

New Hampshire Supreme Court
Professional Conduct Committee
a committee of the attorney discipline system

4 Chenell Drive, Suite 102
Concord, New Hampshire 03301
603-224-5828 ♦ Fax 228-9511

Stephanie C. Hausman, Esq., Chair
Caroline K. Leonard, Esq., Vice Chair
Katheen M. Ames, Vice Chair
Barbara J. Guay, Administrative Assistant

McDonald, Kyle A.H. advs. Attorney Discipline Office - #22-012/#22-018

**Recommendation: Stayed One Year Suspension With Mandatory
Conditions and Order on Costs**

On June 20, 2023, the Professional Conduct Committee deliberated the Stipulation as to Facts, Violations, and Sanction: Stayed One-Year Suspension With Conditions; Agreement to Pay Costs; and Assented-to Motion for Protective Order in the above matter.

The Committee voted to approve the Stipulation as to the Facts, Violations, and Sanction, based on the stipulated facts and rule violations as set forth in the Stipulation, and to recommend a stayed one-year suspension with the mandatory conditions.

The Committee voted to grant the Agreement to Pay Costs.

The Committee granted the Assented-To Motion for Protective Order. The Committee requests that the parties file a redacted stipulation, redacting confidential materials.

Date: June 28, 2023

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

cc: Sara S. Greene, Disciplinary Counsel
Christopher D. Hawkins, Esquire

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

McDonald, Kyle A.H. advs. Attorney Discipline Office - #22-012

and

McDonald, Kyle A.H. advs. Attorney Discipline Office - #22-018

STIPULATION AS TO FACTS, VIOLATIONS,
AND SANCTION: ONE YEAR SUSPENSION,
STAYED WITH CONDITIONS

Respondent Kyle A.H. McDonald, Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

A. Facts

Background/Summary

1. Mr. McDonald is an attorney licensed to practice law in New Hampshire. Mr. McDonald was admitted to practice on May 15, 2015.
2. Mr. McDonald has not been admitted to practice law in any other jurisdiction.
3. At all times material to this proceeding, Mr. McDonald operated his law office as the Law Office of Kyle McDonald, Esq., PLLC, 2 Whitney Road, Suite 11, Concord, NH.
4. Mr. McDonald does not have a previous disciplinary history.
5. The ADO received two grievances concerning Mr. McDonald, as follows:

- a. grievance of client Kathy Needleman dated September 16, 2022 (Docket No. 22-012); and
 - b. grievance of client William Eidtson dated December 13, 2022 (Docket No. 22-018).
6. As set forth further below, Mr. McDonald effectively abandoned these two client matters [REDACTED]
[REDACTED]
[REDACTED]
7. In addition to failing to act diligently in those matters, Mr. McDonald was not responsive to multiple requests from information from the ADO until January 20, 2023. From that date and forward, however, he has cooperated fully with the ADO, produced the requested information (including detailed IOLTA records and client ledgers compliant with Rule 1.15 and Supreme Court Rule 50), and has committed to a course of treatment for his mental health.

Facts: Docket No. 22-012 (Needleman Representation)

8. Mr. McDonald represented Kathy Needleman in a breach of contract and negligence action against Capital Kitchen & Baths, Inc. in small claims court on July 29, 2019.
9. On October 28, 2019, the matter was transferred to Merrimack County Superior Court (Case No. 217-2019-CV-00728).
10. Mr. McDonald took the case on a contingency basis. Ms. Needleman did not sign a fee agreement or a retainer letter.

