

NEW HAMPSHIRE SUPREME COURT  
PROFESSIONAL CONDUCT COMMITTEE

*a committee of the attorney discipline system*

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    \*non-attorney member  
Barbara J. Guay, Legal Assistant

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*Nadeau, Justin P. advs. Attorney Discipline Office - #19-009*

**RECOMMENDATION: DISBARMENT AND ORDER ON COSTS**

On October 18, 2022, the Professional Conduct Committee (the “Committee”) deliberated its oral argument, Hearing Panel reports and recommendations, and the transcripts of hearings before the Hearing Panel (collectively, the “Record”). The written Record consists of 165 tabbed documents. Committee members present included: Caroline K. Leonard, Vice Chair; Kathleen M. Ames, Vice Chair; Peter G. Beeson; Everett Grass; Margaret R. Kerouac; Karyl R. Martin; Mona T. Movafaghi, and Eric R. Wilson. Stephanie C. Hausman, Chair and Sarah Clauss were recused. Ronald K. Ace was absent.

Having reviewed the Record, the Committee approved the facts as found by the Hearing Panel by clear and convincing evidence (Tab 105). The Committee then found that the Attorney Discipline Office (the “ADO”) proved violations of Rules of Professional Conduct (the “Rules”) 1.5; 1.7; 1.8; 1.15; 3.3; 3.4; 5.3; 8.1; 8.4(b); 8.4(c); and 8.4(a) 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 agreed that the Sanction of Disbarment recommended by the Hearing Panel was appropriate. The Committee also voted to approve the recommendation to reimburse the Committee for all costs of investigation and prosecution of this matter.

Page 1 of 6

## **I. FINDINGS OF FACT**

The Committee determined that the Record supports the factual findings as set forth by the Hearing Panel (Report, Tab 105, ¶¶ 13 – 291; ¶¶ 335 - 444) by clear and convincing evidence.

## **II. RULINGS OF LAW**

The Committee concludes that there is clear and convincing evidence that Justin P. Nadeau has violated the following Rules of Professional Conduct by clear and convincing evidence: 1.5; 1.7; 1.8; 1.15; 3.3; 3.4; 5.3; 8.1; 8.4(b); 8.4(c); and 8.4(a).

In summary, the Hearing Panel found that Mr. Nadeau violated Rules 1.5, 1.7, and 1.8 by, among other things, engaging in a business transaction with a client after establishing an attorney-client relationship; failing to obtain a written, informed waiver of conflicts of interest, and failing to provide a written statement to the client of the division of fees resulting from settlement of a contingent-fee litigation matter. In addition, the Hearing Panel found that Mr. Nadeau violated Rule 1.15 and Supreme Court Rule 50 by commingling personal funds with client funds and being out of trust in multiple client matters. Mr. Nadeau violated Rule 3.3 by submitting false Trust Account Compliance Certificates for multiple reporting periods stating he was never out of trust in his client trust account. Mr. Nadeau also violated Rule 5.3 by failing to supervise the conduct of his bookkeeper with respect to the transfer of funds in and out of client trust accounts. The Hearing Panel also found clear and convincing evidence that Mr. Nadeau violated Rule 8.4(b) by signing his wife's name to a legal instrument without her authorization, and Rule 8.4(c) through multiple acts of fraud, deceit, and misrepresentation.

Following notice of the disciplinary investigation, Mr. Nadeau violated Rules 3.4 and 8.1 by failing to preserve evidence, falsifying evidence provided to the ADO, and failing to comply with discovery and pre-trial orders.

## **III. ANALYSIS**

Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support the sanction of Disbarment.

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 sanction analysis, Mr. Nadeau violated duties owed to his clients, the public, and the Court, as well as duties owed as a legal professional. As the Hearing Panel found, "Mr. Nadeau violated every duty owed as an attorney." The duties owed to his clients included the duty to avoid conflicts of interest and the duty to safeguard clients' property and funds. Mr. Nadeau violated duties owed to the public by failing to act with honesty and integrity. He violated duties owed to the legal profession by failing to enter into a written contingency fee agreement with his client and failing to provide a written settlement summary and division of fees. He also violated duties owed to the profession in his conduct during the investigation of this attorney discipline matter. He violated duties owed to the Court and the legal system by filing false trust account certificates with the Supreme Court and falsifying evidence in the ADO investigation.

### **Prong II: Mental State**

With respect to Mr. Nadeau's mental state under the second prong of the sanction analysis, Mr. Nadeau's mental state was knowing and intentional. The Hearing Panel noted that a knowing state of mind is an essential element for violation of Rules 3.3, 3.4(c), and 8.1(a). In addition, Mr. Nadeau acted intentionally with respect to much of the conduct that forms the basis of the Rules violations, including fabrication of evidence with respect to the conflict of interest letters. At oral argument, Mr. Nadeau attempted to introduce testimony to dispute the forensic evidence presented to the Hearing Panel. Mr. Nadeau's effort to expand the record during oral argument was untimely. Nevertheless, the Committee reviewed the Hearing Panel's findings of fact on this issue and did not find them to be clearly erroneous.

### **Prong III: Injury or Potential Injury**

The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Nadeau's misconduct. Injury includes actual or potential harm to the attorney's client, the public, the legal system, or the profession. The Hearing Panel found that Mr. Nadeau caused significant injury except with respect to the Rule 1.15 violations with respect to failing to preserve client property. The ADO appealed this finding, arguing that any instance in which a client trust account is out of trust results in actual injury and not just potential injury. The Committee agrees with the ADO and finds that Mr. Nadeau's misconduct caused actual injury to his clients, the legal system, and the profession.

#### **Aggravating Factors:**

The Hearing Panel found, and the Committee agrees, that the aggravating factors in this matter include Mr. Nadeau's dishonest or selfish motive; pattern of misconduct and multiple violations of the Rules; bad faith obstruction of the disciplinary proceeding, and submission of false evidence and employment of deceptive practices during the disciplinary process, among other factors.

#### **Mitigating Factors:**

Despite the seriousness of the Rules violations, several mitigating factors are also present. The Hearing Panel found that there were no prior disciplinary violations and there was evidence of Mr. Nadeau's positive reputation in the community and character. Mr. Nadeau has contributed to the legal profession as a whole and provided evidence of selfless assistance to many clients. The Hearing Panel also found that Mr. Nadeau suffered from personal and/or emotional problems during the relevant time period that may have contributed to his misconduct.

### **IV. SANCTION**

The Committee concludes that the appropriate discipline in this matter is Disbarment. 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 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 finds that the baseline sanction is disbarment based upon the duties violated, Mr. Nadeau's mental state of knowing or intentional, and actual harm to Mr. Nadeau's clients, the legal system, and the profession. The Hearing Panel found that the baseline sanction should be disbarment except for violation of Rule 1.15, which implicates Section 4.1 of the *Standards*. The Hearing Panel found that suspension is the more appropriate baseline sanction with respect to the Rule 1.15 violation because the Panel found that Mr. Nadeau had not actually "converted" client property. However, as noted previously, the Committee agrees with the ADO that there is actual injury when a client trust account is out of trust and the attorney fails to properly report this fact in the Trust Account Compliance Certificate.

The Committee agrees with the Hearing Panel that the aggravating factors present outweigh the mitigating factors, and the mitigating factors do not warrant a downward departure to a sanction less than disbarment.

## **V. COSTS**

The Committee agrees with the Hearing Panel that Mr. Nadeau shall be responsible for all costs associated with the investigation and prosecution of this matter.

## **VI CONCLUSION**

For all of the above reasons, the Committee recommends Justin P. Nadeau be Disbarred for violating N.H. Rules of Professional Conduct 1.5; 1.7; 1.8; 1.15; 3.3; 3.4; 5.3; 8.1; 8.4(b); 8.4(c); and 8.4(a).

## **VII. MOTION TO TERMINATE**

On September 20, 2022, Respondent filed Respondent's Motion to Terminate and Dismiss Proceeding for the Prosecutorial Misconduct of Disciplinary Counsel Sara Southern Greene and For Her Violation of Supreme Court Rule 37(17)(e) and for The Misconduct of Grievant's Counsel Christopher Hawkins for His Violating New Hampshire Supreme Court Rule 37 ("Motion to Dismiss") (Tab 163). The ADO filed an Objection on September 29, 2022 (Tab 165). The Committee voted to Deny the Respondent's Motion. The Committee notes that at Tab 79, the Respondent filed a similar motion and at Tab 90, the Hearing Panel denied the motion.

December 8, 2022

/s/ Caroline K. Leonard  
Caroline K. Leonard, Esq.  
Vice Chair

cc: Sara S. Greene, Disciplinary Counsel  
Ragnar R. Huffman, Esquire  
J.P. Nadeau  
Christopher K. Hawkins, Esquire

**NEW HAMPSHIRE SUPREME COURT**

**HEARINGS COMMITTEE**

Nadeau, Justin P.

adv.

Attorney Discipline Office

#19-009

**FINDINGS OF FACTS**  
**AND RULINGS OF LAW**

**SUMMARY**

1. At the time of these events, Respondent, Justin P. Nadeau, Esq., was admitted to the New Hampshire Bar.
2. Mr. Nadeau practiced law at the Law Offices of Justin P. Nadeau, PLLC, 1151 Sagamore Avenue, Portsmouth, New Hampshire. He voluntarily ceased practicing law on or around August 1, 2019.
3. Mr. Nadeau does not have a disciplinary history.
4. This disciplinary matter arose from a referral filed with the ADO by Christopher Hawkins, Esq. on April 30, 2019.
5. Mr. Hawkins represents Shawn Fahey ("Ms. Fahey"), a former client of Mr. Nadeau's, in a civil action against Mr. Nadeau based on loans Mr. Nadeau took from Ms. Fahey. *Shawn D. Fahey v. Justin P. Nadeau, et al.*

Case No. 218-2019-00532, Superior Court, Rockingham County (“the Civil Matter”).

6. Mr. Nadeau met Shawn Fahey in July of 2018. In the early stages of getting to know Ms. Fahey, Mr. Nadeau learned that she had made millions in a whistleblower action, and he knew she was the plaintiff in a very high dollar personal injury case.
7. When Mr. Nadeau met Ms. Fahey, he was facing financial pressures. His property at 1151 Sagamore Avenue, which housed his law office, was encumbered with over \$290,000 in state and federal tax liens. He was out of trust in at least 11 client matters (and had a large general IOLTA account shortfall) in a total amount of \$31,748.35, as reported to him by his bookkeeper at the time.
8. As of March 2018, a few months before meeting Ms. Fahey, Mr. Nadeau had a total of \$14,387.63 in his IOLTA account. At the time, the *only* source of these IOLTA funds were those belonging to a charity called Friends of ABM, for which Mr. Nadeau was Treasurer. He should have held in his IOLTA account, *for ABM alone*, \$26,556.87.
9. Mr. Nadeau also faced additional stresses in his personal life. At the time he met Ms. Fahey, he was facing a hard deadline regarding the home he had been renting for \$4,000/month in Hampton, NH. Mr. Nadeau signed an Agreement requiring him to close on the home at the agreed-upon price of \$860,000 by August 24, 2018 or vacate within 15 days. This deadline was his third extension by his landlord, and it was the last that

would be granted. Mr. Nadeau signed the agreement on August 16, 2018. The next day he would ask Ms. Fahey for the \$275,000 loan to use as a down payment on the home.

10. The thousands of texts between him and Ms. Fahey, in a matter of only a few months, demonstrate the rapidity and intensity with which Mr. Nadeau involved himself in various aspects of Ms. Fahey's life. Within 6 weeks of meeting Ms. Fahey, she would be his client, and she would be wiring him \$275,000 for the down payment on his Hampton home — without any written document on the loan. He would then, within a month of the loan, have convinced Ms. Fahey to transfer her \$2 million personal injury case to him and retain over \$165,000 in undisclosed "fees".
11. There is a second phase of misconduct by Mr. Nadeau after the Notice of Charges in this matter. This phase involves the submission of false evidence to the ADO, obstruction, spoliation of evidence, and a failure to cooperate in the disciplinary process. These facts were the subject of a forensic examination of Mr. Nadeau's law office server and a computer used by him during the pertinent time period, as well an expert report and expert testimony.
12. Mr. Nadeau's misconduct also extends to his dealings with the charitable organization, Friends of ABM. In addition to failing to properly maintain filings with the State of NH for this charity, Mr. Nadeau used the

charitable funds from ABM as a “buffer” in his IOLTA account and drew off these funds for other purposes.

## **FACTUAL FINDINGS**

13. The factual findings and rulings of law will be addressed in this order:
  - I. Shawn Fahey Representation;
  - II. IOLTA-related misconduct;
  - III. Pauline Dowd Representation;
  - IV. Failure to Cooperate with the ADO and Fabrication and Spoilation of evidence; and
  - V. Friends of ABM Charity (Amended NOC)

### **I. Fahey Representation**

#### **A) July 2018 — Mid-August 2018: Mr. Nadeau Meets and Advises Ms. Fahey**

14. Mr. Nadeau met Ms. Fahey in July of 2018 through a mutual acquaintance. **[T-1 AT 45, Ex. 3, Bates 1616]**<sup>1</sup>
15. Mr. Nadeau knew shortly after meeting Ms. Fahey that she had recently received several million dollars in a whistleblower action. **[Ex. 7, Bates 1680; Ex. 8, Bates 880; Ex. 9, Bates 5676-5681]**
16. Mr. Nadeau also knew by July 2018 that Ms. Fahey had recently sustained significant injuries at the hands of a drunk driver and was in the midst of negotiating a large settlement with the assistance of her

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<sup>1</sup> “Ex.” signifies the exhibits admitted at the hearing in this matter between October 20, 2021 and October 29

then-counsel, Peter Hutchins, Esq. Ms. Fahey walked with a limp, occasionally used a cane, and had told Mr. Nadeau, in general terms, about her lawsuit and her injury. **[Ex. 23, Bates 904-906; Ex. 24, Bates 943; Ex. 25, Bates 952; Ex. 7, Bates 1675, Ex. 3, Bates 1788-1793]**

17. Mr. Nadeau gave Ms. Fahey legal advice starting in July 2018, offering her advice with respect to proposed investments, business opportunities, and real estate development projects. **[Ex. 8, Bates 880; Ex. 7, Bates 1616-1617, 1643-1649; Ex. 3, Bates 1661, 1664, 1671-1672, 1795-1797]**
18. Prior to reaching an agreement for the private loan from Ms. Fahey to Mr. Nadeau, Mr. Nadeau was acting as Ms. Fahey's attorney regarding a piece of commercial property that she was considering renting and on which she had placed a \$6,500 deposit. **[Ex. 5, Bates 857; Ex. 3, Bates 1616-1617, 1643-1649, 1656-1657]**
19. Bill Mouflouze was the real estate agent with whom Mr. Nadeau dealt regarding the commercial property. **[Ex. 5, Bates 857]**
20. Mr. Nadeau testified that he did not represent Ms. Fahey on this issue, but rather represented a man named Eddie Ahmed, a jeweler who wanted Ms. Fahey to invest in his jewelry shop. **[T-5 at 237]**
21. The emails and texts Mr. Nadeau sent to Ms. Fahey, however, and to others on her behalf, demonstrate that Mr. Nadeau was giving her legal advice and advocating on her behalf. Ms. Fahey sought Mr. Nadeau's

advice, received it, and believed him to be her attorney prior to the private loan.

22. For example, on July 29, 2018, Mr. Nadeau assured Ms. Fahey their communications were “always confidential.” **[Ex. 3, Bates 1619]**
23. On July 31, 2018, Mr. Nadeau texted Ms. Fahey, asking whether she would be amenable to a 1 year trial lease with a 1 year personal guarantee if Mr. Nadeau could get Mr. Mouflouze to agree to it. **[Ex. 7, Bates 1646]**. Ms. Fahey asked if he (Mr. Mouflouze) was “asking to work something out?” and Mr. Nadeau responded “no, Eddie [Ahmed] is.”
24. Mr. Nadeau further texted on July 31, 2018 “Eddie [Ahmed] wants me to propose different terms but you are calling the shots Shawn . . . .” **[Ex. 7, Bates 1647]**
25. These communications demonstrate that Mr. Nadeau was treating Ms. Fahey as a client, advising her of her superior bargaining position over Mr. Ahmed.
26. On July 31, 2018, Mr. Nadeau sent an email to Mr. Mouflouze, on Ms. Fahey’s behalf. **[Ex. 5, Bates 857]**
27. The July 31, 2018 email was sent from Mr. Nadeau’s law office email address and contained his law office signature block at the bottom of the email. **[Ex. 5, Bates 857]**
28. In that email, Mr. Nadeau acted as Ms. Fahey’s attorney.

29. Mr. Nadeau informed Mr. Mouflouze that Ms. Fahey was no longer interested in renting a certain property in Portsmouth. **[Ex. 5, Bates 857]**
30. Mr. Nadeau directed Mr. Mouflouze to forward to Mr. Nadeau's attention, at his law office, the check for \$6,500, representing the deposit that Ms. Fahey had recently made. **[Ex. 5, Bates 857]**
31. Mr. Nadeau instructed Mr. Mouflouze, in the event he had already negotiated Ms. Fahey's check, to "make the check payable to my office with the name 'Ms. Shawn Fahey' scribed in the memo section of the check. **[Ex. 5, Bates 857]**
32. On or around August 2, 2018, Mr. Mouflouze returned the check to Mr. Nadeau per Mr. Nadeau's instructions. **[T-1 at 55, Ex. 3, Bates 1649, 1656-1657]**
33. On August 6, 2018, Mr. Nadeau asked Ms. Fahey via text to bring him information on her personal injury lawsuit, which was then being handled by Attorney Hutchins. **[Ex. 7, Bates 1675]** Mr. Nadeau learned about Ms. Fahey's independent medical examination (IME), which was conducted at Mr. Hutchins' office, describing it as "very strange, and strictly between us." **[Ex. 7, Bates 1677].**
34. Mr. Nadeau continued to discuss Ms. Fahey's legal and business questions with her via text and by phone. On August 13, 2018, he agreed to review and discuss the possibility of Ms. Fahey buying a Portsmouth property at 24 Congress Street, in response to Ms. Fahey's

inquiry about whether it could be “a tax write off situation”? **[Ex. 7, Bates 1698]**

35. In addition, on August 17, 2018, Mr. Nadeau and Ms. Fahey began texting about an exclusive listing agreement Ms. Fahey was considering signing with Joan Blais of Verani/Berkshire Hathaway Real Estate. **[Ex. 3, Bates 1721-1727]**
36. Ms. Fahey told Mr. Nadeau she would forward the agreement to him. **[Ex. 3, Bates 1721-1727]** Ms. Fahey told Mr. Nadeau she had not yet read the document.
37. Mr. Nadeau replied, “please trust me Shawn, there is NO RUSH.” Mr. Nadeau said he would explain when he called her and would review what she sent. Mr. Nadeau reiterated, “please just trust me....” Ms. Fahey responded that she did. **[Ex. 3, Bates 1721-1727]**
38. Ms. Fahey informed Mr. Nadeau that Joan Blais had tried to call her. Mr. Nadeau advised Ms. Fahey not to talk to Ms. Blais “until we talk.” Ms. Fahey joked that she had already signed it without allowing Mr. Nadeau to review it. **[Ex. 3, Bates 1721-1727]**
39. Mr. Nadeau expressed relief she had not in fact signed the document without his review and approval, noting that he was “trying to protect [her].” Ms. Fahey responded, “So sorry and appreciate the protection!” **[Ex. 3, Bates 1721-1727]**

40. In summary, by the date of the private loan to Mr. Nadeau from Ms. Fahey, Mr. Nadeau was acting as Ms. Fahey's attorney, and had offered her legal advice on various matters.

**B) July/August 2018: Mr. Nadeau's Agreements Re: His Family Home in Hampton Require a Closing by August 24, 2018**

41. Mr. Nadeau had been renting his Hampton home at 221 Woodland Road since January 2014 for \$4,000/month. **[Ex. 56, Bates 2647-2653]** He was renting as a "Tenant With Option to Purchase." **[Ex. 56, Bates 2647]**

42. On December 13, 2017, he entered into a "Purchase & Sale Agreement" with his landlord, whereby he promised, *inter alia*, to secure financing from a "reputable lender" and close on the home, at a purchase price of \$860,000, no later than June 15, 2018. If the closing did not occur, Mr. Nadeau would have 15 days to vacate the property. **[Ex. 56, Bates 2650-2651]**

43. The June 15, 2018 deadline passed, and after further negotiations, on July 20, 2018, Mr. Nadeau, Michelle Nadeau (with Mr. Nadeau signing for her as "by Justin P. Nadeau, POA"), and the landlord executed an Addendum to the P&S Agreement, extending the deadline to close until August 7, 2018. **[Ex. 56, Bates 2650-2651]** This addendum noted that Mr. Nadeau would be closing on an Equity Loan for "a property owned situate of 507 State St., Portsmouth, New Hampshire on or about

July 25, 2018.” This language was ultimately struck through by hand. *Id.* (As noted further herein, Mr. Nadeau does not own the State Street Property, but is a beneficiary relating to one of the two units thereof.)

