

STATE OF MAINE
SUPREME JUDICIAL COURT

Docket No. BAR-06-3

BOARD OF OVERSEERS OF THE BAR)	
)	
v.)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
BRIAN D. CONDON, JR.)	SANCTION
of Winthrop, Maine)	
Me. Bar No. 8588)	

A hearing on the motion for contempt brought by the Board of Overseers of the Bar against Brian Condon was held on May 8, 2007. Nora Sosnoff appeared for the Board, and Karen Kingsley appeared for Brian Condon. Condon was the only witness. The parties agreed to the admissibility of all of the offered exhibits.

By order of Justice Howard H. Dana, Jr. of the Supreme Judicial Court entered on December 27, 2006, Condon was found to have violated several provisions of the Maine Bar Rules. The sanction was a one-year suspension from the practice of law, commencing January 1, 2007. The court suspended all but fifteen days of that one-year period of suspension. The parties agree that the unsuspended fifteen-day period began on January 15, 2007.

By motion dated February 26, 2007, the Board seeks a finding of contempt against Condon and alleges three violations of the December 27, 2006 order. First,

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the Board alleges that Condon continued to advertise his services as an attorney in a local newspaper during the period of January 15 through January 30, 2007. Second, the Board alleges that during this period Condon acknowledged deeds as an attorney. Third, the Board alleges that Condon violated the provision of the order that required him, before resuming his practice, to enter into a monitoring agreement with the Maine Assistance Program for Lawyers (MAP). As a sanction, the Board seeks a six-month extension of the unsuspended portion of the suspension from the practice of law.

I. FINDINGS

Related to these instances alleged in the Board's motion for contempt, the court finds that the Board has demonstrated by clear and convincing evidence the following facts.

A. Advertisements

In a weekly local publication called the "*Community Advertiser*," Condon publicized his law office with a small (four-inch by one and one-half-inch) advertisement. The advertisement gives the address of Condon's law office with the phone number and email address. It indicates that he provides services for "Wills/Trusts, Estate Administration, Probate, Corporations, Real Estate, Taxes." It further states: "If buying a home or business, make sure YOU are represented

properly.” Condon had a standing order for the weekly ads. He was periodically billed for the ads by the publication.

This advertisement ran on January 20 and January 27, during the unsuspended portion of Condon’s suspension from practice. Condon testified that the advertisement on those dates was inadvertent. He excused his failure to notify the publication to remove the advertisement by saying that it was not an advertisement as much as it was his support for the publication that provides community services. Condon’s excuse is disingenuous and undermines his testimony that his failure to pull the advertisement during his period of unsuspended suspension was completely inadvertent.

B. Deed Acknowledgments

There was some initial confusion regarding the timing of the unsuspended period of suspension. The parties resolved the confusion and agreed that the period would start on January 15. From January 15 through January 30, Condon continued to go to his law office at least some of the time. He was a sole practitioner at the time of his suspension. He removed a sign from his law office indicating that it was a law office.

During this fifteen-day period he continued to operate another business that he owns, a law-related business of a title company, and he displayed a title company sign on his law office. In his capacity as the owner or employee of the

title company, he prepared deeds. He was also the agent of a title insurance company, and in that capacity he made commitments for the title insurance company.

On January 26, 2007, he conducted a real estate closing involving property in which the seller was Affordable Maine Homes and the buyer was an individual. The buyer and the manager of Affordable Maine Homes were present in Condon's office. The deed and mortgage deed had been prepared ahead of time. Condon took the acknowledgment of the buyer on the mortgage deed. Under Condon's signature, Condon wrote "atty." He realized that he should not acknowledge the signature as an attorney and crossed out "atty." He located his notary stamp and stamped the deed with the notary stamp. Condon also took the acknowledgement of the manager of Affordable Maine Homes on the warranty deed and used his notary stamp. On the same day, Condon participated in another closing and took the acknowledgement of the sellers' signatures on a warranty deed.

On these three deeds, Condon's notary stamp is illegible and the date of expiration is not shown. Although Condon was not aware of it on January 26, his notary commission had expired in March 2006.

Condon did not become aware of the defect¹ in his taking of the acknowledgments until his attorney telephoned to tell him about the motion for contempt that the Board was considering. Condon then wrote a letter to Justice Dana in which he stated:

On January 27, 2007, 3 days prior to resuming the practice of law and prior to the MAP contract being finalized, in the course of doing a closing for my title company, I notarized 3 documents. The first was a mortgage, and instinctively I wrote, “atty” below my name, as I always do. I immediately noticed it, and went into my office from the conference room to get my notary stamp, because I know that an attorney can only notarize documents if they are in good standing. I stamped the document with my notary stamp and seal, and then notarized 2 deeds as well, with the stamp and seal. What I didn’t realize until a few weeks later when the mortgage company got the mortgage, was that my notary stamp (through lack of use or age), had either worn away, or the ink was so dried and low, that the date of my commission expiring was unreadable. When I pulled my stamp and stamped it, I still could not read it, so I turned it around and looked at it, and it said “Commission Expires, March 2006”.

Therefore, those three documents, I needed to re-notarize and re-record, which I have completed at my own expense.

Condon continued on in the letter to state that he meant no disrespect, and he apologized for the mistake. The letter is undated, but the postmark indicates it was mailed on February 26.

In the answer that Condon filed with this Court in response to the Board’s motion for contempt, Condon stated:

¹ The acknowledgement statute provides: “Deeds . . . must be acknowledged by the grantors, . . . before a notary public in the State, or before an attorney-at-law duly admitted and eligible to practice in the courts of the State” 33 M.R.S. § 203 (2006).

