

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Carroll, H. Paul advs. Attorney Discipline Office - #22-014
and
Carroll, H. Paul advs. Attorney Discipline Office - #22-016
and
Carroll, H. Paul advs. Attorney Discipline Office - #23-007

ORDER

On April 16, 2024, the Professional Conduct Committee (Committee) deliberated the Hearing Panel recommendation that the Respondent, Attorney H. Paul Carroll, be disbarred. The Committee considered the Hearing Panel's report, the transcript of the sanction hearing, the record in the matter, and the Attorney Discipline Office's (ADO) request that the Hearing Panel report be adopted in its entirety. The Committee had invited the parties to file memoranda on sanctions, in the hope of hearing from the Respondent. In the absence of any input from the Respondent, the Committee ensured that the record reflected that he had received actual notice of the ADO's investigation.

The Committee found the Hearing Panel's report to be well-reasoned and thorough. The Committee concurred in the Panel's factual findings and legal conclusions and largely adopts their opinion.

A. Procedural and Factual Background

1. Procedural Background

Mr. Carroll is an attorney licensed to practice law in New Hampshire. Mr. Carroll was admitted to practice law in Massachusetts on December 13, 1999. Mr. Carroll was admitted to practice law in New Hampshire on May 30, 2000. Mr. Carroll was administratively suspended from the Massachusetts bar on January 27, 2023. Mr. Carroll was administratively suspended from practicing law in New Hampshire by Supreme Court Order dated February 10, 2023 (ADM-2023-0003). Disciplinary proceedings against Mr. Carroll are also pending in Massachusetts.

At all times material to this proceeding, Mr. Carroll operated his law office as The Carroll Law Firm, 6 Harris Street, Newburyport, MA 01950.

Mr. Carroll has a disciplinary history in Massachusetts. *See In the Matter of H. Paul Carroll*, 28 Mass. Att'y. Disc. R. 130 (2012). Mr. Carroll's disciplinary history in New Hampshire includes a public censure issued on December 17, 2012, as reciprocal discipline from Massachusetts. *See In the Matter of H. Paul Carroll* – LD-2012-0002.

After closing his office, Mr. Carroll did not provide the New Hampshire Bar Association with an updated address, as required by N.H. Supreme Court

Rule 42. Mr. Carroll's home address is believed to be 97 Kings Highway, Hampton, NH 03842-4328.

Mr. Carroll's personal email address is carroll.h.paul@gmail.com. Mr. Carroll provided this email address to Deputy General Counsel Mark Cornell on April 19, 2023. Mr. Carroll has not responded to any ADO communications after that date.

Docket #22-014 ("Barton matter") was initiated by way of court referral on November 17, 2022. Docket #22-016 originated on November 7, 2022, from a grievance submitted by Jocelyn Ema Dowey, a client of Mr. Carroll's ("Dowey matter"). Docket #23-007 originates from a grievance filed by Marijane Currier, a client of Mr. Carroll's, on March 8, 2023 ("Currier matter.")

A Notice of Charges was issued in this matter on June 9, 2023, to H. Paul Carroll, Esq., at The Carroll Law Firm, 6 Harris Street, Newburyport, MA 01950, the address Mr. Carroll maintained with the New Hampshire Bar Association¹ as of that date. Per Rule 37A(III)(b)(1), the Notice was sent via certified mail, return receipt requested. The ADO also sent the Notice via first class mail

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

postage prepaid. Electronic versions were sent to Mr. Carroll at paul@carrolllaw.net and carroll.h.paul@gmail.com as a courtesy.

The email to Mr. Carroll's law firm was returned. The email to Mr. Carroll's personal address was not returned.

On July 3, 2023, the ADO received a returned certified mail package containing the Notice of Charges. The envelope was marked "Return to Sender – Attempted – Not Known – Unable to Forward." On July 18, 2023, the Professional Conduct Committee granted a Motion for Alternative Service. On the same day, the first class mailing to Mr. Carroll's law firm address was returned to the ADO. The envelope was marked "Unable to Forward - Return to Sender."

On July 18, 2023, Disciplinary Counsel forwarded to Mr. Carroll: 1) the Notice of Charges; 2) Motion for Approval of Alternative Service; and 3) the PCC's Order approving the alternative service. The documents were forwarded to Mr. Carroll's home address² and to his personal email address.

Mr. Carroll did not file an Answer to the Notice of Charges. Mr. Carroll is deemed to have admitted the factual and legal allegations set forth in the Notice because of his default. *See* Sup. Ct. R. 37A(III)(b)(3)(A). On September 6, 2023, the Chair of the Hearing Panel issued an Order of Default. Mr. Carroll did not appear at the September 28, 2023 case management conference.

Mr. Carroll is deemed to have violated the following Rules of Professional Conduct:

² A grievant forwarded Mr. Carroll's home address to the ADO in July 2023.

- A. Rule 1.1 – Competence
- B. Rule 1.3 – Diligence
- C. Rule 1.4 – Communication
- D. Rule 3.3 – Candor Toward the Tribunal
- E. Rule 3.4 – Fairness to Opposing Party and Counsel
- F. Rule 8.1 – Bar Admission and Disciplinary Matters
- G. Rule 8.4(c) – Dishonesty, Fraud, Deceit or Misrepresentation
- H. Rule 8.4(a) – General Rule

A hearing on the appropriate sanction for misconduct was duly noticed and held on November 9, 2023. Mr. Carroll did not appear. Disciplinary counsel presented the testimony of two witnesses: Joyce Emma Dowey and Marijane Currier.

