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Respectfully submitted,

Dated: April 7, 2025

/s/Robert M. Fojo  
Robert M. Fojo  
12 Sutherland Way  
Nashua, NH 03062  
(603) 851-5737  
[rfojo418@gmail.com](mailto:rfojo418@gmail.com)

**CERTIFICATE OF SERVICE**

I certify that, on March 11, 2025, a true and correct copy of the foregoing was electronically filed with the Clerk of Court by using the Court’s e-filing system, which will send notice of the filing to all counsel of record.

Dated: March 11, 2025

/s/ Robert M. Fojo  
Robert M. Fojo

**From:** New Hampshire Attorney Discipline Office noreply@nhattyreg.org  
**Subject:** Your Grievance to the NH Attorney Discipline System  
**Date:** December 22, 2023 at 6:56 PM  
**To:** Robert M. Fojo rfojo418@gmail.com



Below is a list of the information you submitted to the NH Attorney Discipline Office. It will be reviewed and you will hear from us in the near future. Please retain this email for your records. Thank you.

YOUR INFORMATION	
<b>Your Name:</b>	Robert M. Fojo
<b>Your Address:</b>	12 Sutherland Way
<b>Your Email:</b>	rfojo418@gmail.com
<b>Your Preferred Contact Phone Number(s):</b>	603-851-5737
INFORMATION REGARDING THE ATTORNEY YOU ARE COMPLAINING ABOUT	
<b>Attorney Name:</b>	Mark Cornell
<b>Attorney's Address (if known):</b>	Attorney Discipline Office, 4 Chenell Dr UNIT 102, Concord, NH 03301
<b>Attorney's Phone Number (if known):</b>	(603) 224-5828
PLEASE ANSWER THE FOLLOWING QUESTIONS	
<b>In regards to this complaint, you are the:</b>	Opposing Party
<b>What type of legal matter does your complaint involve:</b>	Disciplinary Proceeding
If your complaint involves a lawsuit or court, please answer the following:	
<b>Name of Court:</b>	NH Supreme Court
<b>Case Name or Title:</b>	In the Matter of Robert M. Fojo

<b>Case Number:</b>	LD-2021-0012
<b>Names of Parties Involved:</b>	Attorney Discipline Office, Robert M. Fojo
INFORMATION REGARDING YOUR COMPLAINT	
<b>Please state in detail and describe the circumstances surrounding your grievance against the attorney. Include dates or approximate dates if possible.</b>	<p>In a brief, dated February 10, 2022, Mr. Cornell filed with the NH Supreme Court in the above matter, he alleged -- on pages 28-29 -- that Mr. Fojo made a "misrepresentation" that a medical lien from DHHS/NH Medicaid existed concerning Paula Dewey. In a letter dated December 21, 2022, the ADO (through Elizabeth Murphy) communicated to Mr. Fojo's attorney, William Saturday, that the ADO had learned that there were, in fact, several liens concerning Ms. Dewey, including one from NH Medicaid for \$3,027.58.</p> <p>NH Rule of Professional Conduct 3.3(a)(1) states "[a] lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."</p> <p>Mr. Cornell clearly made a false statement of fact to the NH Supreme Court and failed to correct it upon receiving documentation that it was, in fact, false. Mr. Cornell violated Rule 3.3(a)(1).</p>
<b>Attach any supporting documentation related to your grievance.</b>	<p>ADO filing.pdf 12-21-2022 Letter to Mr. Saturley with attachments.pdf</p>
<b>Please provide the name(s), address(es), and telephone number(s) for any witnesses to the conduct complained of in your grievance.</b>	<p>Mark Cornell, Michelle Laramie Elizabeth Murphy Anna Zimmerman</p>
AFFIRMATION AND SIGNATURES	
I hereby swear or affirm under the pains and penalties of perjury that the information contained in this grievance is true to the best of my knowledge.	

<b>Signature</b>	Robert M. Fojo
<b>Date</b>	12/22/2023
I certify that I have sent a copy of this grievance, including any attachments, to the attorney against whom this grievance is filed.	
<b>Signature</b>	Robert M. Fojo
<b>Date</b>	12/22/2023

**From:** New Hampshire Attorney Discipline Office noreply@nhattyreg.org  
**Subject:** Your Grievance to the NH Attorney Discipline System  
**Date:** December 22, 2023 at 7:02 PM  
**To:** Robert M. Fojo rfojo418@gmail.com



Below is a list of the information you submitted to the NH Attorney Discipline Office. It will be reviewed and you will hear from us in the near future. Please retain this email for your records. Thank you.

YOUR INFORMATION	
<b>Your Name:</b>	Robert M. Fojo
<b>Your Address:</b>	12 Sutherland Way, Nashua, NH 03062
<b>Your Email:</b>	rfojo418@gmail.com
<b>Your Preferred Contact Phone Number(s):</b>	603-851-5737
INFORMATION REGARDING THE ATTORNEY YOU ARE COMPLAINING ABOUT	
<b>Attorney Name:</b>	Elizabeth M. Murphy
<b>Attorney's Address (if known):</b>	4 Chenell Dr UNIT 102, Concord, NH 03301
<b>Attorney's Phone Number (if known):</b>	(603) 224-5828
PLEASE ANSWER THE FOLLOWING QUESTIONS	
<b>In regards to this complaint, you are the:</b>	Opposing Party
<b>What type of legal matter does your complaint involve:</b>	Disciplinary Proceeding
If your complaint involves a lawsuit or court, please answer the following:	
<b>Name of Court:</b>	NH Supreme Court
<b>Case Name or Title:</b>	In the Matter of Robert M. Fojo

<b>Case Number:</b>	LD-2021-0012
<b>Names of Parties Involved:</b>	Attorney Discipline Office, Robert M. Fojo
INFORMATION REGARDING YOUR COMPLAINT	
<b>Please state in detail and describe the circumstances surrounding your grievance against the attorney. Include dates or approximate dates if possible.</b>	<p>In a brief, dated February 10, 2022, Ms. Murphy filed with the NH Supreme Court in the above matter, he alleged -- on pages 28-29 -- that Mr. Fojo made a "misrepresentation" that a medical lien from DHHS/NH Medicaid existed concerning Paula Dewey. In a letter dated December 21, 2022, the ADO (through Ms. Murphy) communicated to Mr. Fojo's attorney, William Saturday, that the ADO had learned that there were, in fact, several liens concerning Ms. Dewey, including one from NH Medicaid for \$3,027.58.</p> <p>NH Rule of Professional Conduct 3.3(a)(1) states "[a] lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."</p> <p>Ms. Murphy clearly made a false statement of fact to the NH Supreme Court and failed to correct it upon receiving documentation that it was, in fact, false. Ms. Murphy violated Rule 3.3(a)(1).</p>
<b>Attach any supporting documentation related to your grievance.</b>	<p>ADO filing.pdf 12-21-2022 Letter to Mr. Saturley with attachments.pdf</p>
<b>Please provide the name(s), address(es), and telephone number(s) for any witnesses to the conduct complained of in your grievance.</b>	<p>Mark Cornell Elizabeth Murphy, Michelle Laramée Anna Zimmerman</p>
AFFIRMATION AND SIGNATURES	
I hereby swear or affirm under the pains and penalties of perjury that the information contained in this grievance is true to the best of my knowledge.	

<b>Signature</b>	Robert M. Fojo
<b>Date</b>	12/22/2023
I certify that I have sent a copy of this grievance, including any attachments, to the attorney against whom this grievance is filed.	
<b>Signature</b>	Robert M. Fojo
<b>Date</b>	12/22/2023

New Hampshire Supreme Court  
**Professional Conduct Committee**

*a committee of the attorney discipline system*

4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
603-224-5828 ♦ Fax 228-9511

Stephanie C. Hausman, Esq., Chair  
\*Kathleen M. Ames, Vice Chair  
Caroline K. Leonard, Esq., Vice Chair  
\*Ronald K. Ace  
Richard C. Gagliuso, Esq.  
\*Everett S. Grass  
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Robert R. Lucic, Esq.  
Karyl R. Martin, Esq.  
Robin D. Melone, Esq.  
Mitchell M. Simon, Esq.  
Eric R. Wilson, Esq.  
Trudy Renfors, Admin. Asst.

\*non-lawyer member

**Grievance filed by Robert Fojo against Elizabeth M. Murphy and Mark P. Cornell**

**ORDER**

Enclosed please find the determination by independent bar counsel who was appointed pursuant to Supreme Court Rule 37(3)(c)(1) to review this matter.

Should the grievant wish to request reconsideration of the decision, Supreme Court Rule 37A(II)(4)(C) requires that that request be filed **within ten days of this order**. Requests for reconsideration of this decision must be clearly labeled as such and must be filed with this Office within 10 days of the date of this letter. “The request shall state, with particular clarity, points of law or fact that have been overlooked or misapprehended and shall contain such argument in support of the request” as you desire to present. See New Hampshire Supreme Court Rule 37A(VI)(a). The request for reconsideration may be submitted to Jeanne Timmons, Administrative Assistant, at [jtimmons@nhattyreg.org](mailto:jtimmons@nhattyreg.org).

In accordance with New Hampshire Supreme Court Rule 37A(II)(a)(4)(B), Respondents are advised that they may submit a voluntary reply to the grievance within 30 days from the date of this order. At that time, the grievance and the Respondents’ replies, if any, shall be available for public inspection at this Office for a period of two years from the date it was received by this Office (December 22, 2023), at which time the file will be destroyed.

New Hampshire Supreme Court Rules 37 and 37A and the Attorney Discipline System’s standing orders and policies are available to review at [www.nhattyreg.org](http://www.nhattyreg.org).

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Robert Fojo, Esquire

Re: Grievance filed by Robert Fojo against Elizabeth M. Murphy and Mark P. Cornell  
September 20, 2024

Date: September 20, 2024

/s/ Stephanie Hausman  
Stephanie Hausman, Chair  
Professional Conduct Committee

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel (via email)  
Mark P. Cornell, Deputy General Counsel (via email)  
Robert M. Fojo, Esquire (via email and US mail)  
Jamie N. Hage, Esquire (via email)  
Stephanie Hausman, Chair, Professional Conduct Committee (via email)  
Trudy Renfors, Administrative Assistant, Professional Conduct Committee (via email)  
Jeanne Timmons, Administrative Assistant (via email)

## **MEMORANDUM**

**TO:** NH Professional Conduct Committee/Attorney Stephanie C. Hausman, Chair (*via email only to [stephanie.hausman@clc-nh.org](mailto:stephanie.hausman@clc-nh.org)*)  
**FROM:** Attorney Jamie N. Hage  
**DATE:** September 13, 2024  
**RE:** Fojo v. Cornell & Murphy Grievance

### **INTRODUCTION**

The undersigned was engaged as independent counsel on or about June 4, 2024, to review grievances filed by Mr. Robert Fojo, dated December 22, 2023, which he filed against Attorney Mark P. Cornell (“Atty. Cornell”), Deputy General Counsel of the Attorney Discipline Office (the “ADO”) and Attorney Elizabeth M. Murphy (“Atty. Murphy”), Assistant Disciplinary Counsel of the ADO. Because the grievances are nearly identical and arise out a brief signed by both attorneys, the grievances are analyzed together and are collectively referred to herein as the “Fojo Grievance.” The undersigned was engaged to determine whether the Fojo Grievance meets the prerequisites for docketing as a complaint, which review includes examining the sufficiency of the allegations, i.e. whether there is a reasonable likelihood that a hearing panel would find clear and convincing evidence that Atty. Cornell and/or Atty. Murphy violated Rule 3.3(a)(1) of the New Hampshire Rules of Professional Conduct, as alleged in the Fojo Grievance. (Fojo Grievance). Specifically, Mr. Fojo alleges Atty. Cornell and Atty. Murphy made false statement of facts when they alleged Mr. Fojo made misrepresentations about the existence of a medical lien from the New Hampshire Department of Health and Human Services (“DHHS”) relating to New Hampshire

Medicaid in a brief they filed with the New Hampshire Supreme Court on February 10, 2022, in an action entitled *In the Matter of Robert M. Fojo, LD-2021-0012* (“ADO S.Ct. Brief”). (Fojo Grievance). The Fojo Grievance arises out of and relates to the handling by the ADO of an earlier complaint filed by Paula Dewey (“Ms. Dewey”), a former client of Mr. Fojo, who filed a grievance with the ADO against him in July 2021 (the “Dewey Grievance”).

## **BACKGROUND FACTS**

### **Dewey Grievance: Alleged Misconduct of Mr. Fojo**

#### ***Ms. Paula Dewey***

On July 19, 2021, Ms. Dewey filed a grievance with the ADO against Mr. Fojo. (ADO S.Ct. Brief p.4). In the grievance, Ms. Dewey alleged that Mr. Fojo engaged in misconduct by failing to pay her the net proceeds of her personal injury settlement. (ADO S.Ct Brief, p.4). The ADO docketed the grievance as a complaint, and, after its investigation, filed a Petition for the Immediate Interim Suspension of Mr. Fojo from the practice of law. (ADO S.Ct Brief, p.4). The New Hampshire Supreme Court ordered the immediate suspension of Mr Fojo on December 21, 2021. In response thereto, Mr. Fojo, through counsel, requested hearing on the suspension. Thereafter, on December 23, 2021, the court appointed Judge Larry M. Smukler (retired) to serve as a referee for the case, to determine whether the suspension should be lifted and to make such other recommendations to the court regarding the suspension of Mr. Fojo from the practice of law as he deemed appropriate. On January 4, 2022, Judge Smukler held a hearing, and on January 12,

2022, he filed his recommendations, (the “Judge Smuckler Report”), which *inter alia*, included a finding that the interim suspension was necessary for the protection of the public and should remain in place. (Judge Smuckler Report, p.14).

