

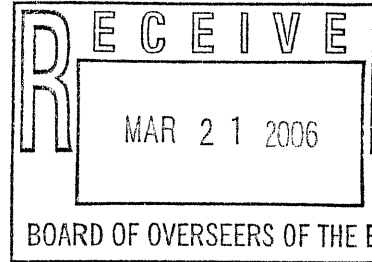
STATE OF MAINE

KENNEBEC, ss.

BOARD OF OVERSEERS OF THE BAR
GRIEVANCE COMMISSION
GCF #05-036

BOARD OF OVERSEERS OF THE BAR,)
)
Petitioner)
)
vs.)
)
RICHARD L. RHODA, ESQ.,)
)
Respondent)

REPORT OF PROCEEDINGS,
FINDINGS, CONCLUSIONS
AND DISPOSITION



The above matter was heard by a Grievance Commission Panel A, on March 7, 2006, at the Magistrates Court Room, US District Court, 202 Harlow Street, Bangor, Maine 04402. Pursuant to a disciplinary petition dated August 24, 2005, with proper notice being provided, a disciplinary hearing open to the public was conducted on this date pursuant to Maine Bar Rules 7.1 (e)(1),(2) to determine whether the grounds exist for the issuance of a reprimand or whether probable cause exist for the filing of an information with the Court. The Board of Overseers was represented by Attorney Bar Counsel Aria eee, Esq. and Respondent, Richard L. Rhoda, Esq. was represented by Attorney Kevin M. Cuddy, Esq. at the Hearing.

Background

The pleadings consisted of a Petition filed by the Board and Response filed by the Respondent. In the course of the proceedings Exhibits 1 through 22 and Exhibits 24 through 29 were admitted, without objection. Exhibit 23 was marked but never offered nor admitted. The Complainants, Russell and Brenda Rodgerson were present and Brenda Rodgerson did testify. The Respondent, Richard Rhoda also testified.

The Respondent has been a practicing attorney in Houlton, Maine since 1974. At one point, he was an Assistant District Attorney, but currently and for the majority of the time he has been in practice, he has been a general practitioner. A significant portion of his practice is devoted to real estate matters.

The Complainants, Russell and Brenda Rodgerson were owners of a home located in Oakfield, which is at the center of this complaint. Brenda Rodgerson's father, Blair Libby, was the original owner of the Oakfield home. Blair Libby had two (2) children, Brenda Rodgerson and Joyce Libby Bartlett. Joyce Bartlett predeceased her father, Blair Libby. Joyce Bartlett was survived by three (3) children, Michelle Bartlett, Gregory Bartlett, and Jonathan Bartlett. It was testified that Mr. Libby did not have a Will. Apparently, in an effort to do some estate planning, however, Mr. Libby had set aside three (3) specific certificates of deposit for his three (3) grandchildren, Michelle Bartlett, Greg Bartlett and Jonathan Bartlett. At approximately the same time, in May of 2000, Blair Libby hired Attorney Daniel Nelson to prepare a deed to convey his Oakfield home to himself and to his daughter Brenda Rodgerson, and her husband; title to those grantees was as Joint Tenants. That deed was executed by Blair Libby on September 13, 2000, delivered to Brenda Libby and later recorded by her at the Registry of Deeds. Blair Libby and his daughter later learned that Michelle Bartlett had withdrawn the funds in one of the certificates of deposit that her grandfather, Blair, had established. Per the testimony of Brenda Rodgerson, this upset Mr. Libby, at which time he instructed his daughter Brenda Rodgerson to utilize his Power of Attorney, he had to change the remaining certificate of deposit for Michelle Bartlett and have her name removed. Blair Libby died on May 15, 2002.

After the death of Blair Libby, Michelle Bartlett consulted with the Respondent, Attorney Rhoda, regarding the initiation of an undue influence claim by Michelle Bartlett and her siblings against Brenda Rodgerson, dealing with the affairs of Blair Libby. Two or three consultations occurred during the later part of 2002 and early part of 2003. By June of 2003, Michelle Bartlett and her siblings had instructed Attorney Rhoda to proceed with an undue influence claim against Brenda Rodgerson.

