

F. Lee Bailey v. Board of Bar Examiners
2014 ME 58



Quick Glance

F. Lee Bailey v. Board of Bar Examiners, 2014 ME 58

Florida Disbarred, 2001

Massachusetts Disbarred, 2003

Denied Admission 2014

2014- Law Court (4-2)
Bailey “failed to prove by clear and convincing evidence that **he recognizes the wrongfulness and seriousness** of the misconduct that led to his disbarment.”

A central image of F. Lee Bailey is surrounded by three map graphics: Florida (Disbarred, 2001), Massachusetts (Disbarred, 2003), and a red graphic for Denied Admission 2014. A text box on the right contains the case details and a quote from the court.

Who is F. Lee Bailey?

CRIMINAL DEFENSE

Dr. Sam Sheppard
Patty Hearst
O.J. Simpson

79132
POLICE DEPT
CLEVELAND O
AUG 8 1964

SAN MATEO SHERRIFF
HEARST
P. C.
9 75 1969/04

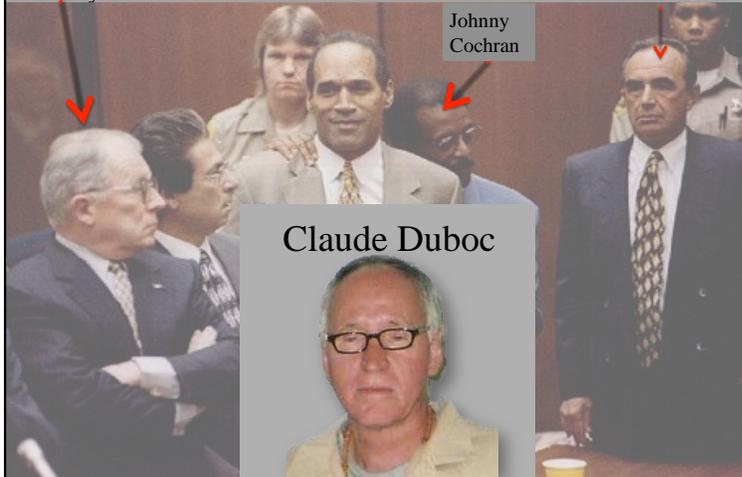
A graphic showing F. Lee Bailey at a podium holding up a bag of evidence. Below him are images of Dr. Sam Sheppard, Patty Hearst, and O.J. Simpson, along with their mugshots.

Part of the "Dream Team" Bob Shapiro

Bailey

Johnny Cochran

Claude Duboc



Claude Duboc



602,000 shares of Biochem Stock
valued at **\$5,891,520**

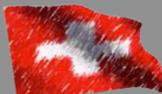
Indicted- 1994

Drug smuggling

Proposed a solution.

Money laundering

Asset forfeiture



Stock Appreciates
in value over time.



Claude Duboc



Attorney Fees

Duboc's real property



May 17, 1994
PLED GUILTY



Stock Appreciates
in value over time.

May 17, 1994
Judge Maurice Paul:
The remainder value of the stock which was being segregated out would be returned to the court at the end of the day, and from that asset ... a motion would be filed for a reasonable attorney's fee for Mr. Bailey.



Claude Duboc



**F. Lee Bailey
PERSONAL
Money Market Account**

\$ 3.5 Million
\$1.3 million

FL residence : \$138, 946

Personal Business: \$2 million

Sold and borrowed stock
to obtain over **4 Million**

Duboc becomes dissatisfied.