Ms. Dewey’s personal injury matter settled on December 14, 2020, and the settlement check, made payable to “Fojo Law PLLC as Attorney(s) for Paula Dewey,” in the amount of \$40,000 was deposited into Mr. Fojo’s IOLTA account on December 23, 2020. (Judge Smuckler Report, p. 2). Pursuant to the fee agreement with Ms. Dewey, Attorney Fojo was entitled to a 1/3 share of the proceeds, or \$13,333.33. (Judge Smuckler Report, p.2). Between December 23, 2020 and February 5, 2021, Attorney Fojo paid himself \$12,000 from the Dewey settlement by making transfers from his IOLTA account to his operating account. (Judge Smuckler Report, p.2). Between February 14, 2021 and May 2021, Ms. Dewey followed up with Mr. Fojo on several occasions, but he either failed to respond or said the check had not been received yet. (Judge Smuckler Report, pp.2-3).

In July of 2021, after still not receiving any information from Mr. Fojo, Ms. Dewey contacted the defendant’s insurer, who stated the check had been issued and cleared back in December of 2020. (Judge Smuckler Report, p 3). As a result, Ms. Dewey filed a complaint with the ADO, the Dewey Grievance. (Judge Smuckler Report, p.3). Mr. Fojo responded to the ADO by denying misappropriation of Ms. Dewey’s funds, explaining that when the check came into the office, he was not there, and his new assistant deposited it into the IOLTA account. (Judge

Smuckler Report, p. 3). Mr. Fojo further stated that the new assistant did not flag the check for him, he overlooked the fact that the funds were in the IOLTA account, and he had since taken steps to remedy the issue. (Judge Smuckler Report pp.3-4).

***Ms. Dewey's Medical Lien***

Mr. Fojo's allegations of misconduct against Atty. Murphy and Atty. Cornell arise out of a DHHS lien from Ms. Dewey's case. In his July 2021 response to the ADO, Mr. Fojo represented he was preparing an invoice for the Dewey matter, and he would issue her a check when he was able to confirm a lien held by the DHHS. (Judge Smuckler Report, p.4). Mr. Fojo noted to the ADO he was still awaiting word concerning the amount of the lien, although he had issued Ms. Dewey a partial payment per an ADO request. (Judge Smuckler Report, p.4). Soon after, the ADO asked Mr. Fojo about the status of the funds that should still have been held in trust for Ms. Dewey, including to cover the DHHS lien. (Judge Smuckler Report, pp 4-5). Mr. Fojo responded stating:

Regarding the funds you are attributing to Ms. Dewey, I did not say I was holding funds for her. Rather, at my meeting with Attorney Cornell [of the ADO] on September 27, I explained that there was a large DHHS lien that has not been confirmed yet, and the remaining funds (the \$7,901.33 figure you mention below) from the settlement will have to be allocated to satisfy that lien. I also mentioned that I likely distributed more money to Ms. Dewey than I should have. It has been a nightmare trying to confirm the amount of the lien with DHHS. After numerous phone calls every other day, we were finally connected with someone with knowledge about this issue. They requested a letter of representation from my firm. I provided it. We have now resumed calling that individual to obtain the necessary information about the lien. I hope to have it clarified any day now, and hopefully by next week. I will continue to update you about this.

(Judge Smuckler Report, p.5).

### **The ADO Brief**

Mr. Fojo's allegations of misconduct against Atty. Cornell and Atty. Murphy arise out of the ADO S.Ct. Brief, which both attorneys signed and submitted on February 10, 2022. The ADO S.Ct. Brief essentially outlined the ADO's investigation of Mr. Fojo's conduct, Judge Smuckler's findings, and concluded that a continued interim suspension of Mr. Fojo's license to practice law was "necessary to protect the public and preserve the integrity of the legal profession." Mr. Fojo asserted that Atty. Cornell and Atty. Murphy made a false statement that violated Rule 3.3(a)(1) of the New Hampshire Rules of Professional Conduct on pages 28-29 of the ADO S.Ct. Brief. (Fojo Grievance). Specifically, Mr. Fojo claims Atty. Cornell and Atty. Murphy made false statements when they stated that Mr. Fojo made a misrepresentation when he said that a medical lien from DHHS or New Hampshire Medicaid existed with regards to Ms. Dewey. (Fojo Grievance).

In the ADO S.Ct. Brief, Atty. Cornell and Atty. Murphy wrote:

[a]s to the DHHS lien, to date there is no confirmation that a lien even exists, much less an amount . . . to put that in context, it appears Mr. Fojo decided to reach out to DHHS concerning a purported lien about which he had made unsubstantiated representations to his client, and for which he claimed he was holding back funds, four months into an ADO investigation. His statements to Ms. Dewey, and to the disciplinary authority, concerning medical expenses and the lien, are misrepresentations.

(Fojo Grievance ). Mr. Fojo alleges that this is a false statement, which was made in violation of the Rules of Professional Conduct, because a Medicaid Lien was found to exist. (Fojo Grievance).

### **Attorney Murphy's Email to Attorney Saturley Confirming Liens**

On December 21, 2022, Atty. Murphy wrote an email to Mr. Fojo's attorney, Attorney William Saturley ("Attorney Saturley"). (December 21, 2022, Email). In the email, Attorney Murphy enclosed correspondence from Attorney Anna Zimmerman ("Attorney Zimmerman") regarding the resolution of outstanding bills in Ms. Dewey's matter. (December 21, 2022, Email).

Atty. Murphy attached several documents to the letter displaying Ms. Dewey's bills. (December 21, 2022, Email Attachments). The attached letter from Attorney Zimmerman states "[w]e have reached out to all providers as well as NH Medicaid on behalf of New Hampshire Healthy Families and ascertained the status of outstanding medical bills incurred by Ms. Dewey with regard to her 10/09/2017 slip and fall." (December 13, 2022, Letter from Attorney Zimmerman). The included documentation shows Ms. Dewey had an outstanding bill of \$3,027.58 from NH Medicaid for various treatments, but the amount due was reduced to \$656.21 after unrelated charges were removed. (December 13, 2022, Letter from Attorney Zimmerman).

### **ANALYSIS**

#### **Atty. Cornell and Atty. Murphy's Conduct Under New Hampshire Rule of Professional Conduct 3.3(a)(1)**

Mr. Fojo claims Atty. Cornell and Atty. Murphy violated Rule 3.3(a)(1) of the New Hampshire Rules of Professional Conduct. (Fojo Grievance). Specifically, Mr. Fojo alleges Atty. Cornell and Atty. Murphy made false statements because it was incorrect when they wrote that Mr.

**THE STATE OF NEW HAMPSHIRE**

**Rockingham, SS**

**Superior Court**

218-2024-CV-00445

Docket No. \_\_\_\_\_

Attorney Discipline Office,  
Petitioner

v.

Melissa Solomon and Robert M. Fojo,  
Respondents

**BILL OF INTERPLEADER**

NOW COMES the Attorney Discipline Office (“ADO”), and requests that this Court determine the rights of the above-named Respondents to certain funds held by the Bank of America, funds which were once held in trust by former New Hampshire attorney, Robert M. Fojo.

**Jurisdiction and Venue**

1. This court has jurisdiction of this matter pursuant to the equitable powers it derives from R.S.A. § 498:1.
2. Venue is appropriate as the underlying marital case giving rise to this interpleader was heard in the Portsmouth Family Division, 10<sup>th</sup> Circuit, *In the Matter of Peter Angerhofer and Melissa Greer Solomon*, Case No. 670-2018-DM-00214 (the “Underlying Action”). Furthermore, Melissa Greer Solomon (“Ms. Solomon”), upon information and belief, is a resident of Rockingham County, New Hampshire residing at 20 Portsmouth Ave, Suite 1, #187, Stratham, New Hampshire 03885.

### **Parties**

3. Petitioner Attorney Discipline Office, investigated and prosecuted Robert M. Fojo (“Mr. Fojo”), in a disciplinary matter. The Attorney Discipline Office is located at 4 Chenell Drive, Suite 102, Concord, New Hampshire 03301. Undersigned counsel was appointed by the New Hampshire Supreme Court to inventory Mr. Fojo’s client files, trust and fiduciary accounts.
4. Respondent Melissa Solomon, upon information and belief, resides at 20 Portsmouth Ave, Suite 1, #187 Stratham, New Hampshire 03885.
5. Respondent Robert M. Fojo, upon information and belief, resides at 12 Sutherland Way, Nashua, NH 03062-2827.

### **Background Facts**

6. On December 17, 2021, the ADO filed a Petition for Immediate Interim Suspension (the “Petition”) of Attorney Robert M. Fojo from the practice of law in New Hampshire.
7. The Petition was granted by Order dated December 21, 2021 (the “Suspension Order”). Exhibit A
8. The Suspension Order appointed Attorney Labonte to take possession of and inventory the trust and fiduciary accounts of Mr. Fojo.
9. At the time of the Suspension Order, Mr. Fojo had an IOLTA account at the Bank of America (“BOA”) ending in #6068 (the “BOA IOLTA”).
10. On December 13, 2021, Mr. Fojo deposited \$100<sup>1</sup> into the BOA IOLTA from his BOA operating account. Exhibit B
11. On December 15, 2021, Mr. Fojo deposited \$15,000 into the BOA IOLTA. Exhibit B
12. At the time, Mr. Fojo identified to the ADO the client for whom this \$15,000 deposit relates as Ms. Solomon.

---

<sup>1</sup> It is not clear if the \$100 were funds belonging to Mr. Fojo.

13. On December 17 and December 22, Mr. Fojo electronically transferred \$5,590 and then \$4,510 from his BOA IOLTA into his BOA operating account, leaving \$5,000 remaining in the BOA IOLTA (the “Disputed Funds”). Exhibit B
14. On December 23, 2021, BOA’s legal processing unit executed the Suspension Order which froze the BOA IOLTA with a balance of \$5,000. Exhibit B
15. Mr. Fojo’s renewed and assented-to request to resign from the practice of law in New Hampshire was approved by the Court on May 18, 2022 (the “Resignation Order”). Exhibit C
16. Shortly after the Suspension Order, Mr. Fojo represented to the ADO that he was holding the \$5,000 in his client trust account (the “Disputed Funds”) to pay an anticipated litigation expense related to the Underlying Action for Ms. Solomon. Exhibit D
17. Mr. Fojo later claimed the Disputed Funds belonged to him and were unpaid fees owed to him by Ms. Solomon. Exhibit E
18. In light of Mr. Fojo’s conflicting representations regarding the Disputed Funds, the ADO remains uncertain as to whether Mr. Fojo or Ms. Solomon is legally entitled to the funds.
19. Based on the foregoing, it is unclear to whom the Disputed Funds belong to.
20. The ADO’s efforts to reach Ms. Solomon regarding the Disputed Funds have been unsuccessful.
21. The Bank of America continues to hold \$5,000 in the BOA IOLTA pursuant to the Suspension Order, and the ADO, a third party without an interest in the funds, seeks to interplead that amount.
22. The ADO cannot determine how to distribute the \$5,000 between the Respondents. The ADO may suffer liability if the funds are not delivered to the rightful owner(s).
23. There is no means at law to obtain a determination of the issue, and there is a danger of injury to the ADO arising out of the claims of the Respondents regarding the funds.

24. This Bill of Interpleader is not being filed to hinder the Respondents' rightful property; rather, the court's intervention is necessary to ensure a venue where the Respondents' respective positions regarding the funds may be heard and adjudicated.
25. Upon completion of service on the Respondents and the filing of the returns of service with the Court, the ADO anticipates that it will request that the Court dismiss the ADO from the Action.

WHEREFORE, the ADO respectfully requests that this Honorable Court:

- (A) Grant this Bill of Interpleader;
- (B) Issue Orders of Notice;
- (C) Schedule a hearing, if necessary, to determine the rights of the Respondents to the \$5,000 that was held by the Bank of America; and
- (D) Grant such other relief as may be just and proper.

Respectfully submitted,

New Hampshire Supreme Court  
Attorney Discipline Office

Andrea Q. Labonte, Esquire  
NH Bar ID No. 12898  
4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
(603) 224-5828

Dated: April 29, 2024

By: /s/Andrea Q. Labonte  
Andrea Q. Labonte  
Assistant General Counsel



THE STATE OF NEW HAMPSHIRE

SUPREME COURT

ORDER

LD-2021-0012, In the Matter of Robert M. Fojo, Esquire

On December 17, 2021, the Attorney Discipline Office (ADO) filed a petition for the immediate interim suspension of Attorney Robert M. Fojo from the practice of law in New Hampshire. The ADO has alleged, among other claims of professional misconduct, that:

- (1) As to one personal-injury client, Attorney Fojo misappropriated approximately \$14,666 in settlement funds, was "out of trust" with his IOLTA account in that amount, used the funds of other clients to make a payment of \$12,000 to the client, and knowingly misrepresented to the client the status of the settlement payment from the insurance company;
- (2) As to two clients whom he represented in a contract dispute with a former employer, Attorney Fojo was "out of trust" with his IOLTA account in the amount of \$50,020 and used the funds of other clients to issue a check, and then a wire transfer, in the amount of \$67,000;
- (3) As to another personal-injury client, Attorney Fojo misappropriated approximately \$33,350 and was "out of trust" with his IOLTA account in that amount;
- (4) Attorney Fojo failed to comply with the record-keeping requirements for IOLTA accounts; and
- (5) Attorney Fojo's conduct violates Supreme Court Rule 50 and Rules of Professional Conduct 1.3, 1.4, 1.5, 1.15, 3.3, and 8.4(a) and (c).

The ADO cites Supreme Court Rule 37(9-A) and (16)(f) as grounds for suspending Attorney Fojo immediately and on an interim basis. Rule 37(9-A) authorizes the court to suspend an attorney, after notice and an opportunity for a hearing, when the court finds that the attorney has engaged in conduct that poses a substantial threat of serious harm to the public. Rule 37(16)(f) authorizes the court to suspend an attorney when it deems a suspension necessary for the protection of the public and the preservation of the integrity of the legal profession. When the court makes such a finding, the attorney may be

suspended on a temporary order, with or without hearing. See Rule 37(16)(d).