2. Factual Background

Docket #22-014 - Court Referral - Barton Matter

In Docket # 22-014 the Notice of Charges allege:

On November 17, 2022, Judge Ellen V. Christo referred Mr. Carroll to the ADO forwarding an Order After Show Cause Hearing. Mr. Carroll represented Michael Barton (“Mr. Barton”) in a pending divorce case filed in the 10th Circuit-Family Division-Brentwood, Case No. 618-2021-DM-00186 entitled *In the Matter of Lisa Barton and Michael Barton*.

The Petition for Divorce was filed on August 12, 2021. The Petitioner sought to have the marital home sold immediately, otherwise the house would be foreclosed upon and any equity in the house depleted, harming both parties.

Mr. Carroll appeared on behalf of Mr. Barton on January 19, 2022. On January 26, 2022, the court issued an order allowing the parties to continue to reside in the home with certain requirements on each party.

During the pendency of the Bartons' divorce, Selene Finance, LP, the holder of the mortgage on the marital residence, began foreclosure proceedings. During a structuring conference on June 27, 2022, Mr. Carroll informed the court that a modification of the mortgage loan had been submitted and approved. As such, the property was not in imminent danger of being foreclosed upon. Despite his representation, Selene Finance continued with the foreclosure process.

At some point, Mr. Carroll notified Selene Finance that he was representing both Mr. Barton and his spouse, Lisa Barton, regarding the loan modification. At the June 27, 2022, structuring conference, Mr. Barton was ordered to provide an authorization within 10 days to Ms. Barton so that she could speak to the mortgage servicer regarding the modification and status of the loan. When Ms. Barton and her attorney, Amanda Lynn Dowgiert, Esq., attempted to speak with Selene Finance regarding the foreclosure, they were informed that unless Mr. Carroll notified Selene Finance that he did not represent both Mr. and Ms. Barton, they would only communicate with him.

Ms. Barton had not authorized Mr. Carroll to represent her when dealing with Selene Finance. Ms. Barton's efforts to contact Mr. Carroll regarding this issue were unsuccessful. On July 27, 2022, Ms. Barton filed a Motion for Ex-Parte Relief. On July 27, 2022, the court issued an Order stating, "Lisa Barton is hereby authorized to access any and all information related to the mortgage."

Due to the pending foreclosure and Ms. Barton's inability to communicate with Selene Finance regarding a loan modification, Attorney Dowgiert filed an Ex-Parte Emergency Motion for Sale of Marital Home. The Ex-Parte Motion was scheduled for a hearing on August 18, 2022, to which Mr. Carroll failed to appear. Mr. Carroll's client, Mr. Barton, informed the court that he did not know why his attorney was not there and that he had expected him to be there. Attorney Dowgiert also informed the court that she had "great difficulty" getting Mr. Carroll to respond to any of her inquiries and she too was under the impression he would be attending the hearing. Attorney Dowgiert and Mr. Barton informed the court that Mr. Carroll had been unresponsive to both for months.

On August 30, 2022, the court entered an order authorizing the sale of the marital residence. Although the court ordered Mr. Carroll to withdraw his representation of Ms. Barton, he did not do so.

The August 30, 2022 order also scheduled a Show Cause Hearing for October 20, 2022, for Mr. Carroll to appear and explain his actions. Mr. Carroll filed an Assented-to Motion to Continue the October 20, 2022 hearing, citing a

conflict with the hearing date and citing the need for more time to obtain medical records. The court granted the Motion to Continue.

The show cause hearing was rescheduled to November 17, 2022. Mr. Carroll failed to appear at the rescheduled hearing. At the show cause hearing, Attorney Dowgiert informed the court that she had explicitly informed Mr. Carroll that she did not assent to a Motion to Continue when he contacted her.

In the November 17, 2022, order, the court found:

In summary, this Judge finds that the following actions or inactions by Attorney Carroll, including but not limited to those listed below, should be referred to the New Hampshire Attorney Discipline Office for investigation:

1. Failure to appear at several noticed hearings on behalf of his client without being excused by the Court, including 8/18/22 and 11/17/22.
2. Making false representations to the Court on 6/27/22 that the parties' mortgage loan modification had been approved and/or was not at risk of foreclosure.
3. Representing to Selene Mortgage that he represented both the Plaintiff and Respondent, when the Plaintiff gave him no such permission to do so.
4. Failing to comply with Court orders, specifically by failing to withdraw his representation to Selene Mortgage on behalf of the Petitioner as ordered to do so on 8/30/22.
5. Making a false representation to the Court that opposing counsel had assented to a Motion to Continue on 10/5/22, when she had not.
6. Failure to appear at a Show Cause Hearing on 11/17/22 to account for his conduct.

The court then referred the matter to the Attorney Discipline Office.

Docket #22-016 – Jocelyn Ema Dowey Matter

In Docket 22-016 the Notice of Charges alleged:

This matter originated from a grievance submitted by Jocelyn Ema Dowey on November 7, 2022. Mr. Carroll represented Ms. Dowey, a plaintiff, in a civil litigation matter entitled *Jocelyn Ema Dowey v. Liquid PC*, filed in Rockingham Superior Court as Docket No: 2018-2021-CV-01102.

