

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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

Stephanie C. Hausman, Esq., Chair
*Kathleen M. Ames, Vice Chair
Caroline K. Leonard, Esq., Vice Chair
*Ronald K. Ace
*Sarah Clauss
*Everett S. Grass

Margaret R. Kerouac, Esq.
Derek Lick, Esq.
Karyl R. Martin, Esq.
Mona T. Movafaghi, Esq.
Mitchell M. Simon, Esq.
Eric R. Wilson, Esq.
Trudy Renfors, Admin. Asst.

*non-lawyer member

Plache, Matthew J.

advs.

Attorney Discipline Office

#22-009

ORDER

On November 14, 2023, the Professional Conduct Committee considered the Stipulation as to Facts, Rule Violations, and Sanctions. The Committee voted to approve the Stipulation and to recommend a one-year suspension. The Committee also voted to approve the Agreement to Pay Costs and granted the Assented-to Protective Order, under Rule 37(20)(g).

November 27, 2023

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

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Matthew J. Plache
Ms. Sarah Geschwindner

**NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE**

Plache, Matthew J.

advs.

Attorney Discipline Office

#22-009

**STIPULATION AS TO FACTS, VIOLATIONS,
AND SANCTION: ONE-YEAR SUSPENSION**

Respondent Matthew J. Plache, Esq., and the Attorney Discipline Office (“ADO”) stipulate as follows:

A. Facts

Background and Jurisdiction

1. Mr. Plache is not licensed to practice law in New Hampshire.
2. Mr. Plache was admitted to practice law in Maryland on December 30, 1986. Mr. Plache was indefinitely suspended from the practice of law in Maryland on March 24, 2023.
3. This matter involves Mr. Plache’s representation of a client, Sarah Geschwindner (“Ms. Geschwindner”), before the United States Court of Claims Vaccine Court (“Vaccine Court” or “Court of Claims”).
4. At the initiation of the underlying matter in 2017, Mr. Plache maintained an office in Maryland. Subsequently, by 2019, Mr. Plache closed his office in Maryland. Thereafter, Mr. Plache’s address was Law Office of Matthew J. Plache at 65 Brackett Road, Wolfeboro, NH. Mr. Plache continued representation of Ms. Geschwindner in the underlying matter in Vaccine Court.
5. Mr. Plache was permitted to practice before the Court of Claims Vaccine Court based upon his admission to practice law in Maryland, and his admission to the Court of Claims.

6. As a result of Mr. Plache's conduct as set forth below, Mr. Plache is currently suspended by the Court of Claims.
7. Prior to the events set forth herein, Mr. Plache did not have a prior disciplinary history in any jurisdiction.
8. Mr. Plache's legal experience through the course of his career includes environmental matters under the Clean Air Act and CERCLA (Superfund matters), toxic tort litigation, representation of pharmaceutical companies in drug approvals, corporate transactions, and communications law matters.
9. Mr. Plache resides in New Hampshire.
10. Mr. Plache's client, Ms. Geschwindner, resides in New Hampshire.
11. After closing his office in Maryland, Mr. Plache continued to provide legal services and performed legal work in New Hampshire relating to Ms. Geschwindner's petition before the Court of Claims Vaccine Court.
12. New Hampshire Rule of Professional Conduct 8.5(a) (Disciplinary Authority) states:

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. **A lawyer admitted in another jurisdiction but not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction.** A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct. (Emphasis added).

13. Mr. Plache does not dispute that he is subject to the jurisdiction of the New Hampshire Supreme Court Attorney Discipline Office ("ADO") for his work on the underlying matter.

Underlying Matter

14. Mr. Plache represented Ms. Geschwindner in a petition seeking compensation under the National Vaccine Injury Compensation Program with the Court of

Claims Vaccine Court.