Based on the information submitted by the ADO in its petition, the court finds that Attorney Fojo's immediate suspension from the practice of law is necessary to protect the public and to preserve the integrity of the legal profession. See Rule 37(16)(d) and (f). Accordingly, it is hereby ordered:

- (1) In accordance with Rule 37(16)(d) and (f), Attorney Robert M. Fojo is immediately suspended from the practice of law in New Hampshire pending further order of this court.
- (2) A copy of the petition for immediate suspension and of this order shall be served on Attorney Fojo by first-class mail at the latest address that Attorney Fojo provided to the New Hampshire Bar Association.
- (3) On or before January 5, 2022, Attorney Fojo may request a hearing on the issue of whether the interim suspension should be lifted. The hearing will be promptly scheduled. See Reiner's Case, 152 N.H. 163 (2005).
- (4) On or before January 20, 2022, Attorney Fojo shall file an answer to the petition for immediate interim suspension.
- (5) Attorney Fojo is enjoined from further use of his IOLTA account. He is further enjoined from transferring, assigning, hypothecating, or in any manner disposing of or conveying any assets of clients, whether real, personal, beneficial or mixed.
- (6) On or before December 29, 2021, Attorney Fojo shall inform his clients in writing of his suspension from the practice of law and of his inability to act as an attorney, and shall advise them to seek other counsel. See Rule 37(13). Attorney Fojo shall file an affidavit on or before January 20, 2022, stating that he has complied with this requirement. A copy of the affidavit shall be sent to the ADO.

Pursuant to Rule 37(17), the court appoints Attorney Andrea Q. Labonte, ADO Assistant General Counsel, to take immediate possession of the client files and trust and other fiduciary accounts of Attorney Fojo, and to take the following actions:

- (1) Attorney Labonte shall notify all banks and other entities where Attorney Fojo has trust or fiduciary accounts and operating accounts of Attorney Fojo's suspension from the practice of law and of Attorney Labonte's appointment by the court.

- (2) Attorney Labonte shall, to the extent that she deems necessary, notify Attorney Fojo's clients of his suspension, inform them of any scheduled hearings, advise them to obtain the services of other lawyers of their choice, and advise them how they or their new attorneys may obtain their files. Attorney Labonte shall not undertake the representation of any of Attorney Fojo's clients, however.
- (3) Attorney Labonte shall, to the extent that she deems necessary, notify the courts in which any hearings are scheduled in the near future of Attorney Fojo's suspension.
- (4) Attorney Labonte shall prepare an inventory of Attorney Fojo's client files and shall file a copy of the inventory with the Supreme Court on or before February 4, 2022, together with a report of her actions taken under this order and recommendations as to what further actions should be taken.
- (5) If Attorney Fojo was in possession of any client funds or property, Attorney Labonte may file an appropriate motion requesting authority to distribute them.

Attorney Fojo is ordered to cooperate with Attorney Labonte in performing the tasks as directed by the court. The expenses of Attorney Labonte shall be paid in the first instance from the funds of the Professional Conduct Committee, which may seek reimbursement from Attorney Fojo.

MacDonald, C.J., and Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: December 21, 2021

ATTEST:

  
Timothy A. Gudas, Clerk

Distribution:  
Mark P. Cornell, Esquire  
Elizabeth M. Murphy, Esquire  
Andrea Q. Labonte, Esquire  
Robert M. Fojo, Esquire  
William C. Saturley, Esquire  
File

P.O. Box 15284  
Wilmington, DE 19850

NEW HAMPSHIRE IOLTA TRUST ACCOUNTS  
FOJO LAW FIRM, PLLC  
264 S RIVER RD STE 464  
BEDFORD, NH 03110-6965

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-  bankofamerica.com
-  Bank of America, N.A.  
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Tampa, FL 33622-5118



**Your Public Service Trust Account**

for December 13, 2021 to December 31, 2021

Account number: XXXXXXXXXXXX8

**NEW HAMPSHIRE IOLTA TRUST ACCOUNTS FOJO LAW FIRM, PLLC**

**Account summary**

Beginning balance on December 13, 2021	\$0.00
Deposits and other credits	15,100.00
Withdrawals and other debits	-15,100.00
Checks	-0.00
Service fees	-0.00
<b>Ending balance on December 31, 2021</b>	<b>\$0.00</b>

# of deposits/credits: 2  
# of withdrawals/debits: 3  
# of days in cycle: 19  
Average ledger balance: \$4,365.78

Introducing security you can see



Our standard protection keeps your finances only safe online. The Advanood meter gives you an extra level of security — and shows your security meter status — by providing additional features:

- You're using a strong password
- You've enhanced your mobile app login

Our new security meter lets you visualize your account security and moves up as you take additional steps to help protect your account.

Visit the Security Center in the Mobile Banking app or Online Banking to see your security level today. To learn more, scan this code or visit [bofa.com/SecurityCenter](https://bofa.com/SecurityCenter).

Mobile Banking requires that you download the Mobile Banking app and is only available for select mobile devices. Message and data rates may apply.



SSM-07-21-0033.B | 3647905

## IMPORTANT INFORMATION: BANK DEPOSIT ACCOUNTS

**How to Contact Us** - You may call us at the telephone number listed on the front of this statement.

**Updating your contact information** - We encourage you to keep your contact information up-to-date. This includes address, email and phone number. If your information has changed, the easiest way to update it is by visiting the Help & Support tab of Online Banking.

**Deposit agreement** - When you opened your account, you received a deposit agreement and fee schedule and agreed that your account would be governed by the terms of these documents, as we may amend them from time to time. These documents are part of the contract for your deposit account and govern all transactions relating to your account, including all deposits and withdrawals. Copies of both the deposit agreement and fee schedule which contain the current version of the terms and conditions of your account relationship may be obtained at our financial centers.

**Electronic transfers: In case of errors or questions about your electronic transfers** - If you think your statement or receipt is wrong or you need more information about an electronic transfer (e.g., ATM transactions, direct deposits or withdrawals, point-of-sale transactions) on the statement or receipt, telephone or write us at the address and number listed on the front of this statement as soon as you can. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

- Tell us your name and account number.
- Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe there is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

For consumer accounts used primarily for personal, family or household purposes, we will investigate your complaint and will correct any error promptly. If we take more than 10 business days (10 calendar days if you are a Massachusetts customer) (20 business days if you are a new customer, for electronic transfers occurring during the first 30 days after the first deposit is made to your account) to do this, we will provisionally credit your account for the amount you think is in error, so that you will have use of the money during the time it will take to complete our investigation.

For other accounts, we investigate, and if we find we have made an error, we credit your account at the conclusion of our investigation.

**Reporting other problems** - You must examine your statement carefully and promptly. You are in the best position to discover errors and unauthorized transactions on your account. If you fail to notify us in writing of suspected problems or an unauthorized transaction within the time period specified in the deposit agreement (which periods are no more than 60 days after we make the statement available to you and in some cases are 30 days or less), we are not liable to you and you agree to not make a claim against us, for the problems or unauthorized transactions.

**Direct deposits** - If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you may call us to find out if the deposit was made as scheduled. You may also review your activity online or visit a financial center for information.

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**Deposits and other credits**

Date	Transaction description	Customer reference	Bank reference	Amount
12/13/21	Agent Assisted transfer from CHK 4715 Confirmation# 1442548187		956912137506584	100.00
12/15/21	Counter Credit		813004652329562	15,000.00

**Total deposits and other credits** **\$15,100.00**

**Withdrawals and other debits**

Date	Transaction description	Customer reference	Bank reference	Amount
12/17/21	Online Banking transfer to CHK 4715 Confirmation# 2176561696		943212176966074	-5,590.00
12/22/21	Online Banking transfer to CHK 4715 Confirmation# 7123029998		943212226835556	-4,510.00
12/23/21	Legal Order, LTS P122321000046		928112230000357	-5,000.00

**Total withdrawals and other debits** **-\$15,100.00**

**Daily ledger balances**

Date	Balance (\$)	Date	Balance(\$)	Date	Balance (\$)
12/13	100.00	12/17	9,510.00	12/23	0.00
12/15	15,100.00	12/22	5,000.00		

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**THE STATE OF NEW HAMPSHIRE**

**SUPREME COURT**

**ORDER**

**LD-2021-0012, In the Matter of Robert M. Fojo, Esquire**

On April 26, 2022, Attorney Robert M. Fojo filed a renewed and assented-to request to resign. The assented-to request was accompanied by his affidavit, which satisfies the requirements of Rule 37(11) and complies with our orders dated March 11 and 22, 2022.

In accordance with Rule 37(11), Attorney Fojo's resignation from the bar is accepted. Attorney Fojo shall reimburse the Attorney Discipline Office for the costs incurred in the investigation and prosecution of this matter.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: May 18, 2022

ATTEST:

  
**Timothy A. Gudas, Clerk**

Distribution:  
William C. Saturley, Esq.  
Mark P. Cornell, Esq.  
Elizabeth M. Murphy, Esq.  
Andrea Q. Labonte, Esq.  
File

## Andrea Labonte

**From:** Saturley, William C. <WSaturley@preti.com>  
**Sent:** Friday, February 4, 2022 1:04 PM  
**To:** Andrea Labonte  
**Cc:** Mark Cornell; Elizabeth Murphy  
**Subject:** Robert Fojo  
**Attachments:** Letter re suspension.pdf; Notice re suspension.pdf

Greetings.

I write to pass along some additional information provided me by Mr. Fojo in response to questions you raised.

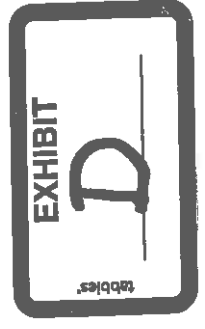
1. Attached please find a copy of Mr. Fojo's letter to Rose Marie. He mailed it on Dec. 28.
2. Attached please also find the model he generally used for letters to clients. Some of his notices to clients were in writing, such as to Ms. Marte; some may have been oral; but he is confident all clients were notified in one form or another.
3. All clients were notified on or before December 29.
4. Regarding the Bank of America IOLTA account, you have the transaction history and statement already.
5. The \$15,000.00 deposit pertained to Melissa Solomon. You may recall that she is a divorce client who submitted a letter on Robert's behalf. She consulted 25 lawyers before one would agree to represent her (Robert). Her matter is scheduled for an evidentiary hearing in May. Two withdrawals were for services rendered. [Please keep this part confidential: The \$5,000 which should remain in the account is for a vendor for an asset search in advance of the May hearing in Ms. Solomon's matter. It appears BoA retains that amount; I hope the bank is able to find it when called upon.]
6. The great majority (or all) of Robert's matters are litigation matters. He emails copies of everything to his clients as the case proceeds; hence they already have their files. To the extent there is a reason for Robert and the client to work on some document(s) jointly, he created a Google Drive space for that process. If any client or substitute counsel wants/needs additional copies of file materials, Robert can accommodate that.
7. In light of the distress in which Robert's clients find themselves due to his interim suspension, no extension of the filing date for his brief will be sought. I will file my brief on Thursday February 10.

Regards. Have a pleasant, icy weekend.

Bill Saturley

William C. Saturley  
603.410.1557 Tel  
wsaturley@preti.com  
[Bio](#) | [LinkedIn](#) | [Blog](#) | [Twitter](#) | [preti.com](#)

**PreFiFlaherty**  
Mailing Address:  
P.O. Box 1318  
Concord, NH 03302-1318



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## **Andrea Labonte**

**Subject:**

FW: Robert Fojo

**From:** Saturley, William C. <WSaturley@preti.com>  
**Sent:** Wednesday, August 24, 2022 12:41 PM  
**To:** Andrea Labonte <alabonte@nhattyreg.org>  
**Subject:** Robert Fojo

Hi Andrea

I'm checking in to see if you have any more information about the stray \$5,000. Robert contends it's his money, as you know, and in his present circumstances he would like it released to him.

Below my signature block, I'm copying a sample email (partially redacted) between Robert and Ms. Solomon. There are two reasons: to make sure you have the same contact information he has, and to demonstrate that she's a sophisticated, educated person. If you are getting no response from her, that would seem to be intentional.

I will be away the next few weeks. If I can hear from you this week, that would be grand.

Thank you,  
Bill

**William C. Saturley**  
603.410.1557 Tel  
wsaturley@preti.com  
[Bio](#) | [LinkedIn](#) | [Blog](#) | [Twitter](#) | [preti.com](#)

**PretiFlaherty**  
Mailing Address:  
P.O. Box 1318  
Concord, NH 03302-1318



This E-Mail may contain information that is privileged, confidential and / or exempt from discovery or disclosure under applicable law. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege. If you are not the intended recipient of this communication, and have received it in error, please do not distribute it and notify me immediately by E-mail at [wsaturley@preti.com](mailto:wsaturley@preti.com) or via telephone at 603.410.1500 and delete the original message. Unless expressly stated in this e-mail, nothing in this message or any attachment should be construed as a digital or electronic signature or as a legal opinion.

Fojo was lying about the existence of a medical lien from DHHS and New Hampshire Medicaid in the ADO S.Ct. Brief. (Fojo Grievance).

Under the New Hampshire Rules of Professional Conduct, “[a] lawyer shall not *knowingly* make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.” (N.H. R. Prof. Conduct 3.3(a)(1)) (emphasis added). This rule requires that the lawyer must have knowledge that his or her statement is false. (N.H. R. Prof. Conduct 3.3(a)(1)). The New Hampshire Rules of Professional Conduct define “knowingly” to mean “actual knowledge of the fact in question.” (N.H. R. Prof. Conduct 1.0(f)).

