Introduction

On August 14, 2015, pursuant to due notice, Panel B of the Grievance Commission conducted a disciplinary hearing pursuant to Rule 13(e) of the Maine Bar Rules concerning the Respondent, Donald F. Brown, Esq., of Brewer, Maine. The hearing was open to the public. Panel members included Thomas H. Kelley, Esq., Chair; Vendean Vafiades, Esq.; and Kenneth Roberts, Public Member. The Board of Overseers was represented by Assistant Bar Counsel Alan P. Kelley. Attorney Brown was present and represented by Walter F. McKee, Esq.

This proceeding was initiated by the filing of a Disciplinary Petition by the Board of Overseers of the Bar, dated May 1, 2015. Attorney Brown filed a response through counsel that was received by the Board on June 1, 2015. These documents are part of the Board’s official record.
The Board submitted Board Exhibits 1-30 in advance of the hearing, and counsel for Attorney Brown submitted Respondent’s Exhibits 1-4 in advance of the hearing. The documents submitted by Attorney Brown as his exhibits were included in the Board’s exhibits, albeit under different numbers. The Board and Attorney Brown, through their respective counsel, stipulated to the admission of all documents.

The Board called as its witnesses the Complainant, Karina Richardson; Attorney Jeffrey W. Davidson, who had represented Ms. Richardson in various proceedings; and Respondent Attorney Donald F. Brown. Counsel for Attorney Brown also conducted his own direct examination of Attorney Brown.

**Findings**

The parties concur that most of the facts relevant to this proceeding are not in dispute. For approximately twelve years, until January 2013, Karina Richardson was employed by Washington County in an administrative capacity at the County Jail. The Washington County Sheriff at that time, Donald Smith, suspended Ms. Richardson from her position in December 2012 because he believed that she had misused funds in the inmate benefit bank account. Sheriff Smith requested that the County Commissioners terminate Ms. Richardson’s employment, and that request precipitated a contentious series of legal proceedings.

Karina Richardson vigorously contested the claim that she had misused the inmate benefit fund and sought a hearing before the County Commissioners. The Commissioners heard the parties in January 2013 and
authorized Ms. Richardson's discharge at that time. As a unionized employee, however, Ms. Richardson was also entitled to file a grievance and seek arbitration to challenge the termination, and she invoked her right to that process.

Attorney Davidson represented Ms. Richardson before the County Commissioners and in the arbitration proceeding. The law firm of Rudman and Winchell was general counsel for Washington County during this period and represented the County at the Commissioner's hearing and in the arbitration process. Sheriff Smith sought separate representation at the Commissioner's hearing and engaged Attorney Brown. Attorney Brown participated in the Commissioner's hearing on the termination of Ms. Richardson on behalf of Sheriff Smith.

After her termination by the County Commissioners, Karina Richardson filed for unemployment benefits from the State of Maine. (Her grievance and request for arbitration remained pending for a lengthy period. Ultimately an arbitrator ruled that she should have been suspended for a period of six months but not terminated.) A deputy of the Maine Unemployment Insurance Commission (MUIC) found that Ms. Richardson had been discharged but not for misconduct and therefore was eligible for unemployment insurance (UI) benefits. Washington County appealed the finding that there was no misconduct.

On May 15, 2013, an administrative hearing officer conducted a lengthy hearing (approximately eight hours, according to Ms. Richardson) to determine
whether Karina Richardson was discharged from her position at the County Jail for misconduct related to her work. The firm of Rudman and Winchell represented the County at this hearing, and Attorney Davidson represented Ms. Richardson. Attorney Brown was not involved in this hearing. The hearing officer thereafter issued a decision, dated May 17, 2013, finding that Ms. Richardson had not engaged in misconduct related to her employment and thus was eligible for unemployment benefits.

Both Karina Richardson and Attorney Davidson testified that they understood from County officials that the County did not intend to pursue a further appeal of the unemployment compensation matter. A letter of October 13, 2014, from Rudman and Winchell attorney John Hamer to Attorney Brown, appears to confirm that understanding. Bd. Ex. 15.

