STATE OF NEW HAMPSHIRE

SUPREME COURT

LD-2018-0007

In the Matter of Craig N. Salomon, Esq.

Brief of Craig N. Salomon, Esq.

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QUESTIONS PRESENTED FOR REVIEW

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- Whether the record contains sufficient evidence to support a finding, by clear and convincing evidence, of a violation of Rules 3.1 and 4.1, given Attorney Salomon's immediate discontinuance of the foreclosure action upon being advised by Mr. Fogg's attorney of the lack of a future advances clause, as well as his agreement to pay fees incurred by Mr. Fogg.
- Whether the record contains sufficient evidence to support a finding, by clear and convincing evidence, of a violation of Rule 8.4(c), given the deficiency of the evidence with respect to Rule 4.1.[1]

With respect to the Florida matter (PCC Docket #14-039):

- Whether the record contains sufficient evidence to support a finding, by clear and convincing evidence, of a violation of Rules 1.2, 1.4,

[1] These issues were preserved for review by Attorney Salomon's answer (Index No. 3), prehearing memorandum (Index No. 24), and post hearing memorandum (Index No 41).

and 3.4, given that the Florida federal district court injunction did not enjoin Attorney Salomon or Blackport, Attorney Salomon did not practice law in Florida (or Idaho) and did not at any time claim otherwise, and he took actions seeking clarification or confirmation prior to the Idaho closing.

- Whether the record contains sufficient evidence to support a finding, by clear and convincing evidence, of a violation of Rule 1.15, given the assurance Attorney Salomon received that the disbursements were for valid claims against the seller, the absence of any title insurance claim by the seller, and the undisputed fact that Attorney Salomon's client was Blackport, not the parent HPC.
- Whether the record contains sufficient evidence to support a finding, by clear and convincing evidence, of a violation of Rule 8.4(c), given the deficiency of the evidence with respect to Rules 1.2, 1.4, 3.4, and 1.15.[2]

In addition to the foregoing legal and factual issues, and as this Court is the final arbiter with respect to discipline, Attorney Salomon requests that the issue of the appropriate sanction be reviewed as well.[3]

[2] These issues were preserved for review by Attorney Salomon's answer (Index No. 3), prehearing memorandum (Index No. 24), and post hearing memorandum (Index No. 41).

[3] This issue was preserved for review by Attorney Salomon's answer (Index No. 3) and sanctions memorandum (Index No. 46).

STATEMENT OF THE CASE

This appeal arises out of two unrelated, but consolidated matters charged by the Attorney Discipline Office against Attorney Craig N. Salomon. In his answer (Index No. 3) and hearing testimony (Index Nos. 38 & 39), Attorney Salomon explained what he did, and why, in connection with the matters leading to the charges, and denied violating any of the Rules of Professional Conduct.

Following a multi-day evidentiary hearing before a Hearing Panel, the Panel concluded that he did violate certain of the rules alleged in the Notice of Charges, and following a Hearing on Sanctions, recommended that he be disbarred. The Professional Conduct Committee concurred.

Attorney Salomon has appealed to this Court, challenging the sufficiency of the evidence, on a clear and convincing standard, to support the rule violations, and also seeking review of the ultimate sanction sought by the Professional Conduct Committee.

STATEMENT OF FACTS

This appeal arises from two unrelated matters. Docket No. 14-037 began with a grievance filed by Irving Haase, the assignee of two promissory notes (one made by Attorney Salomon) and a mortgage. Docket No. 14-039 began with a grievance filed by a Florida law firm regarding a real estate transaction in Idaho, in which Attorney Salomon represented the manager of the selling entity. The following is a brief summary of the Hearing Panel report (Index No. 50). Additional relevant facts are included in the argument where material.

Haase Matter (Docket No. 14-037)

Attorney Salomon's client giving rise to this matter was Deborah Fogg, in a divorce case. The notice of charges alleged violations of the conflict of interest provisions, Rules 1.7 (concurrent) and 1.9 (former); the Hearing Panel found a violation of Rule 1.7, but not 1.9. During his representation of Ms. Fogg, he did work for another client, Pan American, in seeking to develop the property owned by Ms. Fogg and on which he and by assignment, Pan American, held a mortgage that secured payment of his fees. The Hearing Panel determined that there was a "significant risk" of Attorney Salomon being "materially limited" in his responsibilities to either Ms. Fogg or Pan American, and thus he violated Rule 1.7. In his testimony, Attorney Salomon explained why he did not believe this to be the case.

The violations of Rules 3.1 and 4.1 arose out of Attorney Salomon's effort to foreclose the mortgage against Ms. Fogg's ex-husband, George Fogg. As he testified, the amount of the claim was incorrectly stated as

approximately $48,000, rather than $12,000. The number was based upon Attorney Salomon's belief, as explained in his testimony, that the mortgage included a "future advances" clause[4] and therefore secured two notes; in fact, it did not. As soon as he learned of this error, he corrected it, and took other appropriate remedial measures.

Florida Matter (Docket No. 14-039)

This matter was originally the subject of a hearing before retired Supreme Court Justice Duggan, upon the ADO's request for an immediate interim suspension. Justice Duggan denied the request. In very brief summary, the Hearing Panel found that Attorney Salomon failed to comply with an injunction issued by a Florida federal district court, and facilitated the closing on the sale of a property in Idaho that was found to be within the scope of the injunction. As with the Haase matter, Attorney Salomon explained in his testimony what he understood the circumstances to be, and why he undertook the actions he did in relation to the closing.

