STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

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

**Decision No. 225-A**

On August 2, 2019 Disciplinary Counsel filed a petition of misconduct alleging that Respondent, Carolyn Adams, Esq., violated the conditions of probation that were ordered in PRB Decision No. 225. A hearing was held before the Hearing Panel on November 1, 2019. The Panel finds and concludes that Respondent violated the probation conditions and that suspension is the appropriate sanction.

## FINDINGS OF FACT

### PRB Decision # 225

PRB Decision No. 225, issued April 24, 2019, resulted from the filing of a petition of misconduct alleging two violations of the Vermont Rules of Professional Conduct. When Respondent failed to file a timely answer to the petition, the hearing panel ruled that the charges had been deemed admitted. *See* Administrative Order 9, Rule 11(D)(3) ("In the event the respondent fails to answer within the prescribed time, the charges shall be deemed admitted, unless good cause is shown."). A hearing was then scheduled to take evidence on the issue of an appropriate sanction.

The panel found that Respondent had failed to attend two hearings that had been scheduled in Bankruptcy Court; that Respondent's first failure to attend a hearing resulted in the Bankruptcy Court's dismissal of Respondent's clients' Chapter 13 petition; and that after Respondent filed a motion to vacate the order of dismissal she then failed to attend a hearing that was scheduled by the court on that motion. The panel concluded that Respondent's failure to attend the two hearings amounted to incompetent representation – in violation of Rule 1.1 of the

Vermont Rules of Professional Conduct – and a failure to act with reasonable diligence and promptness on behalf of a client – in violation of Rule 1.3.

Respondent attended the sanctions hearing and testified on her behalf. She attributed her failure to attend the two hearings to a bout of depression and anxiety. She testified that she "was not functioning well that week" and was depressed because her deceased parents' wedding anniversary was on the same day as one of the scheduled bankruptcy hearings. Respondent attributed her failure to file an answer to the petition of misconduct to mental stress from the filing of the charges against her. *See* Decision No. 225, 4/24/19, at 3-4.

After considering the evidence presented at the hearing on the issue of sanctions and evaluating the aggravating and mitigating factors, the panel concluded that a public reprimand should issue along with probationary terms and conditions. The panel explained its decision to require probation as follows:

> To begin with, the Panel is concerned that Respondent was previously admonished [in a prior disciplinary decision] 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.

Decision No. 225, at 15.

The panel placed Respondent on probation for one year and required compliance with the following provisions:

> (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;
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> (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;
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> (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
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> (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.

Decision No. 225 at 16.

**The Violation-Of-Probation Charges**

The current petition of misconduct alleges violations of probation conditions (a) and (b). As was the case with the previous petition of misconduct, Respondent failed to file an answer to the petition within the requisite 20-day period or to request an extension of time, as required by A.O. 9, Rule 11(D)(3). On September 20, 2019, the Panel scheduled a hearing on the petition for November 1, 2019. Subsequently, on October 2, it denied a request by Disciplinary Counsel for a phone conference for the purpose of the Panel "assist[ing] the parties in carrying out a few additional steps which would lead to voluntary dismissal." The Panel indicated that even assuming the parties proposed a resolution of the petition for the Panel's consideration, the Panel would proceed with the scheduled hearing on November 1 in light of the absence of an answer and the length of time that had elapsed from the compliance dates set forth in Decision No. 225.

During the afternoon of October 31 – the day before the November 1 hearing – Respondent sent an email to the PRB's Program Administrator requesting permission to present the testimony of two witnesses by telephone at the hearing scheduled to commence at 9:00 a.m. the following morning.[1] This was the first communication of any type from the Respondent in the proceeding. In the early morning hours of the next day – the day of the hearing – Respondent sent another email to the Program Administrator with attachments consisting of an unsigned answer to the petition of misconduct and two exhibits Respondent intended to offer at the November 1 hearing. The Panel members received this email communication at approximately 8:30 a.m. Respondent did not bring a paper copy of the answer to the hearing.

Respondent participated in the hearing on November 1 and testified. Disciplinary Counsel did not object to the filing of the answer to the petition provided that the answer was signed, but maintained that under Rule 11(D)(3) the charges had already been admitted and that

[1] The hearing notice was issued on September 23, 2019 – more than one month before the hearing.

the admission should not be set aside without a showing of good cause. Because Respondent had not brought a copy of the answer with her to the hearing, she was unable to sign the answer at that time. For that reason, the Panel allowed Respondent until the close of business that day to file a signed copy, and Respondent proceeded to do so.

**Facts Pertinent to Probation Condition (a)**

Respondent did not, prior to expiration of the 30-day deadline in the panel's order, secure Disciplinary Counsel's approval of an attorney to undertake the requisite review of Respondent's calendaring system and of her other methods of keeping track of hearings and appointments. Respondent failed to meet this deadline even after having received email reminders from Disciplinary Counsel on May 13 and May 20. Although Attorney Jeffrey Taylor ultimately agreed to conduct the review, Respondent did not comply with the notification requirement until July 10, 2019 – more than one month after the deadline had passed.