11. Attorney Leslie Gill represented the defendant Capital Kitchen, which filed an answer on October 28, 2019.
12. Thereafter, in the 18 months following her retaining his services, Ms. Needleman attempted to reach Mr. McDonald repeatedly by phone, email, and in person visits to his law office.
13. Ms. Needleman emailed Mr. McDonald for updates regarding her case over 20 times from April 2020 through June of 2022. Mr. McDonald responded to very few of these emails.
14. The defendant made an offer of settlement to Ms. Needleman in the spring of 2021. Mr. McDonald emailed his client on April 1, 2021, conveying the offer of settlement from the defendant for \$5,000. Ms. Needleman decided not to settle at that time.
15. Mr. McDonald did not, however, convey his client's decision declining the settlement to opposing counsel Ms. Gill, nor return to her with a counteroffer.
16. On July 26, 2021, Mr. McDonald forwarded to his client discovery responses from the defendant.
17. After that time, Mr. McDonald essentially ceased communicating with Ms. Needleman. Ms. Needleman repeatedly emailed Mr. McDonald, and called him many times, from the summer of 2021 through the spring of 2022.
18. Frustrated by his lack of response, Ms. Needleman requested her file via email on April 9, 2022. On April 22, 2022, Mr. McDonald emailed Ms.

Needleman, stating that her message had gone to his spam folder, but he did not provide her file to her at this time.

19. Ms. Needleman send three additional emails to Mr. McDonald in May and June 2022 requesting her file. Mr. McDonald did not respond.
20. On June 29, 2022, a status conference was held in Ms. Needleman's matter. Mr. McDonald did not inform his client of this status conference, and he did not attend it.
21. On September 16, 2022, Ms. Needleman filed a grievance with the ADO.
22. Mr. McDonald produced the file to Ms. Needleman on September 19, 2022.
23. Mr. McDonald emailed Ms. Needleman "attached please find the file for your case. I will file my withdrawal tomorrow." Mr. McDonald did not file a withdrawal in the case.
24. Shortly thereafter, on September 21, 2019, while Mr. McDonald was still counsel of record, the Court issued a Notice of Hearing scheduling a second status conference for October 20, 2022.
25. Mr. McDonald did not inform his client of this status conference.
26. Because Mr. McDonald had not filed a withdrawal, Ms. Needleman did not receive notice directly from the Court of this status conference. Ms. Needleman therefore did not attend the status conference on October 20, 2022.
27. Mr. McDonald did not attend the October 20, 2022, status conference.

28. By Order dated October 20, 2022, Superior Court Judge Brian T. Tucker dismissed Ms. Needleman's matter.
29. Mr. McDonald was similarly non-responsive to numerous emails and phone calls from opposing counsel.

Facts: Docket No. 22-018 (Eidtson Representation)

30. Mr. McDonald represented William Eidtson in a breach of contract matter involving damage to Mr. Eidtson's vehicle allegedly caused by a car cleaning service. *Eidtson v. TCSNH, LLC*, Grafton Superior Court, Docket No. 215-2021-CV-00281.
31. Mr. Eidtson's former counsel, Attorney Samuel J. Donlan, referred Mr. Eidtson to Mr. McDonald after Mr. Donlan accepted a position at a new firm which practices only family law.
32. Mr. Eidtson did not sign a fee agreement with Mr. McDonald and did not receive a retainer letter concerning the representation. Mr. Eidtson never received a bill from Mr. McDonald.
33. Mr. Donlan wrote a check to Mr. McDonald for \$4,280, representing Mr. Eidtson's retainer.
34. On or around October 8, 2021, Mr. McDonald filed the complaint on behalf of Mr. Eidtson.
35. On October 13, 2021, Mr. McDonald deposited the retainer into his IOLTA.
36. On March 7 and March 8, 2022, Mr. Eidtson emailed Mr. McDonald, requesting an update on his matter and whether Mr. McDonald had

reached out to a witness. He also requested summary of Mr. McDonald's time working on his matter.

