STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: Carolyn Adams, Esq.
PRB File Nos. 2019-014 & -015

Decision No. 225

A petition of misconduct was served on the Respondent, Carolyn Adams, Esq. When Respondent failed to file a timely answer to the petition, Disciplinary Counsel filed a motion to deem the charges admitted based on Respondent's failure to file an answer. Rule 11(D)(3) of Administrative Order ("A.O.") 9 provides that "[i]n the event the respondent fails to answer within the prescribed time, the charges shall be deemed admitted, unless good cause is shown." After Respondent failed to file any response the Hearing Panel granted the motion and, at Disciplinary Counsel's request, scheduled a hearing to take evidence on the issue of an appropriate sanction.

A sanctions hearing was held on March 13, 2019. Respondent appeared and participated in the hearing. Disciplinary Counsel presented evidence, consisting of two exhibits and testimony by Respondent and by one of the clients that were involved in the underlying events.

Based on the allegations in the petition of misconduct, which have been deemed admitted, and the evidence presented at the hearing on sanctions, the Panel now issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

The Respondent, Carolyn Adams, Esq., was admitted to the practice of law in Vermont in 1991. She maintains a solo practice. She has substantial bankruptcy law expertise.

Respondent represented clients EH and JH in a Chapter 13 bankruptcy proceeding ("the bankruptcy proceeding"). Respondent initiated the proceeding by filing a petition in July 2017.

See Exhibit DC-2. Respondent subsequently failed to appear at hearings in the bankruptcy proceeding on two occasions.

The first failure to appear occurred on May 18, 2018 at a hearing on the opposing party's motion to dismiss EH and JH's Chapter 13 petition. The opposing party's motion asserted multiple grounds for dismissal of the motion. *See* Exhibit DC-2 at 19. Respondent received the hearing notice in April 2018 but failed to open the notice or calendar it. Consequently, she failed to notify her clients that a hearing on the motion had been scheduled for that date. Neither Respondent nor her clients appeared at the hearing on May 18, 2018, and the Bankruptcy Court granted the opposing party's motion to dismiss EH and JH's Chapter 13 petition.

Respondent subsequently filed a motion to vacate the order of dismissal, and the motion to vacate was noticed for a hearing July 20, 2018. The opposing party in the bankruptcy proceeding filed an opposition to the motion, which asserted multiple grounds to deny the motion. *See* Exhibit DC-2 at 026. Respondent received the notice of hearing on the motion to vacate and communicated with her clients before the scheduled hearing. Respondent and the clients planned to meet at the courthouse one hour before the hearing.

On July 20, 2018, EH and JH appeared at the courthouse one hour before the scheduled hearing. Respondent, however, failed to appear for the hearing and failed to contact the Bankruptcy Court, her clients, or opposing counsel before the hearing to indicate that she would not be present. The Bankruptcy Court allowed a brief recess of the hearing so that EH and JH could attempt to contact Respondent by telephone. Their effort to contact Respondent was unsuccessful. Respondent was out of cell phone range at that time and therefore did not receive the phone calls or messages from her clients during the hearing. When EH and JH were unable to contact Respondent by phone, the Bankruptcy Court proceeded with the hearing. EH and JH were allowed to represent themselves in Respondent's absence. *See* Exhibit DC-2 at 032.

On July 24, 2018, the Bankruptcy Court denied EH and JH's motion to vacate the order of dismissal. The Bankruptcy concluded that EH and JH "were unable to offer any legal basis, or factual circumstances, which would warrant vacating the Dismissal Order." Exhibit DC-2 at 032. The failure of Respondent to attend the July 20, 2018 hearing caused EH and JH to experience anxiety and stress.

When she agreed to represent EH and JH in filing a bankruptcy petition, the holder of a mortgage on the home of EH and JH had secured a judgment of foreclosure and certificate of non-redemption and had recently obtained a writ of possession from the Vermont Superior Court. The filing of the Chapter 13 proceeding prevented the mortgage creditor from taking possession of the property while EH and JH attempted to obtain alternative financing to satisfy the debt owed to the mortgage creditor.[1] However, Respondent informed them that it would be difficult to achieve success in the proceeding because they were so far behind in their payments and that they would likely lose their case eventually.