[4] RSA 479:5 Present Agreement: "A mortgage or deed of trust which purports to be given in whole or in part as security for notes or bonds thereafter to be issued or other expectant future obligations and which states the nature of the obligations designed to be secured by it, the amount thereof presently to be issued, if any, and the limitations, if any, contained in the mortgage or deed of trust or in a contract referred to in the mortgage or deed of trust with respect to the total or maximum amount thereof ultimately to be issued shall become a lawful security for the same as, when and to the extent that they shall actually be issued or come into existence as valid obligations of the mortgagor."

SUMMARY OF ARGUMENT

The professional conduct rule violations found by the Hearing Panel, and adopted by the Professional Conduct Committee, in both of the unrelated, but consolidated cases, arose out of complex, multi-party litigation and transactional circumstances in which Attorney Salomon, as explained in his detailed answer and hearing testimony, attempted to avoid conflicts, and still carry out the matters he was handling.

This brief explains, in each instance, what Attorney Salomon did, why he did it, and why he did not believe he was engaging in any professional misconduct.

Finally, to the extent any rule violations are confirmed by this Court, Attorney Salomon submits that the sanction of disbarment is disproportional to the circumstances presented, and unnecessary to meet the goals of the attorney discipline system.

ARGUMENT

I. There is no clear and convincing evidence[5] that Attorney Salomon violated the Rules of Professional Conduct in his actions related to the Haase matter.

This docket began with a grievance filed by Irving Haase in March of 2014, after sending a series of otherwise unidentified documents to the Attorney Discipline Office the prior month.[6] The bottom line of the Haase grievance was that he had not been paid in full for obligations owed to him by a third party, the collateral for which included an assignment of a mortgage and promissory note given to that third party by Attorney Salomon.

Shortly before the filing of the grievance, Mr. Haase and Attorney Salomon attempted to arrive at an agreement regarding payment, but never

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[5] Rule 37(4)(c)(3); *see* New Hampshire Civil Jury Instruction 5.2, Clear and Convincing Evidence:

"Clear and convincing evidence is an intermediate standard of proof which calls for more proof than that based on probabilities but less proof than that based on beyond a reasonable doubt.

"Clear and convincing evidence is defined as that evidence which establishes a factual conclusion to be highly probable, rather than merely more probable than not. It requires that the party having the burden of proof place in the trier of fact an abiding conviction that the truth of his/her factual contentions are highly probable; otherwise he/she has failed to prove it and is not entitled to relief."

[6] In particular, one of the documents is Exhibit 52, a payoff calculation; this was neither prepared nor seen by Attorney Salomon prior to the filing of the grievance. This is material in connection with the genuineness of his belief that the mortgage had a future advances clause.

did. And then, several months after its filing, Mr. Haase was paid approximately $60,000 from the disposition of other collateral he held (Exhibit 123), and had not, more than three years later, sought to collect from Attorney Salomon.[7] Mr. Haase's grievance, although it initiated this matter, did not find its way into the violations alleged in the notice of charges (Index No. 2).[8]

The Hearing Panel determined that Attorney Salomon violated Rule 1.7, regarding concurrent conflicts of interest, in his actions regarding the property and its potential development. He respectfully submits that, given the circumstances, his actions were all to the mutual benefit of Ms. Fogg and Pan American, and were not at all inconsistent with his own desire that the matter work out well financially.

In summary, Attorney Salomon received a mortgage from Deborah Fogg for the fees owed in connection with his representation of her in a divorce proceeding (Exhibit 32). Their initial plan included the receipt of funds from Pan American sufficient to buy out George Fogg's first mortgage. Testimony of Attorney Salomon, Transcript, Day 2, at 128-47.

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[7] Indeed, in response to questions from one of the Hearing Panel members regarding Mr. Haase's consideration of the financial circumstances outlined by Attorney Salomon in an email (Exhibit 116), he indicated that he did not believe or care about such protestations. In view of this attitude, it is a fair inference that the payment Mr. Haase received in June of 2014 fully satisfied any indebtedness in connection with the collateral he had received.

[8] Except in connection with the foreclosure proceeding against George Fogg that was promptly discontinued in January of 2014, and for which Attorney Salomon did not charge Mr. Haase, Attorney Mary Ganz represented Mr. Haase in connection with these proceedings. Her testimony about Attorney Salomon's experience and expertise in real estate related matters is significant, particularly in evaluating his testimony regarding his efforts to enhance the development potential of the Fogg property to the mutual benefit of Ms. Fogg and Pan American. Testimony of Attorney Ganz, Transcript, Day 1, at 81-83.

As Attorney Salomon testified, and as is corroborated by the signed, but unrecorded mortgage from Ms. Fogg to Pan American (Exhibit 38), the plan changed when Mr. Fogg declined to take any discount for his mortgage. Attorney Salomon then gave a promissory note to Pan American for the funds, and proceeded with the development work he detailed in his testimony, Testimony of Attorney Salomon, Transcript, Day 2, at 128-47, including attendance at a planning board meeting for a preliminary review regarding potential road and utility construction, conferring with professionals on wetlands issues, registry and library research regarding title to a four acre parcel on which the Foggs were being taxed but for which they had no deed, and introduction of prospective purchasers.[9]

Attorney Salomon commenced the mortgage foreclosure in late 2013 after learning that Ms. Fogg had transferred the property to her ex-husband, George Fogg, believing that the mortgage included a future advances clause, [10] and thus secured not only the $12,000 in divorce fees, but also the $22,350 advanced to him in connection with the development effort. His belief in this regard was immediately challenged by Mr. Fogg's attorney, leading to a rapid correction and rectification. Attorney Salomon discontinued the foreclosure proceeding, and reimbursed Mr. Fogg for $1,500 in attorneys' fees he incurred (Exhibit 117).

