

Kennebec, ss.

Board of Overseers of the Bar
Grievance Commission
File No. GCF #03-233

BOARD OF OVERSEERS OF THE BAR)

Petitioner)

v.)

CHARLES R. BEAN, ESQ.)

of So. Portland, Maine)

Me. Bar #2805)

Respondent)

**REPORT OF FINDINGS
OF PANEL C OF THE
GRIEVANCE COMMISSION**

On May 19, 2004, pursuant to due notice, Panel C of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1(e)(2), to determine whether there were grounds to issue a reprimand or if probable cause existed to file an information concerning alleged misconduct by the Respondent Charles R. Bean (Bean), as described in a Petition dated and filed by the Board of Overseers of the Bar (the Board) on March 8, 2004. Bar Counsel J. Scott Davis represented the Board, and Karen G. Kingsley, Esq., represented Bean. Both counsel and Mr. Bean were present at the hearing.

Although this matter was initially brought to Bar Counsel's attention by the court (Gunther, J.), the "factual complainants" were Attorneys Charles W. Hodsdon and Christopher D. Smith, neither of whom attended that hearing but both had been notified by Bar Counsel that the parties had stipulated to the following facts and proposed disposition of this matter by a reprimand, which the Panel now so finds and adopts as follows:

1. The Bangor District Court (Gunther, J.) initially brought this complaint matter to the Board's attention based upon Attorney Bean's failure to follow through with an agreement to provide a very modest settlement amount - \$250.00 - to Attorneys Hodsdon's and Smith's client, Concord Group Insurance Company.

2. In the Bangor District Court matter of *Concord Group Insurance Co. vs. Charles R. Bean, Esq.*, Concord was the insurer for Elise York and had paid \$4,433.62 to her for damages caused to her motor vehicle in a motor vehicle accident caused by the negligence of Michael Totman on March 19, 1998.

3. By its subrogation action, in January 1999 Concord Group obtained judgment in the amount of \$4,433.62. In his capacity as counsel for Mr. Totman, by letter dated February 7, 2002 to Concord's attorney, Charles Hodsdon, Attorney Bean requested a release from Attorney Hodsdon.

4. After having a telephone conversation with Attorney Bean on February 8, 2002, Attorney Hodsdon received a letter from Attorney Bean indicating Mr. Totman was going to file bankruptcy, and enclosing a check in the amount of \$250.00 as a proposed settlement offer with the explanation that his client wished to obtain his license and right to operate as soon as possible. However, that check was drawn on a personal account. As a result, on February 13, 2002, Attorney Bean

spoke to Attorney Smith and indicated a \$250.00 bank check or check from his trust account would replace that earlier personal check.

5. On behalf of Attorney Hodsdon, Attorney Smith timely delivered that release to Attorney Bean by letter dated February 15, 2002 on the expressly stated condition and mutual agreement that the release would be held in escrow by Attorney Bean until he replaced that personal check with a bank check, money order or check from his office's escrow account to Attorney Hodsdon or Attorney Smith in the amount of \$250.00 to settle Concord's outstanding judgment.

6. Such a condition was critically important to Attorney Hodsdon and Attorney Smith, in light of the fact that they knew Totman was about to file for bankruptcy, which would cause his debt to Concord to be discharged.

7. On June 28, 2002 Attorney Hodsdon received a copy of the Notice to Creditors regarding Mr. Totman's bankruptcy, but Attorney Bean had still not tendered the proper \$250.00 payment as promised.

8. On July 1, 2002 Attorney Hodsdon spoke with Attorney Bean who assured him that the failure to send the check for \$250.00 was an oversight that would be then corrected.

9. On July 24, 2002, Attorney Hodsdon wrote to Attorney Bean regarding this matter, but Attorney Hodsdon received no response. On September 10, 2002, Attorney Hodsdon again wrote to Attorney Bean regarding the matter, but still received no response. On January 28,

2003, Attorney Hodsdon sent Attorney Bean an acknowledgment of service, but it was not returned to Attorney Hodsdon. On April 28, 2003, Attorney Hodsdon received an answer to the complaint he served on Attorney Bean. Thereafter, Attorney Hodsdon has received no further communication from Attorney Bean. On May 20, 2003, Attorney Hodsdon served Attorney Bean with a request for admissions. Attorney Bean did not respond. On June 25, 2003, Attorney Hodsdon filed a Motion for Summary Judgment to which Attorney Bean did not object.

10. Concord's Motion for Summary Judgment against Attorney Bean was granted by the court, but that judgment that was so entered has not been satisfied by Attorney Bean.

11. Thus, Attorney Bean never followed through to pay that \$250.00 settlement amount but was aware that the release had been improperly used to allow Mr. Totman to obtain his motor vehicle license back from Maine's Secretary of State's Office.

12. By respective letters dated August 1 and September 19, 2003, Attorney Bean was notified and directed to respond to Bar Counsel concerning this complaint matter as filed by Judge Gunther. Attorney Bean's response thereto was initially due to be received by Bar Counsel on or before August 22, 2003. Attorney Bean failed to so respond by that date, in violation of M. Bar R. 2(c). Bar Counsel's subsequent certified letter of September 19, 2003 notifying him of that Rule 2(c) violation, was received by Attorney Bean.

13. Attorney Bean still failed to timely respond to Bar Counsel, only doing so by his belated letter of October 15, 2003 (with enclosures), despite having been earlier informed that the Grievance Commission Panel's preliminary review of this complaint matter was to occur forthwith on October 17, 2003.

14. The underlying pleadings and resulting court action in this matter set forth misconduct by Attorney Bean involving at least misrepresentation in violation of M. Bar R. 3.2(f)(3) and conduct prejudicial to the administration of justice in violation of M. Bar R. 3.2(f)(4).

15. Having obtained and benefited from one part of a negotiated settlement, i.e. the execution of Concord Group's Release Document, Attorney Bean failed to comply with his obligation under that agreement and did not forward the required \$250.00 payment to Attorney Smith. His conduct in that regard was again in violation of M. Bar R. 3.2(f)(3)(4).

CONCLUSION AND SANCTION

16. Attorney Bean now agrees and has admitted to this Panel that he engaged in professional misconduct by misrepresenting to counsel that upon receipt of that release he would remit that \$250.00 bank check. His failure to do as agreed and promised was certainly conduct prejudicial to the administration of justice and conduct that involved misrepresentation and was unworthy of an attorney.

17. Attorney Bean has no prior disciplinary record with the Board.

18. Attorney Bean has now remitted that \$250.00 and also provided restitution to Attorney Hodsdon for the costs associated with the litigation he had to initiate against Attorney Bean due to Attorney Bean's failure to make that earlier agreed payment.

19. Based upon his stated remorse and agreement that his grossly dilatory action in this matter did constitute serious misconduct in violation of the Code of Professional Responsibility, the Panel concludes that the appropriate disposition of this case is a public reprimand which is now hereby issued and imposed upon Attorney Charles R. Bean.

Dated: May 19, 2004

David S. Abramson, Esq.
Chair, Grievance Commission Panel C

Valerie Stanfill, Esq.

Christine Holden, Ph.D.