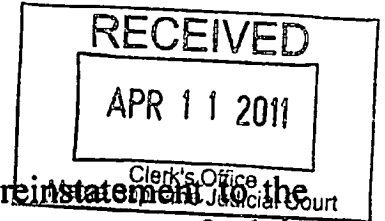


STATE OF MAINE

SUPREME JUDICIAL COURT
DOCKET NO. BAR-10-6

BOARD OF OVERSEERS OF THE BAR]
]
]
v.]
]
THOMAS M. MANGAN]

ORDER ON PETITION



Thomas M. Mangan has petitioned the Court seeking reinstatement to the Bar of the State of Maine. *See* M. Bar R. 7.3(j)(1), (5). For the reasons set forth in this decision, his petition for reinstatement is denied.

I. BACKGROUND

Mangan began practicing law in Maine in 1975. He was disbarred in 2000 by an order of a single justice of this Court. *See Bd. of Overseers of the Bar v. Mangan*, BAR-99-5, 2 *Maine Manual on Professional Responsibility* SJ-507 (Mar. 10, 2000) (Saufley, J.). Mangan appealed that order, which was affirmed by the Law Court. *See Bd. of Overseers of the Bar v. Mangan*, 2001 ME 7, ¶ 1, 763 A.2d 1189, 1190-91. Mangan’s disbarment resulted from several violations of the Maine Bar Rules based upon his improper use of his client escrow account, his neglect of legal matters entrusted to him, his failure to account for receipts related to client matters, and his sexual relationship with a client that adversely affected his representation of the client and abused the attorney-client relationship. *Id.* ¶ 1 n.1, 763 A.2d at 1190. Pursuant to the disbarment order, Mangan was permitted to seek reinstatement after the expiration of two years.

Mangan applied for reinstatement on March 11, 2010. The petition was considered by a Panel of the Grievance Commission of the Board of Overseers, which conducted a testimonial hearing in June 2010. The Panel issued a written report with detailed findings that recommended against Mangan’s reinstatement to the Bar. By a unanimous vote, the Board of Overseers adopted the Panel’s findings and recommendations.

Now that the Board has reviewed the Panel’s report and made its recommendation to the Court, Mangan’s petition for reinstatement is properly

before the Court. *See Williams v. Bd. of Overseers of the Bar*, BAR-09-13, at 2 (May 10, 2010) (Alexander, J.). After the Board informs the Court of its findings and recommendations, “[t]he Court shall, with or without hearing, grant or deny the petition for reinstatement by written order which may include such conditions to be met by a specific date on the petitioner’s reinstatement as the Court deems necessary to protect the public interest.” M. Bar R. 7.3(j)(6). The Court reviews a petition for reinstatement to the practice of law de novo.¹ *See Williams*, BAR-09-13, at 19-20.

As the petitioner, Mangan has the burden of proving by clear and convincing evidence that he should be reinstated to the practice of law. *See* M. Bar R. 7.3(j)(5); *In re Williams*, 2010 ME 121, ¶ 6, 8 A.3d 666, 668. Specifically, the petitioner bears the burden of “demonstrating the moral qualifications, competency, and learning in law required for admission to practice law in this State,” and that “it is likely that reinstatement will not be detrimental to the integrity and standing of the Bar, the administration of justice, or to the public interest.” M. Bar R. 7.3(j)(5).²

¹ As explained in *Williams*:

The ultimate responsibility to decide a petition for reinstatement by a disbarred attorney is the Court’s. The Grievance Panel and the Board of Overseers of the Bar are the agents delegated by the Court to review these matters, develop a record, and make recommendations, but the ultimate decision on these matters must be made by the Court de novo, not as a matter of deferential review of recommendations forwarded to it.

Williams v. Bd. of Overseers of the Bar, BAR-09-13, at 19-20 (May 10, 2010) (Alexander, J.).

