

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE:)	
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Seth T. Carey)	
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Docket No. INS-19-209)	DECISION AND ORDER
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I. PROCEDURAL HISTORY

On April 8, 2019, Seth T. Carey applied for a Maine resident insurance producer license with the Maine Bureau of Insurance (the Bureau). In an Order dated April 25, 2019, Superintendent of Insurance Eric A. Cioppa denied Carey’s application. Carey timely requested a hearing, and on May 15, 2019, Superintendent Cioppa delegated to me the duties and functions of presiding officer in this matter with final decision-making authority, pursuant to 24-A M.R.S. § 210.

Carey was represented by attorney James Howaniec when the hearing was initially scheduled. Prior to the hearing, Mr. Howaniec requested a continuance which was granted, and the hearing was rescheduled to July 10, 2019. Prior to the July 10 hearing, Mr. Howaniec withdrew from his representation, citing a conflict. At the hearing, attorney Susannah Sprague entered an appearance and represented Carey.

The hearing was held at the offices of the Department of Professional and Financial Regulation in Gardiner, Maine. Lindsay Laxon, the licensing attorney for the Bureau, and Lisa Wilson, Assistant Attorney General, participated in the hearing on behalf of Bureau staff.

Prior to the hearing, Bureau staff submitted 15 exhibits, which included, among other items, Carey’s resident producer application, his responses to Bureau requests for supplemental information, and several Maine court orders related to various Bar disciplinary matters involving Carey. The orders included a December 20, 2018 Order from Justice Thomas D. Warren in which Carey’s license to practice law was suspended for three years. Bd. of Overseers of the Bar

v. Carey, BAR-18-4, 16-15, at 14 (Dec. 20, 2018). This Order was the end result of two years of Bar proceedings which will be discussed in further detail below.

The exhibits were entered into the record without objection. At the conclusion of the hearing, it was agreed that the record would remain open for consideration of an anticipated ruling by the Maine Supreme Judicial Court regarding Carey's appeal of the suspension of his license to practice law, and for the submission of statements of support on behalf of Carey. On August 8, 2019, Carey submitted reports by the law firm that had been appointed to monitor him, following a 2016 disciplinary proceeding, including reports dated May 30, 2017, August 24, 2017, November 30, 2017, March 6, 2018, and June 3, 2018¹. The Maine Supreme Judicial Court issued a Per Curium decision on August 15, 2019, affirming Carey's suspension. Board of Overseers of the Bar v. Seth T. Carey, 2019 ME 136. The record was closed on August 23, 2019.

The Superintendent's Order denying Carey's license application cited three reasons for the denial, all of which were based upon two court orders related to attorney disciplinary matters involving Carey.

The first was a Negotiated Order issued by Active Retired Justice G. Arthur Brennan on November 21, 2016, in which Carey was found to have used his Interest on Lawyers Trust Account (IOLTA) to improperly make payments for both personal and professional expenses during the course of many months. Bd. of Overseers of the Bar v. Carey, BAR-16-15, at 7, 8 (Nov. 21, 2016). This was found to be a ground for denial of Carey's producer's license application for demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state pursuant to 24-A M.R.S. § 1420-K(1)(H).

The second reason for the denial related to several findings by Justice Thomas D. Warren in an Order dated September 21, 2018, in which Carey was found to have failed to comply with an Interim Suspension Order dated April 30, 2018. Bd. of Overseers of the Bar v. Carey, BAR-18-4, 16-15, at 9-12 (Sep 21, 2018). The September 21, 2018 Order included findings that Carey:

¹ It appears that these documents were originally submitted to the Court as confidential reports, so they will be treated here as confidential and not discussed extensively. These reports have been considered, and they are not persuasive evidence that the Superintendent acted inappropriately in denying the license application.

- Failed to take down his law firm webpage and other advertising describing himself as an attorney for at least two weeks from the date of the Interim Order, and sent emails in May and June of 2018 using his law firm email address.
- Signed a complaint against the Town of Dexter and filed it with the Penobscot Superior Court clerk on or around May 8, 2018, after his license had been suspended, and conducted two phone calls with the Town of Dexter's counsel, representing that he was acting as a paralegal, but in fact discussing matters that were beyond the role of a paralegal.
- Attempted to file an appeal on behalf of a claimant in a small claims case after his suspension by adding himself as a party in the notice of appeal and signing the notice as the appellant.
- Improperly wrote at least three checks on his law office account following the appointment of a receiver on May 4, 2018. These checks included one for the notice of appeal in the small claims matter.