44. The parties then signed a “3<sup>rd</sup> Addendum to Purchase & Sale Agreement,” which Mr. Nadeau signed on August 16, 2018 (one day before the \$275,000 loan from Ms. Fahey), granting an extension to close on the home until August 24, 2018. This was “an absolute, final extension date” according to the 3<sup>rd</sup> Addendum. **[Ex. 56, Bates 2652-2653]**

**C) August 17, 2018: Mr. Nadeau Borrows \$275,000 from Client Fahey**

45. On or around August 17, 2018, Mr. Nadeau asked Ms. Fahey if he could borrow \$275,000 from her to use as a down payment on his family home. **[Ex. 3, Bates 1728; T-1 at 68].**

46. Ms. Fahey, in the late afternoon of August 17, 2018, wrote Mr. Nadeau a check for \$275,000. Though Mr. Nadeau and Ms. Fahey agreed to the terms of the loan as set forth herein, Mr. Nadeau did not provide Ms. Fahey with any written documentation of the loan on August 17, 2018.

**[T-1 at 77]**

47. Mr. Nadeau did not provide Ms. Fahey with any written documentation of the loan until March of 2019, as a result of her repeated insistence.
48. Though Mr. Nadeau did not provide Ms. Fahey with a Promissory Note on August 17, 2018, he did draft one on or around that date. He sought advice about the Promissory Note from his mentor Jack McGee, Esq.

49. Prior to meeting with Ms. Fahey, and in anticipation of receiving a loan from her, Mr. Nadeau had emailed Attorney Jack McGee on August 17, 2018 at 12:14 pm. Mr. Nadeau attached a draft Promissory Note to this email and said “Please take a look at this as soon as possible as I will be meeting with Ms. Fahey this afternoon at 2 p.m.” **[Ex. 63, Bates 4905-4906]**
50. The Promissory Note that Mr. Nadeau attached noted the loan amount of \$275,000 but contained no collateral or security. It provided that the \$275,000, “with interest at 5% per annum,” would be due on August 17, 2019 “or upon the sale of the property situate at 507 State Street, Portsmouth, New Hampshire 03801.” *Id.* The signature line stated, “Justin P. Nadeau, Individually and as Beneficiary for: The J.P. Nadeau 2009 Trust.” *Id.*
51. Mr. McGee testified that he and Mr. Nadeau were collegial acquaintances and that from time to time he offered Mr. Nadeau mentoring-type advice. **[T-2 at 11]**
52. Mr. McGee testified that sometime in late July or early August 2018, Mr. Nadeau had spoken with him about the possibility of getting a loan for the purchase of the Nadeau’s family residence. Mr. McGee testified that when he spoke with Mr. Nadeau around this time, Mr. Nadeau stated that he could pursue a conventional loan or might be borrowing money from Shawn Fahey as a private loan. **[T-2 at 15]**

53. Mr. McGee testified that he discouraged Mr. Nadeau from pursuing a private loan from a woman he had just met. He testified that after the conversation ended, his understanding from Mr. Nadeau was that Mr. Nadeau would seek the conventional loan route. **[T-2 at 17]**
54. Thus, when Mr. McGee received Mr. Nadeau's August 17, 2018 email, asking Mr. McGee to review and revise a Promissory Note to Shawn Fahey, Mr. McGee was surprised. *Id.* Upon reviewing Mr. Nadeau's draft promissory note, his first impression was that it was insufficient because it lacked security or collateral and was essentially an unsecured loan.
55. Mr. McGee responded to Mr. Nadeau on August 17, 2018 at 2:16 p.m. and attached a revised Promissory Note. The revised Promissory Note included various substantive revisions by Mr. McGee. **[Ex. 64, Bates 4907-4908]** These proposed revisions included the following:
- I. a new paragraph, titled "(a)," and stating "this Note is secured by the following: [blank space for Mr. Nadeau to include security];"
  - II. a revision to Mr. Nadeau's description of the State Street property to clarify "or upon the sale of the *maker's interest* in a certain condominium situate at 507 State Street, Portsmouth, NH;" and
  - III. an attorney's fee provision providing the "holder" of the Note (Fahey) to any attorney fees incurred in efforts collect sums due on the note.
56. Mr. McGee testified that these suggested revisions by him were intended to provide some form of security to Ms. Fahey and attempted to make clearer the fact that while Mr. Nadeau had an "interest" in the State

Street property, it was something short of a fee simple ownership. **[Ex. 63, Bates 4905-4906; Ex. 64, Bates 4907-4908]**

57. Despite receiving these suggested revisions on the same day that Ms. Fahey agreed to loan him the money, Mr. Nadeau did not provide Ms. Fahey with a Promissory Note until March 2019.
58. The Promissory Note that Mr. Nadeau did finally provide to Ms. Fahey, in March 2019, contained none of the protections and clarifications suggested by Mr. McGee. It even removed from his signature line the express statement that he was signing as “beneficiary” of the J.P. Nadeau Trust, and instead stated simply “Justin P. Nadeau,” listing his Sagamore Avenue address in Portsmouth. **[Ex. 67, Bates 2167]**
59. Mr. Nadeau told Ms. Fahey the way she would be repaid was through his ownership interest in 507 State Street in Portsmouth, New Hampshire (“the State St. Condominium”), which he was trying to sell. **[Ex. 3, Bates 1728; Ex. 47-13, Bates 2189; Ex. 47-14, Bates 2191-2193; T-1 at 73]**
60. Mr. Nadeau told Ms. Fahey he owned one of the two units comprising the State St. Condominium. **[Id.]** This was consistent with previous statements to Ms. Fahey made by Mr. Nadeau prior to the loan. For example, on July 30, 2018, he texted her “I am selling my downtown property too, so I will have some liquidity.” On August 5, 2016, he texted her that he needed to “meet an appraiser at my State Street property.” **[Ex. 3, Bates 1633, 1668]**

61. Despite these representations, Mr. Nadeau testified before the Panel that he held only a beneficial interest in the trust that owned the State St. property and was not even sure that he was able to assign such a beneficial interest as part of the loan agreement with Ms. Fahey. **[T-6 at 57-58, 92]**
62. Mr. Nadeau offered Ms. Fahey the following terms for the loan: (1) he would pay Ms. Fahey \$25,000 in consideration of her making the loan (the “origination fee”); (2) he would make all of the monthly interest payments on her home equity line of credit until he repaid Ms. Fahey’s loan; (3) he would assign to her all rents owed by his tenant in the State St. Condominium; and (4) he would provide her a document ensuring she would own the State St. Condominium if he missed a single payment. Ms. Fahey agreed. **[Ex. 47-13, Bates 2189; Ex. 47-14, Bates 2191-2193]**
63. Ms. Fahey agreed to these terms and withdrew \$275,000 from a home equity line of credit and wrote a check to Mr. Nadeau the same day. **[Ex. 62, Bates 843-845; Ex. 3, Bates 1728]**
64. The following day, Mr. Nadeau advised Ms. Fahey that the check had not cleared. **[Ex. 3, Bates 1739-1740; Ex. 85, Bates 2900-2902]**
65. On August 22, 2018, Mr. Nadeau asked Ms. Fahey to wire the funds to him, and accompanied her to the Citizens Bank branch in downtown Portsmouth for this purpose. **[T-1 at 79, Ex. 85, Bates 2900-2902, 2963-2971, 3646-3649]**

66. On August 22, 2018, at Mr. Nadeau's direction, Ms. Fahey wired \$275,000 from her account at Citizen's Bank to Mr. Nadeau's IOLTA account ending in XXXXXX6342 at People's United Bank ("the first loan"). **[Ex. 85, Bates 2900-2902, 2963-2971, 2972-2980; Ex. 58, Bates 3646-3649]**
67. Mr. Nadeau deposited the personal funds into his client trust account ("CTA"), **[Ex. 85, Bates 2900-2902]**
68. Mr. Nadeau never told Ms. Fahey that business transactions between lawyers and clients are generally prohibited. **[T-1 at 79]**
69. He would not produce any written documentation of the loan until March of 2019, at Ms. Fahey's repeated request. **[Ex. 47-14, Bates 2191-2193, T-1 at 120]**
70. As noted above, Mr. Nadeau knew at the time of the first loan that Ms. Fahey was represented by Mr. Hutchins in a personal injury matter (*Fahey v. Zaremba, et al.*, 218-2017-CV-00530, Rockingham County Superior Court, "the personal injury matter"). **[Ex. 7, Bates 1675, 1677]**
- D) August 23, 2018: Mr. Nadeau's Wife, as Sole Borrower, Closes on Their \$840,000 Hampton Home, Using the \$275,000 Borrowed From Ms. Fahey As a "Gift" From Mr. Nadeau**
71. The \$275,000 loan remained in Mr. Nadeau's CTA briefly. **[Ex. 85, Bates 2901-2902, 2972-2980]**
72. It was deposited into his CTA on August 22, 2018 and wire transferred on August 23, 2018 to Signature Escrow & Title Services, the closing agent for the lender, LendUS, LLC ("LendUS"), one day prior to the

- closing on Mr. Nadeau's \$840,000 family home located at 221 Woodland Road in Hampton, New Hampshire. **[Ex. 60, Bates 2468-2481, 2900-2902, 2972-2980]**
73. The sole borrower on the loan was Mr. Nadeau's wife, Michelle Leigh Firmbach Nadeau ("Michelle"). **[Ex. 47-3, Bates 2142-2144; Ex. 60, Bates 2468-2481; Ex. 61, Bates 2482-2488]**
74. Michelle's Loan Application to LendUS, LLC states that the source of the down payment is "FHA – Gift- Source Relative." **[Ex. 61, Bates 2482-2488]**
75. Michelle further answered "no" to the question on the Application that asked: "is any part of the down payment borrowed?" **[Ex. 61, Bates 2485]**
76. Mr. Nadeau and Michelle also signed a "Gift Letter" dated August 21, 2018 and submitted it to the lender as part of the real estate closing. **[Ex. 57, Bates 2578]**
77. The Gift Letter represented that "no repayment of the gift is expected or implied in the form of cash or by future services of the recipient." **[Ex. 57, Bates 2578]**
78. The recipient of the gift was Michelle according to the Gift Letter. **[Ex. 57, Bates 2578]**
79. Also as part of the closing, Mr. Nadeau provided to the lender a copy of a Promissory Note dated August 17, 2018 memorializing his debt to Ms. Fahey of \$275,000 ("Mr. Nadeau's Note"). **[Ex. 65, Bates 2583]**

80. Mr. Nadeau did not, however, provide this Promissory Note to Ms. Fahey in August 2018 when he provided it to the lender. **[T-1 at 120, Ex. 47-14, Bates 2191-2193]**
81. The Promissory Note provided to the lender noted a 6% interest rate, but listed no security or collateral of any kind, nor did it note the \$25,000 “origination fee.” **[Ex. 65, Bates 2583]**
82. Mr. Nadeau testified that in March of 2019 he signed Michelle’s name on a Promissory Note and back-dated the note to August 25, 2018. This note purportedly indebted Michelle to Ms. Fahey for \$275,000 (“Michelle’s Note”).<sup>2</sup> **[Ex. 66, Bates 2169; Ex. 72, Bates 5116-5120]**
83. Michelle’s Note was in conflict with Mr. Nadeau’s Note dated August 17, 2018 which he provided to the lender at closing. **[Ex. 66, Bates 2169; Ex. 65, Bates 2583]**
84. Michelle’s Note was also in conflict with the Gift Letter, which stated that “no repayment of the gift is expected or implied in the form of cash or by future services of the recipient.” **[Ex. 66, Bates 2169; Ex. 57, Bates 2578]**
85. Michelle’s Note contradicted the representation made in her loan application that as to Michelle, no portion of the down payment was borrowed. **[Ex. 66, Bates 2169; Ex. 61, Bates 2482-2488]**

**E) August/September 2018: Mr. Nadeau Convinces Ms. Fahey to Transfer Representation for her Personal Injury Matter from Mr. Hutchins to Himself**

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<sup>2</sup> Michelle’s Note, and her testimony regarding same, is addressed in detail *infra*, Sec. K(2).

86. Mr. Nadeau first began reviewing information from Ms. Fahey's personal injury matter as early as August 6, 2018. **[Ex. 7, Bates 1675]**.
87. For example, on August 22, 2018, at Mr. Nadeau's request, Ms. Fahey forwarded to him an email from Mr. Hutchins describing her case's value as between \$1,000,000 - \$2,000,000. Mr. Hutchins was about to depose the owner of the Pasta Loft. Employees of the Pasta Loft had overserved the driver who injured Ms. Fahey and her son. Mr. Hutchins wanted Ms. Fahey's permission to "invite mediation" following the deposition.<sup>3</sup> **[Ex. 19, Bates 5645-5646]**
88. On August 27, 2018, Ms. Fahey forwarded to Mr. Nadeau another email from Mr. Hutchins to her. It was very detailed, described the results of the deposition, the status of her matter, his opinion that not much more discovery was needed, and that they should proceed to mediation in the \$1-2 million range. **[Ex. 20, Bates 5647-5655]**
89. Thereafter, Mr. Nadeau drafted Ms. Fahey's response to Mr. Hutchins for her, and she sent it from her own email address. **[Ex. 21, Bates 885; Ex. 22, Bates 5656-5659]**

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<sup>3</sup>In the same time period, Mr. Nadeau facilitated a phone call between Ms. Fahey and his father in law, Gregory Firmbach, a financial planner who worked for AEGIS Wealth Builders. **[Ex. 8, Bates 880-880A; Ex. 9, Bates 5676-5681]** Mr. Firmbach created two documents shortly thereafter and emailed them to Ms. Fahey, cc'ing Mr. Nadeau. The documents were entitled "Consultation Opportunity: Shawn Fahey" and "Plan of Action Shawn Fahey's Family Bank." These noted that Ms. Fahey had \$2,000,000 to invest as well as additional money that Ms. Fahey was "anticipating . . . from a pending lawsuit." *Id.*

90. As of August 29, 2018, then, Mr. Nadeau knew that Ms. Fahey's personal injury case was a high-value case in the \$1-2.5 million range. He confirmed this in texts with Ms. Fahey. **[Ex. 3, Bates 1792]** Mr. Nadeau thereafter advised Ms. Fahey about how much was "on the table." **[Ex. 3, Bates 1788-1793]**
91. By late September 2018, Mr. Nadeau prevailed upon Ms. Fahey to terminate her counsel in her personal injury case, Mr. Hutchins, and transfer it to counsel Mr. Nadeau suggested in Boston, Attorney Andrew Abraham. **[Ex. 23, Bates 904-906; Ex. 24, Bates 943; Ex. 25, Bates 952-953; Ex. 28, Bates 1041-1042]**
92. On September 18, 2018, Mr. Nadeau emailed Mr. Abraham, asking to speak with him about a friend who "sustained a very serious brain injury" who might need to "potentially change counsel." **[Ex. 23, Bates 906]**
93. Mr. Nadeau added that they needed to "move quickly" and that Mr. Nadeau would have taken Ms. Fahey's case but for the fact that: "I [Mr. Nadeau] have a personal conflict." **[Ex. 23, Bates 905]**
94. Despite this acknowledged conflict, Mr. Nadeau acted as local counsel for Mr. Abraham in Ms. Fahey's personal injury matter. **[Ex. 31, Bates 3737-3740]**
95. Despite this acknowledged conflict, by December of 2018, Mr. Nadeau also represented Ms. Fahey in her post-divorce proceedings. **[Ex. 13, Bates 67-83; Ex. 3, Bates 1728-1731]**

96. Mr. Abraham testified that he and Mr. Nadeau spoke by phone shortly after the September 18, 2018 email regarding the Fahey case. **[Ex. 23, Bates 906; T-4 AT 76-77].**
97. During this conversation, Mr. Nadeau represented the Fahey matter as “referral,” and the issue of fees arose. Mr. Abraham told Mr. Nadeau that if Mr. Abraham accepted the case, he would give Mr. Nadeau one-third of Mr. Abraham’s “net third.” **[T-4 at 84-86]**
98. Mr. Abraham testified that at no point did Mr. Nadeau describe a conflict arising out of a loan he had recently taken from Ms. Fahey. **[T-4 at 119-120]**
99. During this period, Mr. Nadeau told Ms. Fahey that if she transferred the case to Mr. Abraham, and Mr. Abraham gave Mr. Nadeau a referral fee, Mr. Nadeau would give any referral fee to her. **[T-1 at 103-104]**
100. On September 24, 2018, Mr. Nadeau, with Ms. Fahey’s permission, forwarded to Mr. Abraham Mr. Hutchins’ lengthy Mediation Summary, which Mr. Hutchins had recently forwarded to Ms. Fahey. **[Ex. 27, Bates 977-980; Ex. 26, Bates 5660-5675]**
101. On September 28, 2018, based upon Mr. Nadeau’s advice, Ms. Fahey transferred the personal injury case from Mr. Hutchins to Mr. Abraham. **[Ex. 31, Bates 3737-3740]**
102. Mr. Nadeau did not draft a contingency fee agreement for Ms. Fahey’s signature. **[T-1 at 102]**

103. Mr. Nadeau never disclosed to Ms. Fahey with any reasonable specificity, verbally or otherwise, the basis or amount of the referral fee he would receive from Mr. Abraham. **[T-1 at 103-104]**
104. On October 29, 2018, Mr. Nadeau filed an appearance in Ms. Fahey's personal injury matter, accompanied by a Motion for the *pro hac vice* admission of Mr. Abraham. **[Ex. 31, Bates 3737-3740]**
105. At this point Ms. Fahey had not signed a fee agreement with either attorney. To the extent the issue of the need for a fee agreement with Ms. Fahey arose, it was only addressed by Mr. Abraham, who emailed Mr. Nadeau on October 30, 2018, asking whether his *pro hac vice* had been filed, and stating "I [Abraham] still also need a CFA [contingency fee agreement] with her." **[Ex. 28, Bates 1041-1042]**
106. Mr. Nadeau responded that he could have Ms. Fahey sign one of his (Mr. Nadeau's) fee agreements "with your (Abraham's) information incorporated into it," and offered to have Ms. Fahey sign that very day because he was going to see Ms. Fahey on "her family law matter." *Id.*
107. Mr. Nadeau did not follow through on that, however. Mr. Abraham therefore obtained a draft fee agreement from another New Hampshire attorney. He emailed Mr. Nadeau on November 8, 2018, stating "here is the CFA that I got from another NH lawyer. Is Paragraph 5 necessary?" **[Ex. 30, Bates 1070-1071]**

108. Mr. Nadeau responded that Paragraph 5 was necessary (stating a client must be told that she can choose a contingent fee arrangement or a lawyer's stated hourly rate). *Id.*
109. Mr. Abraham testified that in this time period he was attempting to get Ms. Fahey to sign a contingency fee agreement, he expressly raised the issue of division of fees with Mr. Nadeau. **[T-4 at 111-112]** Mr. Abraham recalls this was during a phone conversation. He told Mr. Nadeau that in Massachusetts, where Mr. Abraham practices, the ethical rules require that lawyers obtain written consent from clients for division of fees between lawyers. He asked if that was also necessary under New Hampshire's rules. *Id.*
110. Mr. Nadeau stated that there was no such requirement in New Hampshire. *Id.* Mr. Abraham took Mr. Nadeau at his word, and on November 13, 2018, Ms. Fahey signed a fee agreement with Mr. Abraham. *Id.* **[Ex. 34, Bates 5121-5122]**
111. Mr. Abraham testified that several times during the Fahey representation, Mr. Nadeau would ask that Mr. Abraham not disclose any referral fee to Mr. Nadeau to Ms. Fahey. **[T-4 at 112]**
- F) The 3 "Conflict Letters" Allegedly Sent to Ms. Fahey By Mr. Nadeau in October, November and December 2018**
112. Mr. Nadeau provided to the ADO three letters that he claims to have sent to Ms. Fahey, dated October 24, 2018, November 29, 2018, and December 13, 2018. **[Ex. 30, Bates 240-241, 401, 546]**

