

State of Maine

Supreme Judicial Court

Docket No. BAR-06-01

BOARD OF OVERSEERS OF THE BAR	)	
	)	
Plaintiff	)	
v.	)	
	)	ORDER
Stephen M. Brett, Esq.	)	
of York Beach, ME	)	
Me. Bar #9277	)	
Defendant	)	

This matter came before the Court on June 20, 2006 pursuant to the Court's Order of May 11, 2006. The Board of Overseers of the Bar (the Board) was represented by Bar Counsel J. Scott Davis. Defendant Stephen M. Brett was present and represented by Attorney Peter J. DeTroy. Most of the various complainants have generally been made aware of counsel's stipulated proposed order, were invited to be present, but did not appear. The Court received two written statements from police officers involved in the criminal matters pending in the Cumberland County Superior Court. These statements will be made part of the record in this matter.

**Stipulations**

The parties have stipulated to the following material facts now found and adopted by the Court:

Stephen M. Brett has been licensed to practice law in Maine since 2001. His practice has generally focused on criminal defense and civil litigation. Mr. Brett has accepted numerous court appointments and maintained a smaller base of retained clients. Five years into his practice, Mr. Brett received three separate reprimands by a Grievance Commission hearing panel's decision dated January 25, 2006. That Grievance Commission hearing panel made the following findings:

“Panel B views Mr. Brett's admitted eavesdropping as a deplorable and lamentable exercise of unsatisfactory judgment. We find no difficulty characterizing listening in on conversations behind closed doors, and particularly conversations between the opposing party and a Judge, as conduct 1) unworthy of an attorney, 2) prejudicial to the administration of justice, and 3) degrading to a tribunal.”

The Panel further determined that the balance of Attorney Brett's conduct as outlined in the decision amounted to “serious lawyer misconduct.”

Approximately one month after those reprimands had been issued, on or about February 20, 2006, Cumberland County District Attorney Stephanie Anderson filed a grievance complaint with the Board against Mr. Brett which is now the subject of a pending criminal complaint to which he has entered a plea of not guilty. Ms. Anderson's complaint and the supporting statements therein detailed Mr. Brett's alleged violation of a client's conditions of release.

Specifically, on or about February 20, 2006, Mr. Brett was charged with violation of those conditions because of his role in providing his then client with access to the client's victim/partner, which was in violation of a District Court order. Although Mr. Brett disputes the State's complete version of those events, he agrees a finding that he engaged in misconduct under the Bar Rules is warranted.

On or about April 25, 2006, Mr. Brett was arrested and again charged with new violations of the Maine Criminal Code (theft) based upon his alleged request and receipt of money from a client whom he had been court-appointed to represent on her criminal charge. District Attorney Anderson once again notified the Board of those new pending charges against Mr. Brett. He again pled not guilty and that criminal matter(s) remains pending against him.

During the time period between Mr. Brett's two arrests, other grievance complaints were filed against him. One of those complaints involved Mr. Brett's handling of his client's (Jeffrey Brisset's) arraignment in the Biddeford District Court. Although the District Court issued proper notice to Mr. Brett of the scheduled arraignment date for his client, neither Mr. Brett nor Mr. Brisset (who was already incarcerated in another county jail but had not been notified or arranged to be present by execution of a writ of habeas corpus) appeared at the initial arraignment. Due to Mr. Brisset's non-appearance, the court forfeited the bail money that his parents (complainants Ernie and Donna Hamel) had posted on

their son's behalf. The District Court later vacated that default and returned the forfeited bail money to Mr. and Mrs. Hamel.

In his response to the Board concerning the Hamels' grievance complaint, Mr. Brett was less than completely candid when he wrote that the District Court failed to provide the necessary notice to him. Assistant Bar Counsel investigated that complaint and on March 27, 2006, a Grievance Commission review panel found probable cause to believe that concerning both his neglect of Mr. Brisset's arraignment and the inaccuracy of his written response to the Board, Mr. Brett had committed misconduct subject to sanction under the Maine Bar Rules.

A subsequent grievance revealed that Mr. Brett also exhibited poor judgment and a lack of impulse control during his interactions with another complainant, Tracy D. At the time they met, Ms. D. was the former partner of Mr. Brett's then client, Taylor S. On more than one occasion, Ms. D. had been assaulted by Mr. S. In order to discuss whether she intended to testify against Mr. S., Mr. Brett repeatedly contacted Ms. D., who met with him to discuss the case. After Mr. S.'s case was resolved, the two met socially on a few occasions as friends, and subsequently Mr. Brett attempted to initiate a romantic relationship with her. Ms. D., however, became uncomfortable with those interactions and ceased contact with Mr. Brett. Mr. Brett, however, persisted trying to reinitiate contact with her. Despite her non-response, he requested to see her again by mailing or hand-

delivering two letters. Ms. D. did not respond to his correspondence, and changed her residence, cancelled her cell phone and changed her email address. Ms. D. then complained to the Board about Mr. Brett's actions.

All of the above-outlined investigations culminated in the Board's expedited filing of a "Petition for Temporary Suspension." On May 11, 2006, counsel for both parties appeared before this Court by teleconference and agreed to a resolution of the Board's Petition. Later that day, this Court issued an order temporarily suspending Mr. Brett, effective May 26, 2006, from the further practice of law in Maine.