² To determine whether a petitioner has satisfied his or her burden of proof, the Court considers evidence that:

- (A) The petitioner has fully complied with the terms of all prior disciplinary orders;
- (B) The petitioner has neither engaged nor attempted to engage in the unauthorized practice of law;
- (C) The petitioner recognizes the wrongfulness and seriousness of the misconduct;
- (D) The petitioner has not engaged in any other professional misconduct since resignation, suspension or disbarment;
- (E) The petitioner has the requisite honesty and integrity to practice law;
- (F) The petitioner has met the continuing legal education requirements of Rule 12(a)(1) for each year the attorney has been inactive, withdrawn or prohibited from the practice of law in Maine, but need not complete more than 22 credit hours of approved

A case conference was held on November 4, 2010, at which the Board was represented by J. Scott Davis, Esq., and Mangan was represented by Caleb J. Gannon, Esq. Neither the Board nor Mangan desired an evidentiary hearing before the Court, and it was stipulated that the record before the Board would serve as the evidentiary record for the Court's determination of Mangan's petition. That record contains the transcript of the testimony of Mangan; Ronald Berry, Mangan's life-long friend; and Frederick A. White, Ph.D., a clinical psychologist who met with Mangan. The record also comprises the exhibits Mangan submitted to the Panel, as well as the supplementary documents filed with the Court upon stipulation of the Board and Mangan.³ Having carefully considered the testimony and the exhibits in this matter, I make the following factual findings and legal conclusions.

II. DISCUSSION

Since his disbarment in 2000, Mangan has been continuously employed in a variety of jobs, primarily as either a retail marketer or a paralegal. He and his former wife were divorced in 2002. Since then, he has been in a relationship with his current girlfriend with whom he resides in Poland, Maine. The testimony and exhibits presented to the Panel focus largely on Mangan's law-related activities since his disbarment, and the degree to which he understands the wrongfulness of the actions that resulted in his disbarment.

A. Litigation Against Complaining Witness, Bar Counsel, and Assistant Bar Counsel

Mangan's law-related activities in the years immediately following his disbarment do not reflect positively on his moral qualifications, competency, and learning in the law required for admission to practice. In response to his

continuing legal education for that entire period of absence from practice, provided that: (1) no more than one half of the credit hours are earned through in-office courses, self-study, or a combination thereof; and (2) at least two credit hours are primarily concerned with the issues of ethics or professional responsibility.

M. Bar R. 7.3(j)(5)(A)-(F); *see also Williams v. Bd. of Overseers of the Bar*, BAR-09-13, at 20-21 (May 10, 2010) (Alexander, J.).

³ The Board and Mangan stipulated that the Board would supplement the record by filing (1) a transcript of a sentencing hearing conducted by Justice Kevin Cuddy of the Maine Superior Court, at which Mangan had appeared in his capacity as a paralegal, and (2) documentation of Mangan's attendance at continuing legal education programs.

disbarment, Mangan engaged in a campaign of litigation against those he deemed most responsible for his misfortune. He filed a complaint in the United States District Court for the District of Maine against the former client with whom he had a sexual relationship and who was also the complaining witness in the disciplinary proceeding brought against him. *See Mangan v. Rumo*, 226 F. Supp. 2d 250 (D. Me. 2002). Mangan sued his former client “for malicious prosecution, abuse of process, intentional interference with an advantageous relationship, defamation, and intentional infliction of severe emotional distress.” *Id.* at 252. The former client counterclaimed “for malpractice; negligent and intentional infliction of emotional distress; and punitive damages.” *Id.* The court granted summary judgment against Mangan on his claims of malicious prosecution, abuse of process, interference with an advantageous relationship, and defamation. *Id.* at 252. Despite a strong suggestion by the court,⁴ Mangan pursued his remaining claim of intentional infliction of severe emotional distress before a jury. *See Mangan v. Davis*, 263 F. Supp. 2d 130, 130 (D. Me. 2003). The jury awarded no recovery to either party. *Id.*

Mangan filed a second action in federal court, naming J. Scott Davis, Esq., and Karen Kingsley, Esq., the bar counsel and assistant bar counsel who prosecuted the bar complaint against him, as well as his former client, as defendants. *Id.* Mangan accused each defendant of “presenting false evidence, fabricating evidence and perjury in connection with his disbarment proceedings.” *Id.* The court dismissed Mangan’s complaint based on well-established principles of claim preclusion:

The issues Mangan raises in his complaint are “inextricably intertwined” with the State court’s “decisions, in judicial proceedings,” to disbar Mangan after hearing, including a review by the highest court of the State, and the denial of a later motion for relief from judgment where Mangan charged that Rumo and bar counsel perpetrated a fraud upon the court.

⁴ After addressing the parties’ summary judgment motions, the trial judge intimated that further litigation would be imprudent.

What remains for trial, then, are Mangan’s claim of intentional infliction of emotional distress through false rape allegations and Rumo’s counterclaims based upon a sexual liaison during a lawyer-client relationship. The trial will not be pretty. Both parties would be well advised to put this matter behind them before then. The record they have compiled in this court, however, gives little reason for optimism.

