STATE OF MAINE

Before the Grievance Commission
Grievance Commission Files Nos.
84-1, 84-35, 84-36, 86-86, 86-218

BOARD OF OVERSEERS OF THE BAR v. THOMAS F. MALONE, JR.	REPORT OF FINDINGS, DETERMINATIONS, AND ACTIONS OF PANEL D

Bar Counsel filed a Petition in these cases dated March 4, 1987, and, with due notification, Panel D of the Grievance Commission convened a hearing open to the public on the Petition on March 24, 1987.

The Respondent appeared personally at the hearing and Bar Counsel presented the evidence with respect to the Petition, including the testimony of several witnesses and numerous documents. At the conclusion of the hearing, the Panel took note that the allegations in the Petition had been admitted, or largely so, by the Respondent, and also amply substantiated by the evidence presented by Bar Counsel. The Respondent advanced a number of statements on his own behalf by way of mitigation and explanation for his conduct.

The Panel concluded the proceedings by finding that violations of the Maine Bar Rules had occurred as alleged in

the Petition based upon the Petition, the Answer, and the evidence presented at the hearing. The Panel continued the matter for disposition until September 22, 1987, in order to permit the Respondent, with the assistance of another member of the Bar and under the oversight of Bar Counsel, to pursue a number of remedial measures that would, it was hoped, enable the Respondent to continue his practice with assurances that there would be no neglect or similar problem in the interim, and under procedures calculated to assure that all pending matters in the cases related to this Petition be attended to promptly and properly. The parties were advised by the Panel that Bar Counsel would have the ability, in his discretion, to request that the Panel reconvene prior to the September 22, 1987, date.

At the request of Bar Counsel, the Panel reconvened the hearing on June 23, 1987. Following those proceedings, the Panel issued an Interim Order on June 23, 1987, and deferred final disposition subject to the imposition of more stringent and more explicit conditions specified in the Interim Order.

At the request of the Respondent and without objection from Bar Counsel, final disposition of the hearing was continued until January 26, 1988, and further extended until April 26, 1988.

On April 26, 1988, the Panel conducted its final hearing in this matter, and the case is now in order for a final disposition by the Grievance Commission.

Based upon all of the evidence presented to the Panel, based upon its findings that all of the violations alleged have been shown to have occurred, based upon the evidence in mitigation presented by the Respondent and the apparently successful pursuit of significant remedial measures by the Respondent, and having duly considered all of the relevant standards implicated in this case, the Panel has determined that the Respondent should be reprimanded for his misconduct. The Panel's findings and analysis are more fully set forth in the remainder of this report.

FINDINGS

On March 24, 1987, the Panel found that all of the allegations contained in the Petition had been established or admitted. Without repeating all of those allegations in this report, the Panel adopts those allegations as findings of fact and incorporates them herein by reference.

Nonetheless, it might be useful for this report to contain some discussion of the underlying facts. The Petition sets forth a number of instances of serious neglect by the Respondent of cases entrusted to his care.

In one case, for example, one of Respondent's clients suffered severe financial and professional hardships as a result of Respondent's neglect of a bankruptcy matter. This included the client's loss of union membership, with adverse effect on his ability to obtain employment while his case remained unresolved.

In another instance, the Respondent neglected to follow up appropriately on the settlement of a case, resulting in the necessity of opposing counsel's filing an action against not only the Respondent's client but the Respondent himself, in order to conclude a settlement that had been agreed upon. Respondent defaulted in this suit, and his conduct caused substantial hardship and delays on all of the parties to the proceeding and on opposing counsel.

There was evidence of a number of other instances of neglect on Respondent's part, and of his failure on many occasions to return phone calls, to respond to clients or other counsel, or to respond timely and properly to Bar Counsel's inquiries.

Respondent, to his credit, acknowledged his misconduct and very forthrightly took responsibility for his own actions. By way of explanation and mitigation, however, Respondent identified to the Panel severe personal and family problems he had experienced over recent years, and he described to the Panel the almost total breakdown in his profes-

sional life and practice that attended upon his personal and family problems and on a growing inabiliy on his own part to attend to his professional commitments fully and punctually.

Respondent sought out assistance in coming to grips with his personal problems, made efforts to cause members of his family to obtain appropriate professional assistance and support with their problems, and sought the assistance of other members of the Bar. He relocated his office out of his personal residence and employed staff personnel to assist him in the proper management of his practice. He was assisted throughout this process, which continued from the date of his original hearing and continues at the present, by attorney Jonathan S. Piper of Portland, whose worthy efforts on the Respondent's behalf deserve commendation.

The Respondent, in short, presented substantial evidence tending to mitigate his misconduct and has, in good faith and with considerable success, pursued remedial measures calculated to prevent the recurrence of such misconduct. In a number of instances the Respondent has labored long and hard, without compensation, to repair the damage done by his own misconduct, and he also provided evidence of restitution made by him in appropriate circumstances. Respondent has clearly suffered much personally through this long ordeal. It is noteworthy that many of those who complained to the Commission (and rightly so) about Respondent's neglect of their

cases also had good things to say about the Respondent as a person and displayed a generosity of spirit as to Respondent's efforts to rehabilitate his practice.

While the Panel finds that the Respondent engaged in a pattern of serious and substantial neglect over a long period of time, the Panel also finds that much of that misconduct can be explained (although not justified) by the serious personal circumstances affecting Respondent's practice. The Panel also finds that the Respondent did not attempt to evade responsibility for his misconduct when called to task, that he attempted to repair the damage he had done or to make restitution when necessary, and that he has diligently and successfully pursued remedial measures to prevent the recurrence of similar misconduct in the future. Insofar as possible, the harm done to Respondent's clients appears to have been addressed.

CONCLUSIONS

Normally a pattern of neglect as substantial and serious as that established here would be the basis for the imposition of severe disciplinary sanctions, both to prevent similar misconduct in the future by the Respondent and to protect the public interest.

Under the circumstances of this case, however, in light of the significant factors in mitigation that are present and

the successful rehabilitation efforts that have been pursued by the Respondent, the Panel feels that discipline more severe than a reprimand is unnecessary to protect the public interest. Consequently, the Panel determines that the appropriate disposition in this case is that the Respondent be, and he hereby is, reprimanded for his misconduct as established in all of the cases addressed by this report.

DATED the 23d of June, 1988.

PANEL D OF THE GRIEVANCE COMMISSION

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