

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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*non-lawyer member

Robert E. McDaniel, Esquire

advs.

Attorney Discipline Office

23-006

ORDER

On November 14, 2023, the Professional Conduct Committee voted on the Respondent's Assented-to Request to Resign. (Caroline Leonard and Margaret Kerouac recused). The Committee voted to accept the Respondent's resignation.

November 27, 2023

/s/ Stephanie C. Hausman

Stephanie C. Hausman
Chair

cc: Sara S. Greene, Esq., Disciplinary Counsel
Edward D. Philpot, Jr., Esq.
Carolyn S. Garvey, Esq.

**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Robert E. McDaniel, Esquire

advs.

Attorney Discipline Office

LD-2023-0012

**REQUEST TO RESIGN AND AFFIDAVIT IN SUPPORT
THEREOF PURSUANT TO RULE 37(11)**

NOW COMES, Robert E. McDaniel, Esquire, and respectfully requests leave to resign from the New Hampshire Bar pursuant to New Hampshire Supreme Court Rule 37(11). In support thereof, Mr. McDaniel, being duly sworn, does hereby depose and state as follows:

1. I was admitted to the New Hampshire Bar in 1987.
2. I am currently summarily suspended from the practice of law in New Hampshire pursuant to Supreme Court Rule 37(9-B), *In the Matter of Robert E. McDaniel, Esquire, LD-2023-0012* (Order dated September 19, 2023).
3. I do not intend to resume practicing law in New Hampshire.
4. I was also admitted to practice law in Washington, D.C. on June 20, 1993. My status with the District of Columbia Bar is that I am administratively suspended for non-payment of dues.
5. I do not have a prior public disciplinary history.

6. My current home address is PO Box 961, 17 Pease Road. Meredith, New Hampshire 03253.
7. My resignation from the Bar is tendered freely and voluntarily. I am not under any duress, subject to any coercion, or medically impaired, except for as set forth in Paragraphs 10 to 13, below. Despite my current health issues, I am fully aware of and accept the implications of submitting this request and resigning from the Bar.
8. I am aware that the ADO has an ongoing investigation concerning allegations that I am guilty of misconduct. As part of that investigation, the ADO filed a Petition for Summary Suspension, which is attached hereto as Exhibit A.
9. I am 72 years old and will be 73 in March. I have been a member of the New Hampshire Bar for 36 years.
10. I have admitted that I made inaccurate statements to the Court in a January 24, 2023 hearing. I wish for the Court to know that I was not feeling well during the hearing and that later that evening, when at home, I began to lose balance and feel disoriented. I managed to get from the bathroom to the kitchen where I was unable to stand on my own. I collapsed on the floor.
11. After being tended to by EMT's at home that evening, I saw my personal physician the next day and was given two EKG examinations, both of which detected abnormalities. Within a few days I also had a battery of X-Rays, a cardiac ultra-sound, a CAT Scan, and an MRI which revealed

an arachnoid cyst in the left front lobe of my brain. It measured 2 by 4 cm. I consulted with Mass General Hospital for this and was instructed to wait in case of changes. This condition can lead to balance issues, and cognitive problems.

12. I do not know what effect this condition has had on the issues in the complaint against me, but I feel that it is important that the Court be aware of these ongoing medical issues.
13. I have also recently experienced frequent irregular heartbeats, shortness of breath, congestion, and coughing, as well as some balance issues. My physician has directed me to reduce stress, rest and not engage in intense work.
14. These health challenges notwithstanding, I acknowledge that the material facts contained in the Petition are true, and that if a Notice of Charges was predicated on such facts, I would not be able to successfully defend them in a disciplinary proceeding.
15. I waive the confidentiality of this Request to Resign and Affidavit, as well as the attached Exhibit A.
16. The ADO does not object to my resignation.
17. In the unlikely event that I apply for readmission to the Bar, I understand that the ADO may object to my application and, in its discretion, may bring forward and prosecute this underlying disciplinary matter to a sanction. I waive my defenses and my right to assert that such prosecution would be barred by the statute of limitations.