15. Generally, vaccine injury petitions are addressed in two stages: First on a determination of liability, and then, if liability is found, the proceeding moves to a determination of damages for the petitioner. Such petitions are detailed pleadings, providing discussion of facts and circumstances surrounding causation and injury, and including medical records.
16. There are very few attorneys in New Hampshire admitted to practice before the Vaccine Court.
17. Mr. Plache prepared and filed a petition dated October 19, 2017 in Vaccine Court on behalf of Ms. Geschwindner demonstrating that she suffered from Guillain-Barré syndrome as a result of an influenza vaccine she received in October 2014.
18. On January 4, 2019, the Court of Claims found that Ms. Geschwindner was entitled to compensation for her injury. On the same date, the Court of Claims then ordered the parties to address the issue of damages.
19. Thereafter, the parties submitted several status reports to the Court of Claims updating the Court as to their progress in resolving the damages issue.
20. On July 31, 2019, Mr. Plache filed on behalf of Ms. Geschwindner updated medical records and other documentation to the Court pertaining to damages.
21. During 2019, Mr. Plache began suffering from depression, which began detrimentally affecting his functioning, including in his professional capacity as an attorney. Although Mr. Plache did not recognize at that time that he was experiencing depression and did not seek medical care for his depression, he stopped taking new clients.
22. By early 2020, with the onset of the Covid-19 pandemic and concurrent shutdowns and stay-at-home orders, Mr. Plache's depression became severe and he had largely stopped functioning professionally. By early 2021, the matter for Ms. Geschwindner was the only ongoing matter that Mr. Plache had, although he did not withdraw from that matter.
23. On October 23, 2020, the Court held a status conference with the parties. The

Court expressed concern to Mr. Plache that no substantive documents had been filed in the case since July 2019.

24. Mr. Plache informed the Court that he was in the process of “identifying documents pertaining to the Medicaid lien” and indicated that he would provide specific updates regarding the issue of the Medicaid lien and outstanding EMGs.
25. The Court gave the parties until November 23, 2020 to file a joint status report updating the Court on their progress in resolving damages.
26. Thereafter, Mr. Plache ceased communicating with opposing counsel and the Court of Claims until June 2021.
27. On November 23, 2020, the opposing party, counsel for Secretary of Health and Human Services (“SHHS”) filed a status report stating that Mr. Plache communicated that he had “been unable to complete reviewing the Medicaid lien as he had been out of the office with personal extenuating circumstances” and did not hear back regarding the filing of a joint status report. The Petitioner was ordered to file her outstanding EMGs. The parties were ordered to file another status report in 30 days.
28. On December 22, 2020, SHHS indicated that he had been unable to communicate with Mr. Plache.
29. On December 23, 2020 and February 8, 2021, the Court ordered the Petitioner to produce status reports. Mr. Plache did not file a status report.
30. In February 2021, the Court made attempts to communicate with Mr. Plache, including a call from the judge’s law clerk.
31. On February 18, 2021, the Court issued an order directing Mr. Plache to consult with co-counsel familiar with the Vaccine Program to assist him with the case and to file a status report confirming he had complied with the order. Mr. Plache did not file a status report.
32. The Court ordered the parties to submit briefs on damages by June 15, 2021.
33. The parties filed a joint status report on June 14, 2021. This was Mr. Plache’s first contact or communication with the Court in seven months. Mr. Plache indicated

- that he would file updated medical records and other documentation.
34. The Court canceled the deadline for briefs and gave the parties until July 14, 2021 to file another status report instead of briefs.
 35. Mr. Plache never filed updated medical records or the status report and ceased all communication with the Court and opposing counsel.
 36. On July 14, 2021 and August 13, 2021, SHHS filed status reports indicating he had not heard back from Mr. Plache.
 37. Mr. Plache never filed updated medical records or a revised Medicaid lien.
 38. On August 13, 2021, the Court issued an order directing the parties to contact chambers within seven calendar days to provide their availability for a status conference. Mr. Plache did not contact chambers as directed.
 39. On August 24, 2021, the Court re-issued an order directing the parties to file briefs on the issue of damages. Mr. Plache did not file a brief.
 40. After SHHS filed various documents, the Petitioner was directed to file a brief addressing those documents by December 20, 2021. Mr. Plache did not file a brief.
 41. On December 21, 2021, the Court issued a show cause order as to why the amount of compensation proposed by SHHS should not be awarded.
 42. The Court gave Mr. Plache until January 20, 2022 to respond by filing a brief as to damages.
 43. Mr. Plache failed to file a response to the December 21, 2021 order or otherwise communicate with the Court.
 44. On January 28, 2022, the Court of Claims awarded Ms. Geschwindner \$92,500 in damages for past pain and suffering. The award did not include an award for future pain and suffering or lost wages because Mr. Plache did not submit evidence relating to those claims.
 45. During the time Mr. Plache was not communicating with the Court, Mr. Plache also was not communicating with his client.
 46. On March 8, 2022, Ms. Geschwindner contacted the Court regarding receipt of her

check.

