

STATE OF MAINE

Board of Overseers of the Bar

GCF No. 11-310

BOARD OF OVERSEERS OF THE)
 BAR)
 Petitioner)
 v.)
 JOHN M. WHALEN, ESQ.)
 of Lewiston, ME)
 Me. Bar No. 0827)
 Respondent)

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

On March 1, 2013, with due notice, Panel D of the Grievance Commission conducted a public disciplinary hearing pursuant to Maine Bar Rule 7.1(e)(2)(E), concerning alleged misconduct by the Respondent, John M. Whalen, Esq. This disciplinary proceeding had been commenced by the filing of a Stipulated Disciplinary Petition by the Board of Overseers of the Bar (the Board) on November 27, 2012.

At the hearing the Board was represented by Assistant Bar Counsel Aria Eee. Attorney Whalen attended the hearing and was represented by Attorney Phillip Johnson. Complainant, Coleman Coyne, Esq. did not attend the hearing but was provided with a copy of the parties' settlement proposal in advance of the hearing. Prior to the disciplinary proceeding, the parties submitted a stipulated, proposed Report for the Grievance Commission Panel's review and consideration.

Having reviewed the agreed, proposed findings as presented by counsel, the Panel makes the following disposition:

FINDINGS

Respondent John M. Whalen of Lewiston, Maine has been at all times relevant hereto an attorney duly admitted to and engaging in the practice of law subject to the Maine Bar Rules and the Maine Rules of Professional Conduct. Attorney Whalen was admitted to the Maine Bar in 1971 and maintains a law office as a solo practitioner.

On September 21, 2011 Attorney Coleman Coyne filed a grievance complaint against Attorney Whalen. The complaint alleged that Whalen engaged in multiple conflicts of interest, fraudulent behavior and a failure to relinquish control as Trustee of The Pineland Securities Trust. Attorney Whalen drafted that Trust in January 1993 on behalf of one of its Settlor, Henry Tukey. Both during and after the Tukeys divorce, Attorney Coyne served as counsel for Ms. Tukey, the surviving Pineland Trust Settlor. Mr. Tukey died in 2009 and Whalen succeeded him as Trustee of that Trust.

In November 2010, Ms. Tukey terminated Attorney Whalen as Trustee and she appointed a successor to take over management of the Trust. Despite an initial belief based on proceedings in Probate Court that his conduct was not violative of the professional conduct rules, Attorney Whalen has since acknowledged various errors on his part. In that regard, Whalen agrees it was improper for him to fail to abide by Ms. Tukey's instructions to withdraw as Trustee of the Pineland Trust. His failure to withdraw constituted violations of M. R. Prof. Conduct 1.7(a) and 8.4(a)(d). Through that inaction, Attorney Whalen also failed to relinquish trust assets to the successor Trustee, in

violation of M. R. Prof. Conduct 1.15(f) and 8.4(a)(c)(d). Moreover, Whalen at times failed to protect and preserve the Trust assets and instead, acted on behalf of parties who had interests adverse to the Trust and its beneficiaries. In doing so, Attorney Whalen engaged in multiple representations of various parties in violation of M. R. Prof. Conduct 1.7.

CONCLUSION AND SANCTION

The Maine Rules of Professional Conduct specifically requires attorneys to uphold their responsibilities to clients and the courts. Due to Attorney Whalen's above-outlined failures, the Pineland Securities Trust and its beneficiaries were not adequately served or protected. The resulting dispute between the Trust beneficiaries and other interested parties was both costly and avoidable. The Panel notes and appreciates that Attorney Whalen has taken responsibility for his transgressions. At the disciplinary hearing, Whalen expressed his remorse for his violations of the Maine Rules of Professional Conduct.

The Panel is aware that Attorney Whalen has an earlier history comprising three separate significant disciplinary sanctions issued between 1997-2001 for conduct both similar and dissimilar to that which occurred in his dealings with the parties involved in the instant matter. Notably, those sanctions all occurred after contested hearing and the Panel appreciates Attorney Whalen's candor to resolve this disciplinary matter by agreement rather than contest.

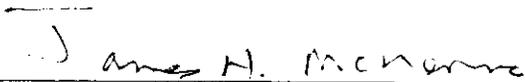
M. Bar. R. 2(a) provides that the purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who, by their conduct, have demonstrated that they are unable to discharge properly their professional duties. Since the evidence supports a finding and Attorney Whalen agrees and admits that he did in fact violate the Maine Rules of Professional Conduct, the Panel finds that a public reprimand serves those purposes.

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

Dated: 3/1/13

For the Panel

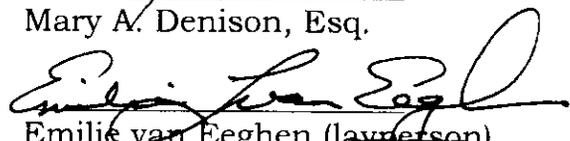
Date: 3/1/13


James A. McKenna III, Esq.
Chair

Date: 3/1/13


Mary A. Denison, Esq.

Date: 3/1/13


Emilie van Eeghen (layperson)
Public Member