

STATE OF MAINE

MAINE SUPREME JUDICIAL COURT

Docket No. BA031211

RECEIVED

FEB - 3 2017

BOARD OF OVERSEERS OF THE BAR)
 Plaintiff)
)
 v.)
)
 AARON FETHKE, Esq.)
 of Searsport, ME)
 Me. Bar #009642)
 Defendant)

BOARD OF OVERSEERS OF THE BAR

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

This disciplinary matter concerns a grievance Complaint filed by John D. Pelletier, Esq. against Attorney Aaron Fethke of Searsport, Maine. It is now before the Court by agreement as a result of an Information filed by the Board of Overseers of the Bar on July 7, 2016 pursuant to M. Bar R. 13(g)(1).

A hearing was conducted at the Cumberland County Superior Court in Portland, Maine on January 27, 2017. At the hearing, the Board of Overseers was represented by Assistant Bar Counsel Alan P. Kelley. Attorney Fethke was present and represented by Attorney James M. Bowie, Esq. The parties stipulated to the following facts that led to the grievance filings and to a finding that those facts constitute Attorney Fethke's violation of specific portions of the Maine Rules of Professional Conduct. The parties also agreed to the form and parameters of the sanction to be imposed by the Court based upon Fethke's admitted violations of Rule 8.4(a)(c)(d) of the Maine Rules of Professional Conduct. Prior to that hearing, Complainant John D. Pelletier, Esq. was notified by Bar Counsel of the parties' proposed stipulation and sanction. Attorney Pelletier was present for the hearing, and both Attorney Pelletier and Attorney Fethke testified before the court.

5

1. Findings of Fact

1. Plaintiff is the Board of Overseers of the Bar (the Board).
2. Defendant Aaron Fethke, Esq. (Attorney Fethke) of Searsport, County of Waldo, Maine is and was at all times relevant hereto, an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules and the Maine Rules of Professional Conduct.
3. Attorney Fethke was admitted to the Maine Bar in 1994 and since that time has engaged in private practice in Waldoboro, Maine.
4. On July 10, 2015, John D. Pelletier, Esq. Executive Director of the Maine Commission On Indigent Legal Services (MCILS) filed a grievance complaint against Attorney Fethke. The complaint followed Attorney Fethke's suspension from the MCILS Roster of Eligible Attorneys for receiving new assignments due to "billing misconduct." MCILS allowed Attorney Fethke to complete his existing cases, and assigned additional cases involving existing clients to him. Although Attorney Fethke's period of suspension has run, he has not reapplied for appointment to the MCILS Roster.
5. In that complaint, Attorney Pelletier alleged that Attorney Fethke had been appointed by MCILS to represent criminal defendants and parents in child protective proceedings in numerous cases since MCILS began operations on July 1, 2010 until he was suspended from the roster in 2015.
6. Attorney Pelletier alleged that during that time period Attorney Fethke had submitted payment vouchers to MCILS that did not accurately reflect the dates on which he performed the work detailed in the vouchers; that he entered time into the billing system in advance for work which had not yet been performed by him; and that his billings generally reflected disregard of his obligation to accurately document his

work and a cavalier, attitude about the need to accurately respond to MCILS inquiries about that work.

- 7 In response to Attorney Pelletier's complaint Attorney Fethke admitted that his "timekeeping and billing practices were sloppy," and that he "did not appreciate the need to consistently and accurately reflect the work actually being done in terms of dates and time of billing." Attorney Fethke recognized that his practices needed to "change and improve," but denied that his billing errors were intentional.
8. On December 17, 2015, a panel of the Grievance Commission reviewed Attorney Pelletier's complaint against Attorney Fethke in this matter. Based upon that review, that panel found probable cause to believe that Attorney Fethke had engaged in misconduct subject to sanction under the Maine Bar Rules. Therefore, the Grievance Commission panel authorized Bar Counsel to prepare and present a formal disciplinary petition before a different panel of the Grievance Commission.
9. On April 29, 2016, based upon Attorney Fethke's waiver of Grievance Commission proceedings, the Court ordered that the Board file a disciplinary proceeding directly with the Court pursuant to Maine Bar Rule 13(g)(1).
10. On July 7, 2016, the Board filed a three count Information with the Court alleging violations of the Maine Rules of Professional Conduct by Attorney Fethke.

COUNT I

11. Between July of 2010 and September of 2014 Attorney Fethke engaged in a practice of billing MCILS for work done on assigned cases by aggregating hours that he spent over several days and recording that work as having being done on a single day.

12. On multiple occasions between July of 2010 and September of 2014 Attorney Fethke's billing practices resulted in MCILS being billed for more than 24 billable hours within a single calendar day; however, at the same time, Attorney Fethke's billings would show a number of days where little or no work was billed, even though he had performed services on those dates.
13. Attorney Fethke's billing practice of aggregating time spent on his cases made it impossible for MCILS to determine whether those bills accurately reflected the amount of time that he spent on the cases to which he was assigned.