At the hearing on July 20, 2018, EH and JH informed the Bankruptcy Court that they were in the process of attempting to refinance their debt. Although their Chapter 13 petition was dismissed, EH and JH were ultimately successful in refinancing the debt on their home and thereby avoided the loss of their home.

Respondent suffers from periodic bouts of depression and anxiety. She has periodically sought treatment and counseling. She attributes her failure to attend the July 20 court appearance to a bout of depression and anxiety. At the time Respondent believed that her performance as a

[1] A summary explanation of Chapter 13 bankruptcy on the website of the United States Courts includes the following: "A chapter 13 bankruptcy is also called a wage earner's plan. It enables individuals with regular income to develop a plan to repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make installments to creditors over three to five years. *** Chapter 13 offers individuals a number of advantages over liquidation under Chapter 7. Perhaps most significantly, chapter 13 offers individuals an opportunity to save their homes from foreclosure. By filing under this chapter, individuals can stop foreclosure proceedings and may cure delinquent mortgage payments over time." (available at https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics).

lawyer was not at risk. In retrospect, she believes that a bout of depression was the cause of her failure to attend the July 20 court appearance. Respondent maintains that she "was not functioning well that week" and was depressed because her deceased parents' wedding anniversary was on July 20.

Approximately three years ago Respondent began limiting her practice to real estate transactions, probate matters, and Chapter 7 bankruptcy proceedings, with which she has substantial familiarity, in order to reduce the stress that she experiences in connection with contested litigation. Her practice previously included family law. Respondent believes that her current practice is less stressful. Respondent is operating her law practice without any support staff.

When Disciplinary Counsel was investigating the complaint against Respondent, Respondent voluntarily met with Disciplinary Counsel. Respondent attributes her failure to file an Answer in this disciplinary proceeding to mental stress from the filing of the charges against her.

EH and JH paid Respondent to represent them in the bankruptcy proceeding. At the time, Respondent charged $3,000 for representation in a typical Chapter 13 bankruptcy case, consisting of a $2,500 fee to handle the proceeding and $500 for costs. Respondent did not provide services on an hourly basis but rather on a lump sum basis.

JH testified that he believed Respondent was paid in excess of $3,500 for her services in connection with the bankruptcy proceeding, although he testified that he was unsure of precisely how much in excess of that amount. Disciplinary Counsel did not provide any documentation of any payments made to Respondent by EH and JH. Respondent initially indicated that she was unsure how much she was paid but, after hearing JH's testimony, agreed that she would have been paid the typical fee for a Chapter 13 bankruptcy matter – $2,500 – plus some amount for costs associated with the petition. The Panel so finds. The Panel is unable to find by clear and

convincing evidence – the applicable standard of proof – that Respondent received any payment beyond $2,500 for her legal services. Respondent has not offered to refund any portion of EH and JH's payments for Respondent's legal services.

CONCLUSIONS OF LAW

Rule 1.1

Disciplinary Counsel maintains that Respondent's failure to attend the two bankruptcy court hearings violated Rule 1.1 of the Vermont Rules of Professional Conduct. Rule 1.1 provides as follows:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

V.R.Pr.C. 1.1.

The comments to Rule 1.1 observe that "[c]ompetent handling of a particular matter includes . . . use of methods and procedures meeting the standards of competent practitioners [and] includes adequate preparation." V.R.Pr.C. 1.1, Comment 5. Attending scheduled court hearings is a fundamental requirement of competent representation. If a lawyer is not present at a scheduled hearing she cannot represent her client during the hearing. Not surprisingly, other jurisdictions have held that failing to attend scheduled hearings amounts to incompetent representation. *In re Moore*, 494 S.E.2d 804, 807 (S.C. 1997) (respondent's failure to appear at scheduled court hearings violated Rule 1.1); *see also Kentucky Bar Ass'n v. Trumbo*, 17 S.W.3d 856, 856 (Ky. 2000) (respondent violated Rule 1.1 by failing to comply with scheduling orders, resulting in dismissal of client's case).

In this case, Respondent initially failed to attend the May 2018 hearing on the mortgage creditor's motion to dismiss. As a result, no arguments were presented on behalf of Respondent's clients at the hearing. When Respondent failed to attend the second hearing in

July 2018 on the motion to vacate the dismissal order Respondent's clients were left to represent themselves. Both instances amounted to incompetent representation in violation of Rule 1.1.