The complaint in the Dowey civil matter was filed in the Superior Court on October 29, 2021. On April 27, 2022, Mr. Carroll, on behalf of Ms. Dowey, filed a Motion to Amend the Complaint. On June 16, 2022, the court granted the Motion to Amend. Despite the court granting the Motion to Amend, Mr. Carroll did not file an amended complaint on Ms. Dowey's behalf. Mr. Carroll did not provide the required automatic disclosures to the opposing party as a part of the discovery in the case.

A scheduling conference was scheduled in the matter for October 14, 2022. After receiving notice of the scheduling conference, Ms. Dowey sent a text message on August 3, 2022, to Mr. Carroll requesting a time to meet to discuss the upcoming scheduling conference. On August 9, 2022, Ms. Dowey sent another text message to Mr. Carroll stating: "Good morning, Paul, hoping we can chat soon so I can get an update." On or about September 30, 2022, Mr. Carroll informed Ms. Dowey that he had a scheduling conflict with regard the October 14, 2022, scheduling conference and another matter and would be filing a Motion to Continue. Mr. Carroll did not file the Motion Continue.

On October 14, 2022, Ms. Dowey received an electronic notice from the court that the case had been dismissed because she and her attorney had failed to appear. The court issued an Order of Dismissal, stating:

A scheduling conference was held [o]n today's date. The Plaintiff, and plaintiff's counsel, failed to appear. Defendants appeared through counsel.

The Court granted leave for the plaintiff to file an amended complaint in April. To date, no amended complaint has been filed, and the plaintiff has not provided any of the required automatic disclosures.

Accordingly, this matter is dismissed for failure to appear and failure to prosecute these claims.

The defendant may seek reconsideration of this Order if he demonstrates just cause for why this matter should not remain dismissed, non-appearance in court and non-compliance with court rules. Any such request must be filed within 10 days.

If this Order is vacated, the plaintiff will be assessed attorney's fees incurred for defense counsel's preparation for, and attendance at today's hearing, and related travel expenses.

On October 20, 2022, Mr. Carroll sent a text message to Ms. Dowey stating:

I am sorry I missed you. Please review the time and court room for today. I will meet you there. I can't talk right now. Please text me the info and time.

Ms. Dowey responded via text message:

The hearing was on Friday 10/14 & was dismissed for failure to appear. I haven't filed for reconsideration yet but I'm working on it.

Mr. Carroll responded: "I will help you with this. I had it misdiaried for today."

On October 20, 2022, Ms. Dowey took the day off from work and went to the court to determine the status of her case. Ms. Dowey learned

that an amended complaint had not been filed, despite the court granting leave to file an amended complaint on June 15, 2022. Ms. Dowey also learned that Mr. Carroll had failed to file certain automatic disclosures and that the court had been trying to contact him to file the Complaint and the automatic disclosures. In addition, opposing counsel indicated that he had “made dozens of attempts to contact Attorney Carroll for these documents without any response recorded from him.”

After going to the court, Ms. Dowey texted Mr. Carroll again to forward him the Order of Dismissal to which Mr. Carroll replied: “I will file a motion to vacate the dismissal and return the case to the trial track. I am sorry about the mix up.” Mr. Carroll sent a follow-up text message, stating: “I will draft and send you an affidavit in support.” Ms. Dowey texted him, stating:

Only have a few more days, 10 days from 10/14. It also says that in April the court granted the motion to amend my complaint, but nothing has been filed & the court has been trying to get in contact with you to file the complaint & the required automatic disclosures.

On October 20, 2022, Ms. Dowey filed a Motion to Reconsider on her own behalf. The court denied the Motion to Reconsider on November 2, 2022. The court’s order stated:

Given the unique history of the claims in this case, the procedural posture, and the significant spans of time where the plf has done nothing in this case, the motion is DENIED. The Court concurs w/the arguments in the objection.

On November 3, 2022, Ms. Dowey sent a text stating, in relevant part:

You've been non-existent except for the occasional text or phone call over the last 8 months since you took over the case & now the lawsuit has been dismissed due to your inaction.

Ms. Dowey testified at the sanction hearing. Her testimony supported the facts alleged in the Notice of Charges.

Ms. Dowey sought to sue her previous employer for discrimination, sexual harassment, and retaliation. After consulting another New Hampshire lawyer who could not handle the lawsuit, Ms. Dowey filed a complaint pro se. She then engaged Mr. Carroll, who had previously represented her, to represent her in the lawsuit. She testified that Mr. Carroll told her he would file an amendment to her complaint. The amendment was never filed. Ms. Dowey testified that Mr. Carroll did not communicate with her, despite her repeated attempts to contact him. Mr. Carroll failed to file a motion to continue and failed to appear at a structuring conference, which ultimately resulted in her case being dismissed. Despite promising to do so, Mr. Carroll did not file a motion to vacate the dismissal.

Ms. Dowey testified she paid Mr. Carroll between \$1,500 and \$2,000 for his services. Ms. Dowey testified that she did not notice any signs of impairment from Mr. Carroll.

Docket #23-007 - Marijane Currier Matter

In Docket 23-007 the Notice of Charges alleged:

On March 8, 2023, Ms. Marijane Currier filed a grievance with the ADO regarding Mr. Carroll's representation of her in a probate matter. The grievance

was docketed on March 9, 2023 and referred to Disciplinary Counsel on April 17, 2023.

By way of background, Mr. Carroll had previously represented Ms. Currier in a workers' compensation matter in 2017. In 2018, Mr. Carroll agreed to represent Ms. Currier's husband with respect to a medical malpractice action, but the lawsuit was not filed.

