

STATE OF MAINE

KENNEBEC, ss.

BOARD OF OVERSEERS OF THE BAR
GRIEVANCE COMMISSION
GCF #05-252

BOARD OF OVERSEERS OF THE B
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BOARD OF OVERSEERS OF THE BAR,)
)
Petitioner)
)
vs.)
)
DONALD F. BROWN, ESQ., of Brewer, ME,)
Me. Bar #8541)
Respondent)

REPORT OF PROCEEDINGS,
FINDINGS, CONCLUSIONS
AND DISPOSITION

The above matter was heard by the Grievance Commission Panel A, with Tobi L. Schneider, Esq. serving as a substitute on July 11, 2006, at the Key Bank Building, offices of Vafiades, Brontas & Kominsky, in Bangor, Maine 04402. Pursuant to a disciplinary petition dated April 14, 2006, with proper notice being provided, a disciplinary hearing open to the public was conducted on this date pursuant to Maine Bar Rules 7.1 (e) (1), (2) to determine whether the grounds exist for the issuance of a reprimand or whether probable cause exists for the filing of an information with the Court. The Board of Overseers was represented by Attorney Bar Counsel Aria eee, Esq. and Respondent, Donald F. Brown, Esq. represented himself. Witnesses included Attorney Brown and the complainant, Muriel E. Dinsmore, of Brewer, Maine.

Background

The pleadings consisted of a Petition filed by the Board and Response filed by the Respondent. In the course of the proceedings Exhibits 1 through 9 were admitted without objection. The panel considered Exhibits 1 through 9 as well as the oral testimony of Muriel E. Dinsmore and the Respondent Attorney Brown.

On August 9, 2004, Muriel Dinsmore had a consultation with Attorney Brown at his office. The purpose of the consultation was to discuss personal injuries she sustained when she slipped on ice when entering the Jo Ann Fabrics Store in Bangor, Maine, on February 2, 2004, resulting in an injury to her right elbow and wrist. As a result of that injury, she sustained a fracture and received medical attention. Mrs. Dinsmore sustained another injury on May 12, 2004, when she apparently fainted and fell, while at work, reinjuring herself. This second incident resulted in additional medical treatment. After receiving treatment for the second incident, on June 28, 2004 Mrs. Dinsmore was released to return to work by her doctor. She presented her employer ProTea with a form stating that she could return to work with no restrictions, but her employer refused to reinstate or rehire her or otherwise allow her back to work. At the consultation with Attorney Brown on August 9, 2004, both injuries were discussed. Pursuant to the consultation, Attorney Brown agreed to investigate two potential causes of action, to wit:

1. A slip and fall claim against Jo Ann Fabrics regarding the February 2, 2004 incident;
2. An employment discrimination claim against ProTea regarding the June 28, 2004 refusal to allow her to return to work;

Mrs. Dinsmore testified that over the next several weeks she made numerous efforts to contact Attorney Brown to provide him with additional information. Attorney Brown denied that he ever received any additional phone calls from Mrs. Dinsmore, other than having spoken with her on one occasion, perhaps in November of 2004.

By a letter dated November 2, 2004, Mrs. Dinsmore wrote to Attorney Brown (Exhibit #9). In that letter, some additional information was provided. It is noted, however, that prior to that date numerous documents had previously been provided to Attorney Brown, which contained much of the factual background information regarding the identity of Mrs. Dinsmore's employer and the dates and sequence of events.

By a letter dated December 7, 2004, Attorney Brown wrote to Mrs. Dinsmore regarding the two matters. At that time he specifically stated to her that he did not believe she had a case regarding her slip and fall claim against Jo Ann Fabrics. Regarding the employment case against ProTea, however, he indicated to her that her claim "may have some merit". In the letter he asked Mrs. Dinsmore to provide, in writing, additional information. He concluded the letter by stating "Once I have received this information, I will then write a letter to your former employer asserting a claim on your behalf" (See Exhibit #3).

By a letter dated December 14, 2004, Ms. Dinsmore wrote to Attorney Brown providing the additional information he had requested. After December 14, 2004, there was apparently no additional communication between Attorney Brown and Mrs. Dinsmore until February 9, 2005. By a letter dated February 9, 2005, Attorney Brown wrote to Mrs. Dinsmore indicating he was declining to represent her in either of the claims against Jo Ann Fabrics or ProTea.

By February 9, 2005, the statute of limitations to assert a claim against ProTea with the Maine Human Rights Commission had expired. Attorney Brown testified that he at no time had considered or become cognizant of the running of the six month statute to file a claim with the Maine Human Rights Commission. There was never any communication from Attorney Brown to Mrs. Dinsmore advising her of the statute or to take necessary steps to protect her interests.

Findings

After consideration of all the evidence submitted at the Hearing, the Panel makes the following findings:

