

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

ORDER

LD-2024-0005, Appeal of Joseph S. Hoppock, Esquire

On April 24, 2025, the court issued an opinion affirming the decision of the Professional Conduct Committee (PCC). Attorney Joseph S. Hoppock has not filed a motion for rehearing or reconsideration pursuant to Rule 22. Rule 37(16)(a) and 37A(III)(d)(f)(B) no longer serve to stay the PCC's decision.

Having approved the PCC's findings, rulings, and sanction, the court orders as follows:

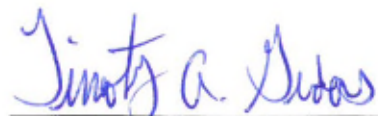
- (1) Attorney Joseph S. Hoppock is suspended from the practice of law in New Hampshire for a period of six months, two months of which are imposed effective immediately and four months of which are stayed for two years on the conditions set forth in the PCC's decision.
- (2) On or before May 16, 2025, Attorney Hoppock shall notify his clients, by registered or certified mail, return receipt requested, of his suspension from the practice of law and of his inability to act as an attorney, shall advise them in that notification to seek other counsel, and shall otherwise comply with each and every requirement set forth in Rule 37(13)(a) and (b).
- (3) On or before June 9, 2025, Attorney Hoppock shall file with this court an affidavit in accordance with Rule 37(13)(d), stating that he has complied with this order and with the requirements set forth in Rule 37(13)(a) and (b). A copy of the affidavit shall be sent to the Attorney Discipline Office (ADO).
- (4) The ADO shall promptly advise the court if it believes that an attorney should be appointed to make an inventory of Attorney Hoppock's files and to take action to protect the interests of his clients. See Rule 37(17).

So ordered.

MacDonald, C.J., and Bassett, Donovan, and Countway, JJ., concurred.

DATE: May 8, 2025

ATTEST:



Timothy A. Gudas, Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. LD-2024-0005, Appeal of Joseph S. Hoppock, Esquire, the court on May 13, 2025, issued the following order:

The joint motion for clarification or modification of the May 8, 2025 order is denied.

MacDonald, C.J., and Bassett, Donovan, and Countway, JJ., concurred.

**Timothy A. Gudas,
Clerk**

Distribution:
Professional Conduct Committee, 19-015
Elizabeth Murphy, Esquire
William C. Saturley, Esquire
Kat Mail, Esquire
File

Distribution:
Professional Conduct Committee, 19-015
Elizabeth Murphy, Esquire
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Kat Mail, Esquire
Joseph S. Hoppock, Esquire
File

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Charles Doe Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by email at the following address: reporter@courts.state.nh.us. Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: <https://www.courts.nh.gov/our-courts/supreme-court>

THE SUPREME COURT OF NEW HAMPSHIRE

Professional Conduct Committee
Case No. LD-2024-0005
Citation: Appeal of Hoppock, 2025 N.H. 18

APPEAL OF JOSEPH S. HOPPOCK, ESQUIRE

Argued: November 13, 2024
Opinion Issued: April 24, 2025

Elizabeth M. Murphy, assistant disciplinary counsel, of Concord, on the brief and orally, for the Attorney Discipline Office.

Preti Flaherty Beliveau & Pachios, PLLP, of Concord (William C. Saturley and Kat Mail on the brief, and Kat Mail orally), for the respondent.

COUNTWAY, J.

[¶1] The respondent, Joseph S. Hoppock, appeals orders of the Supreme Court Professional Conduct Committee (PCC) ruling that: (1) Hoppock violated Rule 4.4(a) of the New Hampshire Rules of Professional Conduct; and (2) the appropriate sanction is “a six-month suspension from the practice of law, two months of which are imposed and four months of which are stayed . . . for two years on [specified] conditions.” We affirm.

[¶2] The following facts were found by the hearing panel, see Sup. Ct. R. 37(4)(c), and upheld by the PCC, or relate the contents of documents in the record before us. Hoppock represented a party with whom the complainant

was involved in a dispute over the registration of a trade name. In June 2019, the complainant filed a grievance with the Attorney Discipline Office (ADO) regarding a letter, dated May 20, 2019, that she received from Hoppock. The ADO subsequently docketed the grievance as a complaint.

[¶3] The letter stated that the complainant had defamed Hoppock’s client on social media and warned, “As you will soon find out, legal consequences shall befall you because of your reckless defamatory conduct.” The letter continued, in pertinent part, to state:

[L]et me be very clear. I will not get into it with you and your ill, immature feelings toward [Hoppock’s client] . . . which have now landed you in a difficult legal position.

What I will do is sue you for negligently or intentionally (or very recklessly) publishing falsely defamatory statements concerning [the client] to third parties

. . . .