113. These letters purport to be conflict waiver letters. **[Ex. 30, Bates 240-241, 401, 546]**.
114. These letters, as well as two additional letters that Mr. Nadeau produced during the disciplinary investigation and which he claims he sent to Ms. Fahey during her representation (the “Disputed Documents”), were actually written *after* Ms. Fahey terminated representation and after she sued Mr. Nadeau and the ADO investigation began. Mr. Nadeau backdated them, and then later manipulated the “external” metadata of these letters, after the Hearing Panel Chair granted the ADO’s motion to compel production of the letters in “native electronic format.”
115. These and other acts of fabrication and spoliation will be addressed in detail based on the forensic examination and expert testimony of James Berriman, Esq. EnCE.
116. The first conflict letter attaches an “informed consent/acknowledgement” for Ms. Fahey’s signature. The nature of the conflict, according to Mr. Nadeau, is “a business relationship” between himself and Ms. Fahey. **[Ex. 30, Bates 240-241]**
117. Ms. Fahey never received any of these letters. **[T-1 at 106-108]**
118. The letters (albeit fabricated) demonstrate that Mr. Nadeau understood the nature of his conflict of interest, and are certainly consistent with a conflict as disclosed to Mr. Abraham in the email dated September 28, 2018. **[Ex. 30, Bates 240-241, 401, 546]**

119. Nonetheless, Mr. Nadeau continued to represent Ms. Fahey to the conclusion of her personal injury case despite this obvious conflict and the lack of her informed consent. **[Ex. 16, Bates 232-235]**
120. The November 29, 2018 letter contains misrepresentations. Mr. Nadeau informed Ms. Fahey:
- I did find a colleague who has offered to take my place as Local Counsel. His name is Attorney Kyle Griffin and he is an honest and hard-working attorney. He has called me back twice now and I either need to put you in touch with him immediately so he can appear and I can withdraw as local counsel, or you need to sign the conflicts waiver. **[Ex. 30, Bates 401]**
121. Attorney Griffin testified that he never agreed to appear as local counsel for Ms. Fahey. **[T-3 at 62-63]**
122. Mr. Griffin recalls a single conversation with Mr. Nadeau in August or September of 2018 in which Mr. Nadeau mentioned he might need local counsel in a “million dollar case.” **[T-3 at 61]**
123. Mr. Griffin confirmed he never called Mr. Nadeau again about the matter, and Mr. Nadeau never followed up. **[T-3 at 63]**
- G) November 2018: Ms. Fahey’s Personal Injury Case Settles for \$1.8 Million, A Dispute Develops With Previous Counsel Over Fees, Mr. Abraham Offers Mr. Nadeau “40% of Our Gross” As a Fee**
124. Ms. Fahey’s personal injury case settled on or about November 15, 2018 for \$1.8 million against one of the defendants, the Pasta Loft (the restaurant that had served alcohol to the driver who crashed into Ms. Fahey and her son). **[Ex. 36, Bates 452-457; Ex. 37, Bates 458-459]**

125. Ms. Fahey signed a Release and Indemnity Agreement with Defendant Pasta Loft on December 6, 2018. **[Ex. 36, Bates 452-457]**
126. Shortly thereafter, Mr. Hutchins filed a Notice of Attorney Lien Pursuant to RSA 311:13.
127. Mr. Nadeau forwarded the Hutchins lawsuit to Mr. Abraham via email on the same day, adding “I am going to prepare a countersuit to file against this fucker.” **[Ex. 38, Bates 1303]** He then forwarded the Hutchins lawsuit seeking fees to Ms. Fahey via email, adding “nothing like being sued . . . lol . . . Michelle [Nadeau] is going to kill me . . . lol, so lets keep this between us. Calling you in a bit.” **[Ex. 39, Bates 1304]**
128. Ms. Fahey email back the same day, stating “I don’t recommend keeping anything from her.” *Id.*
129. A few weeks later, on December 18, 2018, Mr. Abraham texted Mr. Nadeau that he intended to give Mr. Nadeau “40% of our gross.” **[Ex. 40, Bates 3645]**
130. Mr. Nadeau did not disclose this referral fee to Ms. Fahey at any point during his representation. **[T-1 at 103-104]**
- H) Mr. Nadeau’s Disbursements From the “Net” \$1.2 Million Held in Trust for Ms. Fahey**
131. On December 20, 2018, the net amount of \$1.2 million was deposited into Mr. Nadeau’s client trust account. **[Ex. 85, Bates 2921-2923]**
132. The \$1.2 million amount represented the \$1.8 million minus the 1/3 attorneys’ fee amount of \$600,000. **[T-4 at 107]**

133. The check was cut for \$1.2 million, as opposed to \$1.8 million, because by early November 2018, a dispute had developed among the attorneys — Mr. Nadeau, Mr. Abraham, and Mr. Hutchins — with respect to how attorneys’ fees would be divided among them. **[Ex. 29, Bates 289-290; Ex. 32, Bates 298-304; Ex. 35, Bates 447-451; Ex. 41, Bates 599-600]** Attorneys for the Pasta Loft therefore “held back” the \$600,000 in attorneys’ fees pending resolution of that dispute. **[T-4 at 107]**
134. Mr. Nadeau requested that the check for 1.2 million be made out to his law office and Ms. Fahey, and he asked Mr. Abraham that he (Nadeau) deposit the Fahey funds and disburse them. **[[T-4 at 108]**
135. From the \$1.2 million net amount, Mr. Nadeau wired \$700,000 to Ms. Fahey on December 28, 2018. **[Ex. 85, Bates 2923]**
136. On December 28, 2018, Mr. Nadeau disbursed \$2,100 to himself, without authorization, from the \$1.2 million even though he had no claim to fees from this pool of net funds belonging to Ms. Fahey. **[Ex. 2, Bates 3745; Ex. 85, Bates 2921-2923; Ex. 86, Bates 2379]**
137. Also, from the \$1.2 million net settlement amount, Mr. Nadeau paid the following authorized amounts:
- a) various medical providers a total of \$418,473.18; **[Ex. 47-15, Bates 2195; Ex 85, Bates 2929, 2931, 2936-2938, 2942, 2946; Ex. 86, Bates 2379]**
  - b) costs to Mr. Abraham of \$11,802.39; **[Ex. 85, Bates 2929, 2931]** and

- c) an investor, Smartfit Holdings, Inc. \$55,000.00, on Ms. Fahey's behalf. **[Ex. 85, Bates 2934-2938]**
138. Months later, upon demand by Ms. Fahey's counsel Mr. Hawkins in the breach of contract case, Mr. Nadeau paid Ms. Fahey her \$12,626.43 on or around May 9, 2019, representing the balance owed to her from the \$1.2 million net amount he held in trust. **[Ex. 73, Bates 838-840]**
- I) January 2019: The Attorneys Resolve Their Fee Dispute; Mr. Nadeau Disburses, Without Ms. Fahey's Knowledge, Over \$170,000 From the Fahey Trust Account to Himself, and to 11 Out of Trust Client Matters/\$11,665 IOLTA Account Shortfall**
139. As to the dispute over the \$600,000 in attorneys' fees from the personal injury settlement, the matter resolved on January 8, 2019. **[106; Ex. 16, Bates 232-235; Ex. 43, Bates 618]**
140. The case ultimately settled when Mr. Nadeau, Mr. Abraham, and Mr. Hutchins spoke in person while at court for a hearing in the case. **[T-4 at 108-109]** After this meeting, Mr. Nadeau asked Mr. Abraham if he would give Mr. Nadeau an additional \$10,000 from Mr. Abraham's portion due to financial problems. Mr. Abraham agreed. **[T-4 at 111]**
141. On January 8, 2019, per the agreement of the three attorneys, the \$600,000 was deposited in Mr. Nadeau's client trust account. **[Ex. 85, Bates 2928-2930, 2932]**
142. On January 10, 2019, Mr. Nadeau paid Mr. Hutchins \$215,000. **[Ex. 85, Bates 2928-2930, 2999-3007; Ex. 86, Bates 2380-2381]**
143. On January 10, 2019, Mr. Nadeau paid Mr. Abraham \$220,000. **[Ex. 85, Bates 2928-2931; Ex. 86, Bates 2380-2381]**

144. This left \$165,000 in Mr. Nadeau's CTA that he was holding in trust for Ms. Fahey from the total pool of \$600,000 in attorneys' fees from her personal injury funds.<sup>4</sup> **[Ex. 86, Bates 2380-2381]**
145. The issue of fee division, at least for Attorney Abraham, came to the fore again once the fee dispute with Mr. Hutchins resolved and disbursements were actually being made from the pool of \$600,000. **[T-4 at 111-112]**.
146. Mr. Abraham, in January 2019, told Mr. Nadeau that they needed to inform Shawn Fahey of the fee division, especially given the litigation on the issue. *Id.* The issue of a settlement statement came up at that time as well, as Mr. Abraham's practice was to provide a personal injury client with a detailed accounting of all funds resulting from settlement.
147. Mr. Abraham told Mr. Nadeau in January 2019 that he (Abraham) would be informing Mr. Fahey of what each of the three attorneys received in fees. Mr. Nadeau, however, expressly told Mr. Abraham that such disclosure was not required. *Id.*
148. This struck Mr. Abraham as strange, so he looked up the rule in New Hampshire that addresses fee agreements (Rule 1.5). He brought the

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<sup>4</sup> Subtracting Mr. Hutchins' \$220,000 in fees from the total \$600,000 leaves \$380,000 "gross" for Mr. Nadeau and Mr. Abraham. 40% of \$380,000 is \$152,000. Mr. Abraham had agreed to give Mr. Nadeau \$10,000 more from Mr. Abraham's share, for a total of \$162,000. Mr. Nadeau actually received \$165,000 of the \$600,000 in fees. This issue was never disputed by Mr. Abraham, and never known to Ms. Fahey.

rule to Mr. Nadeau's attention, correcting Mr. Nadeau's statement that nothing in the rules required disclosure of fees to Ms. Fahey. *Id.*

149. Upon bringing the actual New Hampshire rule to Mr. Nadeau's attention, Mr. Nadeau told Mr. Abraham he (Nadeau) would "take care of it". *Id.*

150. Upon receiving this assurance from Mr. Nadeau, Mr. Abraham did not inquire further about written disclosure to Ms. Fahey of division of fees and accounting for amounts paid out of the total \$1.8 million. *Id.* It made sense to Mr. Abraham that Mr. Nadeau was in the best position to make written disclosures to Ms. Fahey regarding division of fees and other payments out of the \$1.8 million, as Mr. Abraham had never held any funds relating to her representation, and was not in possession of various details such as precise sums paid to medical providers. **[T-4 at 114-115]**

151. Mr. Nadeau provided to the ADO a copy of a letter to Ms. Fahey dated January 15, 2019, enclosing a "Settlement Summary." **[Ex. 76, Bates 5788-5790]** The forensic evidence demonstrates that Mr. Nadeau drafted this letter on June 20, 2019, after the representation of Fahey had ended and the ADO and Civil Matters were underway. According to the forensic examination, Mr. Nadeau backdated the document to January 15, 2019, then produced it to the ADO, as well as to the Court in the Civil Matter, and later manipulated metadata to cover up his

backdating efforts.<sup>5</sup> Ms. Fahey testified she never received a settlement summary during Mr. Nadeau's representation.

152. Around January 2019, Ms. Fahey asked Mr. Nadeau whether he took any payment for himself from her personal injury funds. **[T-1 at 114-115]**
153. Mr. Nadeau told Ms. Fahey he could not recall the specific amount, but that he received something in the range of \$18,000 to \$22,000. **[T-1 at 114-115]**
154. Based on this representation, Ms. Fahey agreed in January 2019 that Mr. Nadeau should receive \$18,000 - \$22,000 on account of his efforts with respect to the personal injury matter. **[T-1 at 115]**
155. Contrary to what he told Ms. Fahey, and without any disclosure to or authorization from her, Mr. Nadeau did not take only \$18,000 - \$22,000 in fees. **[Ex. 85, Bates 2928-2948; Ex. 86, Bates 2380-2381]**

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<sup>5</sup> Regardless of the actual date of creation, this document also contains misrepresentations. Mr. Abraham never informed Mr. Nadeau that he (Abraham) would provide a settlement summary to Mr. Fahey. **[Abraham Testimony]**. And it was never the case that Mr. Nadeau was not going to receive a fee from the Zarembo settlement. *Id.* As of the date of Mr. Abraham's testimony, Mr. Abraham is still holding over \$35,000 in his account from this settlement, which represents Mr. Nadeau's portion of the Zarembo fee. Up until the date of Mr. Abraham's testimony in this case, the funds were in dispute given the ongoing Civil Matter and Mr. Nadeau had not authorized Mr. Abraham to release those funds to Ms. Fahey. *Id.* While on the record in this matter, counsel for Mr. Nadeau authorized Mr. Abraham to release these funds.

156. As set forth in more detail herein, Mr. Nadeau actually paid himself a total of \$170,849.97 from funds held in trust for Ms. Fahey. **[Ex. 85, Bates 2928-2948; Ex. 86, Bates 2380-2381]** Specifically:

- a) from the \$600,000 in total attorneys' fees, Mr. Nadeau transferred a total of \$137,001.66 from his CTA to his operating account as unauthorized, undisclosed "fees;" **[Ex. 85, Bates 2928-2948; Ex. 86, Bates 2380-2381]**
- b) from the \$600,000 in total attorney's fees, Mr. Nadeau transferred \$31,748.31 from Ms. Fahey's account to replenish eleven other client matters that were out of trust and to correct a general IOLTA shortfall; and **[Ex. 85, Bates 2928-2948; Ex. 86, Bates 2380-2381]**
- c) from the net amount of \$1.2 million, Mr. Nadeau disbursed \$2,100 to himself. **[Ex. 2, Bates 3745; Ex. 85, Bates 2921-2923; Ex. 86, Bates 2379]**

157. From January 10, 2019 through March 14, 2019, Mr. Nadeau transferred from his CTA to his operating account, the following amounts from Ms. Fahey's funds held in trust:

- 1/10/19        \$18,000.00
- 1/10/19        \$10,000.00
- 1/11/19        \$3,000.00
- 1/17/19        \$30,000.00
- 1/23/19        \$11,000.00
- 1/24/19        \$2,000.00
- 1/29/19        \$2,000.00
- 1/31/19        \$15,000.00
- 2/1/19         \$4,000.00
- 2/7/19         \$2,500.00

- 2/14/19 \$3,000.00
- 2/14/19 \$15,000.00
- 2/15/19 \$3,501.66
- 2/20/19 \$5,300.00
- 2/20/19 \$200.00
- 2/25/19 \$2,500.00
- 2/27/19 \$2,000.00
- 2/28/19 \$2,500.00
- 3/1/19 \$1,500.00
- 3/11/19 \$500.00
- 3/11/19 \$500.00
- 3/12/19 \$500.00
- 3/14/19 \$2,500.00

**Ex. 85, Bates 2928-2948]**

158. In addition to these unauthorized payments to himself, Mr. Nadeau engaged in the following unauthorized transfers from the \$600,000 as follows:

- a) Mr. Nadeau transferred funds from Ms. Fahey’s sub-account to 11 other clients matters, all of which were out of trust in amounts ranging from \$42.95 to \$5,350.00, for a total of \$20,083.34. In some instances, these client matters had been out of trust for 1-2 years; and **[Ex. 86, Bates 2359, 2367, 2376-2378, 2380-2381, 2384, 2390, 2396, 2411, 2417, 2422, 2427]**
- b) Mr. Nadeau transferred a large sum — \$11,665 — from Ms. Fahey’s account to what his ledger notes vaguely as “iolta account.” This transfer did not identify any client matter to which this sum was attributed. Mr. Nadeau’s bookkeeper testified that this sum represented total “undesigned” disbursements out of the IOLTA, *i.e.*

transfers which did not identify a client, which predated his employment. **[Ex. 2, Bates 3745; Ex. 86, Bates 2380]**

159. Mr. Nadeau, despite ultimately holding a total of \$1.8 million on behalf of Ms. Fahey, provided her no settlement statement of the gross recovery, as required by Rule 1.5, setting forth the “remittance to the client and the method of its determination,” until March 2019. **[T-1 at 117]**
160. In March of 2019, at Ms. Fahey’s insistence, Mr. Nadeau provided an accounting to Ms. Fahey for funds held as part of Ms. Fahey’s personal injury settlement. **[Ex. 47-15, Bates 2195]**
161. That March 2019 statement addressed only Ms. Fahey’s \$1.2 million “net” settlement. **[Ex. 47-15, Bates 2195]**
162. No accounting for the division of attorneys’ fees, nor disclosure of the referral fee between Mr. Abraham and Mr. Nadeau, was provided to Ms. Fahey at any point during the representation.

**J) December 2018: Mr. Nadeau Borrows \$6,500 From Ms. Fahey**

163. Shortly after Ms. Fahey’s personal injury case settled, Mr. Nadeau came to his client again complaining of financial troubles. **[Ex. 30, Bates 546; T-1 at 112]**
164. On December 12, 2018, Mr. Nadeau asked Ms. Fahey to loan him \$6,500 because he needed money to “pay bills.” **[Ex. 30, Bates 546; T-1 at 112]**
165. Mr. Nadeau told Ms. Fahey that he expected to receive a \$6,000 fee within a day or two that he would use to repay her. **[T-1 at 112]**

166. Mr. Nadeau did not disclose the loan terms in writing, did not offer to pay interest on this loan, did not advise Ms. Fahey to seek the advice of independent legal counsel on the transaction, and did not provide any written disclosures to her regarding this otherwise prohibited lawyer-client transaction. **[T-1 at 112]**
167. On December 12, 2018, in reliance upon Mr. Nadeau's promise to repay the loan within a day or two, Ms. Fahey made out check number 969 to Justin Nadeau in the amount of \$6,500. **[Ex. 47-7, Bates 2161-2162; T-1 at 112]**
- K) March 8, 2019 – March 12, 2019: Ms. Fahey Demands Documentation for Her Loans to Mr. Nadeau; Mr. Nadeau Produces Three Materially Different Documents, One of Them Forged**
168. As of March 4, 2019, Mr. Nadeau had made no payments of any kind on the personal loans he obtained from Ms. Fahey. **[T-1 at 119]**
169. Ms. Fahey became extremely distressed and worried at this point, and began pressing Mr. Nadeau repeatedly regarding the issue of whether the State Street condo was close to selling, and whether he intended to provide her with any documentation on the loans. **[T-1 at 120-124]**
170. Despite her continued requests for some form of documentation, Mr. Nadeau never disclosed to Ms. Fahey that in fact there did exist a Promissory Note – the one he drafted and provided to the lender months prior in order to close on his family home. **[Bates 2583]**

171. On March 4, 2019, Ms. Fahey asked Mr. Nadeau about the status of his efforts to obtain a loan on the State St. Condominium. **[Ex. 47-8, Bates 2165]**
172. Mr. Nadeau responded that he was dealing with an offer on the property as well as a loan. **[Ex. 47-8, Bates 2164-2165]**
173. Ms. Fahey replied she “didn’t really care about the condo anymore after 7 months of waiting for [her] money and continuing to pay monthly for it.... Please answer my questions.” **[Ex. 47-8, Bates 2164]**
174. Mr. Nadeau responded “the condo was appraised last summer for \$700K and at this point my priority is paying you back, so I do not care what it sells for. I just want it sold and you paid. Thank you for all you have done for me and my family.” **[Ex. 47-8, Bates 2164]**
175. According to documents on file at the Rockingham County Registry of Deeds, at that time Mr. Nadeau borrowed the \$275,000.00 from Ms. Fahey, he had no ownership interest in the State St. Condominium. **[Ex. 52, Bates 3868-3869; Ex. 53, Bates 2656-2660]**
176. As of August 2018, the State Street condo was owned by J.P. Nadeau as trustee/donor of “the J.P. Nadeau 2009 Trust,” of which Justin Nadeau was the beneficiary. **[Ex. 52, Bates 3868-3869; Ex. 53, Bates 2656-2660]**
177. On February 27, 2019, two warranty deeds were recorded with the Rockingham County Register of Deeds, transferring the two units comprising the State Street condo. **[Ex. 47-16, Bates 2199-2202]**

178. Unit 1 of the State St. Condominium was owned by J. P. Nadeau a/k/a James P. Nadeau, and Unit 2 of the State St. Condominium was owned by the J.P Nadeau Trust of 2009. **[Ex. 47-16, Bates 2197-2198; Ex. 52, Bates 3868-3869]**
179. By the time Mr. Nadeau presented Ms. Fahey with loan documentation in March of 2019, J.P. Nadeau had granted Units 1 and 2 of the State Street Condo to himself “as Trustee of the Split Rock Cove Family Trust of 2019.” **[Ex. 47-16, Bates 2199-2200]**
180. On March 6, 2019, Ms. Fahey texted Mr. Nadeau “I’m can’t stand this anymore. I’m cracking. The stress is too much. Hunting down answers trying to complete things in my life. Why is this happening to me? I don’t’ deserve it. I try to help people and get screwed and I suffer.” Mr. Nadeau texted back that he was “going to get this done Shawn.” **[Ex. 3, Bates 2020]**
181. On March 7-8, 2019, Ms. Fahey and Mr. Nadeau exchanged emails. **[Ex. 68, Bates 1565-1567]** Ms. Fahey asked Mr. Nadeau about (a) “the paperwork regarding a listing of my bills, who’s been paid, who hasn’t been paid and the total left to me” (i.e. asking for a settlement summary, though she did not know the term for such documentation), and (b) “paperwork” for the loans.
182. Specifically, Ms. Fahey stated “you’re not responding to me about the loan and status. I want paperwork regarding the money I loaned you within 24 hours. It’s been 7 months and no paperwork.” She closed by

saying “I need a response. I don’t know what’s going on but I need closure.”