Respondent did advise Disciplinary Counsel in a May 21 email that Attorney Jeffrey Taylor was her "first choice" while also indicating that she had "another name" of a volunteer attorney who might undertake the review. However, she did not follow up that communication with a definitive notification until July 10, 2019.

At Respondent's request, Disciplinary Counsel spoke to Attorney Taylor by telephone on May 24. Attorney Taylor indicated at that time that he had not yet decided whether to undertake the review and that Respondent had not provided him with a copy of the disciplinary decision. Disciplinary Counsel sent Attorney Taylor an on-line link to Decision No. 225 in order to assist him in coming to a decision.[2] As of the first week of June, Disciplinary Counsel had heard

[2] In a subsequent email to Respondent dated July 11, Disciplinary Counsel set forth her understanding of the May 24 conversation and indicated that she had provided Attorney Taylor with access to the decision following the conversation. Attorney Taylor testified before the Panel that he believed he agreed to assist Respondent in late April or early May and that Respondent had provided him with a copy of the order at some point. If that was the case, Attorney Taylor would presumably have informed Disciplinary Counsel of these facts when they spoke by telephone on May 24. Neither Respondent nor Attorney Taylor provided any notes or email communications to substantiate this testimony by Attorney Taylor. An email

nothing further from either Attorney Taylor or Respondent. As a result, Disciplinary Counsel sent additional emails to Respondent on June 3, June 17, and July 1 indicating that Respondent had not yet identified the attorney she proposed to have undertake the review. There was no response to these emails until July 10.

On July 10, Respondent sent an email to Disciplinary Counsel indicating that Attorney Taylor would be assisting her and that the two of them would be scheduling a meeting in the near future. But, in the absence of confirmation that the meeting had been scheduled, Disciplinary Counsel filed the petition of misconduct on August 1. Two weeks later, on August 14, Respondent notified Disciplinary Counsel by email that that an appointment with Attorney Taylor had been scheduled for August 21. In the same email communication Respondent asserted that she would be unable to file a response to the petition of misconduct because the scheduled appointment with Attorney Taylor was outside the 20-day time period allowed for filing a response.

* * *

Respondent met with Attorney Taylor at his law office on August 22. They had previously conferred about scheduling on July 30 but the meeting was delayed until August 22 because of Attorney Taylor's scheduled two-week vacation in August and other conflicts in his schedule.

Following the meeting, Respondent sent an email to Disciplinary Counsel on August 26 indicating that Attorney Taylor would be submitting a report which she had not yet seen.

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from Attorney Taylor to Respondent dated July 30 indicating that he spoke to "Susan" several weeks ago and told her that "we will help" is vague both as to the relevant time period and the substance of the communication. Because of the vagueness of Attorney Taylor's testimony at the hearing and the absence of any corroborating notes or timely written communication between either Attorney Taylor or Respondent disputing Disciplinary Counsel's July 11 email, the Panel finds Disciplinary Counsel's account to be credible. Moreover, Respondent's attempt to rely on hearsay representations of alleged conversations between her and Attorney Taylor to rebut the July 11 communication are also rejected. The Vermont Rules of Evidence apply in disciplinary proceedings. *See* A.O. 9, Rule 16(B).

Respondent summarized her understanding of three items discussed in the meeting. Respondent reported: (1) that she intended to have notices from the Orange Probate Court sent to Attorney Taylor through May 2020 and had made that arrangement with the probate court; (2) that, although Attorney Taylor had recommended that she not take any Chapter 13 cases, she "want[ed] to keep the option open" and had filed one Chapter 7 case in August and had two others near completion; and (3) that Attorney Taylor had recommended that she "deactivate" with the courts an old email address and that she would proceed to do that. Disciplinary Counsel replied, asking Respondent to file an answer to the petition stating how Respondent had complied with the conditions and indicated that if she submitted a "signed, sworn pleading in a manner I can easily verify as accurate, I will certainly dismiss the petition."

Attorney Taylor issued a letter report to Disciplinary Counsel dated September 4. The letter confirmed that he had met with Respondent and indicated that he had made the following recommendations: (1) that "she might want to discontinue accepting clients with complex Chapter 13 filings during the probationary period [because the subject PRB complaint arose out of a Chapter 13 filing]"; (2) that due to problems Attorney Taylor had experienced receiving notices from the probate court in cases with clients who wanted to handle the initial court filing, she should "refuse [probate] cases unless she was specifically hired pursuant to her engagement letter to handle the entire court proceeding"; and (3) that she arrange with the register of the Orange Probate Court and any other probate court in which she might practice to have the court send a copy of all notices for Respondent during the probationary period" to Attorney Taylor's office so that he could then contact Respondent and "insure that she attends the scheduled hearing." Attorney Taylor also indicated that he would accept responsibility for Respondent's

failure to comply with the probationary condition during the "30-day period ending on June 24, 2019" due to his scheduling issues.[3]

Disciplinary Counsel replied on September 16 that she had reviewed the report and believed it indicated compliance with Condition (a) provided, however, that Respondent needed to change her email address using the Judiciary's online e-Cabinet registration process. Disciplinary Counsel further indicated that upon receiving confirmation of the change she would take steps to dismiss the petition. In mid-October, Respondent sent an email to Attorney Taylor, with a copy to Disciplinary Counsel, indicating that Respondent had changed her address through e-Cabinet and had listed Attorney Taylor's address as an alternative address that would have to be removed after the probationary period. Disciplinary Counsel sent Respondent an email requesting once again that Respondent file a response with the hearing panel and suggesting that "it will vastly improve the potential results for you here."

