

STATE OF MAINE

MAINE SUPREME JUDICIAL COURT

Docket No. BAR 08-5

BOARD OF OVERSEERS OF THE BAR )  
Plaintiff )

v. )

CALVIN E. TRUE, ESQ. )  
Of Bangor, ME )  
Me. Bar #787 )  
Defendant )

**DISCIPLINARY ORDER**  
**M. Bar R. 7.2(b)**

**Background**

In this matter, Bar Counsel J. Scott Davis represented the Board of Overseers of the Bar, and Attorney Peter J. DeTroy represented Defendant Calvin E. True. On June 2, 2008, the Court approved counsel's Stipulated Waiver of Grievance Commission Proceedings. As a result, the Court has jurisdiction to proceed directly in this disciplinary proceeding under M. Bar R. 7.2(b) and issue a Disciplinary Order absent any earlier Grievance Commission hearing under M. Bar R. 7.1(e). At the hearing held in this matter on December 2, 2008, Attorney True expressed his remorse and apologized for his misconduct, confirmed that he waives his right to appeal this Order to the Law Court and also agreed that the sanctions imposed by this Order are effective on the date of this Order.

### **Stipulations**

Counsel for the parties have stipulated to the following material facts now found and adopted by the Court.

At all times relevant hereto, Attorney True has been an attorney duly admitted to and engaged in the practice of law in the State of Maine and subject to the Maine Bar Rules. He has practiced law in the estate-planning field with the law firm of Eaton Peabody in Bangor since 1972. By way of Attorney DeTroy's detailed filing letter of March 15, 2006, with several attached exhibits, Attorney True self-reported to Bar Counsel Davis his misconduct in three separate instances as summarized below.

#### **The December 2004 Real Estate Transaction**

On or about December 23, 2004, Attorney True represented the sellers in a substantial real estate transaction with a value of approximately \$25,000,000. The land involved in that transaction was approximately 54,000 acres, all or most of which was timberland.

There were three sellers represented by Attorney True: the Estate of Doe, Mr. A, and Mr. B, the latter two being the beneficiaries of the Estate of Doe. The Estate of Doe held a substantial portion of the property sold in the transaction.

An accelerating force during the transaction was a new law regulating the use of timberlands. That law modified the allowable use of timberlands acquired

after January 1, 2005, making the property more valuable to the buyers if it were purchased before the law's effective date. Therefore, the parties' contract required that the sale close before December 30, 2004. Accordingly, the closing was scheduled for December 23, 2004.

On December 22, 2004, Attorney True presented his clients with a bill for legal services in the amount of \$175,000. Of that amount, \$115,000 was designated to cover the legal services related to the sale of the timberland interests and the remaining \$60,000 was identified to cover future estate expenses. There was no written fee agreement between Attorney True and his client sellers.

Attorney True agrees that a calculation of the hours the law firm's professionals spent in this timberlands transaction multiplied by their respective hourly rates totaled approximately \$28,000. The firm's invoices to the clients reflected the actual services provided, but did not contain a breakdown of the hours spent or the hourly rates. Attorney True understood that the factors set forth in title 18-A M.R.S. § 3-721 of the Maine Probate Code would provide the basis for the fee ultimately charged to the clients.

Before the closing, Mr. A and Mr. B had agreed that each of the three sellers would bear that portion of Attorney True's fees and expenses that mirrored that seller's proportionate payment from the sale of the timberlands. Mr. A's pro-rata share of the \$115,000 fee billed in December 2004 was \$42,818. The Estate of

Doe's pro-rata share of the \$115,000 fee billed in December was \$40,326.88.

Mr. B's pro-rata share of the \$115,000 fee billed in December was \$31,855.12.

Although there was no written fee agreement for the sale of the timberlands, the billing pattern established during the firm's prior handling of the Estate of Doe (of which Mr. A was a personal representative and Mr. B was a beneficiary) involved monthly invoices that did not specify the time and billing rates of the various Eaton Peabody personnel involved in the representation. Before December 2004 the invoices did predominantly reflect the time and rate of the respective timekeepers.

In early 2005, Mr. A expressed concern to Attorney True that the fees billed to him were too high. He objected both to the fees billed to the Estate of Doe and to the fees billed him individually. Although the firm's accounting system did not allow him to do so, Attorney True ultimately agreed with Mr. A's request to provide separate invoices to reflect the fees attributable to Mr. A, Mr. B, and the Estate.

