THE STATE OF NEW HAMPSHIRE
SUPREME COURT

LD-2018-0007

In the Matter of Craig N. Salomon, Esquire

BRIEF FOR
THE NEW HAMPSHIRE SUPREME COURT
ATTORNEY DISCIPLINE OFFICE

New Hampshire Supreme Court
Attorney Discipline Office

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STATEMENT OF THE CASE

This case involves two disciplinary matters which were initiated following a grievance filed by Irving Haase, #14-037 ("Haase matter") and a referral to the Attorney Discipline Office ("ADO") by the Tripp Scott law firm in Florida, #14-039 ("Florida matter"). [PCC 19, Ex. 1[1]; PCC 20; Ex. 1.]

The ADO issued a consolidated Notice of Charges on March 21, 2017. [PCC 2.] Mr. Salomon filed an Answer on May 5, 2017. [PCC 3.]

A Hearing Panel ("Panel") held an evidentiary hearing on September 26, 2017, September 27, 2017 and November 2, 2017. [PCC 38, 39, 42.] A Preliminary Hearing Panel Report was issued on November 8, 2017. [PCC 43.]

Following a hearing on the issue of sanction [PCC 49], the Hearing Panel issued a Recommended Sanction on February 5, 2018. [PCC 50.] The Hearing Panel recommended that Mr. Salomon be disbarred.

The Professional Conduct Committee ("Committee") reviewed the entire record. Following oral argument by the parties on April 17, 2018, [PCC 52] the Committee issued its final order, Recommendation of a disbarment, on June 4,

[1] Citations to the record are as follows: "PCC" denotes the entire record (consisting of 53 tabbed entries) before the Committee in this matter. For instance, "PCC 19, Ex. 1" denotes Exhibit 1 of Tab 19 within the record. In accordance with Supreme Court Rule 37(16)(a), the record of proceedings before the Committee was submitted on June 5, 2018.

2018. [PCC 53]. The Committee accepted the Hearing Panel's assessment of the facts and violations, finding clear and convincing evidence that Mr. Salomon violated Rules of Professional Conduct ("Rules") 1.7: Conflicts of Interest; 3.1: Meritorious Claims and Contentions; 4.1: Truthfulness in Statements to Others; 8.4(c): Dishonesty, Fraud, Deceit or Misrepresentation; and 8.4(a): Misconduct in the Haase matter; and Rules 1.2: Scope of Representation; 1.4: Client Communication; 1.15(f) and (g): Safekeeping Property; 3.4: Fairness to Opposing Party; 8.4(c): Dishonesty, Fraud, Deceit or Misrepresentation; and 8.4(a): Misconduct in the Florida matter. [PCC 53, pp. 6-9.]

On July 10, 2018, Mr. Salomon identified issues he wished the Supreme Court to review. *See* Sup. Ct. R. 37(16)(c). The Court issued a briefing order on August 9, 2018.

STATEMENT OF THE FACTS

The Hearing Panel and the Committee's factual findings are amply supported by the record and should not be disturbed. The pertinent facts are set forth in the Panel and the Committee's reports and are incorporated fully herein by reference. [PCC 50, 53, respectively.] *See also* ADO Requests of Findings of Fact and Rulings of Law and ADO Closing Argument [PCC 25, 26, and 40.]

A. Facts Relating to Both Matters

Mr. Salomon is a suspended New Hampshire attorney. [*Appeal of Craig N. Salomon* – LD-2016-0018.] Mr. Salomon was admitted to practice law in New Hampshire in 1973. [PCC 3, ¶ 1.] Mr. Salomon has not been admitted to practice law in any other jurisdiction. [PCC 3, ¶ 2.]

At all times material to this proceeding, Mr. Salomon operated his law office as Craig N. Salomon, P.A., P.O. Box 427, North Hampton, New Hampshire 03862. [PCC 3, ¶ 3.]

B. Facts Relating to Haase matter

This matter arises from a grievance filed by Mr. Irving Haase ("Mr. Haase") on February 27, 2014. [PCC 19, Ex. 1, pp. 5-8.] Mr. Haase is the managing member of a Florida-based company, Heirs, LLC. In his grievance, Mr. Haase alleged, he "ended up with a bogus mortgage that Mr. Salomon recorded on November 1, 2013." [PCC 19, Ex. 1, p. 6; PCC 53, p.1.]

The Haase complaint led to an investigation of Mr. Salomon's representation of Deborah Fogg ("Ms. Fogg") in her divorce from George Fogg ("Mr. Fogg"). [PCC 19, Ex. 11, p. 31.] The divorce was finalized in April of 2009. [PCC 19, Ex. 35.]

As part of the divorce agreement, Ms. Fogg took possession of the marital property in Seabrook and agreed she owed Mr. Fogg a total of $22,350. Mr. Fogg agreed to accept a "first mortgage" for that amount. Their agreement

provided that the money was payable within eighteen months. Ms. Fogg planned to sell the property and use the proceeds to repay Mr. Fogg. [PCC 3, ¶ 12; PCC 19, Ex. 35, p. 125.]

At the time the divorce was finalized, Ms. Fogg agreed she owed Mr. Salomon up to $12,000 in attorney's fees. She agreed to grant Mr. Salomon a "second mortgage" on the marital property to secure the payment of the fees. [PCC 3, ¶¶ 12, 14; PCC 19, Ex. 26, p. 88; PCC 19, Ex. 32, pp. 103-105.] Both mortgage deeds were recorded. [PCC 3, ¶ 14; PCC 19, Ex. 31-32.]

After finalizing the divorce agreement, Mr. Salomon contacted Mr. Dale Wood ("Mr. Wood"), a client and friend, to advise him of the Fogg settlement. Eventually, they agreed that Mr. Wood's company, Pan American Fund, LLC ("Pan American"), would accept assignment of the second mortgage of $12,000 on Ms. Fogg's property in exchange for $10,000. [PCC 3, ¶¶ 16-17; PCC 19, Ex. 33, p. 106; PCC 39, p. 52]

Mr. Salomon used information obtained through his representation of Ms. Fogg to negotiate the assignment of the second mortgage and, thus, to obtain his attorney fees prior to the sale of the property. There were public records *(e.g.,* information filed at the registry of deeds regarding the property owned by the Mr. and Ms. Fogg as well as information that would have been in the court files), and non-public records *(e.g.,* appraisals and other information Mr. Salomon had

obtained during of his representation). [PCC 3, ¶¶ 16; PCC 19, Ex. 33, p. 106; PCC 39, p. 62-64]

Within weeks of finalizing the divorce, negotiating a second mortgage with Ms. Fogg, and assigning it to the Pan American Fund, Mr. Salomon entered into another agreement with the Pan American Fund regarding the $22,350 first mortgage held by Mr. Fogg. [PCC 3, ¶¶ 21; PCC 19, Ex. 40, p. 135.] Mr. Salomon negotiated with Mr. Fogg's lawyer, Paula DeSaulnier, to buy out Mr. Fogg's interest in Ms. Fogg's property. Pan American Fund advanced Mr. Salomon $22,350 to buy out the mortgage. Although Mr. Salomon offered to buy out Mr. Fogg, he never offered the full value of the mortgage. Mr. Fogg, through counsel, declined to accept the discounted offers. [PCC 19, Ex. 41, Ex. 45; PCC 39, p. 34.]

In correspondence to the ADO during the investigation and at the hearing, Mr. Salomon testified that the plan was to use the money advanced by the Pan American Fund to buy out Mr. Fogg on behalf of Ms. Fogg, to have Ms. Fogg execute a mortgage to Mr. Salomon in the amount of $22,350, and to have Mr. Salomon assign that second mortgage to his client, Pan American Fund, so they would be in first position to foreclose on the property if Ms. Fogg was unable to sell it or otherwise fulfill her obligations. [PCC 19, Ex. 3, p. 16; PCC 19, Ex. 37, p. 130.]

Evidence before the Panel included the proposed assignment of the $22,350 mortgage from Ms. Fogg to Mr. Salomon. The third page of the document was signed by Ms. Fogg, but never dated, witnessed or recorded. [PCC 19, Ex. 38, pp. 131-133; PCC 19, Ex. 39, p. 134.]

Ms. Fogg testified, at the hearing, that she did not recall signing that document nor did she recall being aware of the plan to buy out her husband's first mortgage. [PCC 39, pp. 30-34.]

When Mr. Fogg declined to accept the discounted offers for the purchase of his mortgage, Mr. Salomon negotiated with Mr. Wood to turn the $22,350 into a personal loan, creating an obligation in that amount plus interest to Pan American Fund. [PCC 39, p. 53.]

With respect to Mr. Salomon's testimony before the Panel, the Committee summarized as follows:

> Mr. Salomon testified that while it was never the intent to offer the full-face amount of the mortgage to Mr. Fogg, Pan American Fund had advanced Mr. Salomon the full-face amount of the mortgage. For Ms. Fogg to execute a valid mortgage granting Mr. Salomon the $22,350 interest in her property, she would need to owe Mr. Salomon that much money. This would imply that Mr. Salomon intended to use the money from the Pan American Fund as his own to buy out Mr. Fogg's mortgage, thus in effect loaning his client, Ms. Fogg, the money necessary to take

> Mr. Fogg out of the mix for Mr. Salomon's personal gain. Specifically, the mortgage deed prepared and partially executed was for the full amount of $22,350, which Mr. Salomon never intended to offer Mr. Fogg. Mr. Salomon did not intend to disclose to Ms. Fogg that he had been able to buy out Mr. Fogg at a discounted price. He also did not intend to inform his client, Pan American Fund, that he had obtained the Fogg mortgage at a discounted rate and was planning on keeping the difference for himself. In fact, Mr. Salomon, when asked what the parties intended with respect to any money in excess of what was used to buy out Mr. Fogg, said that he did not know. [PCC 53, p. 3.]

Pan American Fund assigned both the $12,000 mortgage and the $22,350 loan to Mr. Salomon to Irving Haase/Heirs, LLC. Mr. Haase believed that those amounts were secured by mortgages filed against the Fogg property in Seabrook. In 2013, Mr. Haase contacted Mr. Salomon to have him initiate the process of collecting on the notes, which were past due.

Unknown to Mr. Haase or Mr. Salomon, Ms. Fogg had quitclaimed the deed to her property back to Mr. Fogg to satisfy her debt to him. [PCC 19, Ex. 69, pp. 206-207.]

After the Fogg divorce was finalized, Mr. Salomon continued to help Ms. Fogg find a buyer or developer to purchase her property. This assistance included research concerning the title to some of the lots encompassing the

property on the New Hampshire/Massachusetts border. It also included advocating for the possible development of the property. Mr. Salomon never billed Ms. Fogg for these efforts nor is there any evidence that Ms. Fogg agreed to pay additional fees for Mr. Salomon's assistance. Mr. Salomon testified before the Panel that he had intended to put a future advances clause in the $12,000 mortgage instrument, but had forgotten to do so. [PCC 39, pp. 77-78.]

Mr. Salomon represented Heirs, LLC/Irving Haase in foreclosure proceedings against the Fogg property which was now owned by Mr. Fogg. On November 14, 2013, Mr. Salomon sent a letter to Mr. Fogg demanding payment of principal and interest in the amount of $47,891.13. Mr. Fogg notified Mr. Salomon he was going to contest the amount and requested documentation supporting the demand. [PCC 19, Ex. 83, p. 222.] Mr. Salomon did not provide the documentation. Mr. Salomon instituted formal foreclosure proceedings in December of 2013. [PCC 19, Ex. 90, pp. 229-230.]

Mr. Fogg retained Attorney Michael Alfano, who initiated communication with Mr. Salomon. Mr. Salomon ultimately acknowledged that the only mortgage eligible for foreclosure was the “second” mortgage for $12,000. A settlement agreement was reached to include the payment of Attorney Alfano’s fees. [PCC 19, Ex. 117, pp. 293-296.]

C. Facts Relating to the Florida matter

By letter dated October 16, 2014, an attorney at the Florida law firm of Tripp Scott, filed on behalf of HPC US Fund 1, L.P. and HPC US Fund 2, L.P. (collectively "HPC"), and its authorized representative, Mr. Andreas Brinke, a grievance with the ADO against Mr. Salomon. [PCC 20, Ex. 1.]

The complaint related to Mr. Salomon having been found in contempt in the United States District Court for the Southern District of Florida for knowingly violating a preliminary injunction by assisting Mr. Wood in consummating a sale of property in Idaho, knowing that Mr. Wood did not have the authority to complete the sale. [PCC 3, ¶ 112; PCC 20, Ex. 1, pp. 299-307.]

Mr. Salomon represented Blackport Investment Group, LLC, which was created and retained by HPC US Fund 1, L.P. and HPC US Fund 2, L.P. The HPC entities are holding companies of German-based investment vehicles that hold real estate interests throughout the United States. Blackport managed these interests for HPC. Mr. Wood was Blackport's asset manager representative. [PCC 20, Ex. 1, p. 301.]

Mr. Wood and Mr. Salomon have known each other for many years. Mr. Salomon has represented Mr. Wood individually and has represented companies, including Blackport, of which

Mr. Wood was an owner, member or manager. [PCC 20, Ex. 14, pp. 237-349.]

HPC initiated proceedings in the United States District Court for the Southern District of Florida concerning Mr. Wood's mismanagement of funds belonging to HPC. It was alleged that Mr. Wood had misappropriated approximately $10,000,000. [PCC 20, Ex. 1, p. 301; Ex. 14, pp. 348-349.]

