

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

a committee of the attorney discipline system

Stephanie C. Hausman, Chair
Caroline K. Leonard, Vice Chair
Kathleen M. Ames, * Vice Chair
 *non-attorney member
Barbara J. Guay, Legal Assistant

Sheridan, William C. advs. ADO - #19-003

**SIX-MONTH SUSPENSION WITH THE REQUIREMENT OF A FINDING OF
MEDICAL FITNESS TO PRACTICE LAW BEFORE REINSTATEMENT
AND ORDER ON COSTS**

On September 20, 2022, the Professional Conduct Committee (the “Committee”) deliberated the oral argument, Hearing Panel report and recommendations, and the transcripts of hearings before the Hearing Panel (collectively, the “Record”). Members present included Stephanie C. Hausman, Chair; Caroline K. Leonard, Vice Chair; Kathleen M. Ames, Vice Chair; Ronald K. Ace; Peter G. Beeson; Everett Grass; Margaret R. Kerouac; Mona T. Movafaghi and Eric R. Wilson. Karyl R. Martin and Sarah Clauss were recused.

Having reviewed the Record, the Committee approved the facts as found by the Hearing Panel by clear and convincing evidence, with one amendment as to the date of Mr. Sheridan’s abdominal surgery. The Committee then found that the Attorney Discipline Office (the “ADO”) proved violations of Rules of Professional Conduct (the “Rules”) 1.3 and 1.4, as found by the Hearing Panel. The Committee further agreed with the Hearing Panel’s findings as to duty violated, mental state, injury, and baseline sanction. Finally, the Committee weighed aggravating and mitigating factors and agreed that the Sanction recommended by the Hearing Panel, suspension for a period of six months with the requirement of a finding of medical fitness to practice law before reinstatement, was appropriate. The Committee also voted to approve the recommendation to reimburse the Committee for all costs of investigation and prosecution of this matter.

I. FINDINGS OF FACT

The Committee determined that the Record supports the following factual findings by clear and convincing evidence:

Mr. Sheridan has been admitted to practice law in New Hampshire since 1987. Mr. Sheridan operated his law office as Sheridan Law Offices, located at 50 Nashua Road, Suite 102, Londonderry, NH.

This matter arises out of a complaint filed by Lewis B. Sykes, Jr. against Mr. Sheridan on October 26, 2018. Mr. Sykes retained Mr. Sheridan in January 2017 to file a Rule 60(b) Motion under the Federal Rules of Civil Procedure in the matter of *Lewis B. Sykes, Jr. v. RGS Citizens, N.A. et al.*, Civil No. 13-cv-334-JD in the United States District Court for the District of New Hampshire. The underlying foreclosure action occurred in 2009. Mr. Sheridan filed the Rule 60(b)(3) motion in February 2017. The District Court denied the motion in March 2017, and Mr. Sykes appealed this decision to the First Circuit Court of Appeals. Mr. Sheridan filed the appeal in September 2017. He continued to work on matters related to the appeal into early 2018, including filing a reply brief and an appendix to the brief.

Also in the fall of 2017, Mr. Sykes inquired with Mr. Sheridan about pursuing a Quiet Title action in state court related to the 2009 foreclosure. However, Mr. Sheridan was experiencing significant physical health issues in the fall of 2017, after undergoing abdominal surgery in August 2017. He offered the services of his niece, an attorney in New York, to draft the Quiet Title action. At the time, Mr. Sheridan was still working on the First Circuit appeal, including the appeal appendix.

By January 2018, Mr. Sheridan had provided his niece's draft of the Quiet Title petition to Mr. Sykes. Mr. Sykes provided comments on the draft, including many suggestions for additional information and paragraphs to be added. Following provision of his comments on the draft, Mr. Sykes repeatedly inquired with Mr. Sheridan about the status of the Quiet Title petition.

