

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR-13-7

BOARD OF OVERSEERS OF THE BAR	)
	)
Plaintiff	)
v.	)
Jay H. Otis	)
of Brewer, ME	)
Me. Bar #2941	)
Defendant	)

ORDER of SUSPENSION  
M. Bar R. 7.2

The Board of Overseers of the Bar initiated the above attorney disciplinary action on March 20, 2013 by the filing of a Petition for Temporary Suspension pursuant to M. Bar R. 7.2(c). On March 26, 2013 this Court granted the Board’s Petition and suspended Otis from the practice of law in Maine until further Order of the Court. Thereafter, by Order dated April 4, 2013 the Court appointed Attorneys Roberta Winchell and Barbara Cardone Receivers of the Otis law office.

Following Mr. Otis’s suspension, the Board received additional complaints against Mr. Otis and pursuant to the Maine Bar Rules, the Board filed disciplinary Informations for further proceedings before the Court. Mr. Otis responded with timely Answers to the Board’s Informations and trial in this matter was set for December 5 and 6, 2013.

Just prior to the beginning of trial on December 5, 2013, the parties notified the Court that they were in agreement to a proposed order providing for stipulated findings and sanction. The Court agreed to hear the parties’

recitation of findings of fact and a proposed resolution of this matter. Within their agreement, the parties notified the Court that they would waive any right to argue the few disputed facts and instead, allow the Court, in its sole discretion, to decide those facts based upon the record and the information adduced during the stipulated hearing on December 5. The Court further informed the parties that it would consider but not be bound by the parties' proposal. The parties acknowledged and consented to the Court's plan for resolution of this matter.

At the December 5, 2013 hearing, the Board was represented by Assistant Bar Counsel Aria Eee and Mr. Otis appeared *pro se*. Complainants Jill Kraemer and Attorneys Nathaniel Putnam and Jay Schofield appeared and were given the opportunity to address the Court. Also present at the hearing were Receiver Roberta Winchell, Esq. and her firm's paralegal/bookkeeper, Jackie Fleming. Within her remarks, Attorney Winchell explained to the Court her firm's difficult experience in conducting the wind down of Mr. Otis's law office.

### **FINDINGS AND CONCLUSIONS**

Jay Otis was admitted to the Maine bar in 1983. From his admission until the present, Otis has engaged in private practice in Bangor and Brewer, Maine. The Court notes that except for the instant action, Otis has not otherwise been disciplined for attorney misconduct.

Of concern to the Court, however, is the state of Mr. Otis's law office when it was Ordered into Receivership. By the end of March 2013, Otis's operating account contained a zero balance and he had several unpaid bills, including office rent, computer/technical support, bookkeeping services, malpractice insurance, professional subscriptions and other debts. Of specific and serious concern is the fact that Mr. Otis allowed his malpractice insurance to lapse as of December 2012. He did so, even while continuing to take owner draws from the trust and operating accounts.

Within this bar disciplinary matter, the Court has reviewed and considered the pleadings, the exhibits and the parties' proposal. Accordingly, the Court finds and Otis agrees that he engaged in multiple, serious violations of the Maine Rules of Professional Conduct. Since the Board of Overseers' pleadings outlined five (5) separate counts of alleged misconduct, the Court will separately address each matter and the findings associated with Mr. Otis's misconduct.

**COUNT I**  
**(Jill Kraemer complaint)**

In July 2010 Jill Kraemer hired Mr. Otis to bring a divorce action in the Bangor District Court. During the course of that matter, Ms. Kraemer sold the marital home and remitted proceeds of that sale to Otis so he could safeguard them in his trust account. The divorce action was settled in October 2011 and in February 2012 the District Court issued a consented to Divorce Judgment.

Despite the obligation to do so, Otis did not notify Kraemer of the finalization of her divorce and the resulting Judgment. His failure to do so constituted a violation of M. R. Prof. Conduct 1.3 and 1.4. Kraemer eventually learned of the Judgment and contacted Otis about his lack of communication. Over the course of the next several months she also repeatedly contacted Otis regarding his delayed or non-payment of marital debts that the Divorce Judgment directed to be paid.

While Otis did not respond to Kraemer's inquiries, he did eventually pay most of the marital debt from the funds held in his trust account. One debt he had still failed to pay by the time of Ms. Kraemer's complaint filing was a sizeable sales tax debt she owed to the State of Rhode Island. Otis's neglect and continued retention of Kraemer's money constituted violations of M. R. Prof. Conduct 1.3; 1.4; 1.15(b)(2)(iii)(iv); 1.16(d) and 8.4(a)(c)(d). As is evident from her email communications to Otis, Kraemer was dependent on Otis and she explicitly trusted him to resolve her legal and tax matters.