The Florida court issued a temporary restraining order followed by a preliminary injunction. The preliminary injunction was entered on September 4, 2013, and it addressed a number of defendants, including Mr. Wood. It prohibited Mr. Wood or "any and all persons acting under defendant's direction or control" from taking any action with respect to any property interests held by HPC. The prohibition included transferring or secreting any property interests or any liquid assets they held as a result of conveying HPC's property interests. [PCC 20, Ex. 19, pp. 425-426.]

In the same time frame, Mr. Salomon opened a new matter in his office involving the sale of property in Idaho, which was largely owned by HPC. Mr. Salomon considered Blackport as his client. Mr. Wood was Mr. Salomon's contact person. Mr. Salomon contacted Ms. Nancy Albanese ("Ms. Albanese") at North Idaho Title, the company that was handling the purchase and the sale of the Idaho property. In September of 2013, Mr. Salomon received funds that represented the initial

non-refundable deposit received from the purchaser pursuant to a purchase and sale agreement. He disbursed the money based on instructions from George Kalogeropoulos, who he believed was a Blackport employee. There was no evidence before the Panel that Mr. Salomon was aware of the preliminary injunction in Florida at the time he received and disbursed the funds from the initial deposit. [PCC 20, Ex. 29, pp. 446-447.]

As the parties moved towards a possible closing date, however, Mr. Salomon learned that there was an injunction issued by the federal court in Florida directly prohibiting Mr. Wood from having any involvement in the conveyance of any property interests of HPC. The notice of the injunction came from Mr. Wood via email indicating that he did not have authority to sign on behalf of Blackport in the sale of the property. Mr. Salomon was also contacted by the Tripp Scott law firm in Florida and was advised that there was an injunction. [PCC 20, Ex. 29, pp. 446-447.]

After resolving title issues regarding the property in Idaho, the closing was dependent on determining who was authorized to sign on behalf of the seller. Mr. Salomon knew that Mr. Wood did not have authority. However, Mr. Salomon informed North Idaho Title that Mr. Wood could sign on behalf of Blackport, and the transaction closed on or about November 21, 2013. Mr. Salomon testified before the Panel that he told North Idaho Title that Mr. Wood had authority because Mr. Wood had told him

that Mr. Wood's lawyers advised Mr. Wood to sign on behalf of Blackport, to protect the minority owner's interest in the property. [PCC 20, Ex. 45, p. 480.]

The sale went through and the proceeds were deposited in Mr. Salomon's escrow account. [PCC 20, Ex. 45, p. 480.] Mr. Salomon did not notify HPC or its counsel that he was holding funds covered by the preliminary injunction. Instead, Mr. Salomon distributed those funds at the direction of Mr. Wood. This included Mr. Salomon's attorney fees. Approximately two weeks after the disbursement, $51,970 was returned to Mr. Salomon's trust account and disbursed to a different entity under the direction of Mr. Wood. Mr. Wood authorized Mr. Salomon to keep an additional $3,000 in attorney fees.

In January of 2014, HPC, through their attorneys at Tripp Scott, discovered that the property in Idaho had been conveyed without their knowledge. [PCC, 20, Ex. 61, p. 509.] HPC initiated contempt proceedings against Mr. Wood. The proceedings were ultimately broadened to include a third-party contemnor claim against Mr. Salomon, who received notice and appeared once. The matter was continued, and Mr. Salomon did not subsequently appear for any further proceedings. The Florida court found that Mr. Salomon had violated the preliminary injunction. In an order dated September 5, 2014, the Magistrate found that "both Dale Wood and Craig Salomon were aware of the injunction and had

the ability to comply with it, but chose not to do so." [PCC 22, Ex. 101, pp. 1601-1603.]

After the Florida court adopted the Magistrate's report, HPC filed a motion for judgment and an award of attorney's fees. Mr. Salomon filed an objection. On June 17, 2015, the court ordered that Mr. Wood and Mr. Salomon were jointly and severally liable to HPC for $301,874.70 in contempt damages, $135,739.50 in attorney's fees, and $4,672.70 in costs.

SUMMARY OF ARGUMENT

The Panel and the Committee found clear and convincing evidence that Mr. Salomon violated numerous Rules of Professional Conduct. The Panel and Committee's findings were reasonable and based on clear and convincing evidence presented in the record and through a several day hearing. Additionally, the majority of factual allegations set forth in the Notice of Charges were undisputed by Mr. Salomon in his Answer. On the factual issues Mr. Salomon did dispute, and which he raises on appeal, both the Panel and Committee explicitly found Mr. Salomon not to be credible. There is ample evidence in the record for the Supreme Court to affirm the findings below.

The Committee has recommended that Mr. Salomon be disbarred from the practice of law. Disbarment is the only appropriate sanction for an attorney who: has engaged in

conflicts of interest to his own benefit; violated a bedrock duty of the profession to act honestly; failed to comply with a Federal Court preliminary injunction; has been found in contempt of court; assisted a client with fraudulent conduct; failed to safeguard disputed funds in his client's trust account; has a significant disciplinary history, involving a myriad of Rule violations; has been practicing law for over 40 years; has not made an effort to pay any portion of a judgment against him totaling $442,286.90; and was not found to be credible in his testimony before the Panel.

In summary, the Panel and the Committee, guided by New Hampshire case law, the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*"), and the purposes of attorney discipline, properly determined that Mr. Salomon be should disbarred. This is the only sanction that effectively serves the purposes of attorney discipline. There is ample evidence in the record for the Supreme Court to find, as the Committee and the Panel did, that disbarment is the appropriate sanction for Mr. Salomon's misconduct.

ARGUMENT

A. Standard of Review

This Court has held that it will "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." *O'Meara's Case*, 164 N.H. 170, 176 (2012). The Court has the inherent and statutory authority to discipline attorneys and the responsibility to exercise independent judgment in the process. *See Wolterbeek's Case*, 152 N.H 710, 718 (2005). "In deciding the appropriate sanction, [the Court] consider[s] the case on its own facts and circumstances." *Conner's Case*, 158 N.H. 299, 303 (2009) (citing *Wolterbeek's Case*, 152 N.H. at 714).

B. There is Clear and Convincing Evidence that Mr. Salomon violated Rules 1.7, 3.1, 4.1, 8.4(c), and 8.4(a in the Haase Matter

The Committee found that Mr. Salomon violated Rules 1.7, 3.1, 4.1, 8.4(c) and 8.4(a).

In his appeal, Mr. Salomon asks the Court to reverse the Panel and the Committee's conclusion that Mr. Salomon was not credible on a key consideration of this matter: that he simply "forgot" that he did not include a "future advances" clause as a term of the $12,000.00 second mortgage that Ms. Deborah Fogg provided to him; and that when he moved to foreclose against Mr. Fogg in December 2014, he again forgot that he did not include a future advances clause. Mr. Salomon asks the Court to reverse the Panel and the Committee's finding, even though any reasonably diligent

lawyer, and certainly one as experienced as Mr. Salomon is in real estate matters, would have carefully reviewed the mortgage before seeking to enforce by foreclosing.

