

STATE OF MAINE

CUMBERLAND ss.

SUPREME JUDICIAL COURT
DOCKET NO. BAR-01-6

BOARD OF OVERSEERS OF THE BAR)
)
 Plaintiff)
 v.)
)
 RALPH W. BROWN, ESQ.)
 of Portland, Maine)
 Me. Bar # 2704)
 Defendant)

ORDER

Counts I and II of this matter are before the Court on an information by the Board of Overseers of the Bar, pursuant to Maine Bar Rules 7.2(b) (1), (2) and the Court’s Order of December 4, 2001, which authorized the Board to file an information without the necessity of any further review or hearing by the Grievance Commission under Maine Bar Rules 7.1(d),(e). The Court’s Order of December 4th resulted from a Stipulated Waiver of Grievance Commission Review and Hearing signed by the parties. Additionally, the parties have agreed and stipulated that the Court also is disposing of three other grievance complaints as Counts III, IV and V (GCF # 02-92 / Andrew Germaine, GCF #02-140 / Vincent Son and GCF #02-182 / Juli Hughes), without the necessity of any Grievance Commission review and hearing under M. Bar R. 7.1 (d),(e).

I.
STIPULATIONS

The parties have stipulated to the following material facts:

COUNT I
Sua Sponte / GCF#99-66

1. On or about May 21, 1999 in a *Per Curiam* decision, the Maine Law Court decided *Worrey v. Fournier, et al.*, 1999 Me. 78, 729 A.2d 907 (Me. 1999).

2. Brown was the attorney for the Plaintiff-Appellant, Wayne B. Worrey, and the case was a collection matter brought by Worrey against Fournier for electrical work performed.

3. In *Worrey*, the Law Court:

- a. Affirmed an order entered in the Cumberland County Superior Court dismissing Worrey's case against Fournier for want of prosecution pursuant to M. R. Civ. P. 41(B)(1);
- b. Held that a trustee's disclosure under oath pursuant to M. R. Civ. P. 4(B)(e) was insufficient to prevent dismissal of an action pursuant to M. R. Civ. P. 41(B)(1);
- c. Ruled that Worrey's appeal was a frivolous, egregious abuse of the appellate process, that it had been instituted primarily for the purpose of delay and was taken with no reasonable likelihood of success; and
- d. Awarded treble costs to Fournier plus \$200.00 towards his counsel fees.

4. In representing Worrey, Brown:

- a. Neglected Worrey's case against Fournier by allowing it to be dismissed by the Superior Court for want of prosecution pursuant to M. R. Civ. P. 41(B)(1); and
- b. Did not adequately and sufficiently communicate with Worrey about his case including failing to inform him of the Superior Court's prospective and ultimate dismissal of his case and of Brown's later frivolous appeal of that dismissal.

5. Brown's neglect of Worrey's case, his later frivolous appeal of the Superior Court's dismissal of the matter, and his failure to timely communicate with Worrey about case developments violated M. Bar R. 3.1(a); 3.2(f)(4); 3.3(a); 3.6(a)(2),(3).

COUNT II
Chief U.S. Bankruptcy Judge Goodman –
Standing Chapter 13 Trustee Fessenden / GCF #00-46

6. On or about 1989 Bernard Carson (Bernard) and his wife Nancy Carson (Nancy) opened Carson's Family Restaurant (The Restaurant) in Scarborough, Maine.

7. In the fall of 1995, the Carsons retained Brown to advise them about the operation of the Restaurant, which then was experiencing financial problems.

8. On or about November 16, 1995 Brown filed a Chapter 13 Bankruptcy Petition for Nancy and Bernard, the Standing Chapter 13 Assistant U.S. Trustee being Peter C. Fessenden, Esq. (Fessenden).

9. On or about September 29, 1998 the Bankruptcy Court ordered that the Carsons' Chapter 13 proceeding be converted to a Chapter 7 case effective September 11th.

10. On or about January 15, 1999 Fessenden filed an adversarial proceeding to deny the Carsons a discharge from their debts.

