37(9-A) and (9-B) and that, as a result, he was not afforded due process of law. This argument is without merit. As the court noted in its December 21, 2021 order granting the ADO’s petition for Fojo’s immediate interim suspension, Supreme Court 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,” and “[w]hen the court makes such a finding, the attorney may be suspended on a temporary order, with or without hearing.” See Sup. Ct. R. 37(16)(d), (f), (h). This procedure comports with due process. See *Reiner I*, 152 N.H. at 167-68.

**Conclusion**

Based upon the foregoing, I recommend that the court find and rule that:

- (1) Fojo’s interim suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession, see Sup. Ct. R. 37(16)(f);
- (2) the interim suspension should remain in place; and
- (3) the interim suspension may be lifted by further action of the court at the request of the ADO or Fojo.

Respectfully submitted,

January 12, 2022



Larry M. Smukler, Referee

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. LD-2021-0012, In the Matter of Robert M. Fojo, Esquire, the court on February 25, 2022, issued the following order:**

On December 17, 2021, the Attorney Discipline Office (ADO) filed a petition in this court for Attorney Robert M. Fojo's immediate interim suspension from the practice of law. In its petition, the ADO relied upon Supreme Court Rules 37(16)(f) and 37(9-A). On the same day, the ADO served a copy of the petition on Attorney Fojo and his counsel by email. Attorney Fojo's counsel was simultaneously notified of the petition through the court's electronic filing system. Neither Attorney Fojo nor his counsel immediately responded to the petition.

On December 21, the court issued an order imposing an interim suspension under Supreme Court Rule 37(16)(d) and (f) and notifying Attorney Fojo of his right to request a prompt hearing on whether the suspension should be lifted. That same day, Attorney Fojo requested an immediate hearing and moved to stay the suspension. On December 22, we granted his request for a hearing and stayed his interim suspension for the limited purpose of allowing him to represent a client at a criminal sentencing hearing that day. His suspension otherwise remained in effect.

On December 23, we appointed retired Superior Court Justice Larry M. Smukler as referee to conduct a hearing on the issue of whether Attorney Fojo's interim suspension from the practice of law is necessary for the protection of the public and the preservation of the integrity of the legal profession. See Sup. Ct. R. 37(16)(d), (f); Gallant's Case, 170 N.H. 528, 533-34 (2017). The hearing was held at the Supreme Court on January 4, 2022, and proceeded by offers of proof. In support of its proffer, the ADO submitted over 100 documentary exhibits. Attorney Fojo, represented by counsel, submitted a hearing memorandum and several exhibits. He did not request an evidentiary hearing.

On January 12, the referee submitted a fourteen-page report to the court. In the Referee's Recommendations, Judge Smukler stated as follows:

The evidence clearly supports the ADO's petition, and demonstrates that Fojo's conduct violated Supreme Court Rule 50, as well as Rules of Professional Conduct 1.3, 1.4, 1.5, 1.15, 3.3, and 8.4(a) and (c).

Among other things, Fojo failed to perform monthly reconciliations of his IOLTA account, failed to maintain client ledgers, was significantly “out of trust” in at least three client matters, and regularly left earned fees in his IOLTA account for extended periods of time, resulting in commingling. . . . Nonetheless, Fojo annually certified to the New Hampshire Bar Association that he performed such monthly reconciliations, that he was not “out of trust” at any point, and that he was otherwise compliant with Rules 50 and 1.15.

In addition, Fojo failed to keep his clients reasonably informed about the status of their cases and failed to act with reasonable diligence by not promptly disbursing funds due to them or their creditors. More important, Fojo misappropriated client funds and then lied about it to his clients and to the ADO. . . .

. . . .

Simply put, Fojo’s conduct is not the conduct of an attorney who has made unintentional bookkeeping errors and who has earnestly sought to prevent harm to his clients by correcting those errors. Nonetheless, even if Fojo’s conduct could fairly be construed as a series of negligent bookkeeping errors, a suspension would still be appropriate.

See Sup. Ct. R. 50(1) (explaining that “IOLTA” stands for “Interest on Lawyers Trust Accounts program” and that IOLTA accounts are “for clients’ funds”). The referee made this recommendation to the court: “Because the ADO has sustained its burden of demonstrating by a preponderance of the evidence that an interim suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession, I recommend that the interim suspension remain in place.”

Attorney Fojo challenged the referee’s findings, rulings, and recommendation, and, on January 26, we ordered the parties to file briefs by February 10. On February 7, we scheduled oral argument for February 15. Both parties filed briefs, and Attorney Fojo, relying upon Supreme Court Rule 37(9-B)(g), filed a petition for reinstatement. We heard oral argument on February 15.