. . . These are actionable statements for which [the client] demands Two Hundred Fifty Thousand (\$250,000.00) Dollars in order to settle this problem, which I remind you is totally of your own making.

. . . .

I will file the Complaint with the Court by June 1st if [the client] has not received your check, in good funds, by that date. Let me be very clear about one more point: You should be very concerned you will have “a lot to lose” by saying the things you have said about [the client]; we will pursue you until you have nothing left, except assets exempt from judicial execution.

. . . .

In the event you decline [the client’s] generous settlement proposal, you are advised and warned not to destroy or alter, in any manner, any evidence that may be subject to or pertinent to any related claims of [the client]. . . .

I strongly encourage you to pass this letter on to your insurance agent and attorney, without delay.

(Citation omitted.)

[¶4] The complainant received a second letter, dated June 6, 2019, along with a draft release and settlement agreement. The second letter essentially informed the complainant that if she did not settle, she would have to pay “enormous legal fees.” (Quotation omitted.)

[¶5] Following the ADO’s issuance of the notice of charges, the hearing panel was tasked with determining whether Hoppock’s letters violated Rule of Professional Conduct 4.4(a), which provides: “In representing a client, a lawyer shall not take any action if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, delay or burden a third person.” N.H. R. Prof. Conduct 4.4(a). The panel concluded that “the language and style contained in” the May 20 letter “was obnoxious and rude and should not be encouraged,” but that the ADO had not proved a violation of Rule 4.4(a).¹

[¶6] On March 17, 2022, the PCC issued a notice of oral argument regarding the hearing panel report. The PCC subsequently rejected Hoppock’s contention that the PCC lacked authority to request the parties to appear for oral argument when neither party requested it and stipulations had not been filed. The PCC then reiterated its request for the parties’ appearance at oral argument and stated that it “would like to hear from [Hoppock] and the ADO on” six specified questions.

[¶7] Following oral argument, the PCC issued an order finding that the hearing panel “erred in finding no professional misconduct with regard to Rule 4.4(a) of the New Hampshire Rules of Professional Conduct in this matter.” Focusing on the rule’s use of the disjunctive “or,” the PCC concluded that it prohibits two distinct types of action that have the consequence of burdening a third person: (1) “any action if the lawyer knows . . . that the action has the primary purpose to . . . burden a third person”; and (2) “any action . . . if it is obvious that the action has the primary purpose to . . . burden a third person.” (Emphases added and quotations omitted.) The PCC interpreted the first type, in which the lawyer “knows” the action’s primary purpose, “as addressing the lawyer’s subjective mental state,” and the second, “obvious” type, as involving an objective standard.

[¶8] The PCC determined that the hearing panel did not appear to have considered or made factual findings related to the objective, “obvious” inquiry. It concluded, however, that a remand to the hearing panel for further factfinding was unnecessary and that it could determine whether Hoppock violated the rule based on “the uncontested contents and context of the May 20, 2019, letter.” The PCC concluded that “it was objectively obvious that the primary purpose of Attorney Hoppock’s May 20, 2019, letter to [the complainant], an unrepresented party, threatening financial ruin, was to

¹ The parties agree that the ADO did not request the PCC’s review of the hearing panel’s decision.

burden [the complainant] through intimidation.” Accordingly, the PCC remanded the matter to a new hearing panel for a hearing on sanction only.

[¶9] The second hearing panel determined the appropriate sanction was a six-month suspension stayed, on certain conditions, for two years. Both parties requested the PCC’s review of that decision. The PCC determined that the appropriate sanction was a six-month suspension from the practice of law, with two months imposed and four months stayed, on specified conditions, for two years. This appeal followed.

[¶10] This case comes before us not on a petition for sanctions filed by the PCC, but as an appeal from a finding of a violation and imposition of sanctions by the PCC. In a case with the same procedural posture, we assumed, without deciding, that our usual standard of review for PCC petitions applied when the parties did not argue for a different standard. See Bruzga’s Case, 162 N.H. 52, 57 (2011). Because the parties do not argue otherwise in this case, we will do the same. “In attorney discipline matters, we defer to the PCC’s factual findings if supported by the record, but retain ultimate authority to determine whether, on the facts found, a violation of the rules governing attorney conduct has occurred and, if so, the sanction.” Id. “The PCC’s findings of violations of the Rules must be supported by clear and convincing evidence.” Id.

