

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. Bar-07-7

BOARD OF OVERSEERS OF THE BAR

Plaintiff

v.

DECISION AND ORDER

CHRISTOPHER J. WHALLEY, Esq.  
of Ellsworth, ME  
Me. Bar # 7370  
Defendant

This matter came before the Court pursuant to M. Bar R. 7.2(b) upon the filing of an Information by the Board of Overseers of the Bar. Assistant Bar Counsel Aria eee, Esq. represented the Board and Karen Kingsley, Esq. represented Christopher J. Whalley, Esq. at the September 28, 2007 hearing where the Court heard testimony from various witnesses. The Court makes the following findings:

1. Attorney Whalley is admitted to the Maine Bar and is a solo practitioner in Ellsworth, Maine in Hancock County.
2. In 2003, Rene and Jeffrey Wiesner retained Attorney Whalley to assist them with the incorporation of their two small businesses. Attorney Whalley also agreed to pursue a disclosure hearing for a

small claims case in which Mr. Wiesner had previously secured a judgment.

3. Until 2005, Attorney Whalley employed Patrice Crossman as a legal assistant. Ms. Crossman was responsible for all small claims and collections procedures and regular corporate formation and routine filings for small business clients. Attorney Whalley admitted that he relied too much on Ms. Crossman's assistance in certain matters and should have provided more supervision of her work.
4. Over time, significant problems arose that led to a breakdown in the attorney-client relationship between Attorney Whalley and the Wiesners. The Wiesners were very dissatisfied with their inability to make contact with Attorney Whalley. Further, his office failed to adequately prepare the annual registration form for the corporation. Upon learning of the mistake, Attorney Whalley's office again committed the same errors in the paperwork.
5. Attorney Whalley also failed to diligently pursue the Wiesner disclosure/collection matter. He failed to monitor its progress, resulting in delays, problems with filing fees, late service on the defendant, and significant wait time in court for the Wiesners. He

further failed to communicate with his clients regarding these problems.

6. The Wiesners terminated Attorney Whalley's representation in August 2005, and requested that he return their files. Despite their repeated requests, Attorney Whalley delayed in doing so until two months later, after this grievance was filed.
7. Although this disciplinary proceeding had commenced and proceeded up the ladder to this Court, and Attorney Whalley had knowledge that every aspect of his practice would be scrutinized by this court, Attorney Whalley was threatened with suspension for failure to report his annual CLE hours in a timely fashion, demonstrating neglect of a very routine, yet critically important part of practicing law, while the disciplinary hearing was before this Court.
8. Since 2005, Attorney Whalley has employed a full-time paralegal and another assistant. He has also made a significant effort to streamline his practice and become more efficient and organized.
9. Attorney Whalley was truthful in preparing his defense for this Court and did not intentionally mislead Bar Counsel, the Grievance Commission, or this Court.

10. This Court has previously disciplined attorney Whalley. He received a reprimand in 2005, and in 2003, he received a suspended suspension for three months and was required to submit his practice to a monitor. He also received warnings in 1995, 2000, 2001, and 2005.

This Court further finds that Attorney Whalley violated Bar Rules 3.1(a); 3.5(a)(2); 3.6(a)(2),(3); 3.6(e)(2)(iv); and 3.13(c)(1),(2). Having determined that Attorney Whalley's conduct violated the Bar Rules, the Court must determine an appropriate sanction. The primary purpose of attorney discipline is not to impose punishment, but to protect the public. Although Attorney Whalley's mishandling of the Wiesners' legal matters caused undue stress and significant burdens for the Wiesners, fortunately, the consequences were minor and not of a permanent nature. Attorney Whalley has also indicated his remorse and willingness to take steps to ensure that this never happens again. Given Mr. Whalley's prior disciplinary history, however, this Court has grave concerns about his ability to effectively manage the same caseload and serve clients' needs in the future. In particular, the court found in 2003 that Mr. Whalley had neglected client matters and had failed to timely communicate with clients about case developments as they occurred, similar to the problems that gave rise to the complaint in this case. This court certainly

does not demand perfection from all who practice law, but it does require some evidence of a concerted effort and desire to improve when it is determined that an attorney's approach to client relations and case management is so obviously dysfunctional. It further concerns this Court that Attorney Whalley is uninsured for malpractice.

