

BOARD OF OVERSEERS OF THE BAR)
 Plaintiff)
)
 v.)
)
 PATRICK HUNT, Esq.)
 Defendant)

DECISION

[¶1] This matter is before the Court for decision, after hearing, on a complaint regarding Patrick Hunt, brought by the Board of Overseers of the Bar.

The complaint alleges eight violations of the Maine Bar Rules:

1. Rule 3.2(f)(4)-Conduct Prejudicial to the Administration of Justice
2. Rule 3.2(f)(3)-Dishonesty
3. Rule 3.6(a)-Failure to Exercise Reasonable Care
4. Rule 3.6(d)-Advising Violation of Law
5. Rule 3.6(f)-Communicating with Adverse Party while represented
6. Rule 3.7(a)-Improper Legal Action to Harass or Injure Litigant
7. Rule 3.7(b)-Improper Concealment of a False Statement
8. Rule 3.7(e)-Providing False Information to the Court

FILED
 FEB 02 2010
 MAINE SUPREME
 JUDICIAL COURT

Facts

[¶2] Patrick Hunt has been an attorney for twenty-seven years practicing in Island Falls, Maine. On August 24, 2000, the Department of Human Services¹ (the Department) referred a case to him involving the estate of Eldora Bourgeois. Eldora died on September 15, 1996, and at the time of her death, the Department had a lien against her estate in the amount of \$124,603 for funds expended on her behalf prior to her death. Her son, Ernest Bourgeois, predeceased her. Ernest's widow was Allmeda Bourgeois, and they had five children, Eric, Gail, Ann, Jane, and Cheryl.

[¶3] Following Eldora's death in 1996, six U.S. saving bonds issued to Eldora with a face value of \$5200 were found by her heirs. The savings bonds listed Mrs. Eldora Bourgeois as the owner and named Gerald E. Bourgeois and/or Ernest Gerald Bourgeois as P.O.D. (pay upon death).

[¶4] In the spring of 2000, Eric disclosed the discovery of the bonds to Allmeda. Eric, believing that the bonds belonged to Allmeda, conferred with Attorney Melissa Hale of Ellsworth. Hale informed Eric and Allmeda that the State of Maine had a lien in the amount of \$124,603 on any assets of Eldora's estate; therefore, the State had the right to claim the bonds for the purposes of

¹ The Department of Human Services has since been renamed the Department of Health and Human Services.

reimbursement. Eric and Allmeda gave the bonds to Hale. Subsequent to this meeting, Hunt contacted Eric by phone at which time Eric informed him that the bonds had been turned over to Hale. On September 27, 2000, following his phone conversation with Eric, Hunt sent a letter to Hale acknowledging that the bonds had been turned over to her. In that letter Hunt stated: "I spoke with Eric Bourgeois earlier this week, before I knew of your involvement." He requested that Eldora's heirs assign the savings bonds to the Department so that they could close out the matter.

[¶5] On January 17, 2001, Hale responded to Hunt's letter indicating that she had the bonds and acknowledging that the State was entitled to them. Hale explained that Ernest was Eldora's only child and that Ernest had left five children. Hale set out the names of Ernest's children and their mailing addresses. She included the bonds in the letter that was sent to Hunt.

[¶6] Following this letter from Hale, Hunt waited approximately eighteen months, until June 2002, to try to set up a meeting with Allmeda at the Machias Savings Bank. On June 27, 2002, in addition to contacting Machias Savings Bank, Hunt sent a letter directly to Allmeda requesting that she meet him on July 8 at the savings bank to negotiate the bonds. In this letter, he mistakenly referred to the fact that Allmeda's late mother owned the savings bonds. He also enclosed an affidavit along with that letter for Allmeda to sign and the affidavit contained

wrong information. The affidavit referred to Allmeda as the daughter of Eldora and Ernest and stated that she was their only heir. Allmeda did not respond. Hunt called Eric during July 2002, and followed up with a letter dated July 20, 2002, addressed to Eric at his residence in Cambridge, Massachusetts. (Ex. 3 at 3.) In this letter, Hunt referenced Eldora's estate and tried again to set up a meeting to have Allmeda sign over the bonds to the State of Maine. He set a tentative date of July 30 at Machias Savings Bank, indicating that if resolution could not take place litigation would follow. In that letter, Hunt also acknowledged that Hale was the estate's attorney by agreeing to pay her attorney fees in the amount of \$739.