The conclusion that Mr. Salomon simply made a mistake regarding the future advances clause is contrary to the totality of the evidence on the record. Perhaps most importantly, the Court should take note that the end result of the things Mr. Salomon "forgot" was simple: Mr. Salomon enriched himself. Furthermore, Ms. Fogg had no recollection of any kind of discussion of a future advances clause. She testified credibly that while she was aware Mr. Salomon was seeking a purchaser on her behalf and also did some work with respect to a quiet title action, she was never made fully aware of the amount of work Mr. Salomon was actually performing. While Mr. Salomon did "bill no charge" for some work performed, the last invoice in Ms. Fogg's file, dated May 1, 2011, reflected a balance due of $2,165.11. [PCC 19, Ex. 95, p. 202.] In other words, it was this amount, and not $22,350.00, that Deborah Fogg might have expected she owed.

Mr. Salomon admitted that he did not invoice Ms. Fogg for his work. [PCC 39, p. 167-168.] Mr. Salomon testified: "So, no, I didn't invoice her because, you know, the work had not been completed, from my perspective, and wouldn't be until the property was sold, and then she went and

transferred it to George without telling me." [PCC 39, p. 86-87].

Mr. Salomon also represented to the Panel that he earned up to $22,350.00 in fees for work he purported to have performed for Deborah Fogg without having kept her informed as to the progress of that work. Moreover, there was no written fee agreement for the real estate work. [PCC 39, p. 177.]

Mr. Salomon also testified that Pan American forwarded to him $22,350.00. The $22,350.00 was in addition to the $10,000.00 that Pan American paid Mr. Salomon for his assignment of the $12,000.00 second mortgage that he held on the Fogg property. Mr. Salomon testified that initially the $22,350.00 was forwarded with the intention that an offer could be made to George Fogg to buy out his first mortgage on the Fogg property. However, he never offered Mr. Fogg the full value of the mortgage. [PCC 53, p. 2.] When Mr. Fogg refused the offers made to him in 2009, Mr. Salomon admits that he retained the $22,350.00, and signed a promissory note that included interest on May 8, 2009. [PCC 19, Ex. 40, p. 135.]

Perhaps the most egregious action taken in this matter is the fact that when Mr. Salomon signed the promissory note, it was the Fogg property that was described as the security for the loan of $22,350.00. [PCC 19, Ex. 40, p. 135;

PCC 39, pp. 69-71.] At that time, Mr. Salomon did not hold a $22,350.00 interest in the Fogg property; it was Mr. Fogg who held that interest. Mr. Salomon retained the benefit of that loan for $22,350.00 from May 8, 2009, onward.

With Mr. Salomon's knowledge that he himself had retained the $22,350.00, Mr. Salomon's representation of Heirs, LLC in bringing a foreclosure action against George Fogg was, at a minimum, frivolous. The institution of a foreclosure is a significant legal action that would have taken away Mr. Fogg's legal rights to his property. Mr. Salomon, an experienced real estate attorney, would have been aware of the care that is required before instituting a foreclosure action. In this case, Mr. Salomon admitted that he did not perform a title search before bringing the foreclosure action against George Fogg. [PCC 39, p. 87, 89]. Mr. Salomon also did not review the mortgage that Deborah Fogg had signed. [PCC 39, p. 90.] Mr. Salomon relied on his memory of the amount due when he issued the foreclosure demand. [PCC 39, p. 168.]

Given the above considerations, the ADO met its burden of proof for the following Rule violations by clear and convincing evidence.

With respect to the Rule 1.7 charge, the Committee reasonably concluded:

> Mr. Salomon's concurrent representation of Ms. Fogg and Pan American Fund was a violation of Rule 1.7(a). Specifically, it was the intent of the Fogg divorce agreement that Ms. Fogg would sell the marital property and in so doing would be able to satisfy her obligation to George Fogg under the first mortgage for $22,350. The balance of any proceedings from the sale would be retained by Ms. Fogg. Her interest would have been to obtain the maximum possible sale price from an individual buyer or from a developer. The subsequent assignment to Mr. Salomon of the $12,000 mortgage to pay off her attorney's fees would not change her interest in selling the property for the highest possible value.
>
> At the same time, Mr. Salomon's other client, Pan American Fund, was negotiating to purchase the property. It was Pan American Fund's interest to obtain the property at the lowest possible purchase price to maximize the investment opportunity. The situation is further complicated by the fact that Mr. Salomon's personal interest would be have the property sell as soon as practical to reduce the amount of interest he was paying on the $12,000 mortgage. In addition, he had an interest that his client, Pan American Fund, develop the property and pay him future attorney's fees. [PCC 53, p. 6.]

Mr. Salomon violated Rule 3.1 when he issued a Notice of Foreclosure to George Fogg on December 19, 2013, and

scheduled a foreclosure sale based on a demand for a sum of $47,891.13 that George Fogg did not owe.

The Committee reasonably found the Rule 3.1 violation, specifically finding: ". . . Mr. Salomon, who had forty years of experience, was not credible in his assertion that he was honestly mistaken as to the state of the various loans and mortgages." [PCC 53, p. 7.]

Mr. Salomon violated Rule 4.1 when Mr. Salomon made a false statement of material fact to Irving Haase that Mr. Fogg owed $47,891.13, when the only amount Mr. Fogg could have owed was $12,000.00.

Additionally, Mr. Salomon violated Rule 4.1, when while representing Mr. Haase, he knowingly made a false statement of material fact to George Fogg and to Mr. Alfano when he issued the demand for $47,891.13, knowing that he, himself, had borrowed the $22,350.00 and signed the promissory note for that amount plus interest.

The Committee specifically found the Rule 4.1 violation, stating:

> Mr. Salomon knew that he had borrowed $22,350 from the Pan American Fund group and signed a promissory note for that amount plus interest. Therefore, he knew that there was no mortgage on the Fogg property securing that amount. His representations to Mr. Fogg and Attorney Alfano in issuing the demand for $47,891.13

were false statements of material fact." [PCC 53, p. 7.]

Mr. Salomon violated Rule 8.4(c) when he advised Mr. Haase on September 10, 2013, regarding the Fogg property, that there were two notes secured by one mortgage when he knew that the only signed promissory note was the one that he had signed in favor of Pan American for $22,350.00 plus interest. [PCC 19, Ex. 77, p. 215.] Mr. Salomon further violated Rule 8.4(c), when he sent a demand letter to George Fogg on November 13, 2014, seeking $47,891.13 and issued a Notice of Foreclosure to George Fogg on December 19, 2013 knowing that he had signed the promissory note and retained $22,350.00 for himself. The Committee also found the Rule 8.4(c) violation citing to the reasons it found the Rule 4.1 violations. [PCC 53, p. 7; PCC Order on Request for Clarification dated June 19, 2018.]

