

State of Maine

Supreme Judicial Court

Docket No. Bar-09-09

BOARD OF OVERSEERS OF THE BAR)	
)	
Plaintiff)	
v.)	
)	ORDER
STEPHEN M. BRETT)	
of York Beach, ME)	
Me. Bar # 9277)	
Defendant)	

The Board of Overseers of the Bar initiated the above attorney disciplinary action on January 25, 2010 by the filing of an Amended Information. Based upon their discussions after the pre-trial conference, the parties notified the Court that they were in agreement to an order providing for stipulated findings and sanction.

On July 8, 2010, the parties appeared before the Court to outline their proposal for resolution of this matter. The Board was represented at the hearing by Assistant Bar Counsel Aria Eee and Stephen Brett appeared *pro se*.

Mr. Brett was admitted to the Maine bar in 2001. From his admission until May 2006, Mr. Brett engaged in a solo private practice in York County, Maine. In June 2006, the Court (*Dana, J.*) indefinitely suspended Mr. Brett from practicing law. That suspension remains in effect and Brett has not applied for reinstatement.

Following a review of the pleadings, the exhibits and the parties' proposal, the Court finds that Mr. Brett engaged in violations of then applicable Maine Bar Rules 3.1(a); 3.2(f)(2)(3)(4); and 3.6(e)(i)(ii). To begin with, Mr. Brett failed to properly maintain funds which were entrusted to him by the Complainant, Liberty Title Company. During an April 2006 real estate closing in which Liberty Title hired Brett to act as the settlement agent, he failed to remit the required funds to the Maine Revenue Service (MRS). Subsequently, Mr. Brett improperly retained those funds in his bank account and failed to pay Maine Revenue Service for the required withholding tax. Mr. Brett asserts that at the time of the closing, he did not receive that instruction or realize such tax was then due.

By November 2007, Liberty Title had paid the tax and penalties on its client's behalf. The next month, Mr. Brett reimbursed Liberty Title for the \$3625.00 it paid to Maine Revenue Service.

Additionally, on January 8, 2010 Mr. Brett plead no contest to the charge of "Misuse of Entrusted Property" and guilty to three counts of "Failure to Make and File Maine Income Tax Returns". Those convictions constitute violations of then applicable M. Bar R. 3.1 (a) and 3.2(f)(2). In accordance with the approved plea agreement, earlier this year, Mr. Brett served thirty (30) days in jail. He is also required to pay \$611.00 restitution to Liberty Title and file all outstanding tax returns.

Sanction

In light of Mr. Brett's violations of the Code of Professional Responsibility and accepting his acknowledgment that these are serious violations, the Court must now consider an appropriate sanction.

The primary purpose of attorney discipline is protection of the public. For this reason, the Court hereby approves the parties' agreement and ORDERS the following sanction in this matter as proposed by the parties:

1. Stephen M. Brett is suspended from the practice of law in Maine for three years, i.e. until July 10, 2013;
2. Before petitioning for reinstatement to practice under M. Bar R. 7.3(j), Mr. Brett shall arrange to meet with the Director of the Maine Assistance Program for Lawyers and Judges (MAP). Mr. Brett shall enter into a contractual relationship with MAP and comply with that contract to the satisfaction of and as directed by the Director of MAP;
3. Prior to seeking such reinstatement Mr. Brett shall, at his own expense, undergo forensic evaluation from a clinical psychologist.

Mr. Brett shall follow all recommendations of that psychologist and remain in compliance with any resulting treatment by a licensed, qualified clinician. The psychologist's report shall be distributed to the parties for inclusion and submission as part of any petition for reinstatement so filed by Mr. Brett;

4. Prior to filing any such petition for reinstatement, Mr. Brett shall obtain malpractice insurance coverage in a minimum amount of seven hundred and fifty thousand dollars (\$750,000) from an insurance carrier licensed to do business in Maine;
5. Additionally, should Mr. Brett become reinstated and begin practicing law again in Maine, he shall submit his practice to monitoring by a Maine attorney approved and appointed by the Court;
6. In the event a grievance complaint is received by Bar Counsel concerning alleged misconduct by Mr. Brett, such complaint shall be processed under either Bar Rule 7.1(c) or 7.1(d), as deemed appropriate by Bar Counsel. In the event a preliminary review panel finds probable cause of misconduct under Bar Rule 7.1(d)(5), the matter shall then be filed directly before the Court under Bar Rule 7.2(b) without any proceeding before the Grievance Commission under M. Bar R. 7.1(e); and
7. Any apparent violation of any of the conditions of this Order shall be filed by Bar Counsel directly with the Court.

Date: July 13, 2010

/s/ _____
Warren M. Silver
Associate Justice
Maine Supreme Judicial Court