47. On June 13, 2022, Ms. Geschwindner again contacted the Court advising that she could not contact Mr. Plache.
48. Ms. Geschwindner filed a grievance against Mr. Plache on June 22, 2022.
49. Ms. Geschwindner retained new counsel to attempt to reopen the case at the Court of Claims.
50. On October 11, 2022, the Court vacated its decision awarding damages. In its order, the Court stated: “Ultimately, Petitioner has a right to a full and fair opportunity to present her case. Vaccine Rule 3(b)(2). Petitioner has been deprived of that right due to the complete inaction of her lawyer.”
51. Mr. Plache was suspended from practice before the Court of Claims for failing to respond to its request for information.

Failure to Respond To Requests for Information from the ADO

52. As stated above, Ms. Geschwindner filed a grievance with the ADO on June 22, 2022.
53. After receiving the grievance, the ADO attempted to reach Mr. Plache by telephone. Mr. Plache did not return messages left at his home, which is also his office, and left at the Carroll County Commissioner’s office, where he serves as a county commissioner.
54. On August 2, 2022, the ADO wrote to Mr. Plache giving him an opportunity to provide a voluntary response to General Counsel by August 23, 2022. Mr. Plache did not respond.
55. On August 30, 2022, the grievance was docketed as a complaint and Mr. Plache was required to submit a mandatory response on or before September 13, 2022. The docketing letter was sent to Mr. Plache via certified mail and first-class mail.
56. Mr. Plache signed the certified mail receipt for the docketing letter on September 1, 2022, but he did not submit a mandatory response.
57. The letter sent via first-class mail was not returned to the ADO.

58. The matter was thereafter referred to Disciplinary Counsel for formal proceedings on October 11, 2022.
59. On October 12, 2022, undersigned counsel sent a letter to Mr. Plache asking him to call the office no later than October 26, 2022 to schedule a time to meet. The letter further requested that Mr. Plache produce his complete file regarding Ms. Geschwindner no later than October 31, 2022.
60. Mr. Plache did not contact the ADO to schedule a time to meet with disciplinary counsel.
61. Mr. Plache did not respond to disciplinary counsel's requests for documents and information by the deadline of October 31, 2022.
62. On November 18, 2022, undersigned counsel sent another letter to Mr. Plache again requesting a complete copy of the Geschwindner file and requesting to schedule a meeting. It was requested that Mr. Plache respond to these requests by December 2, 2022.
63. On December 6, 2022, undersigned counsel called Mr. Plache at his cell phone number of (603) 630-9422. The voicemail box was full so a voice message could not be left.
64. On December 8, 2022, undersigned counsel sent Mr. Plache an email to matthew.plache@plachelaw.com forwarding the previously mailed letters. The email also advised Mr. Plache of the attempt to leave a voice message and advised that the Notice of Charges was being prepared.

**Notice of Charges Issued and Subsequent Cooperation
with the ADO and NHLAP**

65. On March 21, 2022, the ADO issued a Notice of Charges against Mr. Plache. The Notice of Charges was sent to Mr. Plache via Certified Mail, First Class Mail and Email.
66. Mr. Plache contacted undersigned counsel on April 20, 2023, prior to the deadline for the Answer to the Notice of Charges to be filed.

