

Kennebec, ss.

Board of Overseers of the Bar
Grievance Commission
File No. GCF #03-305

BOARD OF OVERSEERS OF THE BAR)

Petitioner)

STEPHEN T. HAYES, ESQ.)

of AUGUSTA, ME)

Me. Bar #65)

Defendant)

) REPORT OF PROCEEDINGS
) FINDINGS, CONCLUSION
) AND DISPOSITION

Procedural Background

1. A hearing in this matter was held before Panel D of the Grievance Commission on June 21, 2004, at the offices of the Board of Overseers of the Bar in Augusta, Maine. The panel consisted of Patricia M. Ender, Esq., chair, Stephen Schwartz, Esq., and David Nyberg, Ph.D. There was no objection to the composition of the panel. Bar Counsel Scott Davis represented the Board; Mr. Hayes proceeded *pro se*.

2. At all times relevant hereto, Respondent Stephen T. Hayes, Esq. of Augusta, County of Kennebec, State of Maine, was an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules.

3. Complainant Ruby Gail Card and Respondent Stephen T. Hayes testified. Board Exhibits 1 - 27 were admitted without objection.

Facts

4. Ruby Gail Card was widowed in August 2001. Her husband had owned several farm-based businesses – including raising beef cattle, producing and selling maple syrup, and operating a commercial haying enterprise¹ - and Mrs. Card had contributed to their operation

¹ Mr. Card had assisted with his aunt's dairy operation, but did not own or profit from her business; he had ceased work on a saw-mill operation several years before his death.

and financial support. Mr. Card's will left most of his estate to his children, but reserved a life estate for Mrs. Card. Mrs. Card initially tried to resolve her interests in the estate *pro se*, but her efforts were not fruitful. To settle the estate, Mrs. Card met with Attorney Hayes on or about April 3, 2002.

5. At that meeting, Mr. Hayes advised Mrs. Card of ways she could proceed, including contesting the will, which she did not wish to do. She did wish to clarify her life estate, and to make a claim against the estate. She made it clear that she wanted to pursue her interests in a manner which preserved good relationships with her adult stepchildren and which honored her late husband's wishes.

6. After the meeting, Mrs. Card began to assemble her records regarding her claims. During this time, she also suffered a serious fall, was hospitalized several times and endured a difficult convalescence, all of which interrupted her gathering and sorting of records.

7. Despite her injuries, by August 2002, Mrs. Card sent Mr. Hayes documentation of her expenses, and identified in writing her questions and concerns. She followed this with clarifications and corrections, and in September, October (twice) and November 2002 politely inquired about any progress.

8. In November 2002, on behalf of Mrs. Card, Mr. Hayes filed a claim against the estate. In December, Mr. Hayes and Mr. Livesay, attorney for the personal representative, with some difficulty, worked to arrange a meeting with their respective clients which was finally held on January 13, 2003.

9. Following the meeting, Mrs. Card provided additional information and documentation that had been requested at the January meeting. Mr. Hayes acknowledged receipt, and advised that he would get through the packet in a week and follow up with Mr.

Livesay. He wrote to Mr. Livesay on March 5, 2003, indicating that he would go through the materials and would soon forward a copy of the documentation and a new proposal.

10. There is no indication that Mr. Hayes reviewed the materials. On May 19, 2003, Mr. Livesay sent Mr. Hayes a detailed proposal describing areas of agreement, proposed dispositions, and requests for additional information. Mr. Hayes did not respond.

11. On July 15, 2003, Mrs. Card called Mr. Hayes and eleven days later contacted him by email. She urged a resolution, described her distress at the ongoing uncertainty, and requested a prompt reply. Mr. Hayes did not respond.

12. On or about August 6, 2003, Mrs. Card saw Mr. Hayes outside his office where he said he would contact her soon. He also acknowledged receiving messages from her. Mrs. Card sent Mr. Hayes a certified letter on August 21, 2003, and again on September 10, 2003. In early October 2003, Mrs. Card sent an email and left another phone message for Mr. Hayes. Despite her increasing frustration, all of Mrs. Card's communications were polite and pertinent to her case. Mr. Hayes did not respond.

13. In an effort to stir Mr. Hayes to action, Mrs. Card filed a grievance complaint against Mr. Hayes on October 10, 2003. On November 6, 2003 Mr. Hayes acknowledged receipt of the complaint, gave an explanation of work done and admitted that Mrs. Card "is a nice lady who deserved better attention than she received from me, and I am willing to make it right by her." He offered, if she wished, to complete the matter without additional cost and to refund what she had paid for services provided in December 2002 and January 2003.