I. The PCC’s Authority to Order Oral Argument

[¶11] Hoppock first argues that the PCC exceeded its authority when it ordered oral argument in this matter. He contends that Supreme Court Rule 37A(III)(d)(2)(A) does not “empower the PCC to direct parties to appear for oral argument on matters unrelated to stipulations, where neither party has requested oral argument.” Rule 37A(III)(d)(2)(A) provides:

Whether memoranda are filed or not, either disciplinary counsel or respondent may . . . [within 15 days of the date of the hearing panel report] request oral argument before the [PCC] to address any issues in the hearing panel reports, stipulations or record agreed to by the parties. The [PCC] may, in its discretion, direct the parties to appear before it to address any issues raised in dispositive or partial stipulations, as set forth in Rule 37A(III)(aa)(C).

Sup. Ct. R. 37A(III)(d)(2)(A).

[¶12] We disagree that the PCC’s authority to order oral argument is limited by Rule 37A(III)(d)(2)(A). That provision is found in the section of Rule 37A governing formal proceedings. See Sup. Ct. R. 37A(III). The preface to that section states that “[a]s good cause appears and as justice may require, the

[PCC] may waive the application of any rule under this section.” *Id.* Thus, the preface confirms the interpretation evinced by the substance of the rules themselves: the provisions in Rule 37A(III) — including Rule 37A(III)(d)(2)(A) — are merely procedural and do not establish or delimit the PCC’s jurisdiction or authority. *Cf. Appeal of Carreau*, 157 N.H. 122, 123 (2008) (distinguishing between procedural requirements, which the court has discretion to waive, and “[s]tatutory . . . requirements relative to the vesting of jurisdiction,” for which the court lacks authority to create an exception (quotation omitted)). Instead, the PCC’s authority is conferred in Rule 37(3)(c), which provides, in relevant part:

The [PCC] shall have the power and duty:

. . . .

(3) To consider hearing panel reports and written memoranda of disciplinary counsel and respondents. To conduct oral arguments in which disciplinary counsel and each respondent are given ten (10) minutes to address the findings and rulings contained in the hearing panel reports. After consideration of oral arguments, hearing panel reports, transcripts of hearings before hearing panels and memoranda, to determine whether there is clear and convincing evidence of violations of the rules of professional conduct. To remand complaints to hearing panels for further evidentiary proceedings. To dismiss grievances or complaints, administer a reprimand, public censure or a suspension not to exceed six (6) months.

Sup. Ct. R. 37(3)(c). We conclude that the power conferred in Rule 37(3)(c) includes the power to direct the parties to appear for oral argument whenever the PCC determines oral argument will assist it “to determine whether there is clear and convincing evidence of violations of the rules of professional conduct.” *Id.* Moreover, we conclude that the PCC’s authority to conduct oral argument includes the authority to direct questions to the parties. Thus, to the extent Hoppock challenges that the PCC specified questions to be addressed at oral argument, he has failed to persuade us that the PCC exceeded its authority.

II. Finding of Violation

[¶13] Hoppock next argues that the PCC erred in applying Rule 4.4(a)’s objective, “obvious” standard. We first determine what the standard means. The ethics committee comment to New Hampshire’s Rule of Professional Conduct 4.4(a) notes that it “substantially differs from the [American Bar Association] model rule by using the word ‘obvious’ to set a higher objective standard.” N.H. R. Prof. Conduct 4.4, Ethics Committee Comment.

Construing the objective standard as a reasonable person standard, we conclude that a lawyer violates Rule 4.4(a) under this variant if it would be obvious to a reasonable person that the lawyer's action had "the primary purpose to embarrass, delay or burden a third person." N.H. R. Prof. Conduct 4.4(a).

[¶14] Relying on principles of contract interpretation, Hoppock argues that the operative question is "how to objectively assess [his] intent" when he wrote the letter. He therefore contends that the "PCC needed to consider the intent of the Letter from the perspective of a reasonable person 'in . . . [his] position.'" Rule 4.4(a), however, does not contain the language "obvious to a person in the position of the lawyer," and "[w]e will not add words to the plain language of a rule," State v. Paul, 176 N.H. 262, 265 (2023).

[¶15] Hoppock next argues that the PCC's finding of a Rule 4.4(a) violation under the objectively obvious standard is contrary to factual findings made by the hearing panel. We disagree. The PCC correctly concluded that a determination of objective obviousness in this case required only the application of that standard "to the uncontested contents and context of the May 20, 2019, letter." With respect to context, an important fact was, as the PCC repeatedly noted, that the complainant was an unrepresented party. We agree with the PCC's conclusion that "[d]rafted as it was to an unrepresented party, it is objectively obvious that the primary purpose of Attorney Hoppock's May 20, 2019 letter was to burden [the complainant] within the meaning of Rule 4.4(a)." Or, stated differently, it would be obvious to a reasonable person that the primary purpose of the letter was to burden the complainant through intimidation. Because we agree with the PCC that a violation of Rule 4.4(a) could be found on application of the objective standard to "the uncontested contents and context" of the letter, we necessarily also reject Hoppock's argument that the PCC erred in failing to remand to the hearing panel for further factfinding.