1. Pursuant to the August 9, 2004 meeting, Attorney Brown did agree to investigate various matters on behalf of Ms. Dinsmore. It is not entirely clear whether at that time he undertook formal representation as defined by Rule 3.4. The Panel agrees that it is appropriate under certain circumstances to conduct an investigation prior to agreeing to representation. Unfortunately, at the time Attorney Brown agreed to undertake investigation of Mrs. Dinsmore's claims he failed to appreciate or acknowledge the applicable statute of limitations specifically the six month statute of limitations applicable to the commencing of a claim with Maine Human Rights Commission, Title 5, MRSA §4622;
2. Mrs. Dinsmore wrote to Attorney Brown on November 2, 2004. In that letter she began the communication with "I want to thank you for trying to help me with the problems". She concluded her correspondence with "I will be so relieved when this case is settled as it is causing a hardship". (See Exhibit #9)
3. After receipt of the November 2, 2004, correspondence from Mrs. Dinsmore, Attorney Brown did not respond, correct, or clarify for Mrs. Dinsmore the scope or limitations of his representation. Rather, Attorney Brown wrote to Mrs. Dinsmore on December 7, 2004. In the December 7, 2004, correspondence he clearly indicated he did not believe she had a claim regarding her fall at Jo Ann Fabrics. He did, however, indicate that her wrongful termination claim against her former employer, ProTea, "may have some merit". He requested additional information and closed his letter by stating "Once I have received this information, I will then write a letter to your former employer asserting a claim on your behalf" (See Exhibit #3). At no time did Attorney Brown advise Mrs. Dinsmore of the looming and potential expiration of the statute of limitations to assert and file a claim with the Maine Human Rights Commission.

4. Based upon that exchange of correspondence, Mrs. Dinsmore could objectively believe that legal representation had been commenced by Attorney Brown regarding the employment termination case against ProTea, as commencement of employment is defined by Rule 3.4(a) (2).
5. On February 9, 2005, Attorney Brown communicated to Mrs. Dinsmore that he was not going to represent her regarding her employment termination case against ProTea. By the time of February 9, 2005, the Statute of Limitations to pursue a claim before the Maine Human Rights Commission had expired.
6. Allowing the Statute of Limitations to expire without either protecting Mrs. Dinsmore's rights or advising her of the looming deadline constitutes conduct which is neglectful of a legal matter entrusted to him, which is prohibited by Rule 3.6 (a)(3). At the hearing, Attorney Brown fully acknowledged that he missed the applicable Statute of Limitations regarding the Maine Human Rights claim.
7. None of Attorney Brown's conduct was done intentionally or knowingly, but it does rise to a level of negligence.
8. Attorney Brown's conduct did not result in any damage to Mrs. Dinsmore's claim against Jo Ann Fabrics, as the Statute of Limitations has not expired for that claim. His conduct did, however, result in damage regarding her employment termination claim against ProTea. Specifically, the conduct resulted in her being barred from commencing a claim before the Maine Human Rights Commission and further barred her from making a claim for attorney fees, pursuant to Title 5, MRSA §4614 or any of the other statutory damages, which may have been applicable pursuant to Title 5, MRSA §4613. Although his conduct did not deprive her from still asserting a civil action in the Superior Court, pursuant to Title 5, MRSA §4625, his conduct did result in her being barred from asserting the aforesaid claims before the Maine Human Rights Commission and deprived her from seeking attorney fees, etc.
9. Attorney Brown's failure to communicate or clarify the scope (or limitations thereof) of his employment for Ms. Dinsmore may have been only "minor" misconduct. When coupled, however, with his failure to identify or communicate to Mrs. Dinsmore the looming expiration of the Statute of Limitations to assert a claim before the Maine Human Rights Commission, it cannot be said his conduct was minor. Similarly, it cannot be said that Mrs. Dinsmore suffered "little or no injury" as his conduct deprived her of the right to assert those claims before the Maine Human Rights Commission.

Discussion

Based upon the above findings, the Panel finds that Bar Rules 3.4(a) (2) and 3.6(a) (3) were violated by Attorney Brown. Those rules state:

3.4 Identifying Commencement, Continuation, and Termination of Representation

(a) Disclosure of Interest, Commencement, and Termination: General Provisions.

- (2) Commencement. Representation of a client shall be deemed to have commenced when the lawyer and the client, by conduct or communication, would each reasonably understand and agree that representation commences. Commencement of representation shall be judged by an objective, not a subjective, standard. It is the obligation of the attorney to clarify whether representation has commenced. If the client reasonably believes that representation has commenced and the attorney has failed to clarify that it has not, then representation shall have commenced.*

3.6 Conduct During Representation

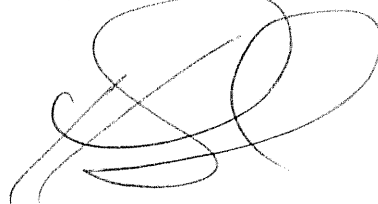
(a) Standards of Care and Judgment. *A lawyer must employ reasonable care and skill and apply the lawyer's best judgment in the performance of professional services. A lawyer shall be punctual in all professional commitments. A lawyer shall take reasonable measures to keep the client informed on the status of the client's affairs. A lawyer shall not*

(3) neglect a legal matter entrusted to the lawyer.

The facts require a finding that she believed legal representation had commenced by the time of the exchange of the November 2, correspondence from Mrs. Dinsmore and the December 7, 2004, correspondence from Attorney Brown. Once legal representation commenced, the standards of care and judgment required by Rule 3.6 are applicable. In this case, Attorney Brown was neglectful of the legal matter entrusted to him by his failure to identify the expiring Statute of Limitations and by his failure to either take action to preserve her claim or otherwise advise Mrs. Dinsmore of the Statute so that she could take appropriate action. Missing the Statute of Limitations which deprived Ms. Dinsmore of her rights to assert a claim before the Maine Human Rights Commission is not minor; we could not find that it resulted in little or no injury.

Accordingly, based upon the evidence and the record before it, Panel A determines that the appropriate disposition of this Petition is that the Respondent, Attorney Brown, should and hereby is reprimanded.

DATED: 8/1/06, 2006



Harold L. Stewart II, Esq.

DATED: 7/25, 2006



Tobi L. Schneider, Esq.

DATED: 7/2/06, 2006



Raymond J. Cota