

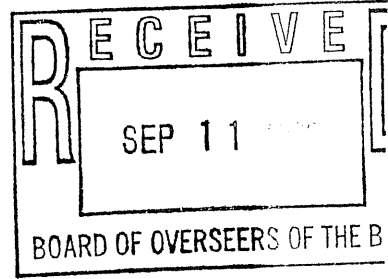
STATE OF MAINE

Board of Overseers of the Bar

Grievance Commission  
File No. 05-286

BOARD OF OVERSEERS OF THE BAR )  
 )  
 Petitioner )  
 )  
 v. )  
 )  
 JAMES L. AUDIFFRED, ESQ. )  
 of Saco, Maine )  
 Maine Bar No. 2382 )  
 )  
 Respondent )

REPORT OF FINDINGS  
OF PANEL D  
OF THE GRIEVANCE  
COMMISSION



On August 28, 2006, 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, James L. Audiffred, Esq. This disciplinary proceeding was commenced by the filing of a Petition by the Board of Overseers of the Bar on April 26, 2006, alleging misconduct in violation of M. Bar R. 3.1(a), 3.2(f)(2), 3.2(f)(4), 3.6(a), and 3.7(a).

At the hearing, Assistant Bar Counsel Aria eee represented the Board, and the Respondent was represented by James M. Bowie, Esq.<sup>1</sup> The Board's exhibits marked Board Exh. 1 through Board Exh. 9, the Respondent's exhibits marked Resp. Exh. 11 through Resp. Exh. 13, and a transcript marked as Joint Exh. 1, were all admitted without objection. The Panel heard testimony from the following witnesses:

Capt. Patrick M. Lehan  
James L. Audiffred, Esq.  
Herschel M. Lerman, Esq.

Having heard the testimony and reviewed the evidence submitted, the Panel hereby makes the following findings:

<sup>1</sup> The Panel denied a request by Richard B. Slosberg, the initial complainant in this matter, to participate as a party.

## 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. At all times relevant hereto, Respondent was representing Sterling Sawmill, LLC, in a collection matter against Kevin Bedard and Raymond Bedard, individually and doing business as Bedard Roofing and Construction. Respondent obtained an order permitting the attachment of the defendants' property. Becoming frustrated with defendants' concealment and movement of the property subject to attachment, Respondent engaged in a series of communications with the York County Sheriff's Department in which Respondent spoke in an overbearing and abusive manner, one of those communications being a message left on Capt. Lehan's home answering machine. (Joint Exh. 1.)

On Friday, September 20, 2002, Capt. Lehan located a construction trailer clearly marked "Bedard Roofing and Construction" and attempted to execute the attachment on it. The defendants produced a registration purporting to show that the trailer was actually owned by Raymond Bedard's son, Coco Bedard, who was not a named defendant.<sup>2</sup> Capt. Lehan contacted Respondent to inform him that he would not be able to attach the trailer. Respondent then came to the site where the trailer was located. He used grossly abusive language against Capt. Lehan, who thereupon advised him to leave.<sup>3</sup>

After Respondent got into his car, Raymond Bedard approached the car window and interacted with Respondent in some manner, following which a physical scuffle ensued outside the car. The two were separated by Raymond Bedard's sons, and Respondent then departed the scene.

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<sup>2</sup> Confusingly, Raymond Bedard is nicknamed "Coco," whereas Coco is apparently his son's given name.

<sup>3</sup> Although Respondent denied using the specific obscenities and other epithets attributed to him by Capt. Lehan, the Panel found Capt. Lehan's account credible. However, the Panel notes that even the abusive language toward Capt. Lehan that was actually admitted to by Respondent would support the Panel's disposition of this matter.

