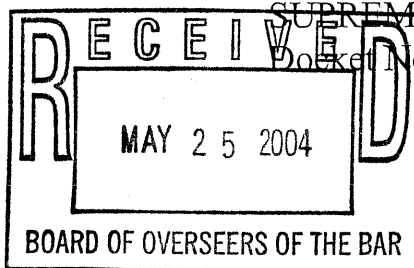


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STATE OF MAINE



SUPREME JUDICIAL COURT
Docket No. Bar-04-2

RECEIVED

MAY 24 2004

Supreme Judicial Court

In the matter of
Petition for Reinstatement
of Donald A. Spear
(Bar No. 227)

ORDER OF REINSTATEMENT

This matter is before the Court on a petition for reinstatement by Donald A. Spear (Bar No. 227), with supporting materials filed by Legal Services for the Elderly. The Court provided notice and opportunity to submit further materials or request a hearing on the petition by May 14, 2004. No hearing having been requested, the matter is now in order for decision.

Donald A. Spear's petition indicates that he had practiced law for forty years. He retired from practice in 1995 and notified the Board of Overseers of his discontinuance of the practice of law, pursuant to M. Bar R. 6(c)(1), at that time. Mr. Spear is now petitioning for reinstatement pursuant to M. Bar R. 6(c)(3), 7.3(j)(4) and (5), and 10(c). Mr. Spear seeks reinstatement so that he may practice solely as a senior attorney volunteer associated with Legal Services for the Elderly. In this capacity, he would receive no compensation to "provide legal information and pro bono legal services to seniors at Maine health centers." Many of these

centers are in areas where, it is asserted, there are few, if any, practicing attorneys available to provide such services.

Mr. Spear's petition has been presented to the Chair of the Board of Overseers of the Bar. The Chair has provided a letter supporting Mr. Spear's reinstatement. The petition is now before the Court for consideration pursuant to M. Bar R. 7.3(j)(4). There is no dispute that Mr. Spear should be reinstated.

In addition to a petition for reinstatement, both Mr. Spear and Legal Services for the Elderly are requesting that all reinstatement fees and, prospectively, all annual fees be waived. The Legal Services for the Elderly communication notes that beyond reinstatement, they are requesting "waiver of related retrospective and prospective fees for himself and on behalf of all future senior attorney volunteers associated with Legal Services for the Elderly."

Annual fees are set pursuant to M. Bar R. 10(d). The current annual fee is \$192. Reinstatement fees are set by two different provisions of the Bar Rules.¹

They are:

(1) M. Bar R. 6(c)(4), which requires a \$125 reinstatement fee, plus payment of the total fees that an attorney would have been obligated to pay had that attorney remained actively registered, minus the part payment credit for partial payments made for the three years after the attorney discontinued practice. There is a cap of \$1000 on this fee. It would appear that, without waiver, Mr. Spear may be

¹ M. Bar R. 10(c) imposes a "reinstatement assessment" of \$125 after late payment of annual fees. Late payment is not an issue here.

subject to the \$1000 “arrearage registration payment,” plus the \$125 reinstatement fee; and

(2) M. Bar R. 7.3(j)(5), requires a petition for reinstatement to be supported by a \$200 filing fee payable to the Board of Overseers of the Bar.

Waiver of the various reinstatement fees is appropriate where an attorney wishes to be reinstated solely to practice, without compensation, for a nonprofit group, such as Legal Services for the Elderly, where the attorney is providing only legal advice and consultation to clients of the legal services provider.

The requested waiver of the reinstatement fees will be granted upon the conditions that: (1) as a reinstated attorney, Mr. Spear shall receive no compensation from any source for providing legal services; (2) he shall provide legal services only to clients of, and people seeking advice from, Legal Services for the Elderly; and (3) at all times his work as a volunteer shall be performed under the general direction of a supervisory attorney for Legal Services for the Elderly.

The question of prospective waiver of annual fees presents a different question. Legal Services for the Elderly is asking that the Court grant an across-the-board prospective waiver of annual fees for such volunteers. The Board of Overseers’ letter declines to comment on the fee waiver request, but does note that, in the Board’s view, such matters should be considered on a case-by-case basis.

Such an ad hoc approach to this policy question may, however, invite suggestions of arbitrariness as future petitions, contemplated by the Legal Services for the Elderly request, are presented.

Maine is fortunate in having many attorneys who provide volunteer, pro bono legal services for individual clients directly or through assignments from a legal services organization. The Maine attorneys who volunteer to provide these vital pro bono legal services to individuals unable to pay are a diverse group. Some are employed full-time in the legal profession. Some receive only part of their income through providing legal services, as they pursue careers or enterprises outside of the legal profession. Some only perform legal services as a volunteer, relying on sources of income outside the legal profession to support themselves. Some may change status from all volunteer to partly compensated legal services as professional opportunities arise.

A waiver of annual fees for a person or persons performing volunteer legal services may invite similar waiver applications from others who believe themselves to be similarly situated. Administration of such waiver requests could become difficult, leading to results that some would eventually view as arbitrary. Accordingly, the request by Legal Services for the Elderly to prospectively waive annual fees for attorneys performing legal services as volunteers will be denied. Such an issue, if it is to be addressed, must be addressed on a more general policy

level. It cannot be addressed ad hoc in response to individual petitions. Should Legal Services for the Elderly choose to pay Mr. Spear's annual fee, this payment should not be considered compensation for legal services.

Therefore, ORDERED,

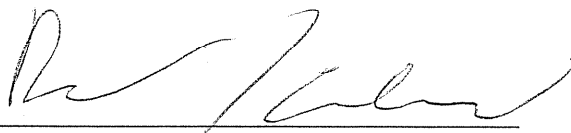
1. Donald A. Spear, Bar No. 227, is reinstated to the active practice of law;

2. Payment of any and all reinstatement fees is waived, conditioned upon Mr. Spear providing legal services only as a volunteer under the supervision of Legal Services for the Elderly, and receiving no compensation for providing legal services; and

3. The request to waive annual fees is denied. Payment of the annual fee by Legal Services for the Elderly on behalf of Mr. Spear shall not be considered compensation under Paragraph 2 above.

Dated: May 24, 2004

FOR THE COURT



Donald G. Alexander
Associate Justice