The document that Attorney True prepared and dated March 4, 2005, purported to be an invoice to the Estate of Doe. It was created by Attorney True in a word processing program outside the firm's normal billing protocol, i.e. it was not an invoice generated by computer automation from contemporaneously maintained time and billing records of the firm's employees. Attorney True agrees

that Mr. A could reasonably have believed that invoice was generated by the firm's bookkeeping records when, in fact, it was not. Attorney True further admits that invoice also contained entries that did not track the specific charges in the prior firm invoices, but rather reflected his general recollection of the nature of the services. He did not make any affirmative inquiry of the firm's accounting department to determine if separate invoices could have been created.

Mr. A requested a more detailed explanation of the legal services for which Attorney True had billed him. On May 16, 2005, Attorney True responded to Mr. A's request by generating a memo that identified the scope of work completed, included a description of the hours spent and listed the billing rate of various firm personnel who had worked on the matter. Attorney True agrees that in that memo he misrepresented to Mr. A the amount of total time and hourly rates of some of the involved professionals from his law firm.

As he did in his self-report filing with the Board, Attorney True admits that his May 16, 2005, memo included several misrepresentations including: (1) the billing rates of several attorneys; (2) the time he had actually devoted to the matter; and (3) the amount of time a firm associate had actually devoted to the matter. In addition, Attorney True's memo also understated the time another firm associate had devoted to the matter.

The actual billable amount of time spent by the firm on behalf of Mr. A, Mr. B, and the Estate of Doe collectively—based upon the contemporaneous entries of firm staff into a time and billing data base—totaled \$27,341.50. Attorney True's May 16, 2005, memo represented that the law firm's records for the billable time for the timberlands transaction on behalf of Mr. A, Mr. B, and the Estate of Doe was collectively \$35,892.50. In sum, the memo inaccurately overstated the time and hourly rate by approximately \$8500.

Attorney True initially admitted his misconduct to his firm in June 2005. At that time, the Co-Personal Representative of the Estate of Doe asked one of Attorney True's partners at Eaton Peabody for information to support the bills that had been rendered to the Estate. The information requested included the bills issued to the Estate for the timberlands transaction as well as the firm's billing records relating to the law firm's administration of the Doe Estate. When Attorney True was approached by that partner, he acknowledged his misconduct to his firm.

The billing issues were ultimately resolved when the firm reimbursed Mr. A and the Estate of Doe for all sums they paid in excess of billing hours and attorney's hourly rates. Mr. B advised the firm that it was his position that the amount of the bill charged him was appropriate, recognizing the factors set out in title 18-A M.R.S. § 3-721. He declined any reduction of the sums he had been billed by the firm.

By preparing and presenting inaccurate information to a client concerning the billing information, Attorney True agrees and the Court finds that he violated M. Bar R. 3.2(f)(3).

### **Misuse of Client Funds Held in Trust**

Prior to that timberlands closing, specifically on December 6, 2004, the buyers submitted a \$1,000,000 earnest money deposit on the timberlands parcel. That deposit was inadvertently placed by the Eaton Peabody accounting department into a separate account at the firm and therefore was not available to be distributed at the timberlands closing on December 23, 2004.

The “Trust Report” and narrative provided by Attorney True to Bar Counsel in his self-report confirm that on December 23, 2004, he directed the firm’s accounting department to issue a \$2500 check to cash to provide for distributions of cash bonuses to five of the firm’s staff members who had worked on the sale of the timberlands. Attorney True also paid a law firm bill for legal services rendered to one of his sons totaling \$1200. He also paid the November invoice of \$11,530 for legal services to the Estate without authorization. Attorney True made these separate payments from the firm’s trust account. While he had understood those payments were made from funds for the firm’s legal fees in the timberlands transaction which had been deposited in its operating account, Attorney True agrees that his having directed such payments from the firm’s trust account without

the clients' consent was inconsistent with the requirements of M. Bar R. 3.6(e) (Preserving Identity of Funds and Property).

### **Conflict of Interest**

Attorney True represented Mrs. C in various legal matters starting in 1994. A prior stroke had left her physically incapacitated, but at all times she retained her mental acuity. In 1999 Mrs. C's son died and she made Attorney True her agent under a power-of-attorney that included the authority to handle her finances. Payment of her monthly expenses was accomplished through a trust she had established with a local bank. In 2000 Attorney True provided estate-planning services to Mrs. C. In 2001, her physical deterioration led to her decision to enter an assisted living facility. At her request, Attorney True monitored Mrs. C's homestead, to which she hoped to return. Although she briefly returned on occasion, she was never able to resume her residence there.