37. On March 8, 2022, Mr. McDonald responded via email. He never provided an invoice or billing record to Mr. Eidtson. He did not respond to Mr. Eidtson about the witness, but did inform Mr. Eidtson that the "case is moving forward" and that trial was set for March of 2023.
38. The March 8, 2022 email was the last communication Mr. Eidtson received from Mr. McDonald.
39. Mr. Eidtson called, emailed and texted Mr. McDonald in April, May and November of 2022, requesting an update and information about the favorable witness.
40. The deadline for propounding interrogatories and disclosing experts passed on September 15, 2022. Mr. McDonald did not confer with his client concerning discovery or expert issues, did not issue any discovery on behalf of his client, nor keep his client updated on these matters relating to the representation.
41. Mr. Eidtson discharged Mr. McDonald by email dated December 13, 2022, requesting a return of his \$4,280 retainer so that he could proceed with new counsel Mark Sullivan, Esq.
42. Mr. Sullivan requested the file and retainer from Mr. McDonald.
43. Mr. McDonald did not return the retainer or produced the client file to successor counsel in a timely manner. However, following multiple efforts by the ADO to reach Mr. McDonald, he returned the retainer to

Mr. Sullivan on or around January 23, 2023, following a phone conversation with undersigned counsel.

44. In addition, Mr. McDonald produced bank records and client ledgers demonstrating that the entirety of Mr. Eidston's \$4,280 retainer had been properly held in trust throughout the pertinent time period.
45. Mr. Eidtson settled the matter on January 17, 2023.

ADO Subpoena of IOLTA and Operating Accounts for the Period of September 2021 to December 31, 2022

46. Upon receipt of the Eidtson grievance in Docket. No. 22-018, the ADO subpoenaed bank records for Mr. McDonalds IOLTA account ending in 0973, as well as his operating account ending in 0957, for the period September 1, 2021, to December 31, 2022.
47. Mr. McDonald ultimately produced individual client ledgers, a general ledger, and reconciliations that comply with Rule 1.15 and Supreme Court Rule 50. His record-keeping for client funds was in order.

Failure to Respond to Requests for Information from the ADO

48. On October 31, 2022, the ADO sent Mr. McDonald a docketing letter regarding the Needleman matter, giving Mr. McDonald 30 days to provide a mandatory response.
49. The October 31, 2022, docketing letter contained the following language:

YOU ARE REQUIRED TO PROMPTLY RESPOND TO THE REQUESTS OF THIS OFFICE. THE FAILURE TO COOPERATE WITH A DISCIPLINARY AGENCY COULD RESULT IN THE SCHEDULING OF A PUBLIC HEARING AND IN A FINDING THAT THE RULES OF PROFESSIONAL CONDUCT HAVE BEEN VIOLATED. RULE 8.1(b).

50. The letter was not returned, but Mr. McDonald never responded.
51. The Needleman matter was forwarded to Disciplinary Counsel for formal proceedings by the Complaint Screening Committee on December 12, 2022.
52. On December 15, 2022, Disciplinary Counsel sent a letter to Mr. McDonald asking again that he respond to the docketed matters and requesting a meeting. That letter provided, in part:

I note that you never responded to General Counsel as required by the docketing letter dated October 31, 2022, in the #22-012 matter. Please know that pursuant to Rule 8.1(b), you have a duty to respond to requests for information from the disciplinary authority. **Failure to do so can result in additional charges for failure to cooperate (Rule 8.1(b)), and could be grounds for summary suspension under Rule 37(9-B).**

53. Disciplinary Counsel provided a deadline of December 29, 2022 for Mr. McDonald to respond to the referral.
54. Disciplinary Counsel also sent an email to Mr. McDonald on December 20, 2022, reminding him again of the requirement to respond.
55. Mr. McDonald did not respond to either the letter or the email from Disciplinary Counsel by December 29, 2022.
56. Disciplinary Counsel placed a call to Mr. McDonald's law office on December 20, 2022. The line rang repeatedly, with no option for to leave a voicemail message.

57. On December 14, 2022, the ADO sent Mr. McDonald a docketing letter regarding the Eidtson matter, giving Mr. McDonald 21 days to provide a mandatory response.

