

State of Maine

MAINE SUPREME JUDICIAL COURT

Docket Nos. BAR-18-4
BAR-16-15

BOARD OF OVERSEERS OF)
THE BAR,)
)
Plaintiff,)
)
v.)
)
SETH T. CAREY, Esq.)
of Auburn, ME)
Me. Bar # 09970)
)
Defendant)
)

ORDER

This attorney discipline matter was initiated on April 10, 2018 by a petition for immediate interim suspension filed by the Board of Bar Overseers pursuant to M. Bar R. 24(d). That petition was docketed as BAR-18-4.

The defendant, Attorney Seth T. Carey, had received a two-year suspension in a prior disciplinary proceeding in BAR-16-15, but that suspension had itself been suspended subject to Attorney Carey’s compliance with certain specified conditions set forth in a November 21, 2016 consent order. At the same time as it filed the petition for immediate interim suspension in BAR-18-4, the Board of Overseers filed a petition to terminate the suspension of discipline in BAR-16-15 and to invoke the two-year suspension imposed in in that case,

The basis of the Board’s petition for an immediate interim suspension was that in a protection from abuse proceeding on March 30, 2018, RUMDC-PA-2018-20, Attorney Carey had been found by the District Court to have engaged in criminal conduct. Specifically, the testimony at the PA hearing, expressly found credible by the District Court, supported a finding that Attorney

Carey had on one occasion subjected the complainant – a person Carey had formerly represented – to conduct that met the definition of unlawful sexual touching under the criminal code. 17-A M.R.S. §§ 260(1)(A), 251(1)(G).¹ The testimony also supported the District Court’s finding that on another occasion Attorney Carey had grabbed the complainant’s head and thrust it toward his crotch while demanding oral sex – conduct that would at a minimum constitute offensive physical contact constituting an assault under the criminal code. 17-A M.R.S. § 207-A(1)(A). Because the complainant and Attorney Carey were former sexual partners, this would qualify as a domestic assault. *Id.*; 19-A M.R.S. § 4002(4).

On April 30, 2018, after a hearing, the court issued an order granting the Board’s petition for an immediate interim suspension. It did so after reviewing the audio recording of the PA hearing, the exhibits admitted at the PA hearing, the District Court’s findings, and the opposing papers submitted by Attorney Carey. In its order, because of the nature of the behavior and particularly because Attorney Carey was essentially already on probation in the prior bar proceeding, the court found that Attorney Carey’s conduct threatened imminent injury to the public and the administration of justice.

At that time, as stated in the April 30, 2018 order, the court envisioned that a final hearing would be promptly scheduled. However, that did not happen for a combination of reasons including an appeal filed by Attorney Carey, the Board’s addition of additional alleged violations that occurred after the court’s April 30 interim suspension, and Attorney Carey’s initial listing of 400 witnesses. *See* July 19, 2018 order granting the Board’s motion to file a Second Amended Information at 2 n.3.

¹ As the court indicated in its April 30 interim suspension order, the complainant’s testimony at the PA hearing appeared to describe conduct that also met the definition of unlawful sexual contact. 17-A M.R.S. §§ 255-A(1)(A), 251(1)(C)(1).

Ultimately, a three-day hearing was held on August 15-17, 2018. The hearing addressed both the conduct alleged in counts I - III and V of the Board's Second Amended Information and the Board's petition to impose the discipline previously suspended in BAR-16-15, which was included as Count IV. Before the Board rested, it dismissed Count II.

The Board was represented by Bar Counsel J. Scott Davis and Deputy Bar Counsel Aria Ee. Attorney Carey, who had represented himself up through late July, was represented at the hearing by James Howaniec, Esq. At the hearing counsel for Carey acknowledged that Carey had committed some bar violations but vigorously disputed many of the Board's charges and contested the seriousness of any violations that were committed.

In a disciplinary proceeding before a single justice, the Board has the burden of establishing its case by a preponderance of the evidence. M. Bar R. 14(b)(4). Based on the evidence at the hearing, the court makes the following findings:

1. Seth T. Carey has at all relevant times been an attorney subject to the Maine Rules of Professional Conduct.

Alleged Sexual Assaults

2. Attorney Carey lived in Rumford until sometime in early 2018, when he moved to Auburn but continued to own a residence on High Street in Rumford which he visited on weekends and occasionally during the week.