183. Mr. Nadeau responded the same day that he would “bring all the paperwork home with me and drop it off to you tomorrow on my way to work. I am doing everything I can to get you your money as fast as possible . . . it kills me because I know how stressed you are. I am stressed beyond belief over this . . .” Mr. Nadeau added that he was working on getting a loan to pay her back. “I am thinking I can borrow \$50,000 from a friend and reduce my debt obligation to you by that sum, and then pay you the remainder as soon as the condo sells. I also have a case that is settling, which can solve all of this.”

184. Ms. Fahey replied: “Didn’t you get paid from my personal injury case? You were going to give me that money anyway. . . . This is why people just don’t write big check to people like I did. Because of how hard it is to get it back.” *Id.*

185. Mr. Nadeau responded on March 7, 2019, but did not answer Ms. Fahey’s questions about fees from her personal injury case. Instead, he reminded her he’d been on “[her] side since day one,” told her his hourly rate is \$300/hour and she’d never seen a bill, adding that if it weren’t for him, her personal injury case “wouldn’t have seen anything north of \$1.2MIL.”

186. Ms. Fahey responded:

...you said ‘as a friend, please talk to Andrew [Abraham], I don’t want a penny’ because I was complaining about Peter

[Hutchins]. You made out big time because you made money from it. I loaned you money to save your house. You asked for \$6,500 more and I never saw it . . . You said to me 'if I miss one payment I owe you and I will give you the condo.' You won't even give me paperwork for it. You have lied to me many times over. You saw me coming a mile away. Don't you dare turn this around on me and make it look like you did me a god damn favor especially when you said 'I'll take your case because you helped me and my family.' I owe you nothing."

187. Mr. Nadeau did not reply to these emails by telling Ms. Fahey that he *had* in fact given her "paperwork on the loan," *i.e.*, the Promissory Note back in August 2018 when he took the loan for \$275,000. He did not remind her at this time that he *had* given her a detailed Settlement Summary back on January 15, 2019, when the attorneys' fee dispute resolved. (The Settlement Summary as described herein was fabricated).
188. The Panel finds the absence of such a communication from Mr. Nadeau as of March 7, 2019 compelling in that it contradicts his testimony that he gave Ms. Fahey a Promissory Note on August 17, 2018 and that he sent her a Settlement Summary in January of 2019. Had he engaged in these acts contemporaneous with the representation, his responses to Ms. Fahey in early March 2019 would have so stated.
189. In any event, Mr. Nadeau did not drop any "paperwork" off to Ms. Fahey "on his way to work" to the next day as he had promised. She texted him on March 8, 2019 saying "I've been waiting here all morning. You're not coming with the paperwork?" She also emailed him the same day and asked, "what's going on with the loan?" **[Ex. 3, Bates 2021; Ex. 68, Bates 1566]**

190. Mr. Nadeau responded the same day that he was calling his sister to see about getting a loan from her to pay Ms. Fahey back, likely for \$50,000 - \$100,000 “but not the entire sum I owe you.” **[Ex. 68, Bates 1565]**
191. After multiple texts back and forth from mid-day on March 8, 2019 until that evening, Ms. Fahey went to Mr. Nadeau’s law office around 5:30 p.m. **[Ex. 3, Bates 2021-2025]** Ms. Fahey had no desire to speak with Mr. Nadeau, so when she arrived at his office, she simply picked up an envelope containing what she assumed would be a document memorializing the terms of the loan and what he owed her. Neither document reflected their agreement reached on August 17, 2018.

**L) March 8, 2019: Justin Nadeau Provides an Unsecured Promissory Note Dated August 17, 2018 For the First Time to Fahey; It Does Not Reflect Their August 2018 Agreement**

192. The first promissory note provided to Ms. Fahey purports to be dated August 17, 2018 and appears to be signed by Justin P. Nadeau (“Nadeau’s Note”). **[Ex. 67, Bates 2167]**
193. Nadeau’s Note as provided to Ms. Fahey in March 2019 is identical to the one he provided to the lender in August 2018. **[Ex. 67, Bates 2167; Ex. 65, Bates 2583]**
194. Nadeau’s Note misrepresents the terms of the loan offered by Mr. Nadeau in August 2018. **[Ex. 47-9, Bates 2167; Ex. 47-13, Bates 2189; Ex. 47-14, Bates 2191-2193; Ex 65, Bates 2583]**
195. Among other things, there is no reference to the \$25,000 fee for making the loan; no reference to monthly payments on Ms. Fahey’s home equity

line of credit; no reference to security or collateral, nor any assignment of rents or mortgage in the State St. Condominium; the note provides for 6% interest per annum; and the note calls for payment in full on or before midnight August 17, 2019. **[Ex. 47-9, Bates 2167; Ex. 47-13, Bates 2189; Ex. 47-14, Bates 2191-2193; Ex. 65, Bates 2583]**

**M) March 8, 2019: Mr. Nadeau Forges Michelle Nadeau's Name on a Second Promissory Note Provided to Ms. Fahey on March 8, 2019, Listing as "Collateral" Real Property Encumbered (But Not Disclosed to Fahey) with a Mortgage of Over \$200,000 and Tax Liens of Over \$290,000**

196. The second promissory note provided to Ms. Fahey on March 8, 2019 purports to be dated August 25, 2018 and is signed by Michelle Firmbach Nadeau. ("Michelle's Note"). **[Ex. 66, Bates 2169]**
197. Michelle's Note also contains Mr. Nadeau's signature as having "witnessed" the Note. **[Ex. 66, Bates 2169]**
198. Mr. Nadeau signed his wife's signature on the Note dated August 25, 2018. **[Ex. 66, Bates 2169; Ex. 72, Bates 5116-5120]**
199. Michelle testified that she never authorized Mr. Nadeau to sign her name to the Promissory Note. **[T-3 at 102, Ex. 66, Bates 2169; Ex. 72, Bates 5116-5120]**
200. Mr. Nadeau falsely "witnessed" Michelle's signature. **[Ex. 66, Bates 2169; Ex. 72, Bates 5116-5120]**
201. Michelle had never seen the Promissory Note purporting to bear her signature until she was served in May 2019 with Ms. Fahey's civil

- lawsuit against Mr. Nadeau, his law office, and Michelle. **[T-3 at 101; Ex. 72, Bates 5116-5120]**
202. Unlike Mr. Nadeau's Note, Michelle's Note contained what purported to be collateral. **[Ex. 66, Bates 2169]**
203. Michelle's Note provides that it is "secured and collateralized by the equity in real property Borrower owns that is situate at 1151 Sagamore Avenue, Portsmouth, New Hampshire 03801." **[Ex. 66, Bates 2169]**
204. The reference to the Sagamore Avenue property, as opposed to the State Street condo, was previously not referenced as collateral for her loan. **[T-1 at 137-138]**
205. Michelle owns the Sagamore Avenue property jointly with Mr. Nadeau. **[Ex. 47-12, Bates 2186-2187]**
206. According to the Rockingham County Registry of Deeds, the Sagamore Avenue property is encumbered with a mortgage of \$224,000. **[Ex. 47-11, Bates 2174-2184]**
207. The Sagamore Avenue Property is also encumbered by Tax Liens by the New Hampshire Department of Revenue and the Internal Revenue Service of approximately \$290,000.00. **[Ex. 47-11, Bates 2171-2173]**
208. The "collateral" of the Sagamore Avenue property is potentially worthless as security for Ms. Fahey's loan. **[Ex. 47-11, Bates 2171-2184]**
209. Mr. Nadeau knew of these encumbrances on the Sagamore Avenue property at the time of presenting Michelle's Note to Ms. Fahey but did

not disclose this material information to her. **[Ex. 47-11, Bates 2171-2184]**

210. The material terms of Michelle's Note are otherwise identical to those in Nadeau's Note. **[Ex. 66, Bates 2169; Ex. 67, Bates 2167]**

**N) March 11, 2019: Ms. Fahey Informs Mr. Nadeau the Two Promissory Notes Do Not Reflect Their Agreement; Mr. Nadeau Produces a Third Document ("Acknowledgement and Agreement") Finally Setting Forth the Actual Agreement**

211. In the next few days, Ms. Fahey reviewed the two Promissory Notes Mr. Nadeau provided and informed him via text and email that they did not accurately reflect their agreement. **[Ex. 3, Bates 2025; Ex. 47-13, Bates 2189]**

212. On March 11, 2019, Ms. Fahey emailed Mr. Nadeau. *Id.* This email followed her review of two Promissory Notes which Mr. Nadeau provided to her for the first time on March 8, 2019 (Mr. Nadeau's Note with the State Street Condo as collateral, and Michelle's Note with Sagamore Ave. as collateral).

213. Ms. Fahey emailed Mr. Nadeau on March 11, 2019 stating "I just reviewed the promissory note you gave me for 507 State Street and it doesn't have the \$25k you promised. Are you taking that away?" Later the same day, after not hearing from Mr. Nadeau, Ms. Fahey emailed him again, stating "I need to hear from you about this. The paperwork needs to reflect our agreement." *Id.*

214. In response, Mr. Nadeau wrote “which do you mean? That I owe you money? \$275,000 + \$25,000 + \$1,500 per month + \$6,500? Sure, ok. I can write something up after trial tomorrow. Sound good?” *Id.*
215. This exchange indicates that Mr. Nadeau’s Promissory Note, as well as Michelle’s, provided to Ms. Fahey on March 8, 2019, did not reflect the agreement Mr. Nadeau had reached with Ms. Fahey when she loaned him \$275,000. His Promissory Note, as well as Michelle’s, makes no mention of “\$25,000 + \$1,500 per month + \$6,500.” This email corroborates Ms. Fahey’s testimony about what she and Mr. Nadeau agreed to on August 17, 2018 when she wrote him a check for \$275,000, on the eve of the closing for Mr. Nadeau’s family home. **[Ex. 3, Bates 2025; Ex. 47-13, Bates 2189]**
216. This email also confirms, because it references the \$1,500/month, that Mr. Nadeau was aware that Ms. Fahey had loaned him the \$275,000 based on a HELOC on which she was paying roughly this amount per month. This is also corroborated by the fact that the draft Note that Mr. Nadeau sent to Jack McGee had listed a 5% interest rate **[Ex. 63, Bates 4906]**, but the Note Mr. Nadeau provided to LendUS, and later to Fahey on March 8, 2019, contained a 6% interest rate. **[Ex. 65, Bates 2583; Ex. 67, Bates 2167]** Ms. Fahey testified this was roughly the interest rate she had been quoted on the HELOC, and she shared this with Mr. Nadeau on August 17, 2018. He agreed on this interest rate when she made the loan. **[Ex. 47-13, Bates 2189; T-1 at 73]**

217. On March 12, 2019, in response to Ms. Fahey's insistence that she receive something in writing that actually reflected their August 2018 agreement, Mr. Nadeau sent Ms. Fahey yet another document. This third document was entitled "Acknowledgment and Agreement" and was purportedly meant to "supplement and/or clarify" Nadeau's Note. **[Ex. 70, Bates 2191-2193]**
218. Notwithstanding this language, the Acknowledgment and Agreement includes a clause stating that it constitutes the entire agreement and understanding of the parties of the terms of the agreement. **[Ex. 70, Bates 2191-2193]**
219. Mr. Nadeau acknowledged in that document that the \$275,000 loan was "reflective of a personal loan made to him by Ms. Fahey" on or about August 23, 2018. **[Ex. 70, Bates 2191-2193]**
220. Mr. Nadeau, for the first time, accurately set forth the amount actually owed and included the \$25,000 "origination fee," acknowledging that he owed Ms. Fahey a total of \$318,500 as of March 12, 2019. **[Ex. 70, Bates 2191-2193]**
221. In the Acknowledgement and Agreement, Mr. Nadeau promised to ensure that in the event of any sale to third parties of any assets, real estate or other interest owned by him in whole or in part or by virtue of any trust holding assets where he had any beneficial interest, he would timely disclose the existence of Ms. Fahey's loan to the closing agent, and she

would be listed on the HUD Settlement Statement for payment at closing.

**[Ex. 70, Bates 2191-2193]**

222. Nadeau's Note, which was the Promissory Note provided the lender in August 2018, and the final document ultimately provided to Ms. Fahey in March 2019 (the "Acknowledgment and Agreement"), are significantly different. **[Ex. 67, Bates 2167; Ex. 70, Bates 2191-2193]**

223. The Promissory Note provided to the lender contained: (1) a lesser total debt \$275,000 vs. \$318,500; and (2) no collateral or security of any kind.

**[Ex. 65, Bates 2583; Ex. 67, Bates 2167]**

224. Mr. Nadeau produced to the ADO, in the course of discovery, a letter to Ms. Fahey dated March 13, 2019, in which he addresses the Acknowledgement and Agreement. This letter, like the January 2019 Settlement Summary, was not produced with the Fahey file in the early stage of the investigation. Like the other 4 Disputed Documents, the forensic evidence demonstrates this letter was created after Ms. Fahey sued Mr. Nadeau, after the ADO investigation began, and was backdated by him. Like the other 4 Disputed Documents, when the bona fides of this document were questioned by the ADO, and Mr. Nadeau was ordered to produce native electronic versions, he manipulated external metadata to make it appear the document was created on the actual day it is dated. *Infra*, par 275-299.

**II. Trust Account Violations: 11 Out of Trust Client Matters, an \$11,665 IOLTA General Shortfall; Commingling**

225. As noted herein, *supra*, Mr. Nadeau was out of trust in 11 client matters for whom he reimbursed funds in his CTA using Ms. Fahey's personal injury recovery/funds. **[Ex. 86, Bates 2359, 2367, 2376-2378, 2380-2381, 2384, 2390, 2396, 2411, 2417, 2422, 2427; T-3 at 39]**
226. Mr. Nadeau reimbursed the 11 client matters that were out of trust on January 17, 2019, only nine days after the \$600,000 attorneys' fee portion of the Fahey settlement was deposited in his CTA. **[T-3 at 44; Ex. 86, Bates 2359, 2367, 2376-2378, 2380-2381, 2384, 2390, 2396, 2411, 2417, 2422, 2427; Brewster Testimony]**
227. Mr. Nadeau also commingled his personal funds in the IOLTA account when he placed the \$275,000 from Ms. Fahey into the IOLTA account.
228. Mr. Nadeau further comingled when he left allegedly earned fees from the Fahey matter in his IOLTA account for months, rather than transfer at once the allegedly earned fees at the same time as he made the transfers to Abraham and Hutchins.
229. As set forth further herein, Mr. Nadeau was well aware of these 11 out of trust matters, because his bookkeeper Brandon Brewster had specifically brought them to Mr. Nadeau's attention in the summer of 2018. **[T-3 at 31]**
230. Even if Mr. Nadeau was not previously aware of this, he was solely responsible all transactions and supervision to ensure that the CTA was not out of trust. See Rule 50(2)(C)(ii)

231. Despite being out of trust in at least 11 client matters, Mr. Nadeau knowingly falsely reported on his trust account compliance certificates for the reporting years covering June 1, 2016 through May 31, 2018 that he was never out of trust and was compliant with Rule 50. **[Ex. 88, Bates 3621-3622]**

**A) Testimony of Brandon Brewster, Mr. Nadeau's Bookkeeper as to IOLTA conduct**

232. Brandon Brewster was Mr. Nadeau's book-keeper from September 2017 until Mr. Nadeau ceased practicing law in June 2019 due to the ADO investigation. **[T-3 at 14]**

233. In the spring of 2019, Mr. Brewster compiled client ledgers that were produced to the ADO at its request, which covered the period January 1, 2017 to April 30, 2019. **[Ex. 86, Bates 2359-2429]**

234. Mr. Brewster has an associate degree in accounting and has been a bookkeeper for 12 years. **[T-3 at 13]** He was referred to Mr. Nadeau by Jack McGee, for whom Mr. Brewster still works as a bookkeeper. **[T-3 at 14]**

235. Mr. Brewster was trained regarding bookkeeping for lawyers by Mr. McGee's former bookkeeper. Mr. McGee testified that Mr. Brewster was a competent and honest bookkeeper, and that Mr. Brewster never made transfers from his IOLTA account without his knowledge. **[T-2 at 12]**

236. During his testimony, Mr. Brewster demonstrated familiarity with the formalities of an IOLTA account, including the need to identify all

disbursements with a client designation, the prohibition on commingling, and the fact that an IOLTA account is not one account but actually subaccounts, one for each client, that must be separately accounted for.

**[T-3 at 49]**

237. Mr. Brewster worked as a 1099 contractor for Mr. Nadeau, usually spending about 10 hours/week at Mr. Nadeau's law office on Sagamore Ave. Mr. Brewster was compensated by a flat fee of \$1,000/month. **[T-3 at 14-15]**

238. Mr. Brewster's duties included maintaining QuickBooks for Mr. Nadeau, including attempting to keep a record of all receipts and disbursements from the IOLTA account. He handled payments for office expenses like rent and payroll. He submitted tax documents to state and federal agencies on behalf of Mr. Nadeau's law office. Mr. Brewster did his best to perform monthly reconciliations as required by Rule 50 and 50A. Mr. Brewster did not perform substantive work for clients. **[T-3 at 14-17]**

239. Upon beginning to work with Mr. Nadeau, Mr. Brewster discovered the IOLTA account was "a mess." Mr. Nadeau's previous book-keeper had only one general ledger, not individual client ledgers. Moreover, many transfers from the IOLTA account had been made without a client designation. In addition, Mr. Nadeau evidently had a habit of making disbursements from the IOLTA via electronic transfer; he occasionally identified a client matter to which such disbursement pertained, but often did not. **[T-3 at 19-23]**

240. Mr. Brewster attempted to reconstruct what specific amounts were held by Mr. Nadeau for each individual client. Mr. Brewster shared his concerns with Mr. Nadeau immediately, as well as the need to attempt to reconstruct for each client amounts held in trust. Mr. Brewster's review attempted to determine, from bank records, check images, "memos" on checks, or designations on electronic transfers, what disbursements pertained to which client. *Id.*
241. At the time he brought these out of trust matters to Mr. Nadeau's attention in the summer of 2018, Mr. Brewster shared his concerns with Mr. Nadeau, including the fact that no client matters should ever be in the negative and that the accounts would need to be brought back to zero. **[T-3 at 32]**
242. Mr. Brewster confirmed that throughout his employment with Mr. Nadeau, all transfers out of, and deposits into, the IOLTA were made with Mr. Nadeau's knowledge. **[T-3 at 83]**
243. He confirmed that when the \$600,000 Fahey attorney's fee was deposited, Mr. Nadeau instructed him to replenish the 11 out of trust client matters noted on Mr. Fahey's ledger. Mr. Nadeau likewise authorized the transfer of \$11,665 as a general "IOLTA" transfer to replenish the many undesignated transfers made by Mr. Nadeau previous to Mr. Brewster's employment. **[T-3 at 35]**
244. As to the other disbursements from the \$600,000 pool of funds, Mr. Brewster testified these were likewise made at Mr. Nadeau's direction.

