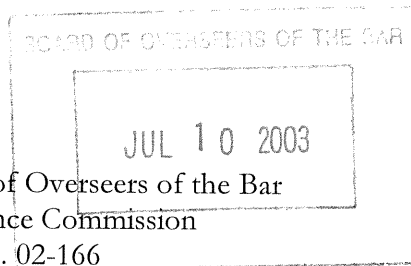


STATE OF MAINE



Kennebec, ss.

Board of Overseers of the Bar
Grievance Commission
File No. 02-166

BOARD OF OVERSEERS OF THE BAR)

Petitioner)

v.)

ELIZABETH KELLY EBITZ, ESQ.)
Maine Bar No. 2036)

Respondent)

**REPORT OF FINDINGS OF
PANEL A OF THE
GRIEVANCE COMMISSION**

INTRODUCTION

On May 6, 2003, pursuant to due notice, Panel A of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1(e)(2), concerning misconduct by the Respondent, Elizabeth Kelly Ebitz, Esq. as alleged in a Disciplinary Petition dated and filed by the Board of Overseers on January 23, 2003. Assistant Bar Counsel Geoffrey S. Welsh represented the Board and Theodore H. Kirchner, Esq., represented Elizabeth Kelly Ebitz, Esq. at the hearing. The Complainant William Baxendale, notified of the proceeding and the proposed disposition, was not present.¹ Nevertheless, the Panel now adopts the factual stipulation of counsel as set forth below and hereby finds that a reprimand is the appropriate sanction for Ms. Ebitz's misconduct.

FINDINGS

1. Respondent Elizabeth Kelly Ebitz, of Bangor, County of Penobscot, and State of Maine, is and at all relevant times hereto, was an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules. She has been practicing in Maine since 1979. This matter was initiated when the Board received a grievance complaint from William Baxendale on September 1, 2002.

2. The Respondent Elizabeth Kelly Ebitz represented the ex-wife of William Baxendale, Tasma Lee, in a divorce action filed in the Piscataquis County District Court (Dover-Foxcroft), Docket No. DOV-95-DV-74. In 1997 the court entered an order terminating the marriage of William Baxendale and Tasma Lee and specified in its order that William Baxendale was to pay \$400 toward Tasma Lee's unpaid legal fees to Elizabeth Kelly Ebitz.

¹ Based on correspondence between Bar Counsel and Mr. Baxendale from February 10, 2003 to April 16th, which the Panel has reviewed, the Panel understands that Mr. Baxendale objects to the agreed upon disposition of this case.

3. In May 1997 Attorney Ebitz requested and received a lien and a writ of execution against Mr. Baxendale for the \$400 in unpaid legal fees. Those fees remained unpaid until September of 1998 when Mr. Baxendale sent Attorney Ebitz a check payable to Tasma Lee in the amount of \$495 (the amount of the court order plus interest). Attorney Ebitz promptly sent Mr. Baxendale's check to Ms. Lee who endorsed it and returned it to Ms. Ebitz for partial payment of her fees. Attorney Ebitz then negotiated and deposited that check into her office account.

4. Through oversight, Attorney Ebitz failed to discharge her lien which remained as of record until June 2002 when the former marital home of William Baxendale and Tasma Lee was sold.

5. On June 17, 2002, Ms. Ebitz received a check from the closing account of the law firm of Eaton Peabody, representing the purchaser in the sale of the Baxendale-Lee property, in the amount of \$663.47 which was the principal amount of the writ of execution Attorney Ebitz obtained in May, 1997 plus interest. The check was paid to her because her lien had not been discharged.

6. In recent years Attorney Ebitz had been in periodic contact with her client, Tasma Lee, who advised her that Mr. Baxendale was in substantial arrears on his child support obligations. Accordingly, Attorney Ebitz sent the check for \$663.47 to her client, Tasma Lee, so that she would receive payment for some portion of the unpaid child support obligations.