III. Sanction

[¶16] Hoppock next argues that even if we affirm the finding that he violated Rule 4.4(a), we should vacate the PCC's sanction order. Following our practice for determining an appropriate sanction, the PCC looked to the ABA Standards for Imposing Lawyer Sanctions (Standards) for guidance. See Mesmer's Case, 173 N.H. 96, 108 (2020) (noting that "[a]lthough we have not adopted the [Standards], we look to them for guidance"). In accordance with the Standards and our precedent, the PCC first determined the appropriate "baseline" sanction by considering: "(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 injury caused." Id. at 108-09.

[¶17] The PCC determined, under the second Standards factor, that Hoppock’s mental state was “knowingly,” and accordingly found that the appropriate baseline sanction was suspension. See ABA Standards for Imposing Lawyer Sanctions § 6.22 (2005). Hoppock argues that this determination contradicts the hearing panel’s finding — which the PCC did not reverse — “that the ADO failed to prove [he] acted knowingly when authoring the Letter.” He contends that his conduct should instead be characterized as negligent, leading to a baseline sanction of either reprimand or admonition. See id. §§ 6.23, 6.24.

[¶18] For purposes of this opinion, we will assume, without deciding, that Hoppock is correct in characterizing his conduct as negligent. Nevertheless, in light of the aggravating factors found by the PCC — most significantly, Hoppock’s “stipulation to a similar violation of the same rule less than two years prior to him composing the letter to [the complainant],” for which violation, the record reflects, he received a reprimand — we conclude that the suspension imposed by the PCC is the appropriate sanction. See id. § 8.2 (stating that “[s]uspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession”); see also Bruzga’s Case, 162 N.H. at 57 (noting this court’s ultimate authority to determine the sanction for lawyer misconduct). The hearing panel made a specific finding, with which the PCC agreed, that “Hoppock’s conduct caused actual and potential injury to the complainant, the legal system, and the reputation and standing of the profession.” Although Hoppock disagrees with this finding, he has failed to persuade us that it is unsupported by the record. See Bruzga’s Case, 162 N.H. at 57.

[¶19] Hoppock next argues that the PCC erred in ignoring two mitigating factors that the hearing panel found persuasive, and that both the PCC and the hearing panel ignored two other mitigating factors. The hearing panel found significant “the burden imposed on Hoppock by the length of the disciplinary process.” The PCC, however, found the delay in processing this case neither aggravating nor mitigating. Although Hoppock argues that “[d]elay should be rejected as a mitigating factor only when” it is the lawyer’s fault, the case he cites in support — Douglas’ Case, 156 N.H. 613 (2007) — does not so hold. The PCC found the delay in this case attributable to relatively neutral causes — “scheduling preferences, seeking appellate review, and the preference for an in-person hearing during the Covid pandemic.” “Under these circumstances, we decline to find that the delay in disciplinary proceedings presents a mitigating factor.” Id. at 622.

[¶20] The hearing panel also noted that it was “cognizant of the impact on Hoppock’s livelihood a suspension would carry and wishes to avoid that impact if possible.” Hoppock argues that the PCC ignored this “key mitigating

factor[] considered important by the [h]earing [p]anel.” The hearing panel, however, did not identify its concern as a mitigating factor and the ADO correctly points out that the impact of a suspension is not listed in the Standards as a mitigating factor that courts have recognized. See Standards, supra § 9.32 & cmt. We conclude that the PCC did not err in failing to consider the financial impact of a suspension as a mitigating factor.

[¶21] Hoppock further argues that two other mitigating factors should have been considered: “absence of a dishonest or selfish motive and character or reputation.” Having reviewed the record, we conclude that the evidence presented did not compel a determination that Hoppock did not act selfishly or that his character and reputation constituted a mitigating factor in this matter. In particular, we are not persuaded by Hoppock’s argument that “it is difficult to conceive of how writing the Letter could have been motivated by selfishness.” In its report at the violation stage of the proceedings, the hearing panel noted that Hoppock testified “that many of his clients want to hire him because he is aggressive and knows the law. His aggressive style usually doesn’t stop until the case ends.” Writing the letter at issue maintained the “aggressive style” for which some clients choose to hire him. Thus, it is not difficult to conceive how he might have benefitted from that action.