3. T.B., the complainant in the Rumford PA case,² had been a client of Attorney Carey's father, Thomas Carey, in a child custody case and had been represented by Seth Carey at one or

² Pursuant to 18 U.S.C. § 2265(d)(3), the complainant in the PA case will only be identified by her initials because this order may be available on the internet.

more hearings or proceedings when Seth Carey stood in for his father. Future references in this order to “Carey” or “Attorney Carey” shall refer to Seth Carey.

4. Several years later, in the fall of 2016, Carey and T.B. got back in contact. At this time their contact was social and did not involve Carey’s professional activities as a lawyer. While it is unclear exactly who initiated the social contact, T.B. at one point during that time period expressed a strong liking for Carey on the Tinder dating application.

5. That led to an evening when Carey invited T.B. to come to his home in Rumford, where they had some drinks and engaged in a consensual sexual encounter.

6. T.B. learned later that evening that Carey was involved with another woman named Ari, which dampened T.B.’s interest in a relationship with Carey. In the course of the evening, however, Carey mentioned that he was planning to rent out one or more rooms in the Rumford residence.

7. In the spring of 2017, T.B. approached Carey and asked if there was still a room available that she could rent. At that time T.B. was temporarily living in her car. Carey offered T.B. a room and she moved into his Rumford residence. She had a job at the time and initially paid a modest amount of rent. During most of this time T.B. was in a relationship with a man named Josh Hussey.

8. T.B. initially stayed at the Rumford residence until Thanksgiving of 2017. During this time Carey propositioned T.B. for sex on a number of occasions, but she declined his verbal advances. In a text message in the fall, Carey asked T.B. if she wanted to “hook up” before she went to Monmouth. She refused, stating that they were each dating other people and that she had told him “many times” that his suggestion was offensive to her. Board Exhibit 52.

9. When she moved out at Thanksgiving, T.B. moved in with Josh Hussey but that relationship became abusive and she abruptly left Hussey’s residence sometime in the winter. She first called a friend for a ride but when that fell through, she sought a ride from Carey. Carey

picked her up and told her that she could stay at his Rumford house in exchange for doing some cleaning and work around the house. He also gave her the use of an automobile which was in the process of being repaired. This was around the time when Carey had moved to Auburn and only came to Rumford on weekends or if he had scheduled court appearances in Rumford. T.B agreed to the proposed arrangement.

10. Carey hoped and expected that part of the arrangement would include sex, and he continued to suggest that T.B. engage in sex with him. She declined. Nevertheless, their relationship generally remained friendly. She sent him at least one text that could be described as flirtatious (referring to him as “blue eyes”), and she attempted to stay in his good graces.

11. During the times when T.B. was staying at Carey’s Rumford residence, there were three occasions when Carey made physical advances. On one of those occasions, which occurred before T.B. left the house at Thanksgiving, she was sleeping and woke up when she felt Carey’s hands touching her legs and between her thighs. He then suggested that she sleep with him. She told him to get out of her room and he left.

12. The other two physical advances took place after T.B. moved back into the Rumford house in 2018. One occurred when Carey tried to pull T.B. into his bedroom while proposing they engage in sex. The other occurred when she was sitting on the couch and he stepped in front of her, pulled her head against his crotch, and in crude terms requested oral sex. On both occasions T.B. rebuffed him and made her unhappiness known, and Carey desisted.

13. At this time T.B., a person with a history of somewhat tumultuous relationships, was dependent on Carey for housing. Carey’s verbal and physical advances were unwelcome, but T.B. put up with them because she was able to repel them and Carey accepted her refusals. Asked why, after leaving Hussey because of physical abuse, she had returned to Carey’s house where she had

previously been subjected to sexual harassment, T.B. credibly testified that at the time she thought it was her best alternative.

14. Things came to a head on Friday, March 23, 2018, when Carey sent a text message requesting that T.B. tape a Clemson basketball game for him that evening.³ T.B. taped the wrong game. When Carey realized that, he texted her not to come back and to give his car back. Defense Exhibit 2 at 17.