On April 29, 2020, Ms. Currier's landlord, Sally Dunham, passed away. Ms. Dunham's will left her house in Salem, New Hampshire to Ms. Currier. Ms. Dunham's son, Joseph Savino, contested the will in probate court.

Ms. Currier requested that Mr. Carroll represent her with respect to that matter and a related equity matter captioned: *Joseph Savino, individually and as Parent and Next Friend of Rebecca Savino v. Estate of Sally Dunham and Marijane Currier*, Case No. 318-2021-EQ-00702, 10th Circuit – Probate Division – Brentwood (collectively “Dunham matter”). The matters alleged that Ms. Dunham lacked the legal capacity required for the execution of a will and other estate planning documents in November 2019, or that she was unduly influenced in executing those documents.

Mr. Carroll filed his appearance on Ms. Currier's behalf on July 16, 2020. On June 29, 2021, the court granted a Motion for Instruction finding:

There being no timely objection to this motion, the motion is granted. The burden of proving the will is on the proponent, which I find in this case to be Marijane Currier. Therefore, she shall carry the burden of proof as the proponent would in any matter requiring the proof of a will in solemn form.

On July 6, 2021, Mr. Carroll filed on Ms. Currier's behalf a Notice of Creditor's Claim and Demand for Payment Pursuant to RSA 556:2 by Marijane Currier for \$34,580.00

A Case Structuring Conference Order dated July 26, 2021, and Probate Rule 62 required the parties to file pretrial statements. Mr. Carroll failed to file the pretrial statement on Ms. Currier's behalf.

On July 6, 2022, a pretrial hearing was held in the Dunham matter. Mr. Carroll and Ms. Currier failed to appear at the pretrial hearing. Mr. Carroll called the court as the pretrial hearing was concluding, but the court did not allow him to participate at that late time because another hearing was scheduled to begin. Despite being ordered to file a pretrial statement eleven months earlier, Mr. Carroll still had not filed the pretrial statement on Ms. Currier's behalf. The court ordered Mr. Carroll to file the pretrial statement, as well as file complete documents and responses to discovery requests and other pleadings, by July 15, 2022. Mr. Carroll did not file the pretrial statement or respond to the other discovery requests.

On July 21, 2022, counsel for Mr. Savino filed a Motion to Compel with respect to additional documents that were requested to be produced during Ms. Currier's deposition. The court granted the Motion to Compel on August 2, 2022, stating:

This motion is granted. No response was filed with the court. Counsel's fees are awarded, and an affidavit of fees shall be submitted to the court within 10 days for a determination of the amount of fees to be awarded.

On July 28, 2022, Mr. Savino filed a Motion to Exclude Marijane Currier from Presenting Witnesses and/or Submitting Exhibits for Trial, and For Other Equitable Relief. The Motion to Exclude included the following requests for relief:

- A. Order Marijane Currier and/or Attorney Carroll to reimburse Joseph Savino for attorney's fees incurred in connection with the filing of this Motion;
- B. Issue an Order excluding Marijane Currier and/or Paul Carroll, Esq. from submitting exhibits or witnesses at trial in this matter.

On August 2, 2022, the court granted the Motion in part, finding:

No pretrial statement was filed on behalf of Marijane Currier in this matter, and no response was filed to this motion. Upon a review of this motion and my orders, I find that the motion is granted as to Prayers A and B. Counsel for Mr. Savino shall submit an affidavit of attorney's fees within 10 days for review by the court. As Marijane Currier has failed to provide any witness or exhibit list, her witnesses and exhibits are hereby excluded from being offered at trial.

The trial began on August 18, 2022. Mr. Carroll did not attend the first day of the trial to represent Ms. Currier.

On August 19, 2022, the court issued an Order on Pending Motions and For Show Cause Hearing. In relevant part the court stated:

I commenced the trial in the above consolidated actions on August 18, 2022. . . . However, I am issuing this order to provide the rulings in writing, as well as to address the failure of Attorney Carroll to appear for the trial and to file any pleadings or appear since prior to the pretrial conference in this matter.

At the time of the trial, the petitioner Joseph Savino appeared with his counsel, Attorneys Daly and Williams. In addition, Paul Savino appeared with his counsel, Attorney Welch. Attorney Merrill was present as the independent administrator of the estate. Marijane Currier appeared without her counsel, Attorney Carroll.

I note that prior to trial, Attorney Carroll had failed to file any pretrial statement on behalf of his client, and had failed to file any motions relating to that failure and the assessment of fees against him. Moreover, he has not filed any responsive pleadings to motions that were filed resulting in orders barring him from presenting any witnesses or exhibits on behalf of his client, Marijane Currier. Ms. Currier is a legatee under the will of the deceased. Attorney Carroll also has failed to comply with this court's order compelling discovery. It appears he last filed anything in these cases in 2021.

. . . .

I note that the motion also seeks an award of attorney's fees and sanctions. I will defer ruling on those requests until after the show cause hearing that will be scheduled as required in this order. Any party may file a motion to bring the issue of attorney's fees and sanctions forward for consideration within 10 days of the conclusion of the show cause hearing if the issue has not been addressed by the court prior to that time.

. . . .