There is clear and convincing evidence for the Court to affirm the Panel and the Committee's findings.

C. <u>There is Clear and Convincing Evidence that Mr. Salomon violated Rules 1.2, 1.4, 1.15, 3.4, 8.4(c), and 8.4(a) in the Florida Matter</u>

The Committee found that Mr. Salomon violated Rules 1.2, 1.4, 1.15, 3.4, 8.4(c) and 8.4(a).

The majority of the Rule violations in the Florida matter revolve around Mr. Salomon's undisputed knowledge of a

September 4, 2013 Federal preliminary injunction prohibiting Mr. Dale Wood or "any and all persons acting under Defendants' direction or control" from "[t]aking any action with regard to any property interest. . . ." [PCC 20, Ex. 18, p. 373] and Mr. Salomon's work in facilitating the sale of the Idaho property in November 2013 after the preliminary injunction was in place and his subsequent distribution of the sale proceeds at the direction of Mr. Wood including the disbursement of legal fees to himself.

As a result of Mr. Salomon's actions in disregarding a Federal injunction, Mr. Salomon was found in contempt of court as a third party contemnor on November 24, 2014, when the Court adopted the Magistrate's September 4, 2014 order. In that order, the Magistrate stated that "[w]here a non-party is shown to have been in violation of an injunction, that non-party submits to personal jurisdiction of the issuing court." *Waffenschmidt v. MacKay*, 763 F.2d 711, 714 (5th Cir. 1985). The First Circuit Court of Appeals has agreed with this proposition stating: "[it] has long been recognized that a nonparty may be held in civil contempt if, and to the extent that, he knowingly aids or abets an enjoined party in transgressing a court order." *See Goya Foods, Inc. v. Wallack Mgmt. Co.*, 290 F.3d 63, 75 (1st Cir. 2002). In other words, Mr. Salomon would likely have been found in contempt in Federal Court in New Hampshire as well.

In the order, the Magistrate found that "all three requirements for a finding of contempt have been clearly demonstrated. The Preliminary Injunction at issue is valid and lawful; it is clear and unambiguous; and both Dale Wood and Craig Salomon were aware of the injunction and had the ability to comply with it but chose not to do so." [PCC 3 ¶ 169; PCC 22, Ex. 93, p. 1433.] The order also set forth the chronology of what Mr. Salomon knew and when he knew it in detail. [PCC 3 ¶ 170; PCC 22, Ex. 93, pp. 1433-1436.] The Magistrate recommended "that both Dale Wood and Craig Salomon should be found in contempt." [PCC 3 ¶ 171; PCC 22, Ex. 93, pp. 1437-1438.]

The Florida Court's finding of contempt and Mr. Salomon's knowing failure to comply with the preliminary injunction support the Rule 3.4(c) violations.

The Florida Court's finding was supported by the evidence that was presented to the Panel and it was that evidence that supported the additional Rule violations.[2] At all relevant times, Mr. Salomon knew of the preliminary injunction and therefore he was aware of HPC's interest in any transaction involving Blackport and/or HPC. Mr.

[2] In his brief, Mr. Salomon states that "a taint remained throughout the proceeding" due to certain testimony by Michael Pirgmann. During the hearing, Mr. Salomon's counsel objected to Mr. Pirgmann's testimony and it was stricken from the record. Consistent with its ruling, the Hearing Panel report is devoid of any reference to this testimony. [PCC 50.] The Rule violations in the Florida matter were proven by clear and convincing evidence.

Salomon even indicated to Mr. Wood that he had studied the terms of the injunction. It was Mr. Salomon who included Mr. Wood on emails regarding the Idaho property on two occasions, and Mr. Wood who advised him that he did not want to be involved and did not want to violate the injunction. [PCC 20, Exs. 32, 34.] Mr. Salomon has defended himself by stating that Mr. Wood later advised him that he could sign on behalf of HPC on the advice of counsel. However, Mr. Salomon did not know or further investigate who gave Mr. Wood such advice. As a result, Mr. Salomon accepted significant legal fees from the final sale of the Idaho property. These key facts support the following additional Rule violations.

Mr. Salomon violated Rule 1.2(d), when despite knowing of the dispute as to Mr. Wood's authority to act for HPC, he assisted Mr. Wood in consummating the sale of the Idaho property.

The Committee reasonably found:

> Mr. Salomon testified that Mr. Wood notified him that he (Mr. Wood) had received legal advice that he should sign on behalf of Blackport to transfer ownership in the sale of the Idaho property. Mr. Salomon alleged that his reliance on Mr. Wood's representation was reasonable. The Committee disagrees. Mr. Salomon knowingly violated the federal court injunction. [PCC 53, p. 8.]

Mr. Salomon knew of the injunction prohibiting Mr. Wood from acting. Mr. Salomon had a duty to advise Mr. Wood of Mr. Salomon's limitations in advising him or assisting him in taking any actions which would violate the preliminary injunction, and therefore violate the Rules of Professional Conduct or other law. Mr. Salomon violated Rule 1.4(a)(5) when, rather than advising Mr. Wood of these limitations, he facilitated the sale of the Idaho property and the disbursement of the proceeds.

The Committee properly found the violation of Rule 1.4, finding in relevant part:

> Mr. Salomon was aware of the injunction. There is no evidence that Mr. Salomon consulted with his client about any relevant limitation on his conduct though he knew he could not assist him in violating the federal injunction. Based on the emails presented at the hearing, Mr. Salomon was attempting to assist Mr. Wood in getting around the federal injunction despite Mr. Wood indicating that he (Mr. Wood) did not want to violate the injunction. [PCC 53, p. 8.]

Likewise, Mr. Salomon violated Rule 1.15 when, despite his knowledge of HPC's interests and the preliminary injunction, Mr. Salomon failed to notify HPC of the proceeds held in his client trust account upon receiving them, in November 2013, before disbursing, as required by Rule 1.15(f)

and he failed to hold funds from the sale of the Idaho property separate until the dispute was resolved as required by Rule 1.15(g). The Committee's finding of this violation was supported by the clear and evidence before it. The Committee specifically found:

> Mr. Salomon knew that HPC had an interest in the sale of the Idaho property. He neither notified HPC that the sale had taken place nor kept the proceeds of the sale in his escrow account until it was determined who was entitled to the funds. Instead, the funds were disbursed at the direction of Mr. Wood, who Mr. Salomon knew was in an ongoing dispute with HPC.

Mr. Salomon violated Rule 8.4(c) when knowing of the injunction, Mr. Salomon authorized Ms. Albanese at North Idaho Title to record the November 15, 2013, warranty deed transferring the Idaho property, and authorized her to transfer the proceeds to his client trust account.

