SEP 16 1996

STATE OF MAINE

Kennebec, ss.

Board of Overseers of the Bar
Grievance Commission
File No. GCF 96-S-14

BOARD OF OVERSEERS OF THE BAR

Petitioner

v.

JOHN E. NALE, ESQUIRE

Respondent

REPORT OF PROCEEDINGS, FINDINGS, CONCLUSIONS AND DISPOSITION

A hearing in this matter was conducted by Panel B of the Grievance Commission on August 15, 1996, in the Cumberland County Courthouse. The Panel members were Elizabeth G. Stouder, Chair, Susan E. Hunter, Esq. and Marvin C. Chaiken. The Board was represented by J. Scott Davis, Esq. Respondent was present and represented himself. Complainant, Nicolo Leone, was also present. Both Mr. Nale and Mr. Leone testified. Board Exhibits 1-12 were admitted at the beginning of the hearing without objection. Defendant's Exhibit 1 was admitted during the hearing without objection.

The Complaint against Mr. Nale is based on Mr. Leone's allegation that he sought to retain Mr. Nale when incarcerated and that Mr. Nale failed to communicate with him and neglected the matter about which he sought to retain him. Briefly, Mr. Leone was incarcerated at Thomaston State Prison when some kind of drug raid occurred in May 1995. After that raid, Mr. Leone and four other prisoners were administratively and summarily transferred to a super maximum facility in Warren, Maine. While Mr. Leone was incarcerated in the "super max" facility, he obtained Mr. Nale's name from other inmates and wrote to him. Mr. Leone sought Mr. Nale's advice about what he thought was an improper transfer. As of the date of the hearing, no formal charges had ever been filed against Mr. Leone either in court or

in any kind of intra-prison disciplinary proceedings. That was the central point of Mr. Leone's complaint: no charges had been filed in any fashion and yet he had been summarily transferred and held in a super max facility for a year and a half and he is still there.

Mr. Leone's Petition to the Board of Bar Overseers alleges that he wrote several letters to Mr. Nale, that he sent several documents to Mr. Nale, that he called the office repeatedly and that Mr. Nale never spoke with him, never communicated any decisions about his case, never communicated by letter and, when Mr. Leone finally requested the return of his file materials, he failed to return the file materials, with the exception of one document. Mr. Leone claims that he sent several letters and over 20 documents and he received only one back. Mr. Leone also claims that these documents are critical to any action he might have against the prison or prison officials for the transfer.

The Petition in this case also contains allegations that Mr. Nale failed to respond to communications from the Board of Bar Overseers.

The evidence presented at the hearing shows that, at best, Mr. Nale was negligent in not responding in a timely and appropriate fashion to Mr. Leone's inquiries and that he maintained office practices which were ineffective and unprofessional. Mr. Nale did not dispute the fact that Mr. Leone had written several letters and sent several documents to Mr. Nale's office. He did not dispute that Mr. Leone had not received all of those documents when he requested the return of the documents. His only explanation is that they must have been lost, either in his office or somewhere in the mail.

Mr. Nale and Mr. Leone both agree that Mr. Leone called from the prison facility several times, that those were necessarily collect calls and that Mr. Nale's office accepted all of the collect calls. However, Mr. Nale never spoke with Mr. Leone by phone and never communicated with him in writing. In fact, Mr. Nale never personally communicated with Mr. Leone in any fashion.

It was undisputed that the only communications between Mr. Leone and anyone in Mr. Nale's office were with Roger Lewis, employed by the office as a paralegal/administrative assistant. It was Mr. Lewis' duty to answer the phone, sort the mail and deal with clients on a daily basis. Inexplicably, Mr. Lewis did not testify at the hearing, although an affidavit by Mr. Lewis was submitted.

The content of Mr. Lewis' conversations with Mr. Leone is disputed. Attorney Nale maintains that he thought Mr. Lewis was telling Mr. Leone that he either did not have a case or that there was nothing the office could do until and unless formal charges were filed. Mr. Leone claims that he was never told at any time that the law firm would not take his case or that he had a weak case. Instead, he claims that he was told repeatedly that Mr. Nale had not had a chance to review the documents, that he would review the documents and that Mr. Nale had not made a decision about what to do with this case.

Finally, in frustration, Mr. Leone requested the return of his file materials, probably in November 1995. He immediately received one document in the mail and has never received the rest of the documents. The failure to return these documents prompted his complaint to the Board of Bar Overseers.

The Panel agrees that Attorney Nale has violated several Bar rules. The conduct of Mr. Nale and his office is in violation of Rule 3.6(a) which provides that a lawyer must employ reasonable care, must be punctual and further provides that a lawyer shall take reasonable measures to keep the client informed on the status of the client's affairs.

Furthermore, Attorney Nale's conduct violates Rule 3.6(a)(3) in that he neglected a legal matter entrusted to him.

Attorney Nale had a responsibility to either review the documents and materials provided by the client or to tell him in some fashion, preferably in writing, that he was either unable to review them or was unable to take the case. After that review, he had an obligation to communicate with the client and explain any further actions or the reasons that further action would be

inappropriate. Attorney Nale should have undertaken that responsibility himself, rather than delegating that entirely to a staff member and non-lawyer. It is clear and admitted that Attorney Nale never directly communicated with this client.

Furthermore, it was clear to the Panel that Attorney Nale was not even clear at the time of the hearing about what Mr. Leone was requesting that he do. Attorney Nale testified that there was really nothing that his office could do until formal charges had been filed. It was clear that Mr. Leone was specifically asking to know what his rights were regarding the administrative transfer. Mr. Leone's specific concern was that he had been transferred without any formal charges or proceedings and that he continued to be held in a super maximum security institution without any kind of formal proceedings.

The Panel has also concluded that Mr. Nale's conduct and his failure to respond adequately to Mr. Leone's case and in his responses to the Board of Bar Overseers proceedings, are in violation of Rule 3.1(a) which prohibits conduct unworthy of an attorney and Rule 3.2(f)(4) which provides that an attorney shall not engage in conduct which is prejudicial to the administration of justice.

Regarding the proceedings before the Board of Bar Overseers, it was undisputed that two letters were sent in January to Attorney Nale's office and that they contained Mr. Leone's handwritten complaints. Attorney Nale claims that he did not receive either one. He claims that the first communication he received about this complaint was on March 26, 1996. He did not respond to that letter until April 5, 1996. The Board then sent another letter on April 18, 1996. It is undisputed that that letter was sent by certified mail, that two reminders were sent to pick that up and that the letter was then returned to the Board. Attorney Nale has absolutely no explanation as to why his office failed to receive two letters in January. He did offer an explanation for his failure to pick up the certified letter but his testimony on that issue is not credible.

Viewing the evidence even in a light most favorable to the respondent, the cumulative failures of Attorney Nale and his office to appropriately deal with important mail from clients and from the Board, to keep from losing client documents and to appropriately respond to client inquiries is inexcusable and in violation of the Bar rules.

For the foregoing reasons, the Panel deems it appropriate to reprimand Attorney Nale for his conduct in violation of the Bar rules cited above.

DATED: September 4, 1996

Elizabeth G. Stouder
Chair Panel B

Susan E. Hunter

Marvin C. Chaiken

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