Atty. Cornell and Atty. Murphy made statements pertaining to Mr. Fojo lying about the existence of the medical lien in the ADO S.Ct. Brief dated February 10, 2022. (ADO S.Ct. Brief, pp. 28-29). The ADO S.Ct. Brief stated: “At the urging of the ADO, Mr. Fojo made a partial payment to Ms. Dewey in August 2021, claiming to be holding back funds for a purported DHHS lien and other medical bills. But this letter too, contained misrepresentation...” (ADO S.Ct. Brief, p. 28). Atty. Cornell and Atty. Murphy noted that the DHHS (Third Party Liability Unit) notified the ADO that “Mr. Fojo did not reach out to DHHS until November 22, 2021,” which was already four months into the ADO investigation. (ADO S.Ct. Brief, p. 28). These pages of the ADO S.Ct. Brief recited the history of some of Mr. Fojo’s representations regarding the existence of a medical lien and stated that it was not clear that any lien existed. The gist of this section was that statements

being made about the existence and amount of any lien was a misrepresentation by Mr. Fojo because he had not obtained any information to substantiate the statements he had made. These pages do not state that it was certain that there was no lien, only that Mr. Fojo did not have support for the funds that he had withheld from Ms. Dewey. These pages also note that while \$12,000 was paid to Ms. Dewey, \$14,666.67 in fees were taken by Mr. Fojo and not paid to any lienholder or held in trust for payment of a lien. This section offers factual support for the allegations contained therein and does not say, as Mr. Fojo asserts, that there is no possibility that a Medicaid lien existed. Instead, it argues that Mr. Fojo's assertion that liens existed, preventing disbursement of funds, was not true, including because he had not diligently sought confirmation of the existence of any lien. Thus, there is no reasonable likelihood that a hearing panel would find clear and convincing evidence that Atty. Cornell and Atty. Murphy *knowingly* made a false statement pertaining to the existence of a medical lien or Mr. Fojo's representations regarding any lien.

### **CONCLUSION**

For the foregoing reasons, undersigned counsel is of the opinion, based on his review of the record pertaining to this grievance, the Dewey Grievance, and related actions, that there is no reasonable likelihood that a hearing panel would find clear and convincing evidence that Atty. Cornell and/or Atty. Murphy violated N.H. R. Prof. Conduct 3.3(a)(1), and Mr. Fojo's grievance should be dismissed.

Respectfully Submitted,

Rath Young and Pignatelli, P.C.

By: /s/ *Jamie N. Hage*

Jamie N. Hage, Esq, Bar #1054

One Capital Plaza

Concord NH, 03302

Telephone: (603) 226-2600

[jnh@rathlaw.com](mailto:jnh@rathlaw.com)

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No. 218-2024-CV-00445

Attorney Discipline Office

*Petitioner*

v.

Melissa Solomon and Robert M. Fojo

*Respondents*

**RESPONDENT ROBERT M. FOJO'S MOTION TO DISMISS BILL OF INTERPLEADER**

Respondent Robert M. Fojo moves to dismiss Petitioner Attorney Discipline Office's ("ADO") Bill of Interpleader. The Court should dismiss the Bill of Interpleader because the ADO lacks authority to continue to withhold the funds, and there is no doubt – certainly none that supports jurisdiction in this action – that the funds belong to Mr. Fojo.

**A. Standard of Review**

**1. Standard of Review for Bills of Interpleader**

“The standard of review in considering a motion to dismiss is whether the plaintiff's allegations are reasonably susceptible of a construction that would permit recovery.”

*Gordonville Corp. N.V. v. LRI-A Ltd. P'ship*, 151 N.H. 371, 376-77 (2004). Although a court must assume the plaintiff's “allegations to be true and construe all reasonable inferences in the light most favorable to him,” it “need not accept allegations that are merely conclusions of law.” *In the Matter of Serodio & Perkins*, 166 N.H. 606, 609 (2014).

“The danger of injury to the complainant arising out of the opposing claims and doubtful rights of the several defendants as between themselves, is the general ground of jurisdiction in the case of a simple bill of interpleader. It must appear from the complainant's own showing,

that he cannot pay the debt or render the duty or other thing to either of the parties claiming the same, without some risk of being subsequently liable for the same debt or duty to the other.”

*City of Portsmouth v. State*, 2000 N.H. Super. LEXIS 6, at \*2-3 (Rockingham Super. Ct. Mar. 30, 2000).

## **2. Judicial Notice**

At this stage of the proceeding, the Court may take judicial notice of public records. *See Duguay v. RBS Citizens Fin. Grp.*, No. 19-cv-1103-LM, at \*3 n.3 (D.N.H. Dec. 13, 2019) (taking judicial notice of property transfer as a result of foreclosure); *see also In re Colonial Mortgage Bankers Corp.*, 324 F.3d 12, 15 (1st Cir. 2003) (in adjudicating a motion to dismiss, court may consider documents incorporated by reference in the complaint, matters of public record, and other matters susceptible to judicial notice); *see also* N.H. R. Evid. 201(a) (“A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”); N.H. R. Evid. 201(d) (“A court ***shall*** take judicial notice if requested by a party and supplied with the necessary information.”) (emphasis added); N.H. R. Evid. 201(f) (“Judicial notice may be taken at any stage of the proceeding.”).

Here, the Court may take judicial notice of filings in *In the Matter of Robert M. Fojo, Esquire*, No. LD-2021-0012, the proceeding concerning the undersigned in the New Hampshire Supreme Court. A filing recently submitted in that proceeding is attached hereto as Exhibit 1.

As demonstrated below, the Bill of Interpleader fails to state a valid claim for relief.

**B. There is No Authority to Withhold the Funds, and There is No Doubt as to the Rightful Owner of the Funds**

The Bill of Interpleader fails to cite any authority or factual basis for the ADO's continued hold on the remaining funds in Mr. Fojo's IOLTA account, and there is no doubt that the funds belong to Mr. Fojo.

**1. The ADO has no authority to withhold the funds.**

This New Hampshire Supreme Court's December 21, 2021, Order ("Suspension Order") appointed Attorney Andrea Q. Labonte, the ADO's Assistant General Counsel, "to take immediate possession of the . . . trust and other fiduciary accounts of Attorney Fojo." Suspension Order at 2. This appointment included "notif[ing] all banks and other entities where Attorney Fojo has trust or fiduciary accounts and operating accounts of Attorney Fojo's suspension . . . and of Attorney Labonte's appointment by the Court."

On the same day, Attorney Labonte and the ADO circumvented applicable out-of-state subpoena and service of process requirements and simply *mailed* the Court's Suspension Order to the legal processing unit for Mr. Fojo's bank (Bank of America), which is located in Delaware, and directed that office to "freeze" not only Mr. Fojo's IOLTA account, *but his operating account as well*.<sup>1</sup> At the time of this directive, \$5,000 remained in Mr. Fojo's IOLTA account. Those funds were to be applied to billable work Mr. Fojo had completed before the Suspension Order. Several days later, the ADO conceded it should not have frozen Mr. Fojo's *operating* account and directed Bank of America to unfreeze that account.

On May 18, 2022, this Court accepted Mr. Fojo's coerced request to resign from the New Hampshire bar. **That order did not address the frozen funds in Mr. Fojo's IOLTA account.**

<sup>1</sup> The ADO deems this unlawful practice "executing" the Suspension Order.

On June 3, 2022, the ADO filed a motion to close this matter with the Professional Conduct Committee (“PCC”). **The ADO also did not address the frozen funds in Mr. Fojo’s IOLTA account.** Rather, the ADO requested that the matter be closed “without prejudice” *only* “to the [ADO]’s right to proceed with a hearing in the event that Mr. Fojo seeks readmission in the future.” **The ADO did not reserve any rights with respect to the funds.**

On June 8, 2022, the PCC issued an order closing the matter, without prejudice, as requested (“Closing Order”). **That order, too, did not address the frozen funds in Mr. Fojo’s IOLTA account.**

The Supreme Court’s acceptance of Mr. Fojo’s coerced resignation and the PCC’s Closing Order naturally extinguished or replaced any prior orders or directives. Indeed, the Supreme Court’s Suspension Order was – by its own admission – an “interim” or “temporary” order. *See* Suspension Order at 1-2. Accordingly, since this matter was closed on June 8, 2022, there remains no order or authority from the Supreme Court (or anywhere else) concerning the still-frozen funds in Mr. Fojo’s IOLTA account. The PCC’s Closing Order should have eliminated any remaining restriction on those funds.

**2. There is no doubt the funds belong to Mr. Fojo.**

The ADO has, nevertheless, obstructed Mr. Fojo’s efforts to release the funds. As explained in the undersigned’s Objection to Motion to Authorize Attorney Discipline Office to File a Bill of Interpleader Involving the Remaining Funds in Robert M. Fojo’s IOLTA Account (“Objection to Motion to Allow Interpleader”) (Exhibit 1), after the PCC issued its Closing Order, in July 2022, Mr. Fojo forwarded it to Bank of America and requested that it release the funds. Bank of America declined to release the funds without a letter from the ADO directing it to do so.

Mr. Fojo then – through his attorney, William Saturley – requested that the ADO (through Attorney Labonte) provide that letter to Bank of America. The ADO declined to issue the letter and contended that the funds belonged to one of Mr. Fojo’s clients, Melissa Solomon. In early August 2022, Mr. Fojo – again, through Attorney Saturley – clarified with Attorney Labonte that the funds had previously been left in the IOLTA account to cover the cost of a potential asset search for Mr. Fojo’s client; that search was not ultimately done; Mr. Fojo had other billable work to which those funds would be applied (pursuant to Mr. Fojo’s engagement agreement with his client); and, thus, the funds should be released to pay for that work. *See* Bill of Interpleader, Exhibits D & E; Objection to Motion to Allow Interpleader.

The ADO declined to release the funds and insisted on communicating directly with Mr. Fojo’s client to obtain authorization to release the funds to him. As stated in the Bill of Interpleader, “[t]he ADO’s efforts to reach Ms. Solomon regarding the Disputed Funds have been unsuccessful.” *Id.* ¶ 20.

Despite Mr. Fojo’s **undisputed claim to the funds** and **no communication or claim by Ms. Solomon**, the ADO insists it “**remains uncertain** as to whether Mr. Fojo or Ms. Solomon is legally entitled to the funds.” *Id.* ¶ 18.

That allegation is baseless and false: the entirety of the information the ADO has accumulated since early 2022 conclusively demonstrates the funds belong to Mr. Fojo. As explained above and referenced in the Bill of Interpleader, Mr. Fojo communicated this information to the ADO in July and August 2022, and – as shown in the Objection to Motion to Allow Interpleader – Mr. Fojo further emphasized it earlier this year. The ADO omitted all of

that information in the Bill of Interpleader.<sup>2</sup> The ADO has nothing to support its assertion that it is “uncertain” as to whether the funds belong to Mr. Fojo. It simply doesn’t want to release the funds to him.<sup>3</sup>

A bill of interpleader does not provide the ADO with any authority it otherwise does not have concerning this issue. “Interpleader is an equitable remedy by which a party who asserts that he is ignorant of the rights of different claimants or at least that there is doubt as to which of them is entitled to a fund, may pay the money into court so that the claims may be resolved and, implicitly, avoid any further liability to him.” *Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Ass'n*, No. 2010-CV-00414, 10 (N.H. Super. May. 2, 2017). A bill of interpleader, thus, presumes that the ADO is truly “ignorant” of the rights concerning these funds. But it is not “ignorant” – the ADO knows exactly who the funds belong to. Its officials – who misrepresented numerous facts before the Supreme Court – simply do not want to release the funds to Mr. Fojo and are fabricating every measure necessary to perpetuate that injustice.

<sup>2</sup> This omission is a violation of New Hampshire Rule of Professional Conduct 3.3(a), but that is a question for another day.

<sup>3</sup> Without any facts to support withholding the funds or – more important – any legal authority to withhold them, the ADO is exceeding any residual authority it has (none exists) over Mr. Fojo (now a private New Hampshire citizen) or his property. Its continued refusal to release the funds amounts to conversion and a violation of Mr. Fojo’s due process rights. That is also a question for another day.



# **EXHIBIT 1**

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. LD-2021-0012

IN THE MATTER OF ROBERT M. FOJO, ESQUIRE

---

**RESPONDENT ROBERT M. FOJO’S OBJECTION TO MOTION TO AUTHORIZE  
ATTORNEY DISCIPLINE OFFICE TO FILE A BILL OF INTERPLEADER  
INVOLVING REMAINING FUNDS IN ROBERT M. FOJO’S IOLTA ACCOUNT**

---

Respondent Robert M. Fojo objects to the Attorney Discipline Office’s (“ADO”) Motion to Authorize the ADO to file a Bill of Interpleader involving the remaining funds in Mr. Fojo’s IOLTA account.

1. The Motion fails to cite any authority or factual basis for the continued hold on the remaining funds in Mr. Fojo’s IOLTA account. The ADO’s conduct amounts to conversion and violates Mr. Fojo’s due process rights.

2. This Court’s December 21, 2021, Order (“Suspension Order”) appointed Attorney Andrea Q. Labonte, the ADO’s Assistant General Counsel, “to take immediate possession of the . . . trust and other fiduciary accounts of Attorney Fojo.” Suspension Order at 2. This appointment included “notif[ing] all banks and other entities where Attorney Fojo has trust or fiduciary accounts and operating accounts of Attorney Fojo’s suspension . . . and of Attorney Labonte’s appointment by the Court.”

3. On the same day, Attorney Labonte and the ADO circumvented applicable out-of-state subpoena and service of process requirements and simply *mailed* the Court’s Suspension Order to the legal processing unit for Mr. Fojo’s bank (Bank of America), which is located in

Delaware, and directed that office to “freeze” not only Mr. Fojo’s IOLTA account, *but his operating account as well*. At the time of this directive, \$5,000 remained in Mr. Fojo’s IOLTA account. Those funds were to be applied to billable work Mr. Fojo had completed before the Suspension Order.

4. Several days later, the ADO conceded it should not have frozen Mr. Fojo’s *operating* account and directed Bank of America to unfreeze that account.

5. On May 18, 2022, this Court accepted Mr. Fojo’s request to resign from the New Hampshire bar. That order did not address the frozen funds in Mr. Fojo’s IOLTA account.