[¶22] Finally, Hoppock argues that the sanction imposed on him “is out of proportion with the alleged misconduct—and with sanctions imposed in comparable cases.” We disagree. “In deciding the appropriate sanction,” each case is considered “on its own facts and circumstances.” Douglas’ Case, 156 N.H. at 621 (quotation omitted). The PCC considered, as comparable cases, Kalil’s Case, 146 N.H. 466 (2001), and Robertson’s Case, 137 N.H. 113 (1993). In comparing those cases to this matter, the PCC found it significant that “Hoppock violated Rule 4.4(a) with a single, considered communication to an unrepresented party, with less aggressive language than in Kalil but after having recently admitted violating the same Rule.” We conclude that the PCC carefully considered and distinguished the comparable cases, and we find no error in its analysis.

[¶23] “We retain the ultimate authority to determine the sanction for a violation of the rules governing attorney conduct.” Bruzga’s Case, 162 N.H. at 60. “In determining the proper sanction, we remain mindful that the purpose of attorney discipline is not to inflict punishment, but rather to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future.” Mesmer’s Case, 173 N.H. at 108 (quotation omitted). Because the sanction imposed by the PCC serves these purposes, we affirm it in all respects. We emphasize that this sanction is not intended to chill zealous advocacy; rather, it addresses conduct that exceeded the bounds of zealous advocacy and entered the territory of attorney misconduct. See Robertson’s Case, 137 N.H. at 118 (sanction warranted where “[t]actics undertaken by [the attorney] in pursuing a

resolution of the litigation were . . . beyond the bounds of acceptable professional conduct”).

[¶24] For the foregoing reasons, we affirm the finding that Hoppock violated Rule 4.4(a) and the sanction imposed. Because we have neither referred to, nor relied upon, those portions of Hoppock’s brief and appendix that the ADO has moved to strike, the ADO’s motion to strike is moot.

Affirmed.

MACDONALD, C.J., and BASSETT and DONOVAN, JJ., concurred.

New Hampshire Supreme Court
Professional Conduct Committee

a committee of the attorney discipline system

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Hoppock, Joseph S.

Advs.

Attorney Discipline Office - #19-015

ORDER

On February 20, 2024, the Professional Conduct Committee (the “Committee”) heard arguments and considered written filings by the parties regarding the Hearing Panel’s determination of sanction.

Procedural History

This case has had a unique procedural history which bears discussion here. The Notice of Charges alleged that Attorney Joseph Hoppock violated Rules of Professional Conduct 4.4(a) and 8.4(a)¹. Rule 4.4, “Respect for Rights of Third Persons,” states, in subparagraph (a), “In representing a client, a lawyer shall not take any action if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, delay or burden a third person.” It was alleged that Attorney Hoppock burdened a third person through intimidation. *See, e.g., Robertson’s Case,*

¹ The alleged violation of Rule 8.4(a) simply alleged a violation of the Rule by violating the Rules. The Committee did not consider this tautology to be significant in its decision-making.

137 N.H. 113, 117-18 (1993) (finding that intimidation constituted burdening within the meaning of Rule 4.4(a)). Specifically, on May 20, 2019, Attorney Hoppock sent a demand letter to an unrepresented party, Brandie Roof, that contained statements threatening financial ruin, threatening that he and his client would “pursue [her] until [she] ha[d] nothing left, except assets exempt from judicial execution,” making assertions about the “legal consequences that would befall” her, and representing that a \$250,000 settlement demand was “generous.”

The first Hearing Panel, in an order dated January 4, 2022, found that the Attorney Discipline Office (the “ADO”) had not met its burden to prove a knowing violation of Rule 4.4(a) by clear and convincing evidence. The ADO appealed the Panel’s finding to the Committee.

In its first order in this case, dated November 29, 2022, the Committee carefully considered the structure of Rule 4.4(a). It found that, as alleged here, Rule 4.4(a) provided two relevant variants²: 1) taking action *knowing* that the action’s primary purpose is to burden a third person, and 2) taking action that it is *obvious* has the primary purpose to burden a third person. The Committee found that the first variant captured a subjective mental state while the second variant contained an objective standard of obviousness³. See, e.g., *New Hampshire Ethics Committee Comment to Rule 4.4(a)* (finding that the New Hampshire Rule “differs from the model rule by using the word ‘obvious’ to set a higher objective standard.”).

The Committee found that the first Hearing Panel had not made factual findings or a ruling on whether the ADO sustained its burden to show a violation of the second variant – whether the letter’s intimidating nature was objectively obvious. Because that assessment did not depend on witness credibility, but only on the content of the May 20, 2019 letter, the Committee made the factual finding that the intimidating nature of the letter was objectively obvious. The Committee thus

² The first Committee order uses the word “prong;” however, “variant” is a better description of the structure of the Rule.

³ The Committee’s first order describes these variants as relating to the “*actus reus*” of the Rule violation; however, the difference between knowledge and an objectively obvious purpose relate to the lawyer’s mental state, or *mens rea*.

found a violation of the “obvious” variant of Rule 4.4(a) by clear and convincing evidence and remanded for a Hearing Panel determination of sanction⁴.