58. The December 14, 2022 docketing letter contained the following language:

YOU ARE REQUIRED TO PROMPTLY RESPOND TO THE REQUESTS OF THIS OFFICE. THE FAILURE TO COOPERATE WITH A DISCIPLINARY AGENCY COULD RESULT IN THE SCHEDULING OF A PUBLIC HEARING AND IN A FINDING THAT THE RULES OF PROFESSIONAL CONDUCT HAVE BEEN VIOLATED. RULE 8.1(b).

59. Mr. McDonald did not respond in a timely fashion to the December 14, 2022, docketing letter.

Rehabilitative Efforts Through the Lawyer's Assistance Program

60. Mr. McDonald, after the delays noted above, responded to the ADO on January 20, 2023. [REDACTED]

[REDACTED]

61. [REDACTED]

[REDACTED] Mr. McDonald also immediately refunded the Eidtson retainer and produced IOLTA records which comply with the Rules.

62. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
63. [REDACTED]
[REDACTED]
[REDACTED].

B. Disciplinary Rules Violated

64. The parties agree that Mr. McDonald's conduct in this case involves violations of the New Hampshire Rules of Professional Conduct, as follows:

Rule 1.2: Scope of Representation

65. The facts set forth at ¶¶ 64 above are incorporated by reference.

66. Rule 1.2 states in pertinent part as follows:

(a) Subject to paragraphs (c), (d), and (e), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

67. Mr. McDonald violated Rule 1.2 when he failed to follow up with opposing counsel and with Ms. Needleman on the settlement offer extended by the opposing party, which deprived Ms. Needleman of the opportunity to make decisions regarding the objective of the representation and the ultimate issue of settlement.

Rule 1.3: Diligence

68. The facts set forth at ¶¶ 1-67 above are incorporated by reference.
69. Rule 1.3 states as follows:
- A lawyer shall act with reasonable diligence and promptness in representing a client.
70. Mr. McDonald violated Rule 1.3 when he failed to take any action to move Ms. Needleman's cause of action forward, including failing to:
- a. Engage in any discovery on her behalf;
 - b. Communicate with opposing counsel regarding the matter;
 - c. Attend status conferences as set forth herein; and
 - d. Follow up on settlement offers to his client and advise her regarding same.
71. Mr. McDonald violated Rule 1.3 when he failed to take any action to move Mr. Eidtson's cause of action forward, including failing to engage in any discovery on his behalf and failing to effectively communicate with successor counsel.

Rule 1.4: Communication

72. The facts set forth at ¶¶ 1-71 above are incorporated by reference.
73. 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.

74. Mr. McDonald violated Rule 1.4 in the Needleman matter by:
- a. failing to keep Ms. Needleman reasonably informed about the status of her matter despite numerous requests by her to obtain such information;
 - b. failing to inform Ms. Needleman of two scheduled status conferences in her matter; and
 - c. failing to inform Ms. Needleman that her matter had been dismissed.

75. Mr. McDonald violated Rule 1.4 in the Eidtson matter by:
- a. failing to keep Mr. Eidtson reasonably informed about the status of his matter despite numerous requests by him to obtain such information; and
 - b. failing to promptly respond to Mr. Eidtson's multiple requests for timekeeping records/invoices and for his file.

Rule 1.15: Safekeeping Property

76. The facts set forth at ¶¶ 1-75 above are incorporated by reference.

77. 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.

78. Mr. McDonald violated 1.15(e) in the Eidtson matter when he failed to promptly deliver to his client funds to which Mr. Eidtson was entitled, i.e. any unearned retainer.

Rule 8.1: Bar Admission and Disciplinary Matters

79. The facts set forth at ¶¶ 1-78 above are incorporated by reference.

80. Rule 8.1 states as follows:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or
- (c) fail to attend a hearing when ordered to do so by a disciplinary authority.

81. Mr. McDonald violated Rule 8.1(b) when he knowingly failed to respond to multiple lawful demands for information from Deputy General Counsel and Disciplinary Counsel in Docket Nos. 22-012 and 22-018 as set forth herein ¶¶ 46-59.