7. At the time the State of Maine Department of Human Services was the designated collection agent for Mr. Baxendale's child support obligations. Attorney Ebitz advised Ms. Lee and the Department of Human Services that the amount of \$663.47 had been received and should serve as a credit against Mr. Baxendale's unpaid and past due obligations. Ms. Ebitz did not, however, take this action until on or about September 30, 2002, which was approximately one month after Mr. Baxendale had filed his grievance complaint against her.

8. In July 2002 Eaton Peabody advised Mr. Baxendale that the firm had sent to Attorney Ebitz a portion of the funds that otherwise would have been paid to him because Attorney Ebitz had failed to discharge her lien and the writ. Later that month Mr. Baxendale wrote to Attorney Ebitz and requested that he be reimbursed. Attorney Ebitz responded several days later acknowledging receipt and advising him that the money had been sent to Ms. Lee since Mr. Baxendale was not current on his child support obligations.

9. After Mr. Baxendale filed his grievance on September 1, 2002 Attorney Ebitz responded acknowledging that (a) Mr. Baxendale had previously satisfied the lien and writ and that through oversight she had failed to discharge it at the time that occurred in 1998; and (b) she had forwarded on the Eaton Peabody check in the amount of \$663.47 to Tasma Lee to be applied toward the arrearage owed by Mr. Baxendale on his child support.

10. In November, 2002 Attorney Ebitz reimbursed Mr. Baxendale \$663.47 in full. In addition, the Department of Human Services has revised its records to indicate that Mr. Baxendale has been credited in the amount of \$663.47 toward his child support arrearages. As a consequence, Mr. Baxendale has substantially been made whole.

CONCLUSIONS

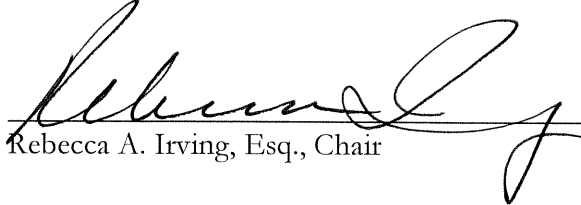
Attorney Ebitz's failure to timely turn over the check for \$663.47 to Mr. Baxendale, notwithstanding her obligations to her client Tasma Lee and her concerns about Mr. Baxendale's failure to be current on his child support obligations, was conduct prejudicial to the administration of justice and in violation of Maine Bar Rule 3.2(f)(4). At the time the draft for \$663.47 was paid to Attorney Ebitz, Mr. Baxendale's obligations in connection with that amount had been fully satisfied and he was entitled to receive the money. While Attorney Ebitz was entitled to notify the Department of Human Services and her client of the sale of the property, the funds she received were neither hers nor her client's and her obligation under such circumstances was to return the money to Eaton Peabody or to forward it to Mr. Baxendale.

Attorney Ebitz has admitted her misconduct and agrees that she should be reprimanded for her violation of the Maine Code of Professional Responsibility. The consequence to Mr. Baxendale (other than having to file a grievance and a wait of several months to receive his funds) is minimal, because he has been fully reimbursed and, in addition, has received full credit for that payment with the Department of Human Services. Effectively he has been compensated twice for the manner in which Attorney Ebitz handled the monies that were owed to him.

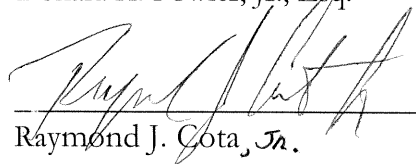
As a result of the Panel having found that Attorney Ebitz engaged in the violation of Maine Bar Rule 3.2(f)(4), the Panel further concludes that the appropriate sanction is that Attorney Elizabeth Ebitz be and is hereby reprimanded. The Panel is aware of Ms. Ebitz's prior disciplinary record, which is significant, but is satisfied that a reprimand is a fair and just disposition of this matter. The Panel notes Ms. Ebitz's current medical condition.

DATED:

July 3, 2003


Rebecca A. Irving, Esq., Chair


Donald A. Fowler, Jr., Esq.


Raymond J. Cota, Jr.