Finally, as to Attorney Carroll. Counsel informed the court that Attorney Carroll was aware of this court's order after the pretrial conference requiring to file a pretrial statement and to comply with the court's order compelling discovery. I was also told that Attorney Carroll cancelled his client's deposition in March claiming that he had COVID, and also asserted nearly 4 months later that at the time of the pretrial hearing he had COVID. Counsel also reported that Attorney Carroll reached out to them last week requesting a continuance of the trial as a result of training for an endurance marathon and having some medical issues. Attorney Daly did not assent to that request.

Ms. Currier and Attorneys Daly, Williams and Welch all confirmed that they heard from Attorney Carroll on the morning of trial that he either was going to the hospital or was expecting to go to the hospital. These communications came shortly before 8:30 am. Ms. Currier said that she was told by Attorney Carroll that he had recently had a short stay in the hospital, but that until the morning of trial he had not contacted her about being in court. She indicated that she had experienced difficulty in communicating with him about the case.

This information raises serious ethical issues about Attorney Carroll. His client was forced to appear in court unrepresented, and other parties were prejudiced by his actions and lack of response. He has had over a month since the pretrial hearing to file something with the court to address his circumstances and answer

the motions that have resulted in his client having no ability to present witnesses or exhibits at the trial. Yet, he has filed nothing. Although he may have been hospitalized for a short part of this time period, he has had ample time to file any required motions with the court. Instead, he has done nothing, thereby prejudicing not only his client, but other parties to the litigation.

As a judicial officer, I am required to make reports of conduct by an attorney that may violate the rules of professional conduct. The circumstances before me appear to require a report to the Committee on Professional Conduct. Prior to making that report, however, Attorney Carroll shall appear for a hearing to show cause as to why he may believe that I should not file a report of his actions and inactions with the Committee. The clerk is requested to schedule a 1-hour hearing on that issue. Any party to this litigation may attend the hearing.

The trial subsequently went forward on August 25, 2022, October 20, 2022, and October 27, 2022. Mr. Carroll attended these hearing dates to represent Ms. Currier. However, he did not provide exhibits or call any witnesses on Ms. Currier's behalf.

A show cause hearing was not scheduled in the matter. Mr. Carroll stopped responding to all parties involved in the Dunham matter in the fall of 2022.

On January 10, 2023, the court issued its order with respect to the evidentiary hearing. In the order, the court found that Ms. Dunham's November 2019 will was invalid and that Ms. Currier and Paul Savino had unduly influenced Ms. Dunham. Ms. Currier's creditor's claim for \$34,580.00 was denied. Mr. Carroll did not inform Ms. Currier of the court's decision. Ms. Currier learned of the court's decision from opposing counsel.

On February 6, 2023, Ms. Currier filed a Motion to Reconsider on her own behalf. The court denied the motion. On February 13, 2023, Mr. Savino filed a Motion for Costs and Attorney's Fees to be Paid by Paul Savino and Ms. Currier.

Ms. Currier testified at the sanction hearing. Ms. Currier had lived in the home owned by Ms. Dunham for 13 years. Ms. Currier filed a creditor's claim against the estate for services performed. Ms. Dunham's family contested the will and creditor's claim.

Ms. Currier testified that Mr. Carroll did not diligently represent her. He failed to file a pre-trial statement and to respond to discovery requests. As a result, Ms. Currier was unable to present any witnesses or exhibits or to effectively pursue her claim in the Probate court.

The probate court ruled against Ms. Currier, finding that she had unduly influenced the decedent. Despite her pro se motion for reconsideration, judgment was ultimately entered against Ms. Currier. She did not inherit the home and she was ordered to pay \$87,000.00 in attorney fees to other parties.

Ms. Currier estimated that she had paid Mr. Carroll approximately \$7,000.00 in attorney fees. In addition, she sent him small amounts of money, and ordered food for him, when he asked. Ms. Currier opined that Mr. Carroll had both an addiction to alcohol and to cold pills. She testified that she frequently drove him to court or other appointments and put approximately 12,000 miles on her car to assist him.

B. Sanction Analysis

The purpose of attorney discipline "is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *Mesmer's Case*, 173 N.H. 96, 108 (2020) (quotation omitted). The sanction must take into account the severity of the misconduct. *Id.*

1. Determination of a Baseline Sanction

The American Bar Association Standards for Imposing Lawyer Sanctions (1992) (Standards) recommend the analysis to employ when considering sanctions for lawyer misconduct. Although the Court has not adopted the Standards, it looks to them for guidance. *Mesmer's Case*, 173 N.H. at 108.

The Standards set forth a four-part analysis to consider in imposing sanctions: "(1) the ethical duties violated by the lawyer; (2) the lawyer's mental state at the time of the violations; and (3) the extent of the actual or potential or actual injury caused." *Id.* at 108-09; *see also* Standards § 3.0. The first three steps create the framework for characterizing the misconduct and determining a baseline sanction. *Id.* Once the baseline sanction is determined, we then look to the fourth and final step in the analysis: the existence of any aggravating or mitigating factors and whether they affect the baseline sanction. *Id.* at 109.

a. The Duties Violated

Mr. Carroll violated important duties owed to his clients, the public, the court, and the legal profession.

Mr. Carroll violated the duties of diligence, competence, and communication owed to his clients in each of the three docketed matters. In the

Barton matter, he violated these duties by failing to appear at hearings where his client's interests were implicated. In the Dowey matter, he violated these duties to Ms. Dowey by failing to amend the complaint, failing to provide automatic discovery disclosure, failure to appear at a scheduled hearing and failing to move for reconsideration despite an invitation from the court to do so. In the Currier case, he violated his duty to his client by failing to file a pretrial statement (resulting in the inability to call witnesses or present exhibits to the court), failing to appear for the first day of trial, and failing to provide and cooperate in the discovery process. In each matter he failed to maintain adequate communication with his clients.