Rule 8.4(a): General Rule

82. Having found the foregoing violations, there is clear and convincing evidence that Mr. McDonald's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

C. Recommended Sanction

83. The Attorney Discipline Office and Mr. McDonald jointly agree that a one year suspension, stayed with conditions is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
84. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
85. 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).
86. 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.

87. The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner’s Case*, 158 N.H. at 303 (stating that “[i]n applying these factors, the first step is to categorize the respondent’s misconduct and identify the appropriate sanction”). Once the baseline sanction is determined, the Court then looks to the fourth and final part of the analysis: the existence of any aggravating or mitigating factors, and whether they affect the baseline sanction. *See id.* (stating that “[a]fter determining the sanction, [the Court] consider[s] the effect of any aggravating or mitigating factors on the ultimate sanction”).
88. Under the first prong of the analysis, Mr. McDonald violated duties owed to his clients and to the legal profession. *See Standards* Sec. II (“Theoretical Framework”).
89. With respect to Mr. McDonald’s mental state under the second prong of the sanction analysis, the parties agree that Mr. McDonald’s mental state was knowing in that he had 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) (discussing “knowing” misconduct and stating “[w]hat is relevant . . . is the volitional nature of the respondent’s acts,

and not the external pressures that could potentially have hindered his judgment.”).

90. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. McDonald’s misconduct.
91. Mr. McDonald’s conduct caused actual injury to his clients Ms. Needleman, whose matter was dismissed, and to Mr. Eidston, whose matter was delayed and who was not provided with his retainer in a timely fashion.
92. The parties agree that the baseline sanction in this matter is a suspension.
93. Mr. McDonald’s 1.15 rule violation implicates Section 4.1 of the *Standards*. That Section provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.**
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition¹ is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

¹ The term “admonition,” as used in the *ABA Standards*, is analogous to a reprimand in New Hampshire. The term “reprimand,” as used in the *ABA Standards*, is analogous to a public censure in New Hampshire.

(emphasis added).

94. Mr. McDonald's 1.3 and 1.4 rule violations implicate Section 4.4 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 a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

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

4.42 **Suspension is generally appropriate when:**

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

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

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

(emphasis added).

95. Mr. McDonald's 8.1 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.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer's conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

(emphasis added).

96. Mr. McDonald's conduct in this matter, when considered under each *Standards* set forth above, would call for a baseline sanction of suspension.

97. The baseline sanction, however, must be considered in light of any aggravating and mitigating factors. *E.g.*, *Conner's Case*, 158 N.H. at 303.

98. In this case the only aggravating factor is multiple offenses. See *Standards* § 9.22.²

² While Mr. McDonald failed to cooperate with the ADO for a period of weeks, such failure was not a "bad faith obstruction" of the disciplinary proceeding

99. Mitigating factors include absence of a prior disciplinary history, personal/emotional problems, absence of a dishonest or selfish motive, and remorse. *See Standards* § 9.32.
100. Given that the fact that the mitigating factors outweigh aggravating factors, the parties believe a downward departure to a stayed suspension, with conditions aimed at addressing [REDACTED] [REDACTED] while monitoring him for no further misconduct, serves the purposes of discipline and is an appropriate sanction in this case.

D. Conditions of Imposed Discipline and Procedures For Alleged Violation of Conditions

101. Mr. McDonald agrees to comply with the following conditions for one year, which shall begin on the date the Professional Conduct Committee accepts this Stipulation:
- a. [REDACTED]
[REDACTED]
 - b. [REDACTED] shall supply Disciplinary Counsel with quarterly reports, with the first report to be provided to Disciplinary Counsel within 60 days of the date that the Professional Conduct Committee accepts the Stipulation, and subsequent reports thereafter at quarterly intervals/deadlines thereafter as set forth by the ADO. The reports shall set forth in detail Mr. McDonald's continued compliance [REDACTED]
[REDACTED]

(see aggravator 9.22(e)) , [REDACTED]
[REDACTED]

- c. Respondent shall pay the expenses incurred by the Professional Conduct Committee in connection with this investigation and prosecution, and if unable to pay in lump sum, shall agree to some form of payment plan with the PCC within 60 days of receiving an invoice from the PCC; and
- d. Respondent will engage in no professional misconduct during the one-year period.