Ms. Kraemer complained against Mr. Otis in April 2012. Despite the opportunity and obligation to do so, Mr. Otis failed to respond to that complaint and failed to forward Ms. Kraemer's file to Bar Counsel, as he was directed to do. Mr. Otis's failures in that regard violated M.R. Prof. Conduct 8.3, 1.15(f) and 1.16(d).

On January 3, 2013, a Grievance Commission Panel convened a public disciplinary hearing concerning the Kraemer complaint matter. Otis did not

appear for the hearing but after it had concluded he did meet with Assistant Bar Counsel Eee. During that meeting, Otis stated that he had Kraemer's \$11,500.00 and he would attempt to resolve the tax debt or immediately return the money to Kraemer. Following the disciplinary hearing, the Grievance Commission found probable cause for the suspension or disbarment of Otis. Although he had earlier promised to remit Kraemer's funds including any additional monies she lost in forfeited tax returns, Otis had not done so by the time the Board petitioned for his temporary suspension.

After this Court suspended Otis and appointed Receivers to wind down his practice, the Receivers then successfully negotiated a resolution of Kraemer's tax debt to Rhode Island. They did so even though Ms. Kraemer's client trust funds (in Otis's trust account) were lacking by approximately \$300.00 toward the tax debt owed. The Board attributes that deficiency to Mr. Otis's payment of his own final legal bill rather than prioritizing payment of all Kraemer debt obligations. Additionally, when the Receivers secured the Otis law office, Ms. Kraemer's client file was not contained within the law office. Her file remains missing and unaccounted for.

**COUNT II**  
**(Amanda Wilbur complaint)**

A second divorce client of Otis's, Amanda Wilbur, complained to the Board in December 2012. By then, Wilbur's legal matter had concluded with a dismissed appeal, an outcome she did not authorize or timely become aware of. As is clear in her grievance complaint filing, Otis failed to pursue the appeal or

obtain Wilbur's consent to dismissal of that appeal. Subsequently, he failed to respond to Wilbur's repeated requests for information and action. Otis also failed to safeguard and return Wilbur's client file. Although Otis had the opportunity to do so, he did not respond to Wilbur's bar complaint or her fee arbitration petition. He did appear at the arbitration hearing in August 2013 after which the Commission awarded no further fees to Otis and no refund of fees to Ms. Wilbur. Otis's failures with regard to the Wilbur representation constituted violations of M. R. Prof. Conduct 1.3, 1.4; 1.15(f); 1.16(d) and 8.4(a)(c)(d).

**COUNT III**  
**(Complaint by Attorneys Devoe, Putnam, Tucker and Schofield)**

On December 31, 2012 and pursuant to M. R. Prof. Conduct 8.3, (Mandatory Reporting) Attorneys William Devoe, Nathaniel Putnam, Richard Tucker and Gerald Schofield jointly filed a grievance complaint against Mr. Otis. The attorneys served as opposing and successor counsel in a then pending Penobscot County Probate court matter. In their complaint to the Board, the attorneys reported Otis's failure to diligently represent his client, "L.S." (an estate beneficiary) failure to communicate with counsel and failure to forward L.S.'s client file to successor counsel, despite multiple requests for that file. Mr. Otis does not dispute his colleagues' report and further acknowledges a lack of adequate notice to his client, L. S. regarding the final probate hearing held in April 2012. Despite the opportunity to respond to the attorneys' mandated report, Otis did not file an answer to their complaint. He now agrees

that the above-outlined failures constituted violations of the professional conduct rules. Those rules include M. R. Prof. Conduct 1.3; 1.4; 1.5(a); 1.15(f); 1.16(d) and 8.4(a)(d).

**COUNT IV**  
**(Denise Dietrich complaint)**

On April 9, 2013, Denise Dietrich filed a complaint against Mr. Otis alleging his neglect of her divorce case. Ms. Dietrich retained Mr. Otis in 2011 and approximately a year later, she began experiencing pronounced difficulties with his lack of information to her. Specifically, the Court finds and Otis agrees that he failed to respond to many of Ms. Dietrich's inquiries, failed to notify her of important deadlines, delayed or failed to notify her of at least one court date and failed to forward her file to successor counsel.

Because of Otis's failure to finalize and file Ms. Dietrich's discovery responses, the District Court levied a \$2,000.00 monetary sanction against Ms. Dietrich. That sanction was understandably upsetting to Ms. Dietrich and though she attempted to have it set aside, she was unsuccessful in that regard. Upon her discharge of Mr. Otis, he failed to return her file and failed to refund approximately \$2,000.00 she had then recently paid toward replenishment of her advanced fee.