Mangan v. Rumo, 226 F. Supp. 2d 250, 255 (D. Me. 2002).

Id. at 131 (citation omitted). The court also reasoned that the “Rooker-Feldman” doctrine applied because “many of the same claims were raised or could have been raised during those state court proceedings or (in Rumo’s case) the federal lawsuit.” *Id.*

Following the dismissal of this second action, Mangan appealed to the United States Court of Appeals for the First Circuit, which affirmed the dismissal. *See Mangan v. Davis*, 2003 U.S. App. LEXIS 26407, at *1 (1st Cir. Dec. 30, 2003). He then filed a petition for a writ of certiorari with the United States Supreme Court, which was denied on June 1, 2004. *See Mangan v. Davis*, 541 U.S. 1077 (2004).

In his testimony before the Panel in June 2010, Mangan offered little insight concerning the propriety of this litigation. He did acknowledge that he was acting out of anger because of his disbarment, and that, currently, he views the cases as having been “educational experiences.” He expressed no regret for the expense and inconvenience he caused the individuals he sued, or for the waste of judicial resources resulting from his claims. In fact, in responding to a question from his attorney about the litigation, Mangan ascribed blame to his former client’s vulnerability for his disbarment:

- Q. There was some discussion concerning the number of matters that you had brought shortly after disbarment. Could you explain how your understanding -- we’ve discussed some of this, but could you discuss how your understanding of the actions that resulted in your disbarment changed over a period of now 10 years?
- A. Over the space of 10 years you realize that what you did was wrong, that you cannot -- in that particular case apparently Judge Saufley found that I had taken advantage of a vulnerable woman, and the advantage of that vulnerable woman is primarily a sexual relationship. And during that period of time I had given her thousands of dollars. And it was a good relationship, but the relationship between the two of us went sour after we broke it up and then she turned around and filed a complaint. But then you look at the situation and say, wait a minute now, if women are going to be that vulnerable, you have to be very, very careful as to what you’re doing and why.

You're not going to get involved with anybody who's vulnerable, let alone a man and a woman. Any person that would have any vulnerability whatsoever in any kind of fashion you just back right off from and everything has to be done on a strictly businesslike manner. And in many ways you are concerned about showing emotion, you're concerned about feeling bad for somebody. It's to the point of an extreme.

Mangan's unsuccessful federal actions establish that during the four years following his disbarment, he failed to accept responsibility for the loss of his license to practice. In addition, his present failure to fully and critically evaluate the judgment he exercised in bringing, trying, and appealing these cases, or to recognize the serious adverse consequences for the individuals he sued, demonstrates that he continues to fail to exercise the judgment required for an attorney to practice law competently.

B. Litigation Against Former Counsel

To petition for reinstatement, Mangan was required to complete a questionnaire in accordance with M. Bar R. 7.3(j)(5). The questionnaire requested, among other things, detailed information regarding every civil action that he had been involved in following his disbarment.⁵ In his response, Mangan listed the two federal actions previously discussed, as well as fourteen additional lawsuits, most of which appear to have been actions he initiated against former clients to collect legal fees.

When questioned by Bar Counsel before the Panel, Mangan testified about another lawsuit that he had failed to disclose in his written response:

⁵ On the questionnaire, the relevant question directed Mangan to:

PROVIDE A STATEMENT SHOWING THE DATES, GENERAL NATURE AND FINAL DISPOSITION OF EVERY CIVIL ACTION, IN ANY JURISDICTION, DURING THE PERIOD FOLLOWING TERMINATION IN WHICH YOU WERE EITHER A PARTY PLAINTIFF OR DEFENDANT OR IN WHICH YOU HAD OR CLAIMED AN INTEREST, TOGETHER WITH DATES OF FILING OF COMPLAINTS, TITLES OF COURTS AND THE NAMES AND ADDRESSES OF ATTORNEYS FOR SAID PARTIES AND OF THE TRIAL JUDGE OR JUDGES, AND THE NAMES AND ADDRESSES OF ALL WITNESSES WHO TESTIFIED IN SUCH ACTIONS.