Ordinarily, we defer to the factual findings of a referee in a lawyer discipline case, reviewing only whether a reasonable person could have reached the same decision as the referee. Gallant’s Case, 170 N.H. at 534. However, we may give less than ordinary deference to the factual findings of the referee in this case because he decided the issues on offers of proof, based upon a paper record,

and all of the documents and proffers upon which he based his decision are available for our review. Id.; see Lawrence v. Philip Morris USA, 164 N.H. 93, 96-97 (2012). As to the referee’s legal rulings, our review is de novo and we “retain the ultimate authority to determine whether suspension is necessary under Rule 37(16)(f).” Gallant’s Case, 170 N.H. at 534.

We first address Attorney Fojo’s argument that his due process rights were violated because the procedures employed in imposing the interim suspension did not comport with Supreme Court Rule 37. Central to this argument is his contention that Rule 37(16) is not a stand-alone, independent basis for an immediate interim suspension but, rather, must be read as supplementary to suspension procedures outlined in other provisions of Rule 37.

Rule 37 provides specific procedures for immediate suspension under certain circumstances. See, e.g., Sup. Ct. R. 37(9)(a), (i) (providing for immediate suspension upon proof that attorney has been convicted of a serious crime or has been indicted for any felony); Sup. Ct. R. 37(9-A)(a) (authorizing interim suspension of an attorney alleged to have “engaged in conduct that poses a substantial threat of serious harm to the public”); Sup. Ct. R. 37(9-B)(a) (authorizing summary suspension of an attorney who fails to cooperate with the ADO’s investigation of a matter “alleging serious misconduct”). Attorney Fojo argues that, when the circumstances fall within one of these rules, the specific procedures set forth in the applicable rule must be followed because they constitute the due process required. We disagree. These specific procedures do not supplant our authority to take immediate disciplinary action against an attorney who is credibly alleged to have engaged in conduct that poses a substantial threat of serious harm to the public, yet may have cooperated with the ADO investigation, and who has not been convicted of a serious crime or indicted for a felony. Attorney Fojo overlooks the true sources of our authority to discipline attorneys — the common law, statutes, and the State Constitution — from which Rule 37 is derived.

We have inherent and statutory authority to discipline attorneys. Petition of Brooks, 140 N.H. 813, 817 (1996); see also RSA 311:8 (2015); RSA 490:4 (2010). Moreover, Part II, Article 73-a of the State Constitution provides that the court shall “make rules governing the administration of all courts in the state and the practice and procedure to be followed in all such courts.” N.H. CONST. pt. II, art. 73-a; see Petition of Tocci, 137 N.H. 131, 135 (1993) (“[T]he judicial branch possesses all the authority necessary to perform its judicial functions . . . .”). Because the judicial branch requires a qualified and ethical bar to perform its functions, we have the inherent authority to establish procedures to ensure that members of the bar meet those standards. Tocci, 137 N.H. at 135;

see also Opinion of the Justices (Judicial Salary Suspension), 140 N.H. 297, 299 (1995) (recognizing that Part II, Article 73-a “vest[s] discipline of the legal profession” in this court).

These authorities confirm that “[t]he task of supervising and disciplining attorneys within this State falls squarely upon the shoulders of this court.” Brooks, 140 N.H. at 817 (quotation omitted). Accordingly, our inherent authority over attorney discipline includes the “power to take reasonable and expeditious action in the suspension or removal of members of the bar for the protection of the community.” Barnard’s Case, 101 N.H. 33, 34 (1957).

Rule 37 must be read in the context of our inherent authority. Indeed, Rule 37(16)(f) codifies our longstanding view that our responsibility for attorney discipline advances the purpose of “the protection of the public, as well as . . . the maintenance of public confidence in the bar as a whole.” Harrington’s Case, 100 N.H. 243, 244 (1956) (quotation omitted); see Sup. Ct. R. 37(16)(f) (providing that the court may discipline attorneys “as the court deems necessary for the protection of the public and the preservation of the integrity of the legal profession”). Likewise, Rule 37(16)(d) codifies our inherent power to take swift disciplinary action. Compare Sup. Ct. R. 37(16)(d) (“The court may make such temporary orders as justice may require either with or without a hearing. Respondent attorney shall be entitled to be heard after any ex parte order.”), and RSA 311:8 (recognizing the court’s power to “inquire in a summary manner into” allegations of fraud or malpractice against an attorney (emphasis added)), with Barnard’s Case, 101 N.H. at 34 (recognizing our inherent authority to take “expeditious” disciplinary action). Given this court’s long-established and plenary authority over attorney discipline — indeed our unique and non-delegable duty to protect the public — we reject Attorney Fojo’s argument that Rule 37(16) cannot serve as an independent basis for an interim suspension. Nor will we read Rules 37(9-A) and (9-B) as abrogating or constraining our inherent ability to act quickly when necessary to protect the public and to preserve the integrity of the legal profession and public confidence in the bar. Therefore, Attorney Fojo’s reliance on Rules 37(9-A) and (9-B) is misplaced.