18. I understand that I will be bound by my representations and admissions as contained in my Request to Resign and Affidavit and related attachments. I also understand that in the event I apply for readmission, this matter may be presented to the Committee on Character and Fitness.
19. I agree to pay the costs incurred by the ADO in the investigation and pursuit of this disciplinary matter. My agreement to pay costs is the subject of a separate agreement.
20. I request that the Professional Conduct Committee recommend to the Supreme Court that this resignation be accepted.
21. The Attorney Discipline Office (Sara S. Greene, Esq.) has been contacted and assents to the relief requested herein.

WHEREFORE, the Respondent, Robert E. McDaniel, Esquire, respectfully requests that the Professional Conduct Committee recommend to the New Hampshire Supreme Court that he be permitted to resign from the New Hampshire Bar, pursuant to Superior Court Rule 37(11).

Respectfully Submitted.

Robert E. McDaniel, Esquire
By his attorney,
EDWARD D. PHILPOT, JR., PLLC
354 South Main Street, Suite 1
Laconia, NH 03246
(603) 528-6207

Dated: October 5, 2023

By: 
Edward D. Philpot, Jr. (NH Bar No. 4116)

Robert E. McDaniel

Dated: October 5, 2023

Robert E. McDaniel, Esquire
17 Pease Road, PO Box 961
Meredith, NH 03253
(603) 393-9033

STATE OF NEW HAMPSHIRE
COUNTY OF BELKNAP

On this 5th day of October, 2023, personally appeared the above named Robert E. McDaniel, and made solemn oath that the facts above are true to the best of his knowledge and belief.

D. Philpot

Justice of the Peace / Notary Public
My Commission Expires:

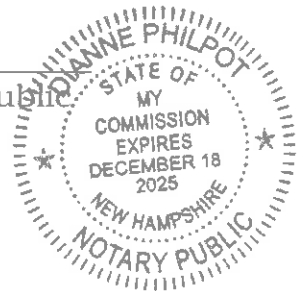


Exhibit A

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In the Matter of Robert E. McDaniel, Esquire

LD-2023-

**PETITION FOR SUMMARY SUSPENSION PURSUANT TO
RULE 37(9-B)(a)(1) FOR “SERIOUS MISCONDUCT”**

The New Hampshire Supreme Court Attorney Discipline Office (ADO) respectfully petitions this Court to order the summary suspension of Robert E. McDaniel, Esq. from the practice of law pursuant to New Hampshire Supreme Court Rule 37(9-B)(a)(1).

1. Respondent’s conduct merits a summary suspension under Rule 37(9-B)(a)(1) (attorney has “engaged in serious misconduct which poses an immediate and substantial threat of serious harm to the public or the integrity of the legal profession”).¹
2. Serious misconduct is defined as any misconduct involving the “mishandling or misappropriation of client or third-party property or funds” or “any other misconduct which by itself could result in suspension or disbarment.” Rule 37(9-B)(b).

¹ This Petition is not supported by affidavit from the ADO because the Petition is not brought under Rule 37(9-B)(2) for failure to comply with a subpoena or other requests for information from the ADO. See Supreme Court Rule 39(9-B)(c) (setting forth when affidavit is required).

3. Here, both bases for summary suspension are present, for the reasons set forth below. To summarize, Mr. McDaniel mishandled client and third-party funds that he held in an escrow account for a divorce matter. In addition, he misrepresented the status of these funds to opposing counsel and mis-stated facts to the tribunal, leading to a contempt finding, an award of attorney's fees to the opposing party, and a judicial referral to the ADO.
4. In addition, bank records subpoenaed for Mr. McDaniel's IOLTA and operating account, demonstrate significant Rule 1.15 violations, including, *inter alia*, misappropriation (large retainers deposited directly into the operating account rather than the IOLTA), commingling, unauthorized cash withdrawals, and a complete lack of record-keeping required by Supreme Court Rule 50 and 50A.
5. As of July 31, 2023, the last date for which the ADO has IOLTA bank records, Mr. McDaniel's IOLTA balance was \$35.04. That account should be frozen, and an inventory attorney appointed, so that the status quo can be maintained while client interests are determined.

