

BOARD OF OVERSEERS OF THE BAR
OCT 25 2005
File No. 04-381

Board of Overseers of the Bar

Grievance Commission

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BOARD OF OVERSEERS OF THE BAR)	REPORT OF FINDINGS OF PANEL E OF THE GRIEVANCE COMMISSION
Petitioner)	
ROBERT LEVINE, ESQ.)	
of Rockland, ME)	
ME Bar #347)	
Respondent)	

On October 25, 2005, pursuant to due notice, Panel E of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1(e)(2), concerning misconduct by the Respondent, Robert Levine, Esq. This disciplinary proceeding was commenced by the filing of a Petition by the Board of Overseers of the Bar on July 21, 2005. Attorney Levine filed an Answer to the Disciplinary Petition on August 26, 2005.

Present at the Disciplinary Hearing were Assistant Bar Counsel Aria eee, representing the Board and Attorney Robert Levine, represented by Karen Kingsley, Esq. The complainant, Steven Dunn was present, represented by Robert Rubin, Esq.

The Panel accepted comments from the parties and reviewed the proposed findings presented by the parties. The Panel then issued the following disposition:

FINDINGS

1. Respondent Robert Levine (Attorney Levine) of Rockland, County of Knox, State of Maine, 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. Attorney Levine was admitted to the Maine Bar in 1974.

2. On or about December 15, 2004, Robert Rubin, Esq. on behalf of his client, Steven Dunn, filed a complaint with the Board against Attorney Levine. [Board Exhibit# 1] The complaint filed by Mr. Dunn involved a family law matter (Dunn v. Dunn) in Rockland District Court.

3. On or about January 24, 2005, Attorney Levine filed a response to Mr. Dunn's complaint with the Board. [Board Exhibit # 2] Thereafter, the Board received rebuttals and replies from both complainant and respondent. [Board Exhibits #3, #4 #5, #6 and #7]

4. On April 25, 2005 a panel of the Grievance Commission reviewed Attorney Levine's actions in this matter, and, based upon that review, found probable cause to believe that he had engaged in misconduct subject to sanction under the Maine Bar Rules for which appropriate discipline should be imposed as provided for in those rules. Therefore, that Grievance Commission panel authorized Bar Counsel to prepare and present a formal disciplinary petition before a different panel of the Grievance Commission. [Board Exhibit #8]

5. The incident which constituted Attorney Levine's misconduct is as follows. In July 2004, Attorney Levine ran into the GAL (also a casual friend of his) who had served the court during Mr. Dunn's case. The divorce was finalized in March 2004 and the GAL mentioned to Levine

that her fees had not yet been paid by Mr. Dunn.

6. Although Attorney Levine had not served as counsel in the matter, his law partner had and because of that fact, Levine recognized the existence of the case. He offered to help the GAL secure her payment.

7. Attorney Levine returned to his office and directed his secretary to request a Writ of Execution from the District Court. The secretary prepared a letter to the District Court applying for the Writ.

8. A careful review of the file would have revealed that no final order for GAL fees had issued from the District Court. All that existed was the May 2, 2003 Order for Appointment of Guardian *ad Litem* [Board Exhibit #9]. That Order provided for a division of the initial fees to pay the GAL. It did not provide for any other division of fees and instead, directed “[that issue] is reserved for decision at time of final hearing.” [Board Exhibit #9.]

9. On August 30, 2004 a Writ of Execution [Board Exhibit #10] issued against Mr. Dunn for the amount of \$1100.00.

10. On December 8, 2004 the District Court Clerk wrote an internal memo questioning whether it was proper to have issued the above mentioned Writ. She wrote her memo in response to Attorney Robert Rubin’s request for information about the issuing of that Writ. [Board Exhibit #11]

11. On that same day, the District Court (Worth, J) vacated the Writ of Execution finding that “[it was] improvidently issued; not for a sum certain. See 5-2-03 order.” [Board Exhibit #12]

12. Attorney Levine’s Answer to the Disciplinary Petition largely admitted the facts and allegations. However he denied any intentional misconduct. Attorney Levine accepts responsibility for the harm caused by his inaccurate request and he acknowledges his duty to ensure that he exercise diligence and due care.

Therefore, the Panel finds that Attorney Levine violated the following provisions of the Code of Professional Responsibility:

3.1 Scope and Effect

(a) This Code shall be binding upon attorneys as provided in Rule 1(a). Violation of these rules shall be deemed to constitute conduct "unworthy of an attorney" for purposes of 4 M.R.S.A. § 851 and Rule 7(e)(6)(A). Nothing in this Code is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation; and the prohibition of certain conduct in this Code is not to be interpreted as an approval of conduct not specifically mentioned.

3.2 Admission, Disclosure and Misconduct

(f) Other Misconduct. A lawyer shall not:

(4) engage in conduct that is prejudicial to the administration of justice.

3.6 Conduct During Representation

(a) Standards of Care and Judgment. A lawyer must employ reasonable care and skill and apply the lawyer's best judgment in the performance of professional services. A lawyer shall be punctual in all professional commitments. A lawyer shall take reasonable measures to keep the client informed on the status of the client's affairs. A lawyer shall not

(2) handle a legal matter without preparation adequate in the circumstances; or

3.7 Conduct During Litigation

(e) Adversary Conduct.

(1) In appearing in a professional capacity before a tribunal, a lawyer shall:

(i) Employ, for the purpose of maintaining the causes confided to the lawyer, such means only as are consistent with truth...

CONCLUSION AND SANCTION

Attorney Levine has taken responsibility for his actions and the subsequent distress it caused Mr. Dunn. At the hearing, Attorney Levine took responsibility for the error and expressed his remorse that it happened.

As Maine Bar Rule 2 outlines, the purpose of disciplinary proceedings is not punishment but rather, protection of the public and the courts from attorneys who by their conduct have demonstrated that they are unable to discharge properly their professional duties. It appears that a reprimand in this case serves those purposes.

Nearly a year ago, Attorney Levine paid a sum certain to Mr. Dunn to compensate for the illegitimate request for a Writ of Execution. The

panel finds that a reprimand is a sufficient sanction because Mr. Levine is remorseful and acknowledges his misconduct.

Having made findings of misconduct subject to sanction under the Bar Rules, M. Bar Rule 7.1 (e)(3)(c) directs this Grievance Commission Panel to consider certain factors in determining the appropriate sanction.


These factors are:

- (i) whether the attorney has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (ii) whether the attorney acted intentionally, knowingly, or negligently;
- (iii) the amount of actual or potential injury caused by the attorney's misconduct; and
- (iv) the existence of any aggravating or mitigating factors.

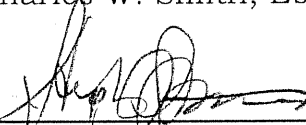
The Panel has accordingly considered the foregoing factors and finds that Attorney Levine has violated duties owed to the public and the legal system. He acted knowingly and or negligently and there was actual injury to Mr. Dunn. Attorney Levine's civil settlement serves as a mitigating factor to the current disposition.

The Panel concludes that the appropriate disposition of this case is a public reprimand to Attorney Robert Levine.


Dated: October 25, 2005



Charles W. Smith, Esq., Chair



Stephen J. Schwartz, Esq.



Joseph R. Reisert, Ph.D.