

DEC 21 2005

STATE OF MAINE

KENNEBEC, ss.

Board of Overseers of the Bar  
Grievance Commission  
File No. 05-098

BOARD OF OVERSEERS OF THE BAR, )  
PETITIONER )  
 )  
v. )  
 )  
WARREN C. SHAY, ESQ., )  
of Skowhegan, Maine )  
Me. Bar No. 0190 )  
RESPONDENT )

**REPORT OF FINDINGS  
OF PANEL C OF THE  
GRIEVANCE COMMISSION**

On November 14, 2005, due notice having been properly and seasonably given, Panel C of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1 (e)(2), to determine whether there were grounds for the issuance of a reprimand or whether probable cause existed for the filing of an information concerning alleged misconduct by Respondent, Warren C. Shay, Esquire (Shay) as described in the Petition dated September 6, 2005 filed by the Board of Overseers of the Bar (the Board).

Assistant Bar Counsel, Aria eee, Esquire, represented the Board, and S. Peter Mills, Esquire, represented Shay, both counsel and Shay being present at the hearing. The complainant Thomas N. Dube was also in attendance. The Panel incorporates the following stipulations of fact which the parties have entered into which the Panel so finds:

1. Since 1974, Warren C. Shay, Esquire of Skowhegan, Maine has been an attorney duly admitted to the Maine Bar, actively practicing from an office in Skowhegan and subject to the Maine Bar Rules. During the tenure of his practice in the Maine Bar, Attorney Shay has received two prior dismissals with a warning resulting from prior complaints in 1994 and 2003.
2. On March 29, 2005, Thomas N. Dube filed against Attorney Shay a grievance complaint arising from the purchase by Dube and two other buyers in common of 27 acres of

land from sellers Walter Lamont and Milan Davis on October 9, 2003.

3. Respondent prepared the deed for the seller and a title opinion for the buyers. The transaction was closed in Respondent's office. Respondent represented both the seller and the buyers with oral consent of the parties but without their informed written consent.

4. Preceding the Dube land purchase, Respondent had represented the sellers Walter Lamont and Milan Davis in preparing a deed for the sale of an adjoining lot to Anthony Carter. At that time, in June of 2003, the land was owned by both Walter Lamont and Milan Davis.

5. Respondent prepared the deed to Carter under instructions from the sellers Lamont and Davis and did not represent the buyer. The deed to Carter was signed by the sellers in Respondent's office on June 30, 2003, but without Carter present. The signing was overseen by Attorney Shay's partner, Attorney Michael Talbot. No money changed hands at Respondent's office and no funds were held by Respondent. Instead, Carter paid the purchase price directly to the LeClairs (former owners) and some money to Davis and Lamont, who then used the money to make improvements to the lot.

6. Although signed by the two sellers in June 2003, the deed to Carter was not filed because Carter's information for the transfer tax form had not been provided and no arrangements had yet been made to pay the transfer tax and recording fees. Both Davis and Lamont were advised orally and in writing that the deed could not be filed without fulfilling these requirements.

7. No information or funds necessary for filing of the deed were received by Respondent's office and the Carter deed of June 30, 2003, was never recorded. Instead, the Carter transaction was consummated by the filing of a new deed, dated June 3, 2004, after Carter persuaded the reluctant sellers to remove certain setback and building height restrictions. Thomas Dube was unaware that the restrictive covenants on the abutting Carter parcel had changed between the 2003 sale and the 2004 filing of the amended deed.

8. The Carter and Dube lots, which abut each other, are located along the west side of the Old Greenville Road in Monson, Maine north of a large parcel retained by Lamont. Lamont's residual lot abuts Dube's south line and Carter's westerly line. Restrictions contained in the Dube deed and in the original Carter deed differed from each other in at least the following respects:

- a. Carter's original deed had a restriction against buildings higher than 24 feet. Dube's

has a building height restriction of 32 feet.

- b. The Carter deed would have restricted Carter from building within 100 feet of his front line on the Old Greenville Road but he was unrestricted on any other line, including his common line with Dube.
- c. The Dube lot has no setback from the road but is restricted against building within 100 feet of its back line along the Appalachian Trail corridor.
- d. Carter's deed included a reservation to the grantors of a right of first refusal, whereas the Dube deed did not. Lamont's large parcel adjacent to Dube and Carter was unrestricted.

9. Prior to the Dube closing in October of 2003, Respondent's preliminary title opinion included a reference to the Carter deed from June of 2003, but noted that the deed was unrecorded. In preparing the deed for the Dube buyers, Respondent included as part of the description a reference to the Carter deed of June 30, 2003, indicating that it was to be recorded. Attorney Shay's final title opinion again referenced the Carter Deed as unrecorded. Because of these references, Dube and the other buyers came to rely on the restrictive covenants outlined in the Carter deed.

10. Unbeknownst to the Respondent or Walter Lamont, Carter did not agree with the restrictions contained in his unrecorded deed of June 30, 2003. Although he had not accepted that deed, Carter remained living in a camper, while working on his lot. There were no discussions between Dube and Attorney Shay about deed restrictions on the Carter lot.