The Superintendent's Order stated that this conduct was grounds for denial of his application pursuant to 24-A M.R.S. § 1420-K(1)(H), for demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state.

The third reason for the denial also involved findings in the September 21, 2018 Order, related to an incident in June of 2018, in which Carey provided counsel for T.B. with several documents which Carey later characterized as a settlement offer. *Id.* at 12-14. On March 30, 2018, T.B. had sought and received a Protection From Abuse Order (PFA Order) against Carey. It was this PFA Order which was the basis for the April 30, 2018 Interim Suspension Order. Justice Warren's description of the documents included that "T.B. was offered an automobile to retract her testimony that Carey had made unwanted physical advances, and if Carey's license to practice law were reinstated by October 1, T.B. would receive \$1,000." *Id.* at 13.

The Superintendent listed this conduct as representing grounds for the denial of his application pursuant to 24-A M.R.S. § 1420-K(1)(H) for using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business.

II. STANDARD OF REVIEW

Pursuant to 24-A M.R.S. § 1417 the Superintendent, after notice and opportunity for hearing, may deny a license application if the Superintendent finds that any of the reasons for denial listed in 24-A M.R.S. § 1420-K exist. These reasons include those under 24-A M.R.S. § 1420-K(1)(H), “Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere.”

When the basis for license denial is a reason under 24-A M.R.S. § 1420-K(1), the issue at a hearing is the reasonableness of the Superintendent’s action in denying the application. 24-A M.R.S. § 1420-K(2).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

At the hearing, Carey offered explanations as to why the cited reasons for denial were either not serious or were misunderstandings of his intent. He did not specifically deny the factual findings of most of the allegations (with the notable exception of the facts leading to the protection from abuse order), and he presented no persuasive evidence that any of the cited violations did not occur. The record in this case includes the findings of Justice Warren, Justice Brennan, and the Maine Supreme Judicial Court’s affirmation of all findings. All of the grounds for license denial cited by the Superintendent have been proven. This leaves the issue of whether, based upon the record, the Superintendent’s license denial was reasonable.

VIOLATIONS INVOLVING THE IOLTA ACCOUNT

Although Carey had prior disciplinary issues in Maine, including at least two prior suspensions, the events leading to his most recent suspension began in 2016. Carey entered into a Negotiated Order on November 21, 2016, in which, among other violations, Carey was found to have improperly made payments from his IOLTA account for both personal and professional expenses during the course of several months. Justice Brennan found that “...at a minimum, Attorney Carey’s conduct reflects improper bookkeeping and business practices in violation of M.R. Prof. Conduct Rule 1.1 [competence].” Bd. of Overseers of the Bar v. Carey, BAR-16-15, at 8 (Nov 21, 2016). Due to this violation, others listed in the Order, and previous discipline that

had been imposed upon Carey, his license was suspended for two years. Id. at 9. However, all of the suspension was suspended, subject to several conditions. Id. The conditions included being monitored by a law firm for at least two years, the monthly reconciliation of his IOLTA account, treatment with a licensed Maine psychiatrist, and the completion of CLEs concentrated on law office practice management. Id. at 9-17.

As part of his producer license application, Carey stated “There was no purposeful impropriety regarding my IOLTA account. I simply put the wrong account number on an order form for the checks when I ordered them. I put the business IOLTA account number down instead of just the plain business account.” Carey also pointed out in subsequent correspondence with the Bureau that the money in the account was his money that he had earned, and that “no client or taxing authority was harmed by this oversight.” He testified at the hearing in this matter “...there’s no like, stealing from the client or – the money is earned.” He also asserted that this was a minor issue. “It’s a mistake. I mean, could I have been more careful? Yes, but it happened and there’s no intent, I guess, I guess is the bottom line. Any of these mistakes that were made were very minor and that’s my argument. Sorry.”

VIOLATIONS RELATED TO THE APRIL 30, 2018 INTERIM SUSPENSION ORDER

The September 21, 2018 Order found several violations of the earlier, April 30, 2018, Order of Immediate Interim Suspension, suspending Carey from the practice of law in Maine. Bd. of Overseers of the Bar v. Carey, BAR-18-4, 16-15 (Sep 21, 2018). The April 30, 2018 Order specified that Carey was to immediately cease operating his website, any Facebook account(s) relating to his practice as a lawyer, and any other form of advertising of his legal services during the period of the suspension. Id. at 9. The impetus for the Board of Bar Overseers to seek the interim suspension was that the District Court had found from evidence presented in a PFA hearing that Carey had engaged in criminal conduct, in addition to the November 21, 2016 suspended license suspension. Id. at 1-2. A three-day hearing was held on August 15-17, 2018 to review the allegations against Carey. Id. at 3. Justice Warren found in the September 21, 2018 Order that Carey had in fact committed acts that would constitute criminal acts, and that he had failed to comply with the Interim Suspension Order in several respects. Id. at 7, 9-12.

