

STATE OF MAINE

SUPREME JUDICIAL COURT

BAR-13-6

BOARD OF OVERSEERS OF THE BAR
Plaintiff

v.

ORDER & DECISION
M. Bar R. 7.2(b)(2)

RON E. HOFFMAN, Esq.
of Rumford, ME
Me. Bar #08593
Defendant

This bar disciplinary matter concerning Attorney Ron E. Hoffman is before the Court based upon the parties' Stipulated Waiver of Grievance Commission Proceedings dated March 15, 2013, the Court's resulting Order of March 27, 2013, and the Board of Overseers of the Bar's Stipulated Information of May 21, 2013, regarding grievance charges brought against Hoffman by Bar Counsel's *sua sponte* notice letter of July 9, 2012, pursuant to M. Bar R. 7.1(b)(d).

The matter was heard at the Lewiston District Court on September 27, 2013. At the hearing, the Board was represented by Bar Counsel J. Scott Davis; Attorney Hoffman was present and represented by James F. Martemucci. By agreement of the parties the facts that led to the grievance filing are stipulated, as is the determination that these facts constitute a violation of specified sections of the Maine Rules of Professional Conduct. The only issue that was contested at the

hearing was the nature and extent of sanctions to be imposed based on the admitted violation of Rules 8.4(a)(b)(c) and (d) of the Maine Rules of Professional Conduct.

The findings of fact and conclusions regarding violation of the Rules of Professional Conduct, stated below, track the findings as agreed by the parties in a Draft Order and Decision filed with the Court prior to hearing with updates and clarifications from the evidence presented at hearing.

1. Findings of Fact

The grievance proceeding was initiated or about July 9, 2012, with a notice to Hoffman that based upon Bar Counsel's understanding of criminal charges being filed against Hoffman for two counts of Terrorizing (Class D), 17-A M.R.S. § 210(1)(A), FARDC-CR-2012-514, he was being charged with violating M.R. Prof. Conduct 8.4(a)(b)(c)(d).

Hoffman was admitted to the Maine bar in 1997 and has maintained a solo practitioner practice in Rumford since approximately 2001. His current practice involves mostly criminal defense, child protective cases, family law and various general civil litigation matters. Although he received a minor private dismissal with a warning sanction for a minimal misconduct matter in 2003, Hoffman has no prior disciplinary record on file with the Board of Overseers of the Bar. *See* M. Bar R. 7.1(d)(4)(B).

On March 29, 2012, two telephonic bomb threats were made within a two minute time frame to two elementary schools in Wilton. The first such call occurred at 9:23 a.m. to the Academy Hill School. A second call occurred at 9:24 a.m to the G. D. Cushing School. The two threatening calls were made by an adult male using slurred speech and stating in both instances that “there is a bomb in your school!”

As a result of those bomb scare calls, the two elementary schools were immediately evacuated and a sweep of each building was then completed by bomb detection dogs. No bombs were found in either school building. The sudden evacuations of all students and staff caused much confusion, anger and upset to everyone, particularly the very young and impressionable students, several of whom cried. The Court has been provided with and read the March 30, 2012, and April 12, 2012, letters submitted by Wilton Elementary Schools Principal Darlene Paine setting forth her impression of the extent of the significant emotional trauma and upset generated by these bomb scares.

The two frightening calls were immediately reported to and an investigation undertaken by the Wilton Police Department. From that investigation, which included Wilton Police Chief Heidi Wilcox’s obtaining of a court order on April 2, 2012, authorizing access to cell phone records information, it was determined that the telephone calls were each initiated by the same cellular phone number,

identified as (207) 730-2626. Chief Wilcox determined that this cell phone had been purchased at the Walmart store in Mexico on March 28, 2012, at 5:44 p.m., and that it was activated the very next day, March 29, 2012—the date of the bomb scares—at 8:07 a.m. Investigation also confirmed that no other calls were ever made by or initiated from that cell phone number and that it had become inactive immediately after the bomb scare calls were made on it.

Maine State Police Detective Randall Keaten also investigated these bomb scare telephone calls. In his investigation, Detective Keaten obtained and observed the Mexico Walmart store's video of the sale and purchase of the Tracphone that Chief Wilcox had determined was used in the March 29th bomb scares. From reviewing that video on April 4, 2012, Detective Keaten observed that the purchaser was Attorney Ron E. Hoffman, a person with whom he was personally familiar from his 16 years as a law enforcement officer in Franklin and Oxford Counties.

On April 5, 2012, Detective Keaten applied for and obtained two search warrants from to conduct searches of Hoffman's residence in Sumner and his vehicle, a 2011 Subaru. Keaten and Maine State Police Detective John Hainey executed those search warrants on that same date. They did so by first meeting with Hoffman at the Farmington District Court.

