

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO. BAR-11-11

BOARD OF OVERSEERS OF THE BAR)

)

Plaintiff)

v.)

)

**ORDER ON RECEIVER'S
PETITION**

DAVID E. HUNT, ESQ.)

of Portland, ME)

Me. Bar # 2522)

Defendant)

This matter is before the Court on the petition of the receiver, Kurt E. Klebe, Esq., seeking compensation for his services and reimbursement for expenses incurred in connection with the receivership previously ordered in this bar discipline proceeding.

I. BACKGROUND

In its petition filed in August 2011, the Board of Overseers of the Bar alleged that David E. Hunt, Esq., a practitioner in the area of estate planning and general probate matters, had left and been absent from Maine for an unknown period of time without providing notice to his clients or enlisting the assistance of substitute counsel to provide coverage for his practice. The Board also asserted that, prior to his departure, Hunt was often unavailable to his clients and either missed or canceled scheduled appointments. In addition, at the time of Hunt's

departure, personnel at Hunt's office had been directed by the building's owner to vacate the premises due to unpaid rent, and Hunt had not identified or located a replacement location for his office. According to the Board, Hunt is generally regarded as a respected practitioner and authority in trusts and estates law.

On August 16, 2011, the Board filed a petition with the Court seeking the expedited appointment of a receiver to assume responsibility for Hunt's law practice pursuant to M. Bar R. 7.3(f)(1). The Board contacted Klebe, an experienced practitioner in the area of trusts and estates, and asked him to serve as receiver. The Board deemed Klebe particularly qualified to serve as receiver both due to his expertise in the area of trusts and estates and because he is a partner in a large firm, Verrill Dana, LLP, that had the administrative resources required for a receiver to immediately step in and take over Hunt's law practice. When he received the call from the Board, Klebe understood that because Hunt's case presented a crisis potentially affecting hundreds of clients, he was required to act immediately. Klebe met with other members of his law firm that evening to discuss the matter and by 9 a.m. the next morning, Klebe notified the Board that he would serve as receiver. Neither Klebe nor the Board fully understood at that time the actual extent of the work that would be required.

The Board presented a proposed order for appointment of receiver to the Court, which was entered on August 18, 2011. The Order addressed the receiver's compensation in the following provision:

Attorney Klebe shall submit to the Court a record of hours worked and disbursement made in the event the Court allows for payment of legal fees at a designated rate. Attorney Hunt shall be the first choice for source of payment to Attorney Klebe, although ultimately, the Court may determine that Attorney Klebe serves in a pro bono capacity. Otherwise Attorney Klebe may be compensated from any other source ordered by the Court, including those matters in which Attorney Hunt's clients have outstanding obligations to him. Attorney Klebe has standing to pursue claims as Receiver for past due legal fees related to Attorney Hunt's practice.

Klebe immediately secured and took possession of Hunt's client files¹ and transferred them to Klebe's office, and he arranged for all communications to Hunt's office, including telephone, email, and regular mail, to be redirected to his law firm. Hunt's IOLTA account containing \$290.42 and an operating account in the name of his law practice containing \$1,523.41 were secured when Klebe notified the bank of the receivership. Klebe also hired Hunt's sole remaining employee, Nancy English, an experienced estate administration paralegal, as a temporary employee to assist with the receivership.

¹ Thirteen large five-drawer file cabinets containing working client files, three fireproof four-drawer file cabinets containing original client documents, 178 banker's boxes containing closed files, billing records, banking records, eight computers, and the most recent client list were removed from Hunt's office.

On March 21, 2012, Klebe filed his interim report and petition for compensation and reimbursement of expenses. The report establishes that the scope of the receivership was unprecedented in Maine in its scale and complexity, due to the large number of clients served by Hunt. The Board recognizes the unprecedented scope of the receivership in this case and characterizes Klebe's performance of his duties as receiver as outstanding.

Klebe notified all of the clients listed on Hunt's client list, or discovered during the inventory of Hunt's files, of their right to request the transfer of their original documents and files, and their right to seek alternate counsel. Of the 623 clients contacted by letter, 333 responded. Eighty-nine clients asked that their files be transferred to another law firm, seventy-nine asked to be represented by Klebe or his firm,² ninety-eight asked that their files be returned to them, eighteen asked that their files be destroyed, and twenty indicated that they had previously transferred their files to other counsel prior to the receiver's appointment or had never engaged Hunt. Clients who asked for their files to be returned or sent to alternate counsel executed a release; where a client was engaged by Klebe or his firm, the client executed an engagement letter.