Mr. Sheridan and Mr. Sykes had a meeting on March 18, 2018. Mr. Sykes subsequently provided a summary of the meeting and enclosed a payment of \$500. Between March and October 2018, Mr. Sykes and Mr. Sheridan exchanged numerous emails in which Mr. Sykes inquired about the status of the Quiet Title petition and Mr. Sheridan provided excuses for the delay, including that he was having medical issues.

In May and June 2018, Mr. Sheridan sent Mr. Sykes multiple emails stating that he was working on the Quiet Title petition and would have a draft ready soon. In an email dated June 7, 2018, Mr. Sheridan appeared to be changing his theory of the case, stating, "I decided that this not a Quiet Title action; it is an action for trespass, ejection and for rent due." Multiple times in June and July 2018, Mr. Sheridan told Mr. Sykes that he had other "emergency" matters to work on first, and then he would turn his attention to the Quiet Title petition.

Mr. Sheridan knew at the latest in early summer of 2018 that Mr. Sykes was expecting him to work on the Quiet Title issue and that he needed to get it done, but he underestimated the effort and time it would take to produce a legal product to file or to provide to Mr. Sykes to file himself. He did not communicate with Mr. Sykes about the difficulties he was having in formulating a legal theory upon which to file the petition.

On August 3, 2018, Mr. Sykes requested return of his payments for the Quiet Title action and informed Mr. Sheridan that he would be looking for a new attorney to handle the matter. On September 12, 2018, Mr. Sheridan emailed a copy of the draft petition to Quiet Title to Mr. Sykes, but the copy received by Mr. Sykes was not readable.

Mr. Sheridan and Mr. Sykes were scheduled to meet on Sunday, October 7, 2018, but the meeting did not take place. Mr. Sheridan emailed Mr. Sykes that morning that he couldn't get the complaint ready that day or the next day; he needed "a long awaited break to just rest and relax," and he had spent about 45 hours on Mr. Sykes's case that year, with 18 hours worked in August and September. Mr. Sykes then sent Mr. Sheridan a letter notifying him that he would file a grievance with the ADO and a lawsuit against Mr. Sheridan if the Quiet Title case did not get filed by October 17, 2018.

Mr. Sykes then sought information from Mr. Sheridan and the First Circuit Court of Appeals regarding the status of the Rule 60(b) appeal. In December 2018, Mr. Sheridan withdrew from the appeal in the First Circuit.

Mr. Sykes filed the Quiet Title complaint *pro se* in October 2019. The Superior Court issued an order in February 2020 granting the defendants' motion for summary judgment on the Quiet Title complaint.

Mr. Sheridan provided timekeeping records to the ADO for the work he performed for Mr. Sykes, totaling 229 hours. Much of this work appears to have been done on the appeal brief and appendix, and it is unclear from Mr. Sheridan's documentation whether any of this work was performed after March 8, 2018.

II. RULINGS OF LAW

The Committee concludes that there is clear and convincing evidence that Mr. Sheridan violated Rules of Professional Conduct 1.3 (diligence) and 1.4 (communication).

Rule 1.3 states as follows:

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

There is clear and convincing evidence that Mr. Sheridan violated Rule 1.3 by failing to act with reasonable promptness and diligence in his work on the Quiet Title action on behalf of Mr. Sykes.

Mr. Sheridan made many excuses for his delay in working on the Quiet Title action, including his need to work on other client matters; his own medical issues and inability to focus on the work; his changing legal theories to support the action; and his need to complete work on Mr. Sykes's First Circuit appeal. He testified that by at least May 2018, he should have been starting work on the Quiet Title action and he was unable to complete the work by October 2018 (approximately six months).

The Committee finds clear and convincing evidence that Mr. Sheridan did not act with reasonable diligence in his representation of Mr. Sykes, including approximately one year of delay from when Mr. Sheridan agreed to prepare a Quiet Title petition for Mr. Sykes, and at least six months of delay in completing the work after the Rule 60(b) appeal was filed. The Committee is not persuaded that the lack of a written fee agreement to draft the Quiet Title petition had any bearing on Mr. Sheridan's duty to act with reasonable diligence.