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[9] The affidavit submitted by Ms. Fogg in connection with the petition to enjoin the foreclosure (Exhibit 101) was materially inaccurate, particularly with respect to payments made and owed to Attorney Salomon, and the chronology of events post-divorce. Testimony of Debra Fogg, Transcript, Day 1, at 46-58,

[10] The Hearing Panel at 8 did not credit his testimony regarding this, but the documentary evidence confirmed his thinking, and, given the clear and convincing standard, this conclusion is not sustainable. Testimony of Attorney Salomon, Transcript, Day 2, at 111-15, 169-70; Exhibits 70, 82, and 94.

With respect to the alleged violations of Rules 3.1 (non-meritorious claims) and 4.1 (false statements), Attorney Salomon was proceeding, as he has set forth consistently throughout, that he understood the mortgage to include a future advances clause, and thus embraced the advance from Pan American. This was the "good faith" basis for the initiation of the proceeding, as well as for the alleged misstatements, none of which, he testified, were made knowingly. Testimony of Attorney Salomon, Transcript, Day 2, at 111-15.

II. There is no clear and convincing evidence that Attorney Salomon violated the Rules of Professional Conduct in his actions related to the Florida matter.

A Florida law firm filed this grievance on behalf of HPC US Fund I, LP[11] with respect to Attorney Salomon's involvement in an Idaho real estate transaction.

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[11] HPC US Fund I, LP and HPC US Fund II, LP are holding companies of German-based investment vehicles that own real estate throughout the United States. HPC US Fund I, LP is a limited partnership of which the general partner is HPC Fund Management, LLC. The manager of HPC Fund Management, LLC is HPC Management, LLC. At the relevant times, the manager of HPC Management, LLC was Blackport Investment Group, LLC, of which Dale Wood was the manager. Testimony of Michael Pirgmann, Transcript, Day 2, at 23.

This witness also alleged, in an answer to a question from Disciplinary Counsel at the hearing, that Attorney Salomon had misappropriated $500,000 that had been placed in his trust account by the witness in connection with a construction project. There was no such allegation by the Attorney Discipline Office, and this highly prejudicial testimony simply was not true. Although the Hearing Panel ultimately struck the testimony, it refused to permit Attorney Salomon to respond to it, and a taint remained throughout the proceeding. Testimony of Michael Pirgmann, Transcript, Day 2, at 11-12, 29-32, and 35-48.

Attorney Salomon had done work for Blackport Investment Group, LLC, an entity created by HPC to manage its holdings in the United States; Dale Wood was the manager of Blackport. His work generally involved efforts to resolve title issues on these properties, including ones in North Carolina and Wisconsin. He never held himself out as being licensed anywhere outside of New Hampshire, and in particular with respect to the Idaho transaction, he did not prepare the purchase and sale agreement, deeds, or any closing documents. Testimony of Attorney Salomon, Transcript, Day 3, at 71.

Attorney Salomon's contact point with respect to the Idaho transaction was George Kalogeropoulos, a representative of Blackport, and the broker of record for the transaction.[12] As the closing approached, he twice advised the title company in Idaho that there was an issue regarding Mr. Wood's authority to sign for Blackport. The order did not specifically name Blackport Investment Group, LLC as one of the parties enjoined, but did so designate Mr. Wood (Exhibit 139). He advised that they should not record the documents until it was resolved (Exhibit 40).

As reflected in the emails in November 2013, Mr. Wood advised Attorney Salomon that he had conferred with Florida counsel, and that the documents could be released for recording.[13] Attorney Salomon conveyed

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[12] HPC confirmed in its testimony that Mr. Kalogeropoulos was authorized to manage and market the properties. Transcript, Day 1, at 188-89 (Testimony of Richard Petrovich).

[13] The Hearing Panel at 4 did not credit Attorney Salomon's reliance on this advice from Mr. Wood, but again, given the clear and convincing evidence standard, and the documentary trail, this conclusion is not sustainable.

this information to the Idaho title company, but did not provide any advice or opinion regarding it (Exhibits 41-43).

The closing went forward, the funds were wired to his trust account, and he made disbursements to various entities in accordance with instructions received from, and confirmed by, Blackport (Exhibits 46-47).

While Attorney Salomon was certainly aware of the ongoing litigation in Florida, there remained issues as to whether (1) there had been an effective removal of Dale Wood as manager of Blackport, and (2) whether Blackport was within the ambit of the preliminary injunction that had been entered there. Attorney Salomon was not aware of an attempt to remove Blackport as manager at any time prior to the closing and disbursements.[14] Testimony of Attorney Salomon, Transcript, Day 3, at 67, 76, and 144.