67. Mr. Plache admitted that he was aware of the ADO's various communications over several months and stated that he was embarrassed about his conduct.
68. On April 28, 2023, undersigned counsel and Mr. Cornell met with Mr. Plache at the ADO. Mr. Plache acknowledged during the meeting that he had been suffering for several years from undiagnosed depression as well as some physical ailments, including severe arthritis in his hip joint and neck which caused constant pain and prevented regular sleep. Mr. Plache agreed to a referral to the New Hampshire Lawyers Assistance Program ("NH LAP").
69. Mr. Plache has since entered into a Monitoring Agreement on May 10, 2023 with NH LAP and has begun treatment for his depression. With the treatment, Mr. Plache has recognized the failures in the underlying matter. Additionally Mr. Plache has begun treatment for his arthritis, with a hip replacement scheduled.
70. Mr. Plache provided an "Affidavit" dated May 5, 2023 to the ADO stating that he is not "currently engaged in the practice of law in New Hampshire or elsewhere."
71. On May 5, 2023, Mr. Plache also provided to the ADO a copy of a September 7, 2023 Consulting Services Agreement which Mr. Plache had entered into with the Carroll County Communications District Planning Committee ("Planning Committee"). The Services Agreement disclosed that Mr. Plache was an attorney admitted to practice in the State of Maryland but was not admitted in New Hampshire. All services Mr. Plache provided to the Planning Committee concluded in March 2023.
72. Mr. Plache completed all work under his consulting agreement with the Planning Committee by March 2023. The work resulted in the creation of the Carroll County Communications District, which is a municipal entity existing to facilitate deployment of high-speed broadband to all citizens in Carroll County. It is the first Communications District in New Hampshire. With the establishment of the Communications District, Mr. Plache was released from his consulting agreement with the Planning Committee and the Planning Committee was dissolved.
73. Mr. Plache has no current clients.

B. Disciplinary Rules Violated

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

Rule 1.1: Competence

75. Allegations set forth above are incorporated by reference.

76. Rule 1.1 states as follows:

- (a) A lawyer shall provide competent representation to a client.
- (b) Legal competence requires at a minimum:
 - (1) specific knowledge about the fields of law in which the lawyer practices;
 - (2) performance of the techniques of practice with skill;
 - (3) identification of areas beyond the lawyer's competence and bringing those areas to the client's attention;
 - (4) proper preparation; and
 - (5) attention to details and schedules necessary to assure that the matter undertaken is completed with no avoidable harm to the client's interest.
- (c) In the performance of client service, a lawyer shall at a minimum:
 - (1) gather sufficient facts regarding the client's problem from the client, and from other relevant sources;
 - (2) formulate the material issues raised, determine applicable law and identify alternative legal responses;
 - (3) develop a strategy, in consultation with the client, for solving the legal problems of the client; and
 - (4) undertake actions on the client's behalf in a timely and effective manner including, where appropriate, associating with another lawyer who possesses the skill and knowledge required to assure competent representation.

77. Mr. Plache owed a duty to Ms. Geschwindner to provide competent representation.

78. Mr. Plache failed to pay attention to details and schedules necessary to assure that Ms. Geschwindner's matter was undertaken with no avoidable harm to her interests.

79. Mr. Plache failed to undertake action on his client's behalf in a timely and effective manner when he:
- a) failed to provide the Court with updated medical records and other documentation in a timely manner.
 - b) failed to respond to numerous orders from the Court to provide status updates and other information to the Court.
 - c) failed to file a brief regarding damages on his client's behalf.
 - d) failed to respond on his client's behalf to the December 21, 2021 show cause order.
80. As such, there is clear and convincing evidence that Mr. Plache failed to competently represent Ms. Geschwindner in violation of Rule 1.1.

Rule 1.3: Diligence

81. Allegations set forth above are incorporated by reference.
82. Rule 1.3 states as follows:
- A lawyer shall act with reasonable diligence and promptness in representing a client.
83. Mr. Plache had a duty to act with reasonable diligence and promptness in representing Ms. Geschwindner in her matter.
84. Mr. Plache breached this duty when he:
- a) failed to provide the Court with updated medical records and other documentation in a timely manner.
 - b) failed to respond to numerous orders from the Court to provide status updates and other information to the Court.
 - c) failed to file a brief regarding damages on his client's behalf.
 - d) failed to respond on his client's behalf to the December 21, 2021 show cause order.
85. As such, there is clear and convincing evidence that Mr. Plache failed to diligently represent Ms. Geschwindner in violation of Rule 1.3.

Rule 1.4: Communication

86. Allegations set forth above are incorporated by reference.
87. Rule 1.4 states as follows:
- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter.
 - (4) promptly comply with reasonable requests for information; and
 - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
 - (b) A lawyer shall explain the legal and practical aspects of a matter and alternative courses of action to the extent that such explanation is reasonably necessary to permit the client to make informed decisions regarding the representation.
88. Mr. Plache had a duty to keep Ms. Geschwindner reasonably informed as to the status of her matter.
89. Mr. Plache breached his duty to Ms. Geschwindner by failing to communicate with her regarding the status of the matter before the Court of Claims.
90. As such, there is clear and convincing evidence that Mr. Plache failed to communicate with Ms. Geschwindner in violation of Rule 1.4.