15. That led to an exchange of texts in which T.B. accused him of evicting her because she would not have sex with him, to which Carey responded, “That’s part of it, yup – guess I’m not a sucker after all.” Defense Exhibit 2 at 18, also admitted as Board Exhibit 89. In a subsequent text T.B. repeated her dismay that Carey was evicting her because she had not taped a basketball game and because she would not have sex with him. Defendant’s Exhibit 2 at 21.⁴

16. Carey eventually sent texts demanding his car back by 5pm and threatening to throw all of T.B.’s belongings out in the snow. T.B. again protested by text that this was happening because she would not sleep with him, adding that it constituted sexual harassment. Defendant’s Exhibit 2 at 28, also admitted as Board Exhibit 90. Carey responded, “it’s not sexual harassment bc [because] you’re not my employee.” Board Exhibit 91.

³ Counsel for Carey argued that Defendant’s Ex. 2 consists of a complete set of the text messages that were exchanged leading up to and including the events of that weekend. The court’s review of Exhibit 2, however, shows that some of those texts come from an earlier time and are out of order and some texts are apparently omitted.

Starting at the top of page 11 with Carey’s request that T.B. tape the Clemson game at 7pm that evening, Defendant’s Exhibit 2 appears to contain the sequence of texts exchanged on the three days beginning March 23 with the following exceptions: pages 19-21 are apparently out of order and should follow page 22, there are one or more pages of texts omitted between pages 18 and 22 and between pages 25 and 26, and an additional page of texts is omitted from Defendant’s Exhibit 2 but was admitted as Board Exhibit 91.

⁴ In her testimony at the hearing T.B. clarified that she had intended to insert the word “not” in the text that appears at page 21 of Defendant’s Exhibit 2 (so that it should have read “because I was not there to spread my legs for you”).

17. That led to the filing of T.B.'s complaint for protection from abuse. Her complaint was triggered by Carey's threat of eviction but was based on the unwanted physical advances that T.B. had previously been willing to endure.

18. On March 26, 2018 the District Court entered a temporary order of protection, and on March 30, 2018, after a four-hour hearing, the District Court entered a final order of protection.

19. Under the preponderance of the evidence standard applicable in this proceeding, Carey's actions as set forth in paragraphs 11 and 12 would constitute criminal or unlawful conduct that would qualify as unlawful sexual touching and domestic assault under 17-A M.R.S. §§ 260(1)(A), 251(1)(G), and 207-A(1)(A).

20. Rule of Professional Conduct 8.4(b) provides that it is professional misconduct for a lawyer to commit "a criminal or unlawful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

21. Counsel for Carey has suggested that a higher standard of proof than preponderance of the evidence should be applied and that Rule 8.4(b) should require a criminal conviction. The court disagrees. The drafters of the rule could have specified a criminal conviction, but they instead chose to proscribe the commission of a "criminal or unlawful" act. "Unlawful" is intended to be broader than criminal. *See* Reporter's Notes to Rule 8.4, which also state, "It is clear that if a lawyer engaged in criminal conduct, he or she would violate these rules." Requiring a criminal conviction would necessarily elevate Rule 8.4(b) to a reasonable doubt standard of proof, and M. Bar R. 14(b)(4) expressly sets forth a preponderance standard. Moreover, enforcement of the Bar Rules should not either depend on or await action by state or federal prosecutors, who may exercise their discretion not to pursue charges for reasons unrelated to the merits of a case.

22. A second issue is whether the above conduct reflects adversely on Carey's honesty, trustworthiness, or fitness as a lawyer within the meaning of Rule 8.4(b). Not every criminal or unlawful act would reflect adversely on fitness to practice law. *See* Comment [2] to Rule 8.4. In this case the court concludes that the nature of the conduct in question reflects adversely on Carey's trustworthiness and fitness as a lawyer and would therefore constitute a violation of Rule 8.4(b).⁵

23. In reaching the above findings, the court has considered defendant's challenges to T.B.'s credibility. In particular, the court is not persuaded that the failure to produce other text messages – besides those offered in evidence by the Board or by Carey – undermines the essential elements of her testimony. T.B.'s phone somewhat mysteriously ended up in Carey's possession at the hearing, and T.B. stated that she believed that messages had been deleted. The phone was subsequently impounded by the court, and neither party sought to pursue that issue. *See* August 16, 2018 Tr. 110-11, 120-26.