- Q. You also sued Lenny Sharon, didn't you, for malpractice?
- A. Yes, sir.
- Q. I don't see that on the list.
- A. I believe it's in there somewhere. I think I had it in there.
- Q. Maybe you're right, but here is the beginning and then there's the list and that list. If you can find it, help me.
- A. I don't know how it's --
- Q. If you can see Sharon --
- A. I don't know. I assumed that you were going to send me copies of your exhibits and you never did.
- Q. Whoa, whoa, whoa. I'm talking about your answer to the questionnaire of all the civil litigation you've been involved in since you were disbarred. That's not me. That's you.
- A. I don't recall listing that.
- Q. I know. That's what I'm asking you. Where is it?
- A. I don't see it.
- Q. Did you sue Lenny Sharon?
- A. I did.
- Q. Why? What's the grounds?
- A. Because of his failure to investigate the matter.
- Q. He was your defense counsel on the matter that resulted in your disbarment, correct?
- A. Yes.

Q. The result of your action against Mr. Sharon was summary judgment in his favor?

A. That's correct. And the reason for that is I had no expert. But these are all eight years ago.

Q. So is a lot of this stuff you've listed, all your little nickel [and] dime suits you're going after; but you didn't bother to list the suit against Lenny Sharon?

A. It's still eight years ago.

I take judicial notice, based on the records of the Androscoggin County Superior Court, that Mangan filed a civil complaint alleging legal malpractice against Leonard I. Sharon, Esq., on May 17, 2006. The action concluded with an order dated May 9, 2007, granting Attorney Sharon's motion for a summary judgment. The court (*Gorman, J.*) found that Mangan had filed the action beyond the applicable statute of limitations period and that Mangan had failed to secure an expert witness to establish the requisite standard of care.

Accordingly, the Superior Court's records demonstrate that: (1) Mangan failed to disclose in his application for reinstatement the legal malpractice action he filed in 2006 against the attorney who had represented him in his disbarment proceeding; (2) the summary judgment entered against him was not "eight years ago" as he testified, but was just under four years ago; and (3) the action was dismissed not only because Mangan failed to secure an expert witness, as he testified, but also because he failed to file the action in a timely manner.

Mangan's failure to disclose this action in his response to the questionnaire, and his mischaracterization of the action in his testimony, demonstrates either carelessness or an intentional effort to mislead the Board and the Court. It is apparent that Mangan had not come to terms with his personal responsibility for his disbarment by 2003, as he now claims.⁶ Indeed, Mangan began his lawsuit

⁶ Mangan provided the following testimony in response to questioning by a member of the Panel:

Q. And, so, the Associate Justice Saufley at that time has a single justice opinion ordering your disbarment. You appealed that to the law court. And then subsequent to losing that appeal in the law court, you sued the young lady, the lady who had been your client and girlfriend?

against Attorney Sharon in 2006. As with his earlier federal actions, Mangan's state lawsuit sought to hold another person—in this instance, his own lawyer—responsible for his disbarment.

C. Unauthorized Practice of Law

In 2001, two criminal complaints were filed against Mangan as a result of him having described himself as a licensed attorney in a resume that he sent to prospective employers. In one instance, Mangan submitted the resume to apply for a position as a special education teacher. Following a jury trial on these criminal charges, Mangan was convicted of unauthorized practice of law (Class E), 4 M.R.S. § 807(1), (2) (2010), and false advertising or representation to be an attorney (Class E), 4 M.R.S. § 859 (2010).

A. Mm-hm.

Q. You sued Mr. Davis?

A. Mm-hm.

Q. And someone else, if I understand correctly, about things that -- and Mr. Sharon -- about activities that revolved around the investigation and prosecution testimony and eventual disbarment for this misconduct.

A. Exactly.

Q. And all of those lawsuits resulted in dismissals or judgments for the defense, correct?

A. No, not really.

Q. So you prevailed in the claim?

A. Well, no. In the claim that I had against [my former client], they had counterclaimed for a great deal of money; and a jury came back in my favor on that one awarding nothing. But outside of that, this is kind of like the alcoholic who has to go through his various stages of resolution of life or somebody who is in the process of dying. You initially are declared a certain thing and then you go to the next stage and that's angry, repelling, fighting back and saying no, denial type of thing. And then as you go through the different stages you realize, oh, maybe people can see it that way. You'll notice all of these actions were in 2002, 2003. I think the last one was in 2003. I don't think it was in 2004. I think everything just died in 2003. That would be seven years ago. And from that point on you start thinking, wait, is it me or is it everybody else. And you have to realize that it's you, and at that point in time you start realizing what you have to do is change your life. It's not a simple matter anymore.

In his testimony before the Panel, Mangan sought to minimize the seriousness of these criminal convictions. When asked whether he had engaged in the unauthorized practice of law after his disbarment, he testified, “Well, I sent out resumes in the year 2001; and those were the old resumes.” He also explained, “I did not believe that a resume for a nonlegal job as, I don’t know, a special ed teacher was cause for concern to the Bar.”