[¶7] Hunt sent another letter to Eric also dated July 20, 2002, but obviously sent subsequent to the first letter, trying to set up a meeting on August 19, 2002, at Machias Savings Bank. (Ex. 3 at 2.) The letter referenced Eldora's estate and indicated that the matter had to be closed by August 19 or he would withdraw his client's offer to them of July 20, 2002, and commence litigation. He also faxed this letter to Eric.

[¶8] Following Hunt's attempt to set up a meeting with Eric and Allmeda, Virginia Lee Holt contacted him by letter dated August 17, 2002, and informed him that she was replacing Melissa Hale as the attorney for Eldora's estate. In this letter to Hunt, she indicated that Allmeda was not the heir to the bonds that were the focus of the lien claim. Holt stated that it was her belief and Hale's belief that

the five children of Allmeda and Ernest were the legal heirs entitled to the bonds. She also explained her reasoning as to why the five children of Ernest and Allmeda were the legal heirs entitled to the bonds.

[¶9] Following this letter, on August 22, 2002, Hunt filed a two-count complaint against Allmeda in Hancock County Probate Court. The complaint alleged fraud and sought a declaratory judgment (Count I) and alleged Medicaid fraud (Count II). Holt filed an answer and counterclaim in response to this complaint. Following the filing of this complaint, there was some discussion between Holt and Hunt regarding a petition being brought in the Probate Court to resolve the issue of the proper heirs. A petition for adjudication was filed in the Washington County Probate Court. Hunt sent to Holt a stipulation of judgment to resolve the matter, but before the matter could be resolved, the parties received a letter from the Washington County Probate Court (*Holmes, J.*) indicating that there were jurisdictional problems because the claim was being filed three years after Eldora's death. Following this, a motion for change of venue was made to the Houlton District Court, and as of the date of the hearing in this case, the motion had not been acted upon. From March 24, 2004, until October 2006, Attorney David Fletcher was involved on behalf of the estate and tried to resolve the matter with Hunt. There were numerous letters addressing a possible settlement of this matter.

Discussion

[¶10] This case started out as a simple matter of getting the necessary parties to assign the savings bonds to the State of Maine to satisfy the Department's lien for medical services provided to Eldora Bourgeois. No one contested the Department's rights to receive the proceeds from the savings bonds.

[¶11] It is unfortunate that this uncontested matter turned into such a tangled web of confusion, filings, and correspondence. This confusion was caused by Hunt's mistaken belief that Allmeda was the proper heir to assign the bonds over to the Department. This mistaken belief, plus the delay in taking the necessary legal action to resolve this problem, caused the confusion and needless litigation.

[¶12] The U.S. savings bonds were in Eldora's name with her son Ernest designated P.O.D., meaning payable upon death. This was not a joint account giving Ernest or his estate any legal interest in the savings bonds. His interest in the bonds ended when he predeceased his mother. The fact that his widow Allmeda may have had physical possession of the bonds at the time of Eldora's death did not give her any legal or equitable interest in the U.S. savings bonds. These bonds were payable only to the named owner of the bonds and possession is of no legal significance.

[¶13] When the Department initially referred the case to Hunt, he mistakenly believed that Allmeda was the proper heir to assign the bonds. The documents also indicate that there was some confusion as to the relationship between Allmeda and Eldora. After talking with Eric in the summer of 2000, Hunt learned that the bonds had been turned over to Attorney Hale. On September 27, 2000, Hunt wrote a letter to Hale acknowledging that she had the bonds and offering an easy settlement to this matter by having the heirs assign the savings bonds to the State of Maine. In this letter he also indicated that Allmeda was the proper heir to assign the bonds.

[¶14] On January 17, 2001, Hale responded to Hunt and set out the family genealogy. The letter clearly indicated that Ernest was Eldora's only child, and that Ernest and Allmeda had five children. The letter included the names and addresses of the five children.

