

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO. BAR-05-08

BOARD OF OVERSEERS OF THE BAR )

Plaintiff )

THOMAS R. ACKER )

of Hollis, ME )

Me. Bar #3381 )

Defendant )

**ORDER OF DISBARMENT**

This matter is before the Court pursuant to M. Bar R. 7.2(b)(1) by disciplinary pleadings filed by the Board of Overseers of the Bar, seeking the disbarment of Thomas R. Acker. The parties previously notified the Court that they were in agreement to a stipulated order, as reflected below:

Based upon the pleadings, the record of letters and exhibits and the parties' representations, the Court makes the following findings:

1. Thomas R. Acker (Acker), of Hollis, County of York, State of Maine was duly admitted as an attorney in the State of Maine in 1986 and subject to the Maine Bar Rules.

2. Pursuant to M. Bar R. 7.3(j) Acker was reinstated to the Maine bar in 1995, following his voluntary resignation in 1990.

3. On December 23, 2005 this Court granted the Board's Motion for Temporary Suspension of Acker. At that time, Mr. Acker did not oppose the requested suspension, as he had attempted to resign due to his debilitating

mental health conditions. The suspension prohibited him from continuing his legal practice.

4. A telephonic conference was scheduled in this matter for March 16, 2006. Assistant Bar Counsel Aria eee appeared for the Board of Overseers of the Bar. On that same day, Mr. Acker filed a letter with the Clerk of the Maine Supreme Judicial Court which stated that he had been a patient in the psychiatric ward and as a result, was not able to manage his affairs.

5. Beginning on or about February 27, 2006, Mr. Acker was hospitalized for a period of approximately seventeen days. His then current physical and mental condition was unknown to the Court.

6. Following the telephonic conference, the Court issued an order which generally continued the evidentiary hearing on the merits of the Board's disciplinary pleadings. However, the Court did set two issues for limited hearing on March 29, 2006. Those issues were the Board's Petition for Appointment of Receiver and proposals for the Court's consideration of Maine Bar Rule 7.3(e) (Proceedings Where An Attorney Is Declared to be Incompetent or is Alleged to Be Incapacitated).

7. Mr. Acker failed to appear for the March 29, 2006 hearing.

8. Mr. Acker's suspension from the practice of law, his failure to return documents to his former clients, and his failure to appear at scheduled hearings in this disciplinary proceeding made it necessary for a Receiver to be appointed to protect the interests Mr. Acker's former clients. On April 7, 2006, the Court appointed Wayne E. Tumlin, Esq. of Portland, Maine as the Receiver in this matter. In that order, the Court also directed that Acker immediately

contact and enter into a contractual relationship with the Maine Assistance Program (MAP), to the satisfaction of the Director of MAP.

9. A substantial portion of the Board's disciplinary complaints detail Mr. Acker's alleged fraudulent dealings with his clients. That issue formed the basis for a multi-count indictment against Mr. Acker. He was arraigned on that indictment on March 21, 2006. The criminal case remains pending in the Cumberland County Superior Court and Mr. Acker has pled not guilty to those charges.

10. While not admitting guilt for the criminal charges, Mr. Acker, for the purposes of this proceeding, does agree that he accepted various client's funds, that he mixed those funds improperly with his operating account and his investment accounts, that he has failed to return the bulk of those funds despite requests to do so, and that he generally failed in his ability to meet his fiduciary and professional obligations.

11. Furthermore, Mr. Acker continues to be incapacitated by his chronic, major depression which renders him incapable of providing professional services. See Maine Bar Rule 7.3(e)(3).

Based on these findings, the Court concludes that Thomas R. Acker has violated the following Maine Bar Rules: 3.1(a); 3.2(f)(1)(3), 3.2(h); 3.4(f)(2)(i); 3.6(a)(3); and 3.6(e)(1).

a. By his failure to comply with Bar Rules and court orders and his recent failure to respond to inquiries by the Board and Bar Counsel, he has also violated M. Bar R. 2(c), engaged in conduct

unworthy of an attorney pursuant to Maine Bar Rule 3.1(a), and violated Maine Bar Rule 3.2(f)(1).

- b. By his failure to take reasonable measures to assure that clients knew and understood that some of the services they were obtaining were non-lawyer related services, he violated Maine Bar Rule 3.2(h).
- c. By failing to obtain the informed written consent of his clients advising of his inherent conflict and of the financial risks of investing in the partnership, he violated Maine Bar Rule 3.4(f)(2)(i).
- d. By abandoning his clients, neglecting matters entrusted to him, and refusing or delaying requests to return files he has violated Maine Bar Rule 3.6(a) and 3.6(a)(3).
- e. By failing to preserve the identity of various clients' funds designated by those clients as "investment funds" he violated Maine Bar Rule 3.6(e)(1).
- f. By repeatedly assuring clients that their money would be refunded on dates certain and then failing to produce those refunds, he violated Maine Bar Rule 3.2 (f)(3).