Soon after Mrs. C's departure from her home, Attorney True proposed the possibility of a house sitting arrangement to defray costs. He acknowledges he advised her that his son and his son's fiancée might be interested in such an arrangement. Mrs. C spoke separately to his son and son's fiancée and reached a satisfactory arrangement for the lease of her home. As a result, in August 2001 Attorney True prepared a lease agreement between the parties at Mrs. C's request. Attorney True suggested that Mrs. C seek the assistance of separate legal counsel if



she had any concerns, but acknowledges this advice was not memorialized by a written consent.

In May 2005, Mrs. C entered a different nursing home and informed Attorney True that she no longer believed she would return home. At that time Attorney True's son and daughter-in-law wrote to Mrs. C expressing an interest in purchasing the home. Mr. True reviewed and edited that letter. Mrs. C and Attorney True's son and daughter-in-law then entered into direct discussions and ultimately agreed that the son and daughter-in-law would have an option to purchase Mrs. C's home for a given price, either during her lifetime should she choose to sell it, or from her estate after her death. The option price proposed by the son was \$145,000. An estimate of value by a respected local broker Mrs. C had recently arranged for concluded the fair market value was \$155,000. Although all substantive terms were negotiated directly by the parties, Attorney True drafted the option agreement that provided for a sales price, based on various contingencies, of \$145,000 to \$155,000.

Attorney True notified Mrs. C that he was unable to represent her in the proposed contract between her and his son. Attorney True did not refer her to separate counsel. He did suggest she consult with a close friend whose son-in-law owned a large real estate firm and who provided her with the estimate of value. Attorney True did meet and discuss with Mrs. C the option contract and billed her

on a single occasion for discussions relating to that contract and to unrelated matters.

The proposed sale ultimately was not consummated.

Attorney True agrees that by assisting in the preparation of the lease and purchase agreement he created a conflict of interest without informed written consent as required by M. Bar R. 3.4(c)(2) (Simultaneous Representation).

### **Order of Sanctions**

It is agreed by the parties and now so found by the Court that Attorney True engaged in professional misconduct. Attorney True engaged in misrepresentations and misstatements to a client regarding the firm's bill, directed client funds held in trust to be used for non-client purposes, and represented a client in circumstances where a conflict of interest existed and in which he failed to obtain the requisite written consent.

Attorney True's misconduct violated specific portions of the Code of Professional Responsibility as noted above, for which Attorney True is now disciplined and/or sanctioned as follows:

1. For his misrepresentations to Mr. A (and indirectly to the Co-Personal Representative) and resulting violation of M. Bar R. 3.2(f)(3), the Court issues a suspension from the practice of law for three months. However, due to Attorney True's remorseful attitude and actions, his

filing of a self-report, his acknowledgment of his misconduct, his lack of any prior disciplinary or sanction history during many years of practice, the absence of prior or subsequent acts of misconduct, and his apology to the Court, the execution of that suspension will be stayed for two years. Although such misconduct often results in the Court's appointment of a Monitor to supervise and control the disciplined attorney's conduct during the suspended period of suspension, given Attorney True's previously mentioned remorseful attitude and performance concerning his misconduct, the Court is satisfied it is not necessary to appoint such a Monitor in this instance. Attorney True shall, however, completely comply with Maine's Code of Professional Responsibility. If he should fail to do so, upon receipt of a grievance complaint from any source (including any self-report) alleging unethical conduct by Attorney True, Bar Counsel has the authority to file that matter directly with this Court without any prior review by or hearing before the Grievance Commission and/or to petition this Court to impose a portion or all of that suspended three month suspension;

2. For his improper payments of funds in violation of M. Bar R. 3.6(e) and for his unrelated conflict of interest violation of M. Bar R. 3.4(c)(2) the Court imposes a dismissal with a warning in each instance; and

3. As part of its imposition of these sanctions, the Court expects Attorney True will use appropriate financial safeguards and monitoring to avoid any misconduct in the future. Therefore, within forty-five days after the date of this Order, Attorney True shall provide written notice to Bar Counsel of the manner and types of such safeguards installed in his practice. Should he fail to satisfactorily notify Bar Counsel and institute appropriate safeguards, Bar Counsel has the authority to notify the Court of Attorney True's non-compliance with this Order and to file any future claims of misconduct directly with this Court for such action as may be found appropriate.

Date: December 2, 2008

FOR THE COURT,

          /s/          

Ellen A. Gorman  
Associate Justice  
Maine Supreme Judicial Court