[¶15] Hunt waited eighteen months before taking any action. Because Eldora died on September 15, 1996, Hunt had until September 15, 2002, to finalize the matter without filing any legal action. Even though Hale spelled out to Hunt the proper genealogy in her January 17, 2001, letter, Hunt still thought he had to have Allmeda rather than the five children assign the bonds to the State of Maine. On or about June 27, 2002, eighteen months after Hale's letter, which clearly referenced that she was representing Eldora's estate, Hunt contacted Allmeda by

letter trying to set up a meeting at the Machias Savings Bank. In that letter Hunt stated that he understood that she had agreed to assign the bonds owned by her late “mother.” On July 20, 2002, Hunt sent Eric a letter, once again referring to Eldora’s estate. In this letter he attempted to set up a meeting with Allmeda at the Machias Savings Bank to have her sign over the bonds. This meeting was to take place on July 30, 2002. In a follow-up letter, also dated July 20, 2002, but obviously later than the previous letter, he again tried to set up another meeting at Machias Savings Bank with Eric and his mother on August 19, 2002. These phone calls and letters to Allmeda and Eric during the month of July 2002 occurred after Hunt had received a letter from Attorney Hale clearly indicating that she was representing the estate of Eldora Bourgeois. In September of 2000, Hunt had sent a letter to Hale and in that letter he made reference to the fact that he had talked to Eric Bourgeois and said, it was “before I knew of your involvement.” This clearly indicates that he knew almost two years prior to these contacts in July of 2002 that Allmeda and Eric were represented by Hale. These contacts represent a violation of M. Bar R. 3.6(f), which prohibits contacting an adverse party who is represented.

[¶16] Nothing was resolved by these improper contacts. Hunt then learned in August of 2002 that Virigina Holt was replacing Hale as the estate’s attorney. He wrote a letter to Holt on August 16, 2002. In a letter dated August 17, 2002,

Holt notified Hunt that she and Hale did not believe that Allmeda was the proper heir to assign the bonds to the State of Maine. They were of the opinion that the five children of Ernest and Allmeda were the proper heirs to assign the bonds. In this letter, Holt attempted to set out the legal reasoning behind this opinion. However, she did set out a possible scenario in paragraph five of the letter where Ernest may have acquired an interest in the bonds because his mother physically gifted them to him. As stated earlier, this is a mistaken opinion of the law in this area.

[¶17] It is obvious that Hunt was feeling the pressure of the statute of limitations coming up on September 15, 2002. This Court believes that he filed the complaint on August 22, 2002, because he had to take legal action before the statute of limitations had run. However, he failed to exercise reasonable care in that he failed to realize that Allmeda was not the proper legal party to assign the bonds. He should have researched the issue before he brought suit. Two attorneys had alerted him to the fact that Allmeda was not the heir entitled to the bonds, but that it was the five children. Nevertheless, Hunt brought suit against the wrong party when he should have known that this was not a legal cause of action. Apart from the sloppiness of the complaint that will be discussed below, the Court finds that Hunt honestly, but mistakenly, believed that Allmeda was the proper party. If he actually knew that she was not the proper party, it does not make sense why he

would not include the five children as alternative defendants to the complaint. Everyone associated with Eldora's estate was willing to sign over the bonds to the State of Maine, but Hunt did not use the various vehicles he had available to him within the eighteen month period to resolve this case. He got short on time and brought suit against the wrong party. This was a failure to exercise reasonable care and skill in the performance of his professional services. His actions were a violation of M. Bar R. 3.6(a). The Court has reviewed the conduct pursuant to an objective standard that is assessed on the standard of the judgment that would be brought to the action by a lawyer of ordinary skill and competence. Restatement (Third) of The Law Governing Lawyers, § 5 cmt. d (2000).

[¶18] However, the Court does not find that this was done with the intent to harass or injure Allmeda. If Hunt knew what the law was in this area, as he should have known, he easily could have started a legal action against the five children to protect the DHS's rights. Therefore, the Court finds and concludes that Hunt did not commence action against Allmeda to harass or maliciously injure her in violation of M. Bar R. 3.7(a).

[¶19] As to the complaint itself, it contains two counts. The caption erroneously refers to Declaratory Judgment Act as 14 M.R.S. §3571. Section 3571 is the Fraudulent Transfer Act, not the Declaratory Judgment Act. The caption

also refers to Medicaid fraud as 22 M.R.S. §14. This is also inaccurate as section 14 is the MaineCare recovery section; section 15 is the fraud section.

