

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR-15-11 & 15-14

BOARD OF OVERSEERS OF THE BAR
Plaintiff

v.

ORDER & DECISION
M. Bar R. 13(g)(4)

DALE L. LAVI, ESQ. of
So. Thomaston, ME, ME
Me. Bar #008848
Defendant

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APR 27 2016

BOARD OF OVERSEERS OF THE BAR

This matter arises from two grievance complaints filed by Jill and Kenneth Artkop and by Lynne Depasquale against Attorney Dale L. Lavi of South Thomaston, Maine. It is now before the Court as a result of disciplinary Informations filed by the Board of Overseers of the Bar pursuant to M. Bar R. 13(g)(1) on September 25 and November 9, 2015, respectively.

A hearing was conducted at the Cumberland County Courthouse in Portland, Maine on April 1, 2016. The Board of Overseers was represented by Bar Counsel J. Scott Davis. Attorney Lavi was present and represented by Attorney Justin W. Andrus. The parties stipulated to the facts that led to the grievance filings and to a finding that those facts constitute Attorney Lavi's violation of many specific portions of the Maine Rules of Professional

Conduct. The parties also agreed to the form and terms of a proposed sanction to be imposed by the Court based upon Attorney Lavi's admission of those Rules violations.

Before that hearing, all three complainants had been notified by Bar Counsel of the parties' proposed stipulation and sanction. They were all in attendance at that hearing. Jill Artkop and Lynne Depasquale explained how Attorney Lavi's misconduct had affected them, and also explained their positions concerning the proposed sanction.

Findings of Fact & Rules Violations

On or about February 23, 2015, Kenneth R. Artkop filed a grievance complaint against Attorney Lavi. In that filing, Artkop complained that Attorney Lavi had seriously neglected his and his wife's (Jill) bankruptcy matter.

Artkop alleged that Attorney Lavi was disorganized, failed to return phone calls, brought the wrong file to a discussion meeting, and was repetitive at the few meetings he did attend. Artkop also asserted that Attorney Lavi had been unreachable by phone and failed to return their file. The Artkops had paid Attorney Lavi \$1,335, inclusive of a filing fee, to handle their bankruptcy matter.

On February 24, 2015, Bar Counsel mailed a copy of the Artkop grievance filing to Attorney Lavi, requesting and directing that he submit a written response

by March 17, 2015. Despite telephonic, electronic, and written reminders from the office of Bar Counsel, Attorney Lavi never responded at any time to the Artkop complaint. His failure to respond is a violation of M.R. Prof. Conduct 8.1(b).

In addition, on April 28, 2015, Jill Artkop spoke by telephone with Attorney Lavi. During their conversation, Attorney Lavi claimed that he had earlier mailed the Artkops their file materials, but was unable to provide any confirmatory information of when or how he had done so. Jill Artkop understood that Attorney Lavi also promised that he would again mail those documents to her on that date, April 28, 2015. Attorney Lavi did not do so. The Artkops have never received any of their documents from Attorney Lavi.

The Artkops hired replacement counsel to handle their bankruptcy, incurring additional legal and filing fees. The Artkops' new attorney wrote and telephoned Attorney Lavi with requests and messages, but Attorney Lavi also failed to respond to him.

On or about May 19, 2015, Bar Counsel left a voicemail and sent an email to Attorney Lavi requesting that he contact Bar Counsel concerning the return of the Artkops' file. Attorney Lavi never replied to Bar Counsel's call, emails, or letters, in violation of M.R. Prof. Conduct 8.1(b).

As a result of the above misconduct, Attorney Lavi agrees and admits that he engaged in conduct that violated at least the following portions of the M.R. Prof. Conduct, specifically Rules 1.1; 1.3; 1.4(a); 1.5(a); 1.15(b)(2)(iv); 1.16(d); 8.1(b); and 8.4(a)(c)(d).