The Committee also finds clear and convincing evidence of a violation of Rule 1.4. Rule 1.4 states:

(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.

There is clear and convincing evidence that Mr. Sheridan breached his duty to keep Mr. Sykes reasonably informed about the status of the Quiet Title matter. Over a period of at least six months, Mr. Sykes repeatedly asked for information about the status of the Quiet Title matter and Mr. Sheridan failed to communicate clearly and promptly about his inability to complete the work on the petition. Mr. Sheridan misled Mr. Sykes about the extent of work that he performed on the draft petition and produced to him an unreadable draft. Mr. Sheridan failed to fully communicate the extent to which his medical conditions were impairing his ability to perform the work on the Quiet Title matter and he repeatedly promised that he would provide completed work product while continuously delaying the timeframe for completing the work.

In addition to failing to communicate sufficiently about the delay, it appears from their email communications that Mr. Sheridan did not fully communicate the extent to which the Quiet Title action was premised on novel legal theories that were unlikely to be successful in the Superior Court. Mr. Sheridan testified that he needed to spend extensive time thinking about and "researching" the Quiet Title action because of the novelty of the legal theories. The Committee finds that Mr. Sheridan did not provide sufficient or complete information to Mr. Sykes such that he would have understood the unlikelihood of success on the merits of these novel legal theories, in violation of Rule 1.4(b).

III. ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support the sanction of suspension.

The purpose of the Court's disciplinary power is "protecting the public, maintaining public confidence in the bar, preserving the integrity of the legal profession, and preventing similar conduct in the future." *Conner's Case*, 158 N.H. 299, 303 (2009). "The sanction . . . must take into account the severity of the misconduct." *Coffey's Case*, 152 N.H. 503, 513 (2005).

Although the Court has not adopted the *Standards*, it looks to them for guidance. *Conner's Case*, 158 N.H. at 303. The *Standards* set forth a four-

part analysis for courts to consider in imposing sanctions: “(a) the duty violated; (b) the lawyer’s mental state; (c) the potential or actual injury caused by the lawyer’s misconduct; and (d) the existence of aggravating or mitigating factors.” *Id.* (quoting *Douglas’ Case*, 156 N.H. 613, 621 (2007)); *Standards* § 3.0.

The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner’s Case*, 158 N.H. at 303. Once the baseline sanction is determined, the Court then looks to the fourth and final part of the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *See id.*

Prong I: Duty Violated

Under the first prong of the analysis, Mr. Sheridan violated his duty owed to his client to act with diligence and to communicate. Both the duty of diligence and the duty of communication with the client are central to the attorney-client relationship.

Prong II: Mental State

With respect to Mr. Sheridan’s mental state under the second prong of the sanction analysis, the Committee finds that he acted with a knowing mental state from early summer 2018 until the fall. “Knowledge” is the “conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” By early summer, Mr. Sheridan was aware that Mr. Sykes was expecting him to work on the Quiet Title petition and aware that his estimates of the amount of time it would take were not reliable. In addition, Mr. Sheridan was aware that he was not communicating adequately with his client regarding Mr. Sykes’s many requests for information about the case or Mr. Sykes’s requests to meet to discuss the matter.

Prong III: Injury

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Sheridan’s misconduct. Mr. Sheridan’s misconduct caused actual injury to his client.

Mr. Sykes testified that he paid Mr. Sheridan a total of \$1,700 for the Quiet Title action, while Mr. Sheridan maintained that it was only \$1,200. Regardless of the actual amount, Mr. Sykes did not receive a finished

legal product a year after he hired Mr. Sheridan to do the work nor did Mr. Sheridan return the money paid when Mr. Sykes requested it.

Mr. Sheridan's failure to act with diligence and to communicate adequately caused Mr. Sykes to waste money, time, and effort. This caused Mr. Sykes significant and undue stress.