Contrary to Attorney Fojo’s claim that the interim suspension process did not comport with Rule 37, he was, in fact, afforded the process required by the applicable rule — Rule 37(16). Sup. Ct. R. 37(16)(d), (f). The ADO did not act precipitously. Prior to petitioning this court for an immediate suspension, the ADO investigated Attorney Fojo for several months and collected extensive documentary evidence of his misconduct. Following our interim suspension order, Attorney Fojo was given the opportunity to request a post-suspension hearing before a referee. See Sup. Ct. R. 37(16)(d); Reiner’s Case, 152 N.H. at 166. He did make such a request, and the hearing occurred promptly — two

weeks after issuance of the order. See Reiner’s Case, 152 N.H. at 167 (interpreting Rule 37(9)(i) as requiring a post-suspension hearing to be scheduled within thirty days of the interim suspension order).

During the January 4 hearing in front of Judge Smukler, the ADO was required to prove, by a preponderance of evidence, that the suspension was necessary for the protection of the public and the preservation of the integrity of the legal profession. See Sup. Ct. R. 37(16)(f); Reiner’s Case, 152 N.H. at 167. The referee issued his fourteen-page recommendation eight days after the hearing. Attorney Fojo challenged the referee’s determination; we ordered briefing and heard oral argument. These procedures comply with Rule 37(16).

Attorney Fojo also contends that, even if, contrary to his arguments, the court has inherent power to take immediate disciplinary action under certain circumstances, those circumstances were not present in this case. He maintains that, as of December 21, 2021, when the interim suspension was ordered, there was no emergency that justified an immediate interim suspension because “nothing had changed” since the end of September 2021. We disagree.

Attorney Fojo, despite knowing that the ADO was investigating his misappropriation of client funds deposited in his IOLTA account, as well as deficient IOLTA record-keeping, closed his IOLTA account on October 27. Attorney Fojo did not alert the ADO of this fact until November 16, and he brought it to the ADO’s attention at that time only because the ADO had recently subpoenaed the records for that account. On November 17, the ADO learned that Attorney Fojo had not yet opened a new IOLTA account. Even after being prompted on November 18 by the ADO to open a new IOLTA account, Attorney Fojo did not do so until December 13, at which time he deposited \$100 of his own money.

Although Attorney Fojo was entrusted with maintaining the funds of at least one client during this time period, for the six-week period between October 27 and December 13, he did not have an IOLTA account. Attorney Fojo was, therefore, “out of trust” with respect to at least one client. Indeed, Attorney Fojo admitted as much when, on November 19, he represented to the ADO — at a time when he did not have an IOLTA account — that “the remaining funds . . . from the [client’s] settlement will have to be allocated to satisfy the [outstanding] lien.” All of this conduct occurred after the ADO had reason to believe Attorney Fojo had previously lied to it about this same client’s funds. Thus, by mid-December, the ADO had a well-founded concern that, although Attorney Fojo was aware of the ADO’s investigation into his misappropriation of that client’s funds and for being “out of trust” with regard to her account, his misconduct was ongoing and posed a continuing danger to the public and to the integrity of the

legal profession. Under these circumstances, it was both reasonable and necessary for the ADO, in the discharge of its responsibilities, to bring the matter to our attention by seeking an interim suspension. Accordingly, we conclude that the circumstances — as they evolved in November and December 2021 — justified the ADO’s decision to petition for interim suspension at that time and, likewise, supported our interim suspension order.

We now turn to Attorney Fojo’s argument that we should lift his suspension because the referee’s report and recommendation is unsupported and “rife with error.” (Bolding omitted.) To continue an interim suspension, we must conclude that the suspension is necessary for both: (1) “the protection of the public”; and (2) “the preservation of the integrity of the legal profession.” Sup. Ct. R. 37(16)(f); see Gallant’s Case, 170 N.H. at 533-34, 536-37. The ADO’s burden, at this early stage in the disciplinary process, is not to prove that Attorney Fojo committed professional misconduct that warrants imposition of final discipline, but, rather, to show by a preponderance of evidence that the ADO is likely to succeed on the merits of its disciplinary case, and that the interim suspension is necessary to protect the public and to preserve the integrity of the legal profession. Cf. Gallant’s Case, 170 N.H. at 536-37 (discussing the ADO’s burden when an attorney’s interim suspension is based on Rule 37(9)(i)).