Failure to take down webpage and advertising as an attorney

Included in the single justice's September 21, 2018 findings were that Carey did not take down his webpage and other advertising describing himself as an attorney and that he sent emails using his law firm email address. Id. at 9-10. At the hearing, Carey explained that around this same time he was experiencing computer issues, that he did not have all the passwords for his accounts, and that he was in Florida for part of this time, making it difficult to fully comply with this portion of the Order. Carey added, "It's sort of ridiculous to think that I was told to take down my website or put it on pause, what have you, because it's a temporary suspension... It just didn't make any sense."

Filing and Conversations following the license suspension

On May 6, 2018, Carey signed and sent for filing a complaint to the Penobscot Superior Court in a case against the Town of Dexter. Id. at 9-10. Carey also had two phone calls with opposing counsel after having been suspended. Id. Justice Warren rejected Carey's claim that he was calling as a paralegal because his discussion went "beyond the usual role of a paralegal." Id. at 10.

At the hearing, Carey explained that he had filed several documents in the Town of Dexter matter prior to the suspension, but he had inadvertently not signed one document prior to the suspension. So, he signed it and sent it back to the court after the suspension.

Adding himself as a party

In another case following his suspension, Carey attempted to file an appeal by adding himself as a party in the caption and signing the notice as the appellant. Id. at 11. The trial court rejected the submission. Id. Carey stated that he was appealing the Court's dismissal of the underlying case as well as the Court's issuance of a \$500 fine against him. "And, so, I added myself as an appellant, so I don't see – and then the Bar, of course, twisted it around and said – or whatever they said, but that's what happened. I don't understand...maybe it's novel...I don't understand why that was a problem... or why I can't do it."

Writing checks on his law office account

Carey wrote checks on his law office account on at least three occasions after his suspension, even though a receiver had been appointed and been given control over Carey's law office accounts. Id. In his April 18, 2019 letter to the Bureau, Carey also downplayed the significance of this finding. He stated that "...I can see how it was maybe more proper to pay for such expenses from the personal account. If I recall accurately, less than ten checks were written, but again, I wrote the checks because I thought that was the proper way to keep track of expenses, so it could have been more but regardless, there was no impropriety or intent to do anything improper or wrong." He noted that the attorney monitors found no issues with his IOLTA accounts during their monitoring of him, and he stated that the receiver for his practice also did not find issues. "This was a manufactured issue by the Board with no substance," he wrote.

At the hearing, Carey stated "I'm not really sure what the problem is there, if any." His position is that he had earned the money in the business account, and so this was a minor issue.

Justice Warren found that these actions together with others were violations of the interim suspension order and violated Rule 3.4(c) of the Rules of Professional Conduct by knowingly disobeying an obligation under the rules of a tribunal. Id. at 12.

ALLEGED WITNESS TAMPERING

On June 28, 2018, Carey met with counsel for T.B. regarding the PFA Order which had been entered in March 2018. Carey provided counsel with several documents, including a statement drafted by Carey, which was to be signed by T.B. recanting her prior statements of abuse. Id. at 12. Another document was a nondisclosure agreement to be signed by both Carey and T.B. Id. at 13. This document provided that after the PFA was vacated Carey would sign over the title of his PT Cruiser to T.B., and that T.B. would file motions stating that there had been no abuse by Carey and seeking to vacate the prosecution of the Board's Bar complaint against him. Id. at 12. If Carey's law license was reinstated prior to October 1, 2018, Carey would also pay T.B. \$1,000. Id. at 12-13. Justice Warren found that Carey's offer and the proposed confidentiality agreement constituted criminal actions in violation of 17-A M.R.S. § 454(1)(A)(1)(attempting to induce T.B. to provide false information), 17-A M.R.S. § 454(1)(A)(2)(attempting to induce a witness to withhold testimony, information or evidence) and

17-A M.R.S. § 454(1)(B)(1)(offering a pecuniary benefit with the intent to induce a witness to withhold testimony, information or evidence). Id. at 14. Justice Warren also stated, “In this instance there can be no dispute that Carey’s conduct reflected adversely on his honesty, trustworthiness, and fitness as a lawyer in violation of Rule 8.4(b).” Id.

