STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: Norman R. Blais, Esq.
PRB File No. 2015-084

Decision No. 194

Norman R. Blais, Esq., Respondent, is publicly Reprimanded and placed on probation for violation of Rule 1.3 of the Vermont Rules of Professional Conduct. Respondent violated Rule 1.3 by failing to respond to formal discovery requests in an uninsured motorist case, by failing to respond to Opposing Counsel's motion to compel discovery, and by failing to comply with the Court's discovery order, resulting in the Superior Court issuing a discovery sanction against Respondent's client. This matter came on for hearing on January 22, 2016 before Hearing Panel No. 4, Jill Lanman Broderick, Esq., Chair, Mary K. Parent, Esq. and David Tucker, with all Panel members present.

Findings of Fact

During the January 22nd hearing, the Panel accepted the parties' Stipulation of Facts and took testimony from Respondent. Based upon the Stipulation of Facts and Respondent's testimony, the Hearing Panel finds that the following facts are supported by clear and convincing evidence.

Respondent obtained his license to practice law in Vermont in 1976, and he has practiced law in Vermont since his admission to the Bar. Respondent is a solo practitioner who employs one full-time assistant. Respondent handles family, criminal, personal injury, and employment law matters. His practice also includes preparing simple wills and trusts, and advising a handful of business clients.

On June 4, 2013, Respondent filed a civil action against an insurance company on behalf of a client, seeking damages for injuries the client sustained in an automobile accident. The accident was a minor rear end collision, and the client suffered a soft tissue injury. The driver of the car that struck the client's car was uninsured, resulting in the client filing a claim for uninsured motorist benefits. The client sued her insurance company when the company failed to pay the claim. The insurance company was represented by an attorney (hereinafter "Opposing Counsel") throughout the litigation.

On August 15, 2013, Opposing Counsel served Respondent with formal discovery requests, as provided by the Vermont Rules of Civil Procedure. Respondent did not respond as required by Rule, but provided Opposing Counsel with information about the case, including the client's post-accident medical records. Respondent's client saw only one healthcare provider, a chiropractor, for treatment of the injury related to the auto accident.

On December 11, 2013, Opposing Counsel filed a motion to compel discovery with the Superior Court. On January 6, 2014, the Court denied the motion to compel, writing: "Although 3 very polite & solicitous letters requesting compliance appear to have been entirely ignored over a span of 90 days, the rule does require actual, 2-way, interactive communication and consultation. If requested documents & records are not disclosed [no later than] 2/1/14, then next motion to compel . . . is likely to be successful, w/ some sort of creative 'sanction' to be devised by the court."[1] Respondent received and read the Court's decision, but did not comply with the Court's direction to respond to Opposing Counsel's discovery requests by February 1st. On February 7, 2014, after the Court's deadline expired, Respondent sent Opposing Counsel his

[1] The Court did not grant the motion, so, technically, it is not an order compelling Respondent to respond to Opposing Counsel's discovery requests. The Court, however, made it patently clear that the Court expected Respondent to submit discovery responses no later than February 1, 2014. This Decision may refer to the January 6th decision as an order, as the direction it provided to Respondent was clear and unambiguous, and included a threat of sanction for failure to comply.

client's signed medical authorization which permitted Opposing Counsel to obtain Respondent's client's medical records directly from the client's healthcare providers.

Respondent testified that he believed his client's case had modest value, which he estimated to be approximately $20,000, and that the value of the case did not justify extensive formal discovery. Respondent stated that the case was not complex as his client only saw one healthcare provider for treatment of the accident-related injury. Respondent stated that he believed he had fully cooperated with Opposing Counsel by providing Opposing Counsel with the information Opposing Counsel needed to prepare a defense. Respondent, however, never made or formalized any agreement with Opposing Counsel to forego or limit formal discovery. Respondent assumed that he did not need to undertake the preparation of formal discovery responses so long as he gave Opposing Counsel the requested information. Respondent did not protect his client's interests by entering into an agreement with Opposing Counsel about the discovery process. Respondent's assumptions in this regard, and his subsequent conduct, put his client's interests at great risk.