In connection with his review, Attorney Taylor did not visit Respondent's law office at any point in time. He met with Respondent once at his own office, on August 22. Although he did discuss with Respondent the potential for confusion associated with an older email address used by Respondent and the benefit of "deactivating" that address so that court notices would go to a single email address – while not listing that discussion in his report – Attorney Taylor did not review Respondent's calendaring system. He believes that when they met in his office Respondent stated that she was using an i-phone calendar for her law practice; however, he did not review its operation with her.[4]

[3] The 30-day deadline in Condition (a) expired at the end of May – not June.

[4] Attorney Taylor testified that he did not review the i-phone calendaring operation because he himself did not use an i-phone and therefore did not know how the calendaring worked. Even assuming that was the case, he himself might have questioned Respondent about the manner in which the calendaring system operated and had her demonstrate its operation to him, in which case he might conceivably have made some recommendations. He did not need to be proficient in the use of the i-phone to evaluate how it was used by Respondent and whether it was effective in connection with Respondent's management of her law office.

**Facts Pertinent to Probation Condition (b)**

Respondent commenced counseling sessions in a timely manner and has continued to attend sessions on a regular basis as required by Condition (b). However, she did not notify Disciplinary Counsel before expiration of the 30-day deadline in the panel's order that she had begun counseling; nor did she timely provide the name and address of her counselor. In addition, Respondent did not properly authorize her counselor to inform Disciplinary Counsel if she missed any appointment or if the counselor came to believe that Respondent's condition adversely affected her ability to practice law.

On May 21 Respondent emailed Disciplinary Counsel stating that she had qualified for Medicaid to pay for her counseling and had made an appointment for the following Tuesday with an unidentified licensed therapist. Disciplinary Counsel replied the next day (May 22), stating that "I need you to write a letter to that provider on your letterhead that explains the terms relevant to counseling set out in subsection b . . . and gives the provider a copy of the order. I need a cc of that letter . . . ." Respondent replied that she would do that but "not before Tuesday."

Respondent subsequently participated in a first counseling session with a clinical social worker, A.A., on May 28. She also attended counseling sessions with A.A. in June (twice), July (three times), August (three times), September (twice), and October (once).

In the absence of any response from Respondent to her May 22 email requesting further information, Disciplinary Counsel sent emails to Respondent on June 3 and June 17 reminding Respondent that she needed to comply with the requirements of Condition (b). Respondent did not respond directly to Disciplinary Counsel. Instead, on June 28 she sent an email to A.A. with a copy to Disciplinary Counsel. The email indicated that Respondent had provided to A.A. at her previous session the last 4 pages of the disciplinary decision; that Disciplinary Counsel needed to confirm that A.A. had been hired to provide the services in the order; and further

stated that "[y]ou have explained to me that your obligation of privacy or confidentiality is to me and not to another party. I allow you to answer these limited questions of SK *if you feel it is acceptable from your professional point of view*." (emphasis added).

On July 1, Disciplinary Counsel sent a reply objecting that Respondent had not provided a business address for the counselor, had not provided an entire copy of the decision to the counselor and had not expressly authorized the counselor to report to Disciplinary Counsel. Disciplinary Counsel indicated that Respondent should provide the necessary release to A.A. and deliver all pages of the disciplinary decision to A.A. On July 10 Respondent provided the business address of A.A. but did not confirm that a complete copy of the decision had been delivered to A.A. and did not address the authorization issue.

On August 5, after the filing of the petition of misconduct, Disciplinary Counsel reminded Respondent that she needed to submit proof of compliance with respect to the counseling provision of the order. On August 14, Respondent confirmed that she had provided a full copy of the decision to A.A. but once again did not address the authorization issue.

Respondent was informed by A.A., following A.A.'s review of the probationary provisions of the disciplinary decision, that communicating with a third party was not something A.A. would ordinarily do in her practice. While Respondent was conducting an examination of A.A. during the merits hearing, Respondent stated on the record that she was waiving without qualification her physician-patient privilege so that going forward A.A. could provide the notifications to Disciplinary Counsel that were set forth in Condition (b).

* * *

Respondent is currently practicing law on a part-time basis. Her practice includes probate cases and bankruptcy cases. Respondent estimates that she is practicing law approximately 25% of full-time.