Background

6. Mr. McDaniel is an attorney licensed to practice law in New Hampshire. Mr. McDaniel was admitted to practice in 1987.
7. Mr. McDaniel was also admitted to practice law in the District of Columbia on June 20, 1993. He is currently on administratively suspended status for non-payment of dues to the D.C. Bar.

8. At all times material to this proceeding, Mr. McDaniel operated his law office as the McDaniel Law Office.
9. Mr. McDaniel does not have a previous disciplinary history.

Grievance and Judicial Referral; ADO Subpoenas

10. This matter was initiated by a grievance dated February 9, 2023, submitted by Attorney Caroline Garvey.
11. A judicial referral for the same underlying conduct was also received from the Hon. Michael H. Garner on February 13, 2023.
12. The matter was referred to Disciplinary Counsel on July 7, 2023.
13. On July 13, 2023, the ADO subpoenaed records for three accounts: an escrow account in a divorce matter handled by Mr. McDaniel ending in XXXX5178, Mr. McDaniel's IOLTA ending in XXXX5186, and Mr. McDaniel's Operating Account ending in XXXX5160. All accounts were at the Bank of New Hampshire.
14. The bank records were received on August 24, 2023, but were incomplete. No check images were provided by the Bank of New Hampshire despite the subpoena's request for such images.
15. The ADO followed up on multiple occasions thereafter, from August 25 through August 30, receiving check images and deposit slips on August 31, 2023.

Kutcher Divorce: Unauthorized Disbursements from Escrowed Funds

16. This discipline matter arises from an underlying divorce case entitled *In the Matter of Lorraine Kutcher and David Kutcher* (650-2020-DM-00136)

pending in the 4th Circuit – Family Division – Laconia.

17. Mr. McDaniel represented David Kutcher. Attorney Garvey represented Lorraine Kutcher at all times relevant to this discipline matter.
18. During the case, Mr. Kutcher received two deferred compensation payments totaling \$90,387.54. The deferred compensation payments were property of the marital estate and subject to division in the divorce case.
19. When Mr. Kutcher initially received these payments, Attorney Garvey filed a motion seeking to have these funds escrowed. In response to this motion, on March 8, 2022, Attorney McDaniel deposited \$90,387.54 into a Bank of New Hampshire account ending in XXXX5178 (“the escrowed funds” or the “escrow account”).
20. Mr. McDaniel represented to the Court in a pleading dated March 9, 2022 that “[b]oth of these payments [totaling \$90,387.54] were endorsed by David A. Kutcher and forwarded to undersigned counsel who has deposited the funds in a law firm trust account. The funds will remain there until further order of the Court There is no need for the Court to take any action at this point. The payments are safe and will remain so.”
21. Mr. McDaniel held these funds in a fiduciary capacity as escrow agent. The beginning balance of account XXXX5178 was \$500.00, representing Mr. McDaniel’s own funds.

22. Attorney McDaniel sent Attorney Garvey a letter dated March 17, 2022 enclosing a check in the amount of \$30,000 for her client. The letter indicated that Mr. Kutcher had also received \$30,000. There is no dispute about these disbursements.
23. Mr. McDaniel's March 17, 2022 letter also stated: "The balance of the \$30,387.54 will remain in Trust for income tax purposes until such time as the taxes are filed and paid."
24. On March 23, 2022, the Court ordered "[Attorney McDaniel] shall retain the deferred compensation payments in his escrow account pending Final Orders or agreement of the parties" ("The March 23rd Order").
25. There was no subsequent agreement or court order authorizing the disbursement of the remaining deferred compensation payments prior to the issuance of the final order in the divorce on December 27, 2022 (the "Final Order").
26. In the Final Order, the Court included these funds in the analysis of the property division and awarded the escrowed deferred compensation funds to Ms. Kutcher.
27. The final hearing in the divorce was held over five days on April 4, April 13, June 8, July 20, and July 21, 2022.

