STATE OF MAINE

BOARD OF OVERSEERS OF THE BAR

Docket No. GCF #17-445

STIPULATED REPORT OF
FINDINGS AND ORDER OF
PANEL C OF THE
GRIEVANCE COMMISSION
M. Bar R. 13(e)

BOARD OF OVERSEERS OF THE BAR )

Petitioner )

v. )

JACKIE T. DIGIACOMO, Esq. )

of Waterville, ME )

Me. Bar No. 004620 )

Respondent )

On November 27, 2018, with due notice, Panel C of the Grievance Commission conducted a public disciplinary hearing pursuant to Maine Bar Rule 13(e), concerning misconduct by the Respondent, Jackie T. DiGiacomo, Esq. This disciplinary proceeding had been commenced by the filing of a Disciplinary Petition by the Board of Overseers of the Bar (the Board) on September 6, 2018.

At the hearing, the Board was represented by Assistant Bar Counsel Alan P. Kelley, and Attorney DiGiacomo appeared without counsel.

Prior to the scheduled hearing date, the parties notified the Clerk that they had negotiated a proposed settlement of the disciplinary matter, with that proposed sanction report being submitted for Panel C’s review and consideration. The complainant, David P. Mooney, Esq., had earlier been provided with a copy of the parties’ proposed Stipulated Report. At that hearing, Assistant Bar Counsel Kelley confirmed that Attorney Mooney had been notified of the hearing date and had been provided with a copy of the proposed Report in advance of the hearing.
Having reviewed the agreed, proposed findings as presented by counsel, the Panel makes the following disposition:

**FINDINGS**

Respondent Jackie T. DiGiacomo, Esq. (Attorney DiGiacomo) of Waterville, Maine has been at all times relevant hereto an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules. Attorney DiGiacomo was admitted to the Maine Bar in 2010 and she is currently engaged in solo practice.

On December 15, 2017, Attorney David P. Mooney filed his complaint against Attorney DiGiacomo who then filed her initial response on January 25, 2018. Attorney Mooney was afforded the opportunity for a rebuttal and supplemental response, resulting in a fully developed investigation, pursuant to M. Bar R. 2(b)(2) & 13(b).

On April 19, 2018 a panel of the Grievance Commission reviewed Attorney DiGiacomo’s actions in this matter and found probable cause to believe that she had engaged in misconduct subject to sanction under the Maine Bar Rules. As a result, that review panel directed Bar Counsel to prepare and present a formal charges disciplinary petition before a different panel of the Grievance Commission.

This grievance complaint concerns Attorney DiGiacomo’s failure to properly supervise a nonlawyer assistant formerly with her office. In March of 2014, Attorney DiGiacomo accompanied a friend to visit the friend’s uncle who was in failing health in a Massachusetts nursing home facility. While there,
Attorney DiGiacomo witnessed the friend's uncle execute his last will and testament; however, there was no Massachusetts notary public present at the signing. Attorney DiGiacomo observed that the friend’s uncle was competent and coherent at the time the document was executed, and was also made aware that he was not expected to live much longer.

After the friend’s uncle executed the document, and they had left the nursing home, the friend asked Attorney DiGiacomo if her Assistant, who was a Massachusetts notary public, would notarize the document. Attorney DiGiacomo was initially reluctant to make that request, but ultimately agreed, and when she returned to her office, she informed her Assistant of her friend’s request. Attorney DiGiacomo advised her Assistant that she had personally witnessed the signing of the document, and told the Assistant that she did not have to notarize the document. The Assistant notarized the document for Attorney DiGiacomo’s friend on that same day.

In Attorney DiGiacomo’s response letter to Bar Counsel’s investigative inquiry she agreed and confirmed that she had asked her Assistant to notarize the document for her friend, and that while she was concerned that what she was asking might be improper, she did not know the Massachusetts laws with regard to notarization. Attorney DiGiacomo believed that her Assistant would have told her if her request was improper. She has acknowledged in hindsight; however, that she exercised poor judgment in making the request of her Assistant to so notarize the document.
CONCLUSION AND SANCTION

The Maine Rules of Professional Conduct specifically require attorneys to uphold their responsibilities to clients and the courts. In that regard, Attorney DiGiacomo agrees and admits that her conduct in this matter violated M. R. Prof. Conduct 5.3(b) [Responsibilities Regarding Non-Lawyer Assistants] and 8.4(d) [conduct prejudicial to the administration of justice]. The panel notes that Attorney DiGiacomo has now taken responsibility for her transgressions and there is little likelihood of repetition by her. The panel also notes that her conduct ultimately caused little or no injury to a client, the public, the legal system, or the profession. At the disciplinary hearing, Attorney DiGiacomo expressed her remorse for lack of understanding and her misconduct.

Since the evidence supports a finding and Attorney DiGiacomo agrees that she did in fact violate those above-referenced portions of the Maine Rules of Professional Conduct, the Panel has analyzed the proper sanction factors warranted under M. Bar R. 21. In that regard, under the required procedures of M. Bar R. 13(c)(6)(8), the Panel considered the existence or absence of any prior sanction record. Accordingly, upon that analysis for imposing a proper sanction concerning the many factors under M. Bar R. 21(c), including its finding of the presence of all the required prerequisites under M. Bar. R. 21(b)(1), the Panel finds that a public non-disciplinary Admonition against Attorney DiGiacomo under M. Bar R. 21(b)(1) is the appropriate sanction.

Therefore, the Panel accepts the agreement of the parties, including Attorney DiGiacomo’s separately executed waiver of the right to file a Petition for
Review, and concludes that the appropriate disposition of this case is an ADMONITION to Jackie T. DiGiacomo, Esq. which is now hereby issued and imposed upon her pursuant to M. Bar R. 13(e)(10)(B) and 21(b)(1).

Date: November 27, 2018

Robert Hark, Esq.
Panel Chair

Justin LeBlanc, Esq.
Panel Member

Marjorie Medd
Public Member