At that meeting, an initial question posed to Attorney Hoffman was whether he had ever purchased a Tracphone. Hoffman initially denied that he had recently purchased any Tracphone, but when presented with a photo that showed him purchasing one at the Mexico Walmart store on March 28, 2012, at 5:44 p.m., he revised his response. He then told Detectives Keaten and Hainey that he had purchased that Tracphone for his brother-in-law in Colorado, but that he had been unsuccessful in his attempts to activate that phone on March 29th and had then discarded the phone in his office trash that same day. Hoffman also told the detectives that he had retained the phone card that he had purchased the same night he had bought the cell phone. He voluntarily gave the detectives the phone card. Hoffman denied ever using the Tracphone to call in any bomb scares at the Wilton area schools, and further denied ever using that Tracphone for any calls.

Detectives Keaten and Hainey then executed the search warrant concerning Hoffman's Subaru, doing so in Hoffman's presence adjacent to the Franklin County Courthouse in Farmington. In that search, the detectives observed three 12-volt adapters and one 110-volt adapter for use with cell phones or hand-held media devices. They also observed a cellular hands-free wire device located in a handbag in the back of Hoffman's vehicle.

In the evening hours of April 5, 2012, Hoffman voluntarily permitted the detectives to search his law office in Rumford, in Hoffman's presence, to review

Hoffman's schedule for the date of March 29, 2012. At the law office meeting, Hoffman provided information that was later determined to be misleading and false, specifically that he had met with and conducted an interview at his law office with a specific client on March 29, 2012 that had occurred from between 9:00 a.m. until 10:00 a.m., or "a little over an hour." He also denied ever travelling west of Rumford Island towards Rumford Center on that date, and instead claimed that he had only traveled to Mexico, which is located to the east of Rumford Island. This statement was important to the detectives because the records obtained in the investigation had confirmed that the bomb scare calls had originated and been executed from locations in or nearby to Rumford Center.

That same evening, the detectives met with Hoffman at his residence in Sumner. They then discussed with him the objects they had earlier found in his Subaru, specifically the 110-volt wall charger and the handbag. Hoffman appeared nervous and denied that there had been any wall charger in his Subaru. Hoffman then showed Detective Keaten the handbag, but when he did so Detective Keaten noted that the hands-free device had been removed since the vehicle search had been conducted at the courthouse.

On July 2, 2012, Hoffman was charged by criminal complaint in the Farmington District Court with two counts of Terrorizing (Class D) in violation of 17-A M.R.S. § 210(1)(A), addressing the respective telephone bomb threats of

March 29, 2012 at the Academy Hill School and the G. D. Cushing School. The matter was transferred to the District Attorney's office in Somerset County for further processing.

On September 21, 2012, Hoffman appeared before the court (*Mills, J.*) and entered pleas of *nolo contendere* to each count of Terrorizing as charged. In a statement to the court, Hoffman took full responsibility for his actions and expressed his sincere remorse for causing upset to school administrators, teachers and mostly the students and their families. He also expressed remorse to his own family and to the bar and judiciary. His pleas were accepted and he was convicted by the court on each count.

Hoffman received maximum jail sentences of 364 days' confinement for each count, to run consecutively, the entire confinement periods being suspended, with Hoffman then placed on Administrative Release for a total of two years by consecutive Administrative Release periods of one year. Bar Counsel has reported to the Court that he has confirmed with the Assistant District Attorney handling the Hoffman matters that the specific conditions of that Administrative Release have either been complied with by Hoffman or remain in effect without any violation thereof to date.

Attorney Hoffman is married and the father of two adopted boys. At the present time, he and his wife are in the process of adopting a third child who has

been placed with them by the Department of Health and Human Services (DHHS). The DHHS approved the placement and prospective adoption after an investigation while this matter has been pending.

Attorney Hoffman and other witnesses presented testimony to the Court concerning the following circumstances. Hoffman suffers from several serious, chronic medical diseases, including Graves disease, insulin dependent diabetes, obsessive compulsive disorder, anxiety and, at times, depression. The Graves disease has caused Hoffman to suffer from periods of fatigue, anxiety and, at times, difficulty with concentration.

In February and March 2012, Hoffman's symptoms associated with his Graves disease and anxiety were progressing, but he was then unaware of the severity of his symptoms. At that time, Hoffman was in treatment with several medical providers for his multiple diseases and was on multiple medications. However, he did not have one particular physician who was managing all of his medications, and he was not seeing a mental health professional for the anxiety, fatigue and depression.

Approximately two weeks after placing the two bomb threat phone calls to the elementary schools, Hoffman sought medical attention for his growing fatigue, agitation, anxiety and to confront his bizarre behaviors. He was then informed, for the first time, that he most likely was suffering from Graves Rage which is a severe

condition of Graves disease. Hoffman was also suffering from severe hypothyroidism which was causing behavioral changes such as nervousness, irritability, and severe anxiety. Hoffman's primary care provider took control of Hoffman's medication therapy and changed it several times over the ensuing months, reportedly resulting in Hoffman feeling much healthier than he was at the time of the phone calls to the schools.