Sheriff Smith did not agree with the hearing officer's finding that there was no misconduct on Ms. Richardson's part, and he engaged Attorney Brown to pursue an appeal to the Unemployment Insurance Commission. Attorney Brown appealed the hearing officer's decision on May 31, 2013 to the three-member board of the Maine Unemployment Insurance Commission. Bd. Ex. 27. It is not clear that Attorney Brown had the authority from the County Commissioners to file that appeal. There is also no indication that Attorney Brown sent a copy of the notice of appeal and attached letter to Attorney Davidson or Karina Richardson.

Attorney Hamer stated in his October 13, 2014, letter that the County Commissioners had advised Attorney Brown by letter dated June 3, 2013, that
they did not wish to file any further appeal of the Richardson case and a related matter. The letter goes on to state Attorney Hamer’s understanding that Attorney Brown met with County officials about a week later and persuaded them to allow him to pursue a further appeal. Attorney Hamer also stated that the County Commissioners did not learn that Attorney Brown had filed an appeal to Superior Court in the fall of 2013 until April 2014.

Attorney Brown acknowledged that he may not have met with the County Commissioners until after May 31, 2013, i.e. after he had already filed the appeal to the Commission. Attorney Brown’s recollection of any such meeting was hazy. Attorney Brown stated clearly, however, that he and the Sheriff had met with the Commissioners after the Maine Unemployment Insurance Commission denied the County’s appeal and upheld the decision of the hearing officer. That decision was dated September 30, 2013. Attorney Brown testified that the Commissioners authorized him to file an 80C appeal of the Commission’s final agency action to Superior Court.

Unfortunately, the Commissioners made no contemporaneous written record stating that Attorney Brown was authorized to file an appeal to the Commission and later an 80C appeal to Superior Court. County officials acknowledged after the fact, however, that they had at least one discussion with Attorney Brown in 2013 about pursuing the unemployment compensation appeal further. See the letters of Attorney John Hamer of July 9, 2014, and October 13, 2014. Bd. Ex. 15 and 21. In the letter of July 9, 2014, the Commissioners, through Attorney Hamer, authorized payment of Attorney
Brown’s bill but also instructed him to cease any pursuit of an appeal in Ms. Richardson’s case.

In early November 2013 Attorney Brown filed an appeal of the Karina Richardson unemployment compensation case in Superior Court in Washington County pursuant to the Maine Administrative Procedure Act, 5 M.R.S. §11001 et seq. and Rule 80C of the Maine Rules of Civil Procedure. 1 Section 11003 of the Act requires service to be made upon the state agency, the Attorney General, and all parties to the agency proceeding. Attorney Brown acknowledges that he read the statute and the rule before commencing the litigation. Nevertheless, he failed to serve the petition upon Ms. Richardson, who was a party to the agency proceeding, or her attorney, Attorney Davidson, while he did serve it upon the state agency and the Attorney General. Further, Attorney Brown took no steps during the pendency of the litigation to rectify this error.

Assistant Attorney General Elizabeth Wyman entered her appearance for Maine Unemployment Insurance Commission by letter to the Superior Court dated November 14, 2015. The “copy to” line of her letter states that copies were sent to MUIC, Attorney Brown, and “Jeffrey Davidson, Esq. (attorney for Karina B. Richardson)”. Bd. Ex. 17. AAG Wyman filed the administrative record of the case with the Superior Court by letter dated December 12, 2013, and again noted that a copy was being sent to Attorney Davidson as attorney for Karina Richardson. Bd. Ex. 18. Also, the subject line in each of the letters

1 The Petitioner was listed as Washington County through its Sheriff Donald G. Smith, a somewhat odd phrasing, since the Sheriff has no independent authority to speak for the County in such proceedings.
referred to the case of Washington County v. Maine Unemployment Insurance Commission and Karina B. Richardson. These references to Attorney Davidson did not prompt Attorney Brown to serve the Rule 80C petition on Karina Richardson. Attorney Brown filed three motions for enlargement of time to file his brief in January, February, and March 2014, and in late March 2014 he filed the brief for Washington County. He did not serve Attorney Davidson or Ms. Richardson with any of these documents.

Assistant Attorney General Nancy Macirowski entered her appearance for MUIC and filed a motion for enlargement of time to file the agency’s brief by letter dated April 14, 2014. Her cover letter also referred to Karina Richardson in the subject line and noted that a copy was being sent to Attorney Davidson. That filing prompted Attorney Davidson to write to the Superior Court Clerk on May 16, 2014, stating that neither he nor Karina Richardson had ever been served the notice of appeal or the petition and asking about the status of the case. Bd. Ex. 20. The letter included a notation that a copy was being sent to Attorney Brown. AAG Macirowski filed the agency’s brief by mail on May 22, 2014. Bd. Ex. 7. In early June 2014 Attorney Brown finally sent copies of his brief and reply brief to Attorney Davidson, but at no time did he attempt to rectify his failure to properly serve Karina Richardson with the 80C petition.

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2 Attorney Davidson testified at the hearing in this matter that after either the November or December letter from AAG Wyman he called Rudman and Winchell to ask whether the County was pursuing an appeal of the Richardson matter and was told the County was not pursuing an appeal. The attorney for Attorney Brown suggested that Attorney Davidson could have inquired further and might have learned about the 80C petition. That does not excuse Attorney Brown’s failure to serve Ms. Richardson with the petition.
On June 15, 2014, Attorney Davidson sent a letter to the Clerk of Court requesting a status conference with the Court to determine if the case should be dismissed because Ms. Richardson had never been properly served. On July 18, 2014, Attorney Davidson filed a Motion to Dismiss and or Sanctions on the basis that Ms. Richardson had never been properly served and that Sheriff Smith did not have the authority to pursue the case. On July 25, 2014, AAG Macirowski filed a motion to dismiss the Richardson case and a related matter involving another Washington County employee on the basis that Washington County officials had informed her that Attorney Brown had been instructed by the Commissioners by letter dated July 9, 2014, to dismiss these appeals. Bd. Exhibits 8-10. The Superior Court had in the meantime scheduled a status conference for July 30, 2014, in response to Attorney Davidson’s June 15 request.

In a letter dated October 24, 2014, in response to the grievance filed with the Board of Overseers of the Bar by Karina Richardson, Attorney Brown acknowledged that he had received a letter from John Hamer of Rudman and Winchell in July 2014 advising him that the County Commissioners wanted him to dismiss the pending unemployment compensation cases. Attorney Brown stated that he then discussed the matter with Sheriff Smith, who told him to continue with the appeals. Attorney Brown took no specific steps before July 30, 2014, to dismiss the cases, but he informed the Court on July 30 at the status conference (which he attended by telephone) that he did not object to the dismissal of the two cases. Justice Billings of the Superior Court issued
an order that same day dismissing the pending unemployment compensation
cases but reserving judgment on Attorney Davidson's motion for sanctions. 3
Bd. Exhibits 12, 13, and 25.

**Conclusions**

In the complaint to the Board and in related filings, including the original
complaint, Karina Richardson and Attorney Davidson asserted that Sheriff
Smith, with the collaboration of Attorney Brown, had intentionally failed to
notify her of the appeal to the Commission and the 80C filing to prevent her
from being heard in those appeals. Bd. Exhibits 1, 22, and 27. At the
grievance hearing Ms. Richardson continued to express the belief that the
failure to notify her of the appeal was intentional.

Assistant Bar Counsel stated at the hearing that, if this panel should
find that Attorney Brown intentionally failed to notify Ms. Richardson of the
appeal, then it should conclude that he violated Rule 3.4(c) of the Maine Rules
of Professional Conduct (MRPC). Rule 3.4 governs fairness to opposing parties
and counsel and states that a lawyer shall “not knowingly disobey an obligation
under the rules of a tribunal ...” In the alternative Assistant Bar Counsel stated
that, if the panel concluded that Attorney Brown did not intentionally fail to
notify Ms. Richardson of the appeal, then it should conclude that Attorney
Brown violated Rule 1.1 of the Maine RPC by failing to provide competent
representation to Sheriff Smith. Assistant Bar Counsel also argued that in any
event Attorney Brown’s conduct violated Rule 8.4(a) and (d), MRCP, by violating

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3 There is nothing in the record of this proceeding indicating whether the Court ever acted on the request
for sanctions.
a provision of the MRPC and by engaging in conduct prejudicial to the administration of justice. He concluded by asking the panel to issue a reprimand to Attorney Brown.

