

Board of Overseers of the Bar)
Plaintiff)
vs.)
Carolyn M. Asquith)
of Brunswick, ME)
Me. Bar No. 9426)
Defendant)

**ORDER
OF SUSPENSION
M. Bar R. 7.2(b)**

A final hearing was conducted on December 17, 2012, regarding the Board of Overseers of the Bar’s disciplinary petition pursuant to M. Bar. R. 7.2(b) against Carolyn M. Asquith following several grievance filings against her. The Board was represented by Bar Counsel J. Scott Davis, with Attorney Charles W. Smith Jr. appearing for Defendant Asquith, who was present at the hearing.

On May 17, 2012, Bar Counsel Davis petitioned the Court for an immediate order temporarily suspending Asquith from the practice of law in the State of Maine. The Board’s petition, which included an attached Affidavit of Bar Counsel Davis, described the substance of five (5) unrelated grievances and related filings then pending against Asquith, to which she had failed to file any responses. At the time the Board filed its petition, Asquith was without counsel. On June 4, 2012, Attorney Smith entered his appearance for Asquith. After conducting a telephonic hearing on July 9, 2012, at which counsel for both parties appeared but Asquith did not, the Court issued a Temporary Suspension Order concerning Asquith’s practice in Maine. She has remained under suspension to date.

By Order of October 9, 2012, the Court appointed Attorney David Weiss to act as Asquith's Receiver (Proxy) under M. Bar R. 7.3(f), in order to address the needs of Asquith's existing clients and matters then pending at the time of her July 9, 2012 suspension. The various complainants involved in the grievance matters filed with the Board against Asquith were notified by Bar Counsel of the scheduled Court proceeding of December 17, 2012, and of their right to attend the hearing and be heard as to the conduct by Asquith that caused their respective complaints.

Based upon Asquith's earlier defaults regarding the initial grievances filed against her, and her current acknowledgment of most of the later allegations, counsel each agree and Asquith acknowledges that she engaged in multiple instances of professional misconduct in violation of the Maine Rules of Professional Conduct and the Maine Bar Rules. During the time leading up to Asquith's suspension and the related Receivership, the facts of her serious misconduct clearly confirm that Asquith failed to adequately perform legal work or to properly monitor her clients' matters.

FINDINGS

Carolyn M. Asquith was admitted to the Maine bar in May 2003. Before her temporary suspension, Asquith maintained a solo law practice in Topsham, Maine. Asquith's professional misconduct is described and summarized as follows:

1. In late June 2011, District Court Judge Valerie Stanfill filed a grievance complaint against Asquith concerning her conduct as a

guardian ad litem (GAL) in a family matter based upon her failure to a) file a GAL Report; b) file an itemized bill; c) comply with the court's order; and d) attend a required conference with the court. Asquith never responded to Bar Counsel's request for a written response to the court's grievance complaint.

2. In September 2011, Lisa West-Harper and her spouse, Brent Harper, former clients of Asquith, filed simultaneous but separate Petitions for Arbitration of Fee Dispute against her. Asquith ignored each Petition, failed to file a reply to either matter, and failed to appear at the Fee Arbitration Commission Panel's joint hearing on January 19, 2012. After conducting a default hearing on each fee matter, the Panel issued separate awards directing Asquith to refund those former clients unearned fee amounts of \$5,675.00 and \$7,325.00, respectively. Asquith then ignored the 30-day refund payment requirements of M. Bar R. 9(i), and never paid any amount of the ordered awards to either of those clients. Due to Asquith's failure to make any such ordered refund of unearned fees, the Harpers later filed claims with the Lawyers' Fund for Client Protection (LFCP). On October 15, 2012, the LFCP's Trustees approved those claims and ordered payments by the LFCP of \$5,675.00 to Ms. West-Harper and \$7,325.00 to Mr. Harper, respectively. Those payments were subsequently made to each Petitioner.