Attorney Salomon cooperated in the Florida litigation, first by providing his file once there was an appropriate waiver of any attorney-client privilege (Exhibit 83), and then voluntarily sitting for his deposition here in New Hampshire (Exhibit 90). He did not have sufficient funds to engage counsel in Florida or otherwise defend the proceeding, and a judgment was entered against him there without any hearing on the merits at which he appeared. Testimony of Attorney Salomon, Transcript, Day 2, at 99-100. The order in the Florida proceeding is not binding on this Court

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[14] In fact, as Attorney Salomon testified at the hearing, Transcript, Day 3, at 41, his first knowledge of this came from the testimony of HPC representatives at the panel hearing. Testimony of Richard Petrovich, Transcript, Day 1, at 175; *cf.* Testimony of Richard Petrovich, Transcript, Day 1, at 196-97 (attempts to record a notice that Dale Wood could not sign for Blackport).

as to its conclusions regarding Attorney Salomon's conduct, and how and why it occurred (Exhibit 105).

With respect to the rule violations alleged in this docket, Attorney Salomon's answer to the notice of charges (Index No. 3), and his testimony (Index Nos. 38 & 39), address each:

- Rule 1.2, Attorney Salomon understood there to be a dispute regarding Wood's authority to act for Blackport, but he proceeded in accordance with instructions received from Blackport's representative. He did not counsel anyone to engage in fraud.
- Rule 1.4, Attorney Salomon was relying on others as to moving forward with the Idaho transaction, and disbursing after the closing, as opposed to failing to communicate with his client.
- Rule 1.15, as noted above, Attorney Salomon proceeded in accordance with instructions received from, and confirmed by, individuals known to and understood by him to be representatives of Blackport.[15]
- Rule 3.2, regarding expediting litigation, Attorney Salomon was not representing anyone in the litigation, except himself, and he cooperated in this litigation to the extent of his ability.

[15] Notwithstanding the assertion that this distribution of the funds was not authorized, HPC never made any claim against the buyer to access its title insurance with respect to the Idaho property. *See* Petrovich Testimony, Transcript, Day 2, at 210. This is significant because it would have had a source of recovery for the allegedly lost funds if it had done so. *See* Salomon Testimony, Transcript, Day 3, at 88.

- Rule 3.4(c), and as noted above, Attorney Salomon was aware of an issue regarding the removal of Dale Wood as manager of Blackport, but had no information to suggest that the preliminary injunction applied to Blackport. Notwithstanding his cooperation, his failure to appear was a result of inability to fund the litigation, or travel to Florida.[16]
- Rule 8.4(c), and as noted several times above, his conduct was based upon his knowledge of the litigation, the issues regarding removal and scope of the injunction, and confirmation received, on advice of other counsel, with respect to Wood's authority to sign the documents and proceed with the closing. While some of these understandings may, in retrospect, have been mistaken, they were not a product of his dishonesty, fraud, deceit, or misrepresentation. Testimony of Attorney Salomon, Transcript, Day 3, at 109-10.

III. Sanction.

"[W]e retain ultimate authority to determine whether, on the facts found, a violation of the rules governing attorney conduct has occurred and, if so, the appropriate sanction." *Coddington's Case,* 155 N.H. 66, 68, 917 A.2d 1284 (2007) (quotation omitted). In exercising this authority, we remain "mindful that the purpose of attorney discipline is not to inflict punishment, but rather to protect

[16] As noted by Justice Duggan in his report and recommendation to the Supreme Court regarding the ADO's petition for interim suspension, the finding of contempt by the federal district court in Florida is not conclusive with respect to the alleged rule violations here. *See* Exhibit 105 at 1765-66.

> the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future." *Id.* (quotation omitted). Accordingly, each attorney discipline case is judged upon "its own facts and circumstances, taking into account the severity of the misconduct and any mitigating circumstances appearing in the record." *Id.* Ultimately, the attorney's behavior, and not just the number of rules broken, is determinative of the gravity of the unprofessional conduct. *Id.*
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> *Grew's Case*, 156 N.H. 361, 365 (2007).

The Professional Conduct Committee has requested that this Court disbar Attorney Salomon. Recognizing its ultimate authority in this regard, and without prejudice to the foregoing arguments as to the sufficiency of the evidence to support the findings of rule violations, Attorney Salomon respectfully submits that such a sanction, given all the circumstances of his career and the matters at issue, is unwarranted, and alternative sanctions will sufficiently address the two goals of protection of the public and preservation of integrity of the bar.

Notwithstanding the fact that this Court has yet to formally adopt them, analysis generally begins with the American Bar Association's Standards for Imposing Lawyer Sanctions ("Standards"). The Hearing Panel and Committee determined that the baseline sanction for the violations found was disbarment, and accordingly, this brief proceeds on this basis, without conceding, given all of the circumstances, it is an appropriate starting point.

Mitigating Factors.

Standard 9.32 sets forth a number of mitigating factors that may be considered for purposes of determining the appropriate sanction, many of

which apply in these circumstances, and justify a downward departure from the baseline sanction. They include:

1. Absence of a dishonest motive;
2. Personal and financial issues;
3. Good faith effort to make restitution;
4. Full and free disclosure and cooperation in these proceedings;
5. Significant public service, including participation in Lawyers Caring for Lawyers;
6. Payment of attorneys' fees as another penalty or sanction;
7. Remorse/changed attitude; and
8. Nature of prior offenses, *i.e.*, none involves similar activity, or any egregious misconduct.

Other Factors.

While not enumerated in the Standards, this Court may certainly take into account Attorney Salomon's personal circumstances, *see* Testimony of Attorney Salomon, Transcript, Day 4, at 37-51, and the impact that disbarment would have on him and his solo practice, given his age and its nature. It would likewise be a hardship to his clients that have depended upon him.