Accordingly, it is hereby ORDERED and ADJUDGED that Christopher J. Whalley, Esq. be suspended from the practice of law in the State of Maine for a period of thirty (30) days, but that suspension itself shall be suspended for a period of one year under the following terms and conditions:

Mr. Whalley shall submit his practice of law to the monitoring of Joel A. Dearborn, Sr., Esq., of Brewer, Maine for a period of one year.

1. Mr. Dearborn shall receive no compensation and shall not be expected to incur any disbursements.
2. Mr. Whalley will meet with Mr. Dearborn at Mr. Dearborn's calling and convenience, on a bi-weekly basis, unless Mr. Dearborn determines that more or less frequent meetings are appropriate.
3. Mr. Dearborn shall have the right to withdraw and terminate his services at any time for any reason he deems necessary. If he does so, he shall notify the Court, Bar Counsel and Mr. Whalley of his

withdrawal, whereupon this matter shall then be scheduled for further hearing as deemed appropriate by the Court.

4. If any aspect of the monitoring procedures creates a situation, which is, or might be interpreted to be a conflict of interest under the Maine Bar Rules, Mr. Dearborn may adopt any one of the following courses with the proposed result:
  - a. Mr. Dearborn ceases to act as monitor and a potential conflict is avoided.
  - b. Mr. Dearborn continues as monitor, but totally excludes Mr. Whalley's clients' matter from the monitoring process, so that no conflict is deemed to exist.
  - c. Mr. Dearborn continues as monitor, but withdraws from the conflicted matter.
  - d. Mr. Dearborn continues as monitor, and obligates Mr. Whalley not to participate in the matter and to promptly obtain replacement counsel for his client(s).
5. If in Mr. Dearborn's judgment it is appropriate, he shall have the right to contact clerks of court, judges, or opposing counsel to determine the accuracy of Mr. Whalley's reports to him.

6. Mr. Dearborn shall have no contact with any of Mr. Whalley's clients, Mr. Dearborn's only contacts in the performance of his monitoring duties being with Mr. Whalley or other persons contemplated by this order.
7. Mr. Dearborn's participation in the disposition of Mr. Whalley's disciplinary case and monitoring of Mr. Whalley's practice shall be deemed not to create an attorney-client relationship between Mr. Whalley and Mr. Dearborn or between Mr. Dearborn and Mr. Whalley's clients. Specifically, Mr. Dearborn shall be deemed not to represent Mr. Whalley or any of Mr. Whalley's clients or to be employed by them in any capacity and Mr. Dearborn shall not have any responsibility of any nature to any of them. Moreover, the attorney-client privilege shall not apply to Mr. Dearborn's monitoring of Mr. Whalley's practice, and Mr. Dearborn shall be immune from any civil liability (including without limitation, any liability for defamation) to Mr. Whalley or any of Mr. Whalley's clients.
8. Mr. Dearborn will have the authority to review and examine any of Mr. Whalley's files, except those in which Mr. Dearborn might have adverse interests under paragraph 5.

9. Mr. Whalley shall prepare and present to Mr. Dearborn reasonably in advance of each meeting a list of all his current clients, showing each pending client's matter with a brief summary and calendar of the status thereof.
10. Mr. Dearborn will, as soon as practicable, have Mr. Whalley establish a method of objectively identifying delinquent client matters and have him institute internal checks and controls to make his practice appropriately responsible to the needs of his clients.
11. Mr. Dearborn shall file a confidential report with the Court every three months or sooner if Mr. Dearborn deems it necessary, with copies to Mr. Whalley and Bar Counsel concerning at least the following subjects:
  - a. measures Mr. Whalley has taken to avoid delinquencies;
  - b. a description of any client matter identified as delinquent;
  - c. and any professional assistance Mr. Dearborn has provided to Mr. Whalley.
12. Mr. Dearborn shall have the duty to report to Bar Counsel and the Court any apparent or actual professional misconduct by Mr. Whalley of which Mr. Dearborn becomes aware or any lack of cooperation by Mr. Whalley in the performance of this Order.