During the merits hearing, Respondent maintained that she had held off filing an answer to the petition because PRB Decision No. 225 and the subsequent probation violation charges had caused her great stress and because she assumed that the Panel would grant Disciplinary Counsel's October 2, 2019 request for a phone conference and that Disciplinary Counsel would ultimately dismiss the petition.[5] She also argued that she could not file an answer until after she had met with Attorney Taylor and after she had changed her email address through e-Cabinet. Respondent further testified that she felt she was being "bullied" by Disciplinary Counsel's emails and by the filing of the petition of misconduct.

Respondent finds the practice of law to be generally stressful. She acknowledges that when she gets stressed by her law practice she at times does not read her work email and needs to "get away." She enjoys the outdoors and traveling and maintains that it helps her to reduce her stress. She further testified that she is "symptom-free" when she is not practicing law.

Respondent believes that the counseling sessions have been "good" in the sense of providing her with a sounding board but that they are otherwise not helping her address her feelings of stress and depression. She believes that the most effective way to address her depression is to "get away" from work. She believes that her part-time work is the best strategy for dealing with her stress issues.

## CONCLUSIONS OF LAW

The first issue for the Panel to decide is whether the alleged violations are deemed admitted under A.O. 9, Rule 11(D)(3) by Respondent's failure to file a timely answer to the petition or whether Respondent has demonstrated good cause to delay the filing of her answer

[5] The request for a phone conference was filed on September 26, 2019 and denied by the Panel on October 2, 2019. In its ruling denying the request, the Panel stated that "[i]n light of Respondent's failure to file an answer to the petition and the length of time that has elapsed from the compliance dates set forth in Decision No. 225, the Panel will in any event proceed with the scheduled hearing to afford the Panel members an opportunity to question Respondent." In addition, the Panel pointed out that "[o]nce a petition has been deemed to have been admitted by virtue of Rule 11(D)(3), as is the case here, Disciplinary Counsel cannot dismiss the petition without the Panel's consent."

until the day before the scheduled merits hearing. Under Rule 11(D)(3), if a respondent fails to answer within the specified 20-day time period, "the charges are deemed admitted, unless good cause is shown."[6]

The Panel concludes that Respondent has failed to demonstrate good cause for her delay. Respondent cannot blame stress for her extended delay in filing an answer. As Respondent herself conceded during the hearing, she could have requested an extension of time from the Panel and failed to do so. Respondent was able to communicate with a therapist and with Attorney Taylor and Disciplinary Counsel during the relevant time period. She has not demonstrated that she was incapable of filing an answer until the morning of the merits hearing.

Moreover, Respondent cannot blame Attorney Taylor for her delay. She did not have to wait for a meeting to take place between herself and Attorney Taylor – or for Attorney Taylor to write his report – before filing an appearance and an answer. And her answer was not filed until nearly two months *after* Attorney Taylor submitted his report.

Finally, Respondent could not rely on a hope that the proceeding would be dismissed. Lawyers are expected to take action to protect against significant risks, and the risk that the charges would be deemed admitted was certainly a significant risk given the language of Rule 11(D)(3). In addition, Respondent's delay until the morning of the hearing cannot be squared with the Panel's September 23 ruling denying Disciplinary Counsel's request for a phone conference, in which the Panel made clear that the previously scheduled hearing on the merits would proceed on November 1 because of the lack of an answer and resulting questions as to compliance under the timeframes in the order.

[6] Disciplinary Counsel did not file a request to deem the charges admitted. However, Rule 11(D)(3) does not require the filing of a motion. When a respondent has missed the 20-day deadline, he or she must demonstrate good cause for any delay in filing an answer.

For all these reasons, the Panel concludes that the alleged violations of Conditions (a) and (b) are admitted. However, even if Respondent had demonstrated good cause to be allowed to dispute the charges by filing an answer on the morning of the merits hearing, the evidence shows that Respondent violated the conditions of the probation order in several respects.

**Probation Condition (a)**

Condition (a) required Respondent to retain the services of a qualified attorney and to obtain Disciplinary Counsel's advance approval of the selection within 30 days of the issuance of the probation order. Even allowing additional time for the Memorial Day holiday, the compliance deadline was Tuesday, May 28.

Although Respondent reached an agreement at some point to have Attorney Taylor work with her on the law office management issues, she did not comply with the notification requirement until July 10 – approximately six weeks after the deadline. During that period of time she failed to respond to numerous reminders and requests for information sent to her by Disciplinary Counsel.

In addition, Respondent failed to take steps to ensure that Attorney Taylor undertook the full scope of the review that was required by Condition (a). That condition provided that the attorney should "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."

Attorney Taylor is to be commended for offering to receive copies of notices from the probate court in Respondent's cases during the twelve-month probationary period as a means of reminding Respondent to attend scheduled hearings. And his discussion with Respondent prompted her to take the steps required of all licensed attorneys to update through e-Cabinet the email address to which court notices are sent.