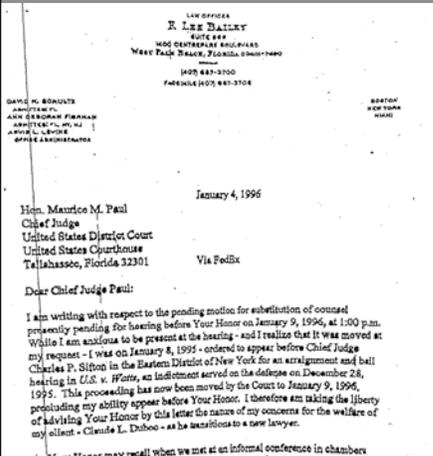


Motion to Substitute Bailey

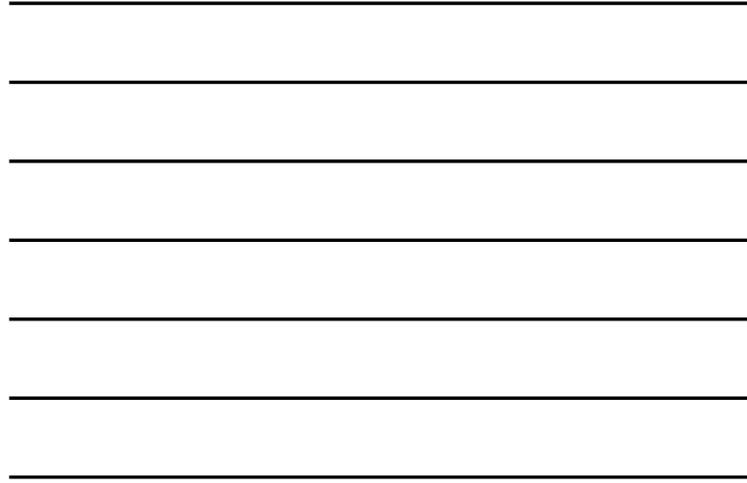


Acts Underlying Disbarment

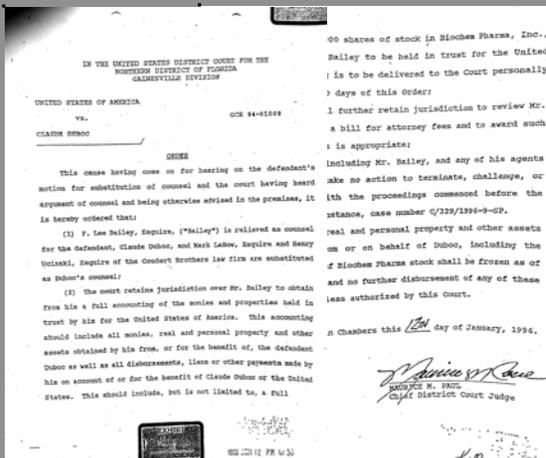
January 4, 1996



Bailey sent an ex parte letter to
Judge Paul



Judge Paul issues Order #1 on: January 12, 1996



Spends \$ 800,000
more of Biochem



Judge Paul issues Order #2 on: January 25, 1996

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA,
v.
CLAUDE DUBOC,
Defendant.

CASE NO. DCB 94-0100-MSD

C.R.D.R.

The Government has filed an "Emergency Motion to Surrender Property" (Doc. 67) to require F. Lee Bailey to surrender to the U.S. Government all property and assets transferred to, or held by F. Lee Bailey, in his capacity as attorney for the Defendant Claude Duboc.

It is ordered that F. Lee Bailey appear before this Court on Thursday, February 1, 1996, at 9 a.m. at the United States Courthouse in Ocala, Florida to answer, in person, the Government's motion. The said F. Lee Bailey shall also, at the time and place above stated, bring with him all shares of stock of Biochem Pharma, Inc. held by him, or by others, which represent the stock turned over to him by the Defendant, Claude Duboc, or Duboc's representatives. If the Biochem Pharma, Inc. stock has been replaced by any other form of asset while in the possession of Mr. Bailey, then the replacement stock will be brought to this Court at the time of the above.

At the hearing above ordered, Mr. Bailey shall produce all written reflecting receipts and disbursements of all funds into his possession as attorney or agent for Claude Duboc, directly or indirectly. In short, Mr. Bailey shall be held to make a full accounting as to all assets he received from Claude Duboc, directly or indirectly, and all disbursements including the purpose for such disbursements.

Mr. Bailey shall also produce at the hearing above ordered all records in his possession or held by others on his behalf, including, but not limited to, check books, savings pass deposit slips, cancelled checks, signature authorization bank statements, promissory notes, correspondence, instructions, power of attorney, letters of credit, and loan documents, pertaining to all assets, or proceeds from the sale of assets, or replacement thereof, received by him, directly or indirectly, as attorney or agent for Claude Duboc. **None of this order shall be stayed on Mr. Bailey by his, will, act, or by the United States Marshal.**

SO ORDERED this 25th day of January, 1996.

Frederic M. Paul
FREDERIC M. PAUL, CHIEF JUDGE

FILED

1996 JAN 25 PM 1:25

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
GAINESVILLE, FLA.
GAINESVILLE, FLA.

U.S. District Court
Gainesville, USM, Bailey

In jail for 44 days.



February 1996

Judge Paul's final order:

- Approved roughly \$1.2 million to be spent on Duboc's Assets
- Bailey Spent roughly \$1.6 million.

Owed the court: \$ 423,737

Bailey appealed to the 11th Circuit

"After reviewing the record, we cannot conclude that Judge Paul was pervasively biased or prejudiced against Bailey."