On February 27, 2014, Opposing Counsel filed another motion to compel discovery and requested sanctions. Respondent did not file a response to Opposing Counsel's motion. On March 24, 2014, the Court granted the motion and ordered compliance by April 10, 2014. The Court wrote: "All requested discovery shall be produced by above date. If not, Plaintiff will be limited to only 1 witness – herself – at trial." Respondent did not comply with the Court's discovery order by the April 10th deadline.

The Court's sanction is significant as it precluded Respondent from calling an expert witness at trial. In an uninsured motorist case, the plaintiff sues his/her own auto insurance company, asking to be paid compensation for injuries and damages caused by the negligent,

uninsured motorist. The insurance company "steps into the shoes" of the uninsured motorist, acquiring all of the same rights and defenses as the uninsured motorist. The case is tried like a personal injury/negligence action. The plaintiff must prove all of the elements of his/her claim (*i.e.*, negligence) to be successful on his/her claim against the insurance company.[2] Typically, expert testimony is required to prove the causal connection between the accident and the plaintiff's injury. Without expert testimony, a personal injury claim may be subject to dismissal for lack of evidence on an essential element of the claim (*i.e.*, causation).

During April 2014, Opposing Counsel noticed the deposition of Respondent's client. Respondent cooperated with Opposing Counsel, and his client was deposed on May 30, 2014. Respondent believed Opposing Counsel obtained sufficient information from the deposition with which to defend the uninsured motorist claim.

On June 13, 2014, Respondent sent Opposing Counsel responses to the written discovery requests. Respondent's answers totaled 28 pages, were well prepared, signed by Respondent's client, and the client's signature was notarized. Respondent's written discovery responses included an expert disclosure, stating Respondent intended to have his client's chiropractor testify as an expert witness at trial.

On June 17, 2014, Opposing Counsel filed a motion *in limine*, seeking to exclude any and all of Respondent's witnesses at trial, excepting only his client, due to Respondent's failure to file written discovery responses by the Court's April 10th deadline. Opposing Counsel asked the Superior Court to enforce the discovery sanction the Court previously imposed. On July 15, 2014, the Court deferred ruling on Opposing Counsel's motion, writing that the motion was "premature" and could be renewed if and when the case was actually set for trial.

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[2] Negligence requires plaintiff presenting evidence showing the existence of a duty owed to plaintiff; breach of the applicable standard of care, causation and damages.

On September 16, 2014, the Court held a status conference and addressed Opposing Counsel's request to exclude Respondent's witnesses. The Court ruled that Respondent would have until September 20, 2014 to respond to Opposing Counsel's motion to exclude Respondent's witnesses. On September 20, 2014, Respondent filed a response to Opposing Counsel's motion to exclude witnesses, and asked the Court to set aside the discovery sanction included in the Court's March 24th order.

On September 25, 2014, the parties participated in mediation. At the time of the mediation, the Court had not ruled on Opposing Counsel's motion to exclude witnesses. The parties did not settle the claim during the mediation.

On October 1, 2014, the parties settled the case, and the Court entered judgment by consent the next day. The case was concluded and dismissed prior to the Court ruling on Opposing Counsel's motion to exclude Respondent's witnesses.

The settlement terms required the insurance company to pay Respondent's client the sum of $10,000, and for Respondent to pay his client the sum of $5,000 from Respondent's own funds. The insurance company also agreed not to seek a set off for medical payments the company had made. (The value of the set-off was $5,000.) Respondent also waived his right to be paid his one-third (1/3rd) contingent fee, and he waived his right to be reimbursed for out-of-pocket costs. (Plaintiff testified that the out-of-pocket costs in his client's case were minimal.)