At the hearing, Carey’s response to this allegation included attempting to discredit T.B. in addition to denying that his offer to T.B.’s counsel was improper. He continues to deny there was any witness tampering. He said in his written response to the Bureau, “So we went back and forth and I finally drafted documents the best I could in the spirit of negotiation, thinking about what was best for both sides. In the end I decided to offer financial remuneration as well, to make it worthwhile to [T.B.] to risk potential criminal exposure. There was no impropriety or witness tampering. These were negotiations all done through lawyers not to [T.B.]. I was not attempting to coax her to lie, but only to tell the truth. If I committed a crime I would face criminal charges. Which I do not.”

Carey graduated from Clemson University in 1997 and received a Master’s degree from Florida State University. He graduated from Vermont Law School in 2001 and went to work as a paralegal at his father’s law office in Maine. He received his law license in Massachusetts in 2005 and in Maine and Connecticut in 2006. He worked for his father’s law office prior to working as an immigration attorney in Miami and as an attorney in Boston. He returned to his father’s law office in 2012 and started his own practice in 2016.

At the time of his interim suspension in 2018, Carey was an experienced attorney. The record shows the court system has used a variety of methods over several years to attempt to have Carey appropriately run his law practice. These methods have included monitoring, suspensions, and imposing requirements for Carey to obtain needed counseling. At the hearing Carey argued that because the Board of Overseers of the Bar had sought disbarment in the 2018 matters, and the single justice had only imposed a three-year suspension, the violations were not as serious as alleged by the Board. This argument is not persuasive. It is true the single justice could have ordered disbarment instead of a suspension. However, the court viewed his violations as serious enough to impose a lengthy suspension and to impose rigorous requirements which must be met prior to reinstatement of his license. The numerous conditions upon a possible reinstatement show the serious concerns of the court, while also not precluding the possibility that Carey may eventually gain reinstatement.

Carey testified that he had been in contact with a life insurer about becoming a producer if he were to obtain his license, although he stated in his written responses to the Bureau that following his license denial the company stopped communicating with him. He testified that the company is a large insurer with a large staff and implied that the company could monitor his activities. However, no evidence was presented to show that the potential employer would be willing or able to take on this monitoring. It was also not clear what exactly his responsibilities would be with the company. Carey stated that he believed he would be working with the company as an independent contractor, which would generally mean he would be subject to less oversight than an employee. In any event, this employment possibility is insufficient to overcome the need to protect the public.

It was also argued that the Superintendent can monitor Carey's producer activities after he is licensed. There is no obligation for the Superintendent to undertake this responsibility, and the history of monitoring involving Carey's practice of law is not encouraging for the prospect of his being monitored closely by an insurance employer or by the Superintendent.

The requirements for attorney licensure are obviously more extensive than those to obtain an insurance producer license. However, as with a law license, the requirements for obtaining a producer's license are in place for the protection of members of the public in their important financial matters.

Some of the violations discussed above, such as the witness tampering, are more serious than some of the others. But all of the violations are concerning, in addition to being both recent and voluminous. Rather than take responsibility or show remorse for the violations, Carey continues to minimize the seriousness of his actions.

The IOLTA and check writing violations demonstrate "incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State..." 24-A. M.R.S. § 1420K(H). The remaining violations, including those involving attempted witness tampering, show the use of "fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial responsibility in the conduct of business in this State..." Id.


The Superintendent's denial of Carey's resident producer license application was reasonable and is hereby AFFIRMED.

IV. NOTICE OF APPEAL RIGHTS

This Decision and Order is a final agency action of the Superintendent of Insurance within the meaning of the Maine Administrative Procedure Act. It may be appealed to the Superior Court in the manner provided by 24-A M.R.S. § 236, 5 M.R.S. § 11001, et seq. and M.R. Civ. P. 80C. Any party to the proceeding may initiate an appeal within thirty days after receiving this notice. Any aggrieved non-party whose interests are substantially and directly affected by this Decision and Order may initiate an appeal within forty days of the issuance of this decision. There is no automatic stay pending appeal; application for stay may be made in the manner provided in 5 M.R.S. § 11004.

PER ORDER OF THE SUPERINTENDENT OF INSURANCE

August 30, 2019



TIMOTHY N. SCHOTT
Deputy Superintendent of Insurance