Attorney Brown insisted that he did not intentionally fail to serve the 80C petition on Ms. Richardson. Rather, he attributed his failure to serve her as an unintentional oversight, and he noted that he had repeatedly expressed his regret for failing to serve Ms. Richardson. Counsel for Attorney Brown argued that there was no intentional act that would warrant a sanction under Rule 3.4, MRPC. Counsel conceded that Attorney Brown’s actions displayed a failure of competence and thus warranted a finding of misconduct. He argued further, however, that the misconduct was minor, that there was little injury to a client, the public, the legal system, or the profession, and that there was little likelihood of repetition. He concluded by asking the panel to issue an admonition rather than a reprimand. 4

It is clear that there is a great deal of animosity between Sheriff Smith and Karina Richardson. The panel concludes, however, that there is insufficient evidence to find that Attorney Brown knowingly disregarded a statutory directive by intentionally failing to serve the 80C petition upon Ms. Richardson. Indeed, if the Sheriff wanted to continue a campaign of harassment against Ms. Richardson, as she believed, service of the petition may have caused her considerably more emotional stress. In any event the panel is not persuaded that Attorney Brown violated Rule 3.4(c), MRPC.

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Attorney Brown, through counsel, concedes that his failure to serve the petition upon Ms. Richardson violated Rule 1.1, MRPC, which requires an attorney to provide competent representation, but he urges us to find that this misconduct was a minor mistake on his part. The panel disagrees with the assertion that the misconduct was minor and caused little injury.

If Attorney Brown had initially failed to serve Karina Richardson with the 80C complaint but had thereafter taken steps to correct this failure, the panel would be more sympathetic to the claim that the misconduct was minor. For example, if Attorney Brown had taken steps to serve Ms. Richardson after receiving the letters from AAG Wyman in November and December 2013 that noted Karina Richardson as a party in the subject line and Attorney Davidson in the copy line, this panel would be more sympathetic to the claim that the misconduct was minor. As the litigation proceeded, Attorney Brown should have recognized that he had failed to serve a necessary party. Even after Attorney Davidson's letter of inquiry to the Court in May 2014, however, Attorney Brown never took any formal steps to correct his failure to amend and serve the petition and join Ms. Richardson as a necessary party.

As Justice Billings noted at the hearing on the motion to dismiss:

“I am troubled by the fact that the process that would be expected to be followed by an attorney in such matters clearly has not been followed here. Attorney Brown is an experienced practitioner and should have known that Ms. Richardson was a party to the action and needed to be served with the petition in this matter and all other pleadings in this matter. If he had any doubt about that it certainly should have been researched, and there's a pretty clear answer that could have easily been obtained. So it's clear to me, simply from reviewing the Court's filings, that Mr. Brown did not meet his obligations to the Court in this matter.”
Bd. Ex. 25 at 15. The effect of Attorney Brown's misconduct, the denial to Ms. Richardson of an opportunity to participate in a legal proceeding of great importance to her, was a significant breach of his professional responsibility.

Further, the injury occasioned by Attorney Brown's misconduct affected not only Ms. Richardson but also Washington County, the Office of the Attorney General, and the Judicial Department, all of which spent time and money on a case that was litigated but could not be resolved on the merits because of the failure to serve Ms. Richardson.

In considering the type of sanction to be imposed for attorney misconduct, the panel is authorized to consider any prior disciplinary action involving the attorney. After doing so, based upon the evidence and record before it, this panel determines that the Respondent, violated Rule 1.1 and Rule 8.4 (a) and (d) of the Maine Rules of Professional Conduct and that the appropriate disposition of this petition is that Attorney Brown should be and is hereby reprimanded.

Dated: September 16, 2015

Thomas H. Kelley, Esq.

Vendean V. Vafiades, Esq.

Kenneth L. Roberts, Public Member