Respondent's mishandling of the discovery issue had the potential for harm. With the limited information presented, the Hearing Panel cannot make a finding of actual harm, as the Court had not ruled on the question of lifting its discovery sanction when the parties settled the case. The potential for harm, however, was great. At the time the parties settled the case, the Court's discovery sanction was in place, and the Court had not yet ruled on Respondent's request

to lift the sanction. If the Court enforced the discovery sanction, Respondent would have been barred from calling his expert witness. Without an expert witness, Respondent may not have been able to prove an essential element of the case (*i.e.*, causation), putting the entire case at risk of dismissal. With the evidence currently available, the Hearing Panel cannot make a finding that the insurance company offered less in settlement because of the outstanding discovery sanction. It is also a matter of speculation whether Respondent's client accepted less in settlement out of fear that the Court would enforce the discovery sanction and make the case untenable. Accordingly, there is insufficient evidence to find actual harm, but the potential for harm was great.

Respondent took remedial measures to address his errors, and abate the harm his client incurred. Respondent contributed his own funds to his client's settlement, waived his right to be paid a fee, and waived his right to reimbursement of out-of-pocket costs. Respondent also waived attorney's fees owed by his client's spouse, incurred in a separate matter that Respondent handled during the uninsured motorist litigation.[3] Respondent testified that he took these remedial measures as there was uncertainty about whether the Court would permit Respondent to call his client's chiropractor as an expert witness at trial. By contributing to the settlement and waiving his right to fees and costs, Respondent believes his client received what his client's case was actually worth, approximately $20,000.

Respondent explained that he failed to answer the written discovery because the case was not complex and had a modest value. Respondent also believed filing formal responses was unnecessary because he had disclosed all of the information that Opposing Counsel needed to prepare and present a defense. Respondent believed he had fully cooperated with Opposing

[3] During the litigation, client's spouse asked Respondent for legal representation in a contract dispute. The spouse could not afford to pay Respondent's fees, so Respondent and spouse agreed that the spouse's fees would be paid once the client's personal injury matter was settled.

Counsel's efforts to obtain the information Opposing Counsel required. Respondent acknowledges, however, that he did not file a response to the second motion to compel, and did not comply with the Court's discovery orders. Although Respondent did file a motion to set aside the discovery sanction, it is a matter of pure speculation whether the Court would have relieved Respondent of the sanction. Accordingly, Respondent's opinion that the Court would have lifted the sanction is given no weight.

Other than the written discovery issue, Respondent handled all other aspects of his client's case in a prompt and diligent manner, including meetings with the client, investigating the accident, documenting the client's medical issues and costs, documenting the client's lost wages, preparing for and participating in the client's deposition, preparing for and participating in mediation, and ultimately settling the case on terms the parties believe were fair. From filing to resolution, the case took sixteen months, which is a reasonable amount of time to resolve a case like this one.

Respondent has previously been sanctioned for violations of the Code of Professional Conduct. On December 30, 2003, the Professional Responsibility Board suspended Respondent from the practice of law for a period of five months for violation of Rule 1.3 (neglect of a personal injury case) and Rule 1.4 (failure to keep client reasonably informed about status of case.) In *In re: Norman Blais, Esq.*, the Hearing Panel described Respondent's disciplinary record as follows:

> Respondent was first disciplined in 1991 when he received a private admonition for neglecting a client matter. PRB File No. 1991.010, PCB Decision No. 25. In his second case he received a public reprimand arising from a 1992 complaint of failure to render an accounting PCB Decision No. 118; *In re Blais*, 166 Vt. 621 (1997).

> In 2002 Respondent was sanctioned for neglecting five separate client matters and for making misrepresentations to three of his clients. These complaints were made during the period 1998 through 2000 for events that happened between 1989 and 1996. In this final matter the Hearing Panel imposed a five month suspension followed by a minimum of 18 months *sic* probation. PRB Decision No. 31.

PRB Decision No. 48; *affirmed In re Blais*, 174 Vt. 628, 817 A.2d 1266 (2002).

Respondent completed his suspension period and was reinstated in October 2003. (PRB Decision No. 58).

There is no evidence that Respondent had any dishonest or selfish motive in this case. Respondent fully cooperated with Disciplinary Counsel and expressed remorse.

Conclusions of Law

The findings of the Hearing Panel must be established by clear and convincing evidence. A.O. 9, Rule 16(C). Disciplinary Counsel bears the burden of proof when discipline is to be imposed. A.O. 9, Rule 16(D).