Respondent's Background.

The background of this respondent is important to the discernment of an appropriate sanction. In particular, it is described in the transcript of the hearing before the Panel in #13-011, Sanctions Memorandum, Exhibit A, at 11-13 (Index No. 46):

Q. And you're a solo practitioner?

A. Yes.

Q. How long has that been the case, approximately?

A. Well, at least since 2003 and probably a little bit before then.

Q. All right. Have you ever held any public offices or positions?

A. Yes.

Q. Can you tell us what ones?

A. First of all, I guess, I would say that in the late '70s or early '80s, and I'm not clear on the dates, I was a marital master for a little over a year, and at that time, that was a per diem kind of arrangement. And we didn't have any staff to type up orders and that sort of thing and we couldn't sit in our home county, so that got to be pretty much of a strain on the rest of my practice. So I resigned from that, but for those reasons.

When I lived in Hampton, I was on the planning board for several years, chairman during a time of a lot of growth down in Hampton Beach. And I also served on the first-ever conservation commission in Hampton. And Governor Gallen had appointed me to a commission on coastal zone management, and our task was to make recommendations to him and the legislature about coastal environmental issues.

Since I've moved to North Hampton, I served a three-year term on the planning board and a three-year term on the select board and that ended in 2010. And I'm currently not in any official position, although every Wednesday morning, I sit with the shadow cabinet and we figure out what we'd do differently.

Q. Attorney Salomon, you're a recovering alcoholic?

A. Yes.

Q. And how long have you been sober?

A. Twenty-seven years.

Q. And in that regard, I understand you were involved in getting the Lawyers Concerned for Lawyers program started in New Hampshire?

A. Yes.

Q. Can you just tell us a little bit about when that happened and what that is?

A. That happened when I was probably sober five or six years, and a good friend of mine was really struggling with alcohol. He was a lawyer, and a group of us got together and did what's called an intervention. And he went to Hazelton, which is a rehab in Minnesota, and when he came back, we knew that being a lawyer was very important to him, and he would probably be more comfortable going to meetings with lawyers than other meetings. So I got together with an elected official from Rockingham County who was in recovery, a judge who was in recovery, another lawyer, and myself who were familiar with the Massachusetts LCL program, and we initiated that in New Hampshire. Shortly thereafter, we had a lot of other lawyers who came in with us and that since has evolved into a more official, if you will, lawyer assistance program.

Q. So are you still involved in that to any extent?

A. I attend the meetings two or three times a year and usually chair one of those meetings.[17]

We have here a 44 year practitioner, who has now been sober for 29 years, and continues to assist others so afflicted. He has been a sole

[17] Attorney Saturley also described his work as a DOVE volunteer in his testimony before the panel in #13-011, Sanctions Memorandum, Exhibit A at 24 (Index at No. 46).

practitioner for many, many years, with a number of longtime clients.[18]

Nature and Remoteness of Prior Discipline.

While this is certainly a recognized aggravating factor, the nature and remoteness of the prior disciplinary matters is significant, and must be weighed appropriately. Those prior matters occurred more than ten (10) years ago, and involved incomplete statements at an *ex parte* attachment hearing (02-127, *Beaudry*, Rule 3.3(d)), failing to place a retainer in a trust account (03-072, *Billewicz*, Rule 1.15(a)(1)), and a use of a partnership name that was not accurate (05-104, *West*, Rule 7.5(d)).[19] None of the prior misconduct that led to the imposition of discipline bears any similarity to the issues giving rise to this case, a personal and difficult financial situation. In this circumstance, their weight as an aggravating factor is properly diminished.

With respect to the #13-011 matter, it bears noting that it arose out of the respondent's personal life, not in the course of representing a client. While this does not excuse a failure to abide by the court order, it places the matter in a different context than one in which professional responsibilities are compromised.

[18] The respondent's testimony before Justice Duggan in the interim suspension hearing traced some of this same background. *See* Exhibit 105, Transcript at 39-43, Bates Nos. 1687-1691.

[19] These prior matters were discussed by the respondent in his testimony before the panel in #13-011, Sanctions Memorandum, Exhibit A at 25-28 (Index No. 46).

Proportionality.

This Court has noted countless times the fact that, while the Standards provide a framework for analyzing sanctions, the ultimate determination is for this Court. In this sense, New Hampshire maintains its own proportionality for the discipline imposed for various transgressions.

There are two disciplinary matters that deserve consideration in terms of ensuring that any sanction here is proportionate to other decisions. First, in the matter of *Williams, Finis E., III advs. Attorney Discipline Office*, #12-008 (March 20, 2014), this Committee imposed a public censure for violation of Rules 1.15(f, g). There, the attorney failed to safeguard property in violation of his fiduciary duty when he paid himself attorneys' fees from an escrow account on four occasions, and failed to pay fees to another attorney in accordance with a court order. *Id*. at 12. Although not a Rule 3.4(c) matter, the respondent submits that it is sufficiently analogous that the disposition should bear on the appropriate sanction here.

Second, an order of this Court, LD-2013-0002, *In the Matter of Philip A. Brouillard* (October 23, 2013), the attorney violated Rule 3.3 by knowingly making false statements of material fact in two court proceedings, and failing to correct those statements, as well as Rule 8.4(c) by making misrepresentations regarding insurance. The Court did not accept the recommendation of this Committee, a two year suspension, and instead imposed a stay of the suspension for two years subject to certain conditions. While obviously involving misconduct in a different context, its severity, and the resulting stay of suspension, is likewise instructive here.

