

State of Maine

Supreme Judicial Court

Docket No. BAR-05-10

BOARD OF OVERSEERS OF THE BAR)
)
 Plaintiff)
 v.)
)
 J. Michael Huston, Esq.)
 of Lisbon Falls, ME)
 Me. Bar #2154)
 Defendant)

ORDER

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 MAY 5 2006
 Supreme Judicial Court

This matter was presented to the Court pursuant to information filed by the Board of Overseers of the Bar. The Board of Overseers of the Bar (the Board) was represented by Assistant Bar Counsel Aria eee. Defendant J. Michael Huston (Huston) was represented by David M. Lipman, Esq. The complainant, Wilfred Giroux, advised the Board in advance of his agreement to the proposed resolution of this grievance matter that is adopted by this order.

Stipulations

The parties have stipulated to the following material facts:

Since March 1999, J. Michael Huston has been registered with the Board of Bar Overseers as an inactive attorney under M. Bar Rule 6(c). That status immediately followed a sixty (60) day suspension agreed to by Huston and imposed by this Court's Order dated December 23, 1998. That order provided as follows:

This order is entered based upon the Court's express understanding that at the conclusion of that period of suspension on March 11, 1999, Huston will then immediately file with the

Board a notification of his discontinuance of the practice of law in Maine and will then register on inactive status under Maine Bar Rule 6(c). In any event, after January 11, 1999, Huston shall not thereafter resume the active practice of law in Maine without first having complied with all the provisions and requirements of Maine Bar Rule 6(c)(2), (3).

On or about May 6, 2004 Wilfred Giroux filed a complaint with the Board against Huston. Mr. Giroux referenced a May 6, 2004 Oxford Town Selectman's Meeting that he attended in which Huston stated that "...he was not practicing on a full-time basis." The Board has both the tape and a transcription of that May 6, 2004 meeting. A review of the tape reveals that Huston did indeed say "I'm not practicing on a full-time basis."

Also on May 6, 2004, Huston, while employed as the Oxford Town Manager, assisted a family friend's son at the South Paris District Court to contest the son's speeding ticket. Although Huston did not then enter an appearance, he did engage in discussions with the prosecutor and assisted the young man in obtaining a "filed" charge from the prosecutor. In those discussions, Huston informed the parties that he was an attorney, but that he was not "representing" the son. Regardless of Huston's intent, his presence and statements either created an ambiguity as to his role or left some observers with the impression that he was providing informal legal assistance. The day after his court attendance, the family friend stopped by Huston's office with a bouquet of flowers for him.

During Bar Counsel's investigation, the Board discovered that Huston was not entirely forthcoming about his activities since his 1998 suspension

and 1999 inactive status. Huston's lack of candor constitutes violations of Maine Bar Rules 3.1(a) and 3.2(f)(3). For example, in his initial response to the Board's inquiry, Huston asserted the following: "I have turned down previous clients who have called looking for wills....or even for me to be the clerk of a corporation". However, the Board obtained from Huston's former employers documents that demonstrate he *has* served as a corporate clerk (for a corporation in which he owns stock) and has maintained legal documents which he had prepared. With the availability of those documents and their accessibility to municipal employees, emerged the appearance of Huston's continued practice of law, even after he registered as inactive.

Since his change to inactive status, Huston has been employed by a variety of municipalities. The Board alleges that Huston improperly engaged in the practice of law during those municipal employments. While Huston denies the Board's allegation, he agrees that some of his actions may have led to other people's belief that he was improperly practicing law.

Agreed Conclusions

The parties agree, and the Court finds, that Huston's conduct violated Maine Bar Rules 3.1(a) (conduct unworthy of an attorney); 3.2(f)(1) (conduct subverting any provision of the Maine Bar Rules); 3.2 (f)(3) (conduct involving dishonesty, fraud, deceit or misrepresentation); and 7.3(i)(1)(F) (action by disbarred or suspended attorneys or attorneys who assume inactive status under rule 6(c)).

Sanction

Having found these violations of the Maine Bar Rules, and agreeing with the Board and the Defendant that they are serious, the Court must address the sanction recommended by the parties. The Court is mindful that Huston was suspended in 1998 and immediately thereafter registered as inactive. However, by since acknowledging at a municipal meeting that "he wasn't practicing full time" as well as his actions while attending a District Court proceeding, Huston has left the impression that he is still practicing law. Huston's conduct, while perhaps not intentionally designed to violate this Court's previous order, has in fact, led him to be in violation of the Court's 1998 Order suspending him from the practice of law. Therefore, noting that the main purpose of attorney discipline is not punishment, but protection of the public, the Court

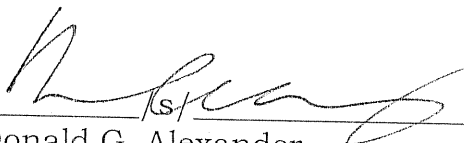
ORDERS the following sanction in this matter as proposed by the parties:

J. Michael Huston is suspended from the practice of law for 6 months with all but ten (10) days of that suspension being suspended for one year subject to the following terms and conditions:

1. Mr. Huston shall not participate in any court proceedings on behalf of a party other than himself or as a witness, without the prior, specific authorization of Bar Counsel or this Court.
2. Mr. Huston shall not engage in any conduct that would give the appearance that he is drafting any legal documents or giving any legal advice.

3. In the event a grievance complaint is received by Bar Counsel concerning alleged conduct occurring on or after this date, such complaint shall be processed under either Bar Rule 7.1(c) or 7.1(d), as appropriate, but in the event a preliminary review panel finds probable cause of misconduct under Bar Rule 7.1(d)(5), the matter shall then be filed directly before the Court under Bar Rule 7.2(b) instead of before the Grievance Commission under M. Bar R. 7.1(e);
4. Any apparent violation of any of the conditions of this Order shall be filed by Bar Counsel directly with the Court; and
5. Mr. Huston shall remain registered on inactive status under Maine Bar Rule 6(c). Following his suspension, Huston shall not thereafter resume the practice of law in Maine without first having complied with all the provisions and requirements of Maine Bar Rule 6(c) (2), (3).

Dated: May 5, 2006.


Donald G. Alexander
Associate Justice
Maine Supreme Judicial Court