6. On June 3, 2022, the ADO filed a motion to close this matter with the Professional Conduct Committee (“PCC”). The ADO also did not address the frozen funds in Mr. Fojo’s IOLTA account. Rather, the ADO requested that the matter be closed “without prejudice” *only* “to the [ADO]’s right to proceed with a hearing in the event that Mr. Fojo seeks readmission in the future.” The ADO did not reserve any rights with respect to the disputed funds.

7. On June 8, 2022, the PCC issued an order closing the matter, without prejudice, as requested (“Closing Order”). That order, too, did not address the frozen funds in Mr. Fojo’s IOLTA account.

8. This Court’s acceptance of Mr. Fojo’s resignation and the PCC’s Closing Order naturally extinguished or replaced any prior orders or directives. Indeed, this Court’s Suspension Order was – by its own admission – an “interim” or “temporary” order. *See* Suspension Order at 1-2. Accordingly, since this matter was closed on June 8, 2022, there remains no order or authority from this Court concerning the still-frozen funds in Mr. Fojo’s IOLTA account. The PCC’s Closing Order should have eliminated any other restriction on those funds.

9. The ADO has, nevertheless, obstructed Mr. Fojo's efforts to secure the release of those funds.

10. After the PCC issued its Closing Order, in July 2022, Mr. Fojo forwarded it to Bank of America and requested that it release the funds. Bank of America declined to release the funds without a letter from the ADO directing it to do so.

11. Mr. Fojo then – through his attorney, Bill Saturley – requested that the ADO (through Attorney Labonte) provide that letter to Bank of America. The ADO declined to issue the letter and contended that the funds belonged to one of Mr. Fojo's clients. In early August 2022, Mr. Fojo – again, through Attorney Saturley – clarified with Attorney Labonte that the funds had previously been left in the IOLTA account to cover the cost of a potential asset search for Mr. Fojo's client; that search was not ultimately done; Mr. Fojo had other billable work to which those funds would be applied (pursuant to Mr. Fojo's engagement agreement with his client); and, thus, the funds should be released to pay for that work.

12. The ADO declined to release the funds and insisted on communicating directly with Mr. Fojo's client to obtain authorization to release the funds to him. As stated in the ADO's Motion, it "has made numerous attempts to contact [Mr. Fojo's client]," but "[t]o date, [Mr. Fojo's client] had not responded to the ADO."

13. The ADO does not have any authority to continue to withhold these funds. The ADO's Motion cites no authority or factual basis for doing so. It states only that it "remains uncertain as to whether Mr. Fojo or [his client] is legally entitled to the funds." Motion at 2 (emphasis added).

14. That statement is baseless and false: the entirety of the information the ADO has accumulated since early 2022 conclusively demonstrates the disputed funds belong to Mr. Fojo.

Mr. Fojo communicated this information to the ADO in July and August 2022 and at the end of last month. *See* Exhibit A (Email Chain) and Exhibit B (Email Chain). Attorney Labonte omitted all of that information in Paragraph 4 of the Motion.<sup>1</sup> Accordingly, the ADO has nothing to support its assertion that it is “uncertain” as to whether the funds belong to Mr. Fojo. It simply doesn’t want to release the funds to him.

15. Without any facts to support withholding the funds or – more important – any legal authority to withhold them, the ADO is exceeding any residual authority it has (none exists) over Mr. Fojo (now a private New Hampshire citizen) or his property. Its continued refusal to release the funds amounts to conversion and a violation of Mr. Fojo’s due process rights.

16. A bill of interpleader does not provide the ADO with any other authority it otherwise does not have concerning this issue. “Interpleader is an equitable remedy by which a party who asserts that he is ignorant of the rights of different claimants or at least that there is doubt as to which of them is entitled to a fund, may pay the money into court so that the claims may be resolved and, implicitly, avoid any further liability to him.” *Tuttle v. New Hampshire Med. Malpractice Joint Underwriting Ass’n*, No. 2010-CV-00414, 10 (N.H. Super. May. 2, 2017). A bill of interpleader, thus, presumes that the ADO is truly “ignorant” of the rights concerning these funds. But it is not “ignorant” – the ADO knows exactly who the funds belong to. Its officials – who misrepresented numerous facts in this proceeding – simply do not want to release the funds to him.

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<sup>1</sup> This omission is a violation of New Hampshire Rule of Professional Conduct 3.3(a), but that is a question for another day.

WHEREFORE, Mr. Fojo respectfully requests that this Court (1) deny the ADO's Motion; (b) direct the ADO to release the funds immediately; and (c) order any other relief deemed just and reasonable.

Respectfully submitted by:

/s/Robert M. Fojo

Robert M. Fojo

(603) 851-5737

[rfojo418@gmail.com](mailto:rfojo418@gmail.com)

**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing will be served electronically via email to Andrea Q. Labonte of the Attorney Discipline Office.

/s/Robert M. Fojo

Robert M. Fojo

# EXHIBIT A

**From:** Robert M. Fojo Rfojo418@gmail.com  
**Subject:** Re: Trust Funds  
**Date:** February 22, 2024 at 4:29 PM  
**To:** Andrea Labonte alabonte@nhattyreg.org



Andrea:

I do not assent. As revised, it doesn't disclose any of the information I have provided, and the you acknowledged to Bill in August 2022. Now you're stating the ADO "remains uncertain" as to whether the funds should be released to me. We both know that is complete nonsense: there is no existing order concerning those funds, and, thus, there is no legal basis to withhold them. If there exists some factual basis for you to withhold them (there doesn't need to be; your only jurisdiction over those funds concerned a proceeding that was closed over 18 months ago), the only facts you have indicate those funds belong to me. You have nothing that contradicts what I have consistently communicated to your office since 2022.

The paragraph remains misleading. I do not assent.

-Robert

On Feb 22, 2024, at 3:29 PM, Andrea Labonte <[alabonte@nhattyreg.org](mailto:alabonte@nhattyreg.org)> wrote:

Robert,

Thank you for your response. Please note that paragraph 4 was revised. That said, unless I hear otherwise from you by tomorrow morning at 10 a.m., I will note that you do not assent to the motion.

Thank you,

Andrea

---

**From:** Robert Fojo <[rfojo418@gmail.com](mailto:rfojo418@gmail.com)>  
**Sent:** Thursday, February 22, 2024 12:22 PM  
**To:** Andrea Labonte <[alabonte@nhattyreg.org](mailto:alabonte@nhattyreg.org)>  
**Subject:** Re: Trust Funds

I do not assent. Even as revised, it continues to rely on "prior representations," and you continue to ignore your communication with Bill from August 2022, which contradict that. It's disingenuous and misleading. I do not assent, and I'll take other measures as well to address the false statement.

Robert

On Feb 22, 2024, at 11:40 AM, Andrea Labonte <[alabonte@nhattyreg.org](mailto:alabonte@nhattyreg.org)> wrote:

Robert,

Attached is the revised motion I intend to file with the Court. Please let me know if you assent, do not assent, or take no position to the motion as written. Any objections to the Motion can be filed with and addressed by the Court.

Thank you,

Andrea

---

**From:** Robert M. Fojo <[rfojo418@gmail.com](mailto:rfojo418@gmail.com)>  
**Sent:** Wednesday, February 21, 2024 4:35 PM  
**To:** Andrea Labonte <[alabonte@nhattyreg.org](mailto:alabonte@nhattyreg.org)>  
**Subject:** Re: Trust Funds

Andrea:

Let me refresh your memory as well: The email below from Bill concerned information I provided him in late January to explain the two withdrawals I made from the trust account in December 2021. Bill communicated that information to you in the 2/4/22 email you referenced below.

However, on August 1 or 2, 2022, Bill *also* communicated to you (by phone or email — I believe it was by phone) that, in December, I had planned to leave the \$5,000 in the trust account to cover an asset search; those funds were never specifically earmarked for that by the client; there was no agreement concerning such earmarking; rather, those funds were deposited generally to cover fees and costs under our written engagement agreement; the search wasn't ultimately done; and I had done other work in December for which I was owed money then and am still owed money now; and, accordingly, those funds should be used to pay those fees pursuant to the engagement agreement.

Thus, the second-to-last statement in Paragraph 3 remains false: "the remaining \$5,000 in the account" is NOT "for vendor costs related to M.S.'s May 2022 hearing." I not only do not assent to the motion with that language, but it is a false statement that should not be communicated to the court.

There are no orders concerning the funds, and this matter was closed. There is no legal basis for the ADO to withhold my funds, and the ADO should have directed B of A to release the funds a long time ago. I have been more than patient in allowing this process to reach some conclusion. The funds should be released.

Please advise.

-Robert

On Feb 21, 2024, at 10:08 AM, Andrea Labonte <[alabonte@nhattyreg.org](mailto:alabonte@nhattyreg.org)> wrote:

Robert,

Attached is a copy of a 2/4/22 email from Mr. Saturley to refresh your memory in which you represented that the \$15,000 deposit “pertained to Melissa Solomon...Two withdrawals were for services rendered....**The \$5,000 which should remain in the account is for a vendor for an asset search in advance of the May hearing in Ms. Solomon’s matter.**” (emphasis added)

Also attached is a draft of the revised motion that I plan to file with the Court tomorrow. Please advise whether you assent, object, or take no position. Thank you.

Andrea

---

**From:** Robert M. Fojo <[rfojo418@gmail.com](mailto:rfojo418@gmail.com)>  
**Sent:** Friday, February 16, 2024 1:46 PM  
**To:** Andrea Labonte <[alabonte@nhattyreg.org](mailto:alabonte@nhattyreg.org)>  
**Subject:** Re: Trust Funds

Hi Andrea:

First of all, I continue to maintain that this process is not appropriate for having the funds released. They should have been released in mid-2022, when this proceeding was closed.

That being said, I’m inclined to indulge in this process. So - Paragraph 4 is inaccurate: I did not represent that the \$5,000 in funds belonged to Ms. Solomon. I have maintained — especially through Bill’s communications with you in 2022 and 2023 — that those funds belonged to me. Accordingly, please correct that statement. It is false.

-Robert

On Feb 16, 2024, at 1:11 PM, Andrea Labonte <[alabonte@nhattyreg.org](mailto:alabonte@nhattyreg.org)> wrote:

Robert:

I sent Bill a proposed draft of what I am going to file with the NH Supreme Court, which I am also attaching here. Bill indicated to me yesterday that you were considering assenting but wanted to see

the draft Bill of Interpleader first. The Interpleader is not drafted yet as I am seeking permission from the Supreme Court first to file it. If allowed, the ADO will request the Bank of America to issue the funds payable either directly to the Superior Court or to our Office (which will then be endorsed to the Superior Court), depending on the Order, to be filed with a Bill of Interpleader requesting the Superior Court to determine the rights to the disputed funds. Orders of Notice will then issue to both you and Ms. Solomon.

Andrea

---

**From:** Robert M. Fojo <[rfojo418@gmail.com](mailto:rfojo418@gmail.com)>  
**Sent:** Friday, February 16, 2024 12:59 PM  
**To:** Andrea Labonte <[alabonte@nhattyreg.org](mailto:alabonte@nhattyreg.org)>  
**Subject:** Trust Funds

Hi Andrea:

Bill Saturley mentioned you are planning to pursue an interpleader regarding my \$5,000 in funds that remain frozen in the trust account. He asked me if I would assent. We can deal directly on this going forward; no need to go through Bill. Please let me know what exactly you are planning to do, and I'll let you know if I assent.

Thanks,

Robert M. Fojo  
(603) 851-5737  
[rfojo418@gmail.com](mailto:rfojo418@gmail.com)

<Motion to Allow ADO to Initiate Interpleader.pdf>


<2.4.22 Email from Saturley re funds in IOLTA.pdf><Revised draft of Motion to Authorize Interpleader.pdf>

<Motion to Allow ADO to Initiate Interpleader.docx>

<Motion to Allow ADO to Initiate Interpleader.docx>



# EXHIBIT B

**From:** Robert M. Fojo Rfojo418@gmail.com   
**Subject:** Re: Motion to Authorize Interpleader  
**Date:** February 23, 2024 at 4:17 PM  
**To:** Andrea Labonte alabonte@nhattyreg.org



Thank you. Attached is the email from Bill on August 1, 2022, that I referenced yesterday. Please correct the representation in Paragraph 4 by the close of business on Monday.

-Robert

On Feb 23, 2024, at 10:41 AM, Andrea Labonte <[alabonte@nhattyreg.org](mailto:alabonte@nhattyreg.org)> wrote:

Robert, Please see attached Motion that was filed with the Court this morning.

*Andrea Q. Labonte, Esquire*  
Assistant General Counsel  
New Hampshire Supreme Court  
Attorney Discipline Office  
4 Chenell Drive, Suite 102  
Concord, NH 03301  
(603) 224-5828  
Fax: (603) 228-9511  
[www.nhattyreg.org](http://www.nhattyreg.org)

<Motion to Authorize Interpleader.pdf>



Mail  
Attachment.eml

**From:** Saturley, William C. WSaturley@preti.com  
**Subject:** Robert Fojo  
**Date:** August 1, 2022 at 4:07 PM  
**To:** Andrea Labonte alabonte@nhattyreg.org

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Hi Andrea

I left you a message. Can we speak about the Bank of America situation?

Robert contends the money should be released to him. He told me he set aside the \$5,000 contingently for outside fees and costs Ms. Solomon might incur, but then never did. In the meantime, he had outstanding earned fees for which he has yet to be paid.

What's the best way to resolve this to your satisfaction?

