

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR-13-17

BOARD OF OVERSEERS OF THE BAR)	
)	
Plaintiff)	
v.)	
)	ORDER of SUSPENSION
Scott D. Giese)	M. Bar R. 7.2
of Biddeford, ME)	
Me. Bar #4294)	
Defendant)	

The Board of Overseers of the Bar (Board) initiated the above attorney disciplinary action on March 28, 2014 through its filing of an Expedited Petition for Temporary Suspension. By Order of April 4, 2014 this Court suspended Scott D. Giese from practicing law. Concurrent with that suspension, the Court ordered Giese's law practice into Limited Receivership under the Board.

In preparation for final hearing of this disciplinary matter, the Court conducted a status conference to set the hearing for trial or for negotiated resolution. During the conference, Mr. Giese informed the Court that he did not oppose the Board's request for a sanction order. Accordingly, the parties were given a deadline of September 17, 2014 to resolve the disciplinary case with a negotiated settlement. When no proposed order was filed with the Court, this matter was then set for contested hearing on November 10, 2014. The Court's Executive Clerk notified both parties by U.S. mail. Additional notice of the

hearing was relayed by electronic mail between the parties and the Clerk. No mail was returned to the Clerk's office.

At that final hearing, the Board was represented by Deputy Bar Counsel Aria Eee. Mr. Giese did not attend but according to his communications with Attorney Eee, Giese reported his consent to the proposed sanction order incorporating a long-term suspension. The Court accepted a copy of Mr. Giese's electronic communication as proof of such consent.

FINDINGS AND CONCLUSIONS

Scott D. Giese was admitted to the Maine bar in 2008. Prior to his January suspension, Giese maintained a solo practice in Biddeford, Maine. He is not licensed in any other jurisdiction. The Court notes that subsequent to the January 6 2014 disciplinary hearing, four additional complaints against Giese were filed with the Board. Like the concerns regarding his previous misconduct, the later complaints detailed neglect and lack of communication by Giese. All total, the Board has received at least ten complaints against Mr. Giese. The Court notes that Giese did not respond to most of those complaint matters.

Following a review of the pleadings, the Petition for Temporary Suspension, the Affidavit of Assistant Bar Counsel (impounded) and the communications between the parties, the Court finds that Scott D. Giese engaged in multiple violations of the Maine Rules of Professional Conduct.

Those violations spanned at least four (4) separate counts of misconduct as detailed below.

COUNT I
(Debra A. Sanders)

On January 2, 2014, former client, Debra A. Sanders (Sanders) filed a grievance complaint against Giese. In her complaint, Sanders alleged that Giese neglected her legal matter, failed to adequately communicate and failed to protect her interests. Even after the filing of her bar complaint, Sanders reengaged Giese in an attempt to have him finish the work he started for her. That engagement failed and Sanders made supplemental complaint filings against Giese. The Court finds that Giese's failure to keep Sanders informed about the status of her family matter, failure to file the promised pleadings and his improper retention of her file constituted violations of the Maine Rules of Professional Conduct (M. R. Prof. Conduct).

As is evident from her communications to Giese, Ms. Sanders was dependent on Giese and she relied on him to properly resolve her legal matters. Giese's failures with regard to the Sanders representation constituted violations of M. R. Prof. Conduct 1.2 [scope of representation]; 1.3 [diligence]; 1.4 [communication]; 1.15(b)(2)(iv); [safekeeping/return of client property] 1.16(d) [terminating representation]; and 8.4(a)(c)(d) [misrepresentation; prejudicial conduct].

COUNT II
(Deidre S. Studley)

On January 2, 2014, former employee, Deidre Studley (Studley) filed a grievance complaint against Giese. Studley's complaint reported Giese's misconduct with clients, practice mismanagement, and his failure to timely pay her wages. Within her complaint, Studley also detailed Giese's personal conflict which occurred during the representation of a family law client. Giese filed a response to Studley's complaint, largely denying her allegations. He did agree that he owed Studley some wage payments.

The Court finds that Giese violated M. R. Prof. Conduct 1.3 [diligence]; 1.4 [communication] and 8.4(d)[prejudicial conduct]. The Court further finds that his personal conflict with a client constituted a violation of M. R. Prof. Conduct 1.7(a)(2) [conflict].

COUNT III
(Susan J. and Joseph V. Macchia)

On January 10, 2014, former clients Susan and Joseph Macchia (the Macchias) filed a grievance complaint against Giese. The substance of that complaint regarded the Macchias' 2009 retention of Giese to pursue a civil action against their general contractor. Despite their initial belief that Giese was adequately pursuing their legal matter, the Macchias later discovered that Giese had not attended to the filing or the service of the civil action. His misrepresentations to that effect were violative of the conduct rules and the Attorney's Oath. Moreover, Giese failed to timely deliver the Macchias' file after

his suspension and even upon their receipt of the file, it did not contain the original documents, photos and compact discs. The Court finds that Giese's actions in representing the Macchias constituted violations of M. R. Prof. Conduct 1.1 [competence]; 1.3 [diligence]; 1.4 [communication]; 1.15(b)(2)(iii)(iv); [safekeeping/return of client property] 1.16(d) [termination of representation]; and 8.4(a)(c)(d) [deceit; prejudicial conduct].

