

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

---

*Clark, Steven A. advs. Attorney Discipline Office - #21-018*

**Recommendation: Disbarment and Order on Costs**

On September 20, 2022, the Professional Conduct Committee deliberated the Hearing Panel Report, as well as the Record in the above matter.

Having reviewed the Record, the Committee approved the Hearing Panel Report as to the facts by clear and convincing evidence. The Committee approved the findings of violations of the New Hampshire Rules of Professional Conduct as found by the Hearing Panel Report and to recommend Disbarment for violations of Rules 1.1; 1.3; 1.4; 1.16; 3.4(c); and 8.1B)

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

Date: October 7, 2022

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

cc: Sara S. Greene, Disciplinary Counsel  
Steven A. Clark

**NEW HAMPSHIRE SUPREME COURT**  
**HEARINGS COMMITTEE**

Clark, Steven A.

advs.

Attorney Discipline Office

#21-018

**HEARINGS COMMITTEE ORDER ON SANCTIONS**

This matter came before a quorum of the N.H. Supreme Court's Hearings Committee on Attorney Discipline on August 10, 2022. The Attorney Discipline Office was represented by Attorney Sara Greene. Attorney Clarke did not appear. Upon consideration of the arguments, pleadings and evidence presented, the Hearings Committee finds and rules as follows:

**A. Procedural and Factual Background**

Attorney Steven A. Clark was admitted to practice law in New Hampshire in 1995. Mr. Clark was also admitted to practice law in the State of Maine. He is currently on registration suspension status with the Maine Bar.

This matter was initiated upon a judicial referral from Hon. David Ruoff for Rockingham Superior Court dated August 3, 2021. Mr. Clark had failed to appear for several hearings scheduled in *Scott M. Casper v. Michael B. Nelson and Cathy L. Nelson*, 2018-2019-CV-01036, and failed to appear for a show cause hearing scheduled for July 29, 2021.

Mr. Clark represented Cathy and Michael Nelson in a quiet title action that was brought against them concerning a land dispute. The Nelsons hired Mr. Clark in August 2019. They paid him a \$3,000 retainer. Mr. Clark last communicated with the Nelsons in August of 2020. In August 2020, Mr. Clark stated that the Nelsons' retainer was close to being exhausted, and he requested an additional \$500, which the Nelsons paid. He had informed them that given the Covid pandemic, it was likely there would be no updates in their case for months. Mr. Clark thereafter ceased communicating with the Nelsons.

Mr. Clark failed to inform the Nelsons of ongoing developments in their quiet tile action in the following 11 months, including deadlines for pretrial statements and witness lists, as well as various status conferences. A trial management conference (TMC) was held on July 12, 2021. Mr. Clark did not appear at the TMC. He did not inform his clients of the TMC. Judge Marguerite Wageling thereafter issued a show cause order scheduling a July 29, 2021 hearing "on the issue of contempt where Attorney Clark must appear and show cause why he has failed to attend to this case." Mr. Clark did not appear at the July 29, 2021 show cause hearing.

The Nelsons had to hire another attorney to litigate the quiet title action. They paid \$6,000 to their new attorney to settle the matter, which settled in October 2021 following mediation. The judicial referral to the Attorney Discipline Office (ADO) followed.

Disciplinary Counsel filed a Notice of Charges ("NOC") on January 20, 2022. It was mailed to P.O. Box 4195, Portsmouth, N.H., 03802, the address

Mr. Clark maintained with the New Hampshire Bar Association<sup>1</sup> as of that date. As per Rule 37A(III)(b)(1), the Notice was sent via certified mail, return receipt requested. The ADO also sent the Notice via first class mail postage prepaid. As a courtesy, the ADO also mailed a copy of the Notice to Mr. Clark's home address on January 24, 2022, and sent an electronic version to Mr. Clark at [sclark5657@gmail.com](mailto:sclark5657@gmail.com) on February 3, 2022. Efforts were also made to contact Mr. Clark through the Lawyers Assistance Program.

Mr. Clark never filed an Answer in this matter. Because of his default in answering the charges, Mr. Clark is deemed to have admitted the factual and legal allegations set forth in the Notice of Charges. Sup. Ct. R. 37A(III)(b)(3)(A). Because liability is established due to Mr. Clark's defaulting on the factual and legal allegations in the Notice of Charges, Mr. Clark is hereby deemed to have violated the following rules of professional misconduct:

- A. Rule 1.1 – Competence
- B. Rule 1.3 – Diligence
- C. Rule 1.4 – Communication
- D. Rule 1.16 – Declining or Terminating Representation

---

<sup>1</sup> New Hampshire attorneys are required to report any address change “promptly” to the N.H. Bar Association. Sup. Ct. R. 42(XIV) (“Duty to Update Information”) (“All persons admitted to the bar have a continuing obligation to notify the New Hampshire Bar Association immediately and in writing of all changes of residence address and address of principal office”). This continuing obligation is reflected in the rules addressing discipline. For example, Rule 37(16)(b), addressing petitions for suspensions before the Supreme Court, provides that “service upon the respondent attorney at the latest address provided to the New Hampshire Bar Association shall be deemed to be sufficient.”