Regards,  
Bill

**William C. Saturley**  
603.410.1557 Tel  
wsaturley@preti.com  
[Bio](#) | [LinkedIn](#) | [Blog](#) | [Twitter](#) | [preti.com](#)

**PretiFlaherty**  
Mailing Address:  
P.O. Box 1318  
Concord, NH 03302-1318

Robert M. Fojo  
12 Sutherland Way  
Nashua, NH 03062  
[rfojo418@gmail.com](mailto:rfojo418@gmail.com)

September 30, 2024

Stephanie Hausman, Chair  
New Hampshire Supreme Court  
Professional Conduct Committee  
4 Chenell Drive, Suite 102  
Concord, NH 03301

**Re: Request for Reconsideration of Determination of Grievances filed by Robert M. Fojo against Mark P. Cornell and Elizabeth M. Murphy**

Dear Ms. Hausman:

Pursuant to Supreme Court Rule 37A(VI)(a), I am requesting reconsideration of Attorney Hage's decision concerning the above-referenced grievances. Attorney Hage's decision overlooks or misapprehends several key points, and there is a reasonable likelihood that a hearing panel would find "clear and convincing evidence" that Cornell and Murphy knowingly made a false statement regarding my representations concerning the existence of a medical lien.

"Clear and convincing evidence" is defined as "[e]vidence indicating that the thing to be proved is highly probable or reasonably certain. This is a greater burden than preponderance of the evidence, ... but less than evidence beyond a reasonable doubt." *Obukhov v. Bryfonski*, No. 2013-0875, 2014 N.H. LEXIS 181, at \*9 (Nov. 20, 2014).

First, the decision fails to address or consider the second basis for my grievance against Cornell and Murphy. Both grievances state that these individuals "clearly made a false statement of fact to the NH Supreme Court and failed to correct it upon receiving documentation that it was, in fact, false." This latter portion of Rule 3.3(a)(1) represents a separate basis for discipline. Indeed, even if Cornell and Murphy did not "knowingly" make false statements about me (they did), they were under an obligation to *correct those misstatements* once they learned of their falsity. Here, when they learned of the existence of a DHHS lien in December 2022, they should have corrected the statements they made with the Supreme Court. They failed to do so. There is a reasonable likelihood that a hearing panel would find "clear and convincing evidence" that this failure by Cornell and Murphy constitutes a violation of Rule 3.3(a)(1).

Second, Attorney Hage's decision is based on a false premise. He *converts* the statements Cornell and Murphy made that were false into *entirely different* statements and then bases his analysis on those re-formed statements.

The grievances identify the false statement as follows: "Mr. Cornell filed with the NH Supreme Court in the above matter, he alleged -- on pages 28-29 -- that Mr. Fojo made a

‘misrepresentation’ that a medical lien from DHHS/NH Medicaid existed concerning Paula Dewey.” On page 7 of the decision, Attorney Hage correctly recites this underlying statement: “Atty. Cornell and Atty. Murphy made statements pertaining to Mr. Fojo lying about the existence of the medical lien in the ADO S.Ct. Brief dated February 10, 2022.”

In his ensuing analysis on pages 7-8, however, Attorney Hage magically transforms the underlying statements by Cornell and Murphy into the notion that Cornell and Murphy were merely alleging that the “statements being made about the existence and amount of any lien was a misrepresentation by Mr. Fojo **because he had not obtained any information to substantiate the statements he had made.**” Attorney Hage then proceeds to note that the statements by Cornell and Murphy “do not state that it was certain that there was no lien, only that Mr. Fojo did not have support for the funds that he had withheld from Ms. Dewey.”

That is not, of course, what I said. I alleged that Cornell and Murphy made a misrepresentation **that I lied about there being a lien,** not that there was no lien or about whether or not I had provided support for a lien. These individuals claimed I was lying.

They had “actual knowledge” that was false – that I wasn’t lying – for several reasons. See N.H. R. Prof. Conduct 1.0(f).

First, I provided the ADO with my entire file for Paula Dewey. That file contained emails between Ms. Dewey and me. One such email – dated December 12, 2020 – contained a statement by Ms. Dewey in response to an email from me the day before in which I requested that she sign a release from Acadia. Ms. Dewey stated concerning some language in the release: “I can’t sign that document, it claims on page 2-3 that I receive Medicare part A, B,D. I only receive Medicaid. 2 different things.” In addition, when I forwarded Ms. Dewey’s signed release to Acadia in an email on December 14, 2022, I explained to the claims representative: “Please note: Ms. Dewey is not a Medicare beneficiary. She was on Medicaid. So she crossed that section out and initialed it.” Cornell and Murphy obviously reviewed these emails as well as other documents in the file and were aware of this information when they made the false statements above.

Second, that same file contained several medical authorizations Ms. Dewey signed in February 2018. I provided those authorizations to Jeffrey Lemire, the claims representative for Acadia Insurance, on March 20, 2018. The purpose of these authorizations was so Acadia could obtain records for medical treatment Ms. Dewey received. Some of those treatments were obviously covered by Medicaid. Having received and reviewed the Dewey file, Cornell and Murphy were also aware of these authorizations and – by extension – the fact that Ms. Dewey had received care that was likely covered by Medicaid, and, thus, her settlement would be subject to a lien.

Third, I had several email communications with Cornell from July 2021 through November 2021 and with Murphy in November 2021 concerning the medical lien at issue. Accordingly, by early 2022 (by the time Cornell and Murphy filed their brief), it strains credulity to suggest that they had no “actual knowledge” that my assertion that there was a medical lien from New Hampshire Medicaid was false.

But they didn't care and, instead, made false statements (among many others) in their brief against me and accused me of lying about the existence of the lien. These false statements and their failure to correct them when they learned that I did not lie about the lien constitute a violation of Rule 3.3(a)(1).

Accordingly, I request reconsideration of Attorney Hage's decision.

Regards,

*Robert M. Fojo*

Robert M. Fojo

**From:** Jeanne Timmons [jtimmons@nhattyreg.org](mailto:jtimmons@nhattyreg.org)

**Subject:** RE: Attorney Discipline Office: Order - Grievance filed by Robert Fojo against Elizabeth M. Murphy and Mark P. Cornell

**Date:** December 20, 2024 at 2:28 PM

**To:** Robert Fojo [rfojo418@gmail.com](mailto:rfojo418@gmail.com)

**Cc:** Elizabeth Murphy [emurphy@nhattyreg.org](mailto:emurphy@nhattyreg.org), Mark Cornell [mcornell@nhattyreg.org](mailto:mcornell@nhattyreg.org), [jnh@rathlaw.com](mailto:jnh@rathlaw.com), Stephanie Hausman [stephanie.hausman@clc-nh.org](mailto:stephanie.hausman@clc-nh.org), Trudy Renfors [trenfors@nhattyreg.org](mailto:trenfors@nhattyreg.org)

JT

Mr. Fojo,

The Complaint Screening Committee Chair, Julian B. Jefferson, Esquire, has reviewed your request and has decided to put it forward to the full Committee to deliberate and decide.

Jeanne Timmons (she/her)

[jtimmons@nhattyreg.org](mailto:jtimmons@nhattyreg.org)

Administrative Assistant

NH Supreme Court - Attorney Discipline Office

4 Chenell Drive, Suite 102

Concord, New Hampshire 03301

Phone: 603-224-5828

Fax: 603-228-9511

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**From:** Robert Fojo <[rfojo418@gmail.com](mailto:rfojo418@gmail.com)>

**Sent:** Monday, December 2, 2024 2:20 PM

**To:** Jeanne Timmons <[jtimmons@nhattyreg.org](mailto:jtimmons@nhattyreg.org)>

**Cc:** Elizabeth Murphy <[emurphy@nhattyreg.org](mailto:emurphy@nhattyreg.org)>; Mark Cornell <[mcornell@nhattyreg.org](mailto:mcornell@nhattyreg.org)>; [jnh@rathlaw.com](mailto:jnh@rathlaw.com); Stephanie Hausman <[stephanie.hausman@clc-nh.org](mailto:stephanie.hausman@clc-nh.org)>; Trudy Renfors <[trenfors@nhattyreg.org](mailto:trenfors@nhattyreg.org)>

**Subject:** Re: Attorney Discipline Office: Order - Grievance filed by Robert Fojo against Elizabeth M. Murphy and Mark P. Cornell

It's been two months. What's going on with this?

Robert M. Fojo

(603) 851-5737

[rfojo418@gmail.com](mailto:rfojo418@gmail.com)

On Oct 1, 2024, at 8:36 AM, Jeanne Timmons <[jtimmons@nhattyreg.org](mailto:jtimmons@nhattyreg.org)> wrote:

Mr. Fojo:

This email is to confirm that your request for reconsideration has been received and will be forwarded to General Counsel for presentation to the Complaint Screening Committee, pursuant to Supreme Court Rule 37A((II)(a)(4)(C).

Thank you,

Jeanne Timmons (she/her)  
[jtimmmons@nhattyreg.org](mailto:jtimmmons@nhattyreg.org)  
Administrative Assistant  
NH Supreme Court - Attorney Discipline Office  
4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
Phone: 603-224-5828  
Fax: 603-228-9511

---

**From:** Robert M. Fojo <[rfojo418@gmail.com](mailto:rfojo418@gmail.com)>  
**Sent:** Monday, September 30, 2024 12:50 PM  
**To:** Jeanne Timmons <[jtimmmons@nhattyreg.org](mailto:jtimmmons@nhattyreg.org)>  
**Cc:** Elizabeth Murphy <[emurphy@nhattyreg.org](mailto:emurphy@nhattyreg.org)>; Mark Cornell <[mcornell@nhattyreg.org](mailto:mcornell@nhattyreg.org)>; jnh@rathlaw.com; Stephanie Hausman <[stephanie.hausman@clc-nh.org](mailto:stephanie.hausman@clc-nh.org)>; Trudy Renfors <[trenfors@nhattyreg.org](mailto:trenfors@nhattyreg.org)>  
**Subject:** Re: Attorney Discipline Office: Order - Grievance filed by Robert Fojo against Elizabeth M. Murphy and Mark P. Cornell

Good afternoon:

Please find, attached, my request for reconsideration.

Robert M. Fojo  
(603) 851-5737  
[rfojo418@gmail.com](mailto:rfojo418@gmail.com)

On Sep 20, 2024, at 11:12 AM, Jeanne Timmons <[jtimmmons@nhattyreg.org](mailto:jtimmmons@nhattyreg.org)> wrote:

Attached, please find the determination by independent bar counsel who was appointed pursuant to Supreme Court Rule 37(3)(c)(1) to review this matter, as well as related documents.

Thank you,

Jeanne Timmons (she/her)  
[jtimmmons@nhattyreg.org](mailto:jtimmmons@nhattyreg.org)  
Administrative Assistant  
NH Supreme Court - Attorney Discipline Office  
4 Chenell Drive, Suite 102  
Concord, New Hampshire 03301  
Phone: 603-224-5828  
Fax: 603-228-9511

<Robert Fojo - Murphy and Cornell Order 9-20-2024.pdf><Final  
Fojos, Cornell and Murphy Memo 9-19-2024 (000).pdf - Final Bill

Fojo v. Cornell and Murphy memo 9.13.2024 (002).pdf <EX.ABIII  
of Interpleader with Exhibits.pdf <Ex B.Fojo's Motion to  
Dismiss.pdf >

STATE OF NEW HAMPSHIRE

HILLSBOROUGH COUNTY

SUPERIOR COURT

Docket No. 226-2024-CV-00715

ROBERT M. FOJO,

*Plaintiff*

vs.

ATTORNEY DISCIPLINE OFFICE  
MARK CORNELL

UNION LEADER CORPORATION (D/B/A THE UNION LEADER)

*Defendants*

**COMPLAINT**

Plaintiff Robert M. Fojo brings the following Complaint for damages against Defendants the New Hampshire Attorney Discipline Office, Mark Cornell, and the Union Leader Corporation (d/b/a The Union Leader).

**INTRODUCTION**

This case arises from the egregious and overreaching actions of the Attorney Discipline Office (“ADO”), which initiated and executed a series of measures that brought a successful and well-respected attorney, Robert M. Fojo, to his knees. Mr. Fojo, an attorney with an unblemished record spanning nearly two decades, became the target of the ADO’s punitive tactics at a time when he was vigorously advocating for the rights of parents in dozens of lawsuits challenging unconstitutional mask mandates in schools.

The ADO exploited a minor grievance to embark on a campaign of systemic overreach and personal attacks, weaponizing procedural tools to cripple Mr. Fojo’s practice, tarnish his reputation, and end his legal career. Despite his cooperation and repeated attempts to rectify the alleged issues, the ADO escalated its actions to an

unprecedented level, culminating in the suspension of Mr. Fojo's license and irreparable harm to his career and livelihood.

The ADO's actions were not only excessive but also driven by a clear intent to silence and punish Mr. Fojo for representing an unpopular cause. In doing so, the ADO violated his rights to due process, and – along with a popular news outlet – defamed his character and inflicted severe emotional distress. This complaint seeks to hold the Defendants accountable for their actions and restore the integrity of the disciplinary process in New Hampshire.

### **PARTIES**

1. Mr. Fojo is an individual with an address of 12 Sutherland Way, Nashua, New Hampshire 03062.
2. Defendant Attorney Discipline Office is an agency of the state and has a principal place of business at 4 Chenell Dr., Unit 102, Concord, New Hampshire 03301.
3. Defendant Mark Cornell is an individual with an address of 4 Chenell Dr., Unit 102, Concord, New Hampshire 03301.
4. Defendant Union Leader Corporation (d/b/a The Union Leader) ("Union Leader") is a New Hampshire Corporation with a principal place of business at 100 William Loeb Drive, Manchester, New Hampshire 03109. It has a registered trade name of, and does business as, "The Union Leader."

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this Complaint pursuant to RSA 491:7 and RSA 498:1.
6. This Court has personal jurisdiction over the Defendants because they

reside in or conduct business in New Hampshire.

7. Venue is appropriate in Hillsborough County because some of the parties reside or conduct business in this County.

### **FACTUAL BACKGROUND**

8. Before the events that gave rise to this lawsuit, Mr. Fojo was attorney who was admitted to practice in Florida, New Hampshire, and Massachusetts, as well as several federal courts. He graduated from Harvard Law School in 2005, and he enjoyed a successful career for 17 years, first at large law firms, and then when he started his own firm in 2014. Mr. Fojo had never received a complaint from a client concerning his practice of law or handling of client funds.

