

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR-15-3

BOARD OF OVERSEERS OF THE BAR
Plaintiff

v.

ORDER & DECISION
M. Bar R. 13(g)(4)

PHILIP S. COHEN, ESQ.
of Waldoboro, ME
Me. Bar #007930
Defendant

This matter arises from a grievance complaint filed by Assistant District Attorney Andrew Matulis against Attorney Philip S. Cohen of Waldoboro, Maine. It is now before the Court as a result of an Information filed by the Board of Overseers of the Bar on March 26, 2015 pursuant to formerly applicable M. Bar R. 7.2(b)(1).¹

A hearing was conducted at the Capitol Judicial Center in Augusta on July 27, 2015. At the hearing, the Board of Overseers was represented by Assistant Bar Counsel Alan P. Kelley. Attorney Cohen was present and represented by Attorney Walter F. McKee. The parties stipulated to the facts that led to the grievance filings and to a finding that those facts constitute Cohen's violation of specific portions of the Maine Rules of Professional Conduct. The parties also agreed to the form and

¹ The former Maine Bar Rules were repealed and replaced, effective July 1, 2015. The repeal and replacement involved a major revision and renumbering.

terms of the sanction to be imposed by the Court based upon Cohen's admitted violations of Rules 3.4(c) and 8.4(a)(b)(d) of the Maine Rules of Professional Conduct. Prior to that hearing, ADA Matulis was notified by Bar Counsel of the parties' proposed stipulation and sanction, and chose to not attend that hearing.

1. Findings of Fact

1. Plaintiff is the Board of Overseers of the Bar (the Board).
2. Defendant is Philip S. Cohen, Esq. (Attorney Cohen) of Waldoboro, Maine. Attorney Cohen was admitted to the Maine Bar in 1994 and was at all times relevant hereto, an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules and the Maine Rules of Professional Conduct.
3. Since his admission in 1994, Attorney Cohen has engaged in private practice in Waldoboro, Maine. He has no disciplinary record history on file with the Board.
4. By his filing of December 11, 2013, Assistant District Attorney (ADA) Andrew Matulis formally complained to Bar Counsel that Attorney Cohen had been charged by criminal complaint in the Wiscasset District Court with having committed Domestic Violence Assault (Class D) upon a family or household member (his now-former spouse), Beth Cohen, on November 15, 2013.

5. In that complaint, ADA Matulis further alleged that Attorney Cohen had also been charged in that same court with a Violation of Condition of Release (Class E), by having contact with Beth Cohen between November 19 and December 4, 2013, in violation of the conditions of his release.
6. On July 11, 2014 Attorney Cohen entered pleas of “guilty” to an amended charge of Disorderly Conduct (Class E), and the Violation of Condition of Release (Class E) referenced above; the charge of Domestic Violence Assault was dismissed.
7. Pursuant to a plea agreement, the court ordered Attorney Cohen’s sentencing to be deferred for a period of one year, and Attorney Cohen agreed to and signed the “Agreement of Defendant and Order Deferring Disposition,” containing the court-ordered conditions of deferment.
8. On July 23, 2014 the State filed a Motion to Terminate Deferment and Impose Sentence in the matters Attorney Cohen had plead guilty to, which involved allegations of new criminal conduct by Attorney Cohen, Domestic Violence Assault, against Beth Cohen.
9. A contested testimonial hearing was held on October 3, 2014 before Justice Roland Cole on the State’s Motion to Terminate Deferment and Impose Sentence. By a preponderance of the evidence, Justice Cole found that Attorney Cohen had committed new criminal conduct, Domestic

Violence Assault, in violation of the conditions of deferment, and continued the matter to October 15, 2014 for sentencing.

10. After conducting a hearing on October 15, 2014, Justice Cole imposed a sentence of 28 days of actual incarceration on the charge of Disorderly Conduct, and a concurrent sentence of 30 days of actual incarceration on the charge of Violation of Condition of Release, with separate fines of \$1,000.00 on each charge.
11. Attorney Cohen paid each fine in full and served 19 days of his jail sentence in the Segregation Unit of Two Bridges Regional Jail because of his attorney status and the remainder of his jail time in the general jail population performing community service projects.