Rule 1.3 – Diligence

Rule 1.3 of the Rules of Professional Conduct provides: "A lawyer shall act with reasonable diligence and promptness in representing a client." The Comment to Rule 1.3 is instructive:

> [1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. . . .
>
> [3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, . . . the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

V.R.P.C. Rule 1.3 *Comment* 1 and 3.

Respondent violated Rule 1.3 by failing to respond to formal discovery requests within the time provided by Rule, by failing to respond to Opposing Counsel's motion seeking an order to compel discovery and the imposition of sanctions, and by failing to comply with the Court's discovery orders. As a result of the Respondent's failure to act, the Superior Court imposed a discovery sanction, barring Respondent from calling any witness to testify at trial other than Respondent's client. The Court's discovery sanction put Respondent's case at risk of dismissal, as the order, if not lifted, barred Respondent's expert from testifying on a critical element of the client's cause of action (*i.e.*, causation). Accordingly, the potential for harm was great.

Respondent testified, by way of explanation rather than excuse, that he believed formal discovery was unnecessary as the case was not complex, involved few witnesses, had only modest value, and he believed he had provided Opposing Counsel with everything Opposing Counsel needed. Respondent's reasoning may have some logical appeal, but Respondent's reasoning ignores the fact that Respondent did not take reasonable steps to protect his client's interests, and does not justify Respondent's failure to comply with the Court's clear and unambiguous orders.

Respondent failed to make an agreement with Opposing Counsel to limit the nature or scope of discovery, putting his client's interests at risk. Even if Respondent tried to limit formal discovery, there are legitimate reasons why Opposing Counsel would decline to forego formal discovery. As one example, formal discovery requires the responding attorney and litigant to sign the response, attesting that the response is true, accurate and complete. Typically, informal discovery does not include such an attestation.

During the hearing, Respondent testified that when he began practicing law, it was less common for lawyers to engage in formal discovery and more common to engage in informal discovery. Respondent also testified that when he began practicing law, attorneys would resolve discovery issues informally, without filing motions to compel or request sanctions. Even if the Hearing Panel were to accept Respondent's representations as true, a lawyer has a duty to maintain competence in the practice of law. V.R.P.C. Rule 1.1. The duty of maintaining competence is described in the Rules as follows: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and **its practice**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject." V.R.P.C. Rule 1.1, Comment 6 (*emphasis added*). By way of emphasis, the Rules require a lawyer to adapt to changes in the way law is practiced, not simply keep current with substantive changes in the law itself.

Respondent was also put on notice by the Court's orders of January 6th and March 24th that the Court expected Respondent to file responses to Opposing Counsel's discovery requests. Whatever assumptions Respondent may have had about the proper conduct of the case, the Court's orders should have dispelled those assumptions. Respondent has put forth no reasonable explanation for his failure to comply with the Court's clear and unambiguous orders. The Court gave Respondent an opportunity to address his failure, giving Respondent time to respond to Opposing Counsel's discovery requests, but Respondent failed to heed the Court's initial warning, and then failed to timely comply with the Court's order after a sanction was imposed.

Applicability of the ABA Standards for Imposing Lawyer Sanctions

The Vermont Supreme Court has ruled:

> 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, 513, 857 A.2d 803, 807.

Accordingly, the Hearing Panel employed the ABA Standards as a tool to determine the appropriate sanction to impose in Respondent's case.

A. The Duty Violated

As previously stated, Respondent violated his duty of diligence when he failed to (a) respond to discovery requests within the time required by Rule, (b) failed to respond to a discovery motion and request for sanctions, and (c) failed to comply with the Court's discovery order.

Section 4.43 of the ABA Standards provides that a public reprimand is generally appropriate 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." In contrast, §4.44 of the ABA Standards provides that a private admonition is generally appropriate "when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client." The difference between public reprimand and private admonition in this context is the potential for injury. Reprimand is appropriate when there is injury or potential injury; admonition is appropriate when there is little or no injury or potential injury.