11. During the course of Brown's representation of Bernard and Nancy in the Chapter 13, 7 and Adversarial matters he violated M. Bar R. 3.1(a); 3.2(f)(4); 3.3(a); 3.4(f)(1), (2)(i)(A),(B) & (C); 3.5(b)(2)(ii)-(iii); 3.6(a)(1),(2) & (3); and 3.6(f) by engaging in multiple misconduct including but not limited to the following:

a. Brown failed to monitor the Carsons' accumulation of post-petition debt, including unpaid sales taxes, and he was unaware in the late summer, early fall of 1998 that the Carsons had accrued approximately \$100,000.00 in post petition trade debt and post petition sales tax liability of \$20,000.00 to \$30,000.00.

b. Brown never advised the Carsons that as debtors in possession, they had fiduciary responsibilities to both their pre-petition and secured creditors.

c. Brown failed to monitor the Carsons on their obligation to submit regular, periodic reports to Fessenden, a failure caused by Brown's sloppy office procedures.

d. Brown drafted and prepared a will for Bernard, presided over its execution, and then later billed Bernard \$364.00 for those legal services without ever disclosing any of these matters to Fessenden or to the Bankruptcy Court as he should have done under Federal Rule of Bankruptcy Procedure 2016 and Maine Bankruptcy Rule 2016-1.

e. At the same time Brown drafted Bernard's will, he also drafted a promissory note in the amount of \$50,000.00 payable to Brown, which Bernard also signed, Brown again never disclosing any of this to the Bankruptcy Court or to Fessenden as he was required to do under Federal Rule of Bankruptcy Procedure 2016 and Maine Bankruptcy Rule 2016-1.

f. Several times during his handling of the Carsons' Bankruptcy cases, he had communications with a creditor of the Carsons, which were not known by or consented to by the attorney representing that creditor.

g. Although Fessenden later orally withdrew motions that he made in the adversarial proceeding for a Default and Default Judgment pursuant to Federal Rule of Bankruptcy Procedure 7055, Brown never timely answered or otherwise responded to the motions.

h. On May 13, June 17, 1999 and on two other occasions the Bankruptcy Court held pretrial conferences in the adversarial proceeding, but Brown did not attend or participate in them despite being timely informed of the conferences in advance. Additionally, neither Bernard nor Nancy appeared for the conferences because Brown never notified the Carsons of them.

i. Brown did not file any stipulations or premarked exhibits pursuant to the Bankruptcy Court's scheduling order, and he also failed to file any objections to Fessenden's stipulations and exhibits.

j. Neither Brown nor the Carsons ever appeared for trial, which was set for September 16, 1999, Brown having failed ever to advise the Carsons of that trial date or the earlier scheduled one, August 25th.

12. On or about September 24, 1999 the Bankruptcy Court entered an order denying the Carsons a discharge, that discharge later being set aside upon motion by the Carsons' successor counsel, Richard P. Olson, Esq.

COUNT III
Andrew Germaine / GCF#02-92

13. In the year 2000 Beatrice E. Robenson (Robenson) was diagnosed with cancer, and her nephew, Andrew Germaine (Germaine) assisted her in putting her personal affairs in order.

14. Robenson also hired Brown to revise her will and draft other related documents for her eventual signature. Because of her illness, Brown's work for Robenson was time sensitive.

15. Because of Brown's neglect of Robenson's matters and his multiple failures to timely communicate with her and Germaine about them, Robenson did not execute her new will and related documents until on or about February 9, 2001.

16. The will Brown drafted for Robenson and had her sign bequeathed a significant amount of her property directly to her sister, Rita A. Litton (Litton), who then resided in a nursing home.

17. The federal and state governments' Medicaid Program (Medicaid) paid for either all or a substantial amount of Litton's nursing home care.

18. On or about May 29, 2001 Robenson died.

19. The amount of property Litton directly received through Robenson's will caused or will cause her to exceed, at least temporarily, Medicaid's eligibility criteria for income or assets. This effect, unanticipated or provided for by Brown, resulted or will result in Litton's having to "spend down" the property Robenson left to her so that she again could qualify for Medicaid assistance.