E. Rule 3.4(c) – Knowingly disobeying the tribunal

F. Rule 8.1(b) – Failure to cooperate with disciplinary process

## **B. Sanction Analysis**

The Hearings Committee agrees that the *American Bar Association Standards for Imposing Lawyer Sanctions* (1992) (*Standards*) support the conclusion that the baseline sanction in this case is disbarment and that, because aggravating factors far outweigh the mitigating factors, no downward departure from this baseline sanction is appropriate. The purpose of the Court’s disciplinary power “is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future.” *E.g., 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 steps create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner’s Case*, 158 N.H. at 303 (stating that “[i]n applying these factors, the first step is to categorize the respondent’s misconduct and identify the appropriate sanction”). Once the

baseline sanction is determined, the Court then looks to the fourth and final step in the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *See id.* (stating that “[a]fter determining the sanction, [the Court] consider[s] the effect of any aggravating or mitigating factors on the ultimate sanction”).

Under the first prong of the analysis, Mr. Clark clearly violated duties owed to his clients, the legal system and the legal profession. With respect to Mr. Clark’s mental state under the second prong of the sanction analysis, the Hearings Committee finds that Mr. Clark’s mental state was at least knowing, and more than likely intentional.

The *Standards*, as well as New Hampshire’s Rules of Professional Conduct, differentiate between a knowing state of mind and an intentional state of mind. Rule 1.0(f) of the N.H.R. Prof. Conduct defines “knowingly” as “denot[ing] actual knowledge of the fact[s] in question. A person’s knowledge may be inferred from circumstances.” The *Standards* define “knowledge” as a “conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” *Standards*, Sec. III (“Definitions”). *See also In Re Wyatt’s Case*, 159 N.H. 285, 307, 982 A.2d 396, 413 (2009)

An intentional state of mind is the most culpable state of mind, defined in the *Standards* as acting with “a conscious objective or purpose to accomplish a particular result.” In this matter, Mr. Clark clearly knew that a disciplinary matter was pending. In addition to correspondence sent to him by

both General Counsel (prior to formal proceedings), and Disciplinary Counsel (after the matter was referred by Complaint Screening), Mr. Clark was informed by his office-sharing partner that the ADO attorney, who was appointed to inventory his file per Supreme Court Order, was arriving to the office to remove Mr. Clark's client files. Mr. Clark then chose to affirmatively obstruct this process, which was meant to protect his clients' interests, by removing his file cabinets and banker's boxes containing client files so that inventory counsel could not obtain them. This evidence supports a finding that Mr. Clark acted with "a conscious objective or purpose to accomplish a particular result," *i.e.*, intentional conduct.

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Clark's misconduct. The injury to Mr. Clark's clients is actual and significant. His clients were not kept informed of the status of their matter as it proceeded in court, and his abandonment of their matter caused stress, a loss of confidence in the Bar, and the need to hire new counsel at additional cost. In addition, the legal system was harmed in that the Court had to issue a show cause order and waste judicial resources due to Mr. Clark's abandonment of the Nelson matter.

The baseline sanction in this matter is a disbarment. *See Standards* §§ 4.41(a),(b); 6.21, 7.1. Section 4.4 of the *Standards* provides, in relevant part:

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

4.41 Disbarment is generally appropriate when:

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

Mr. Clark's conduct in this matter, when considered under *Standard* 4.41, would call for a baseline sanction of disbarment.

Mr. Clark's 3.4(c) rule violation implicates Section 6.2 of the *Standards*.

That Section 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 failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

Mr. Clark's conduct in this matter, when considered under *Standard* 6.21, would call for a baseline sanction of disbarment.

Mr. Clark's 7.1 rule violation implicates Section 7.0 of the *Standards*.

That Section 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 false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper

withdrawal from representation, or failure to report professional misconduct.

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Mr. Clark's conduct in this matter, when considered under *Standard 7.1*, would call for a baseline sanction of disbarment.

The baseline sanction must be considered and/or adjusted in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303. In this case there are four aggravating factors present: a pattern of misconduct, multiple offenses, bad faith obstruction of the disciplinary process and substantial experience in the practice of law. *See Standards § 9.22*. The Hearings Committee finds that it was particularly egregious for Mr. Clark to remove clients' files and evade the discipline office, knowing that the ADO attorney appointed by the Supreme Court was attempting to obtain and inventory those files to protect the affected clients' interests. This is worse than "merely" ignoring ADO requests for information or ceasing to cooperate – it is affirmatively obstructing the process.

The only mitigating factor is that Mr. Clark has no discipline history. *See Standards § 9.32*. The Hearings Committee finds that the aggravating factors far outweigh the single mitigating factor, and thus an "upward" departure to disbarment is appropriate. Given the baseline sanction, and consideration of aggravating and mitigating circumstances, a disbarment serves the purposes of discipline and is an appropriate sanction in this case.

## **ORDER ON SANCTIONS**

After considering the arguments, pleadings, and evidence in the context of the four-part analysis recommended by the *Standards*, and the purposes of attorney discipline in New Hampshire, the Hearing Panel orders that Mr. Clark be disbarred. In addition to the sanction of disbarment, Mr. Clark is ordered to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. See Supreme Court Rule 37(19).

SO ORDERED,

/s/ George H. Thomson, Jr.  
George H. Thompson, Jr.  
Chair

/s/ Jason R.L. Major  
Jason R.L. Major  
Reporter

/s/ Elaine Holden  
Elain Holden

– /s/ Jesse Renaud Smith  
Jesse L. Renaud-Smith

Dated: August 30, 2022