In the case at hand, the potential for injury to the client was great. The Court twice directed Respondent to respond to Opposing Counsel's discovery requests, setting deadlines for Respondent to respond. Respondent did not comply with the Court's January 6th directive, which resulted in the Court imposing sanctions on March 24th. Respondent did not timely

comply with the Court's March 24th order, serving Opposing Counsel with discovery responses more than two months after the Court's deadline. Respondent did ask the Court to lift the sanction, and argues that the Court was likely to grant his request. There is insufficient evidence to support Respondent's opinion that the Court would have lifted the sanction. The fact that the sanction remained in place, albeit under the Court's consideration, had the potential for diminishing the settlement value of the client's claim.

The potential exclusion of the Respondent's expert witness cannot be considered "little or no potential injury." Accordingly, this matter fits within §4.43 of the ABA Standards, making a public reprimand the presumptive sanction.

B. Lawyer's Mental State

The second factor to be considered under the ABA Standards is the lawyer's mental state. ABA Standards, §3.0. The ABA Standards explain mental states as follows:

> The most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is knowledge, 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. The least culpable mental state is negligence.

ABA Standards, Theoretical Framework § II, page 6.

Respondent's mental state was one of negligence when he failed to: (a) respond to discovery requests within the time required by Rule, (b) respond to Opposing Counsel's motion requesting an order to compel discovery and sanctions, and (c) comply with the Court's direction of January 6th and order of March 24th.

C. Injury & Potential Injury

The ABA Standards next take into consideration the level of injury or potential injury associated with a respondent's conduct. As discussed above, Respondent's failure to respond to discovery, and his subsequent failure to respond to the motion to compel and for sanctions, led the Court to impose a discovery sanction which prevented the client from calling any witnesses at trial other than the client. Respondent did comply with the Court's order but not within the time required by the Court. Respondent asked the Court to lift the sanction, but there is insufficient evidence for the Hearing Panel to conclude that it was reasonably likely the Court would have rescinded the sanction. As stated above, there is some evidence to suggest the Court may have left the sanction in place, and barred Respondent's expert from testifying. The discovery sanction would have caused real injury to the client's case if the case went to trial. In addition, the discovery sanction had the potential to influence the value of the case during settlement negotiations.

The Hearing Panel cannot find, by clear and convincing evidence, that Respondent's client suffered actual injury. There is, however, clear and convincing evidence that the potential for injury was great. The potential for injury was abated by Respondent contributing of $5,000 of his own money towards his client's settlement, by waiving of his attorney's fees and costs, and by waiving his fees for representing client's spouse in another matter.

D. Presumptive Sanction under the ABA Standards

As set forth above, a public reprimand is the presumptive sanction for Respondent's conduct here. Under the ABA Standards, after arriving at the presumptive sanction, the Hearing Panel must consider whether any aggravating or mitigating factors apply to alter the presumptive sanction. In this case, there are both aggravating and mitigating factors to consider.

1. Aggravating Factors

Section 9.22 of the ABA Standards sets forth a list of aggravating factors that a hearing panel should consider. Several of the aggravating factors listed in §9.22 are present in this case. Respondent has substantial experience in the practice of law, having practiced for thirty-nine years. ABA Standards §9.22(i). Respondent has a history of discipline, including for suspension for 5 months for failing to exercise due diligence. ABA Standards §9.22(a). This history requires further explanation. In the prior disciplinary cases, Respondent neglected to handle certain cases on behalf of clients for a prolonged period of time. In the current matter, Respondent generally handled his client's case promptly and diligently. Respondent, however, failed to timely respond to Opposing Counsel's discovery requests, failed to file a response to a motion to compel, and failed to comply with the Court's discovery order, resulting in a serious discovery sanction.

2. Mitigating Factors

Section 9.32 of the ABA Standards sets forth a list of mitigating factors that a sanctioning authority should consider in determining the appropriate sanction. The parties have stipulated to the following five mitigating factors.