In each docket, Mr. Carroll violated duties owed to the court and the legal system. In each case, he disregarded hearings scheduled by the courts. He failed to abide by basic court rules requiring things like pretrial statements. He misrepresented facts to third parties and, when required by the court to withdraw those misrepresentations, he failed to do so.

An attorney has an obligation to maintain the highest standards of honesty and integrity. In failing to maintain these high standards, Mr. Carroll violated his duty as an attorney to the public.

Moreover, Mr. Carroll's failure to respond to Disciplinary Counsel's request for information and his failure to cooperate in the disciplinary process violated his duty to maintain the integrity of the profession. The record supports the Hearing Panel's finding that Mr. Carroll violated duties he owed to his clients, the general public, the court, and the legal profession.

b. Mental State

The second prong of the analysis set forth in the Standards requires assessment of Mr. Carroll's mental state. The New Hampshire Rules of Professional Conduct as well as the Standards differentiate between an intentional state of mind and a knowing state of mind. Knowing misconduct is a less culpable mental state than intentional misconduct. Rule of Professional Conduct 1.0(f) defines knowingly as "denoting actual knowledge of the fact[s] in question. A person's knowledge may be inferred from circumstances." The Standards define "knowledge" as "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." Standards Sec. III ("Definitions"). In assessing whether a lawyer has acted knowingly, "what is relevant is the volitional nature of the respondent's acts, and not the external pressures that could potentially have hindered his judgment." *In Re Wyatt's Case*, 159 N.H. 285, 307 (2009).

The nature and circumstances of Mr. Carroll's misconduct demonstrate that he acted knowingly. In each docket, Mr. Carroll disregarded court rules, failed to appear at hearings, and failed to communicate with his clients. He also made false representations to the court. His failure to cooperate with the disciplinary process and to provide requested information also demonstrates a knowing mental state. The record supports the Hearing Panel's finding that Mr. Carroll acted knowingly.

c. Actual and Potential Injury

The record shows that Mr. Carroll's misconduct caused significant actual and potential injury to his clients, the courts, the legal profession, and the public.

With respect to the court's referral in the Barton matter, Mr. Carroll left his client without representation when he failed to attend noticed hearings on behalf of his client. Mr. Carroll also caused injury to both his client and the opposing party when he falsely stated that he represented both Mr. and Ms. Barton to Selene Mortgage. This representation impeded Ms. Barton's ability to communicate with Selene Finance regarding a loan modification and likely delayed the loan modification process and the sale of the marital home. Mr. Carroll's false representation that the parties' loan modification had been approved and that the property was not in imminent danger of foreclosure caused actual and potential injury to the parties, risking foreclosure of the marital home and delay to the loan modification process. Mr. Carroll also caused actual injury to the parties and opposing counsel when he falsely represented that the Motion to Continue the October 20, 2022, hearing was assented to, thereby further delaying the proceedings.

With respect to the Dowey matter, Mr. Carroll caused actual and potential injury to Ms. Dowey when he failed to file an amended complaint on her behalf and failed to provide the required automatic disclosures. Mr. Carroll's failure to move to continue the October 14, 2022 hearing as he told Ms. Dowey he would, failure to appear for that hearing, and failure to communicate with his client

about her need to attend the hearing, resulted in the dismissal of Ms. Dowey's matter. Mr. Carroll further caused actual injury to Ms. Dowey by failing to file a Motion to Reconsider, necessary because of his misconduct, on her behalf. Ms. Dowey lost the right to have her claims litigated in court, a significant injury.

With respect to the Currier matter, Mr. Carroll caused actual and potential injury to Ms. Currier by failing to file a pretrial statement on her behalf, failing to attend the July 6, 2022 pretrial hearing, failing to comply with the court's July 6, 2022 order to file a pretrial statement and to file complete documents and responses to discovery requests, failing to attend the first day of trial, and failing to communicate with his client. Mr. Carroll's misconduct resulted in his client bearing the burden of proof at trial yet being prohibited from presenting evidence of calling witnesses to sustain that burden. The court unsurprisingly found against Ms. Currier and denied her creditor claim. His misconduct also resulted in Ms. Currier being held responsible for \$87,000 in attorneys' fees. This is a devastating injury to his client.

In each matter, Mr. Carroll's misconduct caused delay in the judicial process, stress and anxiety, and inconvenience to opposing parties, counsel, and the court. Mr. Carroll's false representations and failure to abide by court orders caused injury to the reputation of the legal profession and to the legal system. Finally, Mr. Carroll caused injury to the profession by failing to cooperate with and respond to the ADO, which undermines confidence in the legal profession.

d. Baseline Sanction

In determining the baseline sanction the Committee addressed each violation of the Rules of Professional Conduct.

Rule 1.3 (Diligence) and 1.4 (Communication)

Mr. Carroll knowingly violated Rules 1.3 (Diligence) and Rule 1.4 (Communication). Standard 4.4 provides:

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

4.41 Disbarment is generally appropriate when:

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

4.42 Suspension is generally appropriate when:

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

4.43 Reprimand³ [Public censure] is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

³ The term “admonition,” as used in the *ABA Standards*, is analogous to a reprimand in New Hampshire. The term “reprimand,” as used in the *ABA Standards*, is analogous to a public censure in New Hampshire.

