The Board of Overseers of the Bar filed an Information against Defendant setting forth numerous factual averments and alleging violations of Maine Bar Rules 3.1(a), 3.2(f)(2), (3), (4) and 3.6(e)(2).\(^1\) In his answer,

\(^1\)The text of the Rules cited is as follows:

3.1 Scope and Effect
(a) This Code shall be binding upon attorneys as provided in Rule 1(a). Violation of these rules shall be deemed to constitute conduct "unworthy of an attorney" for purposes of 4 M.R.S.A. Section 851 and Rule 7(e)(6)(A). Nothing in this Code is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation; and the prohibition of certain conduct in this Code is not to be interpreted as an approval of conduct not specifically mentioned.

3.2 Admission, Disclosure and Misconduct
(f) Other Misconduct. A lawyer shall not:
(2) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
(3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
(4) engage in conduct that is prejudicial to the administration of justice.

3.6 Conduct During Representation
(e) Preserving Identity of Funds and Property.
(2) A lawyer shall:
(i) Promptly notify a client of the receipt of the client's funds, securities, or other properties;
(ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe-deposit box or other place of safekeeping as soon as practicable;
Defendant admitted most of the factual averments. In light of those admissions and stipulations entered into by the parties, they agreed that it was unnecessary to conduct an evidentiary hearing on the charges filed by the Board. The averments, admissions and stipulations reveal the following:

1. Kadish was appointed as conservator for Eveline E. Gervais by the Cumberland County Probate Court on November 20, 1989.

2. According to an inventory of the Gervais estate prepared by Kadish, the size of that estate at the time of his appointment was $231,821.20, including funds on deposit and investments totalling approximately $130,000.00.

3. In November of 1992, Gervais was admitted to Southridge Living Center, a nursing home facility in Biddeford, Maine, and has been a resident thereof since that time. She is 93 years old, rarely talks, and is confused.

4. Gervais was a private pay patient at Southridge, and initially Kadish paid all nursing home care charges to Southridge on behalf of Gervais in a timely manner.

5. Starting in 1994, however, Kadish began delaying making payments to Southridge without any explanation for that delay.


(iii) Maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render prompt and appropriate accounts to the client regarding them; and
(iv) Promptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.
7. Numerous attempts have been made by Southridge to obtain payments from Kadish, with indications from him that the payment would be made in a prompt manner.

8. In fact, payment has not been made by Kadish on behalf of Gervais, and an arrearage of approximately $56,000 remains due.

9. At some point in 1995, Kadish moved from Maine to Illinois.

10. On or about September 5, 1995, Southridge's counsel, David R. Dubord, Esq., wrote to Kadish requesting a) immediate payment of the then outstanding arrearage of $35,158.47 concerning the care of Gervais, b) a current inventory of the Gervais estate and c) an accounting of all funds which had been received or disbursed by Kadish during the term of his appointment as conservator for Gervais.

11. By letter of September 15, 1995 Kadish provided Dubord with a copy of the requested initial inventory and promised that the further information requested by Dubord and the balance due on the Gervais account itself would be paid.

12. No further payment or material was in fact ever made or provided by Kadish to Southridge or Dubord.

13. On October 31, 1995, the Board received Dubord's grievance complaint letter of October 26, 1995 with various enclosures.


15. On March 21, 1996, a panel of the Grievance Commission reviewed Kadish's conduct and found probable cause to conduct a
disciplinary hearing open to the public for the issuance of a reprimand or for the authorization for further court disciplinary action.

16. By letter of March 26, 1996 Dubord and Kadish were notified of the review panel's action.

17. On April 10, 1996 Kadish telephoned Bar Counsel inquiring as to the status of the filing of this petition and the scheduling of a disciplinary hearing, and in the course of that discussion admitted to Bar Counsel that the manner in which he had handled the Gervais and Southridge matters was "wrong."

18. On or about April 17, 1996 Kadish applied for medicaid benefits from the Maine Department of Human Services (DHS) on behalf of Gervais and provided a copy of it to Dubord. That application was later approved by DHS retroactive to April 1, 1996.

19. On or about May 17, 1996 a one count petition was filed with the Grievance Commission concerning the conduct of Kadish.

20. On or about June 10, 1996 Kadish informed the Grievance Commission Chair and Bar Counsel that he would be challenging neither the factual averments contained in the petition nor the legal assertion that he had violated Maine Bar Rule 3.1(a).

21. On or about August 19, 1996, a hearing was held before a panel of the Grievance Commission and during the course of that proceeding, Kadish, pro se, repeatedly refused to answer questions because of his rights under the Fifth Amendment to the United States Constitution. This exchange was typical:
MR. STONE: If I were to ask it by saying put aside 3.2 -- I know you were responding by saying that you're not disputing the allegation of a violation of 3.1, but you've not addressed 3.2; is that correct?