## CONCLUSIONS AND SANCTION

The Panel concludes that Respondent conducted himself in a manner unworthy of an attorney in this matter. “Attorney behavior, particularly in the context of representation of a client, must be worthy of our profession. . . . ‘Any verbal abuse of an adversary is unworthy of an attorney regardless of the circumstances.’” *Board of Overseers v. Neal L. Weinstein*, GCF 03-252 (July 30, 2004) (quoting *Board of Overseers v. Richard B. Slosberg*, BAR 92-13, 93-3, and 95-9 (Mar. 21, 1996). “ ‘The zeal employed by an attorney in guarding the interests of his clients must always be tempered so as not to inject his personal feelings or display a demeanor that subjects parties to a proceeding or opposing counsel to certain indignities.’” *Id.* (quoting *Office of Disciplinary Counsel v. Jackson*, 84 Ohio St. 3d 386, 387-388, 704 N.E.2d 246 (1999). In the *Weinstein* matter, Panel E of the Grievance Commission concluded that the respondent’s verbal abuse and physical confrontation 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,” and appeared to be “action on behalf of the client which the lawyer knows, or should know, would merely serve to harass or maliciously injure another.” *Id.*

In this case, the testimony was inconclusive as to who was more at fault in the physical altercation, although Respondent admitted that in hindsight, he should not have come to the scene at all. It was undisputed, however, that Respondent did come to the scene and was verbally abusive not only to the defendants, but also to the deputy sheriff. Of great concern to the Panel was Respondent’s testimony that in doing so, he was not out of control in any way. The Panel therefore concludes that in Respondent’s view, verbal abuse of others, including a law enforcement officer in the performance of his duties, is an ordinary and accepted course of conduct. The Panel finds this behavior to be inconsistent with the office of an attorney. Under

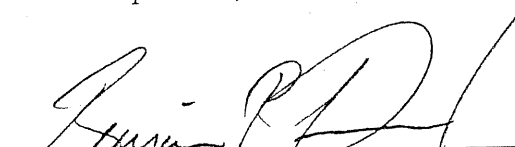
the circumstances at issue in this matter, Respondent's behavior was, at minimum, conduct prejudicial to the administration of justice in violation of M. Bar. R. 3.2(f)(4).


Respondent testified that in his view, the definition of "conduct unworthy of an attorney" is limited to actions specifically proscribed by the Attorney's Oath, 4 M.R.S.A. § 806. The Panel finds Respondent's view of the scope of sanctionable misconduct to be unduly constrained. The Maine Bar Rules specifically state that they are "intended to provide appropriate standards for attorneys with respect to their practice of the profession of law, including, but not limited to, their relationship with their clients, the general public, other members of the legal profession, the courts and other agencies of the State," M. Bar R. 2(a), and that "the prohibition of certain misconduct in this Code is not to be interpreted as an approval of conduct not specifically mentioned." M. Bar R. 3.1(a). Accordingly, the Panel concludes that Respondent has engaged in misconduct subject to sanction under the Maine Bar Rules. Respondent violated a duty owed to the legal system, to the profession, to the courts and other agencies of the State, and to the public.

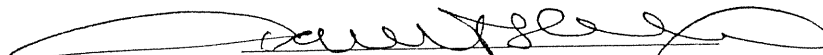
While the injury caused by Respondent's misconduct was minimal, the Panel is unable to conclude that there is little likelihood of repetition by the Respondent. To the contrary, while the likelihood of another similar physical altercation may be remote, the evidence before the Panel demonstrated, at minimum, a pattern on the part of Respondent of verbal abuse and harassment of Capt. Lehan. Respondent's behavior appeared to be intentional and knowing. With regard to aggravating and mitigating factors, Respondent denied any anger management problem, and testified that he was in complete control of himself in using abusive language to others; the sole mitigating factor presented by Respondent was the pressure exerted by his client to achieve a favorable result in the collection matter, a factor that the Panel concludes is foreseeable in similar matters and could be expected to lead to a repetition of similar behavior.

In light of the foregoing findings and conclusions, the Panel concludes that the appropriate disposition is a public reprimand to Respondent, and he hereby is so reprimanded.

Dated: September 1, 2006

  
Benjamin P. Townsend, Esq., Chair

  
David Nyberg, Ph.D.

  
David S. Abramson, Esq.