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

Disbarment is the appropriate baseline sanction for Mr. Carroll's violations of Rules 1.3 and 1.4. In each matter, Mr. Carroll failed to provide legal services to his clients, essentially abandoned his practice, causing actual serious injury. The fact that similar conduct occurred in three separate matters establishes a pattern of abandonment and neglect of client matters that has caused serious injury and potential serious injury. Suspension is not appropriate because of the seriousness of the injuries.

Rule 1.1 (Competence)

Mr. Carroll knowingly violated Rule 1.1 (Competence). Standard 4.5 provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to provide competent representation to a client:

4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

4.53 [Public censure] is generally appropriate when a lawyer:

- (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or

- (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

4.54 [Reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether he or she is competent to handle a legal matter, and causes little or no actual or potential injury to a client.

Mr. Carroll's knowing violations of Rule 1.1 call for a baseline sanction of disbarment. In each matter, Mr. Carroll engaged in a course of conduct demonstrating that he either does not understand or disregards fundamental legal doctrines and procedures. Mr. Carroll failed to file basic legal documents, such as a pretrial statement, an amended complaint, a motion to reconsider – basic measures to protect his client's legal interest. Mr. Carroll repeatedly failed to appear for important court hearings. These failures caused injury to his clients.

Rule 8.4 (c) (Dishonesty, Deceit, Fraud, Misrepresentation)

Mr. Carroll knowingly violated Rule 8.4 (c) (Dishonesty, Deceit, Fraud, Misrepresentation). Standard 4.6 provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:

4.61 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.

4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

4.63 [Public censure] is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

4.64 [Reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

Mr. Carroll was deceitful in his interactions with his clients. In the Dowey and Currier matters, he did not file pleadings that he said he would file, resulting in injury to each client. Mr. Carroll's dishonesty caused injury to his clients, but it does not appear to have been intended to benefit Mr. Carroll. Under these circumstances, suspension is the appropriate baseline sanction.

Rule 8.4(c) (Dishonesty, Deceit, Fraud, Misrepresentation)

Mr. Carroll violated Rule 8.4(c). His conduct implicates Section 5.1 of the Standards, which provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

5.11 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.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

5.13 [Public censure] is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

5.14 [Reprimand] is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

Mr. Carroll's dishonesty to the court and to his clients implicates this Standard, though the Committee finds that his conduct in that regard is more aptly addressed by other Standards. However, given the Hearing Panel's finding in this regard, the Committee agrees that the appropriate baseline under this Standard is public censure given the Panel's finding that he acted knowingly.

Rule 3.3 (Candor to the Tribunal)

Mr. Carroll's Rule 3.3 violation implicates Section 6.1 of the Standards, which provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds

material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.

- 6.12 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.
- 6.13 [Public censure] is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, 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.
- 6.14 [Reprimand] is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

Mr. Carroll's conduct in this matter, when considered under Standard 6.11, calls for a baseline sanction of disbarment. In the Barton matter, Mr. Carroll deceived the court when he made representations that the parties' mortgage loan modification had been approved and/or was not at risk of foreclosure and when he represented that opposing counsel assented to a motion to continue. Mr. Carroll's false statements to the court were made with the intent to deceive and caused potentially serious injury to the opposing party and a potentially serious impact on the legal proceeding.

Rule 3.4 (Fairness to Opposing Party and Counsel) and Rule 8.1 (Bar Admission and Disciplinary Matters)

Mr. Carroll's failures to follow court order in each matter and to comply with the ADO investigation implicate Section 6.2 of the *Standards*, which provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

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

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

6.23 [Public censure] is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

6.24 [Reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court order or rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding.

In each docketed case, Mr. Carroll failed to follow direct orders from a court to file required pleadings or documents and to take action to

rectify a false statement. Mr. Carroll failed to respond to the ADO investigation, interfering with the attorney discipline proceeding.

However, there was no evidence that Mr. Carroll violated the court orders with the intent to benefit himself; nor was there evidence that his failure to comply with the ADO investigation caused a serious interference with that matter. For those reasons, The Committee did not find that this Standard warranted a baseline sanction of disbarment. However, his actions did cause injury to his clients and interfered with the ADO investigation; therefore, suspension is the appropriate baseline sanction.

As indicated in the Standards, Section II (“Theoretical Framework”), in cases with multiple rule violations, the “ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct.” *See also Mesmer’s Case*, 173 N.H. at 111. Thus, the baseline sanction here is disbarment.

2. Consideration of Aggravating and Mitigating Factors

The baseline sanction must be considered in the light of aggravating and mitigating factors. *Id.*

a. Mitigation

Mr. Carroll’s failure to cooperate in the discipline process, including his failures to respond to complaints and to appear for hearings, leads to a record that is devoid of mitigating factors. While the record reflects the possibility of health or substance use-related issues, Mr. Carroll declined the Committee’s

invitation to submit an argument on his behalf. In the absence of evidence, the Committee has no evidence of mitigating factors in this case.

b. Aggravating Factors

On the other hand, the record reveals the presence of several aggravating factors. They include 1) a prior disciplinary history; 2) a pattern of misconduct; 3) multiple offenses; 4) substantial experience in the practice of law; and 5) Mr. Carroll's obstruction of disciplinary proceedings by his failure to respond to the ADO's requests and to cooperate with the disciplinary process.