² At the hearing on the petition held on June 6, 2012, Klebe indicated that of those seventy-nine clients who have retained Klebe or his firm, only twelve had by then produced billable projects, the majority of which had been routine estate assignments, and none had produced substantial fees. Although these inherited clients provide a clear benefit to Klebe and his firm, it is not possible to determine their prospective value.

With respect to financial matters, an audit of Hunt's IOLTA and operating accounts revealed that client retainers had not been properly deposited in the IOLTA account and were instead deposited in the operating account. Klebe issued refunds of outstanding retainers, less accrued and unbilled legal fees earned by Hunt or his employees. Klebe also pursued outstanding receivables owed to Hunt's firm and reviewed unbilled time to determine whether any amounts could be billed and collected. Ultimately, the remaining total amount of non-IOLTA funds related to Hunt held in the Verrill Dana client trust account is \$6,824.08. Klebe has determined that no additional receivables from Hunt's law practice are collectible.

The receiver's interim report detailed the amount of time spent on this matter by Klebe and other attorneys and paralegals from his law firm, as follows:

<u>Attorney</u>	<u>Rate</u>	<u>Hours</u>	<u>Total Fee</u>
Kurt Klebe	305.62	69.9	\$21,271.00
Mary McQuillen	285	8.4	\$2,394.00
Brendan O'Neil	200	8.2	\$1,640.00
Sarah Coburn	200.79	110.5	\$22,187.50
<u>Paralegal</u>			
Patricia Miller	151.61	157	\$23,802.00
Nancy English	125	337.2	\$42,150.00
Pamela Ryan	110	.2	\$22.00
Total		691.1	\$113,466.50

In addition, Klebe's firm incurred \$2,650 in moving expenses and \$535.26 in office expenses associated with the transfer of Hunt's client files. In sum, Klebe

requests compensation for his and his law firm's work in this matter in the amount of \$133,466.50, plus reimbursement of expenses in the amount of \$3,185.26.

II. ANALYSIS

Klebe requests that he be authorized to apply the \$6,824.08 held in his law firm's trust account toward his fees and expenses, and that the Board be ordered to pay the balance of fees as the Court may determine. The Board contends that pursuant to M. Bar R. 7.3(f)(vii), Klebe's fees should not exceed the court appointment rate of \$50 per hour and that "receiver fees and expenses should be borne by the Bar as a whole and that an appropriate source of funding is the Lawyers' Fund for Client Protection." The Board recognizes, however, that the Fund's current rules do not authorize the Fund to pay receivers appointed by the Court. Accordingly, the Board proposes that the payment of whatever sum the Court determines should be paid to Klebe "be deferred until such time as the Rules for the Lawyers' Fund for Client Protection are amended to accommodate the costs of the receivership in this case and in all subsequent cases when payment to a receiver is deemed appropriate by the Court."

The Board and Klebe have identified two applicable sources of law. The first is the relevant portion of the Court's August 18, 2011 order that addressed the receiver's compensation and acknowledged that he might serve on a pro bono

basis. The second is M. Bar R. 7.3(f)(1)(vii), upon which the relevant portion of the August 18 order was based. It provides that a receiver is authorized to

[s]ubmit to the Court a record of hours worked and disbursements made to allow in some cases for payment of legal fees at the State court appointment rate. The assets or estate of the deceased, missing or incapacitated attorney shall be the first choice for source of payment to the Proxy. A Proxy may serve in a pro bono capacity. Otherwise, a Proxy may be compensated from another source ordered by the Court.

M. Bar R. 7.3(f)(1)(vii). Though not a model of clarity, the rule does make plain that there is no single or mandatory approach for the compensation of a receiver.

In attempting to arrive at a principle or standard to guide the exercise of the Court's discretion in this case, the actual circumstances of this case—one in which the accounts and assets of the attorney who is the subject of the disciplinary proceeding will pay no more than a small portion of the expense of the receivership—suggest that the following six factors should be evaluated:

A. The circumstances under which the receiver was appointed. Here, Klebe was appointed in the context of a crisis generated by the unannounced departure of a prominent practitioner with an ongoing law practice affecting several hundred active and inactive clients. As a result, it was not possible at the outset for either the Board or the receiver to understand the scope and breadth of the services that would be required of the receiver.

B. The extent to which there was an agreement regarding the receiver's compensation. Because of the need for immediate action, Bar Counsel and Klebe did not discuss the terms that would govern Klebe's compensation prior to his appointment as receiver. The relevant provision included in the order appointing the receiver was boilerplate language that has been employed in prior Court orders. There was no meeting of the minds between the Board and Klebe regarding his compensation.

