STATE OF MAINE

BOARD OF OVERSEERS OF THE BAR  )
) GRIEVANCE COMMISSION
) File No. 08-396
)

BOARD OF OVERSEERS OF THE BAR

) Petitioner
)v.
)
STEPHEN C. WHITING, ESQ.
of Portland, Maine
Me. Bar #0559
)
Respondent
)

STIPULATED REPORT OF FINDINGS AND ORDER
OF
PANEL B OF THE GRIEVANCE COMMISSION
M. Bar R. 7.1(e)(4)
M. Bar R. 7.1(e)(2)

On September 17, 2009, with due notice, Panel B of the Grievance Commission conducted a public disciplinary hearing pursuant to Maine Bar Rule 7.1(e)(2)(E), concerning misconduct by the Respondent, Stephen C. Whiting, 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 June 29, 2009.

At the hearing, Attorney Whiting was represented by James M. Bowie, Esq., and the Board was represented by Assistant Bar Counsel Aria Eee. The complainant, Bernard J. Broder III, Esq. was present and participated in the disciplinary hearing. Prior to the hearing, the parties had submitted a proposed, stipulated Report of Findings and Order for this Grievance Commission Panel’s review and consideration.

Having reviewed the proposed Report as presented by counsel, the Panel makes the following disposition:
FINDINGS

Respondent Stephen C. Whiting (Whiting) of Portland, Maine has been at all times relevant here to 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 Whiting was admitted to the Maine bar in 1978 and he is currently registered with the Board of Overseers of the Bar as an active Maine Attorney.

On November 3, 2008, pursuant to his obligation as a mandated reporter, Attorney Broder filed a grievance complaint against Attorney Whiting. The complaint alleged Attorney Whiting’s violations of the Code of Professional Responsibility due to his failure to appropriately protect the interests of his clients.

By way of background, the underlying legal matter concerned a real estate transaction involving Attorney Whiting’s then clients, Mr. and Mrs. Proulx. The Proulx contacted Whiting to facilitate a conveyance of Seashore Motor Lodge Motels (Seashore), an ocean front property in Old Orchard Beach, ME. At that time, Seashore was owned by Proulx Real Estate Investment Compay, LLC, a limited liability company owned by Mrs. Proulx and the Gerald A. Proulx Irrevocable Trust, an entity wherein Mr. and Mrs. Proulx serve as the Trustees. The conveyance to Mr. Proulx’s step-son, Armand Vachon (Vachon), was designed to allow the stepson Vachon to obtain a mortgage loan on the property.

While Mr. Proulx expressed to Whiting his intention to sell the property to Vachon, Mrs. Proulx sought to outright gift the property to her son. Given
the divergent goals of Mr. and Mrs. Proulx, Whiting should have conducted a conflict analysis to determine whether he could adequately protect each client’s interest in the proposed transaction. In that regard Whiting should have reviewed the apparent conflict with the Proulx and thereafter sought each client’s informed, written consent to the concurrent conflict of interest. His failure to undertake such measures constituted a violation of M. Bar R. 3.4(c).

Likewise, Whiting’s failure to review with the Proulx and appropriately advise them of their duties as fiduciaries to the Irrevocable Trust, only served to exacerbate the conflict problem inherent in the real estate conveyance. Additionally, the manner in which Whiting carried out the transaction resulted in conduct prejudicial to the administration of justice. See M. Bar R. 3.4(c)(2); and 3.2(f)(4).

CONCLUSION AND SANCTION

The Code of Professional Responsibility specifically requires attorneys to uphold their responsibilities to clients and the courts. Due to Attorney Whiting’s above-outlined failures, his clients were not made aware that they could have separate representation. The property was subsequently conveyed as a gift by the LLC to Vachon.

The Panel notes that Attorney Whiting has taken responsibility for his actions and he expressed remorse for his violations of the Code of Professional Responsibility.

M. Bar. R. 2(a) provides that 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, or likely to be unable, to discharge properly their professional duties. Since the evidence supports a finding and Attorney Whiting agrees that he did in fact violate the the Code of Professional Responsibility, the Panel finds that a public reprimand serves those purposes.

Therefore, the Panel accepts the agreement of the parties, including Attorney Whiting’s waiver of the right to file a Petition for Review, and concludes that the appropriate disposition of this case is a Public Reprimand to Stephen C. Whiting, Esq. which is now hereby issued and imposed pursuant to M. Bar R. 7.1(e)(3)(C), (4).

Dated: September 17, 2009

For the Parties

Aria Eee, Assistant Bar Counsel

Stephen C. Whiting, Esq. Respondent

Grievance Commission Panel

Maurice A. Libner, Esq. Chair

Ann M. Courtney, Esq.

Susannah White