11. After recording Mr. Dube's deed in October 2003, Respondent, on November 24, 2003, sent a copy of the unrecorded Carter deed to both Carter and Lamont asking if it was time to file it. On November 26, 2003, Carter told Respondent he would not accept the deed with the restrictions. Attorney Shay was unaware that his former clients, the buyers of the Dube lot, regarded the restrictions as important and therefore did not notify them of Carter's objection. Thereafter, on a few occasions, Carter showed up at Walter Lamont's home, acting aggressively and threatening Lamont and his wife. In early spring 2004, there was discussion about Lamont buying the land back from Carter. By May 2004, disgusted with the breakdown of the Carter property deal, Lamont approached Dube inquiring as to whether or not Dube and the others would be interested in buying Carter's property, once Lamont purchased it back from Carter. That option did not materialize because a lesser set of restrictions acceptable to Carter were

finally negotiated. Since Carter had already paid his money to Davis and Lamont, Lamont decided not to further agitate the matter. The Carter sale was confirmed on June 3, 2004 with the signing and recording of a new deed.

12. Problems continued in the “Carter” property operations. On at least one occasion (May 31, 2004), the Piscataquis County Sheriff’s office responded to a theft of one of Dube’s culverts and a neighbor’s gravestone. The culvert and slate both were found on Carter’s land and the officer instructed Dube to take the culvert back to his lot. The following week, Carter dragged the gravestone back to the neighbor’s property. On other occasions, Carter’s development of his property resulted in further animosity, as he failed to follow the setback and right of way restrictions previously known to the group. When Dube confronted Carter about his “violation” of the restrictive covenants, Carter presented the new deed which no longer contained those limitations.

13. On September 7, 2004, Mr. Dube called Attorney Shay to complain that Lamont and Shay had altered restrictions in the Carter deed. Respondent told Dube that he would relay his concerns to Lamont and then did so. Thereafter, Lamont and Dube negotiated between themselves a resolution of their disagreement. The settlement resulted in Lamont’s transfer of an additional seven (7) acres of land that Lamont valued at \$40,000.00 to Dube in exchange for a release of all claims against Lamont. At Lamont’s request, Respondent prepared a mutual release and a deed for the seven (7) acres and forwarded both documents to the parties. The original draft of the release would have released Attorney Shay as well as Lamont, but that release was not used when Dube objected. Attorney Shay acknowledges that by continuing to represent Lamont, after the dispute over the land arose, he violated Me Bar Rules 3.4(b)(1) and 3.4(c)(2)(iii). He also acknowledges that if the release had been signed in original form, it would have violated Me Bar Rule 3.4(f)(2)(v).

### CONCLUSIONS

Considering the above facts stipulated to by the parties, together with the testimony and evidence presented, the Panel finds that Attorney Shay had a conflict of interest as defined by Maine Bar Rule 3.4(b)(1) when he entered into the simultaneous representation of Dube as one of the buyers, and Lamont and Davis as the sellers relative to the 27 acre real estate transaction in Monson, Maine on October 9, 2003. Although such simultaneous representation is possible

with informed consent, Attorney Shay violated Me. Bar R. 3.4(c)(2)(ii) when he failed to adequately consult with Dube prior to commencement of the representation. Without that consultation, it can not be said that Dube had the benefit of making adequately informed legal decisions pursuant to Me. Bar R. 3.4(c)(2)(ii) or that his consent to the simultaneous representation was informed. In addition, Attorney Shay violated Me. Bar R. 3.4(c)(2)(iii) by failing to terminate his representation of Mr. Lamont once it became clear that Lamont's interests came into direct conflict with the interests of Mr. Dube.

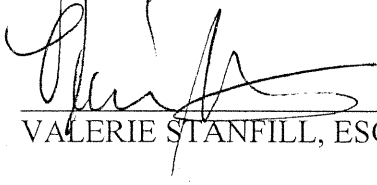
The panel also concludes that Shay violated the spirit of Me. Bar R. 3.4(f)(2)(v) when he drafted and presented Dube with a release which attempted to settle any potential claims Dube may have had against Attorney Shay. Although Dube refused to execute such a release, the panel is troubled by Shay's attempt at obtaining such a release, without advising Dube to obtain independent legal counsel. While not technically a violation of Me. Bar R. 3.4(f)(2)(v), such conduct is unworthy of an attorney pursuant to Me. Bar R. 3.1(a).


In view of the foregoing misconduct, the Panel concludes that the appropriate disposition of this complaint is that Shay be, and he hereby is, reprimanded for violating Me. Bar R. 3.4(b)(1), 3.4(c)(2)(ii), 3.4(c)(2)(iii) and 3.1(a) as established in the findings of fact discussed in this report. The panel has taken into consideration Shay's prior disciplinary record involving, most recently, a dismissal with a warning dated August 21, 2003 for violating the prohibition against simultaneous representation of clients involved in a matter subject to litigation.

Dated this 18 day of December, 2005

Panel C of the Grievance Commission

  
DAVID S. ABRAMSON, ESQ., Chair

  
VALERIE STANFILL, ESQ.

  
CHRISTINE HOLDEN, Ph.D.