

State of Maine

Maine Supreme Judicial Court

Docket No. BAR 09-10

BOARD OF OVERSEERS OF THE BAR)
)
Plaintiff)
v.)
)
MICHAEL I. MONTEMBEAU, ESQ.)
Of Saco, ME)
Me. Bar #9211)
Defendant)

DISCIPLINARY ORDER
M. Bar R. 7.2(b)

Background

In this matter, the Board of Overseers of the Bar was represented by Assistant Bar Counsel Jacqueline L.L. Gomes, and Defendant Michael I. Montembeau was represented by Attorney Peter J. DeTroy. On June 11, 2009 the Court approved counsel’s Stipulated Waiver of Grievance Commission Proceedings. As a result, the Court has jurisdiction to proceed directly in this disciplinary proceeding under M. Bar R. 7.2(b) and issue a Disciplinary Order absent any earlier Grievance Commission hearing under M. Bar R. 7.1(e). At the hearing of this matter, Attorney Montembeau expressed his remorse and apologized for his misconduct, confirmed that he waives his right to appeal this Order to the Law Court and also agreed that the sanctions imposed by this Order are effective on the date of this Order. Charles W. Smith, Jr., Esq. who is a partner of Smith, Elliot, Smith & Garmey the injured party in this matter was present at the hearing. He was provided with a copy of the proposed

Order and notice of the hearing. Attorney Smith indicated that he had no objection to the proposed Order.

Stipulations

Counsel for the parties have stipulated to the following material facts now found and adopted by the Court.

At all times relevant hereto, Attorney Montembeau has been an attorney duly admitted to and engaged in the practice of law in the State of Maine and subject to the Maine Bar Rules. He practiced land use law and general litigation with the law firm of Smith, Elliot, Smith & Garmey in Saco from 2005 until April 1, 2008. By Attorney DeTroy's filing letter of April 4, 2008, Attorney Montembeau self-reported to Bar Counsel J. Scott Davis his misconduct in two separate instances as summarized below. Smith, Elliot, Smith & Garmey reported the misconduct by a letter dated April 7, 2008. While Attorney Montembeau has maintained an active license to practice law, he has not engaged in the practice of law since April 1, 2008.

The June 2007 Fraudulent Bill

Attorney Montembeau began representing a couple regarding a boundary dispute in the fall of 2006. The clients had title insurance through Chicago Title Company (Chicago Title) which agreed to pay for the legal defense of the clients. Attorney Montembeau attempted to persuade the other parties involved in the litigation to compensate his clients for costs they incurred to secure housing during the time they

were not permitted to build a home on their property. Those attempts were unsuccessful. Attorney Montembeau then tried to persuade Chicago Title to compensate his clients for the same costs. In June 2007, Chicago Title informed Attorney Montembeau that it would not make any payment for displacement costs. On or about June 12, 2007, Attorney Montembeau submitted an invoice to Chicago Title in the amount of \$23,066.76.

The document that Attorney Montembeau prepared and dated June 12, 2007 purported to be an invoice for the boundary dispute case. It was created by Attorney Montembeau in a word processing program outside the law firm's normal billing protocol, i.e. an invoice generated by computer automation from contemporaneously maintained time and billing records of the firm's employees. The invoice was approximately \$7,000 higher than the actual time charges expended on the case. Chicago Title paid the invoice in full in August 2007 by a check made out to Smith, Elliot, Smith & Garmey. The check was deposited into the firm's trust account. Attorney Montembeau provided the clients with a check from the firm's trust account in the amount of \$7,000.

Attorney Montembeau agrees that he misrepresented to Chicago Title the amount of total time and hourly rates included on the invoice he submitted in June 2007.

The firm's internal time and billing records – based upon the contemporaneous entries of firm staff into a time and billing data base –

resulted in an actual billable amount of time spent by the firm on behalf of Attorney Montembeau's clients of \$16,066.76. The firm was paid \$16,066.76 from a check written on the firm's trust account based on the remittance by Chicago Title. Attorney Montembeau did not disclose this misconduct to his firm.

By his conduct in preparing and presenting inaccurate information to Chicago Title on behalf of a client concerning the above billing information, Attorney Montembeau agrees and the Court so finds that he violated M. Bar R. 3.2(f)(3) and 3.3(a).

The October 2007 Fraudulent Bill

On or about October 25, 2007, Attorney Montembeau submitted another invoice to Chicago Title in the amount of \$18,584.50 for work purportedly done on the same case.

The document that Attorney Montembeau prepared and dated October 25, 2007 was again created by Attorney Montembeau in a word processing program outside the firm's normal billing protocol, i.e. an invoice generated by computer automation from contemporaneously maintained time and billing records of the firm's employees. The invoice was approximately \$6,000 higher than the actual time charges expended on the case. On or about March 12, 2008 Attorney Montembeau wrote a letter to Chicago Title offering to discount the invoice to \$14,000 if paid in full within a week. The discounted amount overstated the value of legal services provided by Attorney Montembeau by \$2,000.

Attorney Montembeau agrees that he misrepresented to Chicago Title the amount of total time and hourly rates included on the invoice he submitted in October 2007.

The firm's internal time and billing records – based upon the contemporaneous entries of firm staff into a time and billing data base – resulted in an actual billable amount of time spent by the firm on behalf of Attorney Montembeau's clients of \$12,584.50. Chicago Title did not pay either the October 27, 2007 invoice or the discounted amount proposed by Attorney Montembeau. Attorney Montembeau did not disclose this misconduct to his firm.

By his conduct in preparing and presenting inaccurate information to Chicago Title on behalf of a client concerning the above billing information, Attorney Montembeau agrees and the Court so finds that he violated M. Bar R. 3.2(f)(3) and 3.3(a).

Order of Sanctions

It is agreed by the parties and now so found by the Court that Attorney Montembeau engaged in professional misconduct. Attorney Montembeau engaged in misrepresentations and misstatements to Chicago Title regarding the law firm's bill and diverted money paid for attorney's fees to his clients.


Attorney Montembeau's misconduct violated specific portions of the Code of Professional Responsibility as noted above, for which

Attorney Montembeau is now disciplined and sanctioned. It is hereby ORDERED:

1. For his misrepresentations to Chicago Title, collection of an excessive fee, diversion of attorneys fees to his clients and resultant violations of Maine Bar Rules 3.2(f)(3) and 3.3(a) the Court issues a suspension from practice of 15 months retroactive to April 1, 2008. Pursuant to Bar Rule 7.3(j)(1), in order to return to practice in Maine he must thereafter petition for reinstatement. Prior to petitioning for reinstatement, he must complete the restitution payments to Smith, Elliot, Smith & Garney of \$7,000 in accordance with the agreement he executed May 13, 2009. He must also provide a written plan to be approved by Bar Counsel regarding appropriate financial safeguards and the manner and types of such safeguards he proposes. Although such misconduct often results in the Court's appointment of a Monitor upon reinstatement to supervise and control the disciplined attorney's conduct for an appropriate period of time, given Attorney Montembeau's remorseful attitude and actions, his filing of a self-report, his acknowledgement of his misconduct, his self-imposed sabbatical from the practice of law and his apology to the Court, the Court is satisfied that it is not necessary to appoint a Monitor in this instance; and

2. Attorney Montembeau shall refrain from any misconduct in the future. Bar Counsel has the authority to notify the Court of Attorney Montembeau's non-compliance with this Order and to file any future complaints of his misconduct directly with this Court without any prior review by and/or hearing before the Grievance Commission for such action as may be found or deemed appropriate.

Date: October 6, 2009



Andrew M. Mead
Associate Justice
Maine Supreme Judicial Court