Unauthorized Disbursements from the Escrow Account

28. Despite the lack of agreement between the parties, and the lack of any further court order following the March 23rd Order regarding the escrowed funds, Mr. McDaniel thereafter disbursed a total of \$30,387.54

of unauthorized funds from the escrow account into Mr. McDaniel's Operating Account at Bank of New Hampshire account ending XXXX5160, as follows:

| <u>Date</u> | <u>Transaction Type</u> | <u>Amount</u> | <u>Bates</u> |
|-------------|----------------------------------------------------------------------------|---------------|---------------|
| 3/8/2022 | Initial Deposit | \$90,387.54 | 215 & 226-231 |
| 3/17/2022 | Online transfer to operating account ending in 5160 (authorized) | (\$15,000) | 215 & 244-249 |
| 3/17/2022 | Online transfer to operating account ending in 5160 (authorized) | (\$45,000) | 215 & 244-249 |
| 7/1/2022 | Online transfer to operating acct ending in 5160 (not authorized) | (\$1,583.25) | 219 & 269-274 |
| 8/23/2022 | Online transfer to operating acct ending in 5160 (not authorized) | (\$12,925.00) | 220 & 275-281 |
| 8/25/2022 | Outgoing wire fee (not authorized) | (\$25.00) | 220 & 240 |
| 8/25/2022 | Outgoing wire to David Kutcher (not authorized) | (\$15,000.00) | 220 & 240 |
| 9/2/2022 | Online transfer to operating acct ending in 5160 (not authorized) | (\$1,325.00) | 221 & 282-287 |

29. These disbursements equaled a total of \$90,858.25. (Ex. 1, excel sheet with Bates numbered documents) This amount exceeds the Kutcher total deposit of \$90,387.54.
30. Thus, the total disbursements Mr. McDaniel made from the escrow account exceeded the Kutcher deposit by \$470.71. Mr. McDaniel had to use his own funds (from the initial \$500 deposit) to make the various disbursements from that account.
31. By way of further background, in August 2022, Mr. Kutcher, [REDACTED] [REDACTED] called Mr. McDaniel.

32. At that time, Mr. Kutcher [REDACTED]
[REDACTED]
33. During this phone call, [REDACTED]
[REDACTED]
[REDACTED]
34. Mr. McDaniel effectuated these disbursements from the escrowed funds on August 23, 2022 and August 25, 2022, respectively.
35. According to Mr. Kutcher, Mr. McDaniel t [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
36. The other disbursements from the escrow account were for Kutcher-related expenses that were not authorized by the Court nor agreed to by the opposing party.
37. Mr. McDaniel identified these disbursements to the ADO. The ADO requested and received invoices, which demonstrated the disbursements as follows:
- a. Disbursement of \$1,583.25 to “eScribers” for a transcript of the hearing in the Kutcher matter;
 - b. A \$25 wire fee for the unauthorized wire to David Kutcher for \$15,000 on August 25, 2022;
 - c. Payments to appraiser Kristin Eldridge for appraisals of marital estate real property located in Meredith, New Hampshire, in the total amount of \$1,150.00.

38. The Eldridge invoice was for \$1,150.00, not \$1,325.00, which is the amount Mr. McDaniel actually distributed from the escrow account.
39. Mr. McDaniel produced a Kutcher client ledger, but it was incomplete and inaccurate and did not match the disbursements evidenced by the bank records.
40. On December 2, 2022, the escrow account was closed [REDACTED]
[REDACTED]

**Escrow Account Depleted; Representations to Opposing Counsel
and to the Court**

41. Attorney Garvey began requesting documentation of the escrowed funds beginning on December 19, 2022. The Court issued a Final Decree on December 27, 2022.
42. Ms. Garvey followed up via email regarding the escrow account on December 28, 2022, and again on December 30, 2022.
43. At 3:02 pm on December 30, 2022, Ms. Garvey made her third request for “documentation verifying that you have the \$30K you were holding in trust still there.”
44. Mr. McDaniel replied at 3:34 pm. “I will provide you with the escrow information next week.”
45. Ms. Garvey replied at 3:44 pm: “please provide documentation relative to the money you are holding in escrow. This is now my 4th request. If you have the money in escrow, this should be a simple task. If I don’t receive proof that the money is still in your IOLTA account by the end of

business today, I will take the matter up with the Court Tuesday because if the money is not there, there is a big problem.”

