

STATE OF MAINE

SUPREME JUDICIAL COURT

BAR-08-6

BOARD OF OVERSEERS OF THE BAR )

Plaintiff )

)

**DECISION and ORDER**

v. )

)

FRANKLIN A. POE, Esq. )

of Boothbay Harbor, ME )

Me. Bar #2305 )

Defendant

This matter came on to be heard before the undersigned Justice on December 15, 2008, pursuant to M. Bar R. 7.2(b)(1), (2). Pursuant to M. Bar R. 7.2(b)(3), the matter was heard de novo. The Board was represented by Assistant Bar Counsel Aria eee. Respondent Franklin A. Poe, an attorney, despite being notified of the hearing, did not appear, and was not represented by counsel.

There have been three separate grievance complaints filed against Poe, resulting in two separate informations which are the subject of the December 15 hearing before this Court. The first information resulted from the Grievance Panel proceedings conducted in June of 2007, which arose from the grievance complaints filed by Marian Chioffi on July 5, 2006, and Cecil Day on November 2, 2006. Poe did not respond to that information. The second information, to which Poe did file an answer, arose out of the grievance complaint filed by attorney Thomas Berry on

July 18, 2008. The information arising from the Berry complaint was consolidated with the prior information arising from the Chioffi and Day grievance complaints. Because Poe failed to appear at the hearing held on both informations, he is defaulted on both informations.

## FACTUAL BACKGROUND

### A. First Information

Poe was appointed Trustee of the Josephine Day Revocable Trust and served in that capacity until he was suspended as Trustee by the Lincoln County Probate Court on January 2, 2008. The Trust's primary asset is the Trailing Yew Inn, a seasonally operated inn located on Monhegan Island. The Inn's operation accounts are controlled by the Trustee, and profits from the operation of the Inn, after expenses, are to be distributed to the beneficiaries of the Trust. The Trust provides that quarterly distribution of profits be made to the beneficiaries, and that the Trustee make an annual accounting.

Poe, as Trustee, failed to abide by the provisions of the Trust. He failed to make distributions on a quarterly basis. He made distributions to the beneficiaries for a period of time, but on an annual basis only. His accounting was insufficient. Poe provided no explanation for the ever-increasing miscellaneous expenses listed in his accounting, and the accounting did not provide sufficient detail to allow the beneficiaries to understand what the administrative and miscellaneous expenses

represented. The profits distributed to the beneficiaries steadily declined, and the administrative expenses steadily increased, even though the gross income of the Trust remained essentially the same.<sup>1</sup>

Since March 28, 2003, Poe, as Trustee, has not made any distribution of profits or Trust assets to the beneficiaries, has not provided any accounting to the beneficiaries, and has not offered any satisfactory explanation to account for what happened to the Trust income. Poe has not communicated with the beneficiaries, despite many attempts by some of them to communicate with him. Poe has written several checks to himself in substantial amounts from Trust funds. The Inn's staff, including Marian Chioffi, the Inn's manager, has had great difficulty locating Poe, and has not been able to communicate with him, making operation of the Inn very difficult.

Moreover, the terms of the Trust provide that Chioffi has an option to purchase the Inn, which could be exercised as of May 11, 2007. Chioffi, who desires to exercise the option, has been unable to do so because Poe has not responded to her many attempts to contact him.

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<sup>1</sup> Poe provided the following information to Cecil Day, one of the Trust's beneficiaries, concerning the finances of the Tailing Yew Inn for the years 1997-2000.

