

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR-11-21

BOARD OF OVERSEERS OF THE BAR	)
	)
Plaintiff	)
v.	)
	)
Michael M. McAleer	)
of Orono, ME	)
Me. Bar #3673	)
Defendant	)

DECISION AND ORDER  
M. Bar R. 7.2

The Board of Overseers of the Bar initiated this attorney disciplinary action on May 18, 2012 by filing a disciplinary Information pursuant to M. Bar R. 7.2(b). Mr. McAleer responded with a timely Answer to the Board’s Information. After pre-trial discussions, the parties notified the Court that they were in agreement to submit a proposed order providing for stipulated findings and sanction.

On June 14, 2012, counsel appeared before the Court to outline their proposal for resolution of this matter. The Board was represented by Bar Counsel J. Scott Davis, and Marvin H. Glazier, Esq. represented Mr. McAleer.

**FINDINGS AND CONCLUSIONS**

McAleer was admitted to the Maine bar in 1987. From his admission until his administrative suspension in October 2010, McAleer engaged in private practice in Bangor, Maine. The Court notes that except for this current action McAleer has not previously been disciplined for attorney misconduct.

Following a review of the pleadings and the parties' proposal, the Court finds and McAleer agrees that he engaged in specific violations of the formerly applicable Maine Code of Professional Responsibility and the current Maine Rules of Professional Conduct. The specific findings related to each count of the Board's Information are outlined below.

**COUNT I**  
**(GCF# 11-012 *sua sponte* complaint)**

On January 13, 2011 Bar Counsel docketed a *sua sponte* grievance complaint as a result of McAleer's failure to file the "notification affidavit" as specifically required by Maine Bar Rule 7.3(i)(2)(A)(B).

By way of background, following his October 19, 2010 administrative suspension, Even though McAleer had voluntarily refrained from representing clients or otherwise practicing law, he failed to file the "notification affidavit" as specifically required by Maine Bar Rule 7.3(i)(2)(A)(B). McAleer's suspension occurred as a result of his failure to file an annual registration statement and attain his required CLE hours. McAleer's failure to file the notification affidavit was a violation of Rule 7.3(i)(2)(A)(B). McAleer did not provide an answer to the *sua sponte* complaint regarding the affidavit. His failure to so respond to Bar Counsel constituted a violation of M. R. Prof. Conduct 8.1(b).

**COUNT II**  
**(GCF# 11-151 Sua sponte complaint)**

On May 6, 2011, Bar Counsel docketed a *sua sponte* complaint against McAleer based upon his failure to file Maine tax returns and to pay Maine state income taxes for six years, 2003-2008. McAleer was charged by criminal complaint in 2009 and in April 2010 he pleaded no contest to the five charges. As a result of his pleas, McAleer was given a suspended jail sentence with probation. Additionally McAleer received a special condition to pay his Maine income tax. Since then, McAleer has successfully completed his probation. The Court finds that McAleer's criminal conduct and his failure to answer the *sua sponte* complaint constituted violations of M. Bar R. 3.1(a); 3.2(f)(2); and M. R. Prof. Conduct 8.1(b); 8.4(a).

**SANCTION**

McAleer has committed serious violations of the former Code of Professional Responsibility and the current Maine Rules of Professional Conduct. As a result, the Court must consider an appropriate sanction. The Court is mindful that the primary purpose of attorney discipline proceedings is not punishment but rather protection of the public.

Among the factors to be considered in imposing sanctions are the duty violated, the lawyer's mental state, the actual or potential injury caused by the lawyer's misconduct and the existence of any aggravating or mitigating

circumstances. See *ABA Standards for Imposing Lawyer Sanctions*, 1991 (ABA Standards). See also M. Bar R. 7.1(e)(3)(C).

The first factor under the ABA Standards is to determine the duty that was breached. The Maine Rules of Professional Conduct specifically require attorneys to uphold their responsibilities to clients and the courts. McAleer violated his duties to the legal system by failing to complete the annual registration requirements in 2010 and by failing to file the required notification affidavit once he was administratively suspended. The information collected by the annual registration of lawyers facilitates the protection of the public and courts. As well, any former clients of McAleer would need access to his contact information in order to access their files or related property.

The Court must also consider any mitigating and aggravating factors. There are mitigating circumstances here. McAleer reports that he has now filed all of his Maine income tax returns and that he is current on his payment of taxes. Additionally, McAleer suffers from debilitating depression and, at times, he is unable to address personal and required professional obligations. In that regard, McAleer failed to respond to the Board's mailing which contained his annual registration materials. He also failed to file responses to the Grievance Complaints.

McAleer acknowledges that he suffers from a disability and he is remorseful for his violations of the professional conduct rules. Moreover, the Court is aware that McAleer is not currently practicing law and he has affirmed

that he does not intend to practice until he is cleared to do so by his physician. McAleer remains suspended from the practice of law in Maine.

Accordingly, the Court imposes upon Michael M. McAleer two Public Reprimands. In doing so, the Court approves the parties' agreement and ORDERS the following conditions in this matter:

1. Mr. McAleer shall remain current in all filing obligations and payment of all taxes owed by him to the United States Internal Revenue Service and the State of Maine Revenue Service.
2. If he intends to return to the practice of law in Maine, Mr. McAleer shall remain in treatment for his disability until released by his physician. Prior to seeking reinstatement, Mr. McAleer must provide the Court and Bar Counsel with a copy of his treating physician's prognosis and recommendations.
3. By June 30, 2012, Mr. McAleer shall also comply with the provisions of M. Bar R. 7.3(i)(1).

Date: June 14, 2012

\_\_\_\_\_/s/  
Ellen A. Gorman  
Associate Justice  
Maine Supreme Judicial Court