46. At 5:08 pm, Ms. Garvey sent another email, stating: “It being 5:07 p.m. and not having received documentation regarding the money you are supposed to be holding in trust, I can only assume that the money is no longer in your IOLTA account and will address the matter with the Court.”
47. By the time Attorney Garvey was requesting confirmation of the amount held in the escrow account, the escrowed funds were exhausted. Indeed, the escrow account was closed.
48. Mr. McDaniel knew the escrow funds were exhausted because he had personally disbursed the funds to himself as fees, to his client, and made payments for other divorce-related expenses.
49. Moreover, Mr. McDaniel had easy access to information about the escrow account and had performed “online transfers” three times. He also knew the escrow account had been closed, as he had been dealing with a fraudulent transaction on that account that had caused him great concern.
50. Despite this knowledge, Mr. McDaniel replied to Ms. Garvey on December 20, 2022 at 5:23 pm: “Of course the trust money was properly managed. Do not leap to another baseless conclusion. I will deal with it next week.”

51. On January 3, 2023, Ms. Garvey sent an email at 3:49 p.m. asking Mr. McDaniel for the fifth time for proof that he was holding the escrowed funds in trust. He replied: “Why, what money do you think I have?”

52. At 4:19 pm, Ms. Garvey made a sixth request that the escrowed funds were still intact, saying: “

Bob, This is outrageous. You told the Court that you released \$15K of the money you were holding in trust and then you told the Court that you would look into the matter. We were all there. It is on the record. Attached is a copy of your 3/17/2022 letter wherein you state: ‘the balance of \$30,387.54 will remain in Trust for income tax purposes until such time as the taxes are filed and paid.’ If you don’t have the \$30,387.54 in your IOLTA account, you have a very serious problem on your hands. Today, before the close of business I want proof that the money in in your IOLTA account.”

53. Mr. McDaniel responded at 4:30 pm, “That is not the entire story. I will examine the file and respond tomorrow. You do not set deadlines for me. And you have your facts wrong. The tax money is a separate issue. More to follow.”

54. Attorney Garvey sent another follow-up email on January 5, 2023, and when she did not receive a response, the next day she filed a Motion for Transfer of Escrow Funds and Accounting of Same.

55. Attorney McDaniel filed an Objection on January 17, 2023 representing, in part, that \$15,000 had been given to Mr. Kutcher “on August 8, 2022,” as he was in “dire need of funds for living expenses,” and that “[t]he remaining balance was then \$15,387.43.”

56. In addition, the Objection stated that Mr. Kutcher had “authorized The McDaniel Law Office to pay outstanding invoices related to his case, including two appraisals conducted by Eldridge Appraisals totaling \$1,300.00, a transcript fee of \$786.35, as well as his outstanding legal fees and costs which the McDaniel Law Office discounted from \$18,100.00 to \$13,000.00 as a courtesy to Mr. Kutcher and in light of his financial distress. These payments left a balance of \$301.19, which remains in the McDaniel Law Office IOLTA Account.”
57. None of these representations were truthful or accurate.
58. Specifically, the \$15,000 payment to Mr. Kutcher was made via wire transfer on August 25, 2022, not August 8, 2022.
59. Second, the balance of the escrow account after the \$15,000 transfer was \$13,804.04 according to bank records, and not \$15,387.54 as represented by Mr. McDaniel.
60. Mr. McDaniel produced the invoices for Eldridge Appraisals in the ADO investigation, and they totaled \$1,150.00, not \$1,300.00 as he represented to the Court.
61. The transcript fee was not \$786.35, but rather \$1,583.25, as evidenced by the invoice Mr. McDaniel provided during the ADO investigation.
62. Mr. McDaniel’s legal fee was \$12,925.00, not \$13,000.00 as he represented to the Court.
63. Finally, Mr. McDaniel falsely represented that the escrow account had a balance of \$301.19 as of January 17, 2023, the date of his pleading.

However, by that date the escrow account had been closed due to an unrelated fraudulent transaction, and he had utilized \$470.71 of his own funds in the escrow account to effectuate the various disbursements.