United States v. Bailey, 175 F.3d 966, 969 (11th Cir. 1999)



Continuing Litigation over the Biochem Stock

2002- US Court of Federal Claims

Bailey v. United States, 54 Fed. Cl. 459, 487 (Fed. Cl. 2002) aff'd, 94 Fed. Appx. 828 (Fed. Cir. 2004)

Government

"The Biochem Pharma stock or its value not used for property maintenance or for attorneys' fees, as approved by Chief Judge Paul, would be forfeited to the government."

Bailey

he contended that the government had breached an implied-in-fact contract to transfer the stock to him in fee simple absolute. *Bailey v. United States*, 54 Fed. Cl. 459, 485-87 (2002)

The Court

- accepted the "sincerity of the government's professed understanding of arrangements between the parties" and
- held "no implied-in-fact contract came into being on Mr. Bailey's terms."



Litigation about Bailey's Federal Income Tax Liability

January 2013

US Tax Court finds that Bailey owed \$1.9 million in federal income taxes and penalties.

July 2013

The IRS filed tax liens against Bailey in the approximate sum of \$4.5 million, which included statutory interest.



Florida Disbarment Proceeding

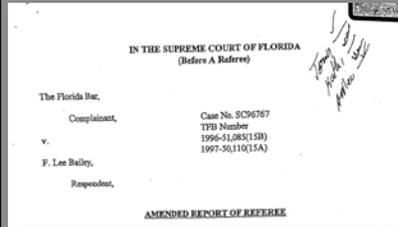
July, 2000

After a 5-day hearing Judge Ellis recommended disbarment:

- | | |
|-----------------------------|-----------------------|
| Misappropriation of assets | Commingling of assets |
| Ex-Parte Communication | Conflict of interest |
| False testimony under oath. | Self-dealing |

Florida Supreme Court Affirms J. Ellis' Judgment

The Florida Bar v. Bailey, 803 So. 2d 683 (Fla. 2001).



“committed some of the most egregious rules violations possible.”

2003: Bailey Reciprocally disbarred in Massachusetts

10 Years Later....

- 2011- F. Lee Bailey passes the Maine Bar
- 2012- Board of Bar Examiners hearing on “character & fitness”
- 2013- To Maine Supreme Judicial Court for a trial de novo by single justice
- 2014- Appeal from single justice decision to Law Court

Bailey “failed to prove by clear and convincing evidence that he recognizes the wrongfulness and seriousness of the misconduct that led to his disbarment.”

BBE's Motion for Findings and Reconsideration

RECEIVED
JUN 11 2013
STATE OF MAINE
SUPREME JUDICIAL COURT
DOCKET NO. Bar-12-14

F. LEE BAILEY

ORDER ON MOTION FOR FINDINGS

BOARD OF BAR EXAMINERS

This matter is before the Court on the Board of Bar Examiners Motion for Findings and for Reconsideration dated June 11, 2013. After review, the Court notes:

1. The Orders of April 18, 2013 and June 7, 2013 included extensive findings addressing all issues that the Court was required to address. In making these findings, the Court was required to consider all of the evidence in the record, but the Court did not and was not required to address each bit of evidence and each prior opinion or order that formed the record on which the Court's orders were based.
2. The Order of April 18, 2013 recognized that findings of fact in some of the prior court orders and opinions were contested in this proceeding, *id.*, 2, and acknowledged that those prior opinions and orders had "sometimes differing

1, 8. The Court then proceeded to make its own findings entire record and did not adopt any particular findings order, except when it indicated it was doing so.

ity issues asserted by the Board of Bar Examiners in its again note the opinion in *Chined Okoro v. Seccocchia*, 433 ted in the April 18, 2013 Order. That opinion, in a matter y, provides significant insight into Government practice in rency allowed and approved defense attorneys being paid bject to forfeiture proceedings. *Id.*, 22-24. The opinion hange in the Government's position in the 1996 - 1998 re to an unsuccessful effort, initiated in 1998, to recover assets subject to forfeiture. *Id.*, 23 s.3-26. The history e opinion supports the credibility of Bailey's testimony as he commitments from the Government regarding sources les and expenses in the Doboc case.

has made sufficient findings to support its order;

IS:

1 of Bar Examiners Motion for Findings and for d.

2013

FOR THE COURT,
Donald G. Alexander

BAR-12-14, Order dated June 11, 2013, p. 3

Law Court (2014)- LEGAL FRAMEWORK

Bar Rule 7.3(j): Reinstatement of attorneys who have been disbarred.

