

STATE OF MAINE
CUMBERLAND, ss.

SUPREME JUDICIAL COURT
DOCKET NO. BAR-00-5

BOARD OF OVERSEERS OF THE BAR)
Plaintiff)
V.)
RICHARD S. EMERSON, JR., Esq.)
of Portland, Maine)
Me. Bar No. 934)
Defendant)

ORDER ON
INCAPACITY
M. Bar R. 7.3(e)(2)(A)

With the consent of the parties herein, the Board of Overseers of the Board (the Board) and Richard S. Emerson, Jr., Esq. (Emerson), after hearing for good cause shown pursuant to M. Bar R. 7.3(e)(2)(A), **IT IS HEREBY ORDERED:**

1. The Board's Petition to Determine Incapacity is hereby granted in all respects.
2. The Court specifically finds that because Mr. Emerson was on September 11, 2000 incapacitated from continuing the practice of law by reason of addiction to intoxicants, he is in need of being supervised and monitored as set forth below.
3. Mr. Emerson's practice of law shall be in accordance with the terms and conditions specified in paragraphs 4-19 below. If after due notice and hearing the Court finds that Mr. Emerson violated or failed to comply with any of the provisions of this order, the Court may enter any order necessary or appropriate to protect the public interest, including suspending him from practicing law.
4. Mr. Emerson shall submit his practice of law to the monitoring of Richard S. Berne, Esq., of the law firm of Berne & Lafond (B&L) of Portland, Maine. Mr. Berne shall be a volunteer, will receive no compensation, and shall not be expected to incur any substantial disbursements.

COPY SENT TO ALL PARTIES ON 3-16-01

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5. Mr. Emerson will meet with Mr. Berne at Mr. Berne's calling and convenience, on at least a monthly basis, unless Mr. Berne should determine that more frequent meetings are appropriate.
6. Mr. Berne will have authority to review and examine any of Mr. Emerson's files, if necessary, except those files in which Mr. Berne or B&L might have an adverse interest under paragraph 14.
7. Mr. Emerson shall prepare and present to Mr. Berne reasonably in advance of each meeting a list of all of his current clients, showing each pending client's matter with a brief summary and calendar of the status thereof.
8. Mr. Berne will, as soon as practicable, have Mr. Emerson establish a method of objectively identifying delinquent client matters and have him institute internal checks and controls to make his practice appropriately responsible to the needs of clients.
9. Mr. Berne shall file a confidential report with the Court, bi-monthly or sooner if he deems it necessary, with copies to Mr. Emerson and Bar Counsel, concerning at least the following subjects:
 - a) Measures Mr. Emerson has taken to avoid delinquencies.
 - b) A description of any client matter identified as delinquent.
 - c) Any professional assistance Mr. Berne has provided Mr. Emerson.
10. Mr. Emerson shall participate in psychological counseling and therapy at least bi-weekly either with Barbara S. Waldron, Ph.D., Glenn Jamison, M.D., or Stanley J. Evans, M.D (the counselors). By the tenth of every month, Mr. Emerson shall submit to Bar Counsel copies of the records of his treatment by

the counselors during the preceding month. Additionally, Bar Counsel may at any time contact the counselors and obtain additional records and information from them concerning Mr. Emerson. All expenses of Mr. Emerson's counseling and therapy and the cost of copying of the counselors' records shall be borne by him. For purposes of this paragraph, the Physician and Psychotherapist-Patient Privilege of M. R. Evid. 503 between Mr. Emerson and the counselors is hereby waived and shall not apply to this matter.

11. Mr. Emerson shall attend regular meetings of Alcoholics Anonymous in accordance with the "Supervision Agreement", which is attached and incorporated by reference herein. Mr. Emerson's attendance at the above referenced meetings will be under the supervision of Stephen C. Lunt, Esq., who, like Mr. Berne, shall be a volunteer, will receive no compensation, and shall not be expected to incur any substantial disbursements.

12. Mr. Berne's monitoring of Mr. Emerson's practice and Mr. Lunt's supervision of Mr. Emerson's attendance at his substance abuse recovery meetings in the manner provided herein shall be deemed not to create an attorney-client relationship between them and Mr. Emerson, and Mr. Berne and Mr. Lunt shall be deemed not to represent Mr. Emerson or to be employed by Emerson as his attorney in any capacity whatsoever. More specifically, the attorney-client privilege shall not apply to Mr. Berne's monitoring and to Mr. Lunt's supervising of Mr. Emerson, and both of them shall be immune from any civil liability (including, without limitation, any liability for defamation) to Mr. Emerson.