Escrow Funds Replenished; Mr. McDaniel Found in Contempt of Court Order and Attorneys' Fees Awarded

64. A hearing was held on the Motion to Transfer Escrow Funds on January 24, 2023.
65. At the hearing, Attorney McDaniel gave Attorney Garvey a bank check from Meredith Village Savings Bank in the amount of \$30,387.54. [REDACTED]
66. In an Order dated February 6, 2023, the court found that Mr. Kutcher was in contempt of the "the Court's Order requiring the sequestration of funds."
67. The Court also awarded Mrs. Kutcher attorney's fees which were incurred in relation to seeking documentation of the escrowed funds. This amount was \$7,273.60.

IOLTA Violations: Misappropriation, Unauthorized Cash Withdrawals, Commingling, Routine Disbursements from IOLTA Without Client Designation

68. During the investigation into this matter, the ADO requested copies of records for Attorney McDaniel's trust accounts. In his response dated May 16, 2023, Mr. McDaniel, through counsel, stated:

[Attorney McDaniel] relied on records for his bank accounts, including his IOLTA account, on Bank of New Hampshire's

electronic banking system. He did not have a separate system for keeping records or reconciling his accounts. He does not have copies of the electronic records, and there are no checkbook registers that show balances of accounts.

Because he did not keep a checkbook register for his accounts, he also does not have a monthly reconciliation for each client account, and the only record of the total account summary is the monthly statement.

69. On July 13, 2023, the ADO issued a subpoena to the Bank of New Hampshire for the following accounts, covering the time period March 1, 2022 to the present date (at the time of production, last bank records covered October 2022):
 - a. Account XXXXX5178 (“the escrow account”)
 - b. Account XXXXX5186 (“the IOLTA”)
 - c. Account XXXXX5160 (“the Operating account”)
70. To summarize, review of the bank records demonstrates that Mr. McDaniel deposited unearned retainers directly into his operating account, thereafter disbursing client funds before they were earned, (i.e. misappropriation), routinely transferred monies out of his IOLTA without any client designation, took unauthorized cash withdrawals, and engaged in commingling.
71. In addition, he maintains a nonlawyer, his wife Laurie McDaniel, as a signatory on the IOLTA without a proper bond as required by Supreme Court Rule 50(c)(i).
72. The details of the Kutcher escrow account are set forth *supra*, ¶¶ 13-67.

73. The details of Rule violations as to the IOLTA and the Operating account are set forth below.

The IOLTA Account

74. From March 2, 2022 through August 15, 2022, Mr. McDaniel effectuated online transfers from the IOLTA to the Operating Account, without any client identification or designation, in the total amount of \$68,606.89.

(Ex. 2 hereto, excel chart with Bates numbered bank records)

75. Mr. McDaniel effectuated unauthorized cash withdrawals from the IOLTA on six occasions in the total amount of \$19,950. (Ex. 3 hereto, excel chart with Bates numbered bank records)

76. Mr. McDaniel commingled personal funds with those of his clients by depositing, on six occasions, a total of \$3,091.93 from his Operating Account into the IOLTA. (Ex. 4 hereto, excel chart with Bates numbered bank records)

77. Mr. McDaniel effectuated a \$10,000 cash deposit on June 6, 2022 (treasurer's check) made payable to Robert E. McDaniel with no client identification. (Ex. 5 hereto, Bates numbered bank records)

78. Bank records demonstrate at least seven (7) deposits into the IOLTA for client matters, in amounts ranging from \$5,000 - \$15,000, which presumably were retainers. (Ex. 6 hereto, excel chart with Bates numbered bank records)

79. Despite the ADO's request by letter dated February 13, 2023 for all client ledgers for any client for whom Mr. McDaniel held funds in trust, Mr. McDaniel failed to produce client ledgers for any of these seven clients.
80. Laurie McDaniel, a non-lawyer, is a signatory on the IOLTA and wrote checks from the IOLTA. Upon information and belief, Mrs. McDaniel works as a legal assistant for Mr. McDaniel.
81. Mrs. McDaniel is not bonded as required by Supreme Court Rule 50(2)(C)(i).