Rule 3.4: Fairness to Opposing Party and Counsel

91. Allegations set forth above are incorporated by reference.
92. Rule 3.4 states 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;
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1) the person is a relative or an employee or other agent of a client; and
 - (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

93. Mr. Plache had a duty to comply with orders of the Court.

94. Mr. Plache breached that duty when he failed to comply with orders of the Court, including but not limited to:

- a) The Court's November 23, 2020 order for Mr. Plache to file his client's EMG.
- b) The November 23, 2020, December 23, 2020 and February 8, 2021 orders for status reports.
- c) The February 18, 2021 order for Mr. Plache to consult with co-counsel.
- d) The Court's August 13, 2021 order directing the parties to contact chambers to schedule a status conference.
- e) The Court's August 24, 2021 order directing the parties to file briefs.

95. Mr. Plache breached that duty when he failed to comply with the Court's December 21, 2021 show cause order.
96. As such, there is clear and convincing evidence that Mr. Plache violated Rule 3.4(c).

Rule 8.1: Bar Admission and Disciplinary Matters

97. Allegations set forth above are incorporated by reference.
98. 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.
99. Mr. Plache had a duty to respond to requests for information from the ADO.
100. Mr. Plache had a duty to respond to the ADO's request for a mandatory response as requested in the docketing letter.
101. Mr. Plache breached that duty when he failed to file a mandatory response to the docketing letter.
102. Mr. Plache had a duty to respond to the ADO's request for a complete copy of his file in this matter.
103. Mr. Plache breached that duty when he failed to respond to the ADO's request for a complete copy of his file.
104. As such, there is clear and convincing evidence that Mr. Plache breached his duty to cooperate with the ADO's investigation in violation of Rule 8.1.

Rule 8.4(a): General Rule

105. Having found the foregoing violations, there is clear and convincing evidence that

Mr. Plache's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

C. Recommended Sanction

106. The Attorney Discipline Office and Mr. Plache jointly agree that a one-year suspension is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
107. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
108. 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).
109. 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.
110. The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. *See Conner's Case*, 158 N.H. at 303 (stating that "[i]n applying these factors, the first step is to categorize the respondent's misconduct and identify the appropriate sanction"). Once the baseline sanction is determined, the Court then looks to the fourth and final part of the analysis: the existence of any aggravating or mitigating factors, and whether they affect the baseline sanction. *See id.* (stating that "[a]fter determining the sanction, [the Court] consider[s] the effect of any aggravating or mitigating factors on the ultimate sanction").

111. In the case of multiple charges of misconduct, the *Standards* recommend that the sanction imposed “should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations; it might well be and generally should be greater than the sanction for the most serious misconduct.” *Id.* (citing *Richmond’s Case*, 152 N.H. 155, 160 (2005)).
112. Under the first prong of the analysis, Mr. Plache violated duties of diligence and competence that he owed to his client, Ms. Geschwindner. Mr. Plache violated duties owed to the legal system to comply with Court orders. Mr. Plache also violated the duty to maintain the integrity of the profession by his failure to respond to lawful demands for information from a disciplinary authority. *See Standards* § § 4.4, 4.5, 5.1, 6.2 and 7.0.
113. With respect to Mr. Plache’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Plache’s mental state was knowing. The *ABA Standards* define “knowledge” as the “conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” *ABA Standards*, Sec. III (“Definitions”). *See also In Re Wyatt’s Case*, 159 N.H. 285, 307, 982 A.2d 396, 413 (2009) (discussing “knowing” misconduct and stating “[w]hat is relevant ... is the volitional nature of the respondent’s acts, and not the external pressures that could potentially have hindered his judgment.”). Mr. Plache knew that the Court had ordered him to submit certain information and he had not done the work. Mr. Plache also knew that the ADO was seeking his cooperation with the matter.
114. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Plache’s misconduct.
115. Mr. Plache’s conduct caused injury to Ms. Geschwindner. First, Mr. Plache’s actions significantly delayed the resolution of her matter before the vaccine court. Second, while Ms. Geschwindner’s original award was for \$92,500 in damages for past pain and suffering, the award did not include an award for future pain and suffering or lost wages because Mr. Plache did not submit evidence relating to

those claims. Third, Ms. Geschwindner had to retain subsequent counsel to represent her with respect to her case and the matter was reopened. On October 11, 2022, the Court vacated its decision awarding damages. In its order, the Court stated:

