STATE OF MAINE

BOARD OF OVERSEERS OF THE BAR

GCF No. 16-4

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BOARD OF OVERSEERS OF THE BAR )  
Petitioner )

v. )

JOHN D. BUNKER, ESQ. )
of Bangor, ME )
Me. Bar No. 000140 )
Respondent )

STIPULATED REPORT
OF FINDINGS & ORDER
OF PANEL A OF THE
GRIEVANCE COMMISSION
M. Bar R. 13(e) and 21(b)(1)

On May 5, 2017, with due notice and pursuant to Maine Bar Rule 13(e)(7), Panel A of the Grievance Commission conducted a public disciplinary hearing, concerning misconduct by Respondent, John D. Bunker, Esq. This disciplinary proceeding was commenced on October 27, 2016, by the Board of Overseers of the Bar's (Board) filing of a Formal Disciplinary Charges Petition.

At the hearing, Attorney Bunker appeared pro se and the Board was represented by Bar Counsel J. Scott Davis. The complainant, Lee Anne Boutaugh, had been provided by Bar Counsel Davis with a copy of the parties' proposed Stipulated Report and was present at that proceeding and given the opportunity to present comment to the Panel.

Having reviewed the stipulated, proposed findings within that Report as presented by counsel, the Panel makes the following disposition:

FINDINGS

The Respondent, Attorney John D. Bunker, of Bangor, Maine, was at all times relevant hereto an attorney duly admitted to the practice of law in the State of Maine and subject to the Maine Bar Rules and the Maine Rules of Professional Conduct. Attorney Bunker was admitted to the Maine Bar in 1978 and at the
time of the relevant events, he was and remains a practitioner at the law firm of Paine Lynch & Harris in Bangor, Maine.

According to the parties’ stipulations, the Panel finds the following relevant facts:

On March 21, 2016, this complaint was filed by Lee Anne V. Boutaugh against Attorney Bunker. Ms. Boutaugh’s complaint involved a conflict of interests in two family matters that were not initially recognized by Attorney Bunker. In October of 2012, Attorney Bunker had represented Ms. Boutaugh for the preparation of a Power of Attorney (POA) for her (then) husband and her son (from a previous marriage). Attorney Bunker drafted the POA and then closed that client file.

On February 16, 2016, Ms. Boutaugh met with Attorney Bunker for representation on new matters. At that meeting, she told Attorney Bunker that she had become divorced and therefore needed an amended POA in favor of her fiancé. Ms. Boutaugh then gave Attorney Bunker her fiancé’s name, J. D., that full name being one that Attorney Bunker agrees “meant nothing to (him) at the time.”

At that meeting, Ms. Boutaugh also discussed her need for a new Will. In the course of their discussion regarding Ms. Boutaugh’s new Will, Attorney Bunker brought up and suggested that Ms. Boutaugh should also use a prenuptial agreement concerning her impending marriage to Mr. D., to be referenced in her new Will as prepared by Attorney Bunker.

1 The parties have agreed to utilize initials for the fiancé in order to protect his privacy.
Attorney Bunker then explained to Ms. Boutaugh that in order to ensure the validity of a prenuptial agreement, both parties would need to make complete financial disclosures to the other, and that Mr. D. should have separate legal counsel in that matter. To assist Ms. Boutaugh getting started on such a financial disclosure, Attorney Bunker then gave her a blank copy of the financial statement form that is used in family matters. He also gave Ms. Boutaugh a second financial statement form to be provided to Mr. D. He then told Ms. Boutaugh, however, that Mr. D. would need his own separate legal counsel to review the final prenuptial agreement as prepared by Attorney Bunker. Attorney Bunker thus assumed that Mr. D. would be consulting his own counsel in connection with the development of his financial disclosure.

Attorney Bunker then further counseled Ms. Boutaugh on how she should proceed with those legal matters, including the need for her to provide the financial information to him for his completion of her prenuptial agreement. In that regard, he further instructed Ms. Boutaugh how to complete her financial disclosure form and then directed that she later return it to him or his law firm.

