

**STATE OF MAINE  
KENNEBEC COUNTY, ss**

**BOARD OF OVERSEERS OF THE BAR  
GRIEVANCE COMMISSION  
FILE NO. 03-252**

**BOARD OF OVERSEERS OF THE BAR**

**Petitioner**

**v.**

**NEAL L. WEINSTEIN  
Maine Bar No. 2230**

**Respondent**

**REPORT OF FINDINGS, DETERMINATIONS AND ACTIONS**

This matter came before Panel E<sup>1</sup> of the Grievance Commission on a Disciplinary Petition of Bar Counsel alleging Respondent Neal L. Weinstein of Old Orchard Beach, Maine violated the following Maine Bar Rules in connection with his representation of Pamela C. Hawk:

- §3.1(a) - conduct "unworthy of an attorney"
- §3.2(f)(2) - illegal conduct that adversely reflects on the attorney's fitness as a lawyer
- §3.2(f)(4) - conduct prejudicial to the administration of justice
- §3.6(a) - failure to exercise reasonable care and skill and apply the lawyer's best judgment in the performance of professional services
- §3.6(c) - threatening prosecution of criminal charges solely to obtain an advantage in a civil matter
- §3.6(f) - communicating with adverse party
- §3.7(a) - asserting a position or taking other action on behalf of the client when the lawyer knows, or should know, that such action would merely serve to harass or maliciously injure another (added by Bar Counsel without objection at the commencement of the hearing).

A public hearing was conducted on July 6, 2004 in Portland, Maine to determine whether a Bar Rule violation had occurred and whether probable cause exists for filing an information pursuant to Maine Bar Rule 7.2(b).

The Board of Overseers of the Bar ("the Board") was represented by Geoffrey S. Welsh, Esq. ; Respondent Neal L. Weinstein was represented by James M. Bowie, Esq. No objection was made to the composition of the Panel. At the hearing the Panel admitted Board Exhibits 1-4, 6 - 9, 10 (Sgt. Deluca's seven page narrative only), 11 - 14, 14A , 14B, and Respondent's Exhibits 16 and 17, all without objection. Board Exhibit 15 (an approximately two foot length of

---

<sup>1</sup>David R. Weiss, Esq. and John H. Rich, III Esq. substituted as Panel E members for Stephen G. Morrell, Esq. and Charles W. Smith, Jr., Esq., respectively, while Harriet R. Tobin continued to serve in her capacity as the Panel's lay member.

rebar) was admitted over objection of Respondent's counsel, but only for the limited purpose of illustrating what a conventional landscaping rebar resembles. The Panel also heard testimony of Nancy McBride, the Respondent Neal L. Weinstein, Pamela C. Hawk, Robert Morton, Adam LaBreque, Sgt. Timothy B. Deluca and Richard J. Abbondanza, Esq. On the basis of this evidence, Panel E finds that Respondent Neal L. Weinstein did violate Maine Bar Rules 3.1(a), 3.2(f)(4), 3.6(a) and 3.7(a). For the reasons stated below, the Panel reprimands Neal L. Weinstein for his violation of the Bar Rules discussed below.

### **FINDINGS OF FACT**

In June 2003, Pamela Hawk retained the Respondent Neal L. Weinstein (hereafter "Mr. Weinstein") after her abutter Nancy McBride claimed ownership of approximately eight inches of what Ms. Hawk believed to be her property. Ms. Hawk and Ms. McBride own abutting residential lots located at 8 and 10, respectively, on Colby Avenue in Old Orchard Beach, Maine. Mr. Weinstein wrote a letter to Ms. McBride on June 20, 2003 (*Board Exhibit 1*) in which he 1) asserted his client's ownership of the disputed eight inch strip under the principles of adverse possession, boundary by acquiescence and boundary by parole agreement, 2) suggested Ms. McBride would end up paying, among other things, his client's attorneys fees, 3) invited a call to discuss the matter, and 4) requested removal of a recently-planted small tree. The parties disagree on whether Ms. McBride's counsel, Attorney Richard J. Abbondanza, contacted Mr. Weinstein shortly thereafter to alert him to his representation of Ms. McBride, although everyone agrees that the lawyers spoke shortly after the incidents which are the subject of the complaint.