Mr. Salomon never advised Ms. Albanese of the injunction. Ms. Albanese testified in her deposition that she would not have closed the sale if she had known about the injunction. [PCC 20, Ex. 77, p. 2049.] She likewise testified before the Panel that had she known that Mr. Wood had been removed as manager she could not have closed the sale of the Idaho property. [PCC 39, p. 253.]

Mr. Salomon further violated Rule 8.4(c) when, knowing of HPC's interest in the property, he disbursed the proceeds from the sale to parties other than HPC at the authorization of either Mr. Kalogeropoulos and/or Mr. Wood, including retaining attorney's fees for himself, without informing HPC or seeking their assent.

> The Committee found by clear and convincing evidence that Mr. Salomon's conduct in assisting Mr. Wood to obtain the proceeds from the sale of the Idaho property involved dishonesty, fraud, deceit or misrepresentation. Specifically, he failed to advise North Idaho Title that there was a preliminary injunction issued by a federal court. He also disbursed proceeds from the sale of that property to parties other that HPC despite his knowledge that HPC had an interest in the property. [PCC 53, p. 9.]

The Panel after considering all of the testimony, exhibits, and weighing the credibility of the witnesses, found clear and convincing evidence of the Rule violations discussed above. The Committee affirmed these findings. Mr. Salomon has not demonstrated an error that would prefent the Court from deferring to the factual findings of the Panel. Therefore, the Court should adopt the Committee's factual findings and Rule violations.

D. A disbarment is Commensurate with New Hampshire Case Law, the ABA *Standards*, and the Goals of Attorney Discipline

The ADO incorporates fully herein its Memorandum on Sanction by reference. [PCC 45.] A disbarment is the appropriate sanction and discipline in this matter. Mindful that "[e]very case is judged on its own facts and circumstances," and based on the record submitted, both the Panel and the Committee reasonably found that this sanction was appropriate. *See Morgan's Case*, 143 N.H. 475, 477 (1999) (*citing Flint's Case*, 133 N.H. 685, 689 (1990)). The attorney's behavior, and not just the number of rules broken, is determinative of the gravity of the unprofessional conduct. *See Grew's Case*, 156 N.H. 361, 365 (2007) (*citing Coddington's Case*, 155 N.H. 66, 68 (2007)). A disbarment protects the public, maintains public confidence in the bar, preserves the integrity of the legal profession, and serves to prevent similar conduct in the future. *See e.g.*, *Conner's Case*, 158 N.H. 299, 303 (2009). Moreover, both case law and the *Standards* support this sanction.

"Where there are multiple misconduct charges, 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."

(Internal quotation marks omitted). *Morse's Case*, 160 N.H. 538, 547 (2010), citing *Wyatt's Case*, 159 N.H. 285, 306 (2009).

1. A Disbarment is Consistent with the ABA *Standards*

Although the Court has not adopted the *Standards*, they are considered for guidance. *Conner's Case*, 158 N.H. at 303. The *Standards* set forth a four part analysis for courts to consider in imposing sanctions: "(a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." *Id.* (quoting *Douglas' Case*, 156 N.H. 613, 621 (2007)); *Standards* § 3.0. The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. 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 Conner's Case*, 158 N.H. at 303.

2. Mr. Salomon Violated Duties Owed to His Clients, the Public and to the Legal System

Under the first prong of the analysis, Mr. Salomon violated several of the duties the *Standards* cover. First, he violated duties owed to clients. In the Haase matter, Mr. Salomon violated his duty of loyalty that he owed to his clients when he failed to avoid conflicts of interest between

his clients. In the Florida matter, Mr. Salomon violated the duty of diligence that he owed to Mr. Wood. In addition, Mr. Salomon violated the duty of loyalty owed to his client and to third-parties as a fiduciary when he failed to safeguard and preserve the proceeds of the sale of the Idaho property in spite of the federal preliminary injunction. [PCC 53, p. 10.]

Mr. Salomon also violated duties he owed to the legal system and to the public. Mr. Salomon violated his duty to the legal system when he failed to comply with the preliminary injunction and when he was found in contempt of court. Mr. Salomon violated the duty of candor and the duty of honesty to the general public when he failed to act honestly with respect to the Idaho transaction. [PCC 53, p. 10.]

3. Mr. Salomon's Mental State was Knowing and Intentional

The second prong of the three-part test requires an assessment of Mr. Salomon's mental state. The Committee adopted the Hearing Panel's finding that Mr. Salomon acted knowingly. Violations of Rules 1.2(d), 3.4(c) and 8.4(c) all require a knowing state of mind. [PCC 53, p. 10.] The Committee and Panel also found that the evidence supported an inference that Mr. Salomon acted intentionally; that is, with a conscious objective to achieve a result. [PCC 53, p. 10.]

To find a knowing state of mind the Panel and the Committee did not need to find that Mr. Salomon had an

elaborate scheme, only that he had an awareness of the attendant circumstances of his conduct. In the Haase matter, Mr. Salomon was most certainly aware of the attendant circumstances and acted intentionally. Specifically, he engaged in self-dealing in that matter. Mr. Salomon was at all times aware that he was the person who had borrowed $22,350.00 and signed the promissory note for that amount plus interest. Mr. Salomon knew that he gained a benefit from this advance and that he had not repaid the loan.

In the Florida matter, there is ample evidence to find that Mr. Salomon acted knowingly and even intentionally with respect to the Rule 1.4 and 1.15 violations. With respect to the Rule 1.15 violation, Mr. Salomon admitted that at all relevant times he knew of the preliminary injunction. He stated in an email to Mr. Wood that he had studied the terms of the injunction. Therefore, Mr. Salomon was aware of HPC's interest in any transaction involving Blackport and/or HPC. Mr. Salomon admitted during his testimony that at the time he was working on the sale of the Idaho property, he knew of the Federal lawsuit against Mr. Wood and that there was a controversy as to whether Mr. Wood had been properly removed as manager of Blackport. Mr. Salomon also admitted he knew that the "minority investors" that Mr. Wood and Mr. Salomon sought to protect were not minority investors of either HPC or Blackport, but instead were

minority sellers, whose interests Mr. Salomon was not required to protect. At a minimum, such awareness would have required him to hold the proceeds of the sale in trust. [*See* PCC 42, pp. 60-61.]

Mr. Salomon was at all times aware of the controversy regarding Mr. Wood, Blackport and HPC and therefore knew, or at a minimum should have known, that he should not have distributed the sale proceeds from the Idaho property.

Likewise, Mr. Salomon's knowledge of the preliminary injunction also requires a finding that Mr. Salomon acted knowingly with respect to the Rule 1.4 violation.

With respect to all of the Rule violations found in the Florida matter, Mr. Salomon benefited from the sale of the Idaho property in that he retained significant legal fees for himself.

There is ample evidence to affirm the Committee's findings regarding Mr. Salomon's state of mind.

4. Mr. Salomon's Misconduct Caused Both Actual Injury and Potential Injury

The third prong requires an analysis of actual or potential injury caused by Mr. Salomon's misconduct. In these matters, Mr. Salomon's conduct has caused both actual and potential injury.