13. Mr. Berne and Mr. Lunt both shall have the right to withdraw and terminate their services as Mr. Emerson's law practice monitor and substance abuse attendance meeting supervisor, respectively, at any time and for any reason they deem sufficient. In the event of either's withdrawal, they each shall notify the Court, Bar Counsel and Mr. Emerson of that fact, and the matter shall then be scheduled for further hearing and consideration as deemed appropriate by the Court.

14. If any aspect of the monitoring and supervision procedures creates a situation which is, or might be interpreted to be, a conflict of interest under the Maine Bar Rules (for example, if Mr. Emerson is or becomes opposing counsel concerning a matter involving Mr. Berne or his law firm), then Mr. Berne and Mr. Lunt may adopt any one of the following courses with the proposed result:

- a. Mr. Berne or Mr. Lunt ceases to be the monitor or supervisor and the potential conflict is avoided.
- b. Mr. Berne or Mr. Lunt continue as monitor or supervisor, and obligate their firm to withdraw from the conflicted matter.
- c. Mr. Berne or Mr. Lunt continue as monitor or supervisor, but obligate Mr. Emerson not to participate in the matter and to obtain new counsel for his client(s).

15. If in Mr. Lunt's or Mr. Berne's judgment it is appropriate, they shall have the right to a) contact clerks of court, judges, or opposing counsel to determine the accuracy of Mr. Emerson's reports to them; and b) to consult with any of the counselors referred to in paragraph 10 above. Mr. Lunt and Mr. Berne also may

freely consult with one another in performing any of the duties assigned to them by this order.

16. Neither Mr. Berne nor Mr. Lunt shall have any contact with any of Mr. Emerson's clients, their only contacts in the monitoring and supervising of Mr. Emerson being with him, the counselors or other individuals contemplated by this order.
17. Both Mr. Berne and Mr. Lunt shall have the duty to report to Bar Counsel and to the Court any apparent or actual professional misconduct by Mr. Emerson of which they become aware and any lack of cooperation by Mr. Emerson with Mr. Berne's monitoring of his practice or with Mr. Lunt's supervision of his attendance at substance abuse meetings.
18. Mr. Berne's monitoring of Mr. Emerson's practice and Mr. Lunt's supervision of his attendance at substance abuse meetings will be for a period of at least one year from the date of this order, unless terminated earlier as herein provided or by other order of this Court.
19. The Board may file additional Petitions to Determine Incapacity directly with the Court, without the necessity of the preliminary screening and hearing that might otherwise be required by M. Bar R. 7.3(e)(2)(A), concerning other allegations that Mr. Emerson is incapacitated from continuing the practice of law by reason of addiction to intoxicants, which come to the Board's attention after the date of this order.

Dated:

3/15/01



Susan Calkins
Associate Justice

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SUPERVISION AGREEMENT

I, Richard S. Emerson, Jr., Esq., agree to comply with all the terms and conditions of this Supervision Agreement.

I. **ATTORNEY SUPERVISOR**

1. I agree to submit to supervision by Stephen C. Lunt, Esq., who will supervise and report on my attendance at Alcoholics Anonymous meetings in accordance with this Agreement. Mr. Lunt will make written monthly progress reports to Bar Counsel of the Board of Overseers of the Bar (the Board). I further understand that Mr. Lunt will immediately report to Bar Counsel any non-compliance on my part with the terms and conditions of this Agreement.
2. I also understand that in supervising me, Mr. Lunt is not acting as my attorney in any way or manner, directly or indirectly, and that Mr. Lunt's supervision of my attendance at my Alcoholics Anonymous meetings in the manner provided herein shall be deemed not to create an attorney-client relationship between me and him. I further agree that I shall hold Mr. Lunt harmless from any civil liability (including, without limitation, any liability for defamation) to me.
3. I agree to contact Mr. Lunt in person or by telephone weekly, or more frequently if he so requires, throughout the duration of this Agreement. I further understand that Mr. Lunt may require, from time to time, that such contact be made in person rather than by telephone.

II. **ABSTINENCE**

4. I agree to abstain from alcohol and all other similar mind altering drugs except when medications are prescribed or approved by an attending medical doctor or psychiatrist. When such drugs are prescribed or approved, I agree to immediately inform Mr. Lunt of: a) the name of the drug prescribed or approved, b) the name of the prescribing or approving physician; and c) the medical condition necessitating the use of the medication. I further agree, upon request from Mr. Lunt to take any action or execute any documents necessary to allow him to obtain information directly from such physician, psychologist or any other health care provider.