Hoffman also started mental health counseling in the late spring of 2012, prior to being charged with a crime, and continues that counseling to date. The mental health counselor testified that she diagnosed Hoffman with mood disorder due to Graves disease, with mixed features. She meets with Hoffman regularly and has noted and charted his emotional improvement and mental stability.

Approximately one month prior to the hearing before this Court, Hoffman's thyroid condition caused him to experience what he and his counselor testified was a more severe outbreak of anxiety, depression, and feelings of lack of control than he was experiencing around March 29, 2012. However, because of the systems of protection Hoffman had in place within his family and with his medical and mental health providers, his situation was promptly stabilized, and with adjustments in his medications and a more permanent address of his thyroid situation, any harm to him or anyone else was avoided. He is now on a treatment plan where the problem he experienced is unlikely to recur.

Hoffman testified that upon recognizing that he suffered from illnesses that were affecting his emotional and mental wellbeing, he voluntarily entered into a Maine Assistance Program (MAP) contract in July 2012. According to the testimony of the MAP Director, Hoffman has been in compliance with all terms and conditions of the MAP contract since its inception and meets on a regular basis with the Director. Conditions of the MAP contract include that Hoffman faithfully follow all medical treatment and counseling protocols and medications and that he be in communication with the MAP Director in person or by telephone every two weeks, or at such other intervals deemed appropriate by the MAP Director.

As a result of the criminal charges, Hoffman's health issues became a matter of public knowledge, particularly among the members of the bar in Franklin and Oxford Counties. Several attorneys testified that in the year and a half since March 2012 they had worked with or in opposition to Hoffman in matters before the courts, including jury trials. They all testified to recognizing Hoffman's skill, integrity, and dedication to representing his clients in the matters in which they had participated. In fact, just the day before the hearing in this matter, Hoffman had appeared before the Lewiston District Court in a child protective matter that he was requested to join at a late date because of the failure of a relationship between a parent and the parent's prior attorney.

Hoffman agrees that he needs an attorney to monitor his practice to reasonably assure that he is in compliance with the Maine Rules of Professional Conduct and that his clients are being served appropriately. One experienced member of the Franklin County Bar, Margot Joly, has been in communication and contact with Hoffman on at least a weekly basis to address both his caseload and his personal and health issues. She has expressed a willingness and desire to continue to offer those services to Hoffman into the future.

2. Conclusions Regarding Violation of the Rules of Professional Conduct.

The Board asserts and Attorney Hoffman agrees that he engaged in conduct unworthy of an attorney and specifically that he violated Rules 8.4 (a)(b)(c) and (d) of the Maine Rules of Professional Conduct. Rules 8.4 (a)(b)(c) and (d) specify that it is professional misconduct for a lawyer to:

(a) violate or attempt to violate any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal or unlawful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice.

Hoffman's criminal and unprofessional misconduct had a most serious effect—and caused emotional injury—to the students, parents of students, and staff of the two schools as indicated in the exhibits and testimony presented by members of the schools' staff at hearing. Hoffman's actions also caused disruption and financial loss to the first responders involved in the March 29 events and to the school district. As part of the disposition in the criminal proceeding, Hoffman has paid restitution for the financial losses he caused.

Hoffman's conduct also had a negative effect on his law practice and his family and was a serious concern among the bar and judiciary. Hoffman has taken reasonable steps to identify and address the causes of his actions and reiterates his intent to continue to address his medical and mental health issues in a vigilant and diligent manner with a commitment to good health and proper conduct throughout the future.

As indicated above, Hoffman agrees that his conduct of March 29 and April 5, 2012 violated Rules 8.4(a)(b)(c) and (d) of the Maine Rules of Professional Conduct. The Court finds that Hoffman violated Rules 8.4(a)(b)(c) and (d). With the violations found, the Court proceeds to consider the appropriate sanction.

3. Sanction

The parties agree that Hoffman should and must be disciplined by the Court for his serious misconduct of March 29 and April 5, 2012. The parties did not agree as to the nature and form of that discipline, and exhibits, testimony and argument was presented on that issue at the hearing.

On behalf of Hoffman, his attorney proposed that his sanction be a public reprimand coupled with a 60-day suspension from the practice of law, with the suspension being suspended in its entirety. Alternatively, Bar Counsel proposed that Hoffman receive a public reprimand with a one-year suspension period, with all but 60 days of that suspension being so suspended. As a result, Hoffman would serve a suspension from practice for a 60-day period.

