



STATE OF MAINE

Board of Overseers of the Bar

Grievance Commission
File No.: 07-095; 09-003

BOARD OF OVERSEERS OF THE)	
BAR,)	
)	
Petitioner)	STIPULATED REPORT OF FINDINGS
)	AND ORDER OF PANEL E OF THE
vs.)	GRIEVANCE COMMISSION
)	M. Bar R. 7.1(e)(2)(4)
ERIKA L. FRANK, ESQ.,)	
)	
Respondent)	

On July 28, 2009, with due notice, Panel E of the Grievance Commission conducted a public disciplinary hearing pursuant to Maine Bar Rule 7.1(e)(2)E, concerning misconduct by the Respondent, Erika M. Frank, Esq. The disciplinary proceeding had been commenced by the filing of a Disciplinary Petition by the Board of Overseers of the Bar (the Board) on September 4, 2008. Additionally, on March 18, 2009 the Board filed a second Disciplinary Petition which was stipulated to by the parties. By agreement, the two Petitions were consolidated for this public disciplinary hearing before Panel E of the Commission.

At the hearing, James Bowie, Esq. appeared on behalf of his client, Erika Frank, Esq., and the Board was represented by Bar Counsel J. Scott Davis. Prior to the disciplinary proceeding, the parties had submitted a stipulated, proposed sanction report for the Grievance Commission Panel's review and consideration. The complainant, Martica Douglas, Esq., though not present for the hearing, was

provided with a copy of the Report (in its proposal form) and did not object to the parties' proposal.

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

FINDINGS

Respondent Attorney Erika M. Frank (Frank) of Windham, County of Cumberland, State of Maine, has been 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. Attorney Frank was admitted to the Maine bar in 1995 and the bulk of her practice as a Maine Attorney has been as a solo practitioner.

FIRST COUNT

On March 26, 2007, Attorney Martica S. Douglas filed a grievance complaint against Attorney Frank. The complaint alleged violations of the Code of Professional Responsibility related to Attorney Frank's involvement in a real estate closing between Victor Bernier and Robert Hanson.

On April 23, 2007, Attorney Frank filed her initial response to the grievance, generally denying any Code violations.

By way of background, Mr. Bernier inherited ownership of his childhood home, in Brunswick, Maine, following the death of his mother in December 2005. Mr. Bernier subsequently became unable to meet the financial obligations of maintaining the home, largely due to his impairments resulting from Myopic Dystrophy.

In August of 2006, Mr. Bernier sold the property to Mr. Hanson (the buyer) for a purchase price of \$15,655, which equaled the outstanding mortgages on the family home. Mr. Bernier became aware of Mr. Hanson's possible interest through a flyer sent to him by Mr. Hanson.

In the closing transaction, Attorney Frank was retained by the buyer of the property, Mr. Hanson; however, her involvement was more than that of a typical buyer's attorney. In addition to acting as closing agent, Attorney Frank prepared the Warranty Deed as well as the transfer tax documents, without Mr. Bernier's request to do so. Although Attorney Frank denied that she was representing Mr. Bernier, she procured from both buyer and seller a signed conflict disclosure rendering each party's consent to the simultaneous representation. In hindsight, Attorney Frank acknowledges Mr. Bernier's belief that she was representing his interests at the real estate closing, given the executed consent and her preparation of the seller's documents referenced above.

Based upon her actions during the 2006 closing, Attorney Frank engaged in simultaneous representation without fully informing each party of the limits of her representation, thus violating the Code of Professional Responsibility. Even with her disclosure and consent document, Attorney Frank was required to maintain the appropriate standard of care and judgment in the discharge of her professional duties.

Attorney Frank agrees that she should not have allowed the transaction to go forward with the documentation relating to Mr. Bernier's lease rights and ability to

stay in the home remaining undocumented and unresolved. She should have paid more attention to the circumstances surrounding the somewhat unusual sale, and if the parties had not resolved all of the issues she should have referred them to independent counsel to resolve those issues. Attorney Frank's conduct in her essentially simultaneous representation of Mr. Bernier and Mr. Hanson, in a transaction in which they had competing interests, resulted in her violations of Rules 3.4(c)(2) and 3.6(a)(2).

SECOND COUNT

On or about January 9, 2009, Bar Counsel docketed a *sua sponte* complaint against Attorney Frank based upon her conduct in the case of *Merrifield v. Hadlock*, 2009 ME 1 (ME 2009). Attorney Frank's failure to submit a required filing (notification of ADR or Report ADR conference) resulted in the dismissal with prejudice of her client's civil case in Cumberland County Superior Court. In her response to that complaint, Attorney Frank has acknowledged her resulting violations of M. Bar R. 3.1(a); and 3.2(f)(4).

CONCLUSION AND SANCTION

Due to Attorney Frank's above-outlined misconduct, Mr. Bernier's interest in his home was not fully protected, resulting in actual harm and additional litigation. Moreover, due to Attorney Frank's involvement in *Merrifield*, her client's legal matter was dismissed with prejudice.

Since these incidents, Attorney Frank has accepted responsibility for her lapses and admitted to her violations of the above-outlined sections of the Code of

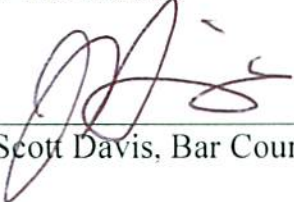
Professional Responsibility. Although Attorney Frank has no history of discipline, she did receive a warning sanction following her 2006 public disciplinary hearing concerning a lapse similar to what occurred in the *Merrifield* case. Following the issuance of that warning, the case against Attorney Frank was dismissed.

M. Bar. R. 2(a) provides that the purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who, by their conduct, have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties. Since the evidence supports a finding and Attorney Frank agrees that she did in fact violate the Code of Professional Responsibility, it appears that a public reprimand serves those purposes.


Therefore, the Panel accepts the agreement of the parties, including Attorney Frank's waiver of the right to file a Petition for Review, and concludes that the appropriate disposition of each of these matters is a reprimand of Erika M. Frank, Esq. as provided by M. Bar R. 7.1(e)(3)(C).

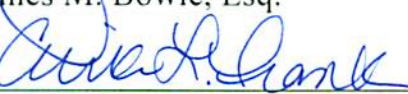
Dated: July 28, 2009

For the Parties



J. Scott Davis, Bar Counsel



James M. Bowie, Esq.


Erika L. Frank, Esq.
Respondent

Grievance Commission Panel

Dated: 7.28.09



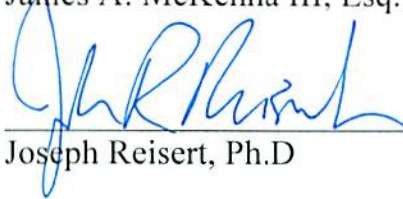
Victoria Powers, Esq., Chair

Dated: 7/28/09



James A. McKenna III, Esq.

Dated: 7/28/09



Joseph Reisert, Ph.D