Proposed Sanction.

If this Court determines that rule violations did occur, given the circumstances of this case and this attorney, Attorney Solomon respectfully proposes the following sanction that addresses the concerns of the attorney discipline process:

- Stay these proceedings until July 1, 2020
- Work only under the oversight of an existing law firm
- Take at least 2 DOVE cases a year
- Not hold or be responsible for any client funds
- Pay the costs of the ADO proceedings
- Retire on or before July 1, 2020, and then terminate proceedings
- Agree not to apply for readmission here, or admission elsewhere

As of the filing of this brief, Attorney Solomon has completed the six-month suspension imposed in Docket No. LD-2016-0018, and has taken the MPRE on August 11, 2018; assuming he has passed it, he would apply for reinstatement pursuant to Rule 37(14)(a).[20]

[20] There is another pending matter before the Professional Conduct Committee involving Attorney Salomon, Docket No. 16–034. On April 10, 2018, the Attorney Discipline Office and Attorney Salomon entered into a stipulation of facts and rule violations, and a sanctions hearing was held on May 21, 2018. The Hearings Panel recommended disbarment in a report filed on August 14, 2018, and as of the filing of this brief, the matter is awaiting hearing and review by the Professional Conduct Committee.

CONCLUSION

Rule Violations

These consolidated proceedings reflect two complicated series of facts, but the focus in all events should be on Attorney Salomon's knowledge, and his actions based on this knowledge. He has explained in his testimony what he did, and why he did it, and has been subjected to lengthy cross examination, without wavering in the consistent position he has outlined since the beginning of these grievances.

While the rest of us may find the context of these matters unfamiliar, the nature of his practice and personal financial circumstances create real situations that he navigates, consistently with the applicable ethical standards. On careful consideration of all the evidence, there is no clear and convincing evidence of any rule violations.

Sanction

In the event rule violations are sustained, Attorney Salomon respectfully requests that the Court decline the Committee's request for disbarment, and impose a lesser sanction consistent with the goals of attorney discipline.

REQUEST FOR ORAL ARGUMENT

Craig N. Salomon, Esq. requests the opportunity for oral argument, through his undersigned counsel, before the full Court.

CERTIFICATION OF COMPLIANCE WITH WORD LIMIT

I hereby certify that the within brief complies with Sup. Ct. R. 26 (7) and contains 5,494 words, excluding the cover page, table of contents, table of authorities, statutes, rules, and appendix.

Respectfully submitted,

Craig N. Salomon,

By his counsel,

UPTON & HATFIELD, LLP

Date: September 7, 2018 By: /s/ Russell F. Hilliard

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was this day forwarded to Elizabeth M. Murphy, Esq., Assistant Disciplinary Counsel and David M. Rothstein, Esq., Chair, Professional Conduct Committee.

_/s/ Russell F. Hilliard_____
Russell F. Hilliard

New Hampshire Supreme Court

Professional Conduct Committee

a committee of the attorney discipline system

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Salomon, Craig N. advs. Attorney Discipline Office, #14-037
Salomon, Craig N. advs. Attorney Discipline Office, #14-039

RECOMMENDATION: DISBARMENT AND ORDER ON COSTS

On April 9, 2018, the Professional Conduct Committee (the "Committee") held Oral Argument in the above matters. Present were David M. Rothstein, Chair, Elaine Holden, Vice Chair, Ronald K. Ace, Kathleen M. Ames, Caroline K. Leonard, Mona T. Movafaghi, Edward D. Philpot, Jr., Margaret R. Kerouac and Georges J. Roy. Peter G. Beeson, Heather E. Krans, and Martha Van Oot were not present and did not participate in the decision of this case.

Following deliberation, which included each members' consideration of the entire record, the Committee voted to affirm the Hearing Panel's finding of multiple violations of the Rules of Professional Conduct. In Matter # 14-037 (the "Haase Matter") the Committee found violations of Rules 1.7, 3.1, 4.1, and 8.4(a) by clear and convincing evidence. In Matter # 14-039 (the "Florida Matter") the Committee found violations of Rules 1.2, 1.4, 1.15, 3.4, 8.4(a), and 8.4(c) by clear and convincing evidence. The Committee voted to impose the sanction of disbarment.

I. FINDINGS OF FACT

Haase Matter - #14-037

The Attorney Discipline Office ("ADO") received two complaints regarding Craig N. Salomon. The first was from Irving Haase in February 2014. Mr. Haase is the managing member of Heirs, LLC, a Florida-based company. He alleged that Mr. Salomon had sold him a "bogus" mortgage. This complaint led to an investigation of Mr. Salomon's representation of Deborah Fogg in her divorce from George Fogg. The divorce was finalized in April of 2009.

As part of the divorce agreement, Ms. Fogg was given possession of the marital property in Seabrook. She also agreed that she owed Mr. Fogg $22,350. Mr. Fogg agreed to accept a "first mortgage" for that amount. The agreement provided that the money was payable within eighteen months. Ms. Fogg intended to sell the property and use the proceeds to repay Mr. Fogg.

At the time the divorce was finalized, Ms. Fogg owed Mr. Salomon $12,000 in attorney's fees. Ms. Fogg agreed to grant Mr. Salomon a "second mortgage" on the marital property to guarantee the payment of the fees. Both the first mortgage to Mr. Fogg and the second mortgage to Mr. Salomon were recorded.