Mr. Brewster could not identify the source of the two deposits into this account, for \$250 and \$3500. **[T-3 at 27-28]**

245. Mr. Brewster acknowledged that if these sums represented earned attorneys' fees, they should have been transferred out of the IOLTA all at once, reasonably promptly after receipt. He further testified Mr. Nadeau did not want the Fahey "earned" fees moved to his operating account all at once as he did not want funds in his operating accounts subject to IRS liens. **[T-3 at 50]**

246. As to all disbursements from the Fahey funds of 1.2 million, these were also made at Mr. Nadeau's direction. **[T-3 at 53]**

247. Mr. Brewster testified about one of the 11 client matters that were out of trust as an example, that of Sean and Amy Murphy. He noted that after an initial deposit of \$4,444 into the Murphy trust account on November 29, 2018, Mr. Nadeau himself (not Mr. Brewster) made multiple electronic transfers in round numbers (\$1,000, \$500, \$400), all on nearly consecutive days (December 3, 4, 6, and 7, 2018). **[Ex. 86, Bates 2411]**

248. Mr. Brewster testified that it seemed unusual for an attorney to withdraw funds on a near daily basis, as his experience with Mr. McGee involved monthly billings backed up by time records. Mr. Brewster testified he never saw billing statements to clients or time-keeping records of Mr. Nadeau. **[T-3 at 42]**

249. By December 21, 2018, the Murphy trust account was at negative - \$1,150. Nonetheless, the ledger shows a subsequent payment to Mr.

Nadeau of \$1,000, bringing the out of trust amount to -\$2,150. Mr. Nadeau would transfer \$1,000 electronically from the IOLTA, and instruct Mr. Brewster to attribute it to the Murphy matter, even though funds were being held on behalf of the Murphy. Mr. Brewster stated that by definition, Mr. Nadeau was using the funds of other clients to make this payment, and others like it, for clients that were out of trust. **[T-3 at 43]**

**B) Testimony of Heidi Granlund, Mr. Nadeau's Paralegal**

250. Heidi Granlund was Mr. Nadeau's paralegal from the summer of 2017 through June 14, 2019. **[T-2 at 142-156]**
251. In addition to her standard duties as a paralegal, one of Ms. Granlund's duties while working for Mr. Nadeau was reviewing and processing client correspondence documentation. *Id.*
252. At the time that she first began working for Mr. Nadeau, he was in the process of moving his law practice from 507 State Street in Portsmouth, NH to 1151 Sagamore Avenue in Portsmouth, NH. Ms. Granlund worked at both locations. *Id.*
253. At the time she began working for Mr. Nadeau, Mr. Granlund was provided with a computer from which to work. She had her own password. Mr. Nadeau knew this password, which she had written on a piece of paper that she kept under her keyboard. *Id.*
254. Mr. Nadeau had his own computer that he used at the law office. *Id.*

255. Both of these computers came from the State Street office to the Sagamore office and were used for client matters, and both were, to Ms. Granlund's knowledge, still at the Sagamore office at the time she left employment on June 14, 2019. *Id.*
256. Ms. Granlund knew of the Fahey matter, but had little involvement in it. She testified that her work was limited to correspondence with medical providers regarding certain medical liens in the Fahey personal injury matter. Ms. Granlund testified that Mr. Nadeau had primary contact with Ms. Fahey. *Id.*
257. During the time that Mr. Nadeau represented Ms. Fahey, Ms. Granlund never wrote a single letter to Ms. Fahey. At most she recalled a letter or two that involved medical bills Ms. Fahey had incurred. *Id.*
258. She testified she was never instructed by Mr. Nadeau to routinely delete Word versions of letters to clients once they had been printed, signed, and either mailed or emailed. *Id.*
259. Ms. Granlund had never seen the five Disputed Documents during the Fahey representation, and did not draft them. *Id.*

### **III. Pauline Dowd/Maureen Smith Misappropriation**

260. On or around February 23, 2017, Pauline Dowd hired Mr. Nadeau to represent her daughter, Maureen Smith, over whom Ms. Dowd held a power of attorney, for purposes of rescinding or otherwise invalidating Ms. Smith's recent divorce. **[Ex. 81, Bates 4719-4742; Ex. 83, Bates 3634-3640]**

261. Ms. Smith has cognitive disabilities. **[Ex. 82, Bates 4732]**
262. Mr. Nadeau provided Ms. Dowd with an invoice in which he stated his billing rate was \$250/hour. **[Ex. 83, Bates 3623-3633]**
263. Ms. Dowd paid Mr. Nadeau a \$10,000 retainer by bank check. **[Ex. 85, Bates 2801-2802, 2806]**
264. He deposited this retainer into his CTA on February 27, 2017. **[Ex. 85, Bates 2801-2802]**
265. On March 1, 2017, less than two days later, Mr. Nadeau disbursed \$5,000 of Ms. Dowd's funds to his operating account via an online transfer. **[Ex. 85, Bates 2807-2809]**
266. He had billed no time whatsoever on Ms. Dowd's matter as of this date, according to his own time records. **[Ex. 83, Bates 3623-3633]**
267. The disbursement of \$5000 was not supported by billing records. Although Mr. Nadeau testified that he had done work, the panel was not convinced by clear and convincing evidence that this specific amount was earned. **[T-5 at 182-186]**
268. By March 29, 2017, Mr. Nadeau had disbursed the balance of Ms. Dowd's retainer to himself (*i.e.* \$10,000 total), even though according to his time records, he had only billed \$3,050 of total lawyer and paralegal time on her matter as of that date. **[Ex. 82, Bates 4731-4742, 5907-5911; Ex. 83, Bates 3623-3624; Ex. 86, Bates 2376-2377]**

269. Mr. Nadeau thus misappropriated, and was out of trust in Ms. Dowd's matter, in the amount of \$6,950 as of March 29, 2017. **[Ex. 83, Bates 3623-3624; Ex. 85, Bates 2801-2802; Ex. 86, Bates 2377]**

**IV. Failure to Cooperate with the Disciplinary Authority, Spoilation, and Fabrication of Evidence Submitted to the ADO**

270. The Panel heard detailed expert testimony from James Berriman, Esq., EnCE. Mr. Berriman created a forensic image of a file server from Mr. Nadeau's law firm, as well as of Heidi Granlund's computer, and then conducted a full forensic examination to determine the authenticity of the following documents ("the Disputed Documents") which were produced by Mr. Nadeau to the ADO in the course of this disciplinary matter:

- I. October 24, 2018 Conflict of Interest Letter, Enclosing Waiver **[Ex. 78, Bates 5819-5820]**
- II. November 29, 2018 Conflict of Interest Letter **[Ex. 78, Bates 5821]**
- III. December 13, 2018 Conflict of Interest Letter **[Ex. 78, Bates 5822]**
- IV. January 15, 2019 Letter, Enclosing "Settlement Summary" **[Ex. 78, Bates 5823-5824]**

V. March 13, 2019 Letter Re Acknowledgment and Agreement and Promissory Notes (including Michelle's) **[Ex. 78, Bates 5809-5814 (curriculum vitae), 5825-5827;**<sup>6</sup> **Ex. 79, Bates 5849-5882 (report).**

271. Mr. Berriman did not image "the most important source of forensic evidence," Mr. Nadeau's law office computer. Mr. Nadeau testified that he disposed of the laptop and hard drive sometime between late fall 2020 and early spring of 2021. **[T-5 at 36]**. This disposal occurred after he had promised to provide the ADO with discovery in this case and after an order to This is act of spoliation is addressed further herein. **[Ex. 79, Bates 5849-5853 (report summary).<sup>7</sup> ]**

272. Mr. Berriman was hired to determine whether the Disputed Documents were actually created on or near their "face dates" (*i.e.*, the date that appears on the letters themselves), or if they were created after the representation ended, and then back dated. **[Ex. 79, Bates 5849-5853 (report summary)]**

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<sup>6</sup> The Panel Notes that Mr. Berriman's forensic report found other Fahey-related letters to have been backdated, including one that Mr. Nadeau produced in response to a request for production propounded by the ADO. **[Ex. 76, Bates 5787]**, letter to Ms. Fahey with face date of January 10, 2019, but create date based on forensics of May 19, 2019. The ADO did not focus its inquiry on this letter or others that shared characteristics of back-dating, all of which are detailed at pages 12-13 of Mr. Berriman's report.

<sup>7</sup> For the purpose of this section, the citations will refer the reader to the summary of Mr. Berriman's findings. The testimony of Mr. Berriman can be found at T-2 at 28-140. The panel found this lengthy testimony to be consistent with the report written by Mr. Berriman.

273. Mr. Berriman's expert report and CV are attached hereto as Exhibits 79 and 78. The report is comprehensive and conclusive, and the Panel incorporates it in its entirety by reference.
274. In summary, the Panel finds that Mr. Nadeau repeatedly produced false documents to the ADO, always in response to a request for production or information, and after he had agreed to preserve electronic data relevant to the Fahey matter. **[Ex. 79, Bates 5849-5853 (report summary)]**
275. Mr. Nadeau agreed to preserve electronic data relating to Ms. Fahey's representation at least twice during the informal proceedings, once in a letter to Mr. Hawkins dated May 8, 2019, within a week of Mr. Hawkins' referral to the ADO, and again over a year later in a lengthy email to Disciplinary Counsel Sara Greene dated September 28, 2020. **[Ex. 73, Bates 838-839; Ex. 74, Bates 4895-4896].**
276. By 2020, Ms. Greene was requesting the 3 Conflict Letters, as well as the Settlement Summary, in native electronic format. Indeed, the ADO had requested these Disputed Documents in native electronic four times. **[Ex. 75, Bates 5734-5751]**
277. Mr. Nadeau's September 28, 2020 email to Ms. Greene stated:
- [w]ith regard to the Conflict Letters dated October 24, 2018, November 29, 2018, and December 13, 2018, as well as the January 15, 2019 Settlement Summary I provided to Ms. Fahey, all of which you requested in native electronic format . . . I have contacted an I.T. specialist and described exactly what I am looking to accomplish as requested by you and your office. He advised me not to try and access any of these files myself, which I have not, and he will do his best to arrange a time to come to my former office sometime early this week in order to preserve and produce these documents

in native electronic format to you and your office as requested.” **[Ex. 74, Bates 4895-4896].**

278. In addition to the above promises, Mr. Nadeau was on notice to preserve and produce when Ms. Greene sent a “Document Preservation Notice & Request for Production/Inspection” dated March 12, 2021 to Mr. Nadeau’s counsel, Paul Glickman, re-asserting the demand that Mr. Nadeau preserve all electronic data and computer equipment and requesting that he produce hard drives for inspection. **[Ex. 78, Bates 5805-5814]**
279. Mr. Nadeau’s fabrication and manipulation of data began in May 2019 and continued through February 2021. **[Ex. 79, Bates 5849-5853 (report summary)]**
280. First, the Disputed Documents that Mr. Nadeau produced to the ADO contain face dates that are false and meant to deceive the ADO that Mr. Nadeau sent them to Ms. Fahey during the representation, when in fact, they were created after the ADO investigation was underway and after Mr. Nadeau had been sued by Fahey, in May and June 2019, as set forth in the Expert Report. **[Ex. 79, Bates 5849-5853 (report summary)]**
281. Later, the ADO and Mr. Hawkins questioned the bona fides of the Disputed Documents and requested them in “native electronic format” in the summer of 2019. Native electronic format is the original, source format of a document; in this case, the MS Word format. **[Ex. 79, Bates 5849-5853 (report summary)]**

282. Despite assurances to preserve electronic data, Mr. Nadeau never produced the Disputed Documents in native electronic format. Nor did he ever produce them as PDFs (though they were in his possession as evidenced by the forensic exam). **[Ex. 79, Bates 5849-5853 (report summary)]**
283. Instead, in June of 2019, Mr. Nadeau downloaded, installed, ran, and later deleted two applications whose specific purpose is to alter metadata. Mr. Nadeau altered *external* metadata for the Disputed Documents (which did not affect *internal* metadata, however) in anticipation of a July 23, 2019 deadline to respond to Mr. Hawkins' requests for production. **[Ex. 79, Bates 5849-5853 (report summary)]**
284. After the ADO filed the Notice of Charges, and lacking the Disputed Documents in Word format, or even PDF format, the ADO moved to compel production of the Disputed Documents in native electronic format. Mr. Nadeau claimed, for the first time (and despite May 2019 assurances he would preserve electronic data and was hiring an I.T. professional to assist) that his office "practice" was to delete Word versions of client letters after they were printed, mailed, and saved as PDFs. **[Ex. 78, Bates 5844]**
285. The motion to compel was granted, providing Mr. Nadeau a deadline of February 22, 2021 to produce the Disputed Documents in native electronic format. He did not do so. **[Ex. 79, Bates 5849-5853 (report summary)]**

286. Instead, he began a third phase of fabrication efforts. On February 17, 2021, he conducted two google searches, and visited a website, to continue efforts to alter metadata. He then created multiple versions of altered “screenshots” of the properties window for the PDFs of the Disputed Documents. Though it took several attempts and multiple rejected versions, as well as working back and forth between his computer (the one he claimed was disposed of the past summer) and the paralegal computer, he eventually achieved the result he wanted. **[Ex. 79, Bates 5849-5853 (report summary)]**
287. He then produced to the ADO screenshots that showed the following: altered *external* metadata with “created” dates matching the face dates for each Disputed Document. However, what Mr. Nadeau did not realize is that the PDFs themselves contained *internal* metadata, which he did not (or could not) alter. **[Ex. 79, Bates 5849-5853 (report summary)]**
288. Comparing that internal metadata with the external metadata reveals what Mr. Berriman testified was an “impossible condition:” a document with an external metadata create date that is earlier in time than its internal metadata create date. He testified such a condition does not exist in the absence of backdating efforts. He testified at length regarding many other “forensic artifacts” corroborating these backdating efforts. **[Ex. 79, Bates 5849-5853 (report summary)]**
289. The ADO received the Metadata Screenshots **[Ex. 78, Bates 5838-5843]**, moved to compel production of Mr. Nadeau’s law office equipment, which

was granted, and thereafter had them imaged and examined by Mr. Berriman. His Report details the findings made above.

290. In addition to the findings of Mr. Berriman, the Panel notes that nowhere, in thousands of texts between Mr. Nadeau and Ms. Fahey, nor in their email communication, is there any reference to the 5 Disputed Documents.
291. The Panel finds that this conduct represents a deliberate, multi-year effort to deceive the disciplinary authority.

## **DISCIPLINARY RULES VIOLATED**

292. The hearing in this matter was convened initially to hear evidence on non-admitted rule violations. However, at the hearing, Mr. Nadeau disputed evidence and indicated the desire to withdraw the admissions in his Answer. Further, the ADO admitted evidence in areas previously admitted by Mr. Nadeau. Therefore, we are considering all allegations of rule violations based on the evidence presented at hearing regardless of what may have been previously admitted.

### **Rule 1.5: Fees**

293. Allegations set forth above are incorporated by reference.
294. Rule 1.5 states in pertinent part as follows:
- (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.

- (f) A division of fee between lawyers who are not in the same firm may be made only if:
  - (1) the division is made either:
    - a. in reasonable proportion to the services performed or responsibility or risks assumed by each, or
    - b. based on an agreement with the referring lawyer;
  - (2) in either case above, the client agrees in a writing signed by the client to the division of fees;
  - (3) in either case, the total fee charged by all lawyers is not increased by the division of fees and is reasonable.

295. Mr. Nadeau violated Rule 1.5(c) by failing to provide Ms. Fahey with a written statement stating the outcome of the matter and showing the remittance to her and the method of its determination.

296. Mr. Nadeau violated Rule 1.5(f) by failing to obtain Ms. Fahey's written consent to the division of fees between Mr. Nadeau and Attorney Abraham.

### **Rule 1.7: Conflicts of Interest**

297. Allegations set forth above are incorporated by reference.

298. To the extent the \$275,000 loan from Ms. Fahey was found to have occurred prior to Mr. Nadeau's representation of her, he violated Rule 1.7 by representing her after obtaining this loan while acting under a conflict

of interest and in the absence of Ms. Fahey's written, informed waiver of the conflict.

299. Rule 1.7 states as follows:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client; or
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
  - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law;
  - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
  - (4) each affected client gives informed consent, confirmed in writing.

300. Mr. Nadeau violated Rule 1.7 by representing Ms. Fahey in her personal injury matter and her divorce matter, despite a concurrent conflict of interest arising from his personal interest in the two loans that he took from her in August 2018 and December 2018, without obtaining a waiver of this conflict with Ms. Fahey's informed consent confirmed in writing.

**Rule 1.8: Conflict of Interest; Current Clients; Specific Rules**

301. Allegations set forth above are incorporated by reference. Rule 1.8 states as follows:

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
  - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
  - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
  - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

302. Mr. Nadeau violated Rule 1.8(a) when, after establishing an attorney-client relationship, he engaged in a business transaction with client Ms. Fahey, by borrowing \$275,000 from Ms. Fahey in August 2018 without, contemporaneously to such loan:

- a) Setting forth fair and reasonable terms fully disclosed to her in a manner that could be reasonably understood by her;
- b) Advising her in writing of the desirability of seeking independent counsel, and giving her a reasonable opportunity to seek the advice of independent counsel; and
- c) Obtaining her written, informed consent with her signature agreeing to the essential terms of the transaction and Mr. Nadeau's role in the

transaction, including whether Mr. Nadeau was representing her in the transaction.

303. Mr. Nadeau violated Rule 1.8 when he engaged in a business transaction with client Ms. Fahey, by borrowing \$6,500 from Ms. Fahey in December 2018 without, contemporaneously to such loan:

- a) Setting forth fair and reasonable terms fully disclosed to her in a manner that could be reasonably understood by her;
- b) Advising her in writing of the desirability of seeking independent counsel, and giving her a reasonable opportunity to seek the advice of independent counsel; and
- c) Obtaining her written, informed consent with her signature agreeing to the essential terms of the transaction and Mr. Nadeau's role in the transaction, including whether Mr. Nadeau was representing her in the transaction.

**Rule 1.15 and Supreme Court Rule 50: Safekeeping Property**

304. Allegations set forth above are incorporated by reference.

305. 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.

306. Mr. Nadeau violated Rule 1.15 by:

- a) Commingling his personal funds with the funds of his clients, by depositing the \$275,000 he borrowed from Ms. Fahey into his client trust account, and by allowing his allegedly earned legal fee in the

Fahey personal injury matter to remain in his IOLTA account for three months after they were earned;

- b) being out of trust in 11 client matters as set forth herein;
- c) using Ms. Fahey's funds to replenish 11 out of trust client matters as set forth herein;
- d) failing to promptly render to Ms. Fahey a full accounting of her funds held in trust; and
- e) misappropriating Ms. Dowd's funds by transferring a retainer not yet earned to his operating account.

**Rule 3.3: Candor Toward the Tribunal**

307. Allegations set forth above are incorporated by reference.

308. 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;

309. Mr. Nadeau violated Rule 3.3 by knowingly submitting false Trust Account Compliance Certificates for the reporting periods covering June 1, 2016 through May 31, 2018 falsely representing that he was never out of trust in his client trust account.

**Rule 3.4: Fairness to Opposing Party and Counsel**

310. Allegations set forth above are incorporated by reference.

311. Rule 3.4 states, in pertinent part, as follows:

A lawyer shall not:

- (a) unlawfully obstruct another party' s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

312. Mr. Nadeau violated Rule 3.4(c) when he destroyed/disposed of his own law office computer in the midst of a disciplinary investigation, after promising to preserve electronic data.

313. Mr. Nadeau violated 3.4(b) when he falsified evidence as set forth herein; specifically, by backdating documents and producing them to the ADO in his defense, and by thereafter altering metadata in an attempt to make such documents appear authentic.

**Rule 8.1: Bar Admission and Disciplinary Matters**

314. Allegations set forth above are incorporated by reference.

315. 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.
316. Mr. Nadeau violated 8.1(a) when he falsified evidence as set forth herein; specifically, by backdating documents and producing them to the ADO in his defense and by altering metadata in an attempt to make such documents appear authentic.
317. As to 8.1(b), The ADO requests that the Panel find Mr. Nadeau in violation for a) failure to comply with the discovery order issued by the Hearing Panel Chair, b) failure to attend his deposition, c) failure to comply with the disclosures required by the Case Management Order, and c) failure to appear at a final pre-trial hearing. The Panel heard sufficient evidence as to a) and b) and therefore finds Mr. Nadeau in violation of 8.1(b). However, the Panel declines to make such a finding as to c) and d) as these distinct areas were not sufficiently proven.
318. The panel also finds that the ADO proved a violation of 8.1 (c) by clear and convincing evidence. Although not contained in the Notice of Charges, the ADO presented un rebutted argument for a finding that Mr. Nadeau's absence for the first several days of the hearing in this matter constituted an 8.1 (c) violation.<sup>8</sup>
319. The foregoing represents clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.1.

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<sup>8</sup> The panel may consider charges not noticed originally if there is reasonable notice and an opportunity for the respondent to respond. See Rule 37A – III, a(4)

**Rule 8.4(b): Misconduct**

320. Allegations set forth above are incorporated by reference.

321. Rule 8.4 (b) states as follows:

It is professional misconduct for a lawyer to:

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

322. Mr. Nadeau violated Rule 8.4(b) by signing his wife, Michelle Leigh Firmbach Nadeau's name, without her specific authorization, to the Promissory Note purporting to obligate Michelle to Ms. Fahey in the amount of \$275,000 with the purpose to defraud Ms. Fahey.

