

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR-13-17

BOARD OF OVERSEERS OF THE BAR)
)
 Plaintiff)
 v.)
)
 Scott D. Giese, Esq.)
 of Biddeford, ME)
 Me. Bar #4294)
 Defendant)

ORDER of SUSPENSION
M. Bar R. 7.2

The Board of Overseers of the Bar initiated the above attorney disciplinary action on September 25, 2013 by the filing of a Stipulated Waiver of Grievance Commission Proceedings. Thereafter, on November 5, 2013, the Board filed a Disciplinary Information pursuant to M. Bar R. 7.2(b)(1). Although Attorney Giese did not file an Answer to the Information, during the pre-trial conference he notified the Court that he was largely in agreement to a negotiated resolution of this disciplinary matter. Following a pre-trial status conference, the Court scheduled final hearing for January 6, 2014.

At that final hearing, the Board was represented by Assistant Bar Counsel Aria Eee and Attorney Giese appeared *pro se*. Additionally, some of those who had filed complaints against Attorney Giese (Ingrid Horvat and Attorney Amy Fairfield) appeared and were given the opportunity to address the Court. Former client Tammy Mutombo lives out of state and was unable to appear for this hearing. While another former client (Geoffrey Reese) also desired to appear, his current incarceration prevented that appearance.

FINDINGS AND CONCLUSIONS

Scott D. Giese was admitted to the Maine bar in 2008. From his admission until the present, Giese has engaged in private practice in Biddeford, Maine. He is not licensed in any other jurisdiction and the Court notes that except for the instant action, Giese has not otherwise been disciplined for attorney misconduct.

Following a review of the pleadings and the parties' negotiated proposal, the Court finds and Giese agrees that he engaged in multiple violations of the Maine Rules of Professional Conduct. Those violations spanned five (5) separate counts of misconduct as detailed below.

COUNT I (GCF# 13-201 Ingrid Horvat)

On April 8, 2013, former client, Ingrid Horvat (Horvat) filed a grievance complaint against Giese. In her complaint, Horvat primarily alleged that Giese agreed to a highly contested parental rights order without her consent to do so. Within her complaint, Ms. Horvat expressed her distress that Attorney Giese failed to adequately communicate and failed to protect her interests. The Court finds that Giese's failure to explicitly obtain Ms. Horvat's authority to settle the parental rights case and his continued retention of Horvat's money and corporate file constituted violations of the Professional Conduct rules. Based upon Bar Counsel's subsequent investigation it is also clear that Giese was

paid for, but did not perform any work on a separate legal matter involving Horvat's small business. Ms. Horvat filed a Fee Arbitration Petition and Attorney Giese agrees she is due a refund. The Fee matter has not yet been scheduled for hearing.

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

COUNT II
(GCF# 13-188/Amy L. Fairfield)

On May 29, 2013 Attorney Amy L. Fairfield filed a grievance complaint against Attorney Giese. Fairfield's complaint reported Giese's unauthorized contact with Fairfield's family law client. The Court finds and Giese agrees that his contact with that represented person violated M. R. Prof. Conduct 4.2(a) [contact with represented person]. Within her complaint, Fairfield also detailed Giese's personal conflict, which occurred during the representation of his client in the underlying family law matter. Giese acknowledges and the Court finds that his conflict constituted a violation of M. R. Prof. Conduct 1.7(a)(2) [lawyer's personal conflict].

COUNT III
(GCF# 13-221 Diane M. Gonneville and Katreena Gioud)

A related grievance complaint was filed on July 3, 2013, by Diane M. Gonneville and Katreena L. Gioud. The substance of that complaint regarded Attorney Giese's filing of an unmeritorious lawsuit on behalf of the same family law client with whom he had a personal conflict. After Gonneville and Gioud hired counsel to defend them in the action, the York County Superior Court granted their Motion and dismissed the case. While Giese initially denied the complaint allegations, he now agrees that it was improper for him to have filed the suit against Gonneville and Gioud. The Court finds that Giese's filing constituted violations of M. R. Prof. Conduct 2.1 [Advisor]; 3.1 [meritorious claims] and 8.4(d) [conduct prejudicial to administration of justice].

Count IV
(GCF# 13-274 Tammy Mutombo)

Former client Tammy Mutombo (Mutombo) filed a grievance complaint and related Fee Arbitration Petition against Attorney Giese on August 30, 2013. Within her complaint Mutombo alleged that Giese neglected her estate 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] and 1.5(a) [excessive fee]. Despite the requirement to do so, Giese failed to answer the Mutombo grievance complaint, in violation of M. R. Prof. Conduct 8.1(b). Giese did file a response to the Fee Petition and that matter remains pending.