Additionally, the Fee Arbitration Commission awarded a \$4,200.00 refund which Mr. Otis had not yet paid as of the disciplinary hearing date. The Court finds that Otis's failures as outlined above constituted violations of M. R. Prof. Conduct 1.3; 1.4; 1.5(a); 1.15(b)(2)(iii)(iv); 1.16(d) and 8.4(a)(d).

**Count V**  
**(*sua sponte* complaint)**

On October 30, 2013, Bar Counsel docketed a *sua sponte* complaint against Mr. Otis related to his service as a Personal Representative (PR) in a Penobscot County Probate Court matter. Specifically, in December 2010, Otis was appointed successor PR following the Probate Court's removal of the original PR, for alleged conversion of Estate funds. After his appointment, Otis did not notify the Estate's financial institutions of his appointment.

According to Attorney Winchell (now the court-appointed Special Administrator of that Estate) the former PR continued to make withdrawals from the Estate's bank accounts and was able to do so as a consequence of Otis's failure to notify the banks and otherwise protect the assets of the Estate. Despite the Probate Court's mandate, Mr. Otis failed to file an accounting of the Estate assets or of the work he performed as PR. Moreover, Mr. Otis did not respond to the multiple requests for information by other lawyers involved in the proceeding. As a consequence of his neglect, the Probate Court removed Mr. Otis as PR on April 22, 2013.

In addition to neglecting his duties as a PR, Mr. Otis failed to safeguard the Estate's file and it was not contained within his law office when the Receiver inventoried the files of that office. The Court finds that Otis's serious neglect of his fiduciary duties to the Estate and its beneficiaries constituted violations of at least M. R. Prof. Conduct 1.1; 1.3; 1.4; 1.15 and 8.4(a)(c)(d).



In sum, during the representation of his various clients and his service as a Personal Representative, Otis ultimately failed to provide the professional services those clients and litigants relied upon him to deliver. Indeed, Otis failed to timely communicate, failed to safeguard client property, failed to adequately notify or respond to clients, courts and his colleagues in the bar. Otis's failures constituted multiple violations of the Maine Rules of Professional Conduct and the Court does not view his conduct lightly.

Within his own practice management, it is also apparent that Mr. Otis failed to properly utilize his client trust accounts, such that some accounts revealed shortages that should not have occurred. Overall, Otis's record keeping system and perceived bank balances were not supported by other records, bank statements and the review audit performed by the Receiver. While the Board has not charged a claim of theft, it is clear from the Receiver's October 2013 report and the Board's exhibits that Otis's accounting practices were improper and largely indecipherable.

Even by the December hearing date, the Receiver was still not able to explain how some of Mr. Otis's accounts devolved into the state they were in. The Receiver reported her concerns about Otis's use of "double books" and potentially unearned advanced payments. At the disciplinary hearing, Mr. Otis expressed his intention to the Court that he would ensure all clients are made whole, if there are any remaining trust balances to refund to those clients. The Board and Receiver then informed the Court that some monies still exist in the trust account, though it is difficult for the Receiver to allot how those funds

should be divided among the clients who are seeking a refund of their legal fees.

All of these financial concerns are very troubling to the Court. Prior to his filing any reinstatement Petition Mr. Otis will need to provide proof that he has engaged in appropriate client trust account and law office management education.

Finally, the Court is further concerned by Mr. Otis's actions immediately after his practice was ordered into Receivership. As noted, the court issued an Order for on April 4, 2013. Mr. Otis received actual notice of that Order. On that same day, the Receivers met with and informed Otis that they were securing the law office and he could thereafter access it only with their assistance. Nevertheless, Otis returned to the office "after hours" and without permission or authority to do so. He was observed exiting the office building by another tenant, Ms. Scott, who saw Mr. Otis hastily return to his parked vehicle. At approximately 6:10 am the next day, Ms. Scott once again observed Mr. Otis at the office building. She passed him on the stairs on his way out of the building. He was carrying a banker's box with him. As she made her way into the building, Ms. Scott observed that Mr. Otis's truck was backed up to the steps of the building entrance. She further observed that Mr. Otis's truck was so full he was unable to close the truck cap.

Attorney Winchell explained her concerns about those events when addressing the Court at the disciplinary hearing. She reported her recollection that on April 4, while meeting with Mr. Otis, his laptop was in the office, there

were files on the side of his desk and there were bankers' boxes on the floor near a bookcase. After learning the next morning about Otis's return to the office building Attorney Winchell had the locks to the law office changed. Upon her observation of the office, she noted that files were no longer on the desk, the laptop and the bankers' boxes were missing.

At the disciplinary hearing, Mr. Otis acknowledged that he had returned to the law office building after he was no longer authorized to do so. He reported to the Court that he did not remove law office files or property; instead he claims to have removed personal items from an unlocked closet near, but not inside, his former law office. Mr. Otis explained his belief that the Court's Order only extended to his law office, not the building itself.