323. Specifically, Mr. Nadeau made and executed in writing, with intent to defraud Shawn Fahey, Michelle's promissory note so that it purported to be the act of another (Michelle Nadeau), and purported to be executed at a time other than was in fact the cases, ie. August 25, 2018

324. Moreover, this conduct by Mr. Nadeau is a class B Felony because he signed Michelle Nadeau's name to an instrument representing an interest of claim against property.

325. This conduct violates N.H. R.S.A. § 638:1(I), which states in full:

I. A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:

(a) Alters any writing of another without his authority or utters any such altered writing; or

(b) Makes, completes, executes, authenticates, issues, transfers, publishes or otherwise utters any writing so that it purports to be the act of another, or purports to have been executed at a time or place or in a numbered sequence other

than was in fact the case, or to be a copy of an original when no such original existed

II. As used in this section, "writing" includes printing or any other method of recording information, checks, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.

III. Forgery is a class B felony if the writing is or purports to be:

(a) A security, revenue stamp, or any other instrument issued by a government, or any agency thereof; or

(b) A check, an issue of stocks, bonds, or any other instrument representing an interest in or a claim against property, or a pecuniary interest in or claim against any person or enterprise.

IV. All other forgery is a class B misdemeanor.

V. A person is guilty of a class B misdemeanor if he knowingly possesses any writing that is a forgery under this section or any device for making any such writing. It is an affirmative defense to prosecution under this paragraph that the possession was without an intent to defraud.

326. The foregoing represents clear and convincing evidence of a violation of N.H. R. Prof. Conduct 8.4(b).

**Rule 8.4(c): Deceit**

327. Allegations set forth above are incorporated by reference. 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;

328. Mr. Nadeau violated Rule 8.4(c) by:

a) Falsely stating to Ms. Fahey that he owned the State Street condominium outright at the time of the \$275,000 loan, when in fact it was owned by a Trust, and could not legally be transferred, sold, or encumbered without the Trustee's authorization;

- b) Falsely stating that he was taking as legal fees in her personal injury action \$18,000-\$20,000, when in fact he retained over \$170,000;
  - c) Falsely stating, from August 2018 until March 2019, that he had no Promissory Note drafted that would provide Ms. Fahey with written documentation of the \$275,000 loan, when in fact he had provided a Promissory Note for this loan to the Lender on or around August 23, 2018, the date of closing on his family home; and
329. Mr. Nadeau violated Rule 8.4(c) by:
- a) failing to disclose over \$290,000 in tax liens on the Sagamore property at the time he provided Ms. Fahey with a Promissory Note purporting to provide the Sagamore property as collateral on the loan for \$275,000; and
  - b) failing to disclose to Ms. Fahey the full amount of funds he retained for himself from personal injury funds held on her behalf.
330. Mr. Nadeau violated Rule 8.4(c) by signing his wife's name to the Promissory Note dated August 25, 2018 ("Michelle's Note") without her express authorization.
331. Mr. Nadeau violated Rule 8.4(c) when he represented to LendUS in the Gift Letter dated August 22, 2018 that "no repayment of the gift is expected or implied in the form of cash or by future services of the recipient [Michelle]" then signed Michelle's name to a Promissory Note indebteding Michelle to Ms. Fahey for the full amount of the gift, i.e. \$275,000.

332. Mr. Nadeau violated Rule 8.4(c) by misappropriating funds held in trust in the Dowd matter, by transferring funds to himself before they were earned.
333. Mr. Nadeau violated 8.4(c) by stating in the November 29, 2018 document that he purportedly sent to Ms. Fahey that Attorney Griffin had agreed to take Mr. Nadeau's place as local counsel in her personal injury matter when in fact Mr. Griffin had not agreed.
334. Mr. Nadeau violated 8.4(c) by engaging in acts of deceit and document fabrication over a two year period, including: disposing of evidence in the disciplinary matter when he threw away his law office computer despite prior assurances to preserve electronic data, by producing false documents to the ADO in his defense which were backdated, and by fabricating screenshots and manipulating metadata in response to an Order to produce dated January 21, 2021.

## **IX. Facts: Friends of ABM Scholarship**

### **A) Formation of "Friends of ABM Scholarship"**

335. On September 29, 2008, Mr. Nadeau along with William Scott ("Scott"), Steven Tuttle ("Tuttle"), David Tooch ("Tooch") and Anthony Sillitta formed the New Hampshire non-profit corporation, Friends of ABM Scholarship ("ABM") with the New Hampshire Secretary of State's Office ("NH SOS"). **[Ex. 92, Bates 4946-4948]**
336. Mr. Nadeau prepared and filed the Articles of Agreement ("Articles") on behalf of ABM. **[Ex. 92, Bates 4946-4948]**

337. According to the Articles, ABM's purpose was "[t]o provide financial assistance to students and potential students at the ABM program at the Thompson School of Applied Science ("Thompson School") in Durham, New Hampshire, in an open and non-discriminatory manner." **[Ex. 92, Bates 4946-4948]**
338. The original Board of Trustees for ABM, as noted in the Constitution and Bylaws, consisted of Scott as Chairman/Trustee, Tuttle as Treasurer/Trustee, Mr. Nadeau as Trustee, Sillitta as Trustee, as well as another individual, Stephen Atkins ("Atkins") (hereinafter collectively known as "the Board"). **[Ex. 92, Bates 4949-4953]**
339. ABM's purpose was to raise scholarship money for students in the Thompson School through funding raising events such as golf tournaments and other student-managed events. **[Ex. 110, Bates 5076-77]**
340. Although ABM was formed as a non-profit corporation with the NH SOS on September 29, 2008, ABM did not register with the New Hampshire Department of Justice Charitable Trusts Division (NHDOJ Charitable Trusts") as required by NH RSA 7:19 until April 14, 2010. **[Ex. 96, Bates 4962-4963; Ex. 93, Bates 5115]**
341. Mr. Nadeau prepared and filed the Register of Charitable Trust application for registration ("Application"), along with required documentation on behalf of ABM, on January 26, 2010. **[Ex. 92, Bates 4942-4953]**

342. On February 15, 2011, the NH SOS administratively dissolved/suspended ABM for its failure to file annual reports since its formation on September 29, 2008. **[Ex. 93, Bates 5113-5115]**
343. Approximately four months later, Mr. Nadeau revived ABM with the NHSOS on June 23, 2011. **[Ex. 97, Bates 4965-4966]**
344. By approximately 2014, UNH decided to close the Thompson School, and ABM had ceased funding raising efforts. **[Ex. 98, Bates 4967-4969; Ex. 110, Bates 5076-5077]**
345. Once the Thompson School closed, ABM's charitable purpose was null.

**B) September 2015- September 2018: Mr. Nadeau Takes Possession of ABM's Funds as Treasurer, Deposits the Funds Into his Trust Account, and Makes Unauthorized Transfers Totaling \$2,800**

346. By 2015, Tuttle retired from teaching. **[Ex. 98, Bates 4967-4969; Ex. 99, Bates 4970-4971]**
347. On April 3, 2015, Tuttle sent an email to Mr. Nadeau, Scott, Tooch, Sillitta which stated in part:

We have \$25,661.87 in cash remaining and the ABM program is going away. I will be resigning as treasurer at the end of the semester because I am retiring and moving to Florida.

I plan to complete our IRS tax form this weekend and send it in. That along with drafting the checks for scholarships will be my last act as treasurer.

Steve Tuttle

**[Ex. 98, Bates 4968-4969]**

348. On April 10, 2015, Tuttle sent an email to Mr. Nadeau, Tooch, and Sillitta in which he confirmed that "[o]ur 990 and Scheduled O have been

filed with the IRS. This will be my last time. I will be moving out of state before the next one. We will need a new treasurer if we plan to continue. I still do not have any indication that the IRS considers us tax exempt and will not authorize further expenditures until I know that the IRS won't be chasing me for money." **[Ex. 99, Bates 4970-4971; Ex. 101, Bates 4972-4978]**

349. On September 10, 2015, Tuttle officially resigned as Treasurer and as a board member of ABM via registered letter addressed to: ABM c/o Justin P. Nadeau, Law Offices of Justin P. Nadeau, 507 State Street, Portsmouth, NH 0380 ("resignation letter.") **[Ex. 102, Bates 5302-5303]**
350. Tuttle's resignation letter explained that he was retiring and moving to Florida and could no longer perform the duties of either position. **[Ex. 102, Bates 5302-5303]**
351. Tuttle also enclosed the financial records of ABM with his resignation letter as well as a "check for the entire balance of the ABM account." **[Ex. 101, Bates 4972-4978]**
352. Upon information and belief, Mr. Nadeau deposited the check he received from Tuttle for assets of ABM into his CTA account ending in 6342. **[Ex. 86, Bates 2388]**
353. Mr. Nadeau took possession of the ABM funds in September 2015, and held them in a fiduciary capacity in his CTA, on behalf of a nonprofit for which he was a trustee. **[Ex. 86, Bates 2388; Ex. 109, Bates 5003-5008; Ex. 102, Bates 5302]**

354. Mr. Nadeau was effectively the successor Treasurer of ABM as of September 10, 2015. **[Ex. 86, Bates 2388; Ex. 109, Bates 5003-5008; Ex. 102, Bates 5302; Ex. 112, Bates 5396-5397]**
355. Mr. Nadeau produced his ledger for ABM to the ADO (“ABM Ledger”), beginning with the year 2017. **[Ex. 86, Bates 2388]**
356. The ABM ledger indicates that Mr. Nadeau held \$25,556.87 in trust for ABM as of August 23, 2017. **[Ex. 86, Bates 2388]**
357. The first date for which the ADO has subpoenaed bank records for Mr. Nadeau’s CTA is January 1, 2017. **[Ex. 85, Bates 2796-3016]**
358. On January 1, 2016, the NH SOS administratively dissolved/suspended ABM once again for its failure to file annual reports. **[Ex. 107, Bates 5113-5115]**
359. In 2017, the NHDOJ Charitable Trust division began making inquiries about ABM, which had failed to file any annual reports. **[Ex. 104, Bates 5304; Ex. 105, Bates 5305-5311]**
360. These inquiries eventually prompted email correspondence among certain Board members. **[Ex. 109, Bates 5003-5008; Ex. 110, Bates 5075-5078]**
361. On March 21, 2017, Audrey Blodgett, paralegal for NHDOJ Charitable Trusts Unit (“Ms. Blodgett”) sent a letter to the Board requesting annual reports for the years 2012 through 2016 as per New Hampshire statutes. **[Ex. 104, Bates 5304]**

362. Ms. Blodgett sent a second request on May 5, 2017 requesting that the delinquent annual reports be filed with 10 days. This letter was sent to Scott, Tuttle, Atkins & Sillitta, and also to Mr. Nadeau at his office address of 507 State Street, Portsmouth, New Hampshire. **[Ex. 105, Bates 5305-5311]**
363. On May 22, 2017, Mr. Nadeau responded to Ms. Blodgett via email claiming he would "...submit by the end of the week" the requested annual reports. **[Ex. 106, Bates 5312]**
364. Despite Mr. Nadeau and Ms. Blodgett exchanging emails and telephone voicemails through June 21, 2017, Mr. Nadeau did not file any annual reports as required by NH RSA 7:28. **[Ex. 107, Bates 5313-5318]**
365. Over a year later, on September 5, 2018, Thomas J. Donovan, Director NH DOJ Charitable Trusts ("Mr. Donovan") sent a certified letter to ABM c/o Mr. Nadeau at 1151 Sagamore Avenue, Portsmouth, NH 03801, again demanding that all delinquent reports for ABM be filed with 10 days. **[Ex. 108, Bates 5319-5323]**
366. A copy of this letter was also sent via certified mail to Sillitta and Scott. **[Ex. 108, Bates 5319-5323]**
367. On September 11, 2018 @ 1:09 pm, following receipt of the certified letter, Sillitta emailed Mr. Nadeau along with other ABM principals expressing his concern about the correspondence from the NH DOJ, his belief that the organization "no longer existed," and asking that someone from the Board follow up with the NH DOJ. **[Ex. 109, Bates 5003-5008]**

368. Mr. Nadeau responded via email that day at 1:41 PM:

Hello All,

I received the same certified letter and almost fainted...Lol

Anyway, I talked with the AG's office yesterday afternoon and am taking care of all of it today or tomorrow.

It's all set, but a BIG pain in the butt.

To be clear, the charitable trust was not dissolved, but we do need to file annual reports and there are missing years. I will copy you on the filings.

If you have any questions, please call me anytime. My mobile number is (603) 498-2324.

Justin

**[Ex. 109, Bates 5006]**

369. Tuttle responded the same day at 7:32 pm:

I closed the account, got a certified check made out to Justin, and sent it to his law office certified over three years ago along with my resignation letter. At that time, all of the reports were up to date.

The ABM curriculum ceased to exist soon after and I'm on my 4<sup>th</sup> year of retirement here in Florida.

**[Ex. 109, Bates 5005-5006]**

370. On September 12, 2018 at 11:37 AM, Mr. Nadeau responded that he would be contacting the NH DOJ that day to "finalize everything." **[Ex.**

**109, Bates 5005]**

371. Mr. Tuttle responded the same day via email at 11:44 AM:

There should be nothing left to take over other than a pile of money and any IRS problems.

**[Ex. 109, Bates 5004-5005]**

372. Tuttle further stated via email at 12:06 PM on September 12, 2018:

I don't blame you. For your piece of mind, there is plenty of money to cover any IRS liability and none of us ever did

anything illegal or ever took any payment. There should be nothing remaining other than to decide who to give the remaining funds.

**[Ex. 109, Bates 5003]**

373. Tuttle further responded at 12:37 PM:

Gentlemen:

As the ABM Charitable Trust is laid to rest, here is a brief reminder of what we accomplished:

We held several student managed events, all successful and fun.

We gave away over \$120,000.00 in scholarships to deserving students over the years.

We never took a penny or paid a penny in salaries, wages, administrative fees or commissions.

We paid our IRS taxes even though we were a recognized, state chartered, charitable trust.

Our last tournament was held in 2013/2014 we paid our \$6,000 in scholarships that year.

We would still be giving out scholarships now, but UNH, in its diving wisdom, saw fit to do away with ABM and the Thompson School of Applied Science as we once knew it.

Well done gentlemen and thank you for all of your efforts.

**[Answer at ¶ 297; Ex. 110, Bates 5075-5078]**

374. Mr. Tuttle twice stated that none of the Board members had ever been paid “a penny” for any services rendered as part of the ABM organization.

**[Ex. 110, Bates 5075-5078]**

375. Unbeknownst to Tuttle, Sillitta and the other Board members at the time of these email discussions, Mr. Nadeau had by that time (i.e. September 2018) made unauthorized payments to himself totaling \$2,800 from ABM funds, causing Mr. Nadeau to be “out of trust” in regard to monies held for ABM. **[Ex. 86, Bates 2388]**

376. According to Mr. Nadeau's ABM ledger, on August 23, 2017, after Mr. Nadeau paid himself \$1,000.00, the ABM ledger noted a balance of \$25,556.87 held in trust for ABM. **[Ex. 86, Bates 2388]**
377. Mr. Nadeau thus should have held, for ABM alone, \$25,556.87. The actual total balance in his CTA on August 23, 2017, however, was only \$20,564.55. **[Ex. 85, Bates 2838-2840]**
378. According to the ABM ledger, on September 6, 2017, after Mr. Nadeau paid himself an additional \$600.00, the balance held for ABM alone should have been \$24,956.87. The actual balance in his entire CTA on September 6, 2017, however, was only \$19,127.55. **[Ex. 86, Bates 2388; Ex. 85, Bates 2845-2846]**
379. According to the ABM ledger, on March 7, 2018, after Mr. Nadeau paid himself an additional \$1,200.00, the balance held for ABM should have been \$23,756.87. The actual balance in his CTA on March 7, 2018 was \$14,387.63 **[Ex. 86, Bates 2388; Ex. 85, Bates 2885-2886]**
380. By this time, Mr. Nadeau was out of trust for ABM in the amount of \$11,169.24. This out of trust amount includes the \$2,800 in unauthorized transfers to himself out of the ABM trust account. **[Ex. 86, Bates 2388]**
381. On September 13, 2018, just one day after the aforementioned email exchanges among Board members inquiring of the status of ABM funds, Mr. Nadeau deposited back into his ABM trust account (*i.e.*, replenished

it), the exact total he had previously paid himself by that time:

\$2,800.00. **[Ex. 86, Bates 2388]**

**C) September 2018: Mr. Nadeau Opens a New Bank Account for ABM Funds and Makes Unauthorized Transfers of \$3,870**

382. Mr. Nadeau thereafter issued check number 1045 on September 17, 2018 for \$26,556.87 from his CTA ending in 6342, made payable to Friends of ABM Scholarship. **[Ex. 86, Bates 2388; Ex. 117, Bates 4785]**
383. On the same day, Mr. Nadeau opened a new checking account ending in 2514 with TD Bank in the name of Friends of ABM Scholarship and deposited check number 1045 into the account. **[Ex. 115, Bates 4778; Ex. 116, Bates 4780; Ex. 117, Bates 4782-4788]**
384. Mr. Nadeau was the only signatory on the account ending in 2514. **[Ex. 115, Bates 4778; Ex. 116, Bates 4780; Ex. 117, Bates 4782-4788]**
385. In September of 2018, Mr. Tooch and Mr. Nadeau agreed that they would each be responsible for giving away half of the total amount held by ABM. **[T-4 at 30]**
386. Mr. Tooch directed Mr. Nadeau to give a total of \$13,000 to three charities of Mr. Tooch's choosing. **[T-4 at 31]**
387. Mr. Tuttle had stepped away from any decisions about the remaining ABM back in 2015, and approved Mr. Nadeau and Mr. Tooch's handling of the matter. **[T-3 at 131]**

388. Mr. Tooch understood that Mr. Nadeau would likewise pick one or more charities to which to donate the other \$13,000, thereby exhausting ABM's funds for charitable purposes. **[T-4 at 30]**
389. On September 21, 2018, Mr. Nadeau filed with the NH DOJ Charitable Trusts, for the years 2011-2017, the following: Annual Reports, Annual Reports Certificate, Appendices to Annual Report, Applications for Extension of Time to File, and Certifications Required by Charitable Organizations, enclosing check no. 0098 in the amount of \$525.00 issued from the account at TD Bank ending in 2514 for the filing fees. **[Ex. 111, Bates 5328-5392]**
390. Mr. Nadeau signed the Annual Report Certificates, Applications for Extension of Time to File and Certifications Required by Charitable Organizations for the years 2011 through 2017 as Treasurer of ABM. Mr. Nadeau did not list any other officers on the Annual Report Certificate other than himself as Treasurer. **[Ex. 111, Bates 5329-5330; 5336-5339; 5345-5348; 5354-5358; 5363-5366; 5372-5375; 5381-5384; 5390-5391]**
391. Each annual report for the years 2011 through 2017 filed by Mr. Nadeau noted that the net assets of ABM were \$26,556.87. **[Ex. 111, Bates 5332; 5335; 5341; 5344; 5350; 5353; 5359; 5362; 5368; 5371; 5377; 5380; 5386; 5389]**
392. Mr. Nadeau also answered "no" to paragraph 2 on each Appendix for the Annual Report for the years 2011 through 2017, confirming that he did

- not receive a pecuniary benefit from ABM. **[Ex. 111, Bates 5331; 5340; 5349; 5358; 5367; 5376; 5385]**
393. For the year 2017, this information was false, as Mr. Nadeau made payments to himself on August 23, 2017 of \$1,000.00, and on September 6, 2017 of \$600.00. **[Ex. 86, Bates 2388;]**
394. On October 1, 2018, the checking account ending with TD Bank ending in 2514 was closed. **[Ex. 117, Bates 4788]**
395. On the same day, Mr. Nadeau opened another checking account with TD Bank ending in 2564 and deposited the remaining balance of ABM of \$26,031.87 (\$26,556.87 minus \$525.00 in check number 0098 issued for filing fees with the NHDOJ for the annual reports) into the new account. **[Ex. 118, Bates 4789-4803]**
396. From October 1, 2018 to February 28, 2019, the ABM monthly balance of the TD Bank account ending in 2564 decreased only by a \$2.00 per month fee for paper statements. **[Ex. 118, Bates 4802-4808]**
397. By February 28, 2019, the balance remaining in the TD Bank account ending in 2564 was \$26,023.87. **[Ex. 118, Bates 4808]**
398. On January 17, 2019, Mr. Nadeau directed his bookkeeper to transfer, as a “book-keeping item,” \$11,665.00 from the Shawn Fahey CTA to his CTA generally. **[Ex. 86, Bates 2380-2381]**
399. The Fahey ledger notes this transfer, though there is no memo for this transfer noting its purpose. The transfer column does not list a recipient

and notes only that the transfer of \$11,655.00 was made from the Fahey funds to "IOLTA account." **[Ex. 86, Bates 2380-2381]**