On July 23, 2015, with due notice, the Grievance Commission conducted a public hearing pursuant to Bar Rule 13(e)(7) concerning the Board's disciplinary petition presenting the Artkops' complaint against Attorney Lavi. Based upon Attorney Lavi's failure to file any answer to that petition, he was defaulted, and the Board's factual allegations and conduct rule violations were admitted, pursuant to M. Bar R. 20(a).

At the hearing, Attorney Lavi and Kenneth Artkop addressed comments to the Panel. Attorney Lavi admitted that when he had received the Board's "really thick . . . manila envelope," he "didn't (ever) look at it." In addition, he said that he also purposely never opened or "looked" at the Board's follow-up mailing, and he further said that he had consciously not answered the Board's disciplinary petition in this matter.

In its findings and order of August 28, 2015, the Hearing Panel concluded that Attorney Lavi intentionally, knowingly, and negligently violated the following provisions of the Maine Rules of Professional Conduct:

Rule 1.1, Competence: he failed to provide the Artkops with competent representation in their effort to declare bankruptcy;

Rule 1.3, Diligence: after minimal work, he ignored the Artkops' case;

Rule 1.4, Communication: he ignored the Artkops' repeated attempts to communicate with him;

Rule 1.5, Fees: he collected an unreasonable fee from the Artkops;

Rule 1.15, Safekeeping property, Client Trust Accounts, Interest of Trust Accounts: he failed to return the Artkops' bankruptcy file;

Rule 1.16, Declining or Terminating Representation: he did not formally terminate his representation of the Artkops; he also ignored them;

Rule 8.1, Bar Admission and Disciplinary Matters: he ignored the Board's disciplinary proceedings until the day of the hearing; and,

Rule 8.4 Misconduct: in violating the above Rules of Professional Conduct, he engaged in conduct that is prejudicial to the administration of justice.

On August 20, 2015, Lynne Depasquale filed a grievance complaint with the Board, claiming that Attorney Lavi was neglecting her bankruptcy matter by failing to respond to her repeated inquiries regarding the status of her bankruptcy matter.

Depasquale reported that, in January 2015, she had retained and paid Attorney Lavi \$500.00 to handle her bankruptcy. By an email dated July 20, 2015, Attorney Lavi informed Depasquale that a “. . . meeting with the Trustee is scheduled for August 17 at 11:00 at the Senator Inn in Augusta.” Based on Attorney Lavi's email, Depasquale arranged to be absent from her employment on

August 17, 2015. By text message of August 14, 2015, however, Attorney Lavi notified Depasquale that there would be no meeting with the Trustee on August 17, 2015.

When she checked directly with the Bankruptcy Court, Depasquale learned that as of August 17, 2015, Attorney Lavi had not even filed her bankruptcy petition. Attorney Lavi's email to Depasquale dated July 20, 2015 regarding the meeting with the Trustee scheduled for August 17, 2015 was a misrepresentation by Attorney Lavi in violation of M.R. Prof. Conduct 8.4(c).

Depasquale sent daily emails to Attorney Lavi from August 17 to August 20, 2015 asking for updates or explanations regarding her case, but he ignored her requests. In addition, Depasquale requested that Attorney Lavi provide her with copies of her entire client file, but he failed to do so.

Attorney Lavi did file Depasquale's action with the U. S. Bankruptcy Court on August 22, 2015. Based upon Attorney Lavi's neglectful conduct and failure to communicate with her, however, Depasquale became convinced he was no longer her attorney. As a result, she spent a significant amount of time and energy to prepare to litigate that bankruptcy action herself.

Although Attorney Lavi did appear at Depasquale's bankruptcy hearing on October 5, 2015, he had earlier abandoned Depasquale and her legal matter. He

also deceived her, all in violation of M.R. Prof. Conduct 1.1; 1.3; 1.4(a); 1.5(a); and 8.4(a)(c)(d).

During the investigation of the Depasquale matter, Bar Counsel made written requests to Attorney Lavi on August 26, 2015 and September 24, 2015 to submit a written response to Depasquale's complaint. Attorney Lavi failed to submit any response to Bar Counsel, in violation of M.R. Prof. Conduct 8.1(b).