In his initial response to Bar Counsel's investigation inquiry, Attorney Bunker stated that after their initial meeting, he then put his notes into Ms. Boutaugh's "old file and did not immediately open a new file."

On or about February 17, 2016, Ms. Boutaugh delivered both her and Mr. D.'s respective completed financial disclosure forms to Attorney Bunker's law office.

Sometime between February 16 and February 23, 2016, Jill Reynolds, employed as a legal assistant at Paine, Lynch & Harris, received those two
completed financial statements dropped off by Ms. Boutaugh. According to Ms. Reynolds, she then scanned those documents into her personal work computer. No client file(s) concerning those two financial statements had yet been opened. As a result, Ms. Reynolds did not import them into the law firm’s main system.

On Monday, February 22, 2016, Ms. Boutaugh and Attorney Bunker talked and agreed to later meet on Thursday, February 25, 2016 at 3:00 p.m. That meeting was so scheduled to allow Ms. Boutaugh to receive her new POA and also then review Attorney Bunker’s initial draft of the prenuptial agreement. In that discussion, Attorney Bunker then confirmed his understanding that Ms. Boutaugh had dropped off her financial information at his office. Attorney Bunker, however, had not seen or reviewed those documents, and apparently, never did so.

On February 23, 2016, Ms. Boutaugh left two voicemail messages for Attorney Bunker, which he heard late that afternoon after returning to his office from court. In her messages, Ms. Boutaugh informed Attorney Bunker that she understood there was an upcoming meeting between Attorney Martha Harris (Attorney Bunker’s law partner) and Ms. T. ², as her client.

After hearing those messages, Attorney Bunker confirmed that Attorney Harris had indeed met with Ms. T. and intended to represent her as the plaintiff in a post-divorce matter against Mr. D., concerning their two minor children. Thereafter, Attorney Bunker did then return Ms. Boutaugh’s phone calls and told her that as a result of Attorney Harris’s representation of Ms. T. it would no

² Again, the parties have agreed to utilize initials to protect the privacy of the involved persons.
longer be possible or proper for him to represent her with respect to any of the legal matters they had discussed on February 16, 2016.

In his above-referenced response to Bar Counsel’s initial inquiry, Attorney Bunker reported that with Attorney Harris as legal counsel for Ms. T., his law firm became involved in extensive post-judgment proceedings on behalf of Ms. T. in 2012 extending into 2013, and then again in further proceedings in 2016.

Legal Assistant Reynolds had left the Boutaugh/Mr. D. financial disclosure statements on her desk from the time of her receipt until February 23, 2016, when she was then informed of the conflict of interest issue involving Ms. Boutaugh and Attorney Bunker. At that time, Ms. Reynolds was instructed to delete those two financial disclosure documents from her computer, and she did so. The original hard copies were picked up by an employee of Ms. Boutaugh’s new successor counsel the next day, February 24, 2016.

As a result of the law firm’s measures, neither Attorney Bunker nor Attorney Harris gained any personal knowledge of the content of the documents delivered to their firm by Ms. Boutaugh on February 17, 2016. Neither attorney ever possessed nor reviewed any of those materials.

In her grievance complaint, Ms. Boutaugh had alleged otherwise. She reported that on February 23, 2016, both she and Mr. D. had received separate electronic messages from Ms. T. that made reference to personal factual details and information contained in the materials Ms. Boutaugh had discussed with Attorney Bunker on February 16, 2016, and later dropped off at his firm the next day. However, whatever source Ms. T. may have utilized in the substance of those messages to Ms. Boutaugh and Mr. D., neither Attorney Bunker nor Attorney
Harris ever provided Ms. T. with any confidential client information that Attorney Bunker had obtained from Ms. Boutaugh.

Attorney Bunker does agree and admit, however, that he did engage in minor misconduct in two respects concerning the manner in which he handled Ms. Boutaugh’s legal matter(s) in February 2016.