Rule 1.3

Rule 1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." V.R.Pr.C. 1.3. The comments to the rule observe that "[a] lawyer must . . . act with commitment and dedication to the interests of the client's interests and with zeal in advocacy upon the client's behalf." *Id.*, Comment [1]. Actual prejudice to the client is not a required element of a violation under Rule 1.3. *See, e.g., Attorney Grievance Comm'n v. Davis*, 825 A.2d 430, 448 (Md. Ct. App. 2003) ("no harm, no foul" defense not available under Rule 1.3); *In re Seaworth*, 603 N.W.2d 176, 180 (N.D. 1999) (prejudice not required for Rule 1.3 violation).

Respondent failed to act diligently and promptly in the representation of her clients. Respondent failed to attend a hearing on a motion to dismiss her client's petition and then failed to attend a second hearing on her motion to vacate the dismissal. Moreover, her failure to attend the second hearing occurred despite the fact that she had arranged to meet with her clients at the courthouse before the start of the hearing. Because she was absent, she was unable to advocate for her clients at the hearings. Her conduct indicated a lack of dedication and commitment to her clients' interests. Her failure to attend the hearings violated Rule 1.3. *See, e.g., In re Andres*, 2004 VT 71, ¶ 8, 177 Vt. 511, 857 A.2d 803 (finding violation of Rule 1.3 where respondent failed to attend a scheduled pretrial conference.). The Panel need not decide whether the bankruptcy court would have granted the motion to dismiss in any event. There is no requirement to show prejudice and, thus, no excuse for Respondent's conduct. In sum, Respondent's conduct violated Rule 1.3.

SANCTIONS DETERMINATION

The Vermont Rules of Professional Conduct "are 'intended to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar.'" *In re PRB Docket No. 2006-167*, 2007 VT 50, ¶ 9, 181 Vt. 625, 925 A.2d 1026 (quoting *In re Berk*, 157 Vt. 524, 532, 602 A.2d 946, 950 (1991)). The purpose of sanctions is not "to punish attorneys, but rather to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct." *In re Obregon*, 2016 VT 32, ¶ 19, 201 Vt. 463, 145 A.3d 226 (quoting *In re Hunter*, 167 Vt. 219, 226, 704 A.2d 1154, 1158 (1997)).

Applicability of the ABA Standards for Imposing Lawyer Sanctions

Hearing panels are guided by the ABA Standards when determining appropriate sanctions for violation of the Vermont Rules of Professional Conduct:

> When sanctioning attorney misconduct, we have adopted the *ABA Standards for Imposing Lawyer Discipline* which requires us to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors.

In re Andres, 2004 VT 71, ¶ 14, 177 Vt. 511, 857 A.2d 803.

"Depending on the importance of the duty violated, the level of the attorney's culpability, and the extent of the harm caused, the standards provide a presumptive sanction. *** This presumptive sanction can then be altered depending on the existence of aggravating or mitigating factors." *In re Fink*, 2011 VT 42, ¶ 35, 189 Vt. 470, 22 A.3d 461.

The Duty Violated

The ABA Standards recognize a number of duties that are owed by a lawyer to his or her client. *See Standards for Imposing Lawyer Sanctions* (ABA 1986, amended 1992) (*"ABA Standards"*), Theoretical Framework, at 5. "[T]he standards assume that the most important ethical duties are those obligations which a lawyer owes to *clients*." *Id.* (emphasis in original). Other duties are owed to the general public, the legal system, and the legal profession. *Id.* In

this case, Respondent violated duties owed to her clients under Rule 1.1. and Rule 1.3 – the duty of competence and the duty of diligence, respectively.

Mental State

"The lawyer's mental state may be one of intent, knowledge, or negligence." *ABA Standards*, § 3.0, Commentary, at 27. For purposes of the sanctions inquiry, "[a lawyer's] mental state is [one] of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result." *Id.*, Theoretical Framework, at 6. The mental state of "knowledge" is present "when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct [but] without the conscious objective or purpose to accomplish a particular result." *Id.* The mental state of "negligence" is present "when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *Id.*; *see also id.*, at 19 (definitions of "intent," "knowledge," and "negligence").