Several months after the death of Blair Libby, Brenda and Russell Rodgerson listed for sale the Oakfield home that had been deeded to them by Blair Libby. The Realtor handling the listing was First Choice Realty located in Houlton. In June of 2003, the Rodgersons' entered a Purchase and Sale Agreement for the sale of the Oakfield home. At the suggestion of First Choice Realty, the Rodgersons' agreed that Attorney Rhoda could handle their side of this sale transaction. First Choice Realty faxed to Attorney Rhoda a copy of the Purchase and Sale Agreement, which contained the sale price and closing date, and also a summary sheet containing other information and details of the transaction. Upon receipt of that information, Attorney Rhoda made brief contact with the Rodgersons'. He and his office staff then undertook the normal steps to prepare for the seller's side of a real estate transaction. Upon doing some deed research to prepare for the transaction, Attorney Rhoda became aware that the names involved in the chain of title involved not only Brenda Rodgerson, but also Blair Libby. Pursuant to discovering those names, Attorney Rhoda recognized that there was a conflict with the matter that Michelle Bartlett had consulted and retained him.

Attorney Rhoda did immediately withdraw from the representation of Brenda and Russell Rodgerson regarding the sale of the Oakfield home. He did not, however, withdraw from representation of Michelle Bartlett and her siblings. On July 25, 2003, Attorney Rhoda filed with the Court a complaint alleging undue influence and also filed a Motion for Ex Parte Attachment. The Motion for Ex Parte Attachment was supported by two (2) affidavits signed by Michelle Bartlett, both of which were prepared by Attorney Rhoda. The Motion for Ex Parte Attachment was granted, an attachment of \$50,000.00 was made upon the sale proceeds of the Rodgersons' Oakfield home, which had gone to closing on the same date of July 25, 2003.

Attorney Rhoda continued to represent Michelle Bartlett and her siblings until February of 2004 when he ultimately withdrew. Prior to his withdrawal, the litigation regarding the undue influence claim proceeded through discovery, which apparently involved a voluminous production of documents all relating to the affairs of Blair Libby and his assets, and through the ADR process. After his withdrawal in February of 2004, Michelle Bartlett and her siblings were represented by Attorney Jeff Pickering and Attorney Brian Swayles of Houlton. The Superior Court docket entries indicate that a Motion for Summary Judgment filed by Michelle Bartlett, et al. had been denied. A trial in the matter was ultimately held, at which the Bartletts' were represented by either Attorney Pickering or Attorney Swayles. At the close of the Plaintiff's case, Justice Hunter dismissed the claim of Michelle Bartlett and her siblings. The docket entries from the Superior Court further indicate that the Rodgersons' made application for sanctions, which request was denied. Following that litigation, Brenda and Russell Rodgerson made their complaint with the Board of Overseers regarding the conduct of Attorney Rhoda.

Findings

After consideration of all the evidence submitted at the Hearing, the Panel makes the following findings:

1. Upon receipt of a Purchase and Sale Agreement in June of 2003, Respondent Attorney Rhoda undertook representation of Brenda and Russell Rodgerson, which included contact by him and his staff with his new clients, the Rodgersons and also included conducting some deed research;
2. Prior to that representation of the Rodgersons, Respondent Rhoda was already committed to the representation of Michelle Bartlett, et al., which representation involved the commencement of the common law cause of action of "Undue Influence" against Brenda and Russell Rodgerson;

3. Respondent Rhoda discovered and recognized the conflict of interest no later than July 9, 2003. Upon recognizing the conflict, Respondent only withdrew from representation of the Rodgersons; Respondent did not withdraw from representation of Michelle Bartlett, et al.;
4. On July 25, 2003, Respondent on behalf of Michelle Bartlett and her siblings commenced a law suit against the Rodgersons, which was filed in Superior Court, Aroostook County, and also filed an Ex Parte Motion for Attachment. This Motion for Attachment was supported by two (2) affidavits of Michelle Bartlett, which were both prepared by Respondent Attorney Rhoda and read to Ms. Bartlett prior to her execution;
5. The Motion for Ex Parte Attachment was granted in the amount of \$50,000.00, and attachment was made upon the sale proceeds of the Rodgersons' Oakfield property;
6. By the date of July 25, 2003, Respondent Attorney Rhoda was aware that the Rodgersons' home was under contract for sale, with a closing date of July 25, 2003; although Respondent Rhoda was made aware of the sale of the Rodgerson property from a number of different sources, the particular closing date of July 25, was specific information that he obtained during his representation of Brenda and Russell Rodgerson and receipt of the Purchase and Sale Agreement.
7. After July 25, 2003, the litigation regarding the undue influence claim proceeded; there was no additional information received, during the "simultaneous representation" that had any effect on the continued litigation or its outcome.