The Operating Account

82. Two large retainers were deposited into Mr. McDaniel's Operating Account that should have been deposited into his IOLTA.
83. On September 16, 2022, Mr. McDaniel deposited a check from client JRL² in the amount of \$20,000. The memo line on the check read "retainer." (Ex. 7, Bates numbered bank records)
84. As of the date of this filing, the ADO has not reached JRL despite efforts to do so by mail.
85. On September 16, 2022, Mr. McDaniel deposited a check from client CFP, a business, in the amount of \$15,000. *Id.*
86. The ADO confirmed with the owner of this business that this check was a retainer provided so that Mr. McDaniel could prepare a response to the N.H. Commission for Human Rights regarding a former employee's

² Client initials are used in this Petition to preserve confidentiality, as clients JRL and CFP were not part of the grievance filed in this matter.

discrimination claim. The owner confirmed he never received a bill of any kind and assumed Mr. McDaniel continued to hold any remaining retainer in his IOLTA.

87. Prior to these two retainers being deposited, the balance in the operating account was \$2,534.30. (Ex 7, Bates 284).
88. On September 28, 2022, Mr. McDaniel wrote a check for \$10,000 to Laurie McDaniel from the operating account. (*Id.*, Bates 287, 355 (larger check image)). Many other transactions out of the operating account occurred during September and October 2022. *Id.*
89. At a minimum, Mr. McDaniel engaged in commingling by depositing these two client retainers into an account containing his personal funds, i.e. the Operating Account.
90. It is the ADO's position that by depositing an unearned retainer directly into the operating account, Mr. McDaniel began disbursing for his own use the funds of a client that were not earned fees, i.e. misappropriation.
91. The ADO requested, in two emails to counsel for Mr. McDaniel dated August 31, 2023 and September 5, 2023, various client materials and documentation, including the entire file for the JRL and CFP matters, all billing statements, and client contact information. (Ex. 8, attached hereto (ADO emails without attachments))
92. The ADO requested such materials no later than September 8, 2023. Mr. McDaniel did not timely produce the information requested.

93. On September 18, 2023, at 3:18 p.m., Mr. McDaniel produced these client files. Mr. McDaniel did not produce any billing information.
94. The ADO's initial review of these client files demonstrate no work product by Mr. McDaniel on the JPL matter.
95. The CFP file evidences some email correspondence to the client, a 5-page draft "Answer and Response to Charge of Discrimination" to the N.H. Commission for Human Rights, which was shared with the client on October 10, 2022, but no final submission of the Answer to the N.H. Commission for Human Rights.
96. The JRL and CFP files do not evidence work product that would justify earned fees of \$35,000 as of September 16, 2022, when these amounts were deposited into Mr. McDaniel's Operating Account.

False Trust Account Certifications

97. Given his acknowledgment of a near-complete lack of record-keeping for client funds, Mr. McDaniel knowingly submitted false Trust Account Compliance Certificates for the reporting periods covering June 1, 2021 through May 31, 2022 representing that he was never out of trust in his client trust account and that he performs monthly reconciliations of his client trust account.

Rule Violations

98. Mr. McDaniel's conduct, as set forth in this Petition, violates the following Rules of Professional Conduct:

99. Rule 1.15(e) and (f), for failing to promptly render a full accounting of the escrow funds he held in the Kutcher matter when requested by opposing counsel, and for failing to keep the escrowed funds separate and safeguarded when two or more persons claimed interests in such funds;
100. Rule 1.15 and Supreme Court Rule 50 and 50A for:
 - a. Failing to maintain any of the minimum financial records with regard to client and third-party funds as required by Rule 50 and 50A;
 - b. Failing to deposit the JRL and CFP retainers into the IOLTA;
 - c. Failing to maintain his property separate from that of clients, i.e. commingling his funds with clients' funds, both by depositing his funds into the IOLTA, and by depositing client funds into his Operating Account, as set forth herein;
 - d. Making unauthorized cash withdrawals as described herein;
 - e. Routinely failing to identify by client name disbursements from the IOLTA into his Operating Account; and
 - f. Failing to bond Laurie McDaniel, a non-attorney, as a signatory on the IOLTA;
101. Rule 3.3, for knowingly making false statements of fact to a tribunal in:
 - a. His pleading dated March 9, 2022, wherein he represented that the Kutcher funds "will remain there [in a separate account] until further orders of the Court . . . there is no need for the Court to

take any action at this point. The payments are safe and will remain so;"