MR. KADISH: That's correct.

MR. STONE: Is there something with regard to 3.1 that you --

MR. KADISH: In the most general sense -- if I were representing somebody else sitting in this chair right now, I would be pulling on his sleeve and telling him not to say what I'm going to say, but I'll say it anyway. In the most general sense, what I meant by that was that I should have been more careful in how I managed the documentation of Ms. Gervais' estate and dealt with the everyday details. That was wrong. And to that I will tell you right now, I don't believe and didn't believe on June 10th that there is a defense. So, I'm not defending against it. I'm not wasting your time.

MS. VAFIADES: Should you have -- what do you mean, managed documentation?

MS. BRANHAM: That's my question.

MR. KADISH: By that I mean kept more orderly records. If I had kept more orderly records, I could have responded to things in a much more reasonable time frame. I mean, that at a minimum is troublesome to me.

MS. VAFIADES: I'm going to ask this question even though I think I might know the answer. Are you going to enlighten the panel or are you willing to enlighten the panel why there was such a significant outstanding payment to the nursing home?

MR. KADISH: No.

MS. VAFIADES: No, what?

MR. KADISH: No, I'm not going to enlighten the panel as to that.

MS. VAFIADES: Okay. Is it, then, fair for the panel to assume that it was more than keeping orderly records?

MR. KADISH: I can't answer that, either.
MS. VAFIADIES: So you're not saying if you kept more orderly records you would have paid on a more timely basis?

MR. KADISH: I'm not saying that. That's correct.

MS. VAFIADIES: Is there any -- based on Mr. Stone's question of your admission that you've engaged in conduct unworthy of an attorney, do you want to give us any more explanation of why you are conceding to that definition?

MR. KADISH: No.

22. Further invoking his Fifth Amendment privilege, Kadish refused to answer questions relating to the following matters: investment in speculative concerns; employment of stock brokers; placement of funds in foreign investments or real estate development projects; the identification of the types of companies in which Gervais’ money had been invested; the disposition of $50,000 received by Kadish from the sale of Gervais’ residence; the disposition of $21,000 in monthly checks received by Kadish for Gervais for the years 1994 and 1995.
23. There are unexplained withdrawals totalling $79,507.16 from Gervais' accounts.\(^2\)

**ADMISSIONS OF VIOLATIONS AND MOTION TO AMEND**

In his answer to the Information, Kadish admitted to violations of all of the rules cited by the Board, including Rules 3.2(f)(2) and (3). These rules declare that a lawyer shall not "engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects" and "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." Kadish subsequently filed a motion to amend his answer asserting that he had never intended to admit violations of those rules. Instead, he wished to limit his admissions to 3.1(a) involving conduct "unworthy of an attorney," 3.2(f)(4) proscribing "conduct that is prejudicial to the administration of justice." and 3.6(e) requiring a lawyer to preserve

\(^2\)Kadish argues that the $79,507.16 figure "is a gross number and does not represent funds 'missing' from Gervais' accounts." Kadish thus distinguishes between "unexplained withdrawals" and "missing funds" without specifying the amount of missing funds. This distinction between "unexplained withdrawals" and "missing funds" is reflected in the following accounting of withdrawals and deposits by Kadish from Gervais' accounts prepared by a private attorney retained by the Board of Overseers:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Checks written to Charles Kadish</td>
<td>36,350.00</td>
</tr>
<tr>
<td>Unexplained check to third party</td>
<td>13,025.00</td>
</tr>
<tr>
<td>Unexplained withdrawals</td>
<td>20,787.16</td>
</tr>
<tr>
<td>Unexplained checks written; unavailable from the banks</td>
<td>9,345.00</td>
</tr>
<tr>
<td>Total unexplained withdrawals</td>
<td>79,507.16</td>
</tr>
<tr>
<td>Unexplained deposits</td>
<td>34,577.16</td>
</tr>
<tr>
<td>Payment to Nursing Home from Mr. Kadish's funds</td>
<td>18,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>52,577.16</td>
</tr>
</tbody>
</table>

Kadish apparently takes the position that the "missing funds" approximate the difference between these two totals.
the identity of funds and property. The Board opposes Kadish's motion to amend.

The Court concludes that Kadish's insistence that the admission to Maine Bar Rule 3.2(f)(2) and (3) was a drafting mistake is consistent with the position he took before the panel of the Grievance Commission. Kadish stated during that proceeding that he was not admitting any violation of Maine Bar Rule 3.2, though he now admits that he engaged in conduct that is prejudicial to the administration of justice. The Board will not be prejudiced in any way by granting the amendment and they do not argue to the contrary. The motion to amend the answer is granted.