First, he should have had an immediate “conflicts check” performed upon being contacted in 2016 by Ms. Boutaugh for the preparation of her new Will and new POA. Attorney Bunker reports that the firm’s staff routinely investigates the possibility of conflicts when scheduling appointments in cases involving litigation, potential litigation, and other situations in which there is an obvious potential for conflicts, but in this instance the staff person who scheduled the appointment did not believe there was a need to ask for names of potential adverse parties because the appointment was for a revision of an existing POA and preparation of a Will. Second, Mr. Bunker now admits that when he introduced the topic of the prenuptial agreement during the appointment on February 16, 2016, he erred by failing to immediately have that conflicts check performed. If that had occurred, with the check including the complete full name of Mr. D., Attorney Bunker would then have known of the potential conflict of interest problem involving Ms. T., and would have declined any further discussion with Ms. Boutaugh. Instead, it was his new client, Ms. Boutaugh, who in effect performed the conflicts check for him a week later.

In addition, Attorney Bunker agrees that he engaged in similar misconduct by failing to timely “open a client file” regarding Ms. Boutaugh’s new legal matters. That is, at his meeting with Ms. Boutaugh on February 16, 2016, he
took several notes, summarizing the issues and plan of performing her requested legal services. He agrees he put those notes aside and had never opened any new client file on behalf of Ms. Boutaugh. Had he done so, that immediate conflicts check would have taken place in accordance with the MRPC and office procedure.

Attorney Bunker agrees and admits that his failure to ensure that a complete conflicts check would occur on a timely basis (upon initial client intake, during the initial meeting with the client, and upon the timely opening of a client file) in this instance was conduct in violation of M. R. Prof. Conduct 1.3 (diligence); 1.7 (conflict-of-interest: current clients); and 1.10 (imputation of conflict of interests).

**CONCLUSION AND SANCTION**

The Maine Rules of Professional Conduct specifically requires attorneys to uphold their responsibilities to clients and the courts. Due to Attorney Bunker’s above-outlined failure to properly and timely perform a conflict of interest check at his law firm, a sanction is required under the Maine Bar Rules. The Panel notes that Attorney Bunker has no prior public sanction record with the Board and has taken responsibility for his misconduct in this matter. At the disciplinary hearing, Attorney Bunker expressed his remorse for his violations of the above-referenced Maine Rules of Professional Conduct. In addition, he confirmed to the Panel that he has reformed his practice to attempt to ensure in every instance that: 1) At the scheduling of initial client interviews, either he or his involved nonlawyer staff assistant(s) recognize (to the extent reasonably possible) the potential for conflicts of interest in the situation at hand, and
request and receive the names and available address information of potential adverse parties and others whose interests would conflict with those of the prospective client; 2) Upon conducting initial client interviews, he immediately conducts a conflicts check upon identification of the potential for a conflict; and 3) He then immediately "opens" that file within the firm's system, such that a conflict of interest check occurs or reoccurs without delay.

The purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who, by their conduct, have demonstrated that they are unable to properly discharge their professional duties. See M. Bar. R. 2(a). Since the evidence supports a finding and Attorney Bunker agrees that he did in fact violate the Maine Rules of Professional Conduct, the Panel has analyzed the proper sanction factors warranted under M. Bar R. 21. As a result, the Panel finds under M. Bar R. 21(b)(1) that this was a minor violation; there was little or no injury caused to a client, the public, the legal system or the profession; and there is little likelihood of repetition by Attorney Bunker. As a result, the Panel finds and agrees that an admonition serves those purposes.

Therefore, the Panel accepts the agreement of the parties, including Attorney Bunker's separately executed waiver of the right to file a Petition for Review, and concludes that the appropriate disposition of this case is a public **Admonition** to Attorney John D. Bunker, which is now hereby issued and imposed upon him pursuant to M. Bar R. 13(e)(10)(B) and 21(b)(1).
May 5, 2017

John P. Gause, Esq., Acting Panel Chair

Cynthia M. Mehnert, Esq., Panel Member

Milton R. Wright, Public Member