

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO. BAR-16-15

BOARD OF OVERSEERS OF THE BAR	)
Plaintiff	)
	)
v.	)
	)
SETH T. CAREY, ESQ.	)
of Rumford, ME	)
Me. Bar #009970	)
Defendant	)

**ORDER**  
**M. Bar R. 13(g)**

This disciplinary matter was initiated by the Board of Overseers of the Bar through the filing of three separate disciplinary informations dated June 15, July 8 and August 8, 2016, pursuant to Maine Bar Rule 13(g). Attorney Seth T. Carey filed his answer to each information on July 28, August 8 and September 1, 2016, respectively.

After due notice, the Court conducted a disciplinary proceeding on November 21, 2016. The Board of Overseers of the Bar was represented by Bar Counsel J. Scott Davis and Deputy Bar Counsel Aria Eee. Attorney Carey appeared as his own counsel.

The parties have participated in a judicial settlement conference and have agreed to the entry of this negotiated Order identifying Attorney Carey's misconduct and the resulting sanctions imposed by the Court.

Based upon the parties' negotiated agreement, and after hearing through Bar Counsel from the respective complainants (as applicable), Attorney Carey, and the Board, the Court issues the following Order:

## **I. FINDINGS OF FACT**

### **A. Judge Maria Woodman**

Attorney Seth T. Carey was admitted to the Maine Bar on May 24, 2006, and is currently engaged in private practice in Rumford, Maine. Attorney Carey is also licensed to practice law in Massachusetts and Connecticut.

In late 2014, Judge Maria Woodman<sup>1</sup> filed a grievance complaint concerning her and other jurists' observations of Attorney Carey's repeated incompetence in court matters. Both in the complaint and later during the testimonial evidence presented at the proceeding before the Board's Grievance Commission under M. Bar R. 13(e), four jurists recounted their experiences, observations, and concerns about Attorney Carey's lack of core competence.

Throughout the complaint investigation and the subsequent disciplinary proceeding, Attorney Carey has been adamant that the jurists' accounts were inaccurate and that they had colluded in a conspiracy against him. Although he may continue to disagree with the jurists' testimony, Attorney Carey

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<sup>1</sup>At the time her complaint was filed, December 2014, Judge Woodman was a Family Law Magistrate.

wishes to move forward in his legal career. He has determined to set aside his disagreements and accept that multiple jurists have found his skills to be inadequate. Attorney Carey agrees that the testimony of the four jurists at the preliminary hearing before the Grievance Commission comprises sufficient evidence for this Court to find that he has demonstrated a lack of core competence in the handling of his clients' respective litigation matters. Based upon that admission, the Court finds that Attorney Carey has at times failed to follow applicable rules, procedures and directives issued by the trial courts referenced above.

As detailed within the facts set forth herein, the Court finds that Attorney Carey engaged in violations of the following Maine Rules of Professional Conduct: 1.1; 1.3; 3.3(a)(3); 3.3(b); 8.4(a); and 8.4(d).

**B. Dr. Matthew Donovan**

In May 2015, Dr. Matthew Donovan filed a grievance complaint against Attorney Carey.<sup>2</sup> In his capacity as a Section 312 Examiner appointed by the Maine Workers' Compensation Board (MWCB), on May 15, 2014 Dr. Donovan performed an independent medical examination (IME) of Attorney Carey's

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<sup>2</sup>Given the pendency of the Board's information resulting from Judge Woodman's grievance complaint, the Board filed its information in Dr. Donovan's matter directly with the Court without any hearing before the Grievance Commission. See M. Bar R. 13(d)(6).

client, Richard T. That examination concerned Richard T.'s claim of a work-related low back injury.

Dr. Donovan then issued an IME report, dated May 15, 2014, in which he concluded and found that Richard T. had regained full work capacity as of an earlier date. Dr. Donovan further opined that Richard T. had only a 5% whole-person impairment for his low back and lower extremity condition.

At Richard T.'s request, the MWCB permitted the supplementation of records to be provided to Dr. Donovan. The Court's understanding from the record is that MWCB Hearing Officer Goodnough authorized such a supplementation so that Dr. Donovan could determine whether the additional information would affect or in any way change his opinion of Richard T.'s medical condition and ability to work. The documents provided by Attorney Carey for Dr. Donovan's review, however, did not contain any new medical records.

