

STATE OF MAINE

BOARD OF OVERSEERS OF THE BAR

GCF No. 14-233

Board of Overseers of the Bar )
Petitioner )
v. )
Brian D. Condon, Jr., Esq. )
of Winthrop, ME )
Me. Bar No. 008588 )
Respondent )

STIPULATED REPORT of FINDINGS AND ORDER of PANEL B of the Grievance COMMISSION M. Bar R. 7.1(e)(2)(4)

On April 10, 2015, 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 misconduct by the Respondent, Brian D. Condon, Jr., Esq. The Board of Overseers of the Bar (Board) initiated this disciplinary proceeding by its filing of a December 10, 2014 Disciplinary Petition. Attorney Condon timely answered that Petition. Prior to the scheduled hearing date, the parties notified the Board Clerk that they had reached agreement as to a proposed resolution of this matter.

At the April 10, 2015 hearing, Attorney Condon appeared pro se and the Board was represented by Bar Counsel J. Scott Davis. Complainant Jayne Colby was also in attendance at the hearing. Prior to that date, the parties submitted a stipulated, proposed sanction Report for the Grievance Commission Panel's review and consideration. Bar Counsel had also provided Ms. Colby with a copy of the proposed Report, in advance of the stipulated hearing.

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

## **FINDINGS**

Respondent Brian D. Condon 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 Condon was admitted to the bar in 1997 and maintains a solo practice in Winthrop, Maine.

On May 13, 2014, Jayne S. Colby, a retired Massachusetts attorney, filed a complaint against Attorney Condon. That complaint primarily concerned Attorney Condon's March 2014 small claims filing for legal fees, years after representing Ms. Colby in a real estate insurance matter. The parties agree and the Panel so finds that there was no fee agreement delineating Attorney Condon's 2006/2007 representation of Ms. Colby.

Following its review of the Disciplinary Petition, Attorney Condon's Answer and the parties' agreement, the Panel finds that Attorney Condon filed the small claims matter months after the statute of limitations on such action had run. As a result, Attorney Condon's March 2014 law suit was filed without a non-frivolous basis to do so, in violation of M. R. Prof. Conduct 3.1(a); 4.4(a) and 8.4(d). Specifically, the Panel finds that Attorney Condon knew or should have known prior to the mediation (in the small claims action) that his suit was barred by the statute of limitations. Although Attorney Condon previously explained his belief to Bar Counsel that he had a defense to the statute of limitations problem, (due to the timing of some of his bills) he now acknowledges and accepts the finding that the law suit he initiated against Ms.

Colby was in fact, filed beyond the statute of limitations. The Panel notes that Attorney Condon decided at the parties' April 2014 mediation and discussions therein, to move to dismiss the small claims action against Ms. Colby.

Following its review of this complaint matter, the Panel further finds that Attorney Condon's delayed and unspecific billing for the prior representation was improper since there was no agreement with Ms. Colby to fee amounts, hourly rates or the method of billing. Attorney Condon's pursuit of 10% interest on the \$945.00 amount reportedly owed but disputed by Ms. Colby was likewise improper, as Ms. Colby did not agree to it and no court ordered any charges of interest. Moreover, Attorney Condon did not file all of the billing slips with his small claims action as was required; yet did so when he produced bills for the grievance complaint response, in apparent violation of M. R. Prof. Conduct 3.3(a)(3). As a whole, Attorney Condon's billing practices constituted violations of M. R. Prof. Conduct 1.5(a)(b) and 8.4(d). With regard to his charges of legal fees which pre-dated the effective date of the M. R. Prof. Conduct, Attorney Condon also violated then applicable M. Bar R. 3.3(a). Ultimately, due to her disagreement with his billing and work performed, Ms. Colby did not make any payment to Attorney Condon.

As referenced above, according to the District Court's docket record, Attorney Condon filed a motion to dismiss the small claims action in May 2014. The District Court granted that Motion and dismissed the action with prejudice. In his appearance before the Grievance Commission, Attorney

Condon apologized to Ms. Colby and acknowledged his regret for his conduct relating to the action he filed against her.

### **CONCLUSION AND SANCTION**

The Maine Rules of Professional Conduct specifically require attorneys to uphold their responsibilities to clients and the courts. Due to Attorney Condon's actions, Ms. Colby was subjected to an unmeritorious and burdensome legal action. While Attorney Condon may have believed he was correct to pursue his former client for fees reportedly owed to him, he did not properly document that debt or properly pursue it years later.

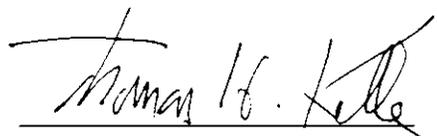
Accordingly, the Panel finds Attorney Condon violated M. R. Prof. Conduct 1.5(a)(b) [Fees]; 3.1 [Meritorious Claims and Contentions]; 3.3 [Candor Toward the Tribunal]; and 4.4 [Respect for Rights of Third Persons]; and 8.4(c)(d) [misrepresentation; conduct prejudicial to the administration of justice]. The Panel notes that Attorney Condon has taken responsibility for his transgressions. At the disciplinary hearing, Attorney Condon acknowledged the impropriety of his actions and expressed remorse to Ms. Colby and to the Panel for his violations of the Maine Rules of Professional Conduct.

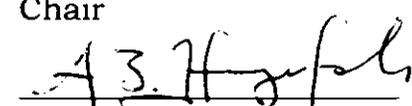
It is well established that the purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who have demonstrated that they are unable to properly discharge their professional duties. See M. Bar. R. 2(a). In this instance, since the evidence supports a finding and Attorney Condon agrees that he in fact did violate the Maine Rules of Professional Conduct, the Panel finds that a public reprimand serves those purposes. Within the issuance of this decision is the Panel's

consideration of Attorney Condon's disciplinary history, including his earlier suspension(s) from practice in 2007 as well as a public reprimand in 2008. The Panel notes that generally, when a lawyer has been sanctioned for the same or similar misconduct and engages in further acts of misconduct that cause injury to a client, the public, the legal system, or the profession, the appropriate sanction is suspension. *ABA Standards for Imposing Lawyer Sanction* §8.2 (1986). See *Board of Overseers v. Bruce S. Billings*, BAR-90-16 (1991). In this case however, the Panel has determined that Attorney Condon did not engage in any misconduct that was similar to his prior reprimand or suspension matters. Furthermore, in mitigation, Attorney Condon has accepted responsibility for his misconduct in this current matter.

Therefore, the Panel accepts the agreement of the parties, including Attorney Condon'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 Brian D. Condon which is now hereby issued and imposed upon him pursuant to M. Bar R. 7.1(e)(3)(C), (4).

Date: April 10, 2015

  
Thomas H. Kelley, Esq.  
Chair

  
A.J. Hungerford, Esq.

  
John C. Alfano, (Public Member)