Previous Discipline

Mr. Carroll was previously disciplined with a public censure in 2012 for similar conduct, *i.e.*, failing to make service of process in a timely manner, failing to vacate a dismissal in a timely manner, and failing to maintain reasonable communications with his client about the status of the case. Mr. Carroll's lack of diligence led his client's claims to become time-barred by the statute of limitations. Mr. Carroll was found to have violated Rules 1.1, 1.2(a), 1.3, 1.4(a) and (b), 1.5(c), and 8.4(d) and (h). He received a Public Reprimand from the Massachusetts Board of Bar Overseers and a Public Censure from the Professional Conduct Committee.

Pattern of Misconduct

These matters reveal a pattern of misconduct. That pattern includes the failure to diligently pursue his client's objective, failure to follow court orders, and failure to properly communicate with his clients and the courts. These failures are present in his conduct in each of the outstanding matters. They are

consistent with the conduct underlying his prior discipline record. This pattern of misconduct is an aggravating factor in the consideration of an appropriate sanction.

Multiple Offenses

A separate aggravating circumstance is that Mr. Carroll has committed multiple offenses on multiple occasions. Mr. Carroll violated multiple Rules of Professional Conduct in multiple ways.

Substantial Experience in the Practice of Law

Mr. Carroll was barred in New Hampshire in 2000. He was barred in Massachusetts in 1999. Ms. Dowey's testimony at the sanction hearing demonstrates that Mr. Carroll has substantial experience in the practice of law. Ms. Dowey testified that Mr. Carroll represented her competently and diligently in criminal proceedings ten years prior to her complaint in this case. She described the difference in his conduct to be "like night and day." Mr. Carroll met his professional obligations in the past and should reasonably understand those obligations. This is an aggravating factor.

Obstruction of the Disciplinary Process

Mr. Carroll's failure to cooperate and participate in the discipline process is also an aggravating factor. Mr. Carroll failed to respond to the ADO's formal requests, attend hearings, or respond to this Committee. Mr. Carroll ignored the disciplinary process for nearly a year. He failed to maintain mailing or email addresses. The requirement of cooperation with the attorney discipline process

maintains public confidence in the legal profession; failure to cooperate is appropriately viewed as an aggravating factor.

In this case the aggravating factors far outweigh any mitigating factors. The appropriate discipline is disbarment.

3. Disbarment is Appropriate in the Light of Other Cases

Disbarment is the appropriate sanction in this case when compared with other cases where disbarment was determined to be appropriate. In *Connor's Case*, 158 N.H. 299 (2009), the attorney was disbarred for lying to clients about the status of their case, initiating frivolous claims, and neglecting claims resulting in attorney fee award payable by clients, even though there was no selfish financial motive and the conduct did not create significant harm to a client. *See also Mesmer's Case*, 173 N.H. 96 (disbarment for violations of Rules 1.1, 1.2, 1.3, 1.4, 1.5, 3.3, 8.4(a) and (c)); *Morse's Case*, 160 N.H. 538 (2010) (attorney disbarred for violating Rules 1.1, 1.3, 1.16(d), 3.3, and 8.4(c)); *In the Matter of Jeremy A. Miller, Esquire*, LD-2017-0007 (August 9, 2017)(disbarment for violations of Rule 8.1(b) in addition to numerous other Rule violations); *In the Matter of Michael J. Reed, Esquire*, LD-2020-0009 (January 13, 2021)(disbarment for violations of Rules 1.1, 1.3, 1.4, 1.16(d), 3.4(c), 8.1 and 8.4(a)). The Court has held that "no single transgression reflects more negatively on the legal profession than a lie, attorney misconduct involving dishonesty justifies disbarment." *Salomon's Case*, 171 N.H. 694, 707 (2019) (quotation omitted).

C. Conclusion and Recommended Sanction

In accordance with New Hampshire Supreme Court Rule 37A(III)(d)(2)(D)(iv), the Committee recommends that the New Hampshire Supreme Court disbar Attorney H. Paul Carroll for violation of the New Hampshire Rules of Professional Conduct: 1.1 (Competence), 1.3 (Diligence), 1.4 (Communication), 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Dishonesty, Fraud, Deceit or Misrepresentation), and 8.4(a) (General Rule)

The Committee also recommends that H. Paul Carroll be ordered to reimburse the Attorney Discipline System for all costs associated with the investigation and prosecution of this matter.

Dated: May 8, 2024

Respectfully submitted,

/s/ Stephanie Hausman

Stephanie Hausman
Chair

cc: Elizabeth M. Murphy, Esq.
H. Paul Carroll (via mail and email)
Jocelyn Ema Dowey (via email only)
Marijane Currier (via email only)

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. LD-2024-0008, In the Matter of H. Paul Carroll, Esquire, the court on September 17, 2024, issued the following order:

Having disbarred the respondent, H. Paul Carroll, in case no. LD-2024-0002, the court grants the Attorney Discipline Office's motion to close this case without prejudice to the Attorney Discipline Office's right to proceed and request a further order in the event that Mr. Carroll seeks readmission in the future.

This order is entered by a single justice (Countway, J.). See Rule 21(7).

**Timothy A. Gudas,
Clerk**

Distribution:

New Hampshire Professional Conduct Committee,

#22-014; #22-016; #23-007

H. Paul Carroll, Esq.

Elizabeth M. Murphy, Esq.

File