After finalizing the divorce agreement, Mr. Salomon contacted Dale Wood, his friend and client, to advise him of the settlement. Mr. Salomon persuaded Mr. Wood's company, Pan American Fund, LLC, to accept assignment of the second mortgage on Ms. Fogg's property in exchange for either the $12,000, on which he would pay interest, or to discount the note to $10,000. They agreed that Pan American would accept assignment of the mortgage in exchange for $12,000 and Mr. Salomon's obligation to pay interest.

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).

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. Mr. Salomon represented that he negotiated with Mr. Fogg's lawyer, Paula DeSaulnier, to buy out Mr. Fogg's interest in Ms. Fogg's property. Mr. Salomon testified that the Pan American Fund advanced him $22,350 to buy out the mortgage. He further testified and documentation supports that he offered to buy out Mr. Fogg, but he never offered the full value of the mortgage. Mr. Fogg, through counsel, declined to accept the discounted offers.

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.

Mr. Salomon's files included the proposed assignment of the $22,350 mortgage from Ms. Fogg to Mr. Salomon. The third page of the document was purportedly signed by Ms. Fogg, but never dated, witnessed or recorded. Ms. Fogg testified 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. 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.

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.

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. Unbeknownst 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.

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 that he had intended to put a future advances clause in the $12,000 mortgage instrument, but had forgotten to do so.

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. Mr. Salomon did not provide the documentation. Formal foreclosure proceedings were instituted in December of 2013.

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.

Florida Matter - #14-039

The second complaint involving Mr. Salomon was received by the ADO in October 2014 from Attorney George Walker of the law firm Tripp Scott in Florida. 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.

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.

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.

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.

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.

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 viewed Blackport as his client. Mr. Wood was Mr. Salomon's contact person.

Mr. Salomon contacted 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 that Mr. Salomon was aware of the preliminary injunction in Florida at the time he received and disbursed the funds from the deposit.

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 e-mail 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.

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 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.

The sale went through and the proceeds were deposited in Mr. Salomon's escrow account. 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. 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." 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.

II. ANALYSIS

Haase Matter - #14-037

Mr. Salomon violated Rules 1.7, 3.1, 4.1, and 8.4(c).

Rule 1.7 – Conflicts of Interest

Rule of Professional Conduct 1.7 states that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: 1) the representation of one client will be directly adverse to another client; or 2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibility to a client, a former client or a third person or by a personal interest of the lawyer."

The evidence supports the Hearing Panel's finding of a violation of Rule 1.7 by clear and convincing evidence. 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 in 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 to 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.

Rule 3.1 – Meritorious Claims and Contentions

Rule of Professional Conduct 3.1 states that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and in fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."

The evidence supports the Hearing Panel's finding of a violation of Rule 3.1 by clear and convincing evidence. Mr. Salomon instituted a foreclosure action against George Fogg on December 19, 2013, based on a demand for a sum of $47,891.13 that he knew had no basis. The Committee finds that 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.

Rule 4.1 – Truthfulness in Statements to Others

Rule of Professional Conduct 4.1 states that "[i]n the course of representing a client, a lawyer shall not knowingly: a) make a false statement of material fact or law to a third person; or b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6."

The evidence supports the Hearing Panel's finding of a violation of Rule 4.1 by clear and convincing evidence. 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. Haase that such a mortgage existed and his representations to Mr. Fogg and Attorney Alfano in issuing the demand for $47,891.13 were false statements of material fact.

Rule 8.4 - Misconduct

The Committee found by clear and convincing evidence that Mr. Salomon violated Rule 8.4(a) for the same reasons underlying the violation of Rule 4.1.

Florida Matter - #14-039

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

Rule 1.2 – Scope of Representation

Rule of Professional Conduct 1.2(b) states that "[a] lawyer shall not counsel a client to engage, or assist a client, in conduct the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequence of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."

The evidence supports the Hearing Panel's finding of a violation of Rule 1.2(b) by clear and convincing evidence. Mr. Salomon knowingly assisted Dale Wood in conduct that was, at a minimum, fraudulent.

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.

Rule 1.4 – Client Communications

The evidence supports the Hearing Panel's finding of a violation of Rule 1.4 by clear and convincing evidence. Mr. Salomon did not consult with his client about any relevant limitation on his conduct. He knew that his client expected assistance not permitted by the Rules of Professional Conduct or other law. *R. Prof. Cond.* 1.4(a)(5). 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 e-mails 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.

Rule 1.15 – Safekeeping Property

The Committee found by clear and convincing evidence that Mr. Salomon violated Rule 1.15. A lawyer receiving funds or other property in which a client or a third person has an interest shall promptly notify the client or third person. *R. Prof. Cond.* 1.15(f). Under Rule 1.15(g), a lawyer must also keep separate property in which two or more persons claim an interest.

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.

Rule 3.2 – Expediting Litigation

The evidence supports the Hearing Panel's finding there is not clear and convincing evidence supporting a violation of Rule 3.2.

Rule 3.4 – Fairness to Opposing Party and Counsel

The evidence supports the Hearing Panel's finding of a violation of Rule 3.4(c) by clear and convincing evidence. Mr. Salomon knowingly disobeyed an obligation

under the rules of a tribunal. He knew of the preliminary injunction, but chose to disobey it. The federal court found Mr. Salomon in contempt.

Rule 5.5 – Unauthorized Practice of Law

The evidence supports the Hearing Panel's finding there is not clear and convincing evidence that Mr. Salomon engaged in the unauthorized practice of law.