Mangan does not appear to fully appreciate the wrongfulness of presenting himself in a false light to prospective employers and in violating the laws that prohibit him, as a disbarred attorney, from falsely representing that he is licensed to practice law in Maine.

D. Employment as a Paralegal

Apart from his own litigation, Mangan’s primary involvement with the law since his disbarment occurred from October 2007 to March 2010 when he worked as a paralegal for Andrews B. Campbell, Esq. In support of his petition for reinstatement, Mangan asserts that he has “competency and proficiency in law” based on his “demonstrated employment with Andrews B. Campbell, Esq. for the previous two and a half years.” Despite this assertion, Mangan did not include a letter of recommendation from Attorney Campbell in support of his petition for reinstatement, nor did he present Attorney Campbell as a witness to testify as to the quality of his paralegal work and his suitability to return to legal practice.⁷ Without Attorney Campbell’s testimony, I cannot fully evaluate and therefore do not accept Mangan’s testimony that his work as a paralegal demonstrates his capacity to return to legal practice.

E. Evidence of Counseling

Mangan presented the report and testimony of Frederick A. White, Ph.D., a licensed psychologist who concluded that “Mangan now possesses and is able to

⁷ I have not sought to summarize all of the evidence Mangan has provided in support of his petition. For example, he presented evidence of having attended several continuing legal education programs, and he submitted a total of ten professional and personal reference letters, four of which were from practicing attorneys, expressing support for his return to legal practice. I have no reason to doubt that Mangan attended the educational programs or the sincerity of the beliefs expressed in his references. The probative value of this evidence on the question of Mangan’s capacity to return to legal practice, however, is diminished by the conspicuous absence of Attorney Campbell’s testimony because Attorney Campbell, as an active member of the Maine Bar who supervised Mangan’s paralegal work, was in a position to observe and evaluate Mangan’s actual performance.

demonstrate a clear awareness and understanding of the nature of conflicts of interest, dual-relationships, and strategies for preventing and remediating such circumstances.” Dr. White testified that he first met with Mangan on December 8, 2009, and that they had their last meeting on January 8, 2010, “for a total of four contact sessions.”

In contrast, Mangan testified to the Panel as follows:

Q. When did you start seeing Dr. White?

A. '09.

Q. Do you know when?

A. September, October, November, December of 2009.

Q. So less than a year ago?

A. Oh, yes.

Q. When did you stop?

A. April, March.

Mangan’s account of his meetings with Dr. White cannot be reconciled with Dr. White’s testimony. The same is true for Mangan’s characterization of the counseling in the written petition that he filed with the Board. In his petition, Mangan represented that he had engaged in “long term counseling.”

III. CONCLUSION

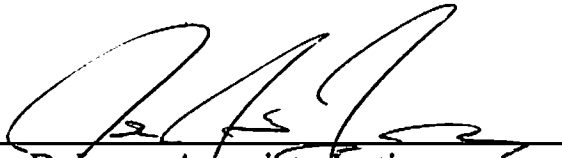
Mangan testified, and I find, that he now understands the nature of the ethical violations that led to his disbarment. He further testified that he understands the various steps that he might take as a practicing attorney to avoid any similar violations of the Code of Professional Responsibility if he is readmitted to practice. These understandings, however, miss the mark. Mangan’s readmission to the Bar does not rest primarily on his understanding as to what he did wrong and what he will need to do to avoid the same mistakes in the future. Rather, his burden is to prove to the high standard of clear and convincing evidence that he currently possesses the “moral qualifications, competency, and

learning in law required for admission to practice law in this State,” and that “it is likely that reinstatement will not be detrimental to the integrity and standing of the Bar, the administration of justice, or to the public interest.” M. Bar R. 7.3(j)(5).

Based on my findings, it is apparent that Mangan has failed to meet his burden of proof. The (1) unsuccessful litigation Mangan initiated in response to his disbarment, (2) two criminal convictions resulting from his unauthorized practice of law and false advertising or representation, and (3) serious errors and omissions in his petition for reinstatement and his testimony before the Panel, lead me to conclude that Mangan does not have the requisite honesty, competency, and learning in the law required to resume legal practice in Maine. I also conclude that his reinstatement would be detrimental to the integrity and standing of the Bar.

It is ORDERED that the petition for reinstatement is DENIED.

Date: April 11, 2011



Jon D. Levy, Associate Justice
Maine Supreme Judicial Court