Bailey had to prove:

“clear and convincing evidence demonstrating the moral qualifications, competency, and learning in law required for admission to practice law” in order to establish appropriate character and fitness.

MIXED QUESTION OF LAW AND FACT

Law Court (2014)- LEGAL FRAMEWORK

Bar Rule 7.3(j)(5) lists certain factors to be considered:

- (A) The petitioner has fully complied with the terms of all prior disciplinary orders;
- (B) The petitioner has neither engaged nor attempted to engage in the unauthorized practice of law;
- (C) The petitioner recognizes the wrongfulness and seriousness of the misconduct;
- (D) The petitioner has not engaged in any other professional misconduct since resignation, suspension or disbarment;
- (E) The petitioner has the requisite honesty and integrity to practice law; and
- (F) The petitioner has met the CLE requirements of Rule 12(a)(1).

Law Court (2014)- BOARD'S ARGUMENT

Principal Argument on Appeal

Bailey failed to prove by clear and convincing evidence that he **recognizes** the wrongfulness and seriousness of the misconduct that resulted in his disbarment

What constitutes recognition?

- (1) whether applicant is **fully repentant** (i.e., shows complete and unambiguous acceptance of findings of wrongdoing) (2) whether applicant must recognize the wrongfulness and seriousness of **all** the misconduct (or just some of it).

omitted)). Consistent with Rule 7.3(j)(5)'s purpose of protecting the public, we construe the term "recognize" to mean that the applicant must demonstrate that he or she (1) sincerely believes that the prior misconduct, as ultimately determined by the tribunal that imposed the discipline, was wrong and serious, and (2) is capable of identifying similar conduct as wrongful in the future if he or she were to engage in the active practice of law.

Law Court's Analyses

"To determine whether an applicant recognizes the wrongfulness and seriousness of his misconduct, a court must necessarily examine the specific misconduct the applicant committed."

- Count I: Commingling Japanese Stock
- Count II: Commingling and misappropriating Biochem stock
- Count III: Violating two federal court orders
- Count IV: Giving false testimony
- Count V: Self-dealing
- Count VII: Ex parte communications

Law Court's Analyses

"To determine whether an applicant recognizes the wrongfulness and seriousness of his misconduct, a court must necessarily examine the specific misconduct the applicant committed."

Count I: Commingling

Bailey's testimony: [29] Bailey admitted to commingling "on one occasion" when he was questioned before the Board about the Biochem stock.¹⁹ Bailey did not testify or

Court's Response:

that the fact-finder could not reasonably have been persuaded that the required factual finding—that Bailey recognizes the wrongfulness and seriousness of having commingled the proceeds from Duboc's Biochem stock—was proved to be highly probable, as required by the clear and convincing evidence standard. *See Taylor,*

Law Court's Analyses

Count II: Misappropriation of Biochem stock

Bailey's testimony:

[¶33] Consistent with his continued claim that the stock belonged to him in fee simple, Bailey repeated before the single justice his position that he had not "misappropriated" the Biochem funds,¹⁴ which was one of the specific ethical violations that the Florida Supreme Court found that Bailey committed. See

Court's Response:

professed understanding of these mistakes minimizes the wrongfulness and seriousness of the actual misconduct for which he was disbarred: misappropriating his client's property.

Law Court's Analyses

Count III: violating two federal court orders

Bailey's testimony:

[¶37] At the hearing before the single justice, Bailey admitted to spending an additional \$300,000 for personal purposes after the January 12 order was issued. However, he maintained that his violation of the order was unintentional because he mistakenly assumed that the January 25 order superseded the January 12 order.¹⁸ There is simply no language, however, in either order that would justify a

Court's Response:

parallel." This justification was squarely rejected in the Florida disbarment proceeding and minimizes the wrongfulness and seriousness of Bailey's misconduct in, among other things, "knowingly disobey[ing] an obligation under the rules of a tribunal." *Florida Bar*, 803 So. 2d at 687-88.

Law Court's Analyses

Count IV: False testimony

Bailey's Testimony:

contempt hearing.²¹ Bailey also testified, however, that he was to some degree aware of the contents of the orders because his associate had read them to him over the phone. Relying on this distinction, Bailey maintained that his testimony before Judge Paul that he had not physically seen the orders at the time he violated them was not false.²²

Court's Response:

Judge Paul and Judge Ellis as the Florida Supreme Court had found. Based on Bailey's testimony, it is not possible to conclude that it is highly probable that Bailey recognizes the wrongfulness and seriousness of his false testimony, as required by the clear and convincing evidence burden of proof.