COUNT I

12. On November 15, 2013, Attorney Cohen engaged in criminal conduct involving his now-former spouse, Beth Cohen, that constituted the offense of Disorderly Conduct, 17-A, M.R.S.A. §501-A(1)(A), by intentionally or recklessly causing annoyance to Beth Cohen by making loud and unreasonable noise.
13. On July 11, 2014, Attorney Cohen pled “guilty” to the crime of Disorderly Conduct based upon his conduct on November 15, 2013.

14. On October 15, 2014, Attorney Cohen received a sentence of 28 days of actual incarceration with a \$1,000.00 fine on the offense of Disorderly Conduct.

COUNT II

15. After his arrest on November 15, 2013 for Domestic Violence Assault against his then-wife, Beth Cohen, Attorney Cohen was released on bail, with a special condition of his release being that he have no contact, direct or indirect, with Beth Cohen.
16. Between November 19, 2013 and December 4, 2013, Attorney Cohen violated the conditions of his release on multiple occasions, by having direct, and/or indirect, contact with Beth Cohen. Over the period of approximately two weeks, Attorney Cohen sent, or exchanged, approximately 100 text messages with Beth Cohen in direct violation of his court-ordered bail conditions.
17. On July 11, 2014, Attorney Cohen pled “guilty” to the crime of Violation of Condition of Release, based upon his conduct between November 19th and December 4th, 2013.
18. On October 15, 2014, Attorney Cohen received a sentence of 30 days of actual incarceration with a \$1,000.00 fine for the crime of Violation of Condition of Release.

COUNT III

19. On December 6, 2013, Attorney Cohen appeared in the Wiscasset District Court in Docket Number WISDC-CR-2013-00793, entering pleas of “not guilty” on charges of Domestic Violence Assault and Violation of Condition of Release.
20. On December 6, 2013, Judge Dow of the Maine District Court set bail at \$500 in cash, with special conditions of release, including a condition that Attorney Cohen have “no direct or indirect contact with Beth Cohen.”
21. Attorney Cohen signed the Bail Bond on December 6, 2013, agreeing to the terms and conditions of his release.
22. Between December 6, 2013 and March 27, 2014, on numerous occasions, Attorney Cohen had direct and indirect contact with Beth Cohen, including: telephonic communication; electronic text messaging; email communication; and direct “face to face” contact.
23. Prior to March 5, 2014, Attorney Cohen and Beth Cohen discussed entering into a judicial separation agreement, rather than a divorce proceeding.
24. A Marital Settlement Agreement for Judicial Separation was entered into between Beth Cohen and Attorney Cohen, both of whom were represented by legal counsel, being signed by the parties on March 5th and

12th, 2014, respectively, resulting in a cash payment by Attorney Cohen to Beth Cohen of \$305,000.

25. Attorney Cohen filed for divorce from Beth Cohen on August 26, 2014 and they were divorced on March 16, 2015 at which time the Marital Settlement Agreement was incorporated but not merged into the final divorce judgment. Beth Cohen was represented by legal counsel at all times during the divorce proceedings.

COUNT IV

26. Prior to March 28, 2014, Attorney Cohen's conditions of release, as set on December 6, 2013, included a condition that he not possess or use alcohol or illegal drugs, and that he would submit to a search of his person, vehicle and residence for evidence of violation of conditions of his release at any time without articulable suspicion.
27. Attorney Cohen sought amendment of his conditions of release, and on March 28, 2014 he signed Amended Bail Bonds that deleted the condition that he not possess or use alcohol.
28. Those new bail bonds signed by Attorney Cohen continued the condition that he not have direct or indirect contact with Beth Cohen, and provided in addition that he not return to the marital residence or be within 10 feet of Beth Cohen.