400. This amount is very close to the total amount Mr. Nadeau was out of trust for funds held for ABM. **[Ex. 86, Bates 2885-2886]**

401. On February 20, 2019, Mr. Nadeau filed with the NHDOJ Charitable Trusts ABM's Annual Report, Annual Report Certification, Appendix to Annual Report and Certification Required by Charitable Organizations for the year 2018 with NHDOJ Charitable Trusts. **[Ex. 113, Bates 5399-5406]**

402. Mr. Nadeau again answered "no" to paragraph 2 that he did not receive a pecuniary benefit from ABM on each Appendix for the Annual Report for the year 2018. **[Ex. 113, Bates 5401]**

403. This information was false, as Mr. Nadeau had made a payment to himself on March 7, 2018 of \$1,200.00. **[Ex. 86, Bates 2388; Ex. 113, Bates 5401]**

404. In April of 2019, Mr. Nadeau made two unauthorized cash withdrawals from the AMB funds:

a. On April 5, 2019, he withdrew \$80.00; and **[Ex. 118, Bates 4812-4814; Ex. 124, Bates 4857]**

b. on April 10, 2019, he withdrew \$40.00. **[Ex. 118, Bates 4812-4814; Ex. 125, Bates 4859]**

405. On April 17, 2019, without express authorization from the other members of the board of ABM, Mr. Nadeau made another payment to

himself in the amount of \$3,750.00 by issuing check number 101 from the ABM funds, noting in the memo “2014-2019 approved legal of services.” **[Ex. 118, Bates 4812-4814; Ex. 120, Bates 4853, 5631]**

406. No Board member had ever approved providing Mr. Nadeau with legal fees at the time that Mr. Nadeau disbursed said “fees.” **[Ex. 110, Bates 5075-5078; Ex. 127, Bates 5412]**

407. Thereafter, Mr. Nadeau made the following authorized disbursements to charitable organizations from the ABM funds, based on the agreement of Mr. Tooch, as follows:

<u>Check No.</u>	<u>Date</u>	<u>Payable to</u>	<u>Amount</u>
*102	5/16/19	American Diabetes Assoc.	\$4,000.00
*103	5/16/19	New Heights	\$2,500.00
*104	6/14/19	Haven	\$6,500.00
Certified Check	4/10/19	The Leukemia & Lymphoma Society	\$6,500.00

**[Ex. 118, Bates 4812-4816; Ex. 121, Bates 4854; Ex. 122, Bates 4855; Ex. 123, Bates 4856; Ex. 125, Bates 4860-4861]**

408. As of October 31, 2020, the ending balance held in the TD Bank account ending in 2564 is \$2639.62. **[Ex. 118, Bates 4849-4850]**

409. Various individuals involved with ABM testified in this matter. The findings below augment the findings *supra*, which were contained in the Amended Notice of Charges filed on January 7, 2021.

**D) Testimony of Prof. Steven Tuttle**

410. Professor Steven Tuttle, formerly of UNH's Thompson School of Applied Science (Applied Business Management program), testified in this matter regarding his involvement with Mr. Nadeau and the Friends of ABM scholarship program. **[T-3 at 108-135]**
411. Mr. Tuttle knew Mr. Nadeau because Mr. Nadeau was an adjunct professor in the ABM program and was a graduate of the program. He recalled Mr. Nadeau getting involved roughly in the 2010 time period with Friends of ABM. *Id.*
412. In the fall of 2014, Mr. Tuttle testified that various ABM Board members met for lunch in Portsmouth, including Mr. Nadeau. At this time, the University of NH had decided that the program would end before the fall semester of 2015. Therefore, as there would be no more students to receive scholarships, the Board decided that they needed to give the rest of the money held by ABM away in an appropriate way that complied with formalities. *Id.*
413. Mr. Tuttle testified that during this meeting, Mr. Nadeau asked to reimbursement his office for time spent on ABM matters. There was never any authorization that Mr. Nadeau could bill on an hourly basis for lawyer services. Rather, that Mr. Nadeau could reimburse necessary expenses and would not pay out of pocket any expenses for the charity. **[T-3 at 115-116]**

414. Mr. Tuttle retired in September 2015. By this time, the ABM program had officially ended. He transferred all ABM funds, a total of \$26,556.87, to Mr. Nadeau on September 10, 2015. Thereafter, Mr. Tuttle stepped away in large part from the organization, as his understanding was that Mr. Nadeau was working with another former professor, David Toooh, on donating all remaining funds to charitable causes. **[T-3 at 108-135]**.
415. Mr. Tuttle was not involved further with ABM for a number of years thereafter. However, he was cc'd on an email chain in September 2018 concerning ABM's status with the CTU, when an email circulated among Board members which attached a letter from the Director of the CTU, noting years of delinquent Annual Reports, providing a 10 day deadline, and threatening a "Notice to Attend Investigation." *Id.*
416. In response to the Board members' emails, Mr. Tuttle sent an email dated September 12, 2018, setting forth the full amount he had transmitted to Mr. Nadeau in September 2015, extolling ABM's total fundraising numbers, and noted that "we never took a penny or paid a penny in salaries, wages, administrative fees, or commissions." **[Ex. 110, Bates 5075-5078; Ex. 118]**
417. To the extent Mr. Nadeau had already disbursed ABM funds from his IOLTA account to himself as of September 12, 2018, Mr. Tuttle testified he had no knowledge of the payments that Mr. Nadeau was making to himself from ABM funds. **[T-3 at 128]** As of this date, Mr. Tuttle had

never seen a billing statement for work done for ABM, nor any work product by Mr. Nadeau for ABM. **[T-3 at 131-132]**

418. To the extent Mr. Nadeau withdrew cash from the ABM account, or paid himself \$3,750 in fees in 2019, Mr. Tuttle testified that he was unaware of these payments until the ADO investigation was underway, when he received this information from Disciplinary Counsel sometime in 2020.

*Id.*

**E) Testimony of Professor David Tooch**

419. Mr. Tooch was also a professor for the ABM Program.

420. Mr. Tooch testified that the Board agreed that Mr. Nadeau would take care of the administration of ABM as a charitable organization, such as required filings with state and federal agencies, and that in 2014, Board members met in person to discuss next steps given the fact that the ABM program was soon ending. **[T-4 at 26]**

421. Mr. Tooch testified that at that meeting in November 2014, the Board members present agreed that the goal was to give all ABM funds away to charitable causes. He likewise confirmed that they agreed Mr. Nadeau could pay for expenses or staff time for filings on behalf of the organization. **[T-4 at 27]**

422. Mr. Tooch described a period from 2015 to the fall of 2018 where he heard very little about ABM. Mr. Tooch became involved again with ABM because he wished to donate ABM funds to a young woman who was running the Boston marathon and needed to raise funds. (Mr. Tooch's

son had died of lymphoma and he wished to donate \$6,500 to the Lymphoma Society). **[T-4 at 30-31]**

423. Mr. Tooch stated that he spoke with Mr. Nadeau in the fall of 2018, and Mr. Nadeau told him he was still holding around \$26,000 on behalf of ABM. They agreed that Mr. Tooch would give away \$13,000 and Mr. Nadeau would give away \$13,000 to charitable causes. Ultimately, Mr. Tooch designated the following recipients, and Mr. Nadeau paid, in 2019, the following organizations:

- a. \$6,500 to the Lymphoma Society;
- b. \$4,000 to the American Diabetes Association;
- c. \$2,500 to the New Heights

*Id.*

424. Mr. Tooch confirmed that he never knew about the total \$2,800 that Mr. Nadeau paid himself from ABM in 2017 and 2018, learning of these payments for the first time through the ADO investigation. *Id.*

425. Mr. Tooch had no knowledge of any money Mr. Nadeau paid himself from ABM at the time Mr. Nadeau took this payment, as Mr. Tooch learned of this payment from the ADO in the course of its investigation. **[T-4 at 36-37]**

426. To the extent Mr. Nadeau made any cash withdrawals from ABM funds, Mr. Tooch had no knowledge of this. *Id.*

**F) Testimony of Brandon Brewster Regarding ABM**

427. Mr. Brewster testified regarding the ABM matter. He confirmed that the first two disbursements from ABM funds out of Mr. Nadeau's IOLTA

account were made before he began to work for Mr. Nadeau. **[T-3 at 66-83]**.

428. As to the March 7, 2018 disbursement for \$1,200, Mr. Nadeau made that disbursement himself via electronic transfer without attributing this disbursement to any specific client matter. As of this date, Mr. Brewster had done no work regarding ABM, and to his knowledge neither had Mr. Nadeau. Mr. Brewster had not seen any billing statement, time sheets, or work product for ABM as of this date. *Id.*

429. Mr. Brewster testified that at the time of the \$1,200 disbursement, there were no clients with sufficient funds in the IOLTA to cover this amount. In fact, the only funds held in Mr. Nadeau's IOLTA account as of March 2018 were the ABM funds. *Id.*

430. ABM was a charity. Mr. Nadeau should not have made any disbursement from these funds which he held in trust. He should have been holding the full amount of \$26,556.87, as transferred to him by Mr. Tuttle, as of March 7, 2018. Instead, bank records demonstrate that the balance in his IOLTA after that transfer was only \$14,387.63. **[Ex. 85, Bates 2885-2886]**

431. Mr. Brewster testified that he attributed Mr. Nadeau's undesignated \$1,200 transfer to ABM because "rather than throw another client into the red, I assigned it to ABM." **[T-3 at 67]**. He testified Mr. Nadeau was aware of this entry on the ABM ledger. *Id.*

432. Mr. Brewster did not receive any payment for any work performed for ABM such as the preparation and filing of annual reports in the fall of 2018. Mr. Nadeau never discussed with Mr. Brewster any form of payment for services rendered on behalf of ABM. **[T-3 at 78].**
433. Mr. Brewster, with Mr. Nadeau's knowledge, replenished the total \$2,800 that Mr. Nadeau had paid himself from ABM funds on September 13, 2018, bringing the total back to the \$26,556.97 that should have been held untouched throughout this time. Mr. Brewster believed throughout his time working for Mr. Nadeau that the ABM funds, because they were charitable funds, would need to be replenished back to the original deposit amount. **[T-3 at 79]**
434. After the funds were transferred, Mr. Nadeau asked Mr. Brewster to assist Mr. Nadeau in preparing seven (7) long-delinquent Annual Reports for ABM to submit to the N.H. Charitable Trusts Division. Mr. Brewster assisted Mr. Nadeau in filling those out based solely on verbal representations from Mr. Nadeau about ABM's activities in last 7 years. **[T-3 at 80].**
435. Mr. Brewster filled out the Annual Reports based on Mr. Nadeau's provided information. They were submitted to the CTD on September 24, 2018. **[T-3 at 80]**

**G) ABM: Testimony of Diane Quinlan, Assistant Director, Charitable Trusts Unit**

436. Diane Quinlan, Esq. testified in this matter in her capacity as the Assistant Director of the New Hampshire Department of Justice

Charitable Trusts Unit. (“CTU”). She described the filings and formalities surrounding charitable trusts as statutory requirements which CTU oversees and enforces. **[T-4 at 192-247]**

437. Ms. Quinlan became directly involved in the ABM matter in 2020, when she began investigating the late filing of multiple Annual Reports for ABM. In February 2021, Ms. Quinlan had a meeting with Mr. Nadeau, as well as Mr. Tuttle and Mr. Tooch. *Id.*
438. Ms. Quinlan essentially confirmed that after Mr. Nadeau’s initial filings in January 2010 (submitting, *inter alia*, a Charitable Trusts Application for Registration and Articles of Agreement for Friends of ABM), no Annual Reports were filed on behalf of ABM until September 2018. *Id.*
439. When those seven delinquent Annual Reports were filed, signed by Mr. Nadeau as Treasurer, and covering reporting years 2011-2017, she became concerned because all of the Annual Reports were essentially identical: they listed no fundraisers, no expenses, no revenue, no program services, and they listed Mr. Nadeau as the only Board member. **[Ex. 111, Bates 5328-5392]**
440. Ms. Quinlan knew that ABM had held fundraisers through 2014, so these Reports appeared to be inaccurate. In addition, Ms. Quinlan noticed that the Annual Report filed by Mr. Nadeau on November 19, 2020, for the reporting year ending September 2019, stated “no” for any “pecuniary benefit paid in excess of \$500,” but then later disclosed in the

same Annual Report \$3,750 of “legal fees” paid to Mr. Nadeau. **[Ex. 129, Bates 5480-5486]**

441. Pecuniary benefits paid to any board member of a charitable trusts must be disclosed to the Board, voted upon, approved, and then reflected in the minutes of a Board meeting. Pecuniary benefits must be approved by two-thirds of disinterested Board members. Ms. Quinlan confirmed Mr. Nadeau did not comply with these requirements. **[T-4 at 210].**
442. Ms. Quinlan did not address or investigate other payments Mr. Nadeau may have made to himself from ABM funds. She did confirm, however, that if he paid himself over \$500 in fees at any point from 2010 to the present, he would have been required to disclose the pecuniary benefit to the Board of ABM, and such payment must have been reflected in a meeting of the Board and approved by two-thirds of disinterested members of the Board. **[T-4 at 210].**
443. Ms. Quinlan described the Annual Reports filed by Mr. Nadeau as being inaccurate and careless and although filled out under oath, “did not accurately reflect what had happened” with the charity over the years. **[T-4 at 216]**
444. Ms. Quinlan asked Mr. Nadeau how he reached the \$3,750 figure that he billed ABM for legal work (presumably the 7 Annual Reports he filed). Mr. Nadeau stated that he conferred with members of his firm to reach a figure that was fair. **[T-4 at 233].**

**X. Disciplinary Rules Violated (Amended NOC)**

### **Rule 5.3: Failure to Supervise**

445. Allegations set forth above are incorporated by reference.

446. Rule 5.3 states as follows:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) Each partner, and each lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) Each lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
  - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
  - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

447. Mr. Nadeau had direct supervisory authority and managerial authority at his law firm, including supervisory authority over his bookkeeper.

448. Mr. Nadeau had a duty to make reasonable efforts to ensure that his firm had measures in place giving a reasonable assurance that the bookkeeper's conduct was compatible with Mr. Nadeau's professional obligations.

449. Mr. Nadeau is responsible for the conduct of his bookkeeper because he ordered and/or ratified, with the knowledge of the specific conduct involved, the transfers of funds made by his bookkeeper.
450. Mr. Nadeau violated Rule 5.3(c) when he ratified the bookkeeper's transfer of \$11,665 from the funds in the CTA held related to the representation of Fahey CTA to Mr. Nadeau's trust account in order to correct shortfalls in the CTA.
451. Mr. Nadeau violated Rule 5.3(c) when he ratified each of the bookkeeper's transfers of client funds within the CTA as set forth in the December 6, 2019 NOC at ¶ 234.

**Rule 8.4(c): Conduct Involving Dishonesty, Deceit or Misrepresentation**

452. Allegations set forth above are incorporated by reference. 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;

453. Mr. Nadeau violated Rule 8.4(c) when he transferred to himself from his CTA account ending in 6342, without having earned said funds, the following amounts which were being held in trust for ABM:
- a. \$1,000.00 on August 23, 2017;
  - b. \$600.00 on September 6, 2017; and
  - c. \$1,200.00 on March 7, 2018.

454. Mr. Nadeau violated Rule 8.4(c) when he made the following disbursements of funds, without having earned said funds, from the checking account held in the name of ABM at TD Bank ending in 2654:
- a. issued check number 101 made payable to himself in the amount of \$3,750.00; and
  - b. made two cash withdrawals of \$80.00 on April 5, 2019, and \$40.00 on April 10, 2019.
455. Mr. Nadeau violated Rule 8.4(c) when he represented in Annual Reports filed for 2017 and 2018 with the NH DOJ that he had not received a pecuniary benefit from ABM, when in fact he had made unauthorized transfers to himself from ABM funds totaling \$1,600.00 in 2017 and \$1,200.00 in 2018.

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

456. In light of the foregoing, there is clear and convincing evidence that Mr. Nadeau's conduct violated N.H. R. Prof. Conduct 8.4(a).

**XI. Request for Costs**

457. Undersigned counsel requests the Hearing Panel recommend to the Professional Conduct Committee that Mr. Nadeau be assessed the expenses incurred by the Professional Conduct Committee in the investigation and prosecution of this matter. See N.H. Sup. Ct. R. 37(19).

Dated: January 4, 2022

Signed: /s/ Stephanie Hausman  
Panel Chair

To: Stephanie Hausman, Chair  
From: Bob Dabrowski,

December 20, 2021

I am in agreement with all of the findings of facts, except these listed here:

**306** IF the fees were not earned, which is a contentious issue in the Nadeau matter, then there cannot be "fees" in the account in violation of 1.15. It appears to be a mutually exclusive situation. Additionally, the issue of "three months", albeit true, doesn't seem to be a worthy enough point to automatically trigger a 1.15 violation in my view.

**322 & 323** The entirety of 322 is stated in 323, there is no practical difference in my view, other than one contains the "\$275,000", which isn't contested, and the other has a date. Even IF the date and amount were melded into one finding, I still would not agree with the "purpose to defraud" in the context of these charges. Undeniably, there were copious amounts of transactions & behaviors that were unsavory, and some forms were filled out fraudulently, meaning that they were intentionally filled out incorrectly. The word choice however in this situation reads as more dire, it suggests that the real estate, it's financing, or eventual sale could never happen, an outright theft, as if Nadeau had already closed his office and was flying away with the bounty to complete a scheme. I don't see evidence of anything even approaching that. In summary, the term "purpose to defraud" does not adequately differentiate between the colloquial use of the terms fraud, fraudulent, fraudulently, and defrauding – all of which have different meanings.

**332 & 267** I believe there is sufficient evidence to cast doubt on the ADO's assertion that Mr. Nadeau had invoiced Dowd before it was earned. Additionally, IF I was to rely on the ADO's [strictest] interpretation of the timeline(s), and monies earned, then I would necessarily have to look at all the billing & work product. (There was testimony that he gave away some services, but since there could never be a financial reason for including it on the invoice, he didn't. Using the ADO's level of scrutiny, Nadeau would automatically have an additional point of violation just because that FREE work wasn't documented either)

I'm available to the committee or the ADO if anyone wishes to discuss these with me.

Thank you,



Bob Dabrowski

NEW HAMPSHIRE SUPREME COURT  
HEARINGS COMMITTEE

*a committee of the attorney discipline system*

---

Barbara Keshen, Chair  
Brooksley C. Belanger, Vice Chair  
Barbara J. Guay, Legal Assistant

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Nadeau, Justin P.

advs.

Attorney Discipline Office

#19-009

## **SANCTION REPORT AND RECOMMENDATIONS**

Having considered the evidence presented throughout the merits and sanction hearing, the Hearings Committee panel hereby recommends that Mr. Nadeau be disbarred from the practice of law. This recommendation is by a majority of the panel with one member presenting a dissenting position.

### **A. Overview**

As described in detail within the Findings of Fact and Rulings of law issued by this panel on January 4, 2022, Justin Nadeau violated nine distinct ethical rules, thereby violating duties owed to his clients, to the court, to the public, and to the legal profession. Those rule violations include self-dealing, lying to a vulnerable client, representing a client despite a clear conflict of interest, misappropriation, and criminal forgery. Mr. Nadeau's conduct caused actual harm to at least one client, the integrity of the profession, and the public's confidence in the bar.

Extremely significant to the panel was Mr. Nadeau's calculated acts of deception in modifying documents, fabricating evidence, and destroying client records in a deliberate effort to deceive the disciplinary authority. This conduct stands out amongst other cases as an aggravating factor.

In the majority of instances Mr. Nadeau violated these rules intentionally, with the goal to benefit himself. These three factors — the duties violated, state of mind, and scope of harm — lead this Panel to determine that disbarment is the "baseline" sanction under the *ABA Standards For Imposing Lawyer Discipline* (1992) ("*Standards*"). Further, the application of mitigating and aggravating factors does not alter this result. The panel finds that there are a multitude of aggravating factors. Further, the majority of the panel finds that the several mitigating factors that *do* exist do not justify a departure from the baseline of disbarment.