C. Whether it was expected that the receiver would be paid from the accounts or assets of the attorney subject to the disciplinary proceeding. Neither the Board nor Klebe had any basis to determine the likelihood that Hunt's accounts or assets would be sufficient to pay all or some of the receiver's expenses. Relatively soon after Klebe's appointment, they learned that Hunt's accounts and assets would pay no more than a small amount of the receiver's expenses.

D. Whether it was expected that the receiver would be paid at his or her normal hourly rates. Here, there is little doubt that Klebe knew that it was possible that he and his law firm would not be compensated at their normal hourly rates. Because of M. Bar R. 7.3(f)(1)(vii), and in the absence of a specific agreement regarding hourly rates, any attorney accepting appointment as a receiver must understand that he or she may ultimately be paid "at the State court appointment rate," which is currently \$50 per hour. *See* 94-649 C.M.R. ch. 301, § 2 (2011).

E. Whether the receiver has received or will receive any other financial or practice benefits as a consequence of the receivership. As noted, Klebe and his law firm have been retained by a significant number of clients who previously employed Hunt. Although the record does not contain evidence from which the court can value this benefit, the benefit is real.

F. Whether the Board had reason to know that it might be required to pay some or all of the charges associated with the receivership. The Court received no testimony or other evidence directly addressing this factor. However, the information provided by the Board regarding previous receiverships suggests that the Board did not anticipate that it would be responsible for paying all or a portion of the receiver's charges in this case. Nonetheless, (i) the receiver was appointed at the Board's request; (ii) the Board is authorized to request the Court to order an attorney subject to discipline "to pay the reasonable expenses incurred by the Board in the investigation of the matter or in the conduct of hearings . . . before the court," M. Bar R. 7.2(b)(8); and (iii) the Board understood that absent a rule amendment, the Lawyers' Fund for Client Protection would not be a source of payment for the receiver. Thus, the Board should have been aware of the possibility that it might be ordered to pay all or a portion of the receiver's expenses.

Considered together, these factors lead the Court to conclude that it would be inequitable to award Klebe no compensation or reimbursement beyond the \$6,824.08 attributable to Hunt's account and receivables. However, because at the outset of the receivership it was understood that Klebe's representation might be pro bono in its entirety, or at least subject to the court appointment rate pursuant to M. Bar R. 7.3(f)(1)(vii), it would not be equitable to compensate Klebe and his firm at their usual hourly rate. Therefore, the Court concludes that it is reasonable to compensate Klebe and other attorneys from his firm at the court appointment rate of \$50 per hour and the paralegals from his firm at a reduced rate of \$30 per hour,³ and to treat the cost of the receivership as an expense of the Board, which may, in turn, ultimately seek reimbursement from Hunt in this proceeding.⁴ Finally, it is beyond the authority of this single justice to modify the rules of the Lawyers' Fund for Client Protection. The Court cannot speculate as to the

³ The following table applies these rates:

<u>Attorney</u>	<u>Rate</u>	<u>Hours</u>	<u>Total Fee</u>
Kurt Klebe	\$50	69.9	\$3,480.00
Mary McQuillen	\$50	8.4	\$420.00
Brendan O'Neil	\$50	8.2	\$410.00
Sarah Coburn	\$50	110.5	\$5,525.00
<u>Paralegal</u>			
Patricia Miller	\$30	157	\$4,710.00
Nancy English	\$30	337.2	\$10,116.00
Pamela Ryan	\$30	0.2	\$6.00
Total		691.1	\$24,667.00

⁴ Neither the Board nor the receiver has provided the court with any information that suggests that Hunt has the means to make any payment toward the receiver's fees. Furthermore, the disciplinary proceeding against Hunt remains pending at this time.

likelihood that the Board will achieve the rule change that it desires and, for that reason, will not subject the payment of Klebe's compensation to that possibility.⁵

It is accordingly ORDERED that the receiver and his law firm shall receive \$24,667.00 in compensation for his and his law firm's service and \$3,185.26 as reimbursement for expenses incurred in this matter. The first source of funds for payment will be the funds remaining from Hunt's law practice, currently held in the Verrill Dana client trust account in the amount of \$6,824.08. From these funds, \$3,185.26 will be paid to the receiver as reimbursement for expenses. The remaining funds, in the amount of \$3,638.82, will be paid to the receiver in partial satisfaction of compensation for his and his law firm's service in this matter. The Board will pay the receiver the remaining balance, in the amount of \$21,028.18.

Dated: July 26, 2012

/s/
Jon D. Levy, Associate Justice
Maine Supreme Judicial Court

⁵ The Court expresses no opinion as to whether the Board should request the Supreme Judicial Court to consider a rule change that would authorize the Fund to reimburse the Board for its expenses in this and similar future cases.