102. If it is alleged that Mr. McDonald violated any of the conditions enumerated at Paragraphs 101(a)-(c) above, the following shall apply:

- (a) Upon motion by Disciplinary Counsel, the Professional Conduct Committee may determine whether any of the conditions enumerated at Paragraphs 101(a)-(c) have been violated. If it determines that a condition has been violated, the Committee shall lift the stay and impose a one-year suspension. If the Committee determines that no condition of this Stipulation has been violated, the Stipulation shall continue in force and effect pursuant to its terms.
- (b) Respondent may request that the Professional Conduct Committee remand the matter to the Hearings Committee so that a Hearing Panel may be appointed to decide the sole issue of whether a condition under Paragraphs 101(a)-(c) of this Stipulation has been violated. During such hearing, it shall be the burden of Disciplinary Counsel to demonstrate by a preponderance of

evidence that a condition listed in Paragraphs 101(a)-(c) has been violated.

(c) If a Hearing Panel determines that a condition has been violated, the Panel shall lift the stay and impose the one-year suspension. If the Hearing Panel determines that no condition of the Stipulation has been violated, the Stipulation shall continue in force and effect pursuant to its terms. The PCC shall review the decision of the Hearing Panel.

103. If a new grievance or referral is filed against Mr. McDonald during the one-year period of the stay, thus implicating the condition at Paragraph 101(d), the following shall apply:

(a) So long as a grievance or referral is filed within the one-year period of the stay (“the subsequent proceeding”), and the alleged misconduct occurred, at least in part, during the one-year period, the stay can be lifted and the one year suspension imposed at such time as there is a finding of misconduct in the subsequent proceeding, even if such finding occurs beyond the one-year period of the stay.

(b) Pending the final resolution of the subsequent proceeding, the matter underlying this Stipulation shall not be closed.

(c) If the conditions of Paragraphs 101(a)-(c) have been met, Mr. McDonald will not have to continue to comply with those provisions while the subsequent proceeding is pending.

- (d) The Respondent shall bear all costs associated with compliance and enforcement of the terms and conditions of this Stipulation.
- (e) Nothing herein shall be construed to limit prosecution of any new grievance or referral involving conduct of Respondent occurring during the one-year period of stay.
- (f) If a grievance or referral is filed within the one-year period of the stay, Mr. McDonald shall provide written notice to Disciplinary Counsel within thirty (30) days of receipt of notice of the grievance or referral, *time being of the essence*, along with supporting information or documentation.

E. Costs

104. Subject to the PCC's approval of Mr. McDonald's Stipulation, Mr. McDonald agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. See Supreme Court Rule 37(19). His agreement to pay the costs incurred by the ADO is the subject of a separate agreement signed by Mr. McDonald.

F. Effect of Stipulation

105. Mr. McDonald understands that this Stipulation represents a recommended disposition, and that the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).
106. Mr. McDonald acknowledges that the admissions of misconduct and the proposed disposition contained in this Stipulation are freely, knowingly, and voluntarily submitted; that he is not entering this Stipulation as a


result of any threats, coercion, or duress, or of any promises or inducements not set forth in the Stipulation.

107. Mr. McDonald has been represented by counsel in reaching this Stipulation and is fully aware of the consequences of the Stipulation.

108. Mr. McDonald knowingly and intelligently waives his right to a hearing.

Respectfully submitted,

Dated: May 25 2023



Kyle A.H. McDonald, Esquire
Respondent

Dated: **May 31** 2023

Christopher D. Hawkins

Christopher D. Hawkins, Esquire
Counsel for Respondent

Dated: _____ 2023

Sara S. Greene, Esquire
Disciplinary Counsel