In summary, Mr. Nadeau's bad faith obstruction of the discipline process, selfish and dishonest motive, extensive pattern of misconduct, and illegal conduct support the majority panel's recommendation for disbarment.

## **B. Analysis**

1. Although the Court has not adopted the *Standards*, it looks to them for guidance. *Conner's Case*, 158 N.H. 299, 303 (2009). Therefore, the panel will apply the *Standard's* four part analysis 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. Standards* § 3.0.

### Duties violated

2. Under the first prong of the analysis, Mr. Nadeau violated every duty owed as an attorney. *See Standards*, Sec. II, Theoretical Framework (analyzing duties owed to clients, the general public, the legal profession, and the legal system).
3. Mr. Nadeau violated a host of duties to his client, Shawn Fahey, including the duty to avoid conflicts of interest, to properly safeguard her funds, and – most fundamentally – to conduct himself with basic honesty. He violated his duty to 11 other clients whose matters were out of trust, failing to treat their funds with the care of a fiduciary and thereby failing to safeguard client property. He violated his duty to the Friends of ABM Charity, by misappropriating the funds of that charity when his IOLTA balance ran low.
4. Mr. Nadeau also violated duties to the general public through his dishonest conduct, which spanned years and is set forth in detail in the Report. *See, e.g.* Rep. at ¶ 291 (“the Panel finds that this conduct represents a deliberate, multi-year effort to deceive the discipline authority.”); *see also Standards*, Sec. II, Theoretical Framework (analyzing duties owed and stating that “[t]he community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty to not engage in conduct involving dishonesty.”)
5. Mr. Nadeau violated duties owed to the legal profession when he failed to enter into a contingency fee agreement with Ms. Fahey in her personal

injury matter, failed to provide her with a settlement summary, and failed to obtain her written consent to the division of fees between himself and Mr. Abraham. Mr. Nadeau also violated duties to the legal profession by failing to comply with properly propounded discovery requests from the ADO, failing to appear at his duly noticed deposition, violating Orders of the Hearing Panel Chair regarding discovery, and failing to appear for the first four days of the hearing in this matter.

6. Mr. Nadeau violated duties owed to the legal system by filing knowingly false trust account certificates with the Supreme Court, by violating Orders of the Hearing Panel Chair, and by deliberately fabricating evidence during the course of the disciplinary process with the intention of interfering with the legal system's investigation process. He further violated his duty to the legal system by engaging in criminal conduct when he forged his wife's name on a promissory note.

Mental State: Knowing and Intentional

7. With respect to mental state under the second prong of the sanction analysis, the panel finds that Mr. Nadeau's mental state was knowing and intentional.
8. 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."
9. Mr. Nadeau acted knowingly, as that state of mind is an essential element for several of the rules that Mr. Nadeau violated: Rule 3.3, for

- “knowingly” filing false trust account compliance certificates, Rule 3.4(c), for “knowingly” disobeying obligations under the rules of a tribunal by violating Orders of the Chair, and Rule 8.1(a), for “knowingly” making a false statement of material fact in connection with a disciplinary matter.
10. In addition, Mr. Nadeau had a more culpable state of mind than a knowing one. He acted intentionally and with the design to benefit himself. This state of mind is amply supported by the documentary and forensic evidence in this case.
  11. Mr. Nadeau attempted to cover up his blatant conflict of interest by fabricating three letters to Ms. Fahey, backdating them, and producing them to the ADO during its investigation of this matter. His later effort to alter metadata to conceal his original fabrication by changing the “create dates” on these letters clearly illustrates that he had a “conscious objective or purpose to accomplish a particular result.” [Rep. ¶¶ 270-291 (setting forth forensic evidence)]. Mr. Nadeau downloaded special software to change metadata and conducted web searches for how to alter metadata. This is intentional, deliberate, and calculated conduct.
  12. The intentional nature of this concealment also supports the general premise that his prior conduct was similarly intentional and culpable. In other words, the extent to which Mr. Nadeau acted with the clear intent to evade the disciplinary authority is evidence of the severity and calculated nature of the sequence of events that led to the ADO’s investigation. If his prior misconduct was the product of an honest

mistake born from good intentions, it is reasonable to infer that he would not have engaged in such a calculated cover-up scheme.

13. Finally, Mr. Nadeau's intentional state of mind is demonstrated by his refusal to produce discovery, ignoring orders granting the ADO's motions to compel, and his decision, when ordered to produce his law office computer (which he had twice promised to preserve), disposing of it instead. [Tr. October 28, 2021 at 32-38.]

Injury: Significant and Actual Injury

14. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Nadeau's misconduct. *See Standards*, Sec. II, Theoretical Framework (addressing injury). The injury in this case is actual and potential. There is evidence of serious injury.
15. Mr. Nadeau's conduct significantly injured his client, Shawn Fahey. Ms. Fahey testified at length during the sanction hearing. She described, broadly speaking, two categories of injury. The first was financial. Ms. Fahey testified that her money damages from the loan to Mr. Nadeau exceed \$300,000.00 [Tr. October 20, 2021 at 119:12-14 and 141: 9-16], and Mr. Nadeau's conduct has forced her to incur legal fees. Mr. Nadeau's actions are likely to also continue to cause her to incur additional and significant attorney's fees.
16. Ms. Fahey testified about a second, just as cognizable, form of injury: her loss of confidence in lawyers and in the Bar, and the personal stress

and anguish that her experience with Mr. Nadeau, and his resulting claims and accusations in the discipline process, have caused her and her family.

17. Ms. Fahey testified that due to her experience with Mr. Nadeau as her attorney, she no longer holds the profession in the high regard she did before meeting Mr. Nadeau. Though she once trusted a lawyer at his/her word, she feels that she would be foolish to do so now.
18. Ms. Fahey testified that when Mr. Nadeau sued her and her attorney for defamation, he included allegations of a sexual nature which, while untrue, caused her deep distress. She was concerned the media might pick up the story, so she prepared her school-aged children for the possibility that they might hear of it from friends at school or parents of friends. Her children were likewise stressed by this information.
19. The salacious accusations from Mr. Nadeau did not end with the aforementioned lawsuit. He testified at some length during the merits hearing, in explicit detail, about alleged sexual advances by Ms. Fahey. Ms. Fahey testified that she lost sleep and experienced a regression in her health due to the stress of it.
20. The majority of the panel finds that Mr. Nadeau's accusations of sexual advances are not credible, particularly in light of the complete absence of any corroborative evidence of her sexual advances or even any suggestive communication from Ms. Fahey to Mr. Nadeau. Of the thousands of text messages submitted to the panel, not a single message indicated any

interest by Ms. Fahey in a sexual relationship. For the majority of the panel, it necessarily follows then that Mr. Nadeau is willing to make false statements that humiliate and betray a former client in order to protect himself before the disciplinary authority. The majority of the panel finds this to be particularly disturbing conduct that clearly places Mr. Nadeau's own self-interest above his responsibilities as a member of the legal profession.

21. In addition to Shawn Fahey, Mr. Nadeau injured the 11 clients for whom he was out of trust, including the Friends of ABM Charity.
22. Finally, his dishonest conduct potentially injured public confidence in the Bar. While impossible to calculate with any certainty, the extreme manner in which he manipulated his client and his interference with, and obstruction of, the discipline process could lead to damage to the public's trust in the legal profession.

Baseline Sanction: Disbarment

23. The panel finds that the baseline sanction in this matter is disbarment. This is based on the panel's findings on the three prongs of duty violated, mental state, and injury
24. Mr. Nadeau's 1.15 rule violation implicates Section 4.1 of the *Standards* and supports suspension. With respect to this failure to preserve client property, the *Standards* provide that "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.” The panel finds that Mr. Nadeau’s actions fit this description more closely than the *Standards* disbarment criteria requiring that the lawyer actually “convert” client property. “Potential injury” clearly exists when a lawyer co-mingles funds and fails to properly safeguard client retainers.

25. Mr. Nadeau’s 1.7 and 1.8 rule violations implicate Section 4.3 of the *Standards* and the panel finds that the nature of his conduct under this section supports disbarment. The *Standards* provide that “disbarment is generally appropriate when a lawyer, without the informed consent of client(s):

(a) engages in representation of a client knowing that the lawyer’s interests are adverse to the client’s with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client”

26. Mr. Nadeau stood to benefit from his ongoing representation of Ms. Fahey in light of his pursuit and acceptance of her financial support. The loan to Mr. Nadeau created a conflict between his interest and what was best for Ms. Fahey, and subsequent, serious financial injury occurred.

27. Mr. Nadeau’s 8.4(c) rule violation implicates Section 4.6 of the *Standards*, governing lack of candor towards a client, and overall, the panel finds that his actions merit disbarment. The *Standards* provide that “disbarment is generally appropriate when a lawyer knowingly

deceives a client with the intent to benefit the lawyer or another and causes serious injury or potential serious injury to a client.” While some of Mr. Nadeau’s conduct under this section may not have been to strictly benefit himself, the panel finds that overall, his deceptive conduct towards Ms. Fahey merits disbarment versus suspension.

28. Mr. Nadeau’s 8.4(b) (forbidding criminal conduct) and 8.4(c) rule violations also implicate Section 5.1 of the *Standards* and clearly support disbarment. The *Standards* provide that “Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice.”

As previously noted, Mr. Nadeau’s intentional effort to mislead the disciplinary authority is specifically egregious to the panel and merits disbarment under Section 5.1 of the *Standards*.

29. Mr. Nadeau’s 3.3 rule violation, candor to the tribunal, implicates Section 6.1 of the *Standards* and supports suspension. That *Standards* provide that “suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or

that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.” The evidence in this category does not support disbarment as there was insufficient proof of potentially serious injury to a party or a potentially significant adverse impact on a legal proceeding.

30. Mr. Nadeau’s 1.5 rule violation implicates Section 7.0 of the *Standards*, governing “duties owed as a professional” and his conduct merits disbarment. That Section provides that, in cases involving false or misleading communication about a lawyer’s services, “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.” Disbarment is appropriate here particularly in light of the injury caused to Ms. Fahey by his collection of fees split with Mr. Abraham without Ms. Fahey’s consent.

Aggravating and Mitigating Circumstances: Aggravating Circumstances Outweigh Mitigating Circumstances and There is no Basis to Downward Depart from Disbarment

31. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner’s Case*, 158 N.H. at 303. After careful review of the aggravating and mitigating factors, the majority of the panel

finds that the mitigating factors do not warrant a downward departure in sanction.

32. Under the *Standards*, the panel considered the aggravating factors which are, in total:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution;
- (k) illegal conduct, including that involving the use of controlled substances.

33. The majority of the panel found that every aggravating factor was present except (a). The facts supporting these findings are as follows.

34. Mr. Nadeau had a dishonest and selfish motive. He sought to enrich himself with a loan from Ms. Fahey, while he was her lawyer, that was

given on patently unfair terms, without security, or indeed any writing memorializing the loan at the time Ms. Fahey provided the funds. This is a selfish motive. Mr. Nadeau's motive was selfish and dishonest when he kept a \$165,000 "referral" fee in Ms. Fahey's personal injury matter. He did not obtain her written authorization in advance, and never disclosed the full amount to her at all. Mr. Nadeau asked Mr. Abraham not to tell Ms. Fahey about any referral fee, even though Mr. Nadeau requested his piece of the pie from his first conversation with Mr. Abraham about taking the Fahey case from then-counsel Peter Hutchins.<sup>1</sup>

35. Mr. Nadeau's conduct in throwing away his computer, producing backdated letters to the ADO, and altering metadata, has an obvious dishonest motive meant to cover up the fact that he never in fact sent Ms. Fahey the client documents concurrent with the representation. His dishonesty in stealing from ABM, then "replenishing" that account just as other Board members began to inquire about the money, is plain evidence of dishonest motive.
36. Ms. Fahey was a vulnerable victim. When she met Mr. Nadeau, who immediately offered to help her with her personal injury case, Ms. Fahey was experiencing very severe symptoms from her recent accident, including a visible limp, facial tics, and cognitive deficits in her concentration and memory/word retrieval.<sup>2</sup> She relied on Mr. Nadeau,

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<sup>1</sup> Tr. October 27, 2021, at 104:15-23; 105:1-6.

<sup>2</sup> Tr. October 20, 2021 at 36:22 - 41:12.

as he repeatedly urged her to trust him and not review documents without his advice. She was a vulnerable person, and Mr. Nadeau knew this, as evidenced in his email to Attorney Abraham sent just six weeks into meeting Ms. Fahey, in which Mr. Nadeau enumerates the many visible signs of Ms. Fahey's brain injury.<sup>3</sup> Mr. Nadeau took advantage of this vulnerability, thereby enriching himself by (a) the value of the loan she provided him to purchase his family home and (b) the \$165,000 of undisclosed (and therefore unauthorized) "fees" from Ms. Fahey's personal injury case.

37. Mr. Nadeau engaged in a pattern of misconduct, and multiple offenses.

His conduct was both expansive in the timeframe and the breadth of duties violated. Mr. Nadeau's misconduct relating to Ms. Fahey began within days of meeting her and continued through to his testimony against her in the course of this disciplinary process.

38. Mr. Nadeau engaged in bad faith obstruction of the discipline proceeding and submitted false evidence. As previously noted, this area is of

particular concern for the panel. His interference with this proceeding by submitting false evidence was extreme and calculated.

39. Mr. Nadeau refused to acknowledge the wrongful nature of his conduct.

At the sanction hearing in this matter, Mr. Nadeau's expression of remorse fell short. He stated that he was sorry that Ms. Fahey lost trust

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<sup>3</sup> Joint Exhibit 25, Bates 952-953 (September 21, 2018 email Nadeau to Abraham).

in him and ashamed of himself for not “tending to things that needed to be tended to timely or appropriately.” As is the case with this example, Mr. Nadeau’s expressions of remorse fail to grasp the significance of the intentional nature of his conduct and the precise injury caused to Ms. Fahey.

40. Mr. Nadeau has substantial experience in the practice of law. Mr. Nadeau’s presentation at the sanction hearing established well that he has served many clients over many years in a wide range of cases. This serves to amplify his complete failure to comply with certain basic professional requirements such as obtaining knowing waivers from clients before engaging in representation that involves a conflict.
41. Mr. Nadeau appears indifferent to making restitution. Mr. Nadeau had not repaid Ms. Fahey any of the funds owed under his agreements with her prior to the disciplinary hearing. Additionally, up until the merits hearing in this case, Mr. Abraham was holding certain client funds that were clearly owed to Ms. Fahey and was unable to release these funds because Mr. Nadeau would not authorize release. It was not until Mr. Abraham testified at the merits hearing to this fact that Mr. Nadeau apparently authorized the release of these funds.
42. Mr. Nadeau engaged in criminal conduct. Particularly concerning in this area is that his act of criminal conduct was an act of dishonesty and directly reflects on his ability to practice law with integrity and to protect the trust of his clients.

43. These seven aggravating factors far outweigh the one mitigating factor in this case: Mr. Nadeau has no prior disciplinary history.
44. In terms of mitigating factors, the *Standards*, at 9.32, list the following:
- (a) absence of a prior disciplinary record;
  - (b) absence of a dishonest or selfish motive;
  - (c) personal or emotional problems;
  - (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
  - (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
  - (f) inexperience in the practice of law;
  - (g) character or reputation;
  - (h) physical disability;
  - (i) mental disability or chemical dependency including alcoholism or drug abuse
    - (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
    - (2) the chemical dependency or mental disability caused the misconduct;
    - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;

(j) delay in disciplinary proceedings.

(k) imposition of other penalties or sanctions;

(l) remorse;

(m) remoteness of prior offenses.

45. Prior misconduct. The panel concurs that there is no evidence of prior misconduct and therefore this mitigation factor applies.

46. Personal or emotional problems. The panel concurs that there were personal and/or emotional problems that effected Mr. Nadeau throughout the course of the relevant timeframe in this case. However, there is a split in the panel as to whether these personal or emotional problems were the cause of the conduct in this case. The majority of the panel does not find that the evidence indicates that these personal or emotional problems were so significant such that they substantially contributed to the conduct in this case. Therefore, the majority of this panel finds that this mitigating fact does not apply.

47. Character or reputation. The panel finds that there is evidence as to the positive nature of his reputation and character. Mr. Nadeau has, over the course of his career, contributed to the legal profession in general and assisted many specific clients well in his representation. However, the majority of the panel declines to give this mitigating factor such weight as to shift the sanction appropriate in this case from disbarment to

suspension. The legal profession expects that its members will, over time, contribute to their communities and their clients. This is a baseline expectation of a lawyer and something that, thankfully, many lawyers in our state can attest to. Mr. Nadeau testified that he is distraught that a career of good work can be wiped out by the sequence of events in this case. Similar to Mr. Nadeau's efforts to express remorse, this attitude suggests that Mr. Nadeau still does not fully grasp the significance of the violations found by this panel. The majority of this panel finds that, despite the evidence supporting Mr. Nadeau's service to past clients and the profession, the extended and intentional nature of the conduct merits a disbarment.

48. Mental disability or chemical dependency. There was no medical evidence presented that the respondent was affected by a chemical dependency or disability and there is no evidence that such conditions were the cause of the misconduct in this case. Therefore, the majority of the panel finds that this mitigating fact does not apply.
49. The panel finds that the remaining mitigating factors not discussed here are absent in this case.
50. Given the baseline sanction, and in consideration of the aggravating and mitigating circumstances, a disbarment serves the purposes of discipline and is an appropriate sanction in this case.

## **E. Conclusion**

51. Taking into consideration the four-part analysis recommended by the *Standards*, the purposes of attorney discipline in New Hampshire, and case law in this state, the majority of this panel recommends that Mr. Nadeau be disbarred. The dissenting panel member is providing a written position. In addition, certain members of the hearing panel who support disbarment do recommend that the disbarment be back-dated to August 1, 2019, the approximate date that Mr. Nadeau voluntarily ceased practicing law.

## **F. Costs**

52. Mr. Nadeau should be ordered to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. See Supreme Court Rule 37(19).

Dated: July 19, 2022

/s/ Stephanie C. Hausman  
Stephanie C. Hausman  
Hearing Panel Chair

Cc: Sara S. Greene, Disciplinary Counsel  
J.P. Nadeau  
Ragnar R. Huffmann, Esquire

NEW HAMPSHIRE SUPREME COURT  
HEARINGS COMMITTEE

*a committee of the attorney discipline system*

Barbara Keshen, Chair  
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Attorney Discipline Office

#19-009

**DISSENTING OPINION ON SANCTIONS**

I believe that Justin P. Nadeau's license should be suspended for 1~2 years, for these reasons:

1. There is a \$275,000 debt that is essentially unchallenged by Mr. Nadeau and Ms. Fahey, though the repayment of which is highly contentious. The testimony shows that this is purely a matter of his ability to pay his debts, made extremely difficult with his law office being closed. Accordingly, this is not an issue of him "refusing" to pay the debt, and it's a critical distinction as I deliberated the sanctions.
2. The inappropriate nature of a loan from a client notwithstanding, I had to look at the totality of the transaction. Since there wasn't even a suggestion that he was trying to obtain cash or other tangible assets, and that this was purely a loan to purchase real property. It is just impossibly-implausible that Mr. Nadeau sought to acquire a loan to purchase an expensive home so that he could immediately default on it – knowing that he would have a lien on the property, or worse. Undeniably, his plans and behaviors violated attorney rules, but ultimately the evidence shows that his motivations were only to purchase real property and not part of any scheme to abscond with any funds.
3. There is sufficient evidence for me to determine that his strange behaviors were Contributed to by his personal, emotional, and/or substance abuse issues. That doesn't excuse it, but I believe it explains it and therefore qualifies as an important mitigating factor.

4. He practiced for decades, not only without complaints, but with high accolades from several aspects of the legal community and prior clients.
5. Ms. Hess testified to her rather dire circumstance after getting poor service from three (3) New Hampshire attorneys, only to be saved by Mr. Nadeau. Her testimony wasn't just a story of desperation after a string of failed attorneys, but more importantly it exposed the value of having Mr. Nadeau practicing again in New Hampshire someday.

In Summary, Mr. Nadeau acted like a [very] tragic figure, because he was a tragic figure – I did not see evidence that he acted as a malicious attorney to defraud anybody. Disbarring him does not protect the public, and ironically, his history of saving clients where SO many prior attorneys failed their client suggests that he should practice again in New Hampshire after a suspension.

Dated: July 19, 2022

/s/ Robert Dabrowski  
Robert Dabrowski  
Hearing Panel Member

Cc: Sara S. Greene, Disciplinary Counsel  
J.P. Nadeau  
Ragnar R. Huffmann, Esquire