

STATE OF MAINE

SUPREME JUDICIAL COURT

Bar No. 08-3

Board of Overseers of the Bar

Plaintiff)

v.)

John D. Duncan Esq.
of Portland, ME
Me. Bar #1077)

Defendant)

ORDER of DISBARMENT
M. Bar R. 7.2(b)(5)

BACKGROUND

In this matter, the Board of Overseers of the Bar was represented by Bar Counsel J. Scott Davis, and Defendant John D. Duncan (Duncan) was represented by Attorney George T. Dilworth. The Court, on May 1, 2008, approved counsel's Stipulated Waiver of Grievance Commission Proceedings. As a result, the Court has jurisdiction to proceed directly in this disciplinary proceeding under M. Bar R. 7.2(b) and issue an Order of Disbarment absent any of the usual preliminary procedures of M. Bar R. 7.1(d) or (e). Through his counsel, Duncan has confirmed to the Court that he waives his right to appeal this matter to the Law Court and agrees the disciplinary sanction imposed, disbarment, is to be effective July 1, 2008.

FILED JUL 10 2008

The parties have stipulated to the following facts. Duncan was at all times relevant hereto an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules.

The Board of Overseers of the Bar asserts and it is agreed by Duncan that he engaged in very serious professional misconduct which constituted both violations of specific portions of the Code of Professional Responsibility as well as violations of the Maine Criminal Code (all of which is detailed below) for which he may be disbarred.

Attorney Duncan was admitted to the bar in Maine in 1978 and practiced law in Portland at Verrill Dana, LLP from 1978 to 2007. He became a partner at the firm in 1983.

On November 2, 2007, Duncan submitted to the Board a letter reporting his own professional misconduct. He admitted that he deposited checks from certain clients for the payment of legal and other services into a personal account. He also reported that he had diverted funds from a client who had previously appointed him to act under a durable power of attorney; instead of writing out the checks for legal services to the firm, he had written them to himself and deposited them into his own bank account. When confronted by the firm's managing partner, he confessed that he diverted those funds, but falsely denied that he had diverted funds from other clients. Duncan also reported to Bar Counsel that he withdrew

from the firm on October 28, 2007, and had repaid the firm \$77,500. Although he did not state definitively how many times he had diverted funds or the total amount of money involved, he admitted that there were other clients from whom he had diverted funds.

In late 2007 and early 2008, Verrill Dana and Eleanor M. Rommel – Duncan’s legal secretary from August 2001 through June 13, 2007—filed respective grievance complaints against Duncan. Duncan understands, agrees and the Court so finds that, in summary, those complainants correctly alleged that Duncan had misappropriated funds meant for Verrill Dana or its clients in an aggregate amount of approximately \$300,000, as described below, and that when he was initially confronted he falsely denied a substantial portion of his serious misconduct.

For a significant period of his practice, Duncan had been a leader of Verrill Dana’s Private Clients Group, where he primarily handled estate planning and estate administration matters. Starting in September 1997 and continuing through January 2007, Duncan deposited checks for the payment of legal and other services totaling at least \$109,000 into his personal bank account, and did not transfer the proceeds to the firm as he should have. Duncan also agrees that a client, JT, had appointed him to act under a durable power of attorney. As part of his duties, Duncan issued or authorized checks from that client’s bank account for payment of

legal fees. On occasion, he detailed in the client's check register the amount of the check and the firm's name as the payee, but Duncan wrote his name on the check as the payee. Duncan then deposited the check into an account he controlled.

In early June 2007, Ms. Rommel informed and provided supporting documentation to at least two experienced attorneys at Verrill Dana that she had become aware of documents and conduct confirming that Duncan had engaged in theft of a significant amount of a client's funds. When initially confronted on June 28, 2007 by one of those attorneys—the firm's managing partner—Duncan then admitted only that he had diverted funds totaling \$77,500.00 to himself from one client (JT) when those funds should have gone to the firm. He offered to repay the firm that amount and to resign from the firm.

The following week, on July 2, 2007, Duncan paid the firm \$77,500 to repay the money he admitted he had diverted from that client. In his further discussions with Verrill Dana attorneys during the summer of 2007, Duncan continued to falsely claim he had not stolen any other client or law firm funds. Eventually, on October 22, 2007, Duncan admitted to Verrill Dana's legal counsel that he had improperly handled and diverted other clients' funds that were properly owed to Verrill Dana. By letter dated October 28, 2007, Duncan resigned from Verrill Dana, to be effective December 31, 2007.

Duncan now agrees that his initial statements to Verrill Dana's managing partner and other attorneys at the firm were false and deceitful. There were additional instances where Duncan diverted payments totaling \$31,500 from clients for legal fees to his own account.

Duncan admits that he also diverted other payments that were intended for Verrill Dana. Duncan received checks for legal services provided to several clients from the respective trust companies attending to their particular interests. Those checks were usually made out in his name. Duncan deposited such checks from trust companies, totaling \$187,495.75, into a bank account that he controlled rather than turn them over to the firm.

Duncan has reviewed the summaries prepared by accountants hired by Verrill Dana, and he understands and agrees that their records confirm that the total amount of funds he improperly diverted is approximately \$300,000. The total monetary amount that Duncan has repaid or that Verrill Dana has withheld from him as a result of his thefts exceeds \$480,000. Duncan acknowledges that his misconduct was most serious and violated Maine Bar Rules 3.2(f)(2),(3) and 3.6(e)(1).

On June 10, 2008 Duncan appeared before the Cumberland County Superior Court (Crowley, J.), waived indictment and pled guilty by information to two counts of Theft (Class B). Specifically, Count I (Theft by Unlawful Taking or

Transfer – 17-A M.R.S. Section 353) involved Duncan's theft of \$109,000.00, and Count II (Theft by Misapplication of Property – 17-A M.R.S. Section 358) *involved* his theft \$187,495.75. After inquiry, Justice Crowley accepted Duncan's two guilty pleas pursuant to M. R. Crim. P., Rule 11, and continued those matters for sentencing until September 10, 2008.

At that Criminal Rule 11 proceeding, each counsel confirmed for Justice Crowley that the parties' agreed recommendation to that court included a condition of probation requiring Duncan to make restitution totaling \$296,495.75, minus any amounts that the Court finds he has already repaid to Verrill Dana.

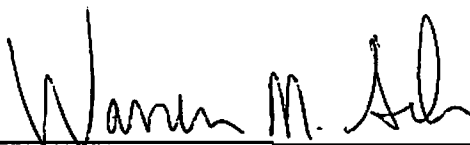
Duncan has also admitted to federal tax authorities that he did not report the income from this conduct on his tax returns, and he has agreed to waive indictment and plead guilty to federal tax evasion charges.

ORDER

The Court hereby orders Duncan be disbarred effective July 1, 2008. The Court further orders (pursuant to M. Bar R. 7.3(j)) that Duncan is disbarred for his lifetime. The long-term nature of the theft, over a ten-year period, and the size of the theft make clear to the Court that Duncan should not ever be eligible to apply

for reinstatement to the Bar of the State of Maine. The Court further orders that all costs of this proceeding be paid by Duncan no later than September 10, 2008.

Dated 7/8/08

A handwritten signature in black ink, appearing to read "Warren M. Silver", written over a horizontal line.

Warren M. Silver, Associate Justice
Maine Supreme Judicial Court