“The injury to the public and to the profession is substantial whenever an attorney is dishonest.” Id. at 538. “No single transgression reflects more negatively on the legal profession and erodes public confidence in the bar more completely than a lie.” Id. (quotations omitted). “This is because the privilege of practicing law includes the concomitant responsibilities of truth, candor and honesty.” Id. (quotation omitted). In addition, a lawyer’s obligation to “refrain, at the least, from misuse of a client’s property must stand among the most insistent of professional norms.” Coddington’s Case, 155 N.H. 66, 70 (2007) (quotation omitted). In cases involving an attorney’s misuse of client funds, we often take severe disciplinary action. See id. (collecting cases involving disbarment or suspension of attorneys for misuse of client funds or “out of trust” IOLTA accounts).

The record provides ample support for the referee’s determination that the ADO proved, by a preponderance of evidence, that this is not a case of an attorney who is “out of trust” due merely to mismanagement or oversight; rather, this case involves a series of lies to clients and the ADO and ongoing misuse and misappropriation of client funds. Most egregious is Attorney Fojo’s conduct with respect to a client’s \$40,000 settlement check. On December 14, 2020, Attorney Fojo’s client settled her personal injury claim. On December 16, the insurance carrier issued Attorney Fojo a \$40,000 settlement check payable to “FOJO LAW PLLC AS ATTORNEY(S) FOR [the client].” On December 23, the check was

endorsed and deposited into Attorney Fojo's IOLTA account. Between December 23, 2020 and February 5, 2021, Attorney Fojo made five separate disbursements to himself totaling \$12,000. Attorney Fojo not only twice failed to respond to the client's inquiries about her settlement during early 2021, in May 2021, he lied to her about having received the check, saying that the insurance carrier "didn't issue the check or it wasn't sent out" and that the carrier would "re-issue the check." Attorney Fojo did not remit any payment to the client until August 2021 — after having been "out of trust" with respect to this client for an extended period.

There is also evidence that Attorney Fojo lied to the ADO about the status of this account. In July 2021, the ADO notified Attorney Fojo that the client had filed a grievance alleging misuse of her funds and that the ADO had docketed the grievance as a complaint. In response, Attorney Fojo represented to the ADO that he "believed for a long time that the [\$40,000] check had not arrived," that he directed his assistant to reach out to the insurance company, and that he was "led to believe the check was lost and had to be re-issued." However, there is no evidence in the record that he or anyone on his behalf ever contacted the insurance company. Indeed, the insurance company claims adjuster attested that the company had no contact with Attorney Fojo's office after issuing the settlement check in December 2020. Further, as described above, there is evidence that Attorney Fojo was aware in December 2020 that the check had arrived — he made disbursements to himself shortly after the check was deposited.

Finally, Attorney Fojo's misconduct continued even after his suspension. On December 21, 2021, this court issued the interim suspension order enjoining Attorney Fojo from "further use of his IOLTA account" and also from "transferring . . . any assets of clients." Nonetheless, on December 22, Attorney Fojo withdrew approximately \$4,500 from his IOLTA account. In doing so, Attorney Fojo violated our order of December 21.

Our independent review of the record confirms the referee's conclusion that the ADO met its burden of proving, by a preponderance of evidence, that the interim suspension is necessary for the protection of the public and the preservation of the integrity of the legal profession. See Sup. Ct. R. 37(16)(f); Reiner's Case, 152 N.H. at 167. Accordingly, Attorney Fojo shall remain suspended from the practice of law in New Hampshire pending further order of this court.

In light of Attorney Fojo's constitutionally protected interest in his license to practice law, Reiner's Case, 152 N.H. at 165, and our ruling that the interim suspension will, absent further order of the court, remain in place pending

final disposition of disciplinary proceedings, the attorney discipline system shall prioritize this case. The ADO shall notify the court if proceedings in the attorney discipline system cannot be concluded within four months of this order. We are aware that this expedited process will require the modification or waiver of certain procedural rules set forth in Rule 37A. The ADO or Attorney Fojo may request that the court order such a modification or waiver. See Sup. Ct. R. 1; see also Sup. Ct. R. 37A(III)(Preface) (“As good cause appears and as justice may require, the professional conduct committee may waive the application of any rule under this section.”). To that end, the ADO and Attorney Fojo are directed to confer regarding procedural deadlines and submit a schedule to the court no later than March 4.

On February 10, 2022, Attorney Fojo petitioned for reinstatement under Rule 37(9-B). See Sup. Ct. R. 37(9-B)(g). For the reasons set forth above, that motion is denied.

So ordered.

MACDONALD, C.J., and HICKS, BASSETT, HANTZ MARCONI, and DONOVAN, JJ., concurred.

**Timothy A. Gudas,  
Clerk**

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