20. Alternatively, Brown could and should have drafted a “Supplemental Needs Trust” for Robenson, thereby avoiding the Medicaid spend down effect on Litton as long as Litton could not have compelled any trustee of such a trust to spend trust funds for her own support.

21. Robenson’s will named Germaine as the Personal Representative (PR), and shortly after her death, he retained Brown to assist him in his duties as Robenson’s PR.

22. In the middle of November, 2001 Germaine discharged Brown and hired other counsel because of Brown’s chronic and continuing failures to communicate with him about Brown’s work on Robenson’s estate.

23. By engaging in the above described misconduct during the course of his representation of Robenson and Germaine, Brown violated M. Bar R. 3.1(a); 3.2(f)(4); 3.3(a) & 3.6(a)(1),(2) & (3).

COUNT IV
Vincent Son / GCF#02-140

24. In late 2000 or early 2001 Vincent Son (Son) entered into an agreement to buy some land in Old Orchard Beach, Maine, and paid the prospective seller a deposit in the amount of \$15,000.00.

25. The seller later either refused to timely close the real estate transaction, could not satisfactorily close it or failed to return Son’s deposit of \$15,000.00.

26. On or about January 22, 2001 Brown began representing Son in the matter to try to recover his \$15,000.00 deposit.

27. Son paid Brown an initial retainer of \$2,600.00.

28. Brown neglected his legal work for Son, failed to complete it and he has not timely communicated with Son about it.

29. Son still has not had his deposit returned to him or otherwise adequately resolved his legal problems over the failed real estate transaction.

30. By engaging in the above described misconduct during his representation of Son, Brown violated M. Bar R. 3.1(a); 3.2(f)(4); 3.3(a) & 3.6(a)(1),(2) & (3).

COUNT V
Juli Hughes / GCF#02-182

31. On or about June 4, 2001 Juli Hughes (Hughes) retained Brown, and paid him \$700.00 to file a Chapter 7 Bankruptcy Petition for her, which he did not file until November 14th (Chapter 7- Case No. 01-21800).

32. On or about March 14, 2002 Brown filed an adversary proceeding against the U.S. Department of Education on behalf of Hughes, and that proceeding remains pending (Adversary Proceeding Case No. 02-2026).

33. On April 3, 2002 Hughes received a discharge concerning her Chapter 7 Bankruptcy Petition.

34. During the course of his representation of Hughes, Brown neglected his work for her, failed to timely complete it and he did not adequately communicate with her about it, including the adversary proceedings. He also did not appear with her at the Meeting of Creditors scheduled under Federal Rule of Bankruptcy 2003.

35. By engaging in the above described misconduct during his representation of Hughes, violated M. Bar R. 3.1(a); 3.2(f)(4); 3.3(a) & 3.6(a)(1),(2) & (3).

II.

SANCTIONS

Having found these violations of the Maine Bar Rules, and agreeing with the Board and the Defendant that they are serious, the Court must now consider an appropriate sanction. By the stipulations herein, Brown has admitted his ethical misconduct, and acknowledged its wrongfulness. The Court also notes Brown's prior disciplinary record: a previous suspended suspension in 1992 and two prior reprimands in 1989 and 1995. Therefore, keeping in mind that the main purpose of attorney discipline is not punishment, but protection of the public, the Court hereby ORDERS the following sanction in this matter as proposed by the parties:

1. Attorney Ralph W. Brown is suspended from the practice of law in the State of Maine for a period of six (6) months effective the date of this order;

2. The Court does not intend to suspend Brown for longer than six months or to impose on him the full reinstatement provisions and procedures of M. Bar Rule 7.3(j). After his six month suspension, however, Brown may elect at any time to be placed on inactive status. Regardless of any change in his status as a Maine attorney, however, Brown shall not resume practicing law without further order of this court concerning appropriate conditions to be imposed on him and his practice, including restitution, if any, to the above referenced clients.

3. Within 30 days of his suspension, Attorney Brown will comply with the notification and filing requirements of Maine Bar Rule 7.3(i).

Date: 10/25/02

Robert W. Clifford, Associate Justice
Maine Supreme Judicial Court

[Signed order received by the Clerk on 10-25-02]