	Beneficiary Distributions	"Misc. Expenses"	Gross Income
1997	\$ 8,484.82	\$ 4,475.66	\$ 226,058.72
1998	\$ 3,835.62	\$ 15,700.04	\$ 215,716.66
1999	\$ 4,460.10	\$ 25,146.98	\$ 222,276.19
2000	\$ 952.86	\$ 18,260.02	\$ 236,940.66

The Lincoln County Probate Court suspended Poe from the position as Trustee, and appointed James E. Day as special fiduciary, with full power to take possession of the property and to administer the Trust. Day's review of the Trust records indicates that Poe wrote checks to himself from Trust accounts between 2004 and 2007, totaling \$70,000. Based on that evidence, which the Court accepts as credible, the Court finds that Poe has violated the following rules: M. Bar R. 2(c), 3.1(a), 3.2(f), 3.3(a), and 3.6(a).<sup>2</sup>

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<sup>2</sup> Maine Bar Rule 2(c) provides:

**(c) Grounds for Discipline.** Each act or omission by an attorney, individually or in concert with any other person or persons, which violates any of these rules shall constitute misconduct and shall be grounds for appropriate discipline notwithstanding that the act or omission did not occur in the course of an attorney-client relationship or in connection with proceedings in court. The failure without good cause to comply with any rule, regulation or order of the Board or the Grievance Commission or to respond to any inquiry by the Board, the Grievance Commission or Bar Counsel shall constitute misconduct and shall be grounds for appropriate discipline.

Maine Bar Rule 3.1(a) provides:

(a) This Code shall be binding upon attorneys as provided in Rule 1(a). Violation of these rules shall be deemed to constitute conduct "unworthy of an attorney" for purposes of 4 M.R.S. § 851. Nothing in this Code is intended to limit or supersede any provision of law relating to the duties and obligations of attorneys or the consequences of a violation; and the prohibition of certain conduct in this Code is not to be interpreted as an approval of conduct not specifically mentioned.

Maine Bar Rule 3.2(f) provides that a lawyer shall not:

- (1) directly or indirectly violate, circumvent, or subvert any provision of the Maine Bar Rules;
- (2) engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (3) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (4) engage in conduct that is prejudicial to the administration of justice.

## B. Second Information

The second of the two consolidated matters before the Court arises out of the complaint filed by Attorney Berry. Poe, in his role as an attorney, was in possession of files belonging to Berry's client. Poe failed to respond to Berry's requests for Poe to turn those files over to Berry. Poe was the clerk of a corporation of which Berry's client is a shareholder, and Poe has failed to file the corporation's annual report to the Secretary of State, resulting in the corporation being administratively dissolved. Poe also failed to respond to direct requests made to him by the client.

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Maine Bar Rule 3.3(a) provides:

**(a) Excessive Fees.** A lawyer shall not enter into an agreement for, charge, or collect an illegal or excessive fee. A fee is excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee.

Maine Bar Rule 3.6(a) provides:

**(a) Standards of Care and Judgment.** A lawyer must employ reasonable care and skill and apply the lawyer's best judgment in the performance of professional services. A lawyer shall be punctual in all professional commitments. A lawyer shall take reasonable measures to keep the client informed on the status of the client's affairs. A lawyer shall not

(1) handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without first associating with another lawyer who is competent to handle it;

(2) handle a legal matter without preparation adequate in the circumstances, provided that, with respect to the provision of limited representation, the lawyer may rely on the representations of the client and the preparation shall be adequate within the scope of the limited representation; or

(3) neglect a legal matter entrusted to the lawyer.

Based on that evidence, which the Court accepts as credible, the Court finds that Poe has violated Bar Rules 3.1(a), 3.2(f)(4), 3.6(a)(3), and 3.6(e)(2)(iv).<sup>3</sup>

### SANCTIONS

The Board has proved the allegations in both informations. The violations of the Bar Rules by Poe are very serious and flagrant. For the protection of the public, the only sanction appropriate for Poe's egregious conduct is disbarment pursuant to M. Bar R. 7.2(b)(5), effective immediately.

Accordingly, the Court orders that Franklin A. Poe is hereby disbarred from the practice of law in the State of Maine.

Dated: February 9, 2009

/s/

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Robert W. Clifford  
Associate Justice  
Maine Supreme Judicial Court

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<sup>3</sup> Maine Bar Rule 3.6(e)(2)(iv) provides that a lawyer shall "[p]romptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive."