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Board of Overseers of the Bar

Grievance Commission

File No. 14-316

BOARD OF OVERSEERS OF THE BAR )  
 Petitioner )  
 )  
 v. )  
 )  
 E. ANNE CARTON, ESQ. )  
 of Brunswick, ME )  
 Me. Bar #2672 )  
 Respondent )

**Report of Findings**  
**Grievance Commission Panel B**  
**M. Bar R. 7.1(e)(2)(3)**

**Introduction**

On June 15, 2015, pursuant to due notice, Panel B of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1(e)(2), concerning the Respondent, E. Anne Carton, Esq., of Brunswick, Maine. Panel members included Thomas H. Kelley, Esq., Chair; Vendean Vafiades, Esq.; and Kenneth Roberts, Public Member. The Board of Overseers of the Bar was represented by Deputy Bar Counsel Aria Eee. Respondent was present and was represented by Peter J. DeTroy, III, Esq.

This proceeding was initiated by the filing of a Disciplinary Petition by the Board of Overseers of the Bar, dated February 19, 2015. The Petitioner filed a response through counsel dated March 24, 2015. Those documents are part of the Board's official record.

The Board submitted Exhibits 1-37 in advance of the hearing, and those exhibits were accepted by the panel at the hearing without objection. The Board also submitted Exhibit 38 at the hearing, which was admitted over the objection of the Respondent for whatever evidentiary value it may have. The Respondent submitted Exhibits 1-54 in advance of the hearing, including supplements A to Exhibits 1, 2, 3, 13, 15, 26, 27, 38, and supplements A and B to Ex. 49, and those exhibits were admitted without objection. The Respondent also offered supplements A and B to Ex. 11 at the hearing, and those exhibits were admitted without objection.

### **Procedural and Factual History**

The events that lead to this proceeding began in the summer of 2011 when the Complainant, Darlene Grover, sought the assistance of Attorney Carton in managing the financial affairs of her mother, Lillian Robinson, after Ms. Robinson suffered a traumatic brain injury. Some background history is necessary, however, to the understanding of this dispute.

In 2005 Lillian Robinson retained the services of Attorney Hylie West of Damariscotta, Maine to update her estate plan. In October 2005, Ms. Robinson executed several documents that had been prepared for her by Attorney West, including a Power of Attorney from Lillian Robinson to Attorney Anne Carton, a reserve Power of Attorney to Attorney Stoddard Smith, a Promissory Note and Personal Guaranty from Darlene Grover to Lillian Robinson, a Living Will, an

Authorization for Use and Disclosure of Protected Health Information, Nomination of Guardian and Conservator, Last Will and Testament, Third Amendment to Revocable Trust Agreement, a Living Trust, and a Letter of Instruction regarding the use of the Power of Attorney. In addition to granting Attorney Carton a Power of Attorney, Ms. Robinson nominated Ms. Carton as conservator in the event it was necessary to ask the Probate Court to appoint a conservator. The Third Amendment to the Revocable Trust Agreement also designated Anne Carton to serve as trustee of the Lillian Robinson Living Trust in the event of Ms. Robinson's disability or death. Attorney West noted that the Power of Attorney was an essential element of the estate plan and often enabled families to avoid the expense and complications of a guardianship or conservatorship proceeding. (Testimony of Hylie West; Board. Ex. 3, 3A and B; 4, 4A and 4B; Respondent's Ex.33-36).

Both Darlene Grover and Lillian Robinson had previously employed the legal services of Anne Carton (for a divorce and a real estate transaction respectively) and had been very satisfied with her services, and that is apparently what prompted Ms. Robinson to grant a Power of Attorney to Attorney Carton. Attorney Carton acknowledged at the hearing that Lillian Robinson had stopped by the office in 2005 and asked her if she would be willing to serve as Lillian's Power of Attorney (POA) and that she had agreed. Hylie West sent the original POA and copies of the various other estate documents to Attorney Carton in late October 2005, and she sent acknowledgment of receipt of those documents to Attorney West in early March

2006. (B. Ex.4A and 4B). Lillian Robinson's Letter of Instruction directed Attorney Carton and her backup Stoddard Smith to use the POA in the event of her disability but only after consulting with her physicians.

(B. Ex. 3 and 3A).<sup>1</sup>

In late June 2011, Lillian Robinson suffered a traumatic brain injury, and within a few days of that event Darlene Grover sought Attorney Carton's legal assistance, particularly in dealing with her mother's finances. The exact date of the initial contact is not clear but must have occurred before July 7, 2011, when guardian/conservator documents were sent by Attorney Carton to Stan Grover. (B Ex.5). At the time of initial contact, Attorney Carton testified that she did not remember that Lillian Robinson had granted her a Power of Attorney to be used in the event of Ms. Robinson's incapacity. Thus, she advised Ms. Grover to seek an emergency guardianship and conservatorship of her mother, and Ms. Grover authorized Attorney Carton to represent her for that purpose. (Testimony of Darlene Grover and testimony of Anne Carton).

Attorney Carton drafted the necessary documents, including notices to Darlene Grover's brothers, Stanley Grover and Terry Grover. A letter of July 7, 2011, to Stanley Grover stated that the probate documents would be filed the following week, but that the filing was delayed at the request of Darlene Grover, who was apparently having reservations about proceeding. (B. Ex 6). By the end of July 2011, Ms. Grover authorized Attorney Carton to proceed, and on

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<sup>1</sup> Attorney Carton's acknowledgment of receipt referred to the Letter of Instruction as "unsigned," but the copy of the Letter of Instruction submitted by the Board was signed.

August 1, 2011, Ms. Carton sent the Joined Petitions for Appointment of Guardian and Conservator along with related documents to the Cumberland County Probate Court. Those documents included a certification by a physician dated July 21, 2011, that Lillian Robinson was incapacitated. On August 16, 2011 Probate Judge Mazziotti issued an ex parte order appointing Darlene Grover Temporary Guardian and Temporary Conservator of Lillian Robinson for a period of three months. (B. Ex. 5-10; R. Ex. 1-8).

At the time of her accident, Lillian Robinson was 85 years old and Darlene Grover lived with her mother and provided her with care and assistance. Although Darlene and her brother Stanley had very poor relations with one another, Stanley expressed satisfaction with Darlene's care of her mother and initially expressed the view that she would make an appropriate guardian for their mother. On the other hand, Stanley Grover repeatedly expressed doubts about Darlene's ability to manage Lillian's financial affairs. Further, he later expressed opposition to the appointment of Darlene as guardian, through his attorney, because he thought Darlene might restrict his contact with his mother. (R. Ex. 2, 9, and 16). Although there is no direct statement from Terry Grover in the record, a mediation report from the fall of 2011 indicates that Terry was satisfied with Darlene's care of their mother but wanted to ensure that he had access to and information about the mother. (R. Ex. 17).

Although Darlene Grover had attended at least one of the 2005 meetings with Attorney Hylie West when he was drafting estate papers for Lillian Robinson, when she first contacted Anne Carton in late June or early July 2011, she did not remember that her mother had given Anne Carton a Power of Attorney. Ms. Grover insisted, however, that she recalled that fact within a short time of the initial contact and had asked Anne Carton about the POA by early to mid-July 2011, i.e. before the probate action was filed. Ms. Grover testified further that Attorney Carton at first stated that she did not have a POA and that it took some persuasion over a few days before Attorney Carton agreed to search her records. Attorney Carton, on the other hand, testified that Darlene Grover did not raise the issue of the POA with her until mid-August 2011 and that she did not realize until August 17 or 18, after her assistant had searched files in storage, that she had a Power of Attorney for Lillian Robinson. (Testimony of Darlene Grover and testimony of Anne Carton).

The Panel accepts as credible Darlene Grover's testimony that Anne Carton was dubious about having a POA when the issue was first raised and that Ms. Grover had to persuade her to search for that document. The panel does not find Ms. Grover's recollection of the timing of this discussion to be reliable, however. Thus the panel concludes that the discussion(s) about the POA most likely occurred in mid-August 2011.

When asked why she had not realized that she had a POA for Lillian Robinson when Ms. Grover first contacted her, Attorney Carton stated that she

kept a record of POAs in her file but because another attorney had prepared the estate documents, Lillian Robinson was not in her POA client database. Attorney Carton also stated that she relied completely on her legal assistant to let her know whether a prospective new client or new client matter raised a conflict issue. Ms. Carton also stated that she had served as a trustee for a few individuals and she did not know how many POAs were in her files. (Testimony of Anne Carton).

Attorney Carton testified that upon learning that she had a Durable Power of Attorney for Lillian Robinson, she had a discussion with Darlene Grover about the POA and the other documents and in particular about the authority of a conservator compared to that of an agent under a POA. That meeting apparently occurred on August 23, 2011. Attorney Carton did not draft a file memorandum about that discussion. Further, Attorney Carton took no immediate steps to advise the Probate Court or Darlene Grover's brothers in writing of her discovery of the POA or to raise a concern about a possible conflict of interest. (Testimony of Anne Carton; B. Ex. 2).

The conflict of interest inquiry regarding Attorney Carton's role as attorney for Darleen Grover and her authority as agent for Lillian Robinson apparently came up at a conference in the Probate Court on September 21, 2011. It is not clear who raised the issue or how it was presented because there was no written record of the proceeding and apparently no formal order of the Court. Darlene Grover testified that her brother Terry raised the issue.

Attorney Carton has never specifically acknowledged any conflict and cited as her reason for withdrawing as Darlene Grover's attorney the fact that Darlene and her brothers were not in agreement about who should manage their mother's finances.<sup>2</sup> In any event, Attorney Carton stated that she and Judge Mazziotti agreed that "I should cease representing Darlene, but continue to be involved on behalf of her mother." (B. Ex. 2 at 2; Response of Anne Carton to Disciplinary Petition; testimony of Darlene Grover; testimony of Anne Carton).

Shortly after the September 21<sup>st</sup> conference, Attorney Carton referred Darlene Grover to Attorney Jennifer Davis of Topsham, and Jennifer Davis advised Anne Carton by letter of October 2, 2011, that she was representing Ms. Grover and that she understood that her fees would be paid by Ms. Carton in her capacity as agent by POA for Lillian Robinson. (B. Ex. 11).

During the fall of 2011, there was considerable conflict between Darlene Grover and her brothers. The primary causes of the discord involved Terry and Stanley Grover's desire to have assurances of access to their mother if Darlene were to continue as guardian and the brothers' concern that Darlene was not the right person to serve as conservator. Efforts to mediate these differences continued through the fall of 2011 and into the winter of 2012, although it appears that no final formal agreement was reached by the siblings. (R. Ex. 11-26A).

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<sup>2</sup> In her Motion to Withdraw as Counsel for Darlene Grover, dated November 21, 2011, Attorney Carton was perhaps alluding to a conflict in citing Maine Rule of Professional Conduct 1.16 (a) (1) (representation will result in a violation of the rules of professional conduct or other laws) along with 1.16(b) (7) (other good cause), but she did not provide any specific details about those grounds.

On November 16, 2011, the Probate Court extended the appointment of Darlene Grover as temporary guardian and conservator without objection until December 21, 2011, at which time a conference with the Court was scheduled. Attorney Carton moved to withdraw as counsel for Darlene Grover on November 21, 2011. On December 21, 2011, Attorney Davis entered her appearance for Darlene Grover, and Judge Mazziotti granted Anne Carton's Motion to Withdraw. After the conference on December 21<sup>st</sup> the Judge issued a scheduling order and an interim order that: 1) continued the appointment of Darlene Grover as temporary guardian for Lillian Robinson with provisions for Attorney Davis to facilitate family members' contact with Ms. Robinson; 2) discontinued Darlene Grover's appointment as temporary conservator; 3) directed Attorney Carton to "continue to manage the finances of Lillian under the authority of a General Durable Power of Attorney given by Lillian to Ms. Carton for that purpose"; and 4) directed Attorney Carton to "provide all parties with any financial information reasonably requested." (R. Ex. 22; also 18 and 21). In September 2012, the Probate Court found that Lillian Robinson was incapacitated and appointed Darlene Grover as permanent guardian. (R. Ex. 29). In December 2012, Judge Mazziotti dismissed the petition for a conservator, finding that it was unnecessary because Lillian Robinson's finances were adequately protected by Anne Carton in her capacity as attorney in fact and trustee. (R. Ex. 39).

Attorney Carton served as agent or attorney in fact for Lillian Robinson pursuant to the POA from the fall of 2011 until September 2013, and during

that time she also served as Trustee of the Lillian Robinson Living Trust. During that two-year period there was considerable friction between Darlene Grover and Anne Carton over the management of Lillian Robinson's finances. In September 2013, Anne Carton resigned as agent and trustee for Lillian Robinson and turned those duties over to Attorney Stoddard Smith, who had been designated by Lillian Robinson as the person to take over those roles in the event Ms. Carton was unable or unwilling to continue. (*See generally* R. 27-49B).

**Complaint of Darlene Grover and Disciplinary Petition of the Board of Overseers of the Bar**

On July 16, 2014, the Board of Overseers of the Bar received a complaint from Darlene Grover, dated July 12, 2014, about the conduct of Attorney Anne Carton in the course of representing Ms. Grover and assisting Lillian Robinson. Ms. Grover faulted Attorney Carton for: 1) not promptly recognizing that she had a Power of Attorney for Ms. Robinson and thus causing unnecessary expenses for a conservatorship and contributing to friction among the Grover siblings; 2) failing to recognize she had a conflict of interest; and 3) failing to manage Lillian Robinson's financial affairs properly while serving as Trustee and as attorney in fact for Lillian. Attorney Carton responded with a detailed explanation and defense of her conduct. (B. Ex. 1 and 2).

After investigating Ms. Grover's complaint, Bar Counsel determined there were sufficient grounds to believe that Attorney Carton had violated provisions

of the Maine Rules of Professional Conduct and thus filed a Disciplinary Petition on February 19, 2015. The Petition alleged the following violations: Rules 1.3 [diligence] and 1.15 [safekeeping of client's property] for failing to recognize promptly that Attorney Carton had a Power of Attorney for Lillian Robinson; Rules 1.1 [competence], 1.7 [conflicts of interest – current clients], and 1.9 [duties to former clients] for filing an apparently unnecessary conservatorship, taking action adverse to Lillian Robinson without disclosing the potential conflict or obtaining consent; Rules 1.1 [competence], 1.5(a) [excessive fees], and 8.4(d) [conduct prejudicial to the administration of justice] by causing unnecessary legal expenses and contributing to discord among Ms. Robinson's adult children; Rule 1.7 [conflict of interest] and 1.16 [termination of representation] by failing to withdraw promptly as attorney for Darlene Grover after realizing she had a POA; Rules 1.3 [diligence], 1.4 [communication], and 8.4(d) [conduct prejudicial to the administration of justice] for not responding promptly to requests for payments of support for Lillian Robinson in her capacity as attorney in fact and trustee; and Rules 1.5(a) [fees]; 1.7(a)(2) [personal conflict], 1.15 [safekeeping property], and 8.4(a) and (d) [misconduct and conduct prejudicial to the administration of justice].

Attorney Carton, through counsel, offered several key points in response to the Petition and in defense of her conduct, including: she had not discovered the POA for Lillian Robinson until after she had filed the petition to have Darlene Grover appointed guardian and conservator and after the Probate Court had issued a temporary appointment, and thus the Board was incorrect

in alleging she knew of the POA when she filed the petition; she had no fiduciary duty to Lillian Robinson until after she had knowledge of her disability; she had no conflict of interest because she was not aware there was any friction among family members at the time she filed the guardian and conservator petition; the existence of the POA did not render the probate petition unnecessary; conversations with Ms. Robinson's health care providers and Darlene Grover lead her to believe that Lillian wanted her daughter to be appointed guardian; the friction among family members pre-dated her representation of Darlene Grover; and she handled Ms. Robinson's finances appropriately and had legitimate concerns about Darlene Grover's use of her mother's funds.

