

MAY 14 2018

**STATE OF MAINE
BOARD OF OVERSEERS OF THE BAR**

BOARD OF OVERSEERS OF THE BAR

Grievance Commission Panel C

GCF-16-350

Board of Overseers of the Bar)
Petitioner)
v.)
)
Timothy M. Vogel, Esq.)
of Portland, ME)
Me. Bar No. 002700)
Respondent)

**REPORT OF
FINDINGS AND ORDER OF
PANEL C OF THE GRIEVANCE
COMMISSION
M. Bar R. 13(e)**

On April 26, 2018, Panel C of the Grievance Commission conducted a public disciplinary hearing pursuant to Maine Bar Rule 13(e) concerning alleged misconduct by the Respondent, Timothy M. Vogel, Esq. This disciplinary proceeding had been commenced by the filing of a Disciplinary Petition by the Board of Overseers of the Bar (the Board) on November 20, 2017.

PROCEDURAL HISTORY

This matter came before the Panel for a hearing upon the Petition and the Answer to the Petition in this action.

Due notice of the hearing, held on April 26, 2018, was given and acknowledged, and all parties agreed to the composition of the Panel, which consisted of Robert S. Hark, Esquire as Chair, Justin D. LeBlanc, Esquire and Richard P. Dana, CPA.

The Board was represented by Bar Counsel, J. Scott Davis; Respondent was represented by his Counsel, James M. Bowie. Present in person was the Complainant.

The Panel heard testimony from the Complainant, Mr. Jonathan Kappel, in his capacity as Personal Representative of the Estate of Marvin Sadik, and from the Respondent; the Panel admitted all of the Board's exhibits and all of the Respondent's exhibits.

At the close of the evidence, both Bar Counsel and Respondent were heard orally as to whether the Board had carried its burden of proof. At that point, the public hearing was closed and the Panel proceeded to deliberate in private.

FINDINGS

The allegations of the Petition alleged a failure to communicate, M.R.P.C. 1.4, and a lack of diligence, M.R.P.C 1.3, and Rule 8.4 (misconduct).

The kernel of the allegations of misconduct consisted of, first, failing to diligently provide timely legal services to the Complainant, by failing to timely complete those services that were necessary to accomplish the closing of the estate, which were alleged to constitute a violation of Rule 1.3 ("A lawyer should act with reasonable diligence and promptness in representing a client") and a failure to keep the client informed under Rule 1.4(a) ("A lawyer shall: *** (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information...").

The facts here disclosed that the administration of the estate entailed gathering significant amounts of financial information (including historic basis information for score of assets sold in the years before the Decedent's death); filing personal and corporate income tax returns for the five (5) years prior to the Decedent's death; liquidating a substantial number of art objects; and

processing claims filed against the estate. In short, the administration of this estate posed a number of complex challenges, and the Respondent reasonably retained the services of a CPA firm to effectuate many of the necessary tasks. The evidence shows that the CPA firm was unreasonably dilatory in doing what it was supposed to accomplish. As a result, the estate is still not closed as of this writing.

A review of the Respondent's invoices shows a substantial amount of communication between the Respondent and the CPA firm. It also demonstrates that there was substantial communication throughout this long process between the Respondent and the Complainant. For these reasons, the Panel finds that the Board has failed to sustain its burden of proof as to a lack of diligence and a failure to keep the complainant reasonably informed about the status of the matter, and thus finds no violations of Rules 1.3 or 1.4(a)(3). However, the Panel finds that after request from the client for bills or invoices, the Respondent failed to promptly comply with such requests. This would not be noteworthy had the Respondent consistently sent bills on a monthly, bi-monthly or even quarterly basis, but the failure of the Respondent to timely provide bills that were requested constitutes a violation of Rule 1.4(a)(4), which requires that a lawyer "promptly comply with reasonable requests for information." The information in a bill or invoice is important information for any client. Sometimes, the amount a client has invested in attorneys' fees can affect decisions that the client may make. The Panel therefore finds that the Board has proven a violation of Rule 1.4(a)(4) by a preponderance of the evidence.

The task remaining before the Panel is to determine the appropriate sanction.

Standards for the appropriateness of a reprimand are found in the *Annotated Standards for Imposing Lawyer Sanctions* published by the American Bar Association, made applicable by Bar R. 21(c), and specifically in section 9.1, which provides “After misconduct has a been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.” Standard 8.3 states that Reprimand is generally appropriate when a lawyer “. . . (b) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system or the profession.” We find that the conduct in question caused *potential* injury to the client. Both “(a) prior disciplinary offenses” and “(i) substantial experience in the practice of law” are aggravating factors under Standard 9.22 of the *Annotated Standards for Imposing Lawyer Sanctions*. Mitigating facts under Standard 9.32 would be “(b) absence of a dishonest or selfish motive[.]” We find that the Respondent was not motivated by dishonesty or selfishness.

The panel nonetheless finds that the respondent’s practice, as evidenced here, concerning excessive delay in billing is considerably short of best practices.


CONCLUSION AND SANCTION

Having heard and considered the evidence, the Panel finds that the sanction of a reprimand is called for here. It is therefore


ORDERED

That the respondent Timothy M Vogel, shall be and hereby is reprimanded for the conduct alleged in the Petition.


Date: May 2, 2018


Robert S. Hark, Esq.
Chair, Panel C

Date : May 3, 2018


Justin D. LeBlanc, Esq.

Date : May 11, 2018


Richard P. Dana, CPA