Rule 8.4 - Misconduct

Under Rule 8.4(a), it is professional misconduct for a lawyer to violate the Rules of Professional Conduct. In addition, Mr. Salomon violated Rule 8.4(c) because he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. 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 than HPC despite his knowledge that HPC had an interest in the property.

III. SANCTIONS

Having found violations of the Rules of Professional Conduct, the Committee considered the issue of sanction. Case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) (*Standards*) support the sanction of disbarment.

Although the Court has not adopted the *Standards*, it looks to them for guidance. The purpose of the Court's disciplinary power is "protecting the public, maintaining public confidence in the bar, preserving the integrity of the legal profession and preventing similar conduct in the future." *Conner's Case*, 158 N.H. 299, 303 (2009). "The sanction . . . must take into account the severity of the misconduct." *Coffey's Case*, 152 N.H. 503, 513 (2005).

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's Case*, 156 N.H. 613, 621 (2007)); *Standards* Section 3.0. In this case, there are multiple misconduct charges. Therefore, the sanction imposed must at least be consistent with the sanction for the most serious instance of misconduct. *See Morse's Case*, 160 N.H. 538, 547 (2010) (citing *Wyatt's Case*, 159 N.H. 285, 306 (2009)).

The Committee adopted the Hearing Panel's findings that Mr. Salomon violated duties to his clients, the legal system and the public. In the Haase Matter, Mr. Salomon violated his duty of loyalty to his clients when he failed to avoid conflicts of interest. In the Florida Matter, Mr. Salomon violated the duty of diligence that he owed to Mr. Wood when he (1) assisted Mr. Wood in fraudulent conduct by helping him consummate the sale of the Idaho property; and (2) when he failed to advise Mr. Wood of his own professional limitations when advising Mr. Wood, or assisting Mr. Wood in taking any actions which would violate the preliminary injunction and, therefore, the Rules of Professional Conduct. In addition, in the Florida Matter, 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 despite the federal preliminary injunction.

Mr. Salomon also violated duties he owed to the legal system and to the public. Mr. Salomon owed a duty to the legal system to obey court orders when he failed to comply with the preliminary injunction and was found in contempt. Mr. Salomon also violated his duty to the public when he failed to comply with the Florida court order. He violated the duties of candor and honesty with respect to his conduct during the Idaho transaction.

The Committee adopted the Hearing Panel's findings 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. The evidence also supported an inference that Mr. Salomon acted intentionally, that is, with a conscious objective to achieve a result.

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.

Finally, the Committee adopted the Hearing Panel's finding that the baseline sanction in this case is disbarment. *See Standards, §§* 4.11, 4.61, 5.11 and 6.21.

There are numerous aggravating factors. First, Mr. Salomon acted with a dishonest and 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 its assent. He retained approximately $12,200 in legal fees. 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.

Second, Mr. Salomon committed multiple offenses involving serious violations.

A third aggravating factor is the vulnerability of a victim. Ms. Fogg was working as a caregiver, had recently been divorced, and needed to sell the Fogg property within eighteen months to satisfy her marital debt.

A fourth aggravating factor is Mr. Salomon's indifference in making restitution. The Florida district court found Mr. Salomon jointly and severally liable for $442,286.90. He has not paid any portion of that judgment.

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 forty years.

A sixth aggravating factor is that Mr. Salomon has not taken responsibility for his actions. He maintains that they were unintentional or mistakes. The explanations are not credible.

The seventh aggravating factor is Mr. Salomon's previous disciplinary record, which includes three public censures and a six-month suspension.

In *Salomon, Craig N. advs. Lisa Beaudry, #02-127* (May 24, 2005), Mr. Salomon received a public censure for violations of Rules 3.3(d) and 8.4(a) for his failure to include known adverse material facts when filing a petition for an *ex parte* attachment in superior court.

In *Salomon, Craig N. advs. Bernice C. Billewicz, #03-072* (September 28, 2007), Mr. Salomon received a public censure for violations of Rule 1.15(a)(1), Supreme Court Rule 50(2)(B) and (C), and Rule 8.4(a) for failure to safeguard client property. Mr. Salomon placed the client's retainer into his operating account before he earned the fees.

In *Salomon, Craig N. advs. David West, #05104* (November 20, 2007), the Committee issued a public censure to Mr. Salomon for violations of Rules 7.5(d) and 8.4(a) for implying that he was practicing in a partnership or a law firm with two other attorneys, when he and the other attorneys had never entered into a partnership agreement and they did not share profits.

Most recently, the Supreme Court issued a final order in the matter of *Salomon, Craig N. advs. Attorney Discipline Office, 13-011; Appeal of Craig N. Salomon, LD-2016-0018.* Mr. Salomon was suspended from the practice of law for six months, effective November 16, 2017. He failed to comply with a court order and was found in contempt, in violation of Rule 3.4(c).

There is one mitigating factor. Mr. Salomon has been cooperative during this proceeding and throughout the ADO's investigation. Because the aggravating factors clearly outweigh this mitigating factor, there is no basis to depart downward from disbarment.

IV. COSTS

Mr. Salomon shall be responsible for all costs associated with the investigation and prosecution of this matter.

V. CONCLUSION

The Committee recommends that Mr. Salomon be disbarred and be ordered to pay the costs for investigation and prosecution of this matter.

June 4, 2018

David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Russell F. Hilliard, Esquire
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