### **Findings and Conclusions**

At the conclusion of the hearing in this matter Deputy Bar Counsel Eee stated that the Board did not intend to press its claims pertaining to Attorney Carton's handling of her financial management duties as trustee and attorney in fact for Lillian Robinson and thus was withdrawing the claims of violations of the Rules of Professional Conduct as they pertained to those financial management duties. The Panel concurs with this decision. While there was friction and disagreement between Darlene Grover and Anne Carton about the appropriate handling of Lillian Robinson's funds, there was no evidence of misconduct on Attorney Carton's part. Although Ms. Grover provided numerous bank statements, Ms. Carton repeatedly requested that Darlene

Grover prepare a budget setting forth regular expenses, which appears to have been a very prudent request, and Ms. Grover's failure to do so contributed substantially to the tension between the two.

The Panel has two areas of concern about Attorney Carton's conduct that raise questions under the Rules of Professional Conduct. One is her failure to determine that she held a Power of Attorney for Lillian Robinson when Darlene Grover contacted her in late June or early July of 2011 and sought assistance in taking care of Ms. Robinson's finances. The other is whether Attorney Carton, upon realizing that she did hold a POA for Ms. Robinson, took sufficiently prompt steps to identify the conflict issues, to notify the appropriate parties of those issues, and to withdraw promptly from representation of Ms. Grover.

*Failure to Identify and Exercise Her Fiduciary Obligation to Lillian Robinson*

Lillian Robinson had a Durable Power of Attorney and other estate documents prepared by Hylie West in anticipation of the type of situation that arose in late June 2011, when she became incapacitated and unable to manage her own financial affairs. If Attorney Carton had determined that she held a POA for Ms. Robinson when Darlene Grover contacted her after her mother's accident, she could have used her authority under the POA to pay bills and manage bank accounts and otherwise deal with the financial issues that prompted Darlene to seek her assistance. Also, she would have had a

copy of Lillian Robinson's nomination of Darlene Grover as her guardian and herself as conservator as necessitated by the circumstances (R. Ex.33). There would have been no immediate need to rush into Probate Court with a guardian and conservator petition. As Hylie West testified, an essential purpose of the POA and the other estate documents is to avoid the complications and expense of a probate proceeding when the client's intentions are clearly stated.

The Panel disagrees with Attorney Carton's assertion that a petition for appointment of a guardian and conservator would have been necessary in any event. Darlene Grover was living with Lillian Robinson and providing her care and assistance, and Darlene's brothers agreed that was an appropriate placement for their mother. The POA gave Attorney Carton the authority not only to manage Ms. Robinson's financial affairs but also to arrange for medical care. The POA gave Ms. Carton broad authority to act on Lillian Robinson's behalf, making it unlikely that a conservator was necessary. Certainly that was the conclusion of Probate Judge Mazziotti, who discontinued the temporary conservator appointment in December 2011, and directed Ms. Carton to use her POA to manage Ms. Robinson's financial affairs. And in December 2012, the Judge dismissed the petition for a conservator as unnecessary. The Panel also notes that if Attorney Carton had the POA and accompanying estate documents available to her when Ms. Grover first contacted her in 2011, she would have discovered that Lillian Robinson wanted her daughter to serve as guardian if necessary but had nominated Attorney

Carton, not Ms. Grover, to be conservator if such an appointment became necessary.

Even if the Panel assumes that a guardianship was necessary in the summer of 2011, it is likely the probate process would have been smoother and less contentious if a petition for appointment of Darlene Grover as conservator had not been joined with the guardianship petition. Darlene's brothers were particularly concerned about her ability to manage their mother's finances. Although friction also developed between Darlene and the brothers over their access to their mother, that topic might have been less contentious if it had not been intertwined with financial management considerations.