The second Hearing Panel, in an order dated October 25, 2023, made detailed factual findings on factors relevant to sanction. It determined that the appropriate sanction was a six-month suspension, stayed for two years on certain conditions. Both parties have asked the Committee to review this decision.

Sanction Analysis

The Committee reviews the Hearing Panel’s factual findings with deference, upholding them “unless clearly erroneous or manifestly in error.” Supreme Court Rule 37A(III)(d)(2)(C). The Committee reviews the Hearing Panel’s conclusions of law and recommendation of sanction *de novo*. *Id.*

The “purpose of attorney discipline is not to inflict punishment, but rather to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future.” *Mesmer’s Case*, 173 N.H. 96, 108 (2020) (quotation omitted). Each case is to be judged “on its own facts and circumstances, taking into account the severity of the attorney’s misconduct and any mitigating circumstances appearing in the record.” *Id.* Although the Supreme Court has not adopted the *American Bar Association’s Standards for Imposing Lawyer Sanctions* (the “ABA Standards”), the Court looks to them for guidance. *Id.* To determine the “baseline” sanction, we consider: “(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 injury caused.” *Id.* at 108-09. Once the baseline sanction is determined, we then look to aggravating and mitigating factors. *Id.* at 109.

First Sanction Factors – Duty Violated

⁴ The present Committee does not consider Attorney Saturley’s arguments focused on reconsidering this finding, as inapposite to the current stage in the litigation of this matter.

As to the first factor, the Hearing Panel found that Attorney Hoppock violated duties owed to the public and the legal system. The Committee agrees. While a lawyer's primary duty is to the client, the Rules of Professional Conduct proscribe some actions in pursuit of the client's goals that impact others. Thus, Rule 4.4 addresses the "rights of third persons" and prohibits, *inter alia*, actions that "the lawyer knows or it is obvious that the action has the primary purpose to . . . burden a third person." The demand letter was sent to an unrepresented party, a member of the public who is protected by the prohibitions of Rule 4.4. In addition, a violation of Rule 4.4(a) entails a violation of a lawyer's duty to the legal system, to practice in accord with the Rules of Professional Conduct.

Second Sanction Factor – Mental State

As to the second factor, the Panel found that Attorney Hoppock acted knowingly for purposes of the sanctions analysis. The Committee agrees.

While the first Hearing Panel found that the ADO did not prove a knowing violation of Rule 4.4(a) by clear and convincing evidence, that finding is controlled by Rule 1.0(f). For purposes of the Rule violation, the ADO had to prove that Attorney Hoppock had "actual knowledge of the fact in question," *id.*, *i.e.*, that his letter's primary purpose was to intimidate the unrepresented party. There is no finding in this regard in this case.

However, to find a knowing mental state for purposes of the sanction analysis, the Committee need only find that Attorney Hoppock was "conscious[ly] aware[]" 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"). Moreover, the *ABA Standard* applicable to this case attaches the knowledge requirement to knowledge of whether the action was a violation of a court rule. See *ABA Standard 6.2* (disbarment and suspension are appropriate sanction when lawyer "knowingly violates a court . . . rule" or "knows that he [or she] is violating a court . . . rule"). Because "knowledge" is defined in different ways and relates to different subjects for purposes of a Rule violation and the

appropriate sanction, the lack of finding of a knowing mental state related to the purpose of the letter does not prevent a finding of a knowing mental state for purposes of the sanction analysis.

Attorney Hoppock was well aware of the words he used in the letter and he knew that Ms. Roof was unrepresented. Thus, he had “conscious awareness of the . . . attendant circumstances” surrounding the letter. See *ABA Standards*, Sec. III (“Definitions”).

In addition, as the Hearing Panel emphasized, Attorney Hoppock had a heightened knowledge of the context of his actions and Rule 4.4(a), to an extent that many attorneys would not have shared. Attorney Hoppock previously admitted to violating Rule 4.4(a) not quite two years prior to sending the letter⁵. While prior disciplinary history is not usually relevant in the sanctions analysis until the consideration of aggravating and mitigating factors, in the unique circumstances of this case the evidence of prior disciplinary history bears directly on the state of mind factor. In the prior case, Attorney Hoppock admitted that his comments increased the friction between the parties, acknowledged that his choice of words was counter-productive, and agreed that he personally attacked the opposing party and opposing counsel in a way that potentially damaged his clients’ interests. He admitted that his conduct violated Rule 4.4(a) and he asserted in that proceeding that he was now “well-educated on New Hampshire’s Rule 4.4.” Given that the standard looks to the lawyer’s knowledge “that he [or she] is violating a court . . . rule,” the Committee agrees with the Hearing Panel that the evidence here showed that Attorney Hoppock acted knowingly in that regard.