29. Between March 28, 2014 and July 11, 2014, on numerous occasions, Attorney Cohen violated the specific conditions of those amended bail bonds by having direct and indirect contact with Beth Cohen, including: telephonic communication; electronic text messaging; email communication; and direct “face to face” contact.
30. During the time period between March 28, 2014 and July 11, 2014, Attorney Cohen used an alias, “Zane Maxim,” on a “Facebook” account created by Beth Cohen under that alias, so that he could communicate more easily with Beth Cohen through the “Facebook” messaging system.
31. Through his conversations with Beth Cohen, Attorney Cohen was aware that she had decided to use the money she received from the separation agreement to move out of the country and purchase a residence in Costa Rica. Attorney Cohen informed Beth Cohen that he opposed this decision.
32. After Beth Cohen left the United States for Costa Rica, Attorney Cohen and Beth Cohen continued to have mutual contact by telephone, email, and other electronic means.
33. After Beth Cohen left the United States, and at her request, Attorney Cohen assisted Beth Cohen with personal and property issues that arose as the result of her move to Costa Rica.

34. On two occasions between March 28, 2014 and July 11, 2014, Attorney Cohen left the United States and visited with Beth Cohen at her new residence in Costa Rica at her request.
35. On one occasion between March 28, 2014 and July 11, 2014, Attorney Cohen purchased airline tickets for Beth Cohen and her daughter to travel from Costa Rica to the United States at her request, and he had personal contact with Beth Cohen when she returned to the United States.

COUNT V

36. On July 11, 2014, Attorney Cohen appeared before Justice Roland Cole of the Maine Superior Court, and entered pleas of “guilty” to the two charges of Violation of Condition of Release and Disorderly Conduct. Pursuant to the negotiated disposition, the State dismissed the charge of Domestic Violence Assault. The court amended Attorney Cohen’s conditions of release to allow him to have contact with Beth Cohen, upon her written consent, and sentencing was continued pursuant to a proposed agreement for a deferred disposition. Beth Cohen provided her personally delivered hand written consent to allow contact between Attorney Cohen and Beth Cohen.
37. On July 12th, after entering his pleas of guilty, Attorney Cohen met with Beth Cohen at a rented camp or cottage in Jefferson, Maine.

38. Late in the evening of July 12th, or during the early morning hours of July 13th, Attorney Cohen got into a physical altercation with Beth Cohen, resulting in allegations of new criminal conduct, specifically Domestic Violence Assault, Obstructing Report of a Crime and Violation of Condition of Release.
39. As a result of Attorney Cohen's alleged assault on Beth Cohen, the State moved to terminate Attorney Cohen's deferred disposition, and to have sentence imposed on the underlying criminal charges.
40. The State's Motion for Termination of the Deferred Disposition was heard before Justice Cole on October 3, 2014. At that hearing, Justice Cole found by a preponderance of the evidence that Attorney Cohen had committed new criminal conduct, Domestic Violence Assault, in violation of his deferred disposition agreement.
41. On October 15, 2014, Justice Cole sentenced Attorney Cohen to 30 days of incarceration on the Violation of Condition of Release conviction, with a \$1,000.00 fine, and 28 days of incarceration on the Disorderly Conduct conviction, with an additional \$1,000.00 fine. Attorney Cohen paid each fine in full and served 19 days of his jail sentence in the Segregation Unit of Two Bridges Regional Jail because of his attorney status and the remainder

of his jail time in the general jail population performing community service projects.

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

Attorney McKee and Bar Counsel agree and the Court so finds that Attorney Cohen disobeyed obligations under the rules of the tribunal in violation of M. R. Prof. Conduct 3.4(c) as follows:

- a. Attorney Cohen's conduct of having direct and indirect contact with Beth Cohen, including: telephonic communication; electronic text messaging; email communication; and direct "face to face" contact on numerous occasions, between November 19 and December 4, 2013; December 6, 2013 and March 27, 2014; and March 28 and July 11, 2014, was in direct violation of the court's respective bail orders in effect at those times.
- b. Attorney Cohen's conduct of violating the court's order of deferred disposition on July 12 and 13 2014 was in direct violation of the court's July 11, 2014 order of deferred disposition, and bail order.