Attorney Carton notes that, after her injury, Lillian Robinson expressed to Attorney Carton and others, including health care providers, that she wanted her daughter to manage her care and her financial affairs, and Attorney Carton cites that in support of her decision to seek appointment of Ms. Grover as guardian and conservator. The Panel notes, however, that Ms. Robinson's medical providers had determined that she was incapacitated at the time, and thus it is difficult to evaluate such statements. By contrast, Ms. Robinson had a comprehensive estate plan prepared for her in 2005 at a time when she was competent, and those documents are the most appropriate source of guidance as to her wishes.

Unfortunately Lillian Robinson's carefully developed estate plan was frustrated by Attorney Carton's failure to identify that she held a POA for Ms.

Robinson, and the Panel concludes that this failure in all likelihood caused unnecessary legal expenses for Ms. Robinson's estate and aggravated pre-existing tensions among family members. Even Attorney Carton testified that the legal and financial uncertainties in mid-July, 2011, were "very stressful" for the family. Her summary explanation of her position is that she safeguarded the files by keeping them in storage and she was not under any obligation to act on Lillian Robinson's behalf until asked to use the POA. The Panel concludes that it is impossible to safeguard documents, even if stored, if you do not have a system in place to identify that those documents even exist and the lack of knowledge of their existence, especially when you have acknowledged in writing that they have been entrusted to you, is not a defense for failure of your obligation to protect the interests of your client.

At least three Rules of Professional Conduct are pertinent. Rule 1.1 requires an attorney to act competently on behalf of clients, and competent representation encompasses having office systems and practices that will flag relevant documents in a file or representation in prior matters that may indicate a potential conflict at the outset of a request for legal assistance. This includes providing adequate supervision to a legal assistant who is assisting an attorney in identifying conflicts.

Rule 1.7, governing conflicts with current clients, also applies. Although Anne Carton had not been Ms. Robinson's attorney for estate planning purposes, Lillian Robinson had designated Attorney Carton as her fiduciary for

estate management purposes after inquiring in person if she would do so. While it is not necessary for an attorney in fact to be an attorney at law, it is likely that Ms. Robinson selected Attorney Carton at least in part for her presumed legal expertise. Attorneys are often called upon to act as fiduciaries, e.g. as trustees, agents, and directors of corporations, and it is imperative that their conflict management systems identify client and matter conflicts with their fiduciary responsibilities. See Rule 1.7(a) (2), which cites an attorney's duty to "a third person," typically a fiduciary obligation. Finally, Rule 1.15 requires attorneys to safeguard the property of clients or third persons that is placed in their possession. While this rule most often involves financial matters, it also applies to documents placed with an attorney for safekeeping.

The Panel concludes, therefore, that Attorney Carton failed to meet her obligations under Maine Rules of Professional Conduct 1.1, 1.7(a) (2), and 1.15 by failing to have sufficient office systems in place to identify her fiduciary obligation to Lillian Robinson when she was contacted by Darlene Grover in late June/early July 2011.

#### *Handling of the Conflict of Interest Once Discovered*

If Attorney Carton had determined she held a POA for Lillian Robinson when she was first contacted by Darlene Grover, presumably she would have also realized that her fiduciary obligation to Ms. Robinson would present a conflict of interest if she were to represent Ms. Grover in a petition for appointment of a guardian and conservator. Further, Attorney Carton

presumably would have informed Darlene Grover that she (Carton) could manage Lillian Robinson's finances with the POA and that Darlene Grover should engage separate counsel if she wanted to pursue a probate action. Darlene Grover acknowledges that neither she nor Attorney Carton initially knew that Attorney Carton held a POA. Ms. Grover testified that she told Attorney Carton about the POA in July not long after they first spoke, i.e. before the probate petition had been filed. As the Panel noted above, however, we conclude that Attorney Carton's recollection of when she first realized she had a POA, i.e. around August 17 or 18, 2011, is more reliable than Ms. Grover's recollection.