14. Mrs. Card replied to Mr. Hayes immediately upon receipt of his response to the grievance complaint. She graciously accepted his apology and offer to complete the work without further charge, noted inaccuracies in his response to Bar Counsel, offered to clarify

information she had previously provided, and expressed her appreciation. On the same date, she advised Bar Counsel of her reply.

15. On December 2, 2003 Bar Counsel wrote to Mr. Hayes and Mrs. Card, advising that he would recommend a dismissal with a warning. He asked each for a status report by December 12, 2003 regarding what work had been done on Mrs. Card's matter, and if it had not been finalized, when that was expected to occur.

16. Mrs. Card again promptly responded to Bar Counsel. The body of that letter stated in full, "In response to your letter dated December 2, 2003 regarding the current status of further legal work performed by Mr. Hayes. There has been no further work done. I received a written apology from him and responded to it. To date that is the extent of his communication with me."

17. Mr. Hayes did not respond to Bar Counsel or to Mrs. Card. Upon his receipt of Mrs. Card's response to the Board, he believed his services had been terminated and he did nothing further. He did not advise Bar Counsel, Mrs. Card, opposing counsel or anyone else of his position.

18. Bar Counsel wrote to the parties on December 12, 2003 indicating that the amended recommended disposition to the reviewing panel would be to find probable cause for further proceedings.

19. Hearing nothing further from Mr. Hayes, Mrs. Card wrote to him on February 26, 2004 to request her file, which was copied and returned.

20. As of June 21, 2004, Mrs. Card was unrepresented by counsel and no further progress had been made on her claim against the estate.

21. Mr. Hayes billed Mrs. Card three times, all of which she promptly paid: on May 1, 2002 for 3.25 hours work performed in April 2002; on February 1, 2003 for 4.25 hours work performed in December 2002 and January 2003; on September 1, 2003 for .1 hour phone call on July 15, 2003.

22. For an undefined period between April 2002 and October 2003, Mr. Hayes's computer system was inoperable.

23. Mr. Hayes has practiced in Maine for 27 years, and has no prior disciplinary record. He has received one dismissal with a warning.

Conclusion

24. Mr. Hayes violated Bar Rule 3.2.(f)(4) by engaging in conduct prejudicial to the administration of justice, Bar Rule 3.6(a) by failing to be punctual and to apprise Mrs. Card appropriately of the status of her case, and 3.6(a)(3) by neglecting the matter she had entrusted to him. Violation of a specific Bar Rule also violates Bar Rule 3.1 and is conduct unworthy of an attorney.

25. The panel cautiously finds that Mr. Hayes did not violate Maine Bar Rule 3.3 prohibiting excessive fees. Mr. Hayes's hourly rate is reasonable for someone of his experience, and the billing records make it clear that he charged for only some of his time. Mr. Hayes, however, stopped working on Mrs. Card's case and consequently achieved little for her. The panel, in finding no violation of Bar Rule 3.3, relies upon Mr. Hayes's offer to return \$573.75 to Mrs. Card, which should be promptly paid.

Disposition

26. The panel, considering the factors set forth at Maine Bar Rule 7.1(e)(3), determines that the appropriate sanction is a public reprimand. The misconduct alleged was

not minor, in that it involved a sustained period of neglect of an entrusted matter and an extended lack of communication with a client. Mrs. Card was injured by the misconduct: her difficult personal loss was made even harder by Mr. Hayes's failure to resolve the claim, which remains unresolved. The legal profession is diminished by the neglect, as evidenced by Mrs. Card's resulting ill feelings towards lawyers in general.

27. The panel finds the following aggravating factors: a) Except for a time during which she was in poor health, Mrs. Card repeatedly and politely contacted Mr. Hayes, provided him with records that she had sorted for him, and offered to assist him in resolving her case, yet he failed to respond. b) After offering to resolve the matter at no further cost to Mrs. Card, Mr. Hayes irrationally concluded – and continues to believe - that her prompt response to Bar Counsel relieved him of his responsibilities, including the responsibility to communicate to her and opposing counsel that he no longer represented her. While the panel appreciates that, in general, it is rare for an attorney to continue representation of a client who has filed a grievance complaint, Mr. Hayes had nevertheless offered to continue representation when he received the complaint and he knew that Mrs. Card had accepted his offer. It is of further concern that Mr. Hayes did not respond to Bar Counsel's request for a status report.

28. The panel finds the following mitigating factors: a) Mr. Hayes has met his obligations under Maine Bar Rule 3.10 by representing a substantial number of indigent persons without charge, and others at a reduced rate; some of these cases which arose between March and October 2003 involved emergencies and one involved a significant question of law before the Law Court. b) Mr. Hayes experienced a computer system breakdown for a time during the period of representation. c) Mr. Hayes has no prior disciplinary record. d) Mr. Hayes offered to return Mrs. Card's payment of his February 1, 2003 bill.