Baseline Sanction

The Committee agrees with the Hearing Panel finding that the baseline sanction in this matter is suspension.

Mr. Sheridan's violations of Rule 1.3 and Rule 1.4 implicate Section 4.4 of the Standards, which provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

...

4.42 Suspension is generally appropriate when:

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

Because Mr. Sheridan's mental state was primarily knowingly, and because he caused actual injury to a client.

Aggravating Factors

Mr. Sheridan has a significant prior disciplinary history in New Hampshire, including previous diligence and communication violations. See *Sheridan's Case*, 148 N.H. 595, 597-98 (2002); *Sheridan's Case*, 146 N.H. 736, 737 (2001). Mr. Sheridan's prior disciplinary history resulted in a six-month suspension in March 2006; a one-year suspension in December 2002; and public censures in 2001 and 1998. Mr. Sheridan also has a prior disciplinary history in Massachusetts, where he remains suspended. While this history is fairly remote, Mr. Sheridan had only been practicing without supervision for a few years at the time of this misconduct. Moreover, while the disciplinary history is remote, it appears that Mr. Sheridan has continued to be plagued with the same problems and has not learned to take steps to avoid repeating his prior disciplinary problems.

Moreover, while Mr. Sheridan apparently had medical issues at the time of his representation of Mr. Sykes, he also used medical issues to defend his behavior in prior disciplinary cases. Until Mr. Sheridan can appreciate and understand the impact of his medical issues on his obligation to diligently practice of law, the Committee shares the Hearing Panel's concern that there is a substantial likelihood of potential or actual harm to future clients if Mr. Sheridan is allowed to continue practicing law until a medical assessment is completed.

Mitigating Factors:

There was some evidence of mitigating factors. Mr. Sheridan cooperated with the ADO's investigation. Mr. Sheridan did not appear motivated by a dishonest or selfish motive.

IV. SANCTION

The purpose of the Court's disciplinary power "is not to inflict punishment but rather to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *Grew's Case*, 156 N.H. 361, 365 (2007) (quotation and citation omitted).

The Committee concludes that the appropriate discipline in this matter, after weighing aggravating and mitigating factors, is a six-month suspension. The Committee recommends that Mr. Sheridan's readmission be conditioned upon the demonstration (through medical records) that he is medically fit to practice law and ongoing monitoring of his law practice to ensure that he satisfies the duties of diligence and communication to his clients.

The Committee's recommended sanction is in accord with the purposes of attorney discipline. See e.g., *Conner's Case* 158 N.H. at 303; *Richmond's Case*, 152 N.H. 155, 159-60 (2005). This sanction is also in accord with the *ABA Standards for Imposing Lawyer Sanctions* (2005) ("Standards").

The Committee finds that this sanction is in line with other sanctions recently imposed by the Court. See, e.g., *Mesmer advs. Attorney Discipline Office*, #16-044 (Feb. 19, 2019) (The Committee recommended three-year suspension, stayed eighteen months, for repeated and consistent neglect in representation on a client matter and knowing deception causing substantial injury to the client); *Mesmer's Case*, 173 N.H. 96, 114-15 (2020) (adopting PCC's recommended sanction). In *Mesmer's Case*, the Committee and the Supreme Court considered the respondent's medical condition (sleep apnea),

treatment, and recovery as mitigating factors justifying a partial stay of the suspension because the respondent voluntarily stopped practicing law for a period of fifteen months, sought treatment, and returned to a full practice of law without incident. *Mesmer's Case*, 173 N.H. at 115. In contrast, Mr. Sheridan has continued to practice law (with a reduced caseload) for several years of ongoing medical issues while this matter has been pending.

V. COSTS

The Committee also recommends that Mr. Sheridan be ordered to reimburse the Professional Conduct Committee for all costs associated with the investigation and prosecution of this matter.

October 11, 2022

/s/ Stephanie C. Hausman
Stephanie C. Hausman
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
William C. Sheridan