



STATE OF MAINE

Board of Overseers of the Bar

File No. 08-132

BOARD OF OVERSEERS OF THE)
 BAR)
) Petitioner)
))
) v.)
))
 SIDNEY H. GELLER, ESQ.)
 of Waterville, Maine)
 Me. Bar #0218)
) Respondent)

**STIPULATED REPORT OF
 FINDINGS AND ORDER
 OF
 PANEL D OF THE GRIEVANCE
 COMMISSION
 M. Bar R. 7.1(e)(4)
 M. Bar R. 7.1(e)(2)**

On August 31, 2009, with due notice, Panel D of the Grievance Commission conducted a public disciplinary hearing pursuant to Maine Bar Rule 7.1(e)(2)(E), concerning misconduct by the Respondent, Sidney H. Geller, Esq. This disciplinary proceeding had been commenced by the filing of a stipulated Disciplinary Petition by the Board of Overseers of the Bar (the Board) on May 7, 2009.

At the hearing, Attorney Geller was *pro se* and the Board was represented by Assistant Bar Counsel Aria Eee. The complainant, Gary Jordan, was present and participated in the disciplinary hearing. Prior to the hearing, the parties had submitted a proposed, stipulated Report of Findings and Order for this Grievance Commission Panel's review and consideration.

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

FINDINGS

Respondent Sidney H. Geller (Geller) of Waterville, 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 Geller was admitted to the Maine bar in 1963 and he is currently registered with the Board of Overseers of the Bar as an active Maine Attorney.

On April 12, 2008, Mr. Jordan filed a grievance complaint against Attorney Geller. The complaint alleged violations of the Code of Professional Responsibility by Attorney Geller involving neglect, lack of communication, and Geller's conversion of settlement funds related to Mr. Jordan's boundary dispute cases. On or about June 5, 2008 Attorney Geller filed a response with the Board, providing information regarding his representation of Mr. Jordan.

By way of background, Mr. Jordan hired Attorney Geller to represent him in two cases against the Town of St. Albans (Town), both involving a boundary line dispute. One case was a claim of trespass, and the other was an objection to the Town of St. Albans taking the parcel in dispute under eminent domain. After trial, Mr. Jordan did not prevail on either case. Attorney Geller represented Mr. Jordan during his appeal of the eminent domain case before the Law Court. The Law Court affirmed the lower court's ruling, and remanded the case back for a jury determination of damages. The jury returned a verdict of \$6,700.19 plus costs for Mr. Jordan.

In post-judgment activity, counsel for the Town filed a table of costs. Attorney Geller filed no response to the Town's costs, as he was staying in

Florida at the time. In December 2006, to satisfy the judgment awarded to Mr. Jordan, the Town delivered a \$5,048.64 check to its attorney to forward to opposing counsel, Attorney Geller. The Town's check reflected the judgment of \$6,700.19, less the Town's costs of approximately \$2,000.00. The Town was entitled to reduction of the judgment because the judgment was less than the Town's Offer of Judgment (see M.R. Civ. P. 68). On or about September 25, 2007, Attorney Geller received the \$5,048.64 check from the town's attorney.

Attorney Geller acknowledges that his attempt to notify Mr. Jordan of Geller's receipt of the funds apparently proved unsuccessful. Attorney Geller reports that upon the firm's receipt of the town's check, he instructed his secretary to notify Mr. Jordan of that receipt, with a request that Jordan contact the office to discuss the disposition of the money. According to Attorney Geller the firm did not receive a response from Mr. Jordan, so they sent a second letter in December 2007. That letter informed Mr. Jordan that if Attorney Geller received no response by a certain date, the firm would apply the check to Mr. Jordan's outstanding legal fees. Ultimately, Attorney Geller applied the funds to Mr. Jordan's outstanding legal bill.

The Panel notes that throughout the investigation, Mr. Jordan has repeatedly disputed Attorney Geller's reported notification of the receipt of the check. Likewise, Mr. Jordan disputes that he received any requests from the firm to claim that check before relinquishing the funds to pay down his legal bill. Regardless of the divergent views, the Panel accepts Attorney Geller's

concession that his failure to explicitly receive consent from Mr. Jordan violated Rule 3.6(e)(2) of the Code of Professional Responsibility.

After the representation had concluded, Mr. Jordan retained successor counsel to file a claim against the Town for non-payment of the awarded judgment. Upon the filing, the town's attorney informed successor counsel that the Town had paid the judgment. During its investigation, the Board of Overseers discovered the payment to Attorney Geller. Thereafter, Attorney Geller acknowledged his failure to send Mr. Jordan those funds.

CONCLUSION AND SANCTION

The Code of Professional Responsibility specifically requires attorneys to uphold their responsibilities to clients and the courts. Due to Attorney Geller's above-outlined failures, his client's post-judgment interests were not adequately protected. Attorney Geller also impermissibly retained costs recovered from an opposing party, with no agreement from his client to apply those funds to the client's legal bill.

The Panel notes that Attorney Geller has taken responsibility for applying the check to Mr. Jordan's legal bill without having obtained specific authority from Mr. Jordan to do so. During this hearing, Attorney Geller expressed remorse for his serious violations of the Code of Professional Responsibility.

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 Geller agrees that he did in fact violate the Code of Professional Responsibility, the Panel finds that a public reprimand serves those purposes.

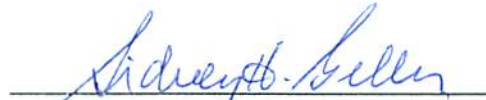
Therefore, the Panel accepts the agreement of the parties, including Attorney Geller's waiver of the right to file a Petition for Review, and concludes that the appropriate disposition of this case is a Public Reprimand to Sidney H. Geller, Esq. which is now hereby issued and imposed pursuant to M. Bar R. 7.1(e)(3)(C), (4).

Dated: August 31, 2009

For the Parties



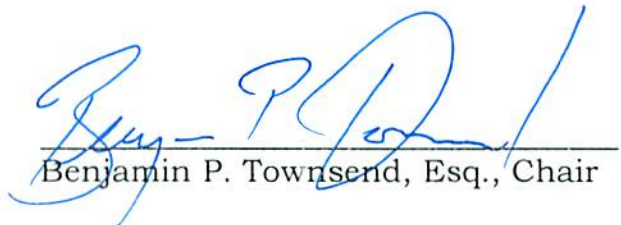
Aria Ee, Assistant Bar Counsel



Sidney H. Geller, Esq.
Respondent

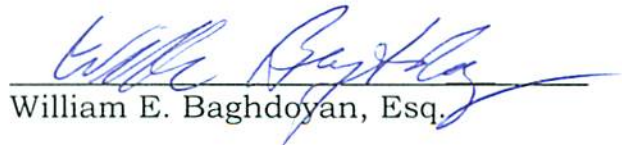
Grievance Commission Panel

Date: 8/31/2009




Benjamin P. Townsend, Esq., Chair

Date: 8/31/09



William E. Baghdoyan, Esq.

Date:



David Nyberg, Ph.D.