But the September 4 letter report was not fully responsive to Condition (a). It did not provide an evaluation of Respondent's calendaring system for tracking hearings and appointments, as was required. Aside from discussing whether Respondent was using multiple email addresses in her work, Attorney Taylor did not evaluate or explain how Respondent went about keeping track of hearings and appointments. Assuming Respondent was using an i-phone for calendaring hearings and appointments, Attorney Taylor did not review the operation of that system. Nor did he address whether another computer-based calendaring system or a manual calendaring system was being used or should be used by Respondent.

The main thrust of Condition (a) was to require an evaluation of the systems being used by Respondent so that she might improve those systems and thereby minimize the risk that she would miss hearings or appointments during the probationary period and thereafter. The recommendations by Attorney Taylor to stop taking bankruptcy cases for a period of time and to not take probate cases where a client would seek to represent himself or herself for a portion of the proceeding might have been sensible, but they were not responsive to the main thrust of the order. Similarly, the generous offer by Attorney Taylor to receive Respondent's probate court notices during the probationary period did not ensure that Respondent's office systems were set up and operating in a manner that would optimize Respondent's attendance at court hearings and appointments *after* the expiration of the probationary period, when Attorney Taylor would no longer be receiving notices. And, of course, receiving a notice of a hearing or appointment is one thing. In order to ensure that the notice is not forgotten, some sort of calendaring system must be in place and operate effectively.

It was incumbent on Respondent under Condition (a) to secure a thorough review by an attorney in accordance with the provisions of Condition (a). Respondent neglected that responsibility. She should have worked more diligently with Attorney Taylor with the goal of

providing a report to Disciplinary Counsel that was fully responsive to the substantive requirements of Condition (a). She is not presently in compliance with Condition (a).[7]

**Probation Condition (b)**

Respondent commenced and has continued regular counseling sessions as required by Condition (b). However, for reasons she has not adequately explained, she delayed beyond the 30-day deadline in providing to Disciplinary Counsel the name and business address of her counselor. Although her first counseling session occurred in late May, she did not identify the counselor until late June and did not provide the counselor's business address until July 10. The purpose of the identification requirement was to allow Disciplinary Counsel to confirm that Respondent was utilizing a licensed clinical mental health counselor. Respondent disregarded multiple reminders from Disciplinary Counsel.

In addition, Respondent violated Condition (b) by failing to provide an unequivocal authorization allowing A.A. to notify Disciplinary Counsel if Respondent missed a monthly appointment or if A.A. came to believe that Respondent's condition at any point adversely affected Respondent's ability to practice law. Respondent's June 28 email was qualified. It suggested that A.A. should only communicate with Disciplinary Counsel if A.A. deemed it appropriate "from [her] professional point of view." Not surprisingly, Respondent was told by

[7] The fact that Disciplinary Counsel did not take issue with the scope of the report does not preclude the Panel from finding that the report did not comply with the substantive requirements of the order. The Panel has the right to insist on full compliance with its order once a probation violation proceeding has been initiated. Moreover, the report was placed into evidence at the hearing. A panel is not required to turn a blind eye to an instance of non-compliance with its order. The Panel takes this opportunity to remind Disciplinary Counsel that, although Disciplinary Counsel is given the authority to decide what rule violations to allege, when a hearing panel has issued a probationary order and designates Disciplinary Counsel as the probation monitor it is Disciplinary Counsel's responsibility to ensure **full** compliance with that order. Failure to do so undermines a disciplinary action that has been taken after due deliberation by a hearing panel. In addition, Disciplinary Counsel serving as probation monitor must insist on full compliance in order to ensure that her affidavit supporting termination of probation is truthful. *See* A.O. 9, Rule 8(A)(6)(b) (providing for termination of probation upon filing of "an affidavit by the probation monitor stating that probation is no longer necessary and summarizing the basis for that conclusion.").

A.A. that she did not ordinarily communicate with third parties concerning her clients. It was therefore incumbent on Respondent to explain the necessity of the reporting requirement and provide whatever assurance in the form of a written release was necessary for A.A. to meet the requirements of the order. Alternatively, if A.A. was not willing to provide the requisite notifications to Disciplinary Counsel under any circumstance then Respondent should have retained a counselor who would agree to do so. Respondent ignored repeated requests by Disciplinary Counsel to provide the necessary authorization. It was only during the merits hearing that Respondent verbally advised A.A. that she was unequivocally waiving the physician-patient privilege. That direction should have been provided in writing at the outset of the counseling relationship.

**SANCTIONS DETERMINATION**

Rule 8(A)(6)(c) addresses violations of probation and provides that "[u]pon proof of a probation violation, any sanction under these rules may be imposed." A.O. 9, Rule 8(A)(6)(c). 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)); *see also* ABA Center for Professional Responsibility, *Standards For Imposing Lawyer Sanctions* (1986) (amended 1992) (*"ABA Standards"*), Purpose and Nature of Sanctions, § 1.1 at 19 ("The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.").

The Panel is guided by the ABA Standards when determining an appropriate sanction:

> 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**

A duty may be owed by a lawyer to his or her client, the general public, the legal system, or the legal profession. *See ABA Standards*, Theoretical Framework, at 5. Respondent in this case owed a duty to the legal system and the general public to comply with the conditions of the hearing panel's probationary order. The probation conditions were designed to protect the public. Respondent's continued practice of law was conditioned on her compliance with the probation conditions.