[¶20] The complaint itself also contains inaccurate references. Count I is entitled fraud and declaratory judgment. However, the allegations contained in Count I do not contain the necessary specific allegations of fraud; it is not clear what type of fraud action Hunt is bringing in Count I. In Count II Hunt makes reference to Medicaid fraud, but the complaint's statutory reference is 22 MR.S. §14, which is the MaineCare recovery section and not the fraud section.

[¶21] The body of the complaint does not contain any specific allegations of fraud, it erroneously alleges that Eldora and Ernest Bourgeois were the owners of the U.S. savings bonds, and improperly asks for attorney fees in its demand.

[¶22] Count II is labeled Medicaid fraud, but does not make reference to 22 M.R.S. §15. Furthermore, it does not contain any factual allegations that would refer to the fraud section.

[¶23] The Court finds and concludes that Hunt failed to exercise reasonable care and skill in the preparation of this complaint by making erroneous references to statutory law, by failing to include specific facts alleging fraud, and by improperly asking for attorney fees when he was clearly not entitled to attorney fees. It is clear to this Court that Hunt hastily put this complaint together to get it filed before the statute of limitations expired.

[¶24] Furthermore, alleging fraud against another individual by a State of Maine agency is a serious matter and Hunt should have taken the necessary steps to ensure that the complaint complied with proper legal principles. In addition, Hunt did not have any evidence that there was any fraud in this case. This case involved confusion as to who was to sign over the bonds, but this was due to Hunt's mistaken belief that Allmeda was the proper heir in this case. There is absolutely no reason for Hunt to allege fraud, common law or statutory, against Allmeda. As a result of the legal actions taken by Hunt, the Court finds that he violated M. Bar R. 3.6(a) by failing to exercise reasonable care and skill in the preparation of the complaint filed against Allmeda Bourgeois.

Conclusion

[¶25] This Court finds that the actions by Hunt were not intended to harass or injure anyone, rather the Court finds that this action was the result of his failure to exercise reasonable care and skill by (1) not knowing the law; (2) not preparing the complaint in proper form; (3) not taking the necessary steps to amicably resolve this issue because all of the parties agreed that the Department was entitled to receive the bonds; and (4) waiting too long to resolve this issue. Hunt was confused and erroneously believed different things at different times regarding Allmeda's position. While it is true that the fact that the attorneys representing the estate continued to negotiate with Hunt lead to the confusion, it is clear that the

five children of Ernest and Allmeda were the heirs that legally had the right to assign the bonds. It is not clear why the attorneys for the estate continued to negotiate with Hunt after he filed the complaint against Allmeda and the statute of limitations had passed. These negotiations help to explain why Hunt has not dismissed this action against Allmeda. It adds some credibility to his mistaken belief that Allmeda may have had some legal or equitable right to the bonds. Whatever reasons the parties continued to negotiate, this Court finds and concludes that Hunt has mishandled this matter from the very beginning and should have known that Allmeda was not the proper party to sign over the bonds and should have found a way to resolve this matter well before the statute of limitations. His mistaken belief that she was the proper party to sign over the bonds lead to this confusing state of events in the estate of Eldora Bourgeois.

[¶26] This Court finds and concludes that Hunt did not violate M. Bar R. 3.2(f)(3), 3.7(b), or 3.7(e) because the Court is convinced that he was not dishonest in his dealings with the court and the parties, only mistaken.

[¶27] Further, the Court finds and concludes that he did not violate M. Bar R. 3.2(f)(4), conduct prejudicial to the administration of justice. This section is a catchall without any specific references to conduct that would come under this section. Because this Court finds that Hunt's violations were in the nature of

negligence rather than intentional conduct, this Court concludes that Hunt did not violate this Rule.

[¶28] For the reasons stated above the Court finds and concludes that Hunt did violate M. Bar R. 3.6(a), failure to exercise reasonable care and skill, and M. Bar R. 3.6(f), communicating with adverse party while represented.

[¶29] The allegation that he violated M. Bar R. 3.6(d), advising violation of law, was dismissed during the trial.

[¶30] This matter will now be scheduled for a hearing regarding sanctions that should be imposed for the violations alleged and proved.

Dated: January 29, 2010



Joseph M. Jabar
Associate Justice
Maine Supreme Judicial Court