Apparently relying on a February 2002 Mortgage Loan Inspection sketch of her property (*Board Exhibit 2*) and assurances from others to establish her boundary, Ms. McBride engaged a landscape contractor to construct a low retaining wall which would effectively run along what she asserted was the common boundary line with Ms. Hawk's lot. On July 2, 2003, the contractor's crew began work by stringing a grade line in the precise location of the intended wall, laying out lengths of 4x4 pressure treated landscaping timbers, and scraping a shallow trench to bury the first course of timbers. Not unexpectedly, Ms. Hawk called Mr. Weinstein to complain and to see what could be done to stop the work. At approximately 9:00 AM, Mr. Weinstein arrived at the work site. Although Mr. Weinstein insists no aggressive or otherwise offensive conduct followed, other credible testimony from the landscaping crew and Ms. McBride suggests at least the following events occurred. Mr. Weinstein began by threatening the workers with criminal trespass and assuring them and Ms. McBride that any work they did he would "destroy with my bare hands." Because she found Mr. Weinstein's statement so incredulous, Ms. McBride asked him to repeat it. He did. Mr. Weinstein then pulled out both grade stakes and line. When told she would call the police, Mr. Weinstein's immediate response was "Bring it on." In due course, the Old Orchard Police arrived to quiet the participants, and succeeded in getting an understanding that the dispute was a civil matter, that a Court would need to clarify who owned what property, and that if the landscaping continued, it was at Ms. McBride's risk and should allow Ms. Hawk to be able to continue to enter her driveway located immediately next to the proposed low wall. In Sgt. Deluca's mind, everyone had agreed to his proposed compromise, although only Ms. Hawk's daughter, Sarah, was present for this conciliation because Ms. Hawk had to leave for an appointment.

Once both the police officers and Mr. Weinstein left, the landscapers repaired what had been upset and renewed their effort to get the wall built that day. Ms. Hawk did not observe the continued work until her return at approximately noon. She admitted she called Mr. Weinstein "in a panic" since she felt the wall made her driveway parking area much less viable than she

had become accustomed to historically. Mr. Weinstein reappeared and immediately confronted the crew in what was described by all observers as violent or enraged demeanor and saturated with obscenities. As previously promised, Mr. Weinstein began tearing out the landscaping timbers, bare-handed. The perplexed landscapers then stood on their work in an effort to save it, but were asked to back down by Ms. McBride when she recognized the confrontation was escalating to something potentially more physical. One landscaper remembers confronting Mr. Weinstein with the caution "Dude, don't do that; you'll get arrested." Mr. Weinstein's reply was "The only way anyone is going to get arrested is if you hit me. Go ahead, hit me." The same worker attempted to replace a grade stake, only to have Mr. Weinstein grip the other end in a tug-of-war from close quarters. When Mr. Weinstein began brandishing a piece of rebar, all of the crew retreated reluctantly to watch Mr. Weinstein remove all of their morning's work. Virtually all of the placed timbers and rebars were thrown back on to Ms. McBride's property. The landscape company owner estimated the value of the lost work between \$600 and \$800.

Mr. Weinstein's client, Ms. Hawk, admits to retreating into her porch during the second confrontation because, in her words, "it was tense." She confirmed she had not authorized her lawyer's actions or outbursts in any way. Ms. McBride returned to her phone to call the Old Orchard Beach Police Department and asked Mr. Weinstein to stay to discuss his behavior. He declined, responding "They know where to find me." Before leaving however, he reassured everyone once more that he would come back as often as necessary to rip out any landscaping work. Ms. McBride also then reached her counsel by phone, who made contact with Mr. Weinstein later that afternoon to ask what he thought he was doing. Mr. Weinstein's only comprehensible response was "McBride's from Massachusetts," a curious observation in view of the fact that Messrs. Abbondanza and Weinstein grew up together in the same Massachusetts community. Mr. Weinstein's counsel suggests the observation was only a joke, but Mr. Weinstein furnished no other justification for the day's events in their phone call.

The landscapers would not restore their work that day without further assurance they would not face a repeat performance by Mr. Weinstein. Mr. Weinstein in fact did return to the site a third time that day, later in the evening. We can only speculate what would have occurred had the wall installation been complete when he returned, but since no further demolition could occur he used the visit to reassure his client that "It's not how I do business." Mr. Weinstein testified further that he had no idea what he would do when he visited the work site the first two times on July 2<sup>nd</sup>. He merely states "I had to see it to believe it."

Although Mr. Weinstein denies touching any stakes, throwing any objects, threatening any criminal action and using any obscenities, and asserts he only moved a timber to remove it from touching his client's motor vehicle tire, the other eye witness testimony is both extensive and consistent, and all contrary to Mr. Weinstein's version of the events.