The Panel believes that Attorney Carton had an obligation, once she learned of the POA, to take prompt steps to notify the Court and Darlene Grover of the conflict and to withdraw from representation of Darlene Grover. The obligation to act promptly can be found in Rule 1.3, which requires a lawyer to act "with reasonable diligence and promptness," and in Rule 1.4(a)(1), which requires the attorney to promptly inform a client of a circumstance that requires the client's informed consent. An obligation to act promptly can also be inferred from Rule 1.7 and the other conflicts rules. Attorney Carton acted in a dilatory manner, however, after learning of the POA. There is no evidence that she promptly explained the problem to Darlene Grover and moved for withdrawal. There is no evidence that she informed the Probate Court of the conflict prior to the September 21, 2011, judicial

conference. Further, she did not move to formally withdraw as Darlene Grover's attorney until November 21, 2011.

At the conclusion of the hearing Attorney Carton, through counsel, argued (or at least seemed to argue) that there was no conflict at the time she realized she had the POA, because the petition for guardian and conservator had already been filed and Darlene Grover had been appointed temporary guardian and conservator. The Panel finds this argument unconvincing. Counsel for Attorney Carton suggested to Attorney Hylie West that the Probate Judge's appointment of a conservator would "trump" the POA, but Attorney West replied that the instructions of the principal, i.e. Ms. Robinson, would trump a temporary court order. The Maine probate code, 18-A M.R.S §5-908, provides that the appointment of a conservator does not terminate or limit a POA unless the court so orders. Ultimately Judge Mazziotti agreed that the POA "trumped" the temporary order.

Attorney Carton also argued that her fiduciary obligation did not arise until she chose to exercise her authority under the POA. The Panel also disagrees with this contention. A Maine durable power of attorney is effective when executed by the principal. Lillian Robinson did not want the POA used until she was incapacitated, but she had been medically determined to be incapacitated when Attorney Carton realized she had the POA, and the exercise of that power was appropriate and necessary at that time.

Attorney Carton and Judge Mazziotti discussed the conflicts issue at the September 21 probate conference, and Attorney Carton agreed to withdraw as Ms. Grover's attorney. Once Attorney Carton withdrew as Darlene Grover's attorney, her continued participation in the probate proceedings as Ms. Robinson's fiduciary was potentially adverse to the interests of her former client. There is no specific evidence that Attorney Carton obtained the informed consent of Darlene Grover to continue participating in the probate matter, but the panel is willing to assume that Judge Mazziotti discussed these issues with the parties on September 21<sup>st</sup> and that Ms. Grover consented to Attorney Carton's continued involvement in the matter.

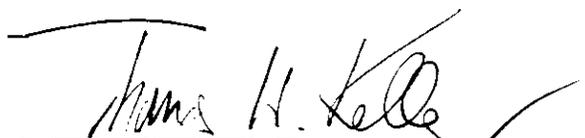
The Panel concludes that Attorney Carton failed to recognize the conflict of interest and take steps to deal with the conflict with the promptness that the Rules of Professional Conduct contemplate. The Panel determines there was no evidence presented that Attorney Carton's conduct caused direct financial harm, compromised the health and safety of her client, or prejudiced the parties.

The Panel is most concerned about the inadequacy of Attorney Carton's office management and her continuing failure to recognize the need to improve her client database and conflict checking systems. The problems that arose in this case would in all likelihood have been avoided with better systems in place. The Panel strongly recommends that Attorney Carton consults with

appropriate parties, e.g. other attorneys, information management consultants, and takes steps to improve her office management.

The Panel also notes that Attorney Carton had represented both Darlene Grover and Lillian Robinson in the past and seemed genuinely concerned about both. There is no evidence that Attorney Carton willfully or intentionally disregarded their interests. Although there was some injury to the client, the Panel concludes that the misconduct is minor, that there is little or no injury to the public, the legal system, and the profession, and that there is little likelihood of repetition by the Respondent. The Panel therefore concludes that the appropriate sanction in this matter is a dismissal with warning pursuant to Maine Bar Rule 7.1(e)(3)(B).

Date: July 1, 2015

  
Thomas H. Kelley, Esq., Panel Chair

  
Vendean V. Vafiades, Esq.

  
Kenneth L. Roberts, Public Member