Attorney McKee and Bar Counsel agree and the Court so finds that Attorney Cohen committed criminal or unlawful acts that reflected adversely upon his

honesty, trustworthiness or fitness as a lawyer in other respects in violation of M. R. Prof. Conduct 8.4(b) as follows:

- a. Attorney Cohen's conduct of intentionally or recklessly causing annoyance to Beth Cohen by making loud and unreasonable noise on November 15, 2013, constituted the crime of Disorderly Conduct;
- b. Attorney Cohen's conduct of having direct and indirect contact with Beth Cohen, including: telephonic communication; electronic text messaging; email communication; and direct "face to face" contact on numerous occasions between November 18, 2013 and December 4, 2013; December 6, 2013 and March 27, 2014; March 28, 2014 and July 11, 2014, each constituted the crime of Violation of Condition of Release; and
- c. Attorney Cohen's conduct of violating the court's order of deferred disposition on July 12th-13th constituted the crime of Violation of Condition of Release.

Attorney McKee and Bar Counsel agree and the Court so finds that Attorney Cohen engaged in conduct that was prejudicial to the administration of justice in violation of M. R. Prof. Conduct 8.4(d) as follows:

- a. Attorney Cohen's contact with Beth Cohen between November 19th and December 4th, 2013; December 6, 2013, and March 27, 2014; and March 28, 2014 and July 11, 2014, was in violation of his bail conditions and was prejudicial to the administration of justice; and
- b. Attorney Cohen's conduct on July 12 and 13, 2015 was in violation of his court ordered deferred disposition and bail conditions.

The respective Rules are set forth as follows:

3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

8.4 Misconduct

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; or

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

3. Sanction

Accordingly, the Court imposes upon Attorney Cohen a six (6) months suspension from practice, with all but thirty (30) days of that period being suspended for a period of one (1) year subject to the following conditions:

1. Attorney Cohen shall serve his actual period of suspension from August 1, 2015 until August 31, 2015; on or before the date of suspension he shall provide written notice to his clients represented in pending matters; any co-counsel in pending matters; an any opposing counsel in pending matters, or in the absence of opposing counsel, the adverse parties, of the suspension and file an affidavit confirming such notice with the Board consistent with the requirements of M. Bar R. 31(a)(h).
2. During the period of actual suspension, Attorney Cohen shall not appear before any tribunal and is prohibited from advising, consulting or meeting with any clients for the purpose of providing legal representation or advice. He may not practice law or appear as though he is practicing law in any manner. He may not advise or consult with other attorneys, including those in his office, regarding any cases or the running of the office. The prohibition against consulting with attorneys does not include providing strictly historical or background information to any attorney handling a matter that Attorney Cohen was previously engaged in. Attorney Cohen shall not be present in his office during business hours, or while clients are

present during the period of his suspension. During any time that Attorney Cohen is present in his office, he will only have access to his personal files, and will not seek or obtain access to client files.

3. Attorney Cohen shall refrain from any criminal conduct, and shall abide by and otherwise obey to the extent within his control all the terms and conditions of any existing or future court orders applicable to him, whether personally or professionally.
4. Attorney Cohen shall also completely and timely comply with the provisions of M. Bar R. 31.
5. If Attorney Cohen 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.
6. In the event a grievance complaint against Attorney Cohen is received by Bar Counsel after the date of this order during the one year period of the suspended suspension, Bar Counsel may seek permission of a Grievance Commission Panel to proceed with a new disciplinary matter directly before the Court pursuant to Bar Rule 13(d)(6).
7. Upon certification to the Court by Bar Counsel that Attorney Cohen has successfully completed all of the requirements described above, including

the period of actual suspension, the underlying suspension from the practice of law shall terminate without further order of the Court.

Dated: July 27, 2015

_____/S/_____
Donald G. Alexander
Associate Justice
Maine Supreme Judicial Court