### **BOARD ALLEGATIONS OF MISCONDUCT**

Neal L. Weinstein is alleged to have violated numerous Maine Bar Rules for his actions towards the landscapers and his behavior generally. After agreeing not to press certain alleged violations, Bar Counsel's remaining alleged misconduct focused on:

- §3.1(a) - conduct "unworthy of an attorney"
- §3.2(f)(4) - conduct prejudicial to the administration of justice
- §3.6(a) - failure to exercise reasonable care and skill and apply the lawyer's best judgment in the performance of professional services
- §3.7(a) - asserting a position or taking other action on behalf of the client when the

lawyer knows, or should know, that such action would merely serve to harass or maliciously injure another

Bar Counsel concedes that visiting the work site and speaking with the landscapers in a professional manner, viewed alone, would not be misconduct.

## DISCUSSION

Of course, this Panel can not and will not rule on the merits of the adverse possession and trespass claims which spurred these neighbors' disagreement. Those matters are now the subject of a civil suit between Ms. Hawk and Ms. McBride. But irrespective of the strength or weakness of Ms. Hawk's legal position on July 2, 2003, this Panel is obliged to rule on Mr. Weinstein's behavior that day.

Attorney behavior, particularly in the context of representation of a client, must be worthy of our profession. We must conduct ourselves "in the office of an attorney ... with all good fidelity." Title 4 MRSA §806 (Attorney's Oath). What is considered "unworthy" is, by definition, spelled out in our Maine Bar Rules. Maine Bar Rule 3.1(a). In Board of Overseers of the Bar v. Richard B. Slosberg, BAR 92-13, 93-3 and 95-9, (3-21-1996) (verbal abuse of a representative of an adversary's employer), Justice Roberts observed "any verbal abuse of an adversary is unworthy of an attorney regardless of the circumstances." "The zeal employed by an attorney in guarding the interests of his clients must always be tempered so as to not inject his personal feelings or display a demeanor that subjects parties to a proceeding or opposing counsel to certain indignities." Office of Disciplinary Counsel v. Jackson, 84 Ohio St. 3d 386, 387-388; 704 N.E. 2d 246 (1999). Based on the evidence presented, the Panel finds Mr. Weinstein's July 2, 2003 conduct to have been inappropriate, unprofessional and unworthy of an attorney.

Perhaps Mr. Weinstein's initial, early morning confrontation could be characterized as zealous representation, although it was still far too immoderate in the language and actions needed to convey his message that the proposed wall was on disputed land. Nevertheless, this Panel finds the afternoon's events were of such an extreme nature to call into question Mr. Weinstein's professional judgment. Nothing positive can ever be achieved through a threatening, enraged confrontation, particularly with individuals who are largely unaware of the underlying dispute. Any reasonable lawyer appreciates, or should appreciate, the explosive nature of a confrontation with a work crew and the likely effect destruction of their labors would produce. Mr. Weinstein is a seasoned lawyer, presumably well aware of the judicial relief available to resolve a boundary dispute. It is difficult to imagine how an attorney's self-help to discourage an adversary from utilizing the disputed property (in this instance a mere eight-inch strip) would ever be fruitful.

Specifically, we find that Mr. Weinstein's self-help approach was conduct prejudicial to the administration of justice, a dramatic failure to exercise reasonable care and skill, and a grievous shortage of "lawyer's best judgment" in the performance of professional services. In addition, his verbal and physical confrontation with the landscapers appears to be action on behalf of the client which the lawyer knows, or should know, would merely serve to harass or maliciously injure another.

## DETERMINATION

In the event the Panel concludes lawyer misconduct subject to sanction under the Maine Bar Rules has occurred, Maine Bar Rule 7.1(e)(3) requires this Panel either to issue a dismissal

with a warning or to issue a public reprimand or a finding of probable cause for suspension or disbarment and direct Bar Counsel to commence an attorney disciplinary action by filing an information pursuant to Maine Bar Rule 7.2(b). In determining an appropriate sanction, this Panel took into account our finding that the Respondent acted intentionally or recklessly, that actual injury was caused by the misconduct, and that a prior record of misconduct exists. Accordingly, we believe the appropriate sanction is that Neal L. Weinstein be and hereby is issued a public reprimand for violation of Maine Bar Rules 3.1(a), 3.2(f)(4), 3.6(a) and 3.7(a).

Dated: July 30, 2004

*/s/*

---

David R. Weiss, Acting Chair Panel E

*/s/*

---

John H. Rich III

*/s/*

---

Harriet R. Tobin