Respondent made timely and good faith effort to make restitution or rectify the consequences of his conduct, including contributing $5,000 to the settlement and waiving his attorney's fees and costs. ABA Standards §9.32(d). It is also worth noting that Respondent took remedial action before any complaint was filed with Disciplinary Counsel, and with no expectation on his part that a complaint would be filed. Respondent cooperated with Disciplinary Counsel, fully and freely disclosing information to Disciplinary Counsel. ABA Standards §9.32(e). Respondent had no dishonest or selfish motive. ABA Standards §9.32(b).

Respondent expressed remorse for his conduct. ABA Standards §9.32(l). Respondent's prior disciplinary sanctions are remote in time. Respondent was last sanctioned more than 10 years ago. ABA Standards §9.32(m). The Hearing Panel notes, however, that the prior violations involved, at least in part, Respondent's failure to exercise due diligence on behalf of several clients and neglecting several clients over a period of several years. Since Respondent's reinstatement from suspension more than a decade ago, Respondent has not had any issues until the present complaint was filed.[4]

Aggravating Factors Outweigh Mitigating Factors

The Hearing Panel finds that the aggravating factors outweigh the mitigating factors for purposes of determining the appropriate sanction. The Hearing Panel is particularly concerned about the fact that Respondent is, again, being sanctioned for the failure to exercise due diligence in the representation of a client.

Disciplinary Counsel argued through memorandum that Respondent's prior discipline was different than the current case. Disciplinary Counsel notes that Respondent's prior discipline was for neglect of client matters he handled in the 1980s and 1990s. At that time, Respondent took on more work than he could handle. Respondent failed to work on some cases and allowed those cases to languish. Disciplinary Counsel goes on to argue that the present case involves one client matter that moved through the court process at a reasonable pace, reaching a timely conclusion. Respondent failed to respond to discovery as required by the Rules, and Respondent's explanation for his conduct is not satisfactory. Responding to discovery was his duty, and did not involve a financial cost to his client. (Respondent was working under a

[4] Disciplinary Counsel noted that Respondent practice mostly involves family and criminal law matters, and that family and criminal law are areas of law that tend to generate professional conduct complaints. Disciplinary Counsel found the absence of complaints against Respondent over the past "fifteen" years noteworthy, in light of Respondent's areas of practice.

contingent fee agreement.) Respondent's explanation does not address his failure to respond to Opposing Counsel's motion for sanctions, or his failure to obey the Court's discovery orders. The current case may not be a reemergence of the prior pattern of conduct, but his lack of diligence represents a serious breach of his duty to his client.

The Hearing Panel finds that a public reprimand is appropriate in this case. A public reprimand is appropriate when a lawyer neglects duties owed to a client during litigation, and the lawyer's failure results in actual or potential harm to the client. *See In re Robert Farrar*, PRB Decision No. 82 (Nov. 2005) (lawyer reprimanded for failure to properly advise client about how to comply with Court's order, and failed to notify client about contempt proceedings brought against client due to client's failure to comply with the Court's order).

Of the cases cited in Disciplinary Counsel's memorandum, Respondent's case is most like *In re Robert DiPalma*, PRB Decision No. 44 (Oct. 2002).[5] Attorney DiPalma filed suit for a client and, after suit was filed, a discovery order was issued. The opposing party sought discovery, but Attorney DiPalma did not respond as required by the Rules. The opposing party filed a motion to compel and Attorney DiPalma did not respond. The opposing party then filed a motion to dismiss for failure to respond to discovery requests. The Court granted the motion and dismissed Attorney DiPalma's case. Attorney DiPalma appealed, but did not file a brief, resulting in dismissal of the appeal. Ultimately, the matter was resolved to the client's satisfaction, and the client continued his relationship with Attorney DiPalma's office. Attorney

[5] Disciplinary counsel cites *In re PRB File No. 2014.063*, PRB Decision No. 182 (Jan. 2015). In that case, the attorney was handling a post-conviction relief case. The attorney failed to comply with the Court's discovery schedule and failed to respond to a motion. The Court twice warned the attorney that the case could be dismissed if the attorney did not comply with the discovery order. The attorney did not heed the warning and the case was dismissed. Ultimately, the case was reinstated, so the client's actual injuries were limited. The Hearing Panel imposed a private admonition for the attorney's lack of diligence. These facts are distinguishable from the case before the Hearing Panel. In Respondent's case, the Court's discovery sanction remained in place, barring Respondent's expert witness from testifying at trial. The potential for injury in Respondent's case was great, both as to Respondent's ability to avoid dismissal for want of an expert witness and as to the settlement value of the case while the discovery sanction was in place.