**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.

Based on all the evidence, the Panel concludes that Respondent's mental state in failing to meet the 30-day deadlines in the order is properly characterized as that of knowledge. Respondent's failure must be viewed against the background of Disciplinary Counsel's repeated reminders and requests for information and for action to be taken. Respondent knew that she was not providing timely communications to Disciplinary Counsel and that she was failing to provide adequate authorization to her counselor. There was no evidence presented by Respondent that she was incapable of understanding the terms of the probationary order or the communications from Disciplinary Counsel or that she was incapable of responding to those communications.

Respondent's failure to ensure that Attorney Taylor's review met the substantive requirements of Condition (a) was characterized by a reckless state of mind. She should have provided comprehensive information to inform the review. In addition, she should have reviewed the report against the substantive requirement of the probationary order and worked with Attorney Taylor to achieve a responsive report. There is no evidence that she consciously allowed a deficient report to be submitted. But she took no interest in ensuring that a report would be produced that fully complied with the probation provision. The Panel concludes that under the present circumstances, where she was the subject of an order, her lack of diligence was reckless – more serious than ordinary negligence.

**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.

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 violation of a hearing panel's probationary order is, by its very nature, injurious to the legal system and the general public. Although Respondent complied with some provisions of the probationary order – she did, in fact, ultimately participate in the review by Attorney Taylor and she participated in regular counseling sessions – she violated other provisions of the order. The delays in providing the requisite information to Disciplinary Counsel were extensive and demonstrated a lack of regard for the Panel's order and Disciplinary Counsel's role as the probation monitor. Her failure to provide the necessary authorization to her counselor – to notify Disciplinary Counsel if Respondent missed one or more counseling sessions – threatened to undermine the effectiveness of a provision that was designed to protect the public. Moreover, Respondent's failure to ensure a thorough and comprehensive review by Attorney Taylor has resulted in the Panel not having confidence that Respondent has taken the necessary steps to ensure that she is running her law office responsibly and that the conduct underlying Decision No. 225 is not likely to recur. The violations cannot be characterized as technical or de minimis. They were serious.

**Presumptive Sanction under the ABA Standards**

The ABA Standards provide for the imposition of sanctions in cases that involve prior disciplinary action. "Courts impose enhanced sanctions for continued misconduct after prior discipline as a means of safeguarding both the public and the legal system from lawyers who create an unacceptable risk of harm." *ABA Standards*, § 8.0.

The Panel concludes that § 8.2 of the ABA Standards provides the best guidance. It provides as follows:

> Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of

> misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

*Id*. § 8.2.

Courts have imposed suspension for violation of the terms of probation previously ordered. For example, in *In re Davis*, 889 P.2d 621 (Ariz. 1995), the court suspended a respondent who had been previously reprimanded for misconduct and who subsequently violated the terms of her probation and failed to cooperate with the disciplinary authorities. In reaching this conclusion, the court cited to the standard in § 8.2. *Id*. at 624 ("Regarding the discipline of a lawyer previously sanctioned, we have determined that a graded response from reprimand, to suspension, to disbarment is sometimes appropriate, depending on the severity of the subsequent conduct.") (quotation omitted).

In this case, Respondent was publicly reprimanded for neglecting her clients – specifically, for failing to appear in court on two occasions for scheduled hearings. The conduct now at issue involved a similar form of neglect – a failure to meet deadlines – and disregard of other requirements of the probation order. Although Respondent has participated in counseling sessions, her failure to meet the specified deadlines, to provide the necessary authorization to her counselor, and to ensure full compliance with the law office management review requirement of the probation order strongly suggests that she poses a risk of harm to the public. Suspension is therefore appropriate.

ABA Standard 8.1(a) provides for disbarment "when a lawyer *intentionally or knowingly violates the terms of a prior disciplinary order* and such violation causes injury or potential injury to a client, the public, the legal system, or the profession . . . ." *Id*. § 8.1(a) (emphasis added). Because Respondent *knowingly* disregarded the deadline to identify her counselor and to confirm that she had arranged for Attorney Taylor to conduct the office management review and *knowingly* failed to provide the necessary release to her counselor – after having received

numerous emails from Disciplinary Counsel – one might argue that Respondent should be disbarred. However, because Respondent did comply with some provisions of the probationary order, the Panel concludes that a graduated sanction of suspension is the more appropriate presumptive sanction.

* * *

For several reasons the Panel concludes that it would not make sense to continue utilizing probation in this case. To begin with, Respondent repeatedly failed to respond promptly to requests by Disciplinary Counsel for information and failed to respond at all to the demand for an appropriate release to be given to her therapist, A.A. In *Davis* the court rejected the respondent's request for extension of the probationary terms as an alternative to suspension, reasoning as follows: "Merely extending the probation or adding additional terms would not provide her or other lawyers with a meaningful indication of the seriousness of violating probationary terms and ignoring the State Bar's information requests." 889 P.2d at 624. That reasoning applies here as well.