Ultimately, Petitioner has a right to a full and fair opportunity to present her case. Vaccine Rule 3(b)(2). Petitioner has been deprived of that right due to the complete inaction of her lawyer.

116. Ms. Geschwindner suffered injury due to the delay in the litigation of her matter. Mr. Plache caused injury to the reputation of attorneys in that Ms. Geschwindner lost confidence in attorneys as a result of Mr. Plache's inaction on her matter.
117. The parties agree that the baseline sanction in this matter is a suspension. *See Standards* §§ 4.42, 4.52, 6.22, 7.2.
118. Mr. Plache's Rule 1.3 and 1.4 violations implicate Section 4.4 of the *Standards*.

That Section provides:

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

4.41 Disbarment is generally appropriate when:

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

4.42 **Suspension is generally appropriate when:**

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

- 4.43 [Public Censure]¹ is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.
- 4.44 [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. (emphasis added).
119. Mr. Plache’s conduct in this matter, when considered under *Standard* 4.42, would call for a baseline sanction of a suspension.
120. Mr. Plache’s Rule 1.1 violation implicates Section 4.5 of the *Standards*. That Section provides:
- Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to 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. (emphasis added).

¹ The *ABA Standards* uses the terms “admonition” and “reprimand.” 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.

121. Mr. Plache's conduct in this matter, when considered under *Standard* 4.52, would call for a baseline sanction of suspension.

122. Mr. Plache's Rule 3.4 violation implicates Section 6.2 of the *Standards*. That Section provides:

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

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

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. (emphasis added).

123. Mr. Plache's conduct in this matter, when considered under *Standard* 6.22, would call for a baseline sanction of a suspension.

124. Mr. Plache's Rule 8.1 violation implicates Section 7.1 of the *Standards*. That Section, in relevant part, provides:

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

- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty as a professional and causes injury or potential injury to a client, the public, or the legal system.**
- 7.3 [Public censure] is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system.
- 7.4 [Reprimand] is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the lawyer’s conduct violates a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system. (Emphasis added.)
125. Mr. Plache’s conduct in this matter, when considered under *Standard 7.2*, would call for a baseline sanction of a suspension.
126. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner’s Case*, 158 N.H. at 303.
127. In this case, there are two aggravating factors: Mr. Plache’s substantial experience in the practice of law and Mr. Plache’s lack of cooperation with the ADO for several months. *See Standards § 9.22*.
128. Mitigating factors include absence of a prior disciplinary record, absence of a dishonest motive, remorse, and personal problems that are now being addressed through a New Hampshire Lawyer’s Assistance (“NHLAP”) monitoring agreement. *See Standards § 9.32*. Mr. Plache has also received other penalties through discipline in the form of an indefinite suspension from the Maryland Grievance Commission and U.S. Court of Claims. Mr. Plache failed to respond to the ADO for many months with respect to this matter. However, Mr. Plache has been cooperative with the ADO and NHLAP since he contacted undersigned counsel in late April 2023.
129. The parties agree that given the baseline sanction, and consideration of both aggravating and mitigating circumstances, neither an upward nor downward

departure from the baseline sanction is appropriate. As such, a one-year suspension serves the purposes of discipline and is an appropriate sanction in this case.