The Supreme Court has observed that "[t]he line between negligent acts and acts with knowledge can be fine and difficult to discern . . . ." *In re Fink*, 2011 VT 42, ¶ 38. In addition, the Court has concluded that while a lawyer's constructive knowledge, in contrast to a lawyer's subjective belief, may support a determination that an ethics violation has occurred, "[i]n the context of sanctions . . . knowing conduct does not encompass both knew or should have known." *Id.* ¶ 38. In reaching this conclusion, the Court has reasoned that [i]f the definition [of the term "knowledge"] extended to constructive knowledge, then no misconduct would be negligent because rather than failing to heed a substantial risk we would always assume the lawyer should have known the substantial risk." *Id.* ¶ 41. Thus, "while a lawyer's good faith, but unreasonable, belief that his actions are not misconduct is not a defense to a violation, such an error can be a factor in imposing discipline." *Id.*

The Panel concludes that Respondent's state of mind was that of negligence. Her failure to attend the hearing resulted from a combination of negligent management of her work schedule and personal emotional problems that distracted Respondent from her professional obligations.

Injury and Potential Injury

The ABA Standards consider "the actual or potential injury caused by the lawyer's misconduct." *ABA Standards*, § 3.0(c), at 26. The term "injury" is defined as "harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from 'serious' injury to 'little or no' injury." *Id.*, Definitions, at 9. The term "potential injury" refers to harm that is "reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." *Id.* Under the ABA Standards, "[t]he extent of the injury is defined by the type of duty violated and the extent of actual or potential harm." *Id.* at 6.

The failure of Respondent to attend the two hearings was not necessarily the cause of the dismissal of EH and JH's bankruptcy petition. The first hearing was on the creditor's motion to dismiss and the creditor may have prevailed whether or not Respondent attended the hearing. There were multiple grounds asserted in support of the motion to dismiss. The same can be said of the motion to vacate the dismissal. The motion might have been granted regardless of whether Respondent attended and presented arguments in opposition. Moreover, notwithstanding the dismissal of their bankruptcy petition, EH and JH were able to hold off the mortgage creditor for approximately one year and obtain refinancing of their debt and thereby avoid losing their home. Thus, it is difficult if not impossible to say that the dismissal of the petition was caused by Respondent's conduct.

However, another form of injury resulted to Respondent's clients. At the time of the hearing on the motion to dismiss, a plan had not yet been approved and refinancing had not yet been obtained by EH and JH (although it was eventually obtained). The failure of their lawyer to

attend the July 20 hearing must have caused anxiety and distress to EH and JH given the uncertainty of their situation. Moreover, Respondent's failure to attend the second hearing left the clients alone at the hearing on the motion to vacate the dismissal, as a result of which they were forced to represent themselves while an attorney represented the opposing party. They must have felt at a disadvantage and that must have been stressful. Anxiety to a client has been recognized as a form of harm in attorney disciplinary proceedings. *See, e.g., In re Scholes*, 2012 VT 56, ¶ 3, 192 Vt. 623, 54 A.3d 520 (finding violation of Rule 1.3 due to delay in the prosecution of bankruptcy proceedings and observing that "there does not appear to be any financial injury, but there is the very real anxiety felt by the clients who wanted to move their bankruptcy petitions to conclusion"). In sum, the Panel concludes there was substantial injury to the clients in the form of anxiety and stress.

Presumptive Standard under the ABA Standards

The Panel concludes that Standard 4.43 provides the most pertinent guidance. It provides for a reprimand to be issued "when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client." Respondent failed to act with reasonable diligence and her negligence resulted in injury to her clients. Standard 4.43 has been applied as the presumptive standard under similar circumstances. *See, e.g.*, *In re Andres*, 170 Vt. 599, 601, 749 A.2d 618, 620 (2000) (based on respondent's failure to file a timely appeal); *In re Farrar*, PRB Decision No. 82 (PRB File No. 2005-203) (failure to attend a contempt hearing that resulted in a ruling against his client).

The Panel concludes that the standard for a private admonition (Standard 4.44) is too lenient under the facts presented. It applies when a respondent's negligence results in "little or no actual or potential injury." As discussed above, the injury caused in this case was substantial and therefore merits a more serious sanction.