Finally, should the Court find that the mental state of the rule violation is determinative of the mental state used in the sanction analysis, the Committee reads Rule 4.4(a)’s objectively obvious mental state as akin to a reckless mental state in criminal law.

A person acts recklessly with respect to a material element of an offense when he is aware of and consciously

⁵ There are only two published cases involving Rule 4.4 violations, *Kalil’s Case*, 146 N.H. 466 (2001); *Robertson’s Case*, 137 N.H. 113 (1993), which signifies to the Committee that this is not a common Rule violation.

disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the circumstances known to him, its disregard constitutes a gross deviation from the conduct that a law-abiding person would observe in the situation.

RSA 626:2, II(c). In criminal law, the reckless mental state falls between a knowing and negligent mental state in terms of culpability. RSA 626:2.

New Hampshire's Rules of Professional Conduct employ a "should have known" standard in a related context. See Rule 4.3 (using "reasonably should have known" standard), Rule 1.0(j) (defining "reasonably should know" standard as capturing when "a lawyer of reasonable prudence and competence would ascertain the matter in question"). The "reasonably should have known" standard is comparable to an objectively obvious standard. In both Rules 4.3 and 4.4, the New Hampshire Rules appear to treat the reasonably should have known/objectively obvious standard as equally culpable as a knowing standard. However, the *ABA Standards* neither use the term "reckless," nor use any related concepts in determining lawyer sanctions. See *ABA Standards*, Sec. III ("Definitions") (defining "intent," "knowledge," and "negligence").

Given that the *ABA Standards* do not address the mental state used in the New Hampshire Rule and that the *ABA Standards* do not control the New Hampshire attorney discipline system but are used instead as guidance, *Mesmer's Case*, 173 N.H. at 108, the Committee finds the objectively obvious mental state is sufficiently equivalent to a knowing mental state to justify using the knowing mental state for purposes of the sanction analysis.⁶

Third Sanction Factor - Injury

⁶ If this is an error and Attorney Hoppock should have been found to meet only the negligent standard for purposes of the mental state analysis, this would result in a lower baseline sanction of a public censure under the *ABA Standards*, Section 6.23 and New Hampshire law. However, given the weight of aggravating and mitigating factors in the case, the Committee would find that, in that scenario, an upward departure from the baseline was warranted, given that Attorney Hoppock's mental state is more appropriately categorized as a "reckless" or "reasonably should know" mental state, which is more culpable than a negligent mental state, and the balance of aggravating and mitigating factors considered below.

The Hearing Panel found that Attorney Hoppock caused “actual and potential injury to the complainant, the legal system, and the reputation and standing of the profession.” The Committee agrees with this finding and, in particular, that Attorney Hoppock’s misconduct caused actual injury to the complainant in that it caused her fear out of proportion to a more typical demand letter.

Baseline Sanction

Given these three findings, the Committee agrees with the Hearing Panel that the appropriate baseline sanction, as guided by Section 6.22 of the *ABA Standards*, is suspension: “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.”

Aggravating and Mitigating Factors

In considering aggravating and mitigating factors, the Committee is guided by the factors listed in the *ABA Standards*. The Standards, however, do not limit the appropriate considerations to those listed; instead, they only list factors that are “include[d]” as aggravators and mitigators. *See, e.g., State v. Moore*, 173 N.H. 386, 391 (2020) (legislature’s use of the work “including” indicates that items listed are not exhaustive). The Committee found the listed factors in the *ABA Standard* to nonetheless be helpful.

The Committee finds three aggravating factors based on the Hearing Panel’s factual findings. First and most significant is the aggravator of Attorney Hoppock’s prior disciplinary history, which includes a stipulation to a similar violation of the same rule less than two years prior to him composing the letter to Ms. Roof. While Attorney Hoppock has characterized the two incidents as being like “apples and oranges,” the Committee disagrees and instead finds striking similarity in the “scorched earth” terminology Attorney Hoppock used. In the prior case, Attorney Hoppock wrote to opposing counsel that he “look[ed] forward to protracted warfare with you and your entitled client.” This tone continued in later communications,

including comparing the opposing party's actions to tactics used by the Nazis, and was found by a court to have "exacerbated" the "friction" between the parties. Here, Attorney Hoppock threatened an unrepresented party with financial ruin. In further communications, he personally attacked Ms. Roof. The Hearing Panel found that the difference between the two cases were "one of degree and not of kind."