24. Although the Board also alleges that Carey violated Rule 1.9 (Duties to Former Clients), the court does not find that the PA proceeding was either "the same or a substantially related matter" as the child custody case in which he and his father had represented T.B. several years ago. *See* Rule 1.9(a). The court also does not find that Carey used or revealed any confidential information obtained in the representation of T.B. in the prior child custody case. *See* Rule 1.9(c). In addition, while T.B. was homeless and a victim of domestic abuse and Carey may have attempted to exploit her situation, he did not exploit the former attorney-client relationship. The social interaction between Carey and T.B. which resulted in his misconduct did not arise out of his prior representation.

⁵ *See In re Harkins*, 899 A.2d 755, 758-60 (D.C. Ct. of Appeals 2006). The court is not aware of any Maine precedent on this issue.

Alleged Failure to Comply with Suspension Order

25. After this court entered the interim order of immediate suspension on April 30, 2018, Carey engaged in a number of actions which the Board alleges were in derogation of the court's interim suspension order.

26. As of at least May 14, 2018 Carey had not taken down his L/A Law firm webpage or his LinkedIn profile describing him as an attorney, despite an express direction in paragraph 7 of the April 30, 2018 order that he immediately cease operation of any websites, facebook accounts, or other advertising of his legal services. He also failed to submit an affidavit to Bar Counsel within 10 days attesting to his compliance with the notification requirements in M. Bar R. 31 and with the suspension order. *See* M. Bar R. 31(h). In and of themselves, these would constitute de minimis and perhaps unintentional violations given Carey's response that he had difficulty accessing his website, that he had forgotten his LinkedIn page existed, and that the 10-day time limit in Rule 31(h) appears to be inconsistent with a 30 day time limit in Rule 31(a).

27. However, these were not Carey's only transgressions. The evidence at the hearing demonstrated that Carey took various actions that amounted to representing or attempting to represent clients after his suspension.

28. In a case against the Town of Dexter that Carey had attempted to file in the Penobscot Superior Court prior to his suspension, the clerk's office returned the complaint because it was unsigned. By that time Carey had been suspended, but he nevertheless signed the complaint and sent it back for filing on May 8, 2018.⁶ That case included a motion for a preliminary injunction,

⁶ There is no doubt that Carey was aware of the suspension at least as of May 3, when he signed and served a motion to dissolve the interim suspension and a motion for recusal (captioned "Motion to Dissolve & for Stay of Temporary Suspension, for Recusal Change of Venue, to Reschedule Dissolution Hearing, Objection to Receivership & in the Alternative, to Appoint Designated Receiver") that was filed with the court on May 4, 2018. Carey also acknowledged in a telephone conversation with Attorney Michael Hodgins on May 3 that he had been suspended.

and Carey had two conversations with opposing counsel (Attorney Michael Hodgins) to ascertain whether the Town intended to go forward in light of the preliminary injunction motion and to see if Hodgins would accept service.

29. In the first phone call, which occurred on May 3, Hodgins indicated he had heard that Carey had been disbarred. When he asked about that, Carey acknowledged he had been suspended but stated he was calling as a paralegal, and that a receiver would be taking over the case. In that phone call, Carey and Hodgins debated the merits of whether the Town could go forward.

30. Hodgins returned a second call from Carey on May 14 and they again discussed whether the Town could go forward. Once again Carey stated he was calling as a paralegal. In this call he stated that his father would be entering an appearance at some point. His father ultimately entered an appearance approximately three weeks later.

31. Given that Carey's discussions with Hodgins went beyond the usual role of a paralegal and given that at the time of those conversation, no substitute counsel had appeared and Carey was acting independently, the court finds that Carey was not just tiptoeing along the line with respect to his suspension but that he stepped over the line.

32. In another case where Carey was purportedly acting as a paralegal in a case where his father had appeared after the interim suspension, he sent emails in May and June under the email address of "Seth T. Carey, Esq. <stcareylaw@gwi.net.>" Board Exhibits 46, 50. Although his father was nominally counsel, Seth Carey was still making legal decisions with respect to the case, as demonstrated by Board Exhibit 49. Moreover, Seth Carey's communications with opposing counsel – and the tone of those communications⁷ – resulted in an order by Justice Clifford that Seth Carey was prohibited from communicating with opposing counsel.

⁷ See Board Exhibit 50.