On the other hand, the Panel concludes that the standard providing for a suspension (Standard 4.42) is too harsh. That standard requires either a mental state of "knowledge" on the part of the lawyer – § 4.42(a) – or a "pattern of misconduct" – § 4.42(b). Respondent's state of mind was that of negligence, not knowledge. And her misconduct, although it involved two failures to attend a hearing, does not seem to be as extensive as the misconduct cited in cases that have relied on the suspension standard. *Cf. In re Hongisto*, 2010 VT 51, ¶¶ 3 & 15, 188 Vt. 553, 998 A.2d 1065 (applying Standard 4.42(a) where respondent took no action on behalf of a client after receiving a retainer and failed to respond to "between forty and fifty phone messages" from client); *In re Blais*, 174 Vt. 628, 631, 817 A.2d 1266, 1270 (2002) (applying the suspension standard in § 4.42 where respondent engaged in "repeated instances of neglect of client matters" in connection with five separate client matters).

In sum, the Panel concludes that the public reprimand standard in § 4.43 is the more appropriate presumptive standard.

Aggravating and Mitigating Factors Analysis

Next, the Panel considers any aggravating and mitigating factors and whether they call for increasing or reducing the presumptive standard of a public reprimand. Under the ABA Standards, aggravating standards are "any considerations, or factors that may justify an increase in the degree of discipline to be imposed." *ABA Standards*, § 9.21, at 50. Mitigating factors are "any considerations or factors that may justify a reduction in the degree of discipline to be imposed." *Id.* § 9.31, at 50-51. Following this analysis, the Panel must decide on the ultimate sanction that will be imposed in this proceeding.

(a) Aggravating Factors

The following aggravating factors under the ABA Standards are present:

§ 9.22(a) (prior disciplinary offenses) – In 2012 Respondent received a prior admonition for violation of Rule 1.3. The misconduct in question occurred between 2009 and

2011. The hearing panel concluded that Respondent had failed to respond to inquiries from a probate court and from an attorney and that she had neglected a client matter over an extended period of time.

§ 9.22(d) (multiple offenses) – Respondent committed multiple violations of the Rules of Professional Conduct. She failed to attend two hearings. Her conduct violated Rule 1.1 and Rule 1.3.

§ 9.22(g) (refusal to acknowledge wrongful nature of conduct) – Although on one hand Respondent apologized at the hearing for her conduct, in other testimony before the Panel she stated that she had informed her clients that "she was not a litigator." Of course, that could not provide an excuse for her failure to attend the hearings. In addition, Respondent seemed to want to qualify the wrongfulness of her conduct by repeatedly arguing that her clients had ultimately obtained refinancing and by blaming her failure to attend the July 20 hearing on a bout of depression. Finally, the Panel notes that Respondent failed to file any written response to the petition of misconduct.[2] The Panel concludes that Respondent has not taken full responsibility for her conduct.

[2] Disciplinary Counsel has argued that Respondent should be deemed to have failed to cooperate in this proceeding, in violation of A.O. 9, Rule 7(D), by failing to file an Answer to the petition. Rule 7(d) recognizes a violation for "[f]ailure to furnish information to or respond to a request from disciplinary counsel, a hearing panel chair, or the Court without reasonable grounds for refusing to do so." It does **not** sanction a failure to file an answer to the petition. The remedy for such a failure is not to find a separate violation, but rather to move to deem the charges admitted, as contemplated by Rule 11(D)(3) and as was done in this case. Moreover, as a factual matter, Disciplinary Counsel fails to address the undisputed fact that Respondent voluntarily met with Disciplinary Counsel prior to the filing of the petition, and there was no evidence presented by Disciplinary Counsel that Respondent failed to cooperate in the investigation. The Panel also notes that while Respondent failed to file an answer, she did attend the sanctions hearing and testified. And, finally, the Panel notes that Disciplinary Counsel did not charge a violation of Rule 7(D) in the petition. Therefore, Disciplinary Counsel should not be allowed to present this argument, either directly or indirectly. For all these reasons, the argument is rejected.