In the Haase matter, with respect to the conflict of interest Rule violations, Mr. Salomon caused actual injury to

Ms. Fogg, Pan American and Mr. Haase, in that none of those representations were free from a conflict of interest and none of those clients were provided with the opportunity to provide informed consent. Mr. Salomon's conflicting interests affected how he handled his clients' individual matters, inhibiting him from acting with undivided loyalty to one client. For example, Mr. Haase testified:

> Q. [Ms. Murphy] Has Mr. Salomon ever repaid you in full?
>
> A. [Mr. Haase] No.
>
> Q. Okay, did you believe that he was being honest with you with respect to some of the e-mails he sent you?
>
> A. No, he was --- they are all self-servicing (verbatim). He made up stories, told me that the Foggs owed him all this money, and the Fogg's didn't owe him anything, and Dale Wood was going to do such and such for him, and it was all just to, you know, settle me down, make me feel happy, but he had no intention of doing anything. [PCC 38, p. 118.]

Mr. Salomon caused injury to the reputation of attorneys in that Ms. Fogg and Mr. Haase lost trust in attorneys as a result of Mr. Salomon's decision to represent both of them while he had a personal interest in the Fogg property. Mr. Salomon further caused

injury to third parties and to the integrity of the profession as a result of his dishonesty.

In the Florida matter, there was actual and substantial injury to HPC. In the Florida litigation, Mr. Salomon was found jointly and severally liable with Mr. Wood for a total sum of $442,286.90. [PCC 22, Ex. 101, p. 1602]. In that litigation, the Court found in relevant part:

> Here, Plaintiffs have offered a detailed accounting showing that the proceeds from the sale of the Idaho property were transferred to Craig Salomon's trust account and ultimately dispersed for the benefit of Salomon and Woods. . . . Notably, neither Woods nor Salomon disputes that $301,874.70 represents the proceeds of the sold property. Given that Woods and Salomon realized this profit as a direct result of their decision to violated the preliminary injunction, this Court finds that the Plaintiffs are entitled to that same amount as compensation for their loss. . . . [PCC 22, Ex. 99, p. 1582.]

HPC lost the benefit of $301,874.70 from the sale of the Idaho property, a significant actual injury to HPC. In addition, the Court found Mr. Salomon jointly and severally liable to HPC for $135,739.50 in attorneys' fees, and $4,672.70 in costs. [PCC 22. Ex. 101, p.

1602.] Mr. Salomon has not repaid any part of this judgment. [PCC 38, pp. 184-185].

HPC suffered potential injury in that the Idaho property was sold without the shareholders' consent and may not have been sold for its highest value.

Mr. Salomon caused actual injury to Mr. Wood when he assisted Mr. Wood with bringing the sale of the Idaho property to a conclusion and distributing the proceeds of the sale to various entities without HPC's knowledge or consent. This conduct resulted in a finding that Mr. Wood was in contempt of court and Mr. Wood has been found jointly and severally liable for a judgment in the amount of $442,286.90. [PCC 22, Ex. 101, p. 1602].

Mr. Salomon also caused injury to the reputation of attorneys and caused injury to the legal system because he did not comply with a valid court order and disregarded the preliminary injunction. Mr. Salomon also injured the integrity of the profession as a result of his dishonesty.

The Committee agreed with these arguments, finding:

> The Committee adopted the Hearing Panel's findings that Mr. Salomon caused serious injury to his client and third parties in the Florida matter. Mr. Salomon also caused actual and potential injury to his clients and

third parties in the Haase matter. [PCC 53, p. 10.]

5. The *ABA Standards* Implicated by Mr. Salomon's Rule Violations Provide for a Disbarment

The Committee adopted the Panel's finding that the baseline sanction in this case is disbarment. *See Standards* §§ 4.11, 4.61, 5.11 and 6.21 as set forth in the Appendix to this brief. [PCC 53, p. 10.] The Rule violations found by the Panel and the Committee also implicate *Standards* §§ 4.31, 4.42, and 6.11 which also implicate as a baseline sanction either disbarment or suspension as set forth in the Appendix to this brief.

6. Aggravating and Mitigating Factors Considered Together Support a Sanction of Disbarment for Mr. Salomon's Conduct

The Committee found numerous aggravating factors all supported by the evidence before it. [PCC 53, p. 10.] First, Mr. Salomon acted with a dishonest and/or selfish motive when he made misrepresentations to North Idaho Title regarding the September 4, 2013 injunction and when he disbursed the proceeds from the sale of the Idaho property to parties other than HPC without informing HPC or seeking their assent. He retained approximately $12,200 in legal fees for himself as a result of the transaction. [PCC 53, p. 10.] The Committee further noted:

> The final $3,000, which he obtained for facilitating the re-disbursement of $51,970, is particularly illustrative of his dishonest and selfish motive. Having completed all disbursements from the original transaction, Mr. Salomon agreed to accept money in his escrow account and re-disburse it without undertaking any investigation as to the source of the funds. He received $3,000 for allowing his office to be the 'clearinghouse' for funds. [PCC 53, p. 10.]

Second, Mr. Salomon committed multiple offenses including serious Rule violations (*i.e.* Rule 1.2, 1.15, 3.4 and 8.4(c)). [PCC 53, p. 11.] A third aggravating factor is the vulnerability of the victim. Ms. Deborah Fogg, who was working as a caregiver, and had recently been divorced, was required by her divorce settlement to sell the Fogg property within eighteen months at the time that Mr. Salomon developed his own personal interest in the Fogg property and when he assigned his interest to Pan American, another client. [PCC 53, p. 11.]

A fourth aggravating factor is Mr. Salomon's indifference in making restitution. Mr. Salomon has been found jointly and severally liable for $442,286.90. He has not paid any portion of that judgment. [PCC 53, p. 11.] Instead, Mr. Salomon repeatedly filed for bankruptcy, in which case, no amount of the judgment is likely to be paid back. [PCC 22, Exs. 106-112.]

A fifth aggravating factor is Mr. Salomon's substantial experience in the practice of law. In 2014, when Mr. Salomon was found in contempt of court in Florida, he had been practicing law for over 40 years. [PCC 53, p. 11.]

The Committee also found a sixth aggravating factor noting: "Mr. Salomon has not taken responsibility for his actions. He maintains that they were unintentional or mistakes. The explanations are not credible." [PCC 53, p. 11.]