33. In another case where Carey had represented a claimant in a small claims case prior to his suspension, Carey attempted to file an appeal after his suspension by adding himself as a party in the caption of the notice of appeal and signing the notice as the appellant (with “Appellant’s Attorney” crossed out). Board Exhibit 42. This submission was rejected by Judge Lawrence.

34. On at least three occasions after his suspension, Carey wrote checks on his law office account (one was for the notice of appeal referred to in paragraph 33) even though a receiver had been appointed and had been given control over Carey’s law office accounts. Board Exhibits 82, 83.

35. After his suspension Carey also continued to campaign for the Republican nomination for District Attorney in Prosecutorial District 3, putting up yard signs and running several video ads that were shown on YouTube and perhaps elsewhere.⁸ At least one of his video ads (Board Exhibit 58) expressly referred to him as “Republican attorney Seth Thomas Carey,” even though he was suspended at the time the video was released.

36. Given that he was running for nomination and election as District Attorney, all of his campaign materials (Board Exhibits 12, 56-61, 66-69, and 74-75) implicitly represented that he was an attorney. Carey won the republican primary and is now the Republican nominee.

37. Carey’s campaign could perhaps be explained as motivated by a hope that he would be reinstated by the time of the election. In closing argument, however, counsel for Carey suggested that if Carey were to win the general election, there would be an argument that – even though suspended – he could serve as District Attorney by administering the office without practicing law. This is difficult to accept, to say the least. If Carey were to make prosecutorial decisions, set policy,

⁸ At the hearing counsel for Carey referred to these as “TV video ads,” August 17, 2018 Tr. 91, but the record does not reflect whether they were ever broadcast on television.

and supervise the lawyers in the District Attorney's Office, he would be practicing law whether or not he ever appeared in court.

38. Based on the facts set forth in paragraphs 28-37, the court finds that Carey acted in derogation of the court's interim suspension order and violated Rule 3.4(c) of the Rules of Professional Conduct by knowingly disobeying an obligation under the rules of a tribunal. The operative principle is that parties are obliged to follow court orders even if they believe those orders to be invalid. *E.g., United States v. United Mine Workers*, 330 U.S. 258, 293-94 (1947) (contempt may be imposed for violation of order later set aside on appeal).

Alleged Witness Tampering

39. On or about June 21, 2018 Carey met with counsel for T.B. and broached the possibility that there could be some kind of settlement. Asked for clarification, Carey provided counsel for T.B. with five documents on June 28. One of these documents (Board Exhibit 8A) was a statement drafted by Carey to be provided to this court and the Board of Overseers. That statement was to be signed by T.B. and stated that "things have been blown out of proportion and Seth Carey did not abuse me." The statement as drafted expressed a desire to vacate the finding of abuse in the PFA order and leave only the no contact provision.

40. The second document drafted by Carey (Board Exhibit 8B) was a nondisclosure agreement to be signed by both Carey and T.B. It provided that upon the PFA being vacated, Carey would sign over the title to his PT Cruiser automobile to T.B. It further provided that T.B. would file a motion with this court and the Board of Overseers stating that there had been no abuse by Carey and seeking to vacate the prosecution of the Board's Bar complaint. The draft agreement provided that if Carey's ability to practice law were reinstated before October 1, 2018, T.B. would

receive \$1000. The proposed agreement also stated that “none of the details of this agreement are to be released to the public or anyone not associated with this agreement.”

41. Two other documents drafted by Carey (Board Exhibits 8C and 8D) were a proposed motion to vacate the finding of abuse in RUMDC-PA-2018-20 to be filed by counsel for T.B. and a proposed statement to be signed by Carey apologizing for attempting to abruptly throw T.B. out of his residence.

42. The remaining document provided to counsel for T.B. by Carey (Board Exhibit 8E) was an incomplete draft of a “Mutual Confidentiality & Non-Circumvention Agreement between [T.B.] and Seth Carey” which provided that to settle all claims between them Carey agreed to give T.B. the PF [sic] Cruiser and that “the parties have agreed that it is in their mutual best interest never to discuss any of this agreement not any of the happenings that led to the breakdown of the relationship and then a PFA and social media accusations with anyone.” The draft agreement also stated that it was intended to lay out the penalties for non-compliance and that “All this history between the Parties be kept strictly confidential.”