§ 9.22(i) (substantial experience in the practice of law) – At the time of the conduct in question, Respondent had practiced law for more than twenty-five years.[3]

(b) Mitigating Factors

The following mitigating factors under the ABA Standards are present:

§ 9.32(b) (absence of dishonest or selfish motive) – There is no evidence suggesting that Respondent acted on the basis of a dishonest or selfish motive.

§ 9.32(c) (personal or emotional problems) – The Panel accepts Respondent's testimony that she was suffering from depression at the time of the July 20 hearing. Although her emotional problems do not excuse her conduct, they are a mitigating factor.

§ 9.32(l) (remorse) – Respondent apologized to JH at the sanctions hearing and expressed remorse for her failure to attend the two hearings. Because of the expression of

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[3] Disciplinary Counsel has argued that the additional aggravating factor for "vulnerability of victim," § 9.22(h), should apply based on the assertion that "EH and JH were in a dire situation financially and could not afford to retain alternate counsel." Disciplinary Counsel Mem., 3/7/19, at 6. Aside from the lack of clear and convincing evidence on the issue of the clients' financial circumstances, the Panel concludes that this factor is ill-suited to a case such as this one, where a lawyer simply fails to show up for hearings. *Cf. In re Robinson*, 2019 VT 8, ¶ 63 (Respondent engaged in sexual relationship with divorce client, in violation of Rule 1.7's conflict-of-interest provisions; divorce client deemed vulnerable to defendant's conduct because she had "just separated from her husband of sixteen years and had limited financial means."). Disciplinary Counsel has cited no case in support of her position.

The Panel also rejects Disciplinary Counsel's assertion that the aggravating factor of "indifference to making restitution," § 9.22(j), should apply, and her related request under A.O. 9, Rule 8(A)(7), that the Panel order Respondent to reimburse the attorneys' fees that were paid by EH and JH. EH and JH were charged and paid a fixed amount for Respondent's services. It is apparent that Respondent performed a substantial amount of work from the time the petition was filed in July 2017 until the final dismissal in July 2018. *See* Ex. DC-2. Moreover, it appears that the principal goal of the petition – to prevent the mortgage creditor from ousting EH and JH from their home while allowing EH and JH time to secure alternative financing – was achieved. Finally, Disciplinary Counsel has provided no basis on which to apportion the fee. *See In re Kagele*, 72 P.3d 1067, 1076 (Wash. 2003) (declining to order refund of allegedly unearned fees while observing that "[t]he record does not establish the actual services Kagele rendered in each case, nor does it contain an assessment of the reasonable value of the work Kagele performed. *** Furthermore, we cannot uphold the Board's recommendation that Kagele pay restitution to the nine clients for unearned fees"). Disciplinary Counsel has failed to meet her burden of proving that reimbursement is appropriate and, if so, what amount would be appropriate in light of the services rendered.

remorse was not made until the time of the hearing, the Panel assigns relatively little weight to this factor.

§ 9.32(m) (remoteness of prior offense) – The conduct underlying Respondent's prior admonition occurred between 2009 and 2011.

(c) Weighing the Aggravating Mitigating Factors

The aggravating factors and mitigating factors essentially offset each other. The Panel concludes that the presumptive sanction of public reprimand should neither be increased nor decreased based on the aggravating and mitigating factors that are present.

* * *

Having in mind that "[i]n general, meaningful comparisons of attorney sanction cases are difficult as the behavior that leads to sanction varies so widely between cases," *In re Strouse*, 2011 VT 77, ¶ 43, 190 Vt. 170, 34 A.3d 329 (Dooley, J., dissenting), the Panel has considered whether past disciplinary determinations are consistent with the issuance of a public reprimand in this case. The Panel concludes that past disciplinary determinations are consistent. *See, e.g.*, *In re Andres*, 170 Vt. 599, 603, 749 A.2d 618, 622 (2000) (public reprimand issued based on respondent's neglect that resulted in dismissal of client's appeal); *In re Blais*, PRB Decision # 194 (File No. 2015-084) at 11-13 (public reprimand issued for violations of Rule 1.3 where respondent failed to respond to initial discovery requests and a subsequent motion to compel discovery and for sanctions, resulting in a discovery sanction being issued against his client). In both *Andres* and *Blais*, the panels concluded that the respondents' mental state was that of negligence and that a public reprimand was appropriate because respondent's conduct had resulted in significant injury or potential injury to their respective clients. *See also, e.g., In re Farrar*, PRB Decision No. 82 (PRB File No. 2005-203) at 3 (reprimanding respondent for, among other violations, failing to attend a contempt hearing that resulted in a ruling against his

client and observing that the client's "anxiety, stress, and frustration" called for a public reprimand).