Law Court's Analyses

Count V: Self dealing

Bailey's testimony:

[¶44] On the first point, as noted above, although Bailey explained to the single justice that he failed to recognize that his acceptance of the Biochem stock was "riddled with conflicts,"²⁴ he did not acknowledge the detriment that his treatment of the stock had to his client's interests. Rather, Bailey only expressed regret for not clarifying who would be entitled to the stock's appreciation, and for not accepting his fees in cash and selling the stock quickly.²⁵

Court's Response:

[¶46] Bailey's present view of his actions minimizes the wrongfulness and seriousness of his self-dealing as determined in the Florida Bar proceeding. Based on Bailey's testimony, it is not possible to conclude that it is highly probable that he recognizes the wrongfulness and seriousness of this misconduct, as required by the clear and convincing evidence burden of proof.

Law Court's Analyses

Count VII: Ex Parte Communications

Bailey's testimony:

[¶49] Before the single justice, Bailey also denied having disparaged Duboc in his letter to Judge Paul, testifying that he had put the phrase "multimillionaire druggie" in quotes to denote that he only repeated what other attorneys had called Duboc.³¹ Bailey further denied that the letter revealed to Judge Paul that Duboc

Court's Response:

supported by competent evidence in the record. The evidence, however, does not support the conclusion that it is highly probable that Bailey recognizes the wrongfulness and seriousness of his self-dealing and disclosure of confidential client information, as required by the clear and convincing evidence burden of proof.

Law Court's Analyses

Bailey's testimony alleging Bias:

- the Department of Justice engaged in "obstructive efforts" to "engineer[]" his disbarment;
- that Judge Ellis was "hostile" toward him;
- that Judge Paul had developed "distaste" for him;
- that the Department of Justice obstructed the re-nomination of Judge Horn to the U.S. Court of Federal Claims "in the hope that she would get the message" to rule against him in the civil complaint he had brought against the federal government;
- and that the IRS agent who investigated Bailey's failure to report income associated with the Biochem proceeds improperly altered his investigative records.

Court's Response:

"Accordingly, in his testimony, Bailey questioned the integrity of almost all of the legal proceedings related to his misappropriation of Duboc's Biochem stock. This lack of respect for the judicial process casts further doubt on whether he believes his misconduct was wrong or serious."

Law Court's Final Conclusions

Bottom Line

“Bailey failed to demonstrate that he is sufficiently rehabilitated by proving that it is highly probable that he **recognizes** the wrongfulness and seriousness of the misconduct that he committed.”

An applicant who has been disbarred need not demonstrate “**complete and unambiguous acceptance**” of “**all of the findings of wrongdoing**” that led to his or her disbarment in order for the applicant to prove that he or she presently has the requisite good character and fitness

Bailey had not met his burden under Rule 7.3(j)(5)

He failed to prove, to the clear and convincing evidence standard, that “*he recognizes the wrongfulness and seriousness of **most of the misconduct he committed.***”

The Dissent

Saufley, C.J., and Clifford, A.R.J.

¶61] Despite the Court’s recognition of the standards applicable to its appellate review, however, it fails to apply those standards, instead making credibility determinations of its own and choosing to give weight to different evidence than was credited by the single justice.

because we would instead remand this matter on the single issue of F. Lee Bailey’s plan for avoiding violations of the Maine Bar Rules while responsible for a significant federal tax obligation, we respectfully dissent.

The Majority’s Response

The central question here is not witness credibility or the adequacy of the single justice’s factual findings, but rather whether the sum of the evidence, viewed in the light most favorable to the court’s judgment, supports the single justice’s findings and ultimate conclusion that Bailey recognizes the wrongfulness and seriousness of his various acts of misconduct as required by Maine Bar Rule 7.3(j)(5)(C). Our analysis turns on the sufficiency of the evidence and not on a reexamination of witness credibility. See *Me. Eye Care Assocs. P.A. v. Gorman*, 2008 ME 36, ¶ 12, 942 A.2d 707; *Taylor*

The dissenting opinion contains no discussion of the record evidence concerning each of the six counts of ethical violations that formed the basis of Bailey’s disbarment. By treating “misconduct” as used in Rule 7(j)(5) as an amorphous and general concept, the dissenting opinion avoids the tedious but necessary consideration of the sufficiency of the evidence in relation to specific acts of misconduct. As