Relatedly and secondarily, the Committee finds as an aggravating factor Attorney Hoppock's refusal to acknowledge the wrongful nature of his conduct. This led the Hearing Panel to find that it had "no confidence that [Attorney] Hoppock will not engage in similar professional misconduct in the future." Given that 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. at 108 (quotation omitted), this is a devastating finding to which the Committee pays great deference.

The last aggravating factor is Attorney Hoppock's substantial experience in the practice of law. He was admitted to practice in New Hampshire in 1988, more than thirty-five years ago.

The Committee finds one mitigating factor – that Attorney Hoppock made a full and free disclosure to the ADO.

Two factors that the Committee found neither aggravating nor mitigating are the delay in the processing of this case and Attorney Hoppock's cooperation with the ADO. While this case has been pending for most of the last five years, much of that delay has been the result of scheduling preferences, seeking appellate review, and the preference for an in-person hearing during the Covid pandemic. While the attorney discipline system strives to resolve cases more quickly, the Committee does not find that the delay in this case should affect the sanction. Of note, Attorney Hoppock has continued to practice during the pendency of this matter. The Committee also does not find Attorney Hoppock's cooperation (apart from his full and free disclosure, which was credited) as separately mitigating because all attorneys have a professional responsibility to cooperate with ADO investigations. Rule 8.1(b).

On balance, the Committee finds that the aggravators overwhelmed the mitigator in this case.

Caselaw

The Committee also looks to New Hampshire caselaw in determining the appropriate sanction. In *Kalil's Case*, the respondent attorney violated Rule 4.4(a) by threatening to “rip [the] face off” an unrepresented party and then immediately lied to the judge about having done so. 146 N.H. at 466-67. The respondent was suspended for three months. *Id.* at 468. In that case, the respondent made the threat in the heat of the moment, after the unrepresented party indicated his intent to violate a court order, and the respondent had no disciplinary history. *Id.* at 466-67. Also, that case involved additional Rule violations involving dishonesty, upon which most of the Court’s analysis focused. *Id.*

In *Robertson's Case*, the respondent was found to have repeatedly accused opposing counsel of committing serious crimes and violating court orders and to have used intimidating language in his attempts to settle the case with opposing counsel. 137 N.H. at 117-18. The respondent was given a public censure. *Id.* at 118-19.⁷

In comparison with these cases, the Committee finds it significant that, here, Attorney Hoppock violated Rule 4.4(a) with a single, considered communication to an unrepresented party, with less aggressive language than in *Kalil* but after having recently admitted violating the same Rule. The Committee considered these cases and their distinctions from this case in crafting its sanction determination.

Sanction

The Committee thus concludes that the appropriate sanction is a six-month suspension from the practice of law, two months of which are imposed and four

⁷ It is unclear from the opinion in *Robertson's Case* whether the respondent had a prior disciplinary history.

months of which are stayed. The four-month suspension is stayed for two years on the following conditions:

- Attorney Hoppock must commit no new violations of the Rules of Professional Conduct until the expiration of the two-year stay. If a grievance or referral is filed prior to the expiration of the two-year period of stay, the stay will be tolled until resolution of the new matter. If a finding is made of additional Rule violations occurring on or after the date of this order and before expiration of the two-year stay, the matter shall come back before the Committee.
- Attorney Hoppock shall meet with the Lawyers Assistance Program (LAP), work with LAP to engage in an evaluation by a LAP-approved provider, follow any treatment recommendations, and work with a LAP-approved mentor.
- Attorney Hoppock shall, prior to or within the two-year period of stay, attend ten hours of ethics training in addition to his annual ethics CLE requirement.
- Attorney Hoppock shall pay all expenses incurred by the ADO in the investigation and prosecution of this matter.

No later than twenty-two months after Attorney Hoppock resumes the practice of law (or later for any alleged later-occurring events), the ADO may file a motion to bring this matter back before the Committee if any violation of these conditions is alleged.

Attorney Hoppock's two-month suspension shall begin on the first business day following the 30th day (or the second business day if both the 30th and 31st days are not business days) after the issuance of this order unless he files an appeal, in which case it will be stayed. Supreme Court Rule 37A(III)(d)(4)(B). If the suspension goes into effect, Attorney Hoppock shall comply with Rule 37(13) and shall file an affidavit with the Supreme Court within 30 days of the suspension taking effect showing that he has fully complied with Rule 37(13). Attorney Hoppock shall send a copy of the affidavit to the ADO.

DATED: March 12, 2024

/s/ Stephanie Hausman
Stephanie C. Hausman

I hereby certify that a copy of the aforesaid Order is being sent on this date, March 11, 2024, to Elizabeth M. Murphy, Assistant Discipline Counsel of the NH Supreme Court Attorney Discipline Office and William C. Saturley, Esq., counsel for Joseph S. Hoppock, Esq.