The seventh aggravating factor is Mr. Salomon's previous disciplinary record which includes three public censures and a six-month suspension. [PCC 53, p. 11.] In *Salomon, Craig N. advs. Lisa Beaudry*, #02-127 (May 24, 2005), Mr. Salomon was disciplined with a public censure for violations of Rules 3.3(d) and 8.4(a) for his failure to include adverse material facts that were known to him when filing a Petition for Ex Parte Attachment in Superior Court. [PCC 44, Ex. S-1.] In *Salomon, Craig N. advs. Bernice C. Billewicz*, #03-072 (September 28, 2007), Mr. Salomon was disciplined with a second public censure for violations of Rule 1.15(a)(1) and Sup. Ct. R. 50(2)(B) and (C) and Rule 8.4(a) for a Failure to Safeguard Client Property. In that matter, Mr. Salomon placed a client's retainer payments directly into his operating account, before he earned the fees, instead of placing the retainer payments into his client trust account. By placing

the funds into his operating account, Mr. Salomon commingled client funds with his own property and failed to safeguard client funds in a clearly designated client trust account. In deciding that a public censure was appropriate, the Committee noted that Mr. Salomon's conduct pre-dated his 2005 Public Censure. [PCC 44, Ex. S-2.] In *Salomon, Craig N. advs. David West*, #05-104 (November 20, 2007), the Committee issued a third public censure to Mr. Salomon for violations of Rules 7.5(d) and 8.4(a) for implying to the public that he was practicing in a partnership or a law firm with two other attorneys when, in fact, he and the other two attorneys had never entered into a law partnership or firm agreement and they did not share profits with each other. The Committee also noted that the conduct in that matter occurred before Mr. Salomon was issued the prior public censures. [PCC 44, Ex. S-3.]

In November 2017, the Supreme Court issued a final order in matter of *Salomon, Craig N. advs. Attorney Discipline Office*, 13-011; *Appeal of Craig N. Salomon*, LD-2016-0018. [PCC 44, Ex. S-4, S-7, S-8]. Mr. Salomon was suspended from the practice of law for six months, effective November 16, 2017. [PCC 44, Ex. S-8]. Although the imposition of the sanction was relatively recent, Mr. Salomon was found in contempt of court in February 2013 and was under investigation by the ADO at the time he committed the Rule

violations in the Florida Matter. [PCC 44, S-4, pp. 2864-2865]. Like the Florida matter, Mr. Salomon failed to comply with a Court order and was found in contempt of Court, in violation of Rule 3.4(c). [PCC 44, S-4, pp. 2845, 2867-2868; PCC 53, p. 11.] Considering both matters together, Mr. Salomon has demonstrated a flagrant disregard for Court orders.

The Committee found only one mitigating factor: that Mr. Salomon had been cooperative during the proceeding and throughout the ADO's investigation. [PCC 53, p. 12.]

Even if the Court were to find, considering the totality of the various Rule violations, that the appropriate baseline sanction is a suspension, the ADO asserts that Mr. Salomon's significant disciplinary and other aggravating factors enumerated above would merit an upward departure to disbarment.

Mr. Salomon asserts that there are other mitigating factors present that should be considered. There is little merit to his arguments, however, which were before both the Panel and the Committee.

For example, Mr. Salomon was specifically found to have a dishonest motive for his actions. Mr. Salomon also asserts that he made a good faith effort at restitution and has made payment of attorney's fees as another penalty or sanction. While this might normally be considered a

mitigating factor, Mr. Salomon has not paid any portion of the substantial judgment that he owes in Florida.

While Mr. Salomon asserts that his past community service and assistance to the New Hampshire Bar should also be considered in mitigation, that service, aside from being extremely remote in time, is simply not a recognized mitigating factor under the *Standards*. Moreover, it is not particularly relevant, given the duties violated here.

Mr. Salomon, in his brief requests a stayed suspension, wherein he would work for an established law firm, with no authority within the law firm and he would agree to retire by July 1, 2020. The ADO opposes such a result and would not agree to devote its resources to monitoring Mr. Salomon through a stayed suspension.

Considering the aggravating factors together and single mitigating factor, a downward departure to a suspension is not appropriate in this matter, particularly in light of the Rule violations present here. Stayed suspensions are meant to serve a rehabilitative purpose. There are no conditions to a stayed suspension that can rehabilitate Mr. Salomon's misconduct. A stayed suspension is also inappropriate in light of Mr. Salomon's significant disciplinary history.

E. A Disbarment is Consistent with New Hampshire Case Law.

New Hampshire case law and prior Committee decisions support the conclusion that a disbarment is the appropriate sanction in this matter. Guidance regarding proportional case law for the Rule violations found in this matter is set forth in the ADO's Memorandum on Sanction and incorporated herein by reference. [PCC 45, pp. 21-28.]

Mr. Salomon's reliance upon *Williams, Finis E., III advs. Attorney Discipline Office*, #12-008 (March 20, 2014) and *In the Matter of Phillip A. Brouillard*, LD-2013-0002 (October 23, 2013) (unpublished) is misplaced. Neither matter involved the scope of the Rule violations present here and neither respondent had as significant a disciplinary history and other aggravating factors as Mr. Salomon.

A disbarment is consistent with New Hampshire case law and prior Committee decisions for the numerous and serious Rule violations present here. Taking into consideration the four-part analysis recommended by the *Standards* and the purposes of attorney discipline in New Hampshire, the Hearing Panel's recommendation and the Committee's order that Mr. Salomon be disbarred is appropriate. The ADO requests that the Supreme Court affirm the Committee's reasoning and disbar Mr. Salomon.

CONCLUSION

In light of the foregoing, there is clear and convincing evidence of violations of Rules 1.2, 1.4, 1.7, 1.15, 3.1, 3.4, 4.1, 8.4(c), and 8.4(a). The imposition of a disbarment is overwhelmingly supported by the record. Such a sanction is in accord with both the *Standards* and the purposes of attorney discipline as described by this Court. The ADO respectfully requests that Mr. Salomon be disbarred.

REQUEST FOR ORAL ARGUMENT

The Attorney Discipline Office requests the opportunity for oral argument, through undersigned counsel, before the full Court. Undersigned counsel requests that this matter be scheduled before the Court on an expedited basis given the seriousness of these allegations. Additionally, undersigned counsel anticipates beginning maternity leave in January 2019 and respectfully requests that this matter be scheduled prior to December 14, 2018. Assent has been requested but not yet received from opposing counsel. Opposing counsel has indicated his availability for oral argument begins after November 16, 2018.

CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

I hereby certify that the within brief complies with Sup. Ct. R. 26(7) and contains 9,461 words, excluding the cover page, table of contents, table of authorities, statutes, rules, and appendix.

Respectfully submitted,
New Hampshire Supreme Court
Attorney Discipline Office

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CERTIFICATION

I, Elizabeth M. Murphy, as Assistant Disciplinary Counsel for the Attorney Discipline Office, certify that a copy of the aforesaid Brief of the Attorney Discipline Office is being served on this 10th day of October 2018, upon Russell F Hilliard, Esq., counsel for Craig N. Salomon, and to David M. Rothstein, Esq., Chair of the Professional Conduct Committee via the court's e-filing service.

By: /s/ Elizabeth M. Murphy
Elizabeth M. Murphy
Assistant Disciplinary Counsel