Thereafter, on October 2, 2014, Dr. Donovan issued an IME supplemental report that included the following statement: "Comparing the index of records received today to those received initially there are no new encounter dates noted. Dates of treatment are exactly equal. Therefore, my opinion remains unaltered."

By an October 6, 2014, "*Order Denying New Section 312 Examination and Granting Motion to Depose Dr. Donovan*," Hearing Officer Goodnough authorized both parties to "bring relevant additional records to the deposition (if they exist, even if generated after the initial April 15, 2014 exam) and ask Dr. Donovan questions about them so long as such records are exchanged by the parties, and provided to Dr. Donovan's office within 14 days of the date of the deposition."

The deposition of Dr. Donovan was scheduled to occur on February 26, 2015. Despite the specific requirements of the October 6, 2014 Order, Attorney Carey did not forward additional medical records to Dr. Donovan until February 22, 2015 (a Sunday). In addition, Attorney Carey failed to contemporaneously send or provide any copies of those records to opposing counsel.

Attorney Carey's client did not prevail in his claim before the MWCB. In his decision denying the client's claim, Hearing Officer Goodnough made the following findings:

10. I find and conclude that the employee failed to prove he has remained partially or totally incapacitated on account of his work injury following his termination. This finding is consistent with Dr. Donovan's report and testimony and the medical record as a whole. It is not consistent with Dr. Esponette's report. However, because Dr. Esponette's report was not provided to Dr. Donovan in a manner consistent with the October 6, 2014 procedural Order discussed above, it cannot be considered clear and convincing contrary evidence.

Within his complaint against Attorney Carey, Dr. Donovan expressed concern regarding Attorney Carey's conduct both in preparation for and during the deposition. Attorney Carey has asserted that the doctor's complaints about him were filed in retaliation for a complaint made by his clients about the doctor to the Board of Registration of Medicine. He acknowledges, however, that in his April 21, 2015 decision, Hearing Officer Goodnough specifically found that Attorney Carey had failed to make certain that the additional medical reports were available to Dr. Donovan, and that he "asked many questions [at Dr. Donovan's deposition] concerning various medical reports, documents, and affidavits that had not previously been admitted into evidence."

Attorney Carey's failure to timely provide the necessary medical documents to Dr. Donovan constituted violations of M.R. Prof. Conduct 1.1[competence] and 1.3 [diligence].

**C. Attorney Bernard J. Kubetz**

In his role as legal counsel for Bangor Savings Bank (BSB), on or about January 25, 2016, Attorney Bernard J. Kubetz filed a grievance complaint against Attorney Carey.<sup>3</sup> BSB had contacted Attorney Kubetz concerning Attorney Carey's handling of his IOLTA (Interest on Lawyer's Trust Account) account maintained at the bank. Attorney Carey established that IOLTA account in 2013, and listed himself as the sole authorized owner of that account.

Within his complaint, Attorney Kubetz detailed several account irregularities associated with Attorney Carey's IOLTA account. Multiple checks had been drawn on Attorney Carey's account that did not fall within the intended and limited use of an IOLTA account as provided in M. Bar R. 6 and M.R. Prof. Conduct 1.15.

Those checks demonstrated that Attorney Carey used his IOLTA account to improperly make payments for both personal and professional expenses during the course of many months. In his response to Bar Counsel, Attorney Carey described that misuse as his "mistakes," and explained that he had earned (or nearly earned) all monies present in the account. Even if that explanation is accurate, Attorney Carey admits that he failed to abide by the

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<sup>3</sup>This matter is before the Court under M. Bar R. 13(d)(6), as discussed above in footnote 2.

rules governing client trust accounts. This failure is troubling because, as an attorney licensed for more than ten years, Attorney Carey knew or should have known that he could not commingle funds or draw upon his IOLTA account for personal and other non-client expenses.

If Attorney Carey had indeed earned all of the funds, he should have transferred the earned funds into his operating account. Had Attorney Carey done so, he would have been able to pay those non-client expenses in a manner consistent with the Maine Rules of Professional Conduct. The Court finds that, at a minimum, Attorney Carey's conduct reflects improper bookkeeping and business practices in violation of M.R. Prof. Conduct, Rule 1.1 [competence]. Should such conduct continue, the Court will have to conclude that Attorney Carey's misuse of his IOLTA account demonstrates at best a reckless disregard of the regulations governing, and the important function served by client trust accounts.