COUNT II

14. On May 2, 2014, the court appointed Attorney Fethke to the matter of *State of Maine vs. JB*, determining that JB was partially indigent.
15. On that same date, a status conference was set in the matter for May 29, 2014; however JB discharged Attorney Fethke and retained another attorney to represent him prior to that conference being held.
16. Attorney Fethke submitted his final bill to MCILS on-line by computer at 8:05 a.m. on May 27, 2014. His bill included 1.5 billable hours for attending a status conference hearing on that date.
17. MCILS paid Attorney Fethke for the voucher submitted in JB's case, including the 1.5 hours of court time on May 27, 2014.
18. MCILS learned of Attorney Fethke's erroneous entries when JB complained to them that his Maine State income tax refund was being offset to reimburse MCILS for work that Attorney Fethke had billed to MCILS.
19. Although no status conference hearing was actually scheduled or held on May 27th,

- Attorney Fethke states that he was present at court for the May 29th status conference.
20. By estimating the amount of time that he would spend at the future court hearing, and by misstating the date that he actually appeared in court, Attorney Fethke submitted an improper bill to MCILS, and made it impossible for MCILS to determine whether that bill accurately reflected the amount of time that he spent on the assigned case.

COUNT III

21. In addition to his appointments in criminal matters, Attorney Fethke was appointed by MCILS to handle numerous child protective cases.
22. In reviewing Attorney Fethke's billing, MCILS concluded that Attorney Fethke was expending significantly more hours reviewing discovery in child protective cases than other attorneys involved in those same, or similar, cases.
23. MCILS required Attorney Fethke to document the number of pages of discovery that he reviewed in connection with each case when he submitted his bill.
24. On March 26, 2015, MCILS performed an unannounced visit to Attorney Fethke's office to review nine different case files, in order to determine whether the amounts of discovery contained within those files were consistent with Attorney Fethke's statements to MCILS.
25. At the conclusion of that inspection, MCILS determined that the total actual amount of discovery contained within those nine case files was less than one-third of the amount that Attorney Fethke stated was contained within those same case-files in his billing submissions to MCILS.
26. Attorney Fethke subsequently admitted to MCILS that his voucher entries stating the

number of pages of discovery in each case were inaccurate, and that in submitting his bills, he had estimated the number of pages of discovery for each case based upon the amount of time that he spent reviewing that discovery.

27. While Attorney Fethke's billing may have accurately reflected the amount of time that he spent reviewing the discovery for each case, by estimating the number of pages that the discovery contained based upon his time reviewing it, Attorney Fethke misrepresented the amount of discovery contained within each case, and frustrated the original purpose that MCILS had in requiring that he document the number of the pages he reviewed.

GENERAL

28. Attorney Fethke fully acknowledges that as a result of his unorthodox and inappropriate billing practices in relation to MCILS, the resulting bills contained knowing misstatements regarding the dates and times that he performed services for his clients. While he acknowledges that his inaccurate record keeping resulted in material misrepresentations of facts to MCILS, Attorney Fethke believes that his bills nonetheless accurately reflected the actual number of hours that he spent on the specific cases to which he was assigned, and that his misrepresentations did not result in overbilling of MCILS.
29. The complainant and the Board agree that while the evidence does establish that Attorney Fethke's billing practices resulted in material misrepresentations of fact to MCILS, the evidence does not establish that those misrepresentations were the result of deliberate or intentional attempts on the part of Attorney Fethke to overbill MCILS for the services he performed for those clients.

30. The Complainant and the Board agree that there is no evidence that the services for which Attorney Fethke billed were not in fact provided, or that Attorney Fethke's representation of his clients through MCILS was substandard.
31. Attorney Fethke has testified that his attempts to run a high volume practice with minimal staff resulted in his being overwhelmed by attempting to balance the administrative tasks inherent in such a practice with the professional obligations of meeting his clients' legal needs and providing high quality representation. He further testified that the filing of this complaint, and the issues raised within it, have caused him to dramatically re-think his approach to his practice and to re-evaluate his work-life balance. In particular, Attorney Fethke testified that he has revised his entire office operation. He has hired additional staff, arranged for more full time staff coverage, and adjusted his work load such that the administrative requirements inherent in his practice are met.
32. Attorney Fethke further testified that he has consulted with other attorneys in similar practices, reviewed materials available with regard to law office practice, taken practice-related CLE, and worked to recognize office practices and procedures that will streamline his billing and insure its accuracy. Attorney Fethke testified that he sets aside time at the end of each day to make sure that all of his time is recorded. In the event that he is out of town and unable to record his time, he makes entries via computer and then makes sure that those entries are appropriately inputted the following day prior to beginning any further work. Attorney Fethke testified that he has his office staff check on his billing so that he is accountable not only to himself and his billing software, but also to a personal check by his staff. Attorney Fethke clarified that although his staff checked his billing on a daily basis following the

filling of the grievance complaint, that practice is now performed monthly.

