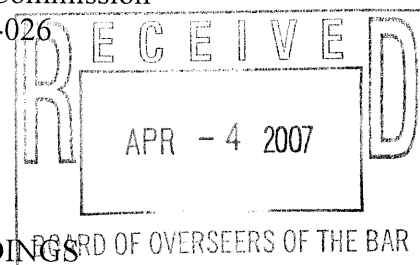


STATE OF MAINE

Board of Overseers of the Bar

Grievance Commission

File No. 06-026



BOARD OF OVERSEERS OF THE BAR)
)
 Petitioner)
)
 v.)
)
 STEPHEN T. HAYES, ESQ.)
 of Augusta, Maine)
 Maine Bar No. 65)
)
 Respondent)

REPORT OF FINDINGS
 OF PANEL D
 OF THE GRIEVANCE
 COMMISSION

On March 26, 2007, pursuant to due notice, Panel D of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1(e)(2), concerning the Respondent, Stephen T. Hayes, Esq. This disciplinary proceeding was commenced by the filing of a Petition by the Board of Overseers of the Bar on September 20, 2006, alleging misconduct in connection with Respondent's representation of a client, in violation of M. Bar R. 3.1(a), 3.2(f), and 3.6(a).

At the hearing, Assistant Bar Counsel Aria eee represented the Board, and the Respondent was represented by James M. Bowie, Esq. The Board's exhibits marked Board Exh. 1-13 and Board Exh. 15-17, and the Respondent's exhibits marked R-1 through R-4, were admitted without objection. The Panel heard testimony from the Respondent; from his former clients, Mona K. Smith and John Coelho; and from Martin C. Womer, Esq. The material facts were not substantially disputed. Having heard the testimony and reviewed the evidence submitted, the Panel hereby makes the following findings:

FINDINGS

Respondent is, and was at all times relevant hereto, an attorney duly admitted to and engaged in the practice of law in the State of Maine, and subject to the Maine Bar Rules.

Ms. Smith and Mr. Coelho engaged Respondent in November 2005 in connection with an estate planning matter involving the disposition of jointly owned real estate in Litchfield, Maine. Ms. Smith and Mr. Coelho were unmarried cohabitants who were registered domestic partners. Ms. Smith was undergoing treatment for cancer. Although the parties' recollections differed as to how fully Respondent was advised of the status of Ms. Smith's illness and treatment, the Panel does not find this discrepancy material to its conclusions.

Following an initial consultation with Ms. Smith and Mr. Coelho on November 1, 2005, Respondent prepared a draft trust document for them, and forwarded it to them on or about December 16. They responded via an e-mail message posing some questions and additional considerations, which Respondent received on December 19.

Respondent did not again communicate with Ms. Smith and Mr. Coelho until January 30, 2006. Although he did not so advise them at the time, the additional considerations raised in their e-mail message created substantial legal issues regarding their ability to protect the assets from creditors. Moreover, this matter arose during a time when the law governing such issues was in a considerable state of flux, due to recent and pending state and federal legislation and rule changes. Although Respondent was actively researching the effect of these changes upon the clients' matter, he testified that it is his practice not to send "empty" communications to clients until such time as he has substantive legal conclusions to impart. Respondent further testified, by way of explanation rather than excuse, that during the time period in question, he had a busy trial schedule and also suffered a spell of bronchitis that temporarily impeded his ability to maintain a full workload.

Mr. Coelho left a voicemail message with Respondent on January 9, and Ms. Smith and Mr. Coelho sent an e-mail message to Respondent on January 11, both of which sought information about the status of their matter. The e-mail message of January 11, in particular, should have put Respondent clearly on notice of his clients' concerns:

It appears that the demands of your practice make it difficult for you to respond to or provide the legal services we requested in regard to the subject trust.

If this is the case, please be good enough to so advise by return note so that we may seek the services of another attorney.

Respondent did not respond to this e-mail message. On January 26, Ms. Smith and Mr. Coelho filed a complaint with the Board of Overseers of the Bar; however, Respondent did not receive notice of their complaint until February 2. In the meantime, he concluded his research (including consultation with Mr. Womer, an elder law attorney with expertise in the specific legal issues affecting this matter), and forwarded two separate e-mail messages to his clients on January 30 and February 1, conveying his conclusions. He sent a bill for his services on February 2. On Saturday, February 4, Ms. Smith and Mr. Coelho sent him an e-mail message terminating his representation of them, which he received on Monday, February 6.

CONCLUSIONS AND SANCTIONS

It is clear from the evidence presented in this matter that Respondent did not neglect his clients' legal matter in violation of M. Bar R. 3.6(a)(3), nor engage in any dishonesty, fraud, deceit or misrepresentation in violation of M. Bar R. 3.2(f). The Panel concludes, however, that Respondent violated M. Bar R. 3.6(a), in that Respondent failed to "take reasonable measures to keep the client informed on the status of the client's affairs."

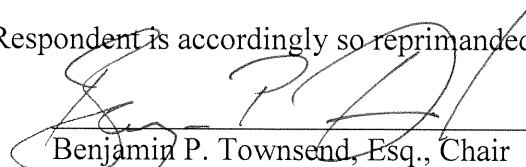
Reasonableness is determined by what a prudent lawyer would have done under like circumstances. Respondent was clearly on notice of his clients' anxiety about the status of the pending matter and their wish for a status report. The responsibility under Rule 3.6(a) to take reasonable measures to keep the client informed rests upon the attorney, and under the

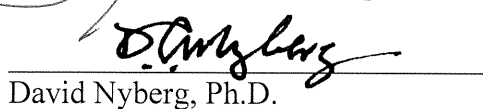
circumstances of this case, Respondent did not act as a reasonably prudent attorney should have to communicate with his clients. In this case, notwithstanding Respondent's expressed antipathy to "empty" client communications, the Panel concludes that a simple status message via telephone or e-mail would not have been an "empty" communication; rather, it would have sufficed to meet the Respondent's professional obligation to take reasonable measures to keep his clients informed.

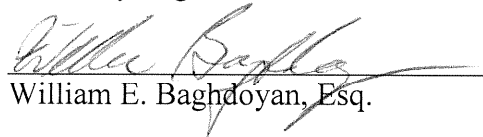
With regard to an appropriate sanction, the Panel has seriously considered, but ultimately rejects, a dismissal with a warning pursuant to M. Bar R. 7.1(e)(3)(B). While Respondent's misconduct was minor and was not due to any neglect nor bad faith, and Respondent's misconduct did not cause substantial injury to the clients, the public, the legal system, or the profession, the Panel is unable to conclude that there is little likelihood of a repetition by the attorney, for two reasons. First, the Panel's review of Respondent's past disciplinary history suggests that Respondent has experienced previous difficulties with client communication. Second, the Panel is concerned by Respondent's evidently sincere testimony regarding his aversion to "empty" client communications, and notes that to the extent such communications are necessary to keep clients reasonably informed as to the status of pending matters, or to respond to a client's inquiries as to the status of a pending matter, they are not merely "empty" communications, but rather an affirmative obligation of the attorney under M. Bar R. 3.6(a).

Accordingly, the Panel hereby determines that the appropriate sanction is a reprimand pursuant to M. Bar R. 7.1(e)(3)(C), and Respondent is accordingly so reprimanded.

Dated: March 28, 2007


Benjamin P. Townsend, Esq., Chair


David Nyberg, Ph.D.


William E. Baghdoyan, Esq.