BOARD OF OVERSEERS OF THE BAR
Established by the Supreme Judicial Court of Maine

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BOARD OF OVERSEERS OF THE BAR OF MAINE

REPORT OF PROCEEDINGS

Re: Curtis G. Webber
No. 83-84
12 October 1983

This is a report of the review and disposition by the Board of Overseers of the Bar of Maine of a complaint made by Michael R. Poulin against G. Curtis Webber.

Preliminary Matters

On June 27, 1983, Michael R. Poulin of Lewiston, Maine, by letter, filed a complaint against G. Curtis Webber alleging that the latter violated provisions of the Code of Professional Responsibility as set forth in Rule 3 of the Maine Bar Rules. Since Mr. Poulin felt that he was in possession of knowledge Respondent had violated the Maine Bar Rules, he determined that under Rule 3.2(e), he was obliged to report the matter to Bar Counsel. Since the Respondent is a member of the Grievance Commission of the Board of Overseers, the Board, consistent with Maine Bar Rules 4(d)(10) and 7(d), assumed and acted upon the authority and duties of the Grievance Commission regarding Mr. Poulin's complaint. These Rules, in summary, state that the a complaint involving a member of the Grievance Commission shall not be referred to the Commission but shall be acted upon by the Board. Bar Counsel carried out his duties respecting the complaint in this matter and recommended that the matter be concluded by adjustment by informal conference, pursuant to Rule
5(b)(2)(ii). The Board, assuming the duties of the Grievance Commission under the last stated rule and under Rule 7(c)(1), undertook to review the matter and to see if it would approve or modify the recommendation made to it by Bar Counsel.

Brief Summary of Facts

The matter arose out of hearings held and action taken by the City of Auburn against one George Bouchles, who was a firefighter for that City. In 1980, Mr. Bouchles was arrested and charged with trafficking in a controlled substance while off duty. In May of 1983, Mr. Bouchles pleaded guilty to the charge. Shortly thereafter, the city notified Mr. Bouchles that he was to be discharged from his position as firefighter.

Auburn has a Civil Service Commission, one function of which is to hear appeals of disciplinary actions, including dismissals, involving firefighters. Mr. Bouchles, through his counsel, Michael Poulin, appealed his dismissal to the Commission.

The Respondent appeared at a hearing scheduled by the Commission to hear the appeal of Mr. Bouchles. Mr. Bouchles was present with his counsel, Mr. Poulin. According to Mr. Poulin, Respondent stated at the hearing that he was acting as "legal advisor" to the Commission. Respondent has stated in a letter to Bar Counsel that he was indeed present at the hearing and that his role there was limited "to advising them (the Commission) on procedural questions which might arise and on any legal issues which might present themselves." Mr Poulin complained to Bar Counsel when he later discovered that prior to the Civil Service Commission hearing, the Fire Chief and the City had sought legal advice from Respondent concerning the Bouchles matter. The Respondent acknowledges that he had indeed consulted with the City Manager and Fire Chief of Auburn on this matter and "had made suggestions to them as to the kind of evidence which (he) thought should be presented in order to persuade the Commission to uphold the Chief's decision." Respondent also
agreed with Mr. Poulin's assertion that at the conclusion of the Commission hearing it was agreed that the City Manager, who was representing the City, and Mr. Poulin, for Mr. Bouchles, would submit legal memoranda to the Commission, and that Respondent would meet with the Commission "after the memoranda were received to discuss with them what their decision was and to assist them in reducing it to writing." Respondent in his letter to Bar Counsel explains what he considers to have been the limited scope of his participation in the deliberations of the Commissioners, spelling out the details of the post-hearing conference in which he offered certain legal advice and served as "note-taker."

Mr. Poulin says that on learning of Respondent's participation he asked Respondent to withdraw from the case. Respondent agreed to do so. Some correspondence indicative of a continuing disagreement as to the effect of Respondent's participation in the matter then ensued between Poulin and the Respondent, culminating in the presentation of this complaint to Bar Counsel.

**Discussion**

It is Mr. Poulin's view that when Respondent consulted with the Fire Chief and City Manager and then sat as legal advisor to the Commission he was in violation of the Code of Professional Responsibility. Bar Counsel called the Board's attention to the provisions of Rule 3.4(c) and suggested that Respondent might be considered in violation of the provisions of that Rule, which reads in part as follows:

*Multiple Employment Forbidden.* A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of his client will be, or is likely to be, adversely affected by his representation of another client, or it would be likely to involve him in representing differing interests...."

It is Respondent's view that he was not acting as attorney for the
Fire Chief or the City Manager when he consulted with them prior to the hearing and that he was not acting as attorney for the Commission as such when he gave advice to Commission during and after the hearing, but instead that he was acting as attorney for the City of Auburn, which he states is "a role which transcends representation of any particular individual or agency of the City." Respondent concedes that "at least the appearance of impropriety is created where the City attorney appears to be indentified with one side or another in an adversarial matter and then purports to advise the decision maker." (Emphasis in original) Respondent nonetheless does not see a violation of any disciplinary rule on his part.

The Board concludes that it must disagree. The Board sympathizes with Respondent's viewpoint that he was acting as attorney for the City in all of its facets and acknowledges that, for example, Respondent might properly give advice to the City Manager on a matter and that later when that matter came before the Planning Board, he might often be able to advise that body without violating the Code since the person being advised (the "client" in the wording of the rule) would really be the same entity: i.e., the City, but to the Board, the Civil Service Commission is in a different situation. As we understand it, the Commission is established in part to serve an independent, quasi-judicial function of assessing the propriety of City action in meting out discipline to firefighters. The interests of the City through its Fire Chief and City Manager in disciplining a firefighter differ from those of the Commission in assessing whether the City acted properly in taking the disciplinary action. We feel this is more than the mere appearance of impropriety: Respondent, in our view is culpable not only of the appearance of impropriety but also of actually acting improperly by being "indentified with one side (the City) ... in an adversarial matter and then (of purporting) to advise the decision maker" to use Respondent's own words. These interests to us seem really substantively "differing" as we have stated.

At the same time, this action by Respondent is thoroughly
understandable when one understands the Respondent's perception of his role as "representing the City" including all its employees, boards and commissions and one would expect that normally such action would be entirely proper. We think it is the special independent status of the Civil Service Commission in its role of evaluating the conduct of the City which makes the difference here. But it seems to us that the action of Respondent was not intentional and that the violation of the Rule which we have discerned is of a minor character.

Determination

A majority of the Board determines that, based on the facts as revealed by the letters presented by Mr. Poulin and the Respondent, and after due consideration of the matter in the light of the applicable Rules, that the recommendation of Bar Counsel should be approved. Bar Counsel is requested to adjust this matter by informal conference pursuant to the provisions of Maine Bar Rule 5(b)(2)(ii).

Dated: 20 October 1983

[Signature]

Vice Chairman, Board of Overseers for the Board