33. Mr. Fethke completed all of his pending cases with MCILS, and his billings after this matter arose were accepted and were paid by MCILS. MCILS has not discovered any further difficulties with regard to Mr. Fethke's billing in the completion of his existing cases, or in subsequent appointments by the court as counsel for indigent clients with the permission of MCILS. In those matters, his billings have been reviewed and no further issues have been noted by MCILS.
34. Mr. Fethke expressed his deep remorse and embarrassment as a result of the conduct giving rise to the complaint. He apologized to MCILS and to the Court for the difficulties, confusion and time expended by others as a result of his mistakes.

2. Conclusions Regarding Violation of the Maine Rules of Professional Conduct

The parties agree and the Court so finds that Attorney Fethke's actions were in violation of the Maine Rules of Professional Conduct and the Maine Bar Rules as follows:

- A. Attorney Fethke's repeated billing of MCILS by aggregating his hours for several days of work on a single date without accurately reflecting the actual dates and times that the services were performed was a negligent misrepresentation of the actual number of billable hours that he worked, and therefore was a violation of MRPC 8.4(a), (c) and (d).
- B. Attorney Fethke's billing of MCILS in advance for a hearing in the matter of *State of Maine vs. JB*, docket number BELSC-CR-2014-00061, that was not scheduled or held on the date for which he billed was a negligent misrepresentation of the billable hours that he worked, and therefore was a violation of MRPC 8.4(a), (c) and (d).

- C. Attorney Fethke's billing of MCILS for time spent reviewing substantially more pages of discovery than he actually reviewed in nine specific child protective cases was a negligent misrepresentation of the actual number of the pages of discovery that he reviewed in those cases, and therefore was a violation of MRPC 8.4(a), (c) and (d).

MAINE RULES OF PROFESSIONAL CONDUCT VIOLATED

8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so, or do so through the acts of another;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice.

3. Sanction

Based upon the above-outlined findings and conclusions, and subject to the conditions and requirements set forth in this Order and Decision, Attorney Fethke is suspended from practicing law in Maine for four months, with that suspension being suspended for a period of one year commencing immediately. The following special conditions will apply to Attorney Fethke for the period that his suspension is suspended:

1. Attorney Fethke shall be monitored in his practice by Attorney Randolph A. Mailloux of Belfast, Maine, hereinafter referred to as the Monitor. If the Monitor is unable to continue serving as a monitor, the role of monitor shall be undertaken by a third party mutually agreed upon by Attorney Fethke and the Board of Overseers, or as otherwise selected and directed by the Court.

2. The Monitor shall submit written reports to Bar Counsel every fourth month of the monitoring period, commencing May 2017, regarding Attorney Fethke's compliance with the special conditions of this order.
3. The Monitor shall immediately report any apparent or suspected violation of the conditions of this order; the Maine Rules of Professional Conduct; or the Maine Bar Rules by Attorney Fethke directly to Bar Counsel.
4. If Attorney Fethke commits any apparent violation of any of the conditions of this Order, Bar Counsel may proceed by way of contempt to request that the Court impose the suspended portion of this sanction.
5. In the event a grievance complaint against Attorney Fethke is received by Bar Counsel after the date of this order during the period of the suspended suspension, Bar Counsel may seek permission of a Grievance Commission Panel to proceed with a new disciplinary matter directly before the Court pursuant to Bar Rule 13(d)(6).
6. Upon certification to the Court by Bar Counsel that Attorney Fethke has successfully completed all of the requirements described above, the underlying suspension from the practice of law shall terminate without further order of the Court.

Dated: January 30, 2017



Thomas E. Humphrey
Associate Justice
Maine Supreme Judicial Court

cc: [illegible]

STATE OF MAINE

MAINE SUPREME JUDICIAL COURT

Docket No. BAR 16-11

RECEIVED

FEB 17 2017

BOARD OF OVERSEERS OF THE BAR)
Plaintiff)

BOARD OF OVERSEERS OF THE BAR

v.)

**ORDER CORRECTING
ORDER & DECISION**

AARON FETHKE, Esq.)
of Searsport, ME)
Me. Bar #009642)
Defendant)

The court, having been advised of an error in its Order and Decision, dated January 30, 2017, regarding the date of Attorney Fethke's admission to the Maine Bar, hereby corrects the Order and Decision by deleting finding No. 3 on page 2 and inserting in place thereof the following:

- 3. Attorney Fethke was admitted to the Maine Bar in 2004 and since that time has engaged in private practice in Waldoboro, Maine.

Dated: February 10, 2017



Thomas E. Humphrey
Associate Justice
Maine Supreme Judicial Court

RECEIVED

FEB 17 2017

S