D. Case Law

130. The New Hampshire Supreme Court and the Professional Conduct Committee has previously imposed discipline on lawyers that are not licensed in New Hampshire. *See e.g. Pasquina, Edward F. Jr. advs. Attorney Discipline Office #09-032, PCC* (May 22, 2012)(imposing six month suspension stayed for one year on a Massachusetts attorney); *Larkowich, Peter advs. Attorney Discipline Office, #10-055* and *Larkowich, Peter advs. Brenda L. McKelvey, #10-061, PCC* (May 12, 2012)(imposing a public censure on a Massachusetts attorney.)
131. A two-year suspension is proportionate to other cases involving similar Rule violations. Mr. Plache's lack of cooperation with the ADO, over a lengthy period of time, makes a suspension appropriate in this case.
132. Consider that long-term suspensions have been imposed for a lack of cooperation, with lesser underlying conduct. For example, *Coddington's Case* squarely involved a Respondent's failure to cooperate. 155 N.H. 66 (2007). Like Mr. Plache, Mr. Coddington violated Rule 8.1(b) by failing to respond to requests for information from the ADO. Other "underlying" rule violations, in addition to the failure to cooperate, were also present.² The Supreme Court suspended Mr. Coddington for two years. *Id.* at 72.
133. The Court in *Coddington* reduced the initially-imposed sanction of disbarment to the two-year suspension because Mr. Coddington ultimately (though extremely belatedly) appeared, filed a motion for reconsideration of the disbarment order, and made a plea for mitigation. *Id.* at 67. Thus, even though Mr. Coddington

² Mr. Coddington violated Rule 1.15 by failing to maintain proper records and by commingling his earned funds with client funds. However, after an audit by the ADO, it was determined that Mr. Coddington owed one client only \$39.60. *Id.* at 68-69. The Court found this actual loss to clients "negligible" and further found that Mr. Coddington did not knowingly convert client funds, essentially determining that his underlying conduct was not egregious or knowingly undertaken.

- finally “cooperated,” the Supreme Court still saw fit to suspend him for two years, applying *Standards* § 6.22 (baseline suspension for knowingly violating court orders or rules and causing potential injury to a client or third party). *Id.* at 69.
134. *In the Matter of Anna M. Roulston, Esq.*, LD-015-0011 (October 2, 2015); *Roulston, Anna M. advs. Attorney Discipline Office - #13-027* (August 7, 2015), a two-year suspension was imposed for a respondent, Ms. Roulston, who violated Rule 8.1(b), in addition to Rules 5.5, 8.4(b) and 8.4(c). Ms. Roulston did not respond to requests from the ADO, did not file an Answer to the Notice of Charges and was not present at the hearing before the Hearing Panel.
135. *In the Matter of James E. Michalik, Esquire*, LD-2017-0017 (May 6, 2019); *Michalik, James E. advs. Attorney Discipline Office, #17-049* (December 14, 2018), the respondent, Mr. Michalik was suspended for two years for violations of Rules 8.1, 8.4(b) (violating a domestic violence restraining order) and Supreme Court Rule 42(XIV). The Committee noted that “Mr. Michalik chose to disregard his obligation to respond to the Notice of Charges, or any other communication sent by the ADO. That conduct reflects poorly on his fitness to serve as counsel and demands a sanction.”
136. This sanction is also proportional to discipline imposed in other cases involving competence, diligence and communication violations. For example, suspensions and stayed suspensions have frequently been issued for these Rule violations where an attorney has cooperated with the disciplinary process. *See e.g. In the Matter of Carol L. Kunz*, LD-2023-0007 (June 21, 2023) (one-year suspension stayed for one year with mandatory conditions for violations of Rules 1.1: Competence; 1.3: Diligence; 1.4: Communication; and 8.4(a): Misconduct); *Sheridan, William C. advs. ADO - #19-003* (October 11, 2022) (Six-Month Suspension with Requirement of Medical Fitness for Reinstatement for violations of Rule 1.3: Diligence; 1.4: Communication and 8.4(a): Misconduct); *Santuccio, Danielle L. Richey advs. ADO, #13-043* (August 8, 2016) (six-month suspension stayed for one year for violations of Rules 1.1: Competence; 1.3: Diligence; 3.2:

Expediting Litigation; 3.4(c); Fairness to Opposing Party and Counsel and 8.4(a)); *White, Stephen A.S. advs. Elaina Roberts, #07-044* (May 29, 2009)(six-month suspension stayed for two years for violations of Rule 1.1(a)-(c): Competence, Rule 1.2(a): Scope of Representation; Rule 1.3(a): Diligence; and Rule 8.4(a).

137. 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, as well as the indefinite suspension in Maryland, the parties agree that a one-year suspension is appropriate.