DiPalma received a public reprimand and was placed on two years' probation. The sanction of suspension was not imposed because Attorney DiPalma's conduct was unintentional. Attorney DiPalma did not receive a private admonition because there was some injury and Attorney DiPalma had been disciplined in the past. The factors present in Attorney DiPalma's case are present in Respondent's case, supporting the sanction of a public reprimand, followed by a period of probation.

Order

BASED UPON the foregoing findings of fact and conclusions of law, Respondent, Norman Blais is hereby REPRIMANDED for violation of Rule 1.3 of the Vermont Rules of Professional Conduct and placed on probation under the following conditions:

Probation

1. Respondent is placed on probation as provided in Administrative Order 9, Rule 8A(6), for a minimum term of twenty-four (24) months, which term may be renewed for an additional period as provided by A.O.9 Rule 8(A)(6)(a). The term of probation shall commence on the date on which this decision becomes final.
2. At the commencement of probation, Disciplinary Counsel shall select a probation monitor as required by A.O.9 Rule 8(A)(6)(b). In the event that the approved probation monitor shall become unavailable during the term of probation, Disciplinary Counsel may appoint a substitute probation monitor. Respondent may recommend for Disciplinary Counsel's consideration one or more persons to serve as probation monitor, or substitute monitor, provided he does so within the time allowed by Disciplinary Counsel.

3. No later than the 5th day of each month during the probationary period Respondent shall provide the probation monitor with copies of all scheduling, discovery and entry orders entered in Respondent's cases during the prior month. The purpose of this requirement is to provide the probation monitor with a tool to determine if Respondent is timely meeting his obligations to clients. Respondent shall provide the probation monitor such information as the probation monitor may require to perform the duties of probation monitor.
4. During the probationary period, Respondent will meet with the monitor no less frequently than every two (2) months so the monitor can review Respondent's work and determine if Respondent is diligently meeting his responsibilities to his clients.
5. The probation monitor shall file periodic reports, as Disciplinary Counsel reasonably requires, detailing Respondent's compliance with the terms of probation.
6. It shall be Respondent's responsibility to secure written reports from the probation monitor detailing compliance with probation and shall provide Disciplinary Counsel with copies of the reports.
7. The terms of probation stated herein are intended to state minimum conditions of probation, and not intended to limit either Disciplinary Counsel or the probation monitor from taking action necessary to assure that Respondent is practicing law consistent with the standards established by the Vermont Rules of Professional Conduct.
8. Probation shall terminate at any time after the initial twenty-four month period, or any renewal term thereof, upon the filing of: (a) an affidavit by Respondent showing compliance with the conditions of probation; and, (b) an affidavit by the monitor

stating that probation is no longer necessary. The probation monitor's affidavit shall state the basis for the probation monitor's conclusion that probation is no longer necessary. Respondent's and the probation monitor's affidavits shall be filed with the Program Administrator of the Professional Responsibility Board, with copies to Disciplinary Counsel.

9. If both affidavits are not filed after the conclusion of the probationary period, it shall be presumed that the probation monitor has recommended that probation continue.

10. Should the Office of Disciplinary Counsel desire to renew the term of probation for an additional period, Disciplinary Counsel shall notify Respondent via certified mail, return receipt requested. Should Respondent wish to be heard on this issue of renewal of probation, he shall file a request for hearing with the Program Administrator and serve a copy of the request on the Office of Disciplinary Counsel.

11. Respondent shall bear all costs associated with probation.

Dated: **March 22, 2016**

Hearing Panel No: 4

/s/

Jill Lanman Broderick, Esq., Chair

/s/

Mary K. Parent, Esq.

/s/

David Tucker