Moreover, it is apparent that Respondent is not otherwise sufficiently engaged in complying with the terms of probation. Respondent was content to delay for months in scheduling an appointment with an attorney to review her law office management practices and then took no steps to ensure that the lawyer's report would satisfy the required scope of review. And Respondent has objected to Disciplinary Counsel's suggestion that a local attorney monitor her practice as a new condition of probation. With respect to counseling, Respondent attended regular sessions; however, Respondent testified that counseling is not really helping her to deal with the stress that she says she experiences when she is practicing law. And Respondent has committed knowing violations of the probation order notwithstanding her regular counseling sessions. Under these circumstances, it does not make sense to require her to complete or to extend the counseling requirement.

## Aggravating and Mitigating Factors Analysis

The Panel must consider any aggravating and mitigating factors and whether they call for a lesser or greater sanction than is presumed under the applicable 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 an admonition for violation of Rule 1.3. PRB Decision No. 149. 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. The disciplinary decision underlying the violation-of-probation charges in this case, Decision No. 225, constitutes a second prior offense.

**§ 9.22(c) & (d) (pattern of misconduct and multiple offenses) –** As discussed above, Respondent has committed multiple violations of the conditions of probation imposed in Decision No. 225 that involve a repeated lack of communication, a failure to meet deadlines, and a general lack of diligence in connection with her obligations under the order.

**§ 9.22(g) (refusal to acknowledge wrongful nature of conduct) –** Respondent has not taken responsibility for the violations that occurred. At the hearing she attempted to blame her extensive failures to communicate with Disciplinary Counsel on stress and depression. But there was no medical evidence presented to the effect that she was incapable of responding. She was advised on numerous occasions that she needed to respond. Moreover, she was able to

communicate with a counselor and Attorney Taylor. In addition, the extensive delay in arranging a review by Attorney Taylor cannot be blamed on Attorney Taylor's scheduling conflicts. It should not have taken Respondent four months after issuance of Decision No. 225 to confirm that an arrangement had been made and to schedule the review. Respondent devoted insufficient attention to these tasks. Moreover, there is no excuse for failing to obtain a comprehensive review of her calendaring system. Respondent is the person who had the information necessary to inform the review and had an obligation to insist on a thorough review. She has failed to take responsibility for her violations.

Likewise, there is no reasonable basis for Respondent's assertion that Disciplinary Counsel was "bullying" her by monitoring compliance. Disciplinary Counsel was required to monitor compliance under the terms of the order. Nor could such a belief justify Respondent's failures to communicate.

Finally, the Panel notes that as was the case when the petition of misconduct underlying Decision No. 225 was filed, Respondent failed to file a timely answer to the petition alleging violations of probation. This conduct amounts to avoidance. Her assertion that she needed to meet first with Attorney Taylor is without merit. She could and should have responded promptly to the petition and then updated her response. Instead she waited until the afternoon before the scheduled merits hearing to mount a defense. Respondent has engaged in a pattern of behavior that is characterized by avoidance and efforts to blame her misconduct on others.

**§ 9.22(i) (substantial experience in the practice of law) –** Respondent has practiced law for more than twenty-five years. As an experienced lawyer, she should have known that strict compliance with an order is essential.

### (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 continues to struggle with depression and that she experiences stress when practicing law. Although her emotional problems do not excuse her conduct, they are a mitigating factor.[8]

**§ 9.32(m) (remoteness of prior offense) –** The conduct underlying Respondent's prior admonition occurred between 2009 and 2011 and it is therefore somewhat remote in time. However, given the similarity of the conduct, the prior offense is entitled to some consideration.

### (c) Weighing the Aggravating Mitigating Factors

While they outweigh the mitigating factors, the aggravating factors do not justify increasing the presumptive sanction. The Panel concludes that a graduated response – increasing the prior sanction of public reprimand to suspension – is appropriate. Suspension will protect the public.

* * *

[8] Respondent did not present evidence that would justify application of the "mental disability" mitigating factor. That factor is applicable when:

> (1) there is medical evidence that the respondent is affected by a . . . mental disability;
>
> (2) The . . . mental disability caused the misconduct;
>
> (3) The respondent's recovery from the . . . mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
>
> (4) The recovery arrested the misconduct and recurrence of that misconduct is unlikely.

*ABA Standards*, § 9.32(i).

The Panel must decide on an appropriate length of suspension in this case. "In 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)., In addition, there is limited precedent to assist the Panel in this case. In *In re Wool*, PRB Decision No. 13 (issued 12/4/2000), the respondent failed to comply with numerous terms of probation that had been previously imposed, including the requirement that he report regularly to Disciplinary Counsel. Based on a stipulation of the parties, the panel imposed a public reprimand, along with stringent continuing probation measures that included a requirement that a co-counsel work on all of respondent's cases and a separate requirement that the respondent stop taking on new clients and cease practicing law within twelve months. The panel observed that if the parties had not so stipulated the panel would have suspended respondent "for no less than six months."