3. In late October 2011, Attorney Neil Shankman filed a grievance complaint against Asquith based upon her failure to comply with the terms of a court order in a pending family matter in which Asquith and Shankman represented opposing parties. Asquith repeatedly ignored Shankman's many requests that she comply with that order, and she also failed to respond to Bar Counsel when it inquired about the matter.
4. In January 2012, Virginia Hodge filed a grievance complaint against Asquith. Hodge is self-employed as Virginia R. Hodge Abstracting, Inc. in Bangor, Maine. Asquith hired Hodge in late April 2011, to perform an urgent search in the Waldo County Registry of Deeds. Hodge immediately performed that search as requested. Despite Hodge's repeated requests—and Asquith's initial deceptive promises—Hodge has not received payment by Asquith of her invoice of \$109.00. Asquith failed to respond to Bar Counsel's inquiry concerning Hodge's complaint.
5. Asquith also never filed an Answer to the Board's two subsequently-filed Disciplinary Petitions, which included detailed factual allegations of her misconduct concerning three of the grievance complaint filings described above, specifically those described in paragraphs 1, 3 & 4. Asquith's failure to respond resulted in her admission by default of all of the facts and related rules violations alleged against her by the Board.

6. In May 2012, Ashley Bonang filed a grievance complaint against Asquith, whom Bonang hired and paid \$1,200.00 in February 2012 to handle a family law matter. Bonang's allegations indicated that Asquith failed to earn that fee, was not entitled to any further fees as Asquith demanded, failed to make necessary filings with the court, and had abandoned Bonang by failing to appear and represent Bonang at her divorce hearing on May 7, 2012. Through counsel, Asquith responded to this grievance complaint. Although Asquith claimed in that response that she had earned her fee, she now acknowledges that she failed to properly seek or obtain court-approved withdrawal in Bonang's family matter, and thereby caused Bonang to be without proper representation on the date of her divorce hearing.
7. In July 2012, Shane Edwards complained to the Board concerning Asquith's services and conduct as the parenting coordinator in what he described as a "high conflict divorce." Through counsel, Asquith answered the Edwards complaint. Although Asquith initially denied most of Edwards's allegations, she now agrees that she should have better communicated with the parties in that matter to articulate the circumstances that would compromise her responsibilities and duties as a parenting coordinator. The issues that Edwards raised concerning Asquith's fees in that matter remain pending for hearing before the Fee Arbitration Commission.

8. In September 2012, client Lisa Bauer complained to the Board that Asquith failed to properly handle two separate court proceedings on her behalf. Both complaints concerned family matters involving Bauer's children. Her complaint detailed Asquith's failure to communicate, failure to earn her fees, failure to appear at important meetings, and failure to file proposed orders and necessary appeals. Attorney Smith filed a general denial of misconduct by Asquith concerning Bauer's cases. Asquith does not now contest that she engaged in professional misconduct in her mishandling of Bauer's case.
9. Based on her misconduct in these seven distinct matters, the Court finds that Asquith violated the following:
Maine Bar Rule:
9(i) (failure to pay an ordered fee refund award within thirty days).
Maine Rules of Professional Conduct:
1.3 (lack of diligence and promptness);
3.4(c) (disobeying obligations of the rules of a tribunal);
4.1(a) (false statement of material fact to a third person);
8.1(b) (failure to respond to Bar Counsel);
8.4(a) (violation of the Maine Bar Rules);
8.4(c) (dishonest or deceitful conduct); and
8.4(d) (conduct prejudicial to the administration of justice).
10. It is clear from the parties' representations and information provided

to the Court, with Asquith's consent, by Attorney William Nugent, Director of the Maine Assistance Program for Lawyers (MAP), that Asquith appears to suffer from a significant and debilitating mental health-related condition, specifically depression.

11. As a result of her significant and repeated instances of serious professional misconduct, it is clear that Asquith has been and remains unable to properly discharge her professional duties. The extent to which Asquith's depression caused her misconduct and ineffective representation of clients is relevant but not dispositive. This matter is before the Court pursuant to M. Bar R. 7.2(b). No disability proceeding has been pursued or filed under M. Bar R. 7.3(e). Nevertheless, the Court includes appropriate conditions within this disciplinary sanction Order to properly address Asquith's ongoing serious depression.