## **II. CONCLUSION and SANCTION**

The Court notes that Attorney Carey has previously been sanctioned for misconduct, some of which is similar to the instant matters and some of which is unrelated to those concerns. *See* two Orders of Suspension, February and October 2009, respectively.



Pursuant to the parties' submitted proposal as supplemented by the Court, it is now hereby ORDERED as follows:

Attorney Seth T. Carey is suspended from practicing law in Maine for two years, with all of that suspension being suspended, subject to Conditions #1 through #28 as set forth below.

The Court urges Attorney Carey to use the two-year period of suspended suspension with monitoring to seek guidance and accept direction from his monitoring colleagues on issues of office management, client and court communication, and litigation strategy, and to discuss with MAP and his monitors how to appropriately engage with the Maine bench and bar so that he may effectively represent his clients. In that regard, the Court issues the following conditions of Attorney Carey's suspended suspension, which becomes effective seven days following the issuance of this Order.

1. For a period of at least two (2) years, Attorney Carey shall be jointly monitored in his practice by Attorneys Verne Paradie, Nicholas Worden and Heather Walker. If those attorneys are unable to continue their service as the Monitors, then that role shall be undertaken by mutually agreed-upon third parties or as otherwise selected and directed by the Court.

2. Any costs or fees associated with the Monitors' supervision shall be borne by Attorney Carey.
3. Attorney Carey will meet with the Monitor(s) at their calling and convenience, on a bi-weekly basis, unless the Monitors subsequently determine that more or less frequent meetings are appropriate.
4. The Monitors shall have the right to withdraw and terminate their services at any time for any reason they deem necessary. If they intend to do so, they shall provide written notice to Bar Counsel of such withdrawal, whereupon this matter shall then be scheduled for further hearing as deemed appropriate by the Court.
5. If any aspect of the monitoring process creates a situation, which is, or might be interpreted to be a conflict of interest under the Maine Rules of Professional Conduct, the Monitors may adopt any one of the following courses with the proposed result:
  - a. Monitors cease to act as monitor(s) and a potential conflict is avoided.
  - b. Monitors continue to serve as the Monitor(s), but totally exclude Attorney Carey's client's matter from the supervision process, so that no conflict is deemed to exist.

- c. Monitors continue to serve as the Monitor(s), but withdraw from the conflicted matter.
6. The Monitors shall have the right to contact clerks of court, judges, or opposing counsel to monitor and confirm Attorney Carey's compliance with his professional obligations.
7. Likewise, if the Monitors determine that Attorney Carey should refrain from expanding his practice areas, the Monitors shall inform Attorney Carey of that fact. Attorney Carey shall then follow the Monitors' directive to refrain or limit his acceptance of such cases, absent this Court's order to the contrary.
8. The Monitors shall not initiate contact with any of Attorney Carey's clients. The Monitors only communications in the performance of their monitoring duties shall be with Attorney Carey or other persons contemplated by this decision, including the Maine Assistance Program for Lawyers and Judges (MAP) and Bar Counsel's office. However, if any clients contact the Monitors with concerns about Attorney Carey's conduct, then they should be referred to Bar Counsel.
9. The Monitors' participation in the disposition of Attorney Carey's disciplinary case and monitoring of Attorney Carey's practice shall be deemed not to create an attorney-client relationship between Attorney

Carey and the Monitors or between the Monitors and Attorney Carey's clients. Specifically, the Monitors shall be deemed not to represent Attorney Carey or any of Attorney Carey's clients or to be employed by them in any capacity and the Monitors shall not have any responsibility of any nature to any of them. Moreover, the attorney-client privilege shall not apply to the Monitors' supervision of Attorney Carey's practice, and the Monitors shall be immune from any civil liability (including without limitation, any liability for defamation) to Attorney Carey or any of Attorney Carey's clients.

10. The Monitors shall have the authority to review and examine any of Attorney Carey's files, except those in which the Monitors might have adverse interests under paragraphs 4 or 5. In that event, the Monitors shall notify Bar Counsel who may then develop an alternative means of file review.
11. Attorney Carey shall prepare and present to the Monitors two weeks in advance of their first meeting a list of all his current clients, showing each pending client's matter with a brief summary and calendar of the status thereof. For all subsequent meetings, Attorney Carey shall prepare and present that information to the Monitors at least three days in advance of the meeting.