III. **PROGRAM PARTICIPATION**

5. I agree to attend meetings of Alcoholics Anonymous as follows:

- a. For the first 90 days of this Agreement, I will attend at least five meetings per week. Mr. Lunt will accompany me to at least one meeting per week, except when, during weeks Mr. Lunt or Mr. Emerson have other conflicting engagements that render this impossible or impractical, Mr. Lunt gives his prior approval.
- b. For the next 275 days of this Agreement, I will attend at least 5 meetings per week. Mr. Lunt will accompany me to at least 2 meetings per month, except when, during weeks Mr. Lunt or Mr. Emerson have other conflicting engagements that render this impossible or impractical, Mr. Lunt gives his prior approval.
- c. For the remaining duration of this Agreement, I will attend at least 5 meetings per week. Mr. Lunt will accompany me to at least 2 meetings per month.
- d. I agree to obtain an Alcoholics Anonymous sponsor, and to provide the name, address and telephone number of my sponsor to Mr. Lunt. I further agree that Mr. Lunt may freely contact my sponsor to obtain information concerning my participation in Alcoholics Anonymous and that Mr. Lunt, in his sole discretion, also may provide to Bar Counsel any information he acquires from my sponsor.

IV.
RELEASE OF INFORMATION

6. I agree to execute a Release of Information and to cooperate in providing all information relevant to this Agreement and my compliance or non-compliance with its terms and conditions to Bar Counsel and to Mr. Lunt.


V.
DURATION OF AGREEMENT

7. This agreement shall remain in effect for a period of one year from the effective date listed below unless terminated earlier by order of the Court.

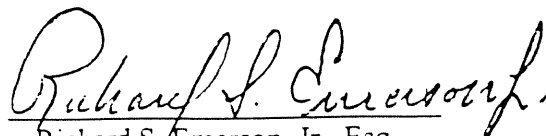
Effective Date: March 15, 2001




Witness



Witness



Richard S. Emerson, Jr., Esq.



Stephen C. Lunt, Esq.

**REPORT OF STEPHEN C. LUNT, ESQ., CONCERNING
ATTENDANCE AT AA MEETINGS BY RICHARD S. EMERSON, JR., ESQ.**

Attorney: Richard S. Emerson, Jr.

Report #: _____

Date: _____

Date of Last Report: _____

To the best of my knowledge, since the date of my last report, or since the date of the Supervision Agreement if this is Report #1, Richard S. Emerson, Jr., Esq., **has abided** by the terms of the Supervision Agreement. I base this assessment on the following:

_____ Weekly contacts

_____ AA Sponsor Contacts

_____ Other _____

Since the date of my last report, or since the date of the Supervision Agreement if this is Report #1, Richard S. Emerson, Jr., Esq., **has not abided** by the terms of the Supervision Agreement. Specifically, Mr. Emerson is out of compliance with the Supervision Agreement in the following respects:

_____ Weekly contacts

_____ AA Sponsor Contacts

_____ Other _____

Stephen C. Lunt, Esq.

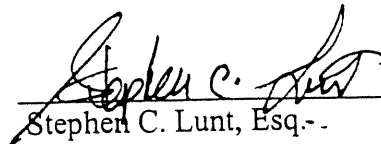
OATH OF MONITOR

STATE OF MAINE
COUNTY OF CUMBERLAND

BEFORE ME, the undersigned authority, personally appeared Stephen C. Lunt, Esq., who, after being duly sworn, on oath stated.

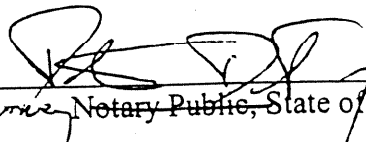
I am acquainted with Richard S. Emerson, Jr., Esq., and have agreed to supervise him under the Supervision Agreement, attached hereto and incorporated by reference herein. I hereby voluntarily accept and undertake all the powers and duties as stated in the Supervision Agreement. I further agree to file monthly reports on Mr. Emerson's progress with Bar Counsel and to immediately report any evidence, actual or apparent, of his non-compliance with the terms and conditions of the Supervision Agreement. Any and all required reports shall be made under oath and subject to the penalties imposed by law for perjury, and shall be provided by me to Bar Counsel without regard to any adverse consequences, which may be occasioned to Mr. Emerson.

Signed this 15th day of March, 2001.



Stephen C. Lunt, Esq.-.

SUBSCRIBED AND SWORN BEFORE ME on this 15th day of March, 2001.



Notary Public, State of Maine

Name Printed: PETER J. DETMOLD

My commission expires: _____

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