**Count IV
(Scott B. Buzzell)**

Former client Scott B. Buzzell (Buzzell) filed a grievance complaint, a Petition for Fee Arbitration and a Lawyer's Fund for Client Protection against Mr. Giese in March 2014. Within his complaint Buzzell alleged that Giese neglected his criminal matter, charged an excessive fee and failed to communicate. His actions in that regard were violative of M. R. Prof. Conduct 1.3[diligence]; 1.4(a)[communication]; 1.5(a)[excessive fee] and 8.4(d) [prejudicial conduct]. Despite the requirement to do so, Giese failed to answer Buzzell's grievance complaint, in violation of M. R. Prof. Conduct 8.1(b).

Just prior to the temporary suspension, Mr. Giese had resumed active status following his initial two month suspension spanning from mid-January to Mid-March 2014. In that first disciplinary matter, Giese assented to a suspension based upon client neglect, prejudicial conduct and contact with a represented person. The Court notes that in the months after his April 2014 temporary suspension, six additional clients filed similar complaints of neglect,

poor communication and excessive fees by Mr. Giese. Those latter complaints were filed after the Board submitted its Expedited Petition for Suspension. The Board notified those clients of Giese's suspension and the closure of his office.

Additionally, nine (9) former clients have filed claims with the Lawyers' Fund for Client Protection (LFCP). Thus far, the Fund Trustees have awarded approximately \$10,000 in claims while three (3) claims remain pending. The Board has relayed to the Court Mr. Giese's reports of his inability to pay any fee awards or LFCP reimbursements. In that regard, even though the Fee Arbitration Commission has issued decisions in favor of his various former clients, Giese has failed to pay (or attempt to pay) those awards. The Court is aware that Mr. Giese has reported a lack of employment and an impermanent living arrangement. The Board has made repeated referrals to the Maine Assistance Program (MAP) to link Giese to that important resource.

Based upon the multitude of client complaints, the Court once again finds that Giese's multiple violations of the Maine Rules of Professional Conduct are very serious. His failures denote an inability to manage his practice and properly interact/communicate with clients. He has demonstrated poor personal and professional judgment. Prior to his January suspension, Giese had practiced law for five years. It is clear to the Court that in building his solo practice, Giese failed to have adequate measures in place to attend to client needs, manage office operations, monitor legal matters and interact effectively and appropriately with clients. While Giese has reportedly experienced personal distress, his violations of the professional conduct rules threaten

lasting injury to his former clients and to the public. Despite his non-appearance at this hearing, the Court is mindful that the primary purpose of attorney discipline proceedings is not punishment but rather protection of the public. See Maine Bar Rule 2(a). Without a doubt, Giese's mishandling of client funds and neglect of multiple legal matters exacted harm to former clients, members of the public and the court's administration of justice. As a result, Giese should be sanctioned by a long term suspension.

SANCTION

Based upon the Court's findings and conclusions, the Court imposes upon Mr. Giese a four year (6) month suspension from practice. In determining a sanction, the Court recognizes that a suspension of more than five years would constitute disbarment. With this suspension the Court also **ORDERS** the following:

1. Mr. Giese shall serve his suspension from November 10, 2014 until May 12, 2019.
2. Given his existing suspension, the Court assumes and expects that Mr. Giese has provided or will provide notice of his suspension to all clients, courts and opposing counsel, consistent with M. Bar R. 7.3(i)(1). Mr. Giese shall also return any remaining client property still within his possession.
3. Mr. Giese shall not Petition for Reinstatement until he has made restitution to the LFCP for all claims paid on his behalf. Likewise, he

shall reimburse any clients who did not receive LFCP funds but who were awarded a refund by the Fee Arbitration Commission.

4. Mr. Giese shall also contract with MAP at least six months before filing a Petition for Reinstatement. The earliest time Mr. Giese can seek such Reinstatement is May 13, 2019.
5. Mr. Giese shall meet all requirements of M. Bar R. 7.3(j), including the completion of the reinstatement questionnaire. He shall otherwise cooperate with the Board and or Bar Counsel.
6. Until this Court reinstates Mr. Giese to practice law, he may not appear before any tribunal and he is prohibited from advising, consulting or meeting with any clients. In sum, he may not practice law or appear as though he is practicing law in any manner.
7. Effective upon any reinstatement, Mr. Giese shall submit his practice to monitoring by a court appointed monitor for two years or longer if the Court or his assigned monitor deems it necessary.
8. Finally, Mr. Giese is expected to refrain from any criminal or fraudulent conduct, all of which will be considered upon any reinstatement petition filing.

Date: 11-12-2014

/s/

Joseph M. Jabar
Associate Justice
Maine Supreme Judicial Court