The Court finds that Mr. Otis knew or should have known that he was not permitted to return to the law office building. Likewise, he knew or should have known he was unauthorized to remove any items from that building without further Court Order or the permission and assistance of the Receivers. The Court's Orders for Receiver and Temporary Suspension divested Mr. Otis of his right to have access to the law office building, including any rooms inside, or associated with the law office. His return to the law office building after hours renders his explanation specious. Furthermore, his removal of anything from the law office premises was contrary to the letter and the spirit of the Court's Orders.

## **SANCTION**

Mr. Otis's numerous violations of the Maine Rules of Professional Conduct are very serious and the Court must consider an appropriate sanction, including long-term suspension or disbarment. The Court is mindful that the primary purpose of attorney discipline proceedings is not punishment but rather protection of the public. While Mr. Otis has practiced for nearly thirty years without any prior discipline, his complete failure to properly discharge his professional duties is a disturbing example of a long-term practitioner.

The Court's Order is intended to address the significant and compound problems associated with Otis's law practice. Despite the opportunity to explain to the Court how and why he engaged in such errant behavior and serious neglect of his professional duties, Otis showed little to no insight and was therefore, unable to adequately respond to the Court's inquiry about the misconduct.

Accordingly, the Court imposes upon Mr. Otis a four (4) year suspension from practice. In doing so, the Court approves the parties' agreement and ORDERS the following sanction and conditions in this matter:

1. During the period of suspension, Mr. Otis may not appear before any tribunal and is prohibited from advising, consulting or meeting with any clients. The Court emphasizes that any future work performed by Otis must not be attorney legal services, despite his training and prior

bar licensure. In short, he may not practice law or appear as though he is practicing law in any manner.

2. Mr. Otis must ensure that any firm (and firm clients) for whom he may work as a paralegal or legal assistant is advised of the limitations of his services, including the fact that Otis is no longer practicing law or permitted to provide legal advice to consumers and clients of the firm.
3. Mr. Otis must wait until March 2017 to seek Reinstatement to the Maine bar.
4. Two (2) years prior to any such Petition for Reinstatement, Otis must have engaged in MAP services (with a contract) pursuant to the terms of this Order and under the supervision of the MAP Director. If required under that contract to engage in therapeutic services, Mr. Otis shall do so and he must sign a release to permit MAP to verify his attendance and engagement in therapy.
5. Also prior to any reinstatement, Mr. Otis must have reimbursed all clients sums due to them as determined by the Fee Arbitration Commission or the Receiver, Attorney Winchell. Additionally, Mr. Otis shall reimburse the Lawyer's Fund for Client Protection for all claims paid by the Fund.
6. Prior to or concurrent with any Reinstatement, Mr. Otis shall obtain and continue to maintain malpractice insurance.
7. Effective upon any Reinstatement to the Maine bar, Mr. Otis shall submit his practice to monitoring for two years or longer if the Court

orders it. The Court-Appointed Monitor shall be either agreed to by the parties or if not, selected by Bar Counsel and approved by the Court; additionally, the Monitor shall conduct and Mr. Otis shall cooperate with any auditing of his accounts as directed by the Monitor.

8. Additionally, once reinstated, Mr. Otis shall undertake at least six (6) hours of approved live continuing legal education focused on law practice management. He shall have completed that CLE within the first year of his reinstatement.
9. Mr. Otis shall employ at least one support staff person familiar and competent in working within the requirements of a law office practice, if he returns to the bar (or later becomes) a solo practitioner.
10. Mr. Otis shall maintain current annual registration and CLE hours as required by the Maine Bar Rules and regulated by the Board of Overseers of the Bar.
11. Prior to any Petition for Reinstatement, Mr. Otis shall reimburse Winchell Law \$ 5,978.56 [Labor-\$5,451.50 Disbursements-\$527.06] toward costs associated with the wind down and closure of his practice. The Court notes that Attorney Winchell previously filed a detailed invoice for her services and costs.
12. Prior to any Petition for Reinstatement, Mr. Otis shall reimburse the Board \$3,200.00 toward costs associated with its investigation and prosecution of him in this matter (as documented by its filing with the Court).

13. If contacted by the Board or by Bar Counsel, Mr. Otis shall timely respond and provide any information related to his intended Petition for Reinstatement, or thereafter, his practice of law in Maine.
14. In the event a grievance complaint is received by Bar Counsel after the date of this Order, Bar Counsel may elect to file a new disciplinary matter directly before the Court under Bar Rule 7.2(b) without involving the Grievance Commission under M. Bar R. 7.1(d)(e).

Date: December 23, 2013

\_\_\_\_\_/s/\_\_\_\_\_  
Justice Jon D. Levy  
Associate Justice  
Maine Supreme Judicial Court