

STATE OF MAINE

BOARD OF OVERSEERS OF THE BAR

GCF No. 12-036

BOARD OF OVERSEERS OF THE BAR )
Petitioner )
v. )
NICHOLAS A. BATTISTA )
of Rockland, Maine )
Me. Bar No. 004382 )
Respondent )

REPORT OF FINDINGS AND ORDER OF PANEL B OF THE GRIEVANCE COMMISSION M. Bar R. 7.1(e)(2)(3)(4)

On June 20, 2013, 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 admitted misconduct by the Respondent, Nicholas A. Battista. This disciplinary proceeding had been commenced by the filing of a Petition pursuant to M. Bar R. 7.1(e) by the Board of Overseers of the Bar on March 11, 2013. On March 13, 2013 Battista was personally served with a copy of that Petition and directed to file his Answer to that Petition within 20 days. Battista failed to submit any answer. As a result, pursuant to M. Bar R. 7.1(e)(1) the facts set forth and the misconduct alleged in the Petition have been admitted by Battista.

At that disciplinary proceeding, the Board was represented by Bar Counsel J. Scott Davis and Battista appeared pro se.

FINDINGS

Nicholas Battista was, until the imposition of an administrative suspension by the Board on October 18, 2011, at all times relevant hereto an

attorney duly admitted to the practice of law in the State of Maine and subject to the Maine Bar Rules. He was admitted to the Maine Bar in 2008.

On October 18, 2011 Battista was administratively suspended by the Board due to his failure to complete the proper credit hours of continuing legal education as required by Maine Bar Rule 12(a)(1). He also did not thereafter file the required "notification affidavit" properly certifying his compliance with Maine Bar Rule 7.3(i)(2) as is required to occur within 30 days after that suspension date.

By a certified letter of December 15, 2011, Bar Counsel notified Battista of the consequence of his failure to file that required affidavit. On or about December 19, 2011 Battista, or his agent, received and accepted by signature that certified mailing from Bar Counsel concerning his failure to comply with Maine Bar Rule 7.3(i)(2). Battista then failed to meet Bar Counsel's response filing deadline date of January 2, 2012 concerning that omitted affidavit.

As a result, on or about January 30, 2012, Bar Counsel initiated and docketed a *sua sponte* grievance complaint against Battista based upon his failure to comply with that affidavit requirement. Thereafter, Battista failed to respond to Bar Counsel's two written requests for information dated January 30 and May 22, 2012 in the Board's investigation of this grievance matter, in violation of M. R. Prof. Conduct 8.1(b).

On August 28, 2012 a panel of the Grievance Commission reviewed Battista's actions and found probable cause to believe that he had engaged in

misconduct subject to sanction under the Maine Bar Rules for which it then directed that a disciplinary Petition be filed against him.

Battista remains currently administratively suspended in Maine and has filed this date the required affidavit.

### **CONCLUSION AND SANCTION**

Based upon Battista's failure to file any answer to the Petition, by that default he is found to have violated Maine Bar Rule 7.3(i)(2)(A)(B) and Maine Rules of Professional Conduct 8.1(b) and 8.4(a)(d).

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 properly discharge their professional duties. Among the factors to be considered in imposing sanctions are: the duty violated, the lawyer's mental state, the actual or potential injury caused by the lawyer's misconduct and the existence of any aggravating or mitigating circumstances. See *ABA Standards for Imposing Lawyer Sanctions*, 1991 (ABA Standards). See also M. Bar R. 7.1(e)(3)(C).

The first factor to be considered for sanctions under the ABA Standards is to determine what duty has been breached. The Maine Rules of Professional Conduct require attorneys to uphold their responsibilities to clients and the courts. Battista violated his duties to the legal system by failing to complete the annual continuing legal education (CLE) filing requirements in 2011 and by then failing to file the required notification affidavit once he was administratively suspended. He further aggravated matters by totaling ignoring

Bar Counsel's initial inquiries and requests for an explanation and then failing to file any formal answer to the Petition. Such misconduct caused injury to the legal system and to the profession. The Maine Supreme Judicial Court promulgated the Maine Bar Rules and the Maine Rules of Professional Conduct to govern the practice of law by Maine attorneys. The information collected by the annual registration and CLE monitoring of lawyers facilitates the protection of the public and courts.

Battista's continuous disregard of the Board's duties, Bar Counsel's inquiries and the requirements of the Maine Bar Rules serve as aggravating circumstances. The Panel agrees with Bar Counsel's argument at the hearing and so finds that Battista's failure to respond to Bar Counsel is serious misconduct. The disciplinary process of the Maine Bar Rules is predicated on the requirement that respondent attorneys reply and provide necessary requested information to allow Bar Counsel's thorough investigation of grievance complaint filings.

The primary mitigating circumstance in this matter is that at the June 20<sup>th</sup> hearing Battista finally admitted his misconduct and expressed remorse for his numerous respective violations of the Maine Bar Rules and the Maine Rules of Professional Conduct. The Panel was informed by Bar Counsel that this is the only instance of misconduct by Battista since being admitted to the Maine Bar in 2008.

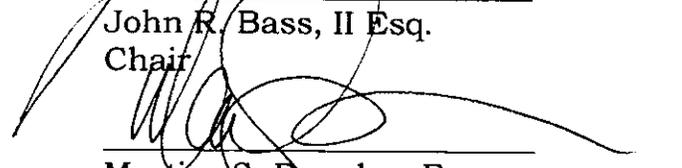
Because Battista's misconduct is serious the Panel accepts Bar Counsel's recommendation, as agreed to at the hearing by Battista's execution of a

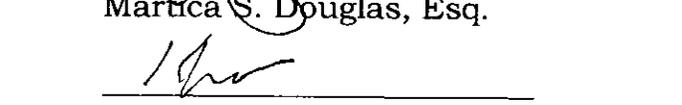
Waiver of Petition for Review of this disposition. As a result, the Panel concludes that the appropriate disposition of this case is a **Public Reprimand** to Nicholas A. Battista which is now hereby issued pursuant to M. Bar R. 7.1(e)(3)(c).

**For the Panel:**

Date: 6/20/2013

  
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John R. Bass, II Esq.  
Chair

  
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Martica S. Douglas, Esq.

  
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Kenneth L. Roberts