In sum, a public reprimand is the appropriate sanction.

Probation Is Also Appropriate In This Case

Although Disciplinary Counsel has not requested the imposition of probation, the Panel concludes that probationary terms and conditions are appropriate. To begin with, the Panel is concerned that Respondent was previously admonished for a violation of Rule 1.3 and has now been found to have violated the same rule. Although the prior conduct occurred some time ago, one would expect Respondent to have taken extra care to avoid another violation. The recurrence of the violation is cause for concern. In addition, it appears from the evidence that the failure to manage Respondent's work/appointments calendar contributed to Respondent's failure to attend the two hearings. The fact that Respondent works as a solo practitioner without support staff makes it imperative that she have a good system in place to keep track of her hearings and appointments. And, finally, Respondent's testimony that she suffers from depression and stress that affects her practice and her inability at the time of the underlying events to recognize and adequately address these problems are of concern to the Panel. *See In re Nawrath*, 170 Vt. 577, 580-583, 749 A.2d 11, 14-17 (2000) (finding that "stress and depression has affected [respondent's] attention span and his work" and requiring respondent, who had resumed receiving counseling, to "keep all appointments with his treating psychologist" and "authorize his treating psychologist to inform the Office of Bar Counsel if he misses any appointments"). The Panel therefore concludes that probation is appropriate in this case.

ORDER

Based on the Findings of Fact and Conclusions of Law, it is hereby ORDERED as follows:

(1) Respondent, Carolyn Adams, Esq., is publicly reprimanded for violation of Rules 1.1 and 1.3;

(2) Respondent is placed on probation for a one-year period of time commencing on the date of issuance of this Order and during the probationary period shall be required to comply with the following conditions:

(a) Within 30 days of the issuance of this Order Respondent shall hire, at her expense, an experienced Vermont licensed attorney, who is knowledgeable and proficient in the management of a small law office and who has been approved by Disciplinary Counsel in advance on that basis, to review Respondent's calendaring system and other methods of keeping track of her hearings and appointments, including the computer system and mobile device(s)being utilized, and to write a report evaluating the system and methods and recommending any changes. A copy of the Panel's decision and Order in this matter shall be provided to the attorney in advance of the review. A copy of the attorney's report and recommendations shall be provided to Disciplinary Counsel within 7 days after its completion. Within 30 days after receiving the report, Respondent shall notify Disciplinary Counsel of any and all steps she has taken to implement any recommendations of the reviewing attorney;

(b) Within 30 days of the issuance of this Order Respondent shall notify Disciplinary Counsel that she has commenced regular counseling sessions, at her expense, with a Vermont-licensed clinical mental health counselor and shall identify the name and business address of the counselor. Commencing 30 days after the issuance of this Order and continuing for a period of twelve consecutive months, Respondent shall

participate in regular counseling sessions, to occur no less than once every 30 days. Prior to commencing the counseling sessions, Respondent shall provide to the counselor a copy of the Panel's decision and Order in this matter. In addition, upon commencement of the counseling sessions, Respondent shall authorize her counselor to inform Disciplinary Counsel (i) if she misses any appointment; or (ii) if at any time the counselor believes that Respondent's condition adversely affects her ability to practice law;

(c) During the period of probation, Respondent shall promptly respond to requests from Disciplinary Counsel that relate to her compliance, or lack thereof, with the terms of Respondent's probation conditions, as forth in this Order. Disciplinary Counsel shall serve as the probation monitor; and

(d) Respondent's probation shall be terminated upon the filing of an affidavit by Respondent showing compliance with the conditions of this Order and an affidavit by Disciplinary Counsel stating that probation is no longer necessary and summarizing the basis for that conclusion.

Dated: April 24, 2019.

Hearing Panel No. 10

By:_____
Jonathan M. Cohen, Esq., Chair

By:_____
Mary C. Welford, Esq.

By:_____
Kelley Legacy, Public Member