In *In re McCoy-Jacien*, 2018 VT 35, 207 Vt. 624, 186 A.3d 626, the respondent was suspended for nine months based on her violation of a probation order that required her to file Vermont income tax returns. In addition, the respondent did not respond to requests for information from Disciplinary Counsel and did not appear in the proceeding to defend against the charges. In arriving at the length of suspension, the panel considered the fact that the violations were ongoing and that the respondent was required under Vermont law to file the tax returns.

Although the current case is unique, it does bear some similarity to these prior decisions. It involves repeated and extensive failures on the part of Respondent to answer inquiries from Disciplinary Counsel designed to ensure that Respondent was meeting deadlines in the probation order and that Respondent was taking prompt steps to review her office management practices. In addition, Respondent failed to comply with the substantive requirement of the order to obtain

a review of her calendaring system and of her other methods of keeping track of her appointments. These were not technical or de minimis violations.

For several reasons, the Panel concludes that a six-month suspension is appropriate. First, a pattern of misconduct on the part of Respondent has now extended over the course of three disciplinary actions. As found in Decision No. 149, Respondent failed to respond to inquiries from a probate court and from an attorney. Respondent also initially failed to respond to an inquiry from Disciplinary Counsel in that case, which resulted in the filing of charges against her. *Id*. at 2-3. Respondent has committed similar misconduct in this case by failing to respond to inquiries from Disciplinary Counsel.

In addition, Respondent has now failed to file timely answers in two consecutive disciplinary proceedings, only to appear at the last possible minute in both proceedings and attempt to contest the charges. This conduct is deeply troubling – it amounts to a serious disregard of established legal process, not unlike failing to appear at a scheduled hearing.

No responsible lawyer would put their client in the position that Respondent put herself in by waiting until the last minute to mount a defense. Respondent neglected her own interests in this disciplinary proceeding – indeed, the charges against her were admitted as a matter of law because of her delay – as surely as she neglected the interests of her clients in connection with Decisions No. 149 and 225. Lawyers cannot be relied upon to serve the public adequately if they cannot attend to basic procedural expectations.

Moreover, Respondent's lack of attention and commitment to the requirements of the probation is troubling. Having been found in violation of the ethics rules for a second time, Respondent had every reason to pay close attention to the requirements of the probationary order. She failed to keep track of and attend to deadlines and to scrutinize and meet substantive requirements. These are everyday requirements when representing clients in the practice of law. The Panel is convinced that the public is at risk based on such conduct.

Finally, the Panel is concerned that Respondent is not adequately addressing her emotional problems. In her defense against the charges, Respondent has attributed her failures to stress and she has maintained, with any supporting evidence, that Disciplinary Counsel was "bullying" her when requesting assurances of compliance. Respondent further maintains that she suffers from depression and that she does not respond to email when she is stressed; that she needs to "get away" when she is stressed; and that she is "symptom-free" when she is not practicing law. She further testified that counseling does not really help her manage her stress and depression.

This is the second proceeding in which Respondent has attributed her conduct to depression and, more specifically, stress that results from the practice of law. While the Panel has the utmost sympathy for any person struggling with depression, stress is a common occurrence in the practice of law and must be managed successfully to practice responsibly and ably. The Panel has no evidentiary basis on which to conclude that Respondent's management of stress has improved to a point where the types of conduct in question – missing deadlines, failing to communicate, and failing to give attention to legal requirements – are not likely to recur. On the contrary, the fact that Respondent did not file an answer until the morning of the hearing and that she attributes her failures to communicate in part to the stress caused by the charges against her suggests she is not functioning well. Moreover, the fact that Respondent has been working only 25% of full time and yet is attributing her failures to mental stress and depression only heightens the Panel's concern. The Panel concludes that the public is at risk and that a substantial suspension is appropriate to protect the public.

**Disciplinary Counsel's Request for Assessment of Costs**

Disciplinary Counsel has requested that the Panel require Respondent to pay the costs of this proceeding. *See* A.O. 9, Rule 8(A)(8) (listing assessment of costs of probation violation proceeding as an available sanction). The rules confer discretion on a hearing panel to decide

whether to assess costs when if finds a violation of probation. *See* Rule 8(A)(6)(c) ("Upon proof of a probation violation, any sanction under these rules may be imposed."). Given that the sanction of suspension will result in a loss of income to Respondent, the Panel declines to assess costs of the proceeding.

**ORDER**

It is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Respondent, Carolyn Adams, Esq., has violated the conditions of her probation, contrary to A.O. 9, Rule 8(A)(6)(c), as set forth above;

2. Respondent is suspended from the office of attorney and counselor at law for a period of six (6) months effective from the date of this decision.

Dated: December 31, 2019.

**Hearing Panel No. 8**

By: _____
Elizabeth Novotny, Esq., Chair

By: _____
Andrew D. Manitsky, Esq.

By: _____
Patrick Burke, Public Member