9. The ADO first contacted Mr. Fojo in late June 2021 after one of his clients filed a grievance. The client alleged that Mr. Fojo was late in paying her certain settlement funds to which she had agreed in connection with a slip-and-fall three years before. In response to the grievance, Mr. Fojo fully cooperated with the ADO: he *acknowledged* his trust account record-keeping was inadequate, *admitted he made a mistake* in his delay in paying out the funds, provided the documents and information the ADO requested of him, and asked the ADO for assistance and guidance in preventing this mistake from happening in the future.

10. Over the next several months, Mr. Fojo responded to all of the ADO's inquiries, met with the ADO twice (in September 2021 and early December 2021), and – at the ADO's behest – spent numerous hours preparing a spreadsheet to properly reconcile his trust account. (Mr. Fojo is not a CPA and had no CPA training whatsoever.) He also engaged a professional bookkeeper to begin a proper reconciliation of his trust account.

Also at the ADO's direction, Mr. Fojo reached out to the New Hampshire Bar Association to correct his trust account compliance certification. That office, however, directed him back to the ADO to complete that task.

11. In mid-November 2021, the ADO's communications with Mr. Fojo turned sour. It is critical to mention that, during this period of time – the fall of 2021 – Mr. Fojo had filed, on behalf of hundreds of parents, over 12 lawsuits against 40 different school districts in New Hampshire and Massachusetts challenging COVID-era mask mandates. Whether or not one agrees on the efficacy of mask mandates (they were useless), Mr. Fojo was representing *clients*, and the arguments posited in these lawsuits did not necessarily reflect his personal views. Regardless of the result of these lawsuits in New Hampshire and Massachusetts, they were meritorious: the arguments in the lawsuits were adopted by many state and federal courts across the country (including the United States Supreme Court) months later.

12. These lawsuits were covered by many news outlets in the region, and Mr. Fojo himself was targeted by several of those outlets. Indeed, at his initial meeting with the ADO in late September 2021, the ADO's Deputy General Counsel, Mark Cornell, voluntarily acknowledged that Mr. Fojo was handling these cases. (The cases had no relation whatsoever to the grievance filed by Mr. Fojo's client.)

13. Despite having provided the ADO with everything it requested, in a November 15, 2021, email, Mr. Cornell accused Mr. Fojo of not providing certain information, failing to respond to follow-up inquiries, and failing to maintain other records. For example, Mr. Cornell accused Mr. Fojo of not providing client ledger cards. Mr. Fojo, however, had told Mr. Cornell months earlier – in July and in September – that he had not maintained them.

14. Mr. Fojo responded to that email and explained he had provided everything asked of him, except for documents and records he did not have, and had responded to all of Mr. Cornell's questions.

15. The ADO then requested *other client files* that had nothing to do with the grievance. In addition, on November 16, the ADO issued a subpoena to Mr. Fojo's bank for his firm trust and operating account records (even though Mr. Fojo had provided all the bank records the ADO had requested, including his trust account statements going back to July 2019. The ADO failed to provide Mr. Fojo with a copy of the subpoena before it was sent, and Mr. Fojo did not receive a copy for nearly a week. This delay prevented Mr. Fojo from reviewing and evaluating the subpoena to determine if he should move to quash it. (He had the right to do so under the applicable rules.)

16. Further complicating matters, during the same time, Mr. Fojo's bank flagged a couple of fraudulent transactions in his firm's operating account, so he had to close his accounts. The bank did not allow an account to be closed unless it had a zero balance. Mr. Fojo worked expeditiously to open new accounts at a different bank.

17. The ADO continued its escalating aggression: it requested an accounting of Mr. Fojo's trust account. Mr. Fojo provided that information.

18. It was also at this time that the ADO – through both Mr. Cornell and Assistant Disciplinary Counsel Elizabeth Murphy – began threatening to summarily suspend Mr. Fojo's license. This threat was confusing because the ADO had the same information at that time (mid-November 2021) that it had in July 2021.

19. Mr. Cornell then accused Mr. Fojo of not providing trust account statements dating back to July 2019. Mr. Fojo reminded him he had provided those statements in September when they met in person, and he then re-sent them to him.

20. The ADO was clearly exceeding the boundaries of its investigation. The ADO – like most regulatory agencies – acts on complaints from clients or judges or civilians. Under the applicable rule (New Hampshire Supreme Court Rule 37A(II)(a)(2)(B)), the ADO may undertake its own inquiry of an attorney if there is a “reasonable factual basis” of any other matter that came to its attention “by any lawful means.” Pursuant to this rule, Mr. Fojo inquired with Mr. Cornell as to the basis for issuing subpoenas for his bank account records and requesting other client files. Mr. Cornell failed to identify any “reasonable factual basis” for these inquiries.

21. Indeed, there was no reason for the ADO to look at Mr. Fojo’s operating account or ask about other clients. No other client had filed a grievance, and there was no information to support any notion that Mr. Fojo was out of trust with respect to other clients. Rather, Mr. Cornell vaguely referenced that “perhaps” – his words in an email string – there were “other discrepancies” with other client files that he wanted to look into. While Mr. Fojo had admitted to not reconciling his trust account<sup>1</sup>, there was no indication he was out of trust or had misappropriated funds. Indeed, Mr. Cornell admitted he would not know of any other issues unless and until he looked at additional documents and records.

22. The ADO’s investigation of a single grievance had morphed into a full-blown fishing expedition, wherein it was trying to find other violations of the New Hampshire Rules of Professional Conduct.

23. Despite these transgressions, Mr. Fojo, nevertheless, continued to cooperate and provide information. For example, he provided revisions to the aforementioned

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<sup>1</sup> Many New Hampshire attorneys fail to do on a regular basis. This is nothing new.

spreadsheet the ADO had requested in which he was trying to recreate his trust account records. He provided his trust account statements going back two years even though he did not believe they were relevant. He corrected his documentation concerning a client for whom the ADO claimed Mr. Fojo was out of trust and provided that information to the ADO at the December 2021 meeting.

24. During that meeting, and afterward, the ADO attempted to induce Mr. Fojo to reveal information concerning the content of that representation. The client had refused to disclose their communications or what Mr. Fojo worked on, and so Mr. Fojo did not have authority to waive the attorney-client privilege. The ADO insisted Mr. Fojo should waive the privilege (under Rule of Professional Conduct 1.6(b)(3)) in order to defend the ADO's spurious accusations that Mr. Fojo had misappropriated funds from the client. Mr. Fojo refused to be so induced.

25. Also during that December 2021 meeting, the ADO inquired about the mask mandate lawsuits Mr. Fojo was handling and *specific parents by name*. Those cases were not the subject of the grievance or the ADO's investigation. That did not stop Mr. Cornell, however, from asking about specific client names during the meeting.

26. On December 13, 2021, Mr. Fojo provided the ADO with his third attempt at preparing a spreadsheet that was supposed to be a re-creation of his trust account transactions for the prior two years. He had explained at the December 2021 meeting that the prior version he had produced still had some issues and errors in it, and he needed to spend more time to correct it. It was nearly impossible to recreate these records – which consisted of hundreds of transactions over 24 months and under such tight deadlines, and he could not find a professional bookkeeper to help him do this in such short order. Inevitably, there would be mistakes. After reviewing this latest version, the ADO

responded and identified additional errors. At this time, Mr. Fojo engaged a attorney, who responded and advised the ADO Mr. Fojo would ultimately engage a professional to finish the job.

27. After *six months of investigation*, the ADO – through Mr. Cornell and Ms. Murphy – petitioned the New Hampshire Supreme Court to immediately suspend Mr. Fojo’s license on Friday, December 17, 2021, at 5:24 p.m. (the week before Christmas).

28. A petition for immediate suspension is used for “emergency” situations or when an attorney poses a “serious harm to the public.” The facts on December 17, however, were no different than they were in late July, when the ADO first contacted Mr. Fojo. In fact, the ADO had *all of the facts* concerning its allegations in its December petition *in September 2021*. Yet it waited three months (again, on the eve of Christmas) to petition to suspend Mr. Fojo’s license.

29. Mr. Fojo did not have an opportunity to contest the petition before his license was suspended. Despite its emergency request, the ADO’s petition was procedurally premised on a rule (New Hampshire Supreme Court Rule 37(9-A)) that would have allowed him 20 days to respond to the petition, the opportunity to request a hearing before a judicial referee or a hearing panel of the professional conduct committee, and 30 days to prepare for the hearing. At that hearing, the ADO has the burden to prove the need for an interim suspension by clear and convincing evidence. The substantive basis for the ADO petition, however, was Rule 37(16)(f), which is *not* a basis for emergency relief; it is a mechanism for imposing suspension after various types of findings, none of which occurred here. The ADO also did not invoke the summary suspension procedure provided in Rule 37(9-B), which is available in cases alleging “serious misconduct.” Summary suspensions and other emergency relief as the New Hampshire Supreme Court deems

necessary to protect the public are available under Rule 37(9-B), but they have nothing to do with the procedure in Rule 37(9-A), the rule under which the ADO's petition was filed. The ADO could have, for example, filed a Notice of Charges and sought an interim suspension under these procedures, but it chose to file its petition on a Friday afternoon before Christmas, and that left Mr. Fojo little opportunity to rebut the allegations or respond to them, and little time to manage his clients' affairs and his practice.

30. Four days later, the New Hampshire Supreme Court somehow ignored this process and time periods in Rule 37(9-A) and *granted* the ADO's petition pursuant to Rule 37(16)(d) and (f) and temporarily suspended Mr. Fojo's license *without a hearing*. This suspension – which would last for several months until Mr. Fojo's coerced resignation from the practice of law – violated Mr. Fojo's due process rights.

31. The ADO's December 17 petition also included numerous false statements and omissions, including that Mr. Fojo had "misappropriated" tens of thousands of dollars from other clients (in which it omitted much of the context concerning the financial transactions involving those clients), lied to the ADO about his efforts to close out a medical lien with New Hampshire Medicaid for the client who filed the grievance against him, and failed to cooperate with the ADO. The ADO also labeled the spreadsheet it directed him to prepare (and that he spent hours and three different attempts to put together) as an official "disbursement journal" for his trust account, and it misconstrued certain errors he made in reconciling the account (again, Mr. Fojo is not a CPA), and accused him of lying about those mistakes.

32. Mr. Fojo requested an immediate hearing to contest the Court's suspension of his license. The Court scheduled a hearing for *January 4, 2022*.


33. The Court's Order directed Mr. Fojo not to use his *trust account* or




withdraw any client funds from the account. Mr. Fojo complied and conducted a final accounting of the account and withdrew any remaining earned funds that were in the account.

34. The ADO ignored the Court’s Order and, just days before Christmas, sent letters to Mr. Fojo’s bank (without following applicable out of state service of process protocols at all) directing the bank to freeze not only Mr. Fojo’s trust account but *his operating account as well*. Mr. Fojo’s operating account was frozen (and he could not withdraw money from it or pay operating expenses for his law firm) during the Christmas holiday.

35. The ADO then communicated to local news outlets that Mr. Fojo’s license was suspended. Given Mr. Fojo’s notoriety over the mask mandate lawsuits he was handling, these news outlets were none too eager to pick up the story and ran headlines like this one in a December 30, 2021, New Hampshire Union Leader article:

## State Supreme Court suspends license of anti-mask mandate lawyer

 **Mark Hayward, The New Hampshire Union Leader, Manchester**  
Thu, December 30, 2021, 6:48 PM · 2 min read

Dec. 30—CONCORD — A Bedford attorney, known for his legal challenges of school mask mandates, had his law license temporarily suspended last week for mishandling nearly \$100,000 in client funds.



MD: If You Have Dark Spots, Do This Immediately (It's Genius!)

These outlets could only have discovered the Court’s Order from the ADO. Many of them parroted the same false allegations in the ADO’s petition, including false allegations that Mr. Fojo stole money from clients.

36. Buried in the middle of the article above, there was a quote from Mr. Cornell of the ADO. He stated “Any client who believes he or she is due funds from [Mr.

Fojo's] account should contact the Attorney Discipline Office.” That statement implied that Mr. Fojo had, in fact, misappropriated from other clients, and that this conduct had yet to be discovered. That was false.

37. Again, these regulatory agencies act on complaints and can investigate an attorney only if they receive a complaint or have a reasonable basis for doing so. A blanket public invitation for complaints against a licensee represents a major due process problem. It was also defamatory.

38. The parties appeared on January 4, 2022, for a hearing before a referee. They proceeded under offers of proof and provided some exhibits. At this hearing and in Mr. Fojo's Hearing Memorandum, Mr. Fojo identified and presented documents that flatly refuted the ADO's accusations that he misappropriated other client funds, lied about closing out a medical lien, and did not cooperate with the ADO. Mr. Fojo had also rectified the error that formed the basis for his client's grievance: he sent her a partial payment of the settlement funds in early August 2021 and set aside funds to pay off any applicable medical liens once those liens were resolved.

39. At the January 4 hearing, in filings with the Court in January and February 2022, and for months afterward, the ADO repeated the misrepresentations and assertions above, ignored all Mr. Fojo's counter-arguments and demanded Mr. Fojo should be disbarred altogether.

40. After the January 4 hearing, the hearing referee issued a recommendation on January 12, 2022 that Mr. Fojo's temporary suspension remain in place. As set forth in Mr. Fojo appeal of that recommendation, the hearing referee applied the wrong standard of review (preponderance of the evidence instead of clear and convincing evidence), concluded Mr. Fojo was dishonest despite evidence directly contradicting that conclusion,

concluded Mr. Fojo resisted the ADO's requests for information, drew an adverse inference against Mr. Fojo for refusing to disclose information concerning one of his clients whose funds the ADO accused Mr. FOjo of misappropriating, concluded Mr. Fojo overpaid himself in two matters despite – again – documents demonstrating he *did not overpay himself*, and otherwise ignored much of the evidence Mr. Fojo presented to refute the ADO's allegations.