12. The Monitors will, as soon as practicable, have Attorney Carey establish a method of objectively identifying problematic or delinquent client matters and have Attorney Carey institute internal checks and controls to make his practice appropriately responsible to the needs of his clients.
13. As stated in the Court's Order & Decision, it is allowed and expected that Attorney Carey shall incorporate and use assistance from the Monitors as is deemed necessary and appropriate.
14. The Monitors shall file a confidential report with the Court every three months or sooner if the Court deems it necessary. The Report shall be copied to Bar Counsel, and shall cover at least the following subjects:
  - a. Measures Attorney Carey has taken to avoid delinquencies or adverse court action;
  - b. A description of any client matter identified as delinquent or problematic;
  - c. Any professional assistance the Monitors have provided to Attorney Carey;
  - d. Attorney Carey's use of and appropriate monthly reconciliation of his IOLTA Account(s); and

- e. A summary of relevant status updates provided by court staff and members of the bar, as referenced in ¶6.
15. The Monitors shall have the duty to file a written report with the Court and Bar Counsel concerning any apparent or actual professional misconduct by Attorney Carey of which the Monitors become aware.
  16. The Monitors shall provide a written report to the Court and Bar Counsel concerning any lack of cooperation by Attorney Carey with the terms of this Order.
  17. Under the supervision and guidance of the Monitors, Attorney Carey shall ensure that his IOLTA account is reconciled each month, utilizing the court-approved forms provided by the Board. At any time the Monitors or Bar Counsel deem it necessary to perform an audit of Attorney Carey's IOLTA account, Carey shall cooperate with such an audit. The Court and Bar Counsel shall be provided with all reconciliation and audit reports.
  18. Within thirty (30) days of the date of this Order, Attorney Carey shall commence treatment with a licensed Maine psychiatrist. Attorney Carey shall provide the name and address of that psychiatrist (and any other professionals he is referred to) to MAP and to Bar Counsel. He shall instruct the psychiatrist to consult with the MAP Director to

address any concerns identified by the Director. Attorney Carey shall follow the recommendations of the psychiatrist and any other treatment providers he may subsequently be referred to. Attorney Carey shall receive consistent treatment from those providers to promote continuity of care. MAP shall pay the cost(s) of such treatments up to a maximum of \$2,000. In the event there is a change in provider(s), Attorney Carey shall notify MAP and Bar Counsel of such changes.

19. Within that same 30-day period Attorney Carey shall meet with the Executive Director of MAP and execute a contract satisfactory to MAP.
20. Attorney Carey shall refrain from all criminal conduct and shall report immediately any criminal charges to MAP and to Bar Counsel; he shall further report any convictions arising out of criminal conduct in any jurisdiction.
21. Attorney Carey shall report to MAP and Bar Counsel any matters in which he is the subject of any civil protection order, e.g., Protection from Harassment or Protection from Abuse.
22. If he has not already done so, Attorney Carey shall designate a Maine attorney to serve as his proxy in the event of any future disability, pursuant to M. Bar R. 1(g)(12).

23. Attorney Carey shall report any grievance complaints and disciplinary proceedings and/or sanctions to all jurisdictions where he is admitted.
24. During the two year period of his probation and monitoring, Attorney Carey shall attend and participate in at least two live Maine trial practice-oriented Continuing Legal Education (CLE) programs certified by the Board of Overseers. Those programs shall include role-playing and/or Attorney Carey's active participation in mock trial(s). Evidence of his participation shall be provided to MAP and Bar Counsel within ten (10) days of such completion.
25. Likewise, within one year of the date of this Order, Attorney Carey shall engage in at least 3 hours of live CLE concentrated on law office practice management, including proper use of financial accounts and record keeping. This law office management program shall be in addition to the eleven (11) hours of CLE annually required of every Maine attorney under Maine Bar Rule 5(a).
26. Attorney Carey shall timely comply with his required annual registration filings and continuing legal education requirements.
27. Any verified and/or investigated new complaints concerning conduct that allegedly occurred after the date of this Order, may form the basis



for additional disciplinary filings directly before the Supreme Judicial Court under M. Bar R. 13(g).

28. Attorney Carey's violation of any condition enumerated within this Order may result in the Board's filing a Petition to Terminate the suspended portion of his Suspension Sanction.

RECEIVED

NOV 21 2016

Dated: \_\_\_\_\_

Clerk's Office  
Maine Supreme Judicial Court



G. Arthur Brennan  
Active Retired Justice  
Maine Superior Court