Additionally, by agreement of the parties, this order refers to and includes all of the following complaints docketed and processed as Grievance Commission Files (GCF) under Maine Bar Rule 7.1(d),(e) and/or 7.2(b)(7) now before the Court:

GCF 04-263 involving complainant John J. McDermott;  
GCF 05-011 involving complainants Louise and Richard Bernhardt  
GCF 05-019 involving complainant Candis and Charles Bridges  
GCF 05-418 involving complainants Robert and Laura Foster  
GCF 06-60 involving complainants William and Patricia Chasse  
GCF 06-127 involving complainants Matthew and Karen Randall  
GCF 06-140 involving complainants Peter and Harriet Robinson  
GCF 06-158 involving complainants Keith and Sharon Ingraham  
GCF 06-285 involving complainant Bette Soule

The violation of these provisions of the Bar Rules are numerous and serious, affecting many clients and the integrity of the disciplinary process. While Mr. Acker denies any criminal wrongdoing, he agrees that his actions were harmful to his clients, himself and the legal system. He has voluntarily agreed to cease the practice of law and acknowledges the severity of his actions. Protection of the public is the primary purpose of the attorney discipline system. Bearing in mind that purpose, the parties agreement and the absence of mitigating factors, these numerous and serious violations of the Maine Bar Rules require that the sanction of disbarment be imposed as the only appropriate sanction in the circumstances.

### **ORDER**

It is hereby ORDERED that Thomas R. Acker be, and he hereby is disbarred from the practice of law in the State of Maine effective the date of this order. It is further ORDERED that should Acker seek reinstatement in accordance with M. Bar R. 7.3(j)(1), he must do so under the following conditions:

1. Mr. Acker shall make restitution payments in an amount at least equal to each client's payments and or investments given to Mr. Acker. Those clients include but are not limited to:

Richard & Louise Bernhardt	Charles & Candis Bridges
Bette Soule	Robert & Laura Foster
Alfred R. Meyer III	William & Patricia Chasse
Matthew & Karen Randall	Keith & Sharon Ingraham
Peter & Harriett Robinson	Robert & Linda Green

Under Rule 3 of the Maine Rules for Lawyers' Fund for Client Protection this Court must also consider the following provision:

"Unless the Court determines otherwise, a lawyer who has been suspended or disbarred by reason of conduct resulting in payment to a claimant shall not be reinstated to practice law in Maine until full restitution to the Fund has been made."

In this case, there are several claims pending before the Lawyers' Fund for Client Protection (LFCP). To the extent that the LFCP partially reimburses claimants for their losses related to the conduct of Thomas R. Acker, Mr. Acker's refund to the LFCP shall be credited toward the total amount of any subsequent restitution he is obligated to pay to any of the individual claimants.

2. Mr. Acker must provide reliable and credible proof that he has obtained appropriate and competent counseling and treatment for his Major Depressive Disorder and any other mental infirmity that would affect his capacity to engage in the practice of law upon reinstatement.

3. Mr. Acker must provide proof that a competent psychiatrist, psychologist or clinical social worker has determined that he has addressed his mental health disorders, and that the problems no longer pose a threat to the interests of the public and any clients that Acker may serve.
4. Mr. Acker must submit a plan by which he proposes to practice law in a manner that will minimize the possibility that the problems that resulted in his disbarment from the practice of law will reoccur. The plan shall include, but not be limited to, the establishment of a mentor relationship with a member of the Maine Bar with at least ten years of experience, with whom Acker will consult on a regular basis for a period of three years. The person serving as mentor must certify in writing that he/she agrees to serve in this capacity, and that he/she will provide the Court and Bar counsel with regular status reports regarding Acker's practice and his progress in addressing the problems that resulted in his disbarment.

Dated: September 22, 2006

\_\_\_\_\_/s/\_\_\_\_\_  
Jon D. Levy  
Associate Justice

Date: September 22, 2006

Seen and agreed to:

\_\_\_\_\_/s/\_\_\_\_\_  
Aria eee, Esquire  
Me. Bar No. 7986  
Board of Overseers of the Bar  
P O Box 527  
Augusta, ME 04332-0527  
Tel: (207) 623-1121