41. The ADO's summary suspension of Mr. Fojo's license accomplished what it set out to do: The Court's suspension order left hundreds of Mr. Fojo's New Hampshire and Massachusetts clients without an attorney. This group included *hundreds* of parents in the midst of lawsuits challenging school district mask mandates, as well as several large institutional clients for whom Mr. Fojo had generated wildly successful results in pending cases). The parents involved in the mask mandate lawsuits could not find another attorney – at all – to represent them. Other clients with whom Mr. Fojo had unconventional billing arrangements could not find other attorneys willing to honor those arrangements.

42. As of mid-February 2022 (after nearly eight months since the ADO's initial contact with Mr. Fojo in late July 2021 and after 46 days after Mr. Fojo's license was suspended), the ADO had yet to file a notice of charges against Mr. Fojo. Thus, Mr. Fojo *still* did not know what charges the ADO intended to bring. Also, as of mid-February, no discovery had been allowed either, no witnesses had testified, and no sworn affidavits had been provided.

43. The New Hampshire Supreme Court held oral argument on Mr. Fojo's appeal on February 15, 2022. As set forth in his brief for that hearing and at the hearing itself, additional information came to light.

44. The then-Chief Justice of the New Hampshire Supreme Court, Gordon J.

MacDonald, was New Hampshire Governor Christopher T. Sununu’s attorney general in 2020, when Mr. Fojo had filed four lawsuits against the Governor challenging an array of COVID-related restrictions. Justice MacDonald, nevertheless, presided at the hearing and *did not recuse himself*.

45. During oral argument, the ADO admitted, for the first time, that the “timing” of the ADO’s petition for suspension (December 17, the week before Christmas) was not “gracious.”

46. The panel focused extensively on the ADO’s delays in resolving this medical lien it claimed Mr. Fojo had lied about. The ADO accused Mr. Fojo of lying about following up with New Hampshire Medicaid to resolve a medical lien for the client who filed the grievance against him. Mr. Fojo had presented information demonstrating he had diligently contacted the agency and tried to submit documentation to initiate the process of confirming and resolving the lien, and that the *agency* (not Mr. Fojo) was late in responding to him. The ADO premised, in part, the emergency nature of its suspension petition in December 2021, on *Mr. Fojo’s* alleged delay. But as of February 15 (two months later), the ADO had done *nothing* to resolve the lien itself. Mr. Fojo obviously could not undertake that effort – because his license was suspended. The Court repeatedly questioned why the ADO could not confirm and resolve the lien. The ADO had no viable answer and, instead, remarked that that process could take *several months*. The ADO’s indifference to this lien issue undermined the supposed “emergency” it cited when it sought to immediately suspend Mr. Fojo license in December.

47. The Supreme Court issued an order on February 25, 2022, concluding Mr. Fojo’s temporary suspension should remain in place while the disciplinary process moves forward.

48. This unprecedented process and Mr. Fojo's resulting suspension were highly draconian, and they set a dangerous precedent for attorneys in New Hampshire. It sent the wrong message to attorneys: the prevailing wisdom was that an attorney should cooperate with the ADO and be transparent. That's what Mr. Fojo did, and it worked out poorly for him.

49. The ADO used this process to "cancel" Mr. Fojo. The many lawsuits he filed challenging COVID restrictions were highly disruptive for the government institutions that were targeted. The ADO used Mr. Fojo's bookkeeping and recordkeeping problems as a pretext to target him for his efforts in challenging state and municipal COVID measures. Its process was designed to exact maximum damage to his reputation and ultimately end his business and professional career.

50. Indeed, in January 2022, Mr. Fojo was forced to send termination letters to all his clients in New Hampshire. He could obviously no longer take any New Hampshire work. Massachusetts would follow and suspend his license to practice law in the Commonwealth in June 2022, and Florida followed suit in October 2024. These events obviously precluded Mr. Fojo from practicing law. Even before that occurred, clients – based on stories such as the Union Leader's above – terminated their engagement of Mr. Fojo and prospective clients refused to engage him on the same basis. As of January 2022, he had lost the majority of his income, and by June 2022, he lost all of his income. There were no jobs or sources of income where Mr. Fojo could replace the income he earned as a lawyer.

51. He had no money left, and he had no time to defend myself: Mr. Fojo was now preoccupied with finding some way to generate income to support his family. The disciplinary process would take several months to a year, and there was no indication it

would end differently for him given the ADO's conduct and the precedent that had already been set.

52. Accordingly, Mr. Fojo requested to resign his license. He submitted an affidavit of resignation on March 14, 2022. The rule that allows such requests (New Hampshire Supreme Court Rule 37(11)) requires only that an attorney acknowledge there is an investigation into allegations of misconduct, generally acknowledge that the facts upon which the complaint is predicated are true, and that if charges were predicated on the misconduct under investigation they could not be successfully defended. The Rule also mandates that the affidavit not be disclosed publicly.

53. In his request, Mr. Fojo admitted to everything he had admitted he believes he did wrong back in July 2021. He was always open and transparent and consistent about what happened. The ADO opposed that request. The ADO insisted he waive confidentiality and that he attach the Court's February 25, 2022 order, which claimed he had moved additional client funds out of his trust account after the Court's suspension order in December – he did not – and admit he violated that order. The ADO insisted Mr. Fojo needed to comply with these requests and revise the request because he “needed to be disciplined.”

54. The ADO filed a formal objection and recited these points – and it conceded, on page 3 of its objection, that no violations had been proven yet, and the Court had mistakenly applied a “preponderance of the evidence” standard. The Court denied Mr. Fojo request and then *directed* him to re-file the affidavit, waive confidentiality, and admit to the Court's findings in its prior two orders.

55. Mr. Fojo was forced to comply with this new directive. He revised the affidavit and attempted to review the specific allegations and findings and admit to the

ones that were consistent with his admissions back in July 2021. He tried to meet the Court's demands and admitted to confusions with respect to other errors. He apologized concerning those errors. After presenting this revised request to the ADO, the ADO objected again and insisted he comply with the Court's March 22 Order. The ADO insisted Mr. Fojo should simplify the affidavit, waive confidentiality, attach the Court's prior orders, and admit to the findings therein. Mr. Fojo, nevertheless, filed the revised affidavit. The ADO formally objected. The Court again denied Mr. Fojo's request.

56. These events placed Mr. Fojo under a lot of duress and emotional distress. As noted above, he had no income, was interviewing for jobs, and trying to find ways to pay his bills. The ADO ultimately "broke" him. He followed the Court and the ADO's directive and prepared a simplified affidavit, waived confidentiality, attached the two orders, and filed the request. The ADO assented. The Court finally accepted it on May 18, 2022.

57. In December 2022, the ADO received correspondence from an attorney it engaged to negotiate any remaining medical liens concerning the client who filed the grievance against Mr. Fojo, so the funds Mr. Fojo had set aside in an escrow account could be disbursed to her. That attorney confirmed that there was a lien with New Hampshire Medicaid of \$3,027.58. In other words, the ADO was incorrect in accusing Mr. Fojo of lying about that lien. It never corrected those misrepresentations with the Court.

58. In early 2024, the ADO directed that the funds that were frozen in Mr. Fojo's trust account (\$5,000) since December 2021 be deposited into the New Hampshire Superior Court, and it filed a bill of interpleader to determine whether those funds belonged to Mr. Fojo or another client. There was no legal authority for the ADO to unilaterally direct the bank to do anything with those funds. Mr. Fojo had always

contended that those funds belonged to him, and the ADO had no basis on which to dispute that.

59. After Mr. Fojo initially contested that proceeding because there was no basis for it, he and his former client reached an agreement on those funds: she agreed those funds were due to Mr. Fojo, and Mr. Fojo forgave a portion of the invoices totaling half of those funds, and they agreed to split them in half. Once again, the ADO's allegations concerning the remaining funds in that account – that they did not belong to Mr. Fojo – were also incorrect.

**COUNT I**  
**Violation of Fourteenth Amendment Right to Procedural Due Process**  
**(42 USC § 1983)**  
**(ADO)**

60. Mr. Fojo incorporates each and every allegation made in Paragraphs 1 through 58 above as if fully set forth herein.

61. The Fourteenth Amendment to the United States Constitution prohibits a state from denying to any person the right of life, liberty, or property without due process of law.

62. The ADO acted under color of law of the state of New Hampshire.

63. Under 42 U.S.C. § 1983, every person acting under color of state law who deprives another person of his or her constitutional rights is liable at law and in equity.

64. Mr. Cornell and Ms. Murphy acted under color of state law.

65. Under 42 U.S.C. § 1983, the Attorney Discipline Office is a “person” liable for unconstitutional customs, practices, and policies, and failure to train its personnel. The ADO is also liable for Mr. Cornell and Ms. Murphy's actions. As counsel in the ADO, Mr.

Cornell and Ms. Murphy occupied positions in which they could create liability under 42 U.S.C. § 1983.

66. The ADO's actions above violated Mr. Mr. Fojo's clearly-established right to procedural due process. These actions included misrepresenting that he failed to cooperate or provide them with information; inducing him to prepare a spreadsheet to document his trust account activity and then using that spreadsheet to accuse him of lying to the ADO; falsely accusing him of misrepresenting that there exists a medical lien with the state; falsely accusing him of misappropriating the funds of other clients despite there being no documents showing same; abusing the applicable procedural rules to summarily suspend Mr. Fojo's license and punish Mr. Fojo; attempting to induce Mr. Fojo to violate attorney-client privilege; directing Mr. Fojo's bank to freeze his trust and operating accounts and refusing to direct the release of those funds; requesting other of Mr. Fojo's clients to come forward and allege other ethical violations; coercing Mr. Fojo to submit multiple requests to resign with the New Hampshire Supreme Court; and directing Mr. Fojo's bank to deposit his funds with the New Hampshire Superior Court.

67. These actions deprived Mr. Fojo of his rights without notice or a meaningful opportunity to be heard. The ADO contravened the Fourteenth Amendment's guarantee of procedural due process.

68. This conduct provided no meaningful opportunity for Mr. Fojo to contest the restriction of his rights.

69. As a result of this conduct, Mr. Fojo has suffered damages, including lost income, lost property, damage to his reputation, humiliation, and mental and emotional anguish and distress.

**COUNT II**  
**Violation of New Hampshire Right to Procedural Due Process**  
***(Violation of Right to Procedural Due Process, Part I, Art. 15, N.H. Const.)***  
**(ADO)**

70. Mr. Fojo incorporates each and every allegation made in Paragraphs 1 through 69 above as if fully set forth herein.

71. The New Hampshire Constitution prohibits a state from denying to any person the right of life, liberty, or property without due process of law. Part I, Art. 15, N.H. Const.

72. The ADO's actions above violated Mr. Mr. Fojo's clearly-established right to procedural due process. These actions included misrepresenting that he failed to cooperate or provide them with information; inducing him to prepare a spreadsheet to document his trust account activity and then using that spreadsheet to accuse him of lying to the ADO; falsely accusing him of misrepresenting that there exists a medical lien with the state; falsely accusing him of misappropriating the funds of other clients despite there being no documents showing same; abusing the applicable procedural rules to summarily suspend Mr. Fojo's license and punish Mr. Fojo; attempting to induce Mr. Fojo to violate attorney-client privilege; directing Mr. Fojo's bank to freeze his trust and operating accounts and refusing to direct the release of those funds; requesting other of Mr. Fojo's clients to come forward and allege other ethical violations; coercing Mr. Fojo to submit multiple requests to resign with the New Hampshire Supreme Court; and directing Mr. Fojo's bank to deposit his funds with the New Hampshire Superior Court.

73. These actions deprived Mr. Fojo of his rights without notice or a meaningful opportunity to be heard. The ADO contravened the New Hampshire

Constitution's guarantee of procedural due process.

74. This conduct provided no meaningful opportunity for Mr. Fojo to contest the restriction of his rights.

75. As a result of this conduct, Mr. Fojo has suffered damages, including lost income, lost property, damage to his reputation, humiliation, and mental and emotional anguish and distress.

**COUNT III**  
**Defamation per quod**  
**(All Defendants)**

76. Mr. Fojo incorporates each and every allegation made in Paragraphs 1 through 75 above as if fully set forth herein.

77. Defendants made false, misleading, and defamatory statements of fact about Mr. Fojo in the form of the statement quoted by the New Hampshire Union Leader on December 30, 2021.

78. Defendants failed to exercise reasonable care in publishing this information.

79. No valid privilege applied to the publication of this information.

80. As a result of Defendants' conduct, Mr. Fojo has suffered damages.

**COUNT IV**  
**Defamation per se**  
**(All Defendants)**

81. Mr. Fojo incorporates each and every allegation made in Paragraphs 1 through 80 above as if fully set forth herein.

82. Defendants made false, misleading, and defamatory statements of fact about Mr. Fojo.

83. These statements are the types of statements that would tend to injure Mr. Fojo in his trade or business and impute criminal conduct to him.

84. Defendants failed to exercise reasonable care in publishing this information.

85. No valid privilege applied to the publication of this information.

86. As a result of this conduct, Mr. Fojo has suffered damages.

**COUNT V**  
**Intentional Infliction of Emotional Distress**  
**(All Defendants)**

87. Mr. Fojo incorporates each and every allegation made in Paragraphs 1 through 86 above as if fully set forth herein.

88. Defendants, by extreme and outrageous conduct, intentionally or recklessly caused severe emotional distress to Mr. Fojo by publishing false statements implying he had misappropriated funds from other clients.

89. The conduct above is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

90. As a result of this conduct, Mr. Fojo has suffered damages.

**COUNT VI**  
**Negligent Infliction of Emotional Distress**  
**(All Defendants)**

91. Mr. Fojo incorporates each and every allegation made in Paragraphs 1 through 90 above as if fully set forth herein.

92. Defendants negligently caused severe emotional distress to Mr. Fojo by publishing false statements implying he had misappropriated funds from other clients.