SANCTION

Accordingly, upon consideration of the Board of Overseers of the Bar's disciplinary filings and attorney Asquith's current mental health condition and pursuant to the parties' agreement, it is hereby ORDERED as follows:

1. Effective immediately and pursuant to M. Bar R. 7.2(b), Carolyn Asquith shall remain disciplinarily suspended from the practice of law in Maine. The suspension is based upon Asquith's violation of the Maine Bar Rules and her numerous, serious violations of various Maine Rules of Professional Conduct, as set forth above.

2. Asquith's suspension is for the term of four (4) years from this date. Twelve (12) months of that suspension, however, is suspended, provided that Asquith does not otherwise violate the conditions of this Order or commit any new violations of the Maine Rules of Professional Conduct or the Maine Bar Rules. In addition, on or after July 1, 2014, Asquith may petition the Court for an additional suspension of all or a portion of her remaining suspension, provided that Asquith has fully complied with all of the requirements of this order as of the date of the petition and has not committed any new violations of the Maine Rules of Professional Conduct or the Maine Bar Rules. Any such petition shall be supported by an affidavit detailing Asquith's mental health treatment, her recent work history, and her compliance with the various requirements of this Order.
3. Any employment Asquith undertakes during this suspension from practice must not in any way involve the provision of legal services as an attorney. Furthermore, she is required to ensure that any law firm and firm clients for whom she may work as a paralegal or in any other non-attorney capacity are properly informed of the limitations of her services and are provided a copy of this Order.
4. Prior to her reinstatement in Maine, Asquith must comply with the provisions outlined in M. Bar R. 7.3(j), as well as complete the conditions set forth below.

5. Asquith is Ordered and further agrees to the following conditions as part of her reinstatement, should that occur pursuant to M. Bar R. 7.3(j):
 - a. Submit to evaluation (and treatment if recommended) by a clinician agreed to by Bar Counsel;
 - b. Obtain written approval by a medical doctor or treating psychiatrist that her depression does not render her impaired to work as an attorney;
 - c. Participate in the Maine Assistance Program for Lawyers (MAP) program, which will include but not be limited to weekly meetings (or at such other frequency as directed by MAP's director) and her execution of any contract(s) deemed appropriate by MAP's Director;
 - d. Submit to the monitoring of her practice, including a financial audit to ensure her compliance with M.R. Prof. Conduct 1.15;
 - e. Demonstrate the ability to acquire office space with a written agreement;
 - f. Provide ongoing verification that the charges incurred for her office space have been paid during the agreement period;
 - g. Hire a staff person, as an employee or on a contract basis, who will assist her in maintaining her schedule and assuring that she is in regular and timely contact with her clients, the courts, attorneys, and others;

- h. Maintain current registration and CLE requirements as required by the Maine Bar Rules and as regulated by the Board of Overseers of the Bar;
- i. Reimburse any of Attorney Weiss's Receivership fees or costs paid on her behalf by the Board of Overseers within one (1) year of the date that Attorney Weiss incurs that fee or cost, or within one (1) year of the date of this Order, whichever is later;
- j. Pay \$13,000.00 to the LFCP regarding the West-Harper/Harper payment matters, \$6,500 of which shall be paid within two (2) years of the date of this Order, and the balance shall be paid within three (3) years of the date of this Order.
- k. Pay the \$109.00 due and owing to Virginia R. Hodge Abstracting within ninety (90) days of the date of this Order;
and
- l. Pay any further claims awarded against her by the Fee Arbitration Commission or the LFCP.

Additionally, should Asquith become reinstated to practice, she agrees that if the Board of Overseers receives any further grievance complaints against her or if her depression results in admittance into any medical facility, upon motion of Bar Counsel, any such new matter(s) or change of circumstances is ordered to be filed directly with the Court for hearing to consider the appropriate action to be taken.

Dated: January 8, 2013

_____/s/_____
Justice Jon D. Levy
Associate Justice
Maine Supreme Judicial Court