Attorney Condon . . . was unaware that his commission as a Notary Public had expired on March 9, 2006, until the mortgage company for the real estate transaction had received the documents back from the Registry of Deeds and notified him of the situation, after which he had the documents in question re-notarized and re-recorded at the Registry of Deeds and promptly applied to the Secretary of State for reinstatement of his notary commission.

In fact, as Condon admitted in his testimony and contrary to what he stated in his letter to Justice Dana and in his answer, he has corrected the acknowledgement and rerecorded only one of the three deeds. Condon testified that he made a “misstatement” in his letter to Justice Dana and in his answer with regard to having corrected and rerecorded all three deeds. The Court finds that Condon made a deliberate misrepresentation in his letter to Justice Dana and his answer concerning his correction and rerecording of the deeds.

C. Monitoring Agreement

The December 27 order states:

a) Prior to his returning to active practice any time after February 1, 2007, at his own expense, Attorney Condon shall enter into a monitoring agreement with the Maine Assistance Program for Lawyers and Judges (MAP) in a form acceptable to Bar Counsel and the Director of MAP, and shall undergo assessment, testing, and treatment, all to the satisfaction of the director of MAP.

Condon resumed his practice of law sometime between January 30 and February 5, 2007.² Prior to January 15, 2007, and during the fifteen-day period, Condon's attorney corresponded by email and telephone with David Kee, the director of MAP regarding a monitoring agreement. Kee explained what he would need from Condon to establish an agreement. Among other things, Condon had to provide Kee with releases and a letter of intent from which Kee would prepare the contract. Condon did not provide the letter of intent to Kee until February 6. Kee then drafted the contract and sent it to the Board's counsel for approval as to form. Condon approved a draft of the contract on February 13, and the Board's counsel gave final approval by letter dated February 27. Kee signed the contract on March 2, and Condon signed it thereafter.

Condon testified that he did not understand that the monitoring agreement had to be executed before he could resume his practice of law. He testified that he believed that as long as counsel for the Board had approved the *form* of the agreement, he could resume practice, and he testified that Board counsel had approved the form before he returned to practice. The Court finds it difficult to believe that Condon could interpret the requirement that he enter into a monitoring

² According to his February 26 letter to Justice Dana, Condon resumed his practice three days after January 27, 2007. He testified that he resumed his practice on February 5, 2007.

agreement before he resumes his practice in the manner that he testified. Condon violated the above-quoted provision of the December 27 order.

II. CONCLUSIONS OF LAW

An attorney under suspension may not “accept any new retainer or engage as attorney for another in any new case or legal matter of any nature.” M. Bar R. 7.3(i)(1)(A). The Court has held that this provision is violated when an attorney used stationary with a letterhead indicating that he is an attorney. *Bd. of Overseers of the Bar v. MacKerron*, 581 A.2d 424, 425 (Me. 1990). Furthermore, an attorney under suspension has no ability to act as an attorney during the suspension period. *Id.*; M. Bar R. 7.3(i)(1)(B). “[A]cknowledging a deed as an attorney” is holding oneself out as an authorized attorney. *MacKerron*, 581 A.2d at 425.

The Maine Bar Rule regarding contempt by a suspended attorney states:

Any failure by a disbarred, resigned or suspended attorney to comply with any of the provisions of this rule, may be found to constitute a contempt of court and thereupon subject said attorney to such sanctions as the Court may further order, including, but not limited to, an extension of the time period of any order of suspension from the practice of law.

M. Bar R. 7.3(i)(1)(F). Under an identically-worded rule, the Court has affirmed the finding of contempt of a suspended attorney who used his letterhead stationary and acknowledged a deed signature as an attorney. *MacKerron*, 581 A.2d at 425.

“Contempt” in M.R. Civ. P. 66(2)(A) is defined as “(i) disorderly conduct, insolent behavior, . . . or other . . . action which actually obstructs or hinders the administration of justice or which diminishes the court’s authority; or (ii) failure to comply with a lawful judgment, . . . or formal instruction of the court.”

Even without contempt rules, Maine courts have inherent contempt power, *State v. DeLong*, 456 A.2d 877, 879 (Me. 1983), and the Supreme Judicial Court has statutory contempt authority, 4 M.R.S. § 7 (2006).

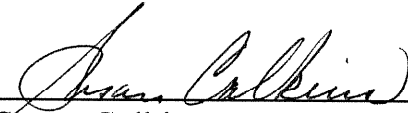
Condon’s failure to stop his advertisement during the fifteen-day suspension period constitutes a failure to comply with Rule 7.3(i) and a failure to comply with the order dated December 27, 2006. Condon’s acknowledgment of the three deeds in his capacity as an expired notary does not technically constitute acting as an attorney during the period of suspension. However, Condon’s deliberate misrepresentation to Justice Dana by letter and to this Court by answer that he had completed the correction of the defects in the three acknowledgments when, in fact, he had not done so, constitutes “hinder[ing] the administration of justice,” M.R. Civ. P. 66(2)(A)(i), and a contempt of court. Finally, Condon’s failure to comply with the terms of the December 27 order by resuming practice before he had entered into the monitoring agreement with MAP likewise constitutes contempt.

III. SANCTION

Condon's failure to stop his advertisement and his resumption of practice before the agreement with MAP was completed warrant a sanction that will capture Condon's undivided attention and impress upon him the seriousness of the suspension imposed by the Court. Furthermore, the deliberate misrepresentation of the facts in his letter to Justice Dana and in his answer to this Court warrants an extension of the unsuspended portion of the suspension from the practice of law.

Therefore, the unsuspended portion of the suspension originally ordered by the December 27 order is extended for an additional period of sixty days, which is to commence on July 1, 2007. In all other respects the December 27 order remains in full force and effect.

Dated: May 31, 2007



Susan Calkins
Associate Justice

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