43. Although Carey has contended that these documents were provided as part of a settlement offer and are inadmissible under M.R.Evid. 408, this does not pass the straight face test. Board Exhibits 8A and 8B demonstrate that the import of Carey’s offer was aimed at this proceeding – not a case which T.B. had the authority to settle. T.B. was offered an automobile to retract her testimony that Carey had made unwanted physical advances and if Carey’s license to practice law were reinstated by October 1, T.B. would receive \$1000.⁹

⁹ In addition, M.R.Evid. 408(a) only precludes the evidence of settlement negotiations to prove or disprove a disputed claim or to impeach by prior inconsistent statement. In this case Board Exhibits 8A through 8E are not being offered for either of those purposes but are being offered to show that Carey offered a pecuniary benefit to T.B. to induce her to retract her testimony.

44. The clear intent of the non-disclosure provisions in Board Exhibits 8B and 8E was that T.B. was not to disclose any aspects of the agreement (including her receipt of an automobile and her potential receipt of \$1000 in exchange for retracting her testimony) and was not to discuss any aspect of the events that were the subject of the PA order and are the subject of certain of the Board's charges in this proceeding.

45. 17-A M.R.S. § 454(1)(A)(1) provides that a person is guilty of tampering with a witness or informant if the person "attempts to induce or cause a witness or informant . . . to testify or inform in a manner the actor knows to be false." This covers both attempts to have a witness testify falsely and attempts to have a witness or informant provide false information. *See State v. Kilgus*, 484 A.2d 1208, 1211-12 (N.H. 1984). Carey's offer to T.B. on June 28 constituted an attempt to induce T.B. to provide false information in violation of 17-A M.R.S. § 454(1)(A)(1). The offer and proposed non-disclosure agreement also constituted an attempt to induce a witness to withhold testimony, information, or evidence in violation of 17-A M.R.S. § 454(1)(A)(2). Finally, Carey's offer coupled with the proposed non-disclosure agreement also constituted the offer of a pecuniary benefit with the intent to induce a witness to withhold testimony, information, or evidence in violation of 17-A M.R.S. § 454(1)(B)(1). In this instance there can be no dispute that Carey's conduct reflected adversely on his honesty, trustworthiness, and fitness as a lawyer in violation of Rule 8.4(b).

46. Independent of whether Carey's conduct as set forth in paragraphs 39-44 would constitute criminal or unlawful conduct, his conduct was prejudicial to the administration of justice and thereby violated Rule 8.4(d).

Alleged Violations of November 21, 2016 Order in BAR-16-15

47. The Board alleges that Carey has violated conditions 18, 20, and 21 of the November 21, 2016 order imposing suspended discipline.

48. Condition 20 provided that Carey “shall refrain from all criminal conduct.” The court’s findings in paragraphs 11, 12, 19, and 39-44 demonstrate that this condition has been violated. It bears emphasis that although the court found criminal or unlawful conduct in paragraph 19 by a preponderance of the evidence standard, it would find the criminal or unlawful conduct set forth in paragraph 45 even if the applicable standard required proof beyond a reasonable doubt.

49. The court does not find that Carey violated condition 21 of the November 21, 2016 order. Although he only grudgingly notified MAP (Maine Assistance Program for Judges and Lawyers) and Bar Counsel of the protection order in RUMDC-PA-2018-20 and did not provide details or even the docket number, he did report that a protection order had issued. Board Exhibit 20.

50. Condition 18 of the November 21, 2016 order, as amended on June 8, 2017, provided that by July 8, 2017 Carey was to commence evaluation and treatment with a psychologist, that “he shall follow the recommendations of the psychologist and any other treatment providers he may subsequently be referred to. Attorney Carey shall receive consistent treatment from those providers to promote continuity of care.” That condition also provided that “MAP shall pay the cost(s) of such treatments up to a maximum of \$2,000.”

51. William Nugent, Esq., director of MAP, coordinated Carey’s compliance with condition 18 and Carey entered into a monitoring agreement with MAP in December 2016.

52. Carey was evaluated on June 17, 2017 by Dr. Nadir Behrem, who provided a written report and treatment recommendations admitted as Board Exhibit 27. One of Dr. Behrem’s

treatment recommendations was that Carey engage in psychotherapy with a clinical psychologist for no less than 12 weeks (one session per week) to address issues including learning to express anger in a socially acceptable manner and learning to focus on accepting responsibility for his own actions as opposed to blaming others.