Based on the facts set forth above, Attorney Lavi, admits that he engaged in violations of the following Maine Rules of Professional Conduct in the Depasquale matter: 1.1; 1.3; 1.4(a); 1.5(a); 1.15(b)(2)(iv); 8.1(b); and 8.4(a)(c)(d).

Sanctions

Attorney Lavi has admitted and agrees that he engaged in the misconduct and violations of the Maine Rules of Professional Conduct as alleged in each disciplinary Information filed by the Board of Overseers of the Bar, as described and set forth above.

Counsel has confirmed that full refunds of the respective attorney fees have been made by Attorney Lavi to the Artkops and to Depasquale.

Pursuant to the parties' submitted proposal as supplemented by the Court, it is now hereby ORDERED as follows:

Attorney Dale L. Lavi is suspended from practicing law in Maine for two years, commencing May 2, 2016. All but thirty days of that suspension is suspended, subject to the following conditions:

1. Before May 31, 2016, Attorney Lavi shall:
 - a) Watch or listen to the recording of the December 7, 2012 "Sole Practitioner CLE" of the Board of Overseers of the Bar and Maine State Bar Association, and shall so certify to monitor MacLean (see Section 4 below) that he has done so, provided that the recording is made available to him by the Board of Overseers of the Bar or the Maine State Bar Association.
 - b) Meet or exceed the roster requirements of the Maine Commission on Indigent Legal Service (MCILS), regardless of whether he may elect to become re-rostered with MCILS;
 - c) Execute a contract with the Maine Assistance Program (MAP), focused on office practice management issues and any other issues as may be directed by MAP, and shall execute appropriate releases allowing MAP's Director to confirm to Bar Counsel that Attorney Lavi is in fact complying with that MAP contract; and
 - d) Have included as an additional requirement in that MAP contract that he shall participate in dialectical behavioral training (DBT) and/or cognitive behavioral training (CBT).
2. On or before June 1, 2016, Attorney Lavi shall join the American Bar Association (ABA) list serve of "solosez;"
3. On or before June 1, 2016, Attorney Lavi shall execute a release(s) allowing Bar Counsel to confirm his attendance and receipt of any counseling services he receives during that two-year suspension period;
4. During that period of his suspended suspension, Attorney Lavi's practice will be overseen and supervised by a monitor, specifically Attorney Christopher K. MacLean of Camden, Maine, subject to the conditions of a Monitoring Order, as approved and incorporated into this Order. In that monitoring

process, Attorney MacLean will also incorporate and use assistance from Attorney Jeremy Pratt, also of Camden, as deemed necessary and appropriate;

5. When he is allowed and authorized to practice law, Attorney Lavi shall engage in a "limited practice" comprising only child protection, criminal, and family matters. And, even within those categories, he shall undertake no financially complicated cases. Upon appropriate motion and resulting order of the Court, Attorney Lavi may expand his practice beyond those three categories, only as may be so ordered on a case-by-case basis.

6. Attorney Lavi shall have monitor Attorney MacLean screen and review each family matter that Attorney Lavi initiates or accepts to undertake, or already has pending as of June 1, 2016;

7. On or before August 1, 2016, Attorney Lavi shall participate in at least six hours of live CLE credit hours concerning office practice management;

8. Attorney Lavi shall attend a live iteration of any similar sole practitioner or related practice management CLE that is presented by the Board of Overseers and/or MSBA through May 2, 2018; and

9. At least every four weeks, commencing during the week of June 6, 2016, Attorney Lavi shall contact Bar Counsel Davis directly by telephone to confirm the status of any or all of the above requirements and to answer any other related questions concerning his practice management and related issues, as directed by Bar Counsel.

So ORDERED.

Dated: April 25, 2016


 Ellen A. Gorman, Associate Justice
 Maine Supreme Judicial Court

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 Maine Supreme Judicial Court