

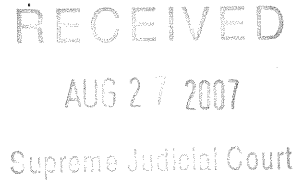
State of Maine

Supreme Judicial Court

Docket No. BAR-00-5

BOARD OF OVERSEERS OF THE BAR)
)
 Plaintiff)
 v.)
)
 RICHARD S. EMERSON, JR.,)
 of Portland, ME)
 Me. Bar #934)
 Defendant)

ORDER



This matter came before the Court pursuant to a Petition to Determine Incapacity filed by the Board of Overseers of the Bar. Following preliminary negotiations, the parties ultimately agreed to propose that the Court instead consider and accept Mr. Emerson's resignation, pursuant to Maine Bar Rule 7.3(g). That voluntary resignation dated August 2, 2007 was tendered to the Board on August 17, 2007 when the full Board considered Emerson's request. Following its consideration, the Board recommended that the Court accept Attorney Emerson's resignation from the Maine bar. The parties then appeared before the Court on August 27, 2007 to conduct the final hearing in this matter.

Throughout the proceeding, the Board of Overseers of the Bar (the Board) has been represented by Assistant Bar Counsel Aria eee. Defendant Richard S. Emerson, Jr. (Emerson) has been represented by Peter J. DeTroy, Esq. The Court understands that Ms. eee notified the complainants, Matthew O'Donnell and Richard P. Waltz, in advance of the proposed resolution of this disciplinary proceeding.

Stipulations

The parties have stipulated to the following material facts:

By Order dated March 15, 2001 this Court determined that

“The Board may file additional Petitions to Determine Incapacity directly with the Court, without the necessity of the preliminary screening and hearing that might otherwise be required by M. Bar R. 7.3(e)(2)(A), concerning other allegations that Mr. Emerson is incapacitated from continuing the practice of law by reason of addiction to intoxicants, which come to the Board’s attention after the date of this order”.

Since March 2002, Richard S. Emerson, Jr. has been registered with the Board of Overseers of the Bar as an inactive attorney under M. Bar Rule 6(c). Subsequent to that date and pursuant to M. Bar R. 6(b)(1) and 10(b), Emerson was summarily suspended for his failure to register and pay the applicable fees to the Board. The summary suspension became effective on November 2, 2002 and while not a disciplinary sanction, it did result in a prohibition on Emerson’s right to practice law.

On April 25, 2005 Matthew O’Donnell filed a complaint against Emerson with the Board. O’Donnell’s complaint alleged that in October 2003 Emerson had agreed to a business venture involving the two of them and a few other partners. To that end, O’Donnell partially liquidated his retirement account and by overnight mail sent a bank check for \$25,000 to “Richard Emerson,

Esq.” The parties agree that Emerson then cashed the check but failed to clarify his inactive bar status for O’Donnell.

After an immediate turn in events, O’Donnell repeatedly requested a return of his funds but Emerson was unable to comply asserting that he did not have the money. Subsequently, O’Donnell obtained a civil judgment against Emerson. O’Donnell has attempted to collect on that judgment and or to negotiate a payment plan but his efforts have proved unsuccessful. Emerson accepts responsibility for the fact that O’Donnell’s funds remain missing and have not been reimbursed to him. He agrees that he owes the money and he intends to reimburse Mr. O’Donnell.

Based upon the facts of this case, the Court finds that Emerson’s involvement with O’ Donnell either created an ambiguity as to his role or left O’Donnell with the impression that Emerson would be providing legal services. Moreover, when Emerson cashed the check made out to “Richard Emerson, Esq.” he compounded the ambiguity and misperception of his bar status.

More recently, in 2006 Emerson persuaded an acquaintance to co-sign a bank loan apparently to fund some of Emerson’s personal expenses. When Emerson defaulted, the acquaintance used his own funds to repay the loan. Emerson promised to reimburse the man but thus far he has made only two payments.

At the time the Board filed its Petition for Incapacity, it argued that Emerson’s failure to satisfy the O’Donnell judgment before borrowing additional funds constituted violations of the Code of Professional

Responsibility. Again, the Court notes that Emerson apparently did not intend to harm anyone but his actions nonetheless resulted in considerable injury both to the men affected and to Emerson's credibility.

As a mitigating factor, Emerson recognizes his lapses in professional and personal judgment and he agrees that his behaviors have severely impacted his fitness to practice law. Emerson is now employed in a different career and it is not his intent to return to the practice of law. The Court also notes that Emerson has displayed sincere remorse for his actions.

Finally, the Court understands that Mr. O'Donnell intends to file a claim seeking reimbursement for his loss from the Lawyers' Fund for Client Protection (LFCP). If that claim is approved and paid in whole or in part by the LFCP, the Lawyers' Fund shall have a claim for restitution against Richard S. Emerson, Jr. for the amount paid. This Order shall operate as a judgment in favor of the LFCP against Mr. Emerson in the amount of \$25,000 plus costs. However, if the Fund determines that the loss was even greater, the LFCP may seek an amendment of this Order accordingly.

Conclusions of Law

The parties agree and the Court so finds that Mr. Emerson's conduct violated Maine Bar Rules 3.1(a) (conduct unworthy of an attorney) and 3.2(f)(4) (conduct prejudicial to the administration of justice). Specifically, the Court is satisfied that Emerson's disability caused him to act in such a way as to have others trust and rely upon him and he failed to honor his commitments to those persons harmed by his misconduct. Of significance here, the Maine Bar

Rules allow any attorney who is the subject of a disciplinary investigation to submit to the Board a letter of resignation, supported by an affidavit, subject to the attorney's compliance with specific conditions as outlined by M. Bar R. 7.3(g)(1).

Therefore, pursuant to Maine Bar Rule 7.3(g)(2) the Court hereby ORDERS the following :

Richard S. Emerson, Jr.'s resignation from the Maine bar is accepted immediately, pursuant to Maine Bar Rule 7.3(g)(3).

As required by M. Bar R. 7.3(g)(3), Richard S. Emerson Jr.'s supporting Affidavit dated August 2, 2007, is hereby impounded, and shall not be available for inspection unless otherwise ordered by the Court. Should Richard S. Emerson Jr. seek reinstatement to the Maine bar, this Affidavit may then be made public without further Order of the Court.

This Order is a matter of public record pursuant to M. Bar R. 7.3(g)(3).

Dated: August 27, 2007

For the Court,



Susan Calkins, Associate Justice
Maine Supreme Judicial Court