53. It took time to find a clinical psychologist but Carey ultimately commenced treatment with Dr. Gray, a licensed clinical psychologist, in January.

54. As of February 21, 2018 Carey was in compliance with his MAP contract. Defendant's Exhibit 48B.

55. A month later, Carey missed two sessions in a row with Dr. Gray and she terminated him from treatment based on those absences. Dr. Gray was willing to take him back, and after Carey received the interim suspension, Nugent arranged for him to go back to Dr. Gray for several sessions even though that resulted in exceeding the \$2,000 cap set forth in condition 18. Carey ceased all treatment with Dr. Gray in June.

56. It appears that Carey has now attended the 12 sessions recommended by Dr. Behrem. However, Carey told Nugent that he only agreed to evaluation and treatment under the November 21, 2016 consent order because he wanted to have the settlement approved by the court. He did not find the sessions with Dr. Gray to be helpful and called them "worthless."

57. This was unfortunate because Nugent – who is not unsympathetic to Carey – wanted Carey to address the issues identified in Dr. Behrem's report.

58. Specifically, Dr. Behrem's report – confirmed by Dr. Behrem's testimony at the hearing – concluded that Carey demonstrates a personality disorder marked by a tendency toward grandiosity, suspiciousness, belief that persons who criticize him are engaged in a vendetta or conspiracy against him, argumentativeness, holding grudges, difficulty expressing anger in a

socially appropriate manner, and a tendency to blame others for any setbacks. Board Exhibit 27 at 13-15.

59. These personality issues partially explain but do not excuse the violations found above. Moreover, they help to explain certain of Carey's other actions that are evident from the record or were referred to at the hearing. These include a number of intemperate, vituperative and inappropriate filings while Carey was representing himself,¹⁰ Carey's filing of a lawsuit against witnesses and other participants in the BAR-16-15 proceeding even though he had agreed to the November 21, 2016 order that resulted from that proceeding, and Carey's filing of a lawsuit against both T.B. and the lawyer who had represented her at the PA hearing, along with a subpoena for a polygraph examination of T.B.

60. Dr. Behrem testified that the recommended treatment for a personality disorder is usually long term psychotherapy.

61. In testifying on August 17, Carey, for what appears to be the first time, acknowledged his problems and stated that he needs help to overcome them. He testified that he does not have health coverage and needs that to obtain the mental health treatment he needs.¹¹

62. Condition 18 required that Carey shall follow the recommendations of the evaluating psychologist. With respect to the recommendation that Carey engage in at least 12 sessions of

¹⁰ See this court's May 4, 2018 and July 19, 2018 orders, responding to Carey's "Motion to Dissolve & for Stay of Temporary Suspension, for Recusal Change of Venue, to Reschedule Dissolution Hearing, Objection to Receivership & in the Alternative, to Appoint Designated Receiver," filed May 4, 2018, and Carey's "Motion for a Mental Examination of False Accuser," filed July 17, 2018.

¹¹ Asked why he was running for District Attorney instead of addressing these issues, Carey both insisted that he would win – without any recognition of the inconsistency between his campaign and his suspension from the practice of law – and also stated that he needed the job to get health insurance coverage so he could get treatment.

psychotherapy with a licensed psychologist, the court finds that he complied with the letter – but not the spirit – of that condition.

63. Carey demonstrates some features of ADHD, and another of Dr. Behrem’s treatment recommendations was that Carey consult a licensed psychiatrist and comply with any recommended psychiatric medications for ADHD. Carey declined to follow that recommendation and violated condition 18 in that respect.

Other Allegations

64. The Board also faults Carey for a social media posting critical of the District Court judge who presided over the PA hearing (Board Exhibit 53), for social media postings attacking the character of T.B. (Board Exhibits 53-55), and for a social media campaign against Pine Tree Legal Assistance (Board Exhibits 14, 15, 17, 18, 71-73, and 76). While these actions were intemperate and inappropriate and while they are relevant to an overall assessment of his behavior, the court does not find that they constituted specific violations of the rules of professional conduct.

Future Proceedings

As previously discussed, a further hearing will be scheduled to consider what sanctions should be imposed in light of the violations found above.

Dated: September 21, 2018



Thomas D. Warren
Justice, Superior Court

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Clerk's Office
Maine Supreme Judicial Court