- b. His pleading dated January 17, 2023, wherein he falsely set forth the amount held in trust in the escrow account as of two dates, and falsely stated the amounts and dates of certain disbursements;

- 102. Rule 3.3, for knowingly filing a false Trust Account Certification;
- 103. Rule 3.4(c), for knowingly violating the Court's Order dated March 23, 2022 requiring the sequestration of Kutcher funds, as found by the Court in its Order holding Mr. McDaniel in contempt, dated February 6, 2023;
- 104. Rule 4.1(a), for knowingly making a false statement of fact to opposing counsel, when he represented in his March 17, 2022 correspondence to Ms. Garvey that the Kutcher funds "will remain in trust," and thereafter, upon her repeated inquiries regarding same, from December 19, 2022 through January 5, 2023, failing to inform her of the disbursements he made from the escrow account, instead telling her "of course the trust money was properly managed," accusing her of "another baseless conclusion;" and
- 105. Rule 8.4(c), for disbursing unearned client retainers in the JRL and CFP matters, which were deposited in their entirety into his Operating Account as set forth herein.

Conclusion

106. This conduct demonstrates that Mr. McDaniel has “engaged in serious misconduct which poses an immediate and substantial threat of serious harm to the public or the integrity of the legal profession.”
107. Mr. McDaniel’s conduct violates, at a minimum, Rules 1.15, 3.3, 3.4(c), 4.1, 8.4(c), and Supreme Court Rule 50. This misconduct merits summary suspension under Rule 37(9-B)(a)(1).
108. Mr. McDaniel’s misconduct constitutes “misconduct which by itself could result in a suspension or disbarment.” Supreme Court Rule 37(9-B)(b). In addition, it involved the mishandling of client and third party funds, and thus meets the definition of “serious misconduct” on both bases.
109. This Court should suspend Mr. McDaniel summarily due to his serious misconduct.

WHEREFORE, the ADO respectfully prays that this Court:

- A. Suspend Mr. McDaniel and initiate further proceedings consistent with Rule 37(9-B);
- B. Order Mr. McDaniel to inform all clients of his suspension, and submit an affidavit to the ADO attesting to same, no later than October 9, 2023, as set forth in Supreme Court Rule 37(13)(b),(d);
- C. Freeze Mr. McDaniel’s IOLTA and operating accounts and order that Mr. McDaniel be enjoined from transferring, assigning, hypothecating, or in any manner disposing of or conveying any assets of clients, whether real, personal, beneficial or mixed;

- D. Appoint, in accordance with Rule 37(17), an attorney to take possession of Mr. McDaniel's files and accounts, and to take such action as is necessary to protect the interests of his clients;
- E. Assess Mr. McDaniel for all expenses that may be incurred by the ADO in the investigation and prosecution of this matter; and
- F. Enter such further orders as it may deem just and necessary to protect the public.

Respectfully submitted,

NEW HAMPSHIRE SUPREME COURT
ATTORNEY DISCIPLINE OFFICE

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Dated: September 19, 2023 By: /s/Sara S. Greene
Sara S. Greene
Disciplinary Counsel

CERTIFICATE OF SERVICE

I, Sara S. Greene, Disciplinary Counsel of the New Hampshire Supreme Court Attorney Discipline Office, certify that a copy of the aforesaid "Petition for Summary Suspension Pursuant to Rule 37(9-B)(a)(1) for 'Serious Misconduct'" was delivered on this 19th day of September 2023, to Edward D. Philpot, Jr., Esquire, counsel for Robert E. McDaniel, Esquire, at Edward D. Philpot, Jr., PLLC, 354 South Main Street, Ste 1, Laconia, NH 03246, by regular mail postage prepaid and via email.

/s/Sara S. Greene
Sara S. Greene
Disciplinary Counsel