The parties agree that the terms and conditions of a suspended suspension period imposed by this Order must include a condition that Attorney Margot Joly shall supervise Hoffman's law practice on a weekly basis for at least a year with observations and management of Hoffman's caseload, deadlines, client communications, and random file reviews. Attorney Joly shall also communicate with Hoffman privately as to Hoffman's medical issues and conditions, as well as his family life. If Attorney Joly determines, in her discretion, that Hoffman is not well physically or mentally and/or that the practice of law is overwhelming to him at any particular time, Attorney Joly shall immediately so notify and inform the

Court and Bar Counsel of her findings. Attorney Joly shall, in any event, submit a written status report to the Court and Bar Counsel each quarter during the monitoring period.

In considering the appropriate sanction, the Court is guided by Bar Rule 2(a) that provides, in pertinent part, that:

A proceeding brought against an attorney under these rules shall be an inquiry to determine the fitness of an officer of the court to continue in that capacity. The purpose of such proceeding is not punishment but protection of the public and the courts from attorneys who by their conduct have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties.

In this case the punishment for the offenses violating the criminal laws and disrupting the public order by the terrorizing actions has been imposed as the sentence in the criminal case. That sentence, among other things, requires supervision and strict compliance with the terms and conditions of Administrative Release, with possible imposition of a maximum term of incarceration if those terms and conditions are violated.

This Court's inquiry must focus on Hoffman's fitness as an officer of the court to continue in that capacity, and any need to protect the public and the courts from any conduct by Hoffman that demonstrates that he is unable, or is likely to be unable, to discharge properly his professional duties.

The record demonstrates that since mid-April 2012, Hoffman has proceeded aggressively to address his medical and mental health issues. He now has protocols in place to monitor his conditions and address any upsets in his conditions when they occur to avoid or minimize and harm to himself, his family, his clients, or the public. On at least one occasion, those protocols worked to quickly stabilize an upset in his condition and avoid any harm to him or others or his law practice.

Hoffman has continued to represent clients and appear in criminal, child protective, and family court proceedings, including jury trials. In those proceedings, he has performed professionally, ethically, and in the best interests of his clients. He continues to be a respected member of the bar, providing important service to the public in a geographic area that is presently significantly underserved because only a few attorneys are available to take court appointed criminal and child protective cases in northern Oxford County.

Hoffman presently has approximately forty clients with active cases, mostly criminal and child protective cases and some family matters. Such matters require regular attention to keep up with court obligations. Any period of suspension to be served would disrupt and delay those cases, impacting not only Hoffman's clients, but others involved as parties, children, witnesses, victims, etc. Thus, any suspension to be served cannot be considered lightly, and should be imposed only

if necessary to protect the public, or Hoffman's clients, or to assure that Hoffman remedies any professional, ethical or personal issues that led to the disciplinary proceeding before he resumes practice.

Here, Hoffman appears to have successfully addressed the issues that led to the disciplinary proceeding. He is actively and with respect representing clients in his practice. He has protocols in place to address his medical, mental health and professional issues, and those protocols have been tested and they have worked. Further, in this Order the Court can impose conditions to assure monitoring, support, and professional accountability for Hoffman's professional conduct for a considerable period of time. Thus, the suspension that the Court imposes will be suspended. At this point, the Court incorporates by reference into this order the statement it made at the conclusion of the hearing on September 27, indicating the sanction it would impose.

4. Sanction Order

Upon consideration of the parties' respective sanction recommendations and the evidence and arguments presented, the Court imposes the following sanction:

1. Attorney Hoffman is suspended from the practice of law for two years, with all of that suspension being suspended from implementation at this time.

2. Hoffman shall continue to comply with all terms and conditions of his MAP contract and shall continue to be under a MAP contract for the next five calendar years. He shall be subject to such random mental health, medicinal, drug(s) or related testing as deemed appropriate by the MAP Director.

3. Attorney Hoffman shall submit his practice to monitoring for two years or longer if the Court or the Monitor deems it necessary. The Court-Appointed Monitor is Attorney Margot Joly of Wilton, Maine. The terms and requirements of that Monitor's service are set forth in a separate monitoring agreement that has been agreed to, and is to be executed and signed by Hoffman. The signed monitoring agreement, consistent with the draft that the Court has reviewed, but with a two year monitoring period, shall be filed with the Court by October 10, 2013.

4. If Attorney Hoffman commits any apparent violation of any of the conditions of this Order, Bar Counsel may proceed by way of contempt to request that the Court impose the suspended portion of this sanction.

5. Within the first six (6) months of the suspended suspension period, Hoffman shall attend in person and complete a seminar or similar educational symposium and/or course consisting of at least four (4) continuing legal education credit hours that has been pre-approved by Bar Counsel which focuses on the stresses of a law practice and how to manage all such stresses reasonably.