COUNT V
(GCF# 13-266 Geoffrey D. Reese)

On August 31, 2013, former client Geoffrey D. Reese (Reese) filed a grievance complaint against Attorney Giese. In his complaint, Reese described Giese's failure to prosecute Reese's criminal appeal then pending in the Maine Supreme Judicial Court. Based upon Giese's failure, the Law Court dismissed Reese's appeal. Subsequent to that dismissal, the Court appointed new counsel and reinstated Reese's appeal. Despite the opportunity to do so, Giese did not file a response to the Reese grievance complaint.

Although Giese denies intentionally abandoning Reese's appeal, he does now acknowledge that he failed to explicitly obtain Reese's approval to file no brief with the Law Court. That failure was violative of M. R. Prof. Conduct 1.2 [scope of representation]; 1.3 [diligence]; 1.4(a) [communication] and 8.4(a)(d) [other misconduct]. Giese's failure to answer Reese's grievance complaint constituted a second violation of M. R. Prof. Conduct 8.1(b) [disciplinary matters]. At the hearing, Giese agreed that he will mail a copy of Reese's client file either to Reese directly or to Reese's mother.

SANCTION

The Court finds that Attorney Giese's multiple violations of the Maine Rules of Professional Conduct are serious and troubling. They indicate difficulties with Giese's ability to manage his practice and properly communicate with clients. Attorney Giese has only practiced law for five years and it appears that he expanded his practice at a speed and breadth that he

could not accommodate. As a result, clients were neglected and legal matters were not properly attended to.

The Court is mindful that the primary purpose of attorney discipline proceedings is not punishment but rather protection of the public. The Court's Order is intended to address the serious problems associated with Giese's law practice.

To address the concerns about Giese's practice management deficiencies, the parties have agreed and the Court hereby orders that Giese submit his practice to monitoring by Attorney Scott Houde of Biddeford, Maine. The related Order for Monitoring is incorporated herein by reference. In that regard, the Court expects that Giese will improve his client relations, his calendaring system and his management of his caseload, so as to practice effectively and avoid future neglect of client matters.

Based upon the Court's findings and conclusions, the Court imposes upon Mr. Giese a two (2) month suspension from practice. In doing so, the Court approves the parties' agreement and ORDERS the following sanction and conditions in this matter:

1. Mr. Giese shall serve his suspension from January 22 until March 19, 2014;
2. On or before January 22, 2014, Mr. Giese shall provide notice of his suspension to all clients, courts and opposing counsel, consistent with

M. Bar R. 7.3(i)(1). His outgoing office messages shall provide a similar disclosure to clients and or prospective clients.

3. During the period of suspension, Mr. Giese may not appear before any tribunal and is prohibited from advising, consulting or meeting with any clients. In short, he may not practice law or appear as though he is practicing law in any manner.
4. Additionally, Mr. Giese's law office shall not be open for any kind of business. While the law office is closed during the period of suspension, another Maine attorney or a temporary staff person (approved by Bar Counsel) is permitted to deal with the administrative functions of the Giese Law office, including reviewing mail, returning client files, paying bills, etc. The Court notes that Mr. Giese has enlisted the help of Attorney Paul Letourneau to cover uncontested client matters during the period of suspension.
5. Mr. Giese shall not be present in the law office for any of the suspension time and his "suspension notification" letter, his answering service and his email account shall inform clients and courts of that fact.
6. Effective March 19, 2014, Mr. Giese shall submit his practice to monitoring for one year or longer if the Court or Monitor deems it necessary. The Court-Appointed Monitor is Attorney Scott Houde of Biddeford, ME;

7. Mr. Giese shall comply with all directives and recommendations made by Attorney Houde. Attorney Houde shall notify the Court and Bar Counsel if Mr. Giese fails to comply with the conditions of monitoring;
8. Three weeks prior to his return to practice, Mr. Giese shall make contact with MAP and if recommended by the Director, William Nugent, Esq., contract with MAP for appropriate services or supports;
9. Attorney Nugent shall notify the Court and Bar Counsel if Mr. Giese fails to make contact or otherwise follow the MAP recommendations;
10. Additionally, by June 16, 2014 Mr. Giese shall undertake six (6) hours of approved live continuing legal education focused on law practice management; he shall provide evidence of that legal education to Bar Counsel and to the Court.
11. If Mr. Giese commits any apparent violation of any of the conditions of this Order, Bar Counsel may proceed by way of contempt to request that the Court impose an additional period of suspension upon Mr. Giese; and
12. In the event a grievance complaint is received by Bar Counsel after January 1, 2014, Bar Counsel may elect to file a new disciplinary matter directly before the Court pursuant to the terms of this Order and of Maine Bar Rule 7.2(b).

Date: January 13, 2014

_____/s/
Joseph J. Jabar
Associate Justice
Maine Supreme Judicial Court