VIOLATIONS

As noted, Kadish repeatedly invoked his privilege against self incrimination before the panel of the Grievance Commission. He also advised the Court that he would have renewed that invocation in any evidentiary hearing held by the Court. Although Kadish was entitled constitutionally to invoke the privilege, the Court can draw adverse inferences against Kadish on the basis of that invocation. As stated by the Law Court in State v. Horton, 561 A.2d 488, 491 (Me. 1989):

Disciplinary proceedings are civil in nature, and a lawyer has no constitutional right to prevent the factfinder in that proceeding from considering the implications of his silence, along with other evidence against him, in making a determination... If he chooses to invoke his Fifth Amendment privilege and remain silent, a lawyer might be disciplined for the underlying misconduct charge by the Board...
In light of the admissions by Kadish to the violations of Maine Bar Rules 3.1(a), 3.2(f)(4) and 3.6(e), in light of his repeated invocation of his privilege against self incrimination, and in light of the money that remains unaccounted for from the funds of Gervais, the Court concludes that Kadish has, in some unexplained fashion, taken substantial funds of Gervais for his own use. He has thus engaged "in illegal conduct that adversely reflects on a lawyer's honesty, trustworthiness, or fitness as a lawyer..." in violation of Maine Bar Rule 3.2(f)(2) and he has engaged "in conduct involving dishonesty, fraud, deceit or misrepresentation" in violation of Maine Bar Rule 3.2(f)(3). The Court also concludes that Kadish has violated Maine Bar Rule 3.6(a).

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3Early in the proceedings, Kadish raised but did not press the contention that as a conservator he was not acting as an attorney for Gervais and hence he was not subject to the Maine Bar Rules. That contention would have availed him nothing. An attorney is subject to sanction under the Maine Bar Rules even if not acting as an attorney: "... the provisions of Rule 3.2 apply to the conduct of an attorney even when he acts in his individual capacity." The Board of Overseers of the Bar v. Horton, Docket Nos. BAR-88-15, 89-12, and 90-12. Even if Kadish had not entered into an attorney/client relationship with Gervais in the usual form, his performance of his conservatorship responsibilities involved conduct "unworthy of an attorney."

4Maine Bar Rule 3.6(a) states as follows:

A lawyer must employ reasonable care and skill and apply the lawyer's best judgment in the performance of professional services.

The rule further requires that a lawyer shall not "neglect a legal matter entrusted to the lawyer." Although paragraph number 32 in the Board's Information did not specifically allege a violation of Rule 3.6(a) by Kadish, the Board did not limit its allegations of violations to those specifically cited in the Information ("... he has engaged in violation of at least the following Maine Bar Rules...") (emphasis added). In the circumstances of this case, given the interconnections among the disciplinary rules involved, there is no unfairness in finding a violation of this additional rule.
SANCTION

The Board urges that Kadish be disbarred. Citing his age (56) and his concern that disbarment will preclude meaningful employment as a lawyer in the future, Kadish asks that suspension from the practice of law be the most severe sanction imposed.

In December 1987 Kadish was suspended from the practice of law for a period of ninety (90) days because he had pled guilty to and was convicted of two counts of failure to file federal income tax returns. In deciding on the sanction of suspension, the Court stated:

The respondent’s crimes never adversely affected the manner in which he conducted his practice. All the information available to the court suggests that the respondent’s dealings with clients were marked by the highest integrity.

In this instance, the conduct of Defendant lacked integrity and it affected the manner in which he carried out his responsibilities on behalf of another party. Although defendant states that he is ashamed of his actions and regrets them deeply, his appropriate acknowledgement does not mitigate the severity of his misconduct. Given the primary purpose of disciplinary proceedings to “protect the public and the courts from attorneys who by their conduct have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties,” M. Bar R. 2(a), the Court concludes that disbarment is required.

Wherefore, it is ORDERED and ADJUDGED:

1. Defendant’s Motion to Amend Response to Information is hereby granted and paragraph 32 thereof shall be amended to read as follows:
Defendant admits the averments of paragraph 32, except denies the averments regarding Maine Bar Rule 3.2(f)(2) and 3.2(f)(3).

2. Defendant is disbarred from the practice of law in the State of Maine. Such disbarment is to take effect thirty (30) days after the entry of this Order and is subject to the requirements of Maine Bar Rule 7.3(l) and (j).

Dated: June 27, 1997

Kermit V. Lipez, Associate Justice

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