Discussion

Based upon the above findings, the Panel finds that Bar Rules 3.2(f)(1) and 3.4(b)(1), (c)(1), (d)(1)(i) were violated by the Respondent. Those rules state:

"3.2 Admission, Disclosure and Misconduct

(f) Other Misconduct. *A lawyer shall not:*

- (1) *directly or indirectly violate, circumvent, or subvert any provision of the Maine Bar Rules;*

3.4 Identifying Commencement, Continuation, and Termination of Representation

(b) Conflict of Interest: General Provisions.

- (1) *Basic Rule. A lawyer shall not commence or continue representation of a client if the representation would involve a conflict of interest, except as permitted by this rule. Representation would involve a conflict of interest if there is a substantial risk that the lawyer's representation of one client would be materially and adversely affected by the lawyer's duties to another current client, to a former client, or to a third person, or by the lawyer's own interests.*

(c) Conflict of Interest: Simultaneous Representation.

- (1) *Representation Prohibited. Notwithstanding the consent of each affected client, a lawyer may not simultaneously represent, or continue to represent, more than one client in the same matter or group of substantially related matters when the matter or matters are the subject of litigation of any other proceeding for dispute resolution and the clients are opposing parties.*

(c) **Conflict of Interest: Successive Representation.**

(1) *Interests of Former Clients.*

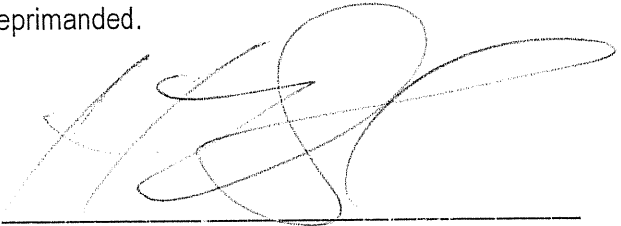
- (i) *Except as permitted by this rule, a lawyer shall not commence representation adverse to a former client without that client's informed written consent if such new representation is substantially related to the subject matter of the former representation or may involve the use of confidential information obtained through such former representation."*

The facts clearly indicate that once the Respondent Rhoda commenced work regarding the Rodgerson sale, a simultaneous representation existed, in violation of the rules. Attorney Rhoda did cease representation of the Rodgersons, but his failure to cease representation of Michelle Bartlett and her siblings, however, resulted then in a violation of rule 3.4(d), which now represented "successive representation". A specific detail of the Rodgerson sale transaction which Respondent Attorney Rhoda learned during the simultaneous representation was the closing date of July 25. This is information that was ultimately used to the disadvantage of the Rodgersons' when Attorney Rhoda, on behalf of Michelle Bartlett, et al., filed the Motion for Ex Parte Attachment on that same date of July 25, 2003. Although Attorney Rhoda now recognizes his conflict and admitted to a violation of the rules regarding the conflict of interest, he failed to recognize that conflict when it was most critical in June and July of 2003.

The Board has also alleged that Respondent violated Bar Rule 3.7 (e)(1)(i). The Panel finds that the Board has failed to meet its burden of proof regarding this alleged violation. Although the undue influence claim was dismissed by Justice Hunter, there is no evidence of the basis or reasoning for that dismissal. The Panel is also cognizant of the fact that a Motion for Sanctions was made, but apparently denied. Even more problematic for the Panel in making a decision regarding this alleged violation is that there were many other factors potentially affecting the course and outcome of the undue influence litigation, which other factors were out of Attorney Rhoda's control once he withdrew in February of 2004. And while Respondent Rhoda's conduct and conflict of interest clearly had impact of the issuance of the Ex Parte Attachment, there is not sufficient evidence to find that the conflict of interest had any effect on the final outcome or resolution of the litigation regarding the undue influence claims.

Accordingly, based upon the evidence and the record before it, Panel A, determines the appropriate disposition of this petition is that the Respondent should and hereby is reprimanded.

DATED: Feb 14, 2006



Harold L. Stewart II, Esq.

DATED: March 16, 2006



John A. Mitchell, Esq.

DATED: March 17, 2006



Raymond J. Cota