E. Suspension Requirements

138. The suspension shall be effective immediately after the date of the entry of a final order in this matter.
139. Mr. Plache agrees that he will not accept any new retainers or engage as a lawyer for any individual or entity in any new cases or legal matters of any nature.
140. Mr. Plache agrees to immediately begin the process of winding up and completing, on behalf of any client, any and all matters which are currently pending, if any.
141. Mr. Plache further agrees to complete the following within seven (7) days of the issuance of a final order in this matter:
- a. file a notice of withdrawal as of the effective date of the suspension with every court, agency or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs (c) and (d) below.
 - b. resign as of the effective date of the suspension all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs (c) and (d) below, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket number of the proceedings, if any;
 - c. provide notice to all clients and to all wards, heirs, and beneficiaries that Respondent has been suspended; that he is disqualified from acting as a

lawyer after the effective date of the suspension; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

- d. provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that Mr. Plache has been suspended and, as a consequence, is disqualified from acting as a lawyer after the effective date of the suspension;
 - e. make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;
 - f. refund any part of any fees paid in advance that have not been earned; and
 - g. close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in his/her possession, custody or control.
142. All notices required by the above paragraph shall be served by certified mail, return receipt requested, in a form approved by the Court.
143. Mr. Plache agrees that within thirty (30) days after the entry of a final order, he shall file with the Supreme Court an affidavit in compliance with Supreme Court Rule 37(13) certifying that he has fully complied with the provisions of this stipulation and with the rules of professional conduct. Appended to the affidavit of compliance shall be:
- a. a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients

shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

- b. a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this order any client, trust or fiduciary funds;
 - c. a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of the final order or thereafter;
 - d. such proof of the proper distribution of such funds and the closing of such accounts as has been requested by the bar counsel, including copies of checks and other instruments;
 - e. a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice,
 - f. the residence or other street address where communications to the lawyer may thereafter be directed; and
 - g. any and all bar registration cards issued to the lawyer by the bar association.
144. Mr. Plache shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with these notice requirements. *See* Supreme Court Rule 37(13)(e).
145. Mr. Plache agrees that within thirty (30) days after the entry of a final order, he shall file with the clerk of the NH Supreme Court the following:
- a. a copy of the affidavit of compliance required by paragraph 136 of this stipulation;
 - b. a list of all other state, federal and administrative jurisdictions to which Mr. Plache is admitted to practice; and
 - c. the residence or other street address where communications to Mr. Plache may thereafter be directed.

146. Mr. Plache agrees to comply with the New Hampshire Lawyers Assistance Program Health & Recovery Monitoring Agreement (“Agreement”) (attached hereto) which he entered into on May 10, 2023, with a projected completion date of May 10, 2025.
147. Mr. Plache must provide evidence of compliance with the Agreement should he later seek admission to the New Hampshire Bar.
148. Mr. Plache must also provide evidence of reinstatement to the Maryland Bar in order to apply for admission to the New Hampshire Bar.

F. Costs

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

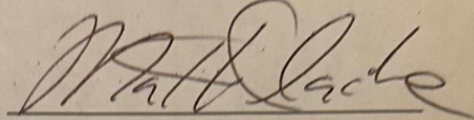
G. Effect of Stipulation

150. Mr. Plache understands that this Stipulation represents a recommended disposition, and that the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).
151. Mr. Plache acknowledges that the admissions of misconduct and the proposed disposition contained in this Stipulation are freely, knowingly, and voluntarily submitted; that he is not entering this Stipulation as a result of any threats, coercion, or duress, or of any promises or inducements not set forth in the Stipulation
152. Mr. Plache understands that he has a right to obtain counsel regarding this Stipulation and, that he is fully aware of the consequences of the Stipulation.

153. Mr. Plache knowingly and intelligently waives his right to a hearing.

Respectfully submitted,

Dated: 10-11 2023



Matthew J. Plache, Esquire
Respondent

Dated: _____ 2023

Elizabeth M. Murphy, Esquire
Assistant Disciplinary Counsel


153. Mr. Plache knowingly and intelligently waives his right to a hearing.

Respectfully submitted,

Dated: _____ 2023

Matthew J. Plache, Esquire
Respondent

Dated: 10/12 2023



Elizabeth M. Murphy, Esquire
Assistant Disciplinary Counsel