Just prior to the issuance of that order of temporary suspension, (on May 10, 2006) the Board received a new complaint from an opposing party concerning Mr. Brett's conduct between September 2004 and August 2005 when he allegedly mishandled a mechanic's lien action, including having direct contact with the opposing party without the consent of that party's attorney. Mr. Brett now agrees he should not have acted as he did in that matter.

On May 12, 2006, the Maine Law Court issued its Per Curiam decision in the matter of *Hayden v. Orfe*, 2006 ME 56, finding among other things that "the appeal is interlocutory and must be dismissed." Mr. Brett served as Appellant Orfes' attorney. In its decision, the Court imposed sanctions upon Mr. Brett's clients because the ". . . appeal (was) obviously without any merit and (had) been

taken with no reasonable likelihood of prevailing. . . .” The Law Court also found that Mr. Brett had stated inconsistent positions at oral argument concerning the facts as they related to the “notice” issue and he was also undecided about those facts. In that opinion, Mr. Brett’s clients were assessed sanctions of “treble costs and reasonable attorney fees in the amount of \$1000.00.”

As recently as June 12 and 13, 2006, the Board received an audio recording of Mr. Brett and a written complaint that confirmed that on June 12th Mr. Brett still acted and spoke in such a manner as to cause a recent former client, and/or his power of attorney, to believe Mr. Brett was still serving as his lawyer or was at least providing some informal legal assistance concerning an appellate matter. The Court hereby stresses that during his suspension from practice, Mr. Brett must completely abstain from providing any advice, assistance or counseling of any kind to anyone.

Taken in their totality, these continuing new allegations against Mr. Brett are serious and disturbing. Mr. Brett acknowledges collectively these allegations exhibit impulsivity, serious lapses of judgment and serious professional misconduct by him. Mr. Brett further agrees that it is necessary and appropriate for him to discontinue his practice of law for an indefinite amount of time.

It is apparent that this misconduct all occurred after Mr. Brett became a solo practitioner without any office support in 2004 and then became financially unable

to pay for health insurance. Based upon that lack of insurance, he could not afford to pay for medical care or medications essential for his mental health functioning and his ability to make reasoned decisions.

While he accepts responsibility for his behavior, Mr. Brett has asserted that he intended no harm and believed that he was justified in his actions. Regardless of Mr. Brett's intent, his actions and inactions referenced above all resulted in various violations of the rules of criminal and civil procedure and the Code of Professional Responsibility. Mr. Brett's misconduct and poor judgment provide the rationale for this Court to protect the public by providing that (at a minimum) Mr. Brett's current suspension from the practice of law remain in effect until further order of this Court.

### **Conclusions of Law**

The parties agree and the Court so finds that Attorney Brett's conduct violated Maine Bar Rules 3.1(a) (conduct unworthy of an attorney); 3.2(f)(1) (conduct subverting any provision of the Maine Bar Rules); 3.2(f)(3)(conduct involving dishonesty, fraud, deceit or misrepresentation); 3.2(f)(4)(conduct prejudicial to the administration of justice); 3.6(a)(3)(neglect of a client's matter); and 3.6(f)(communicating with adverse party).

## Sanction

In light of Mr. Brett's many violations of the Maine Bar Rules, the Court must now consider an appropriate sanction.

Recognizing that the primary purpose of attorney discipline is not punishment, but protection of the public, the Court hereby ORDERS the following sanction in this matter as proposed by the parties:

1. Stephen M. Brett remains suspended from the practice of law until further order of the Court and must proceed pursuant to M. Bar R. 7.3(j)(reinstatement) prior to being readmitted to practice;
2. Within 30 days of this Order, Mr. Brett shall arrange to meet with the Director of the Maine Assistance Program for Lawyers and Judges (MAP) and enter into a contractual relationship with MAP that shall be incorporated by reference in this order. All conditions contained within the contract shall be completed to the satisfaction of and as directed by the Director of MAP;
3. Prior to seeking reinstatement to practice under M. Bar R. 7.3(j), Mr. Brett shall be and remain in compliance with the MAP contract and shall undergo a forensic evaluation by such clinical psychologist as directed by Bar Counsel;
4. Prior to filing any such petition for reinstatement, Mr. Brett shall obtain malpractice insurance coverage in an amount satisfactory to the Board as confirmed by Bar Counsel;
5. Within 90 days of this Order, Mr. Brett shall ensure that all of the sanctions imposed by the Law Court in *Hayden v. Orfe* have been paid as required;
6. In the event a grievance complaint is received by Bar Counsel concerning alleged misconduct by Mr. Brett, such complaint

shall be processed under either Bar Rule 7.1(c) or 7.1(d), as appropriate, but in the event a preliminary review panel finds probable cause of misconduct under Bar Rule 7.1(d)(5), the matter shall then be filed directly before the Court under Bar Rule 7.2(b) instead of before the Grievance Commission under M. Bar R. 7.1(e);

7. Any apparent violation of any of the conditions of this Order shall be filed by Bar Counsel directly with the Court; and
8. On or before June 30, 2006, Mr. Brett shall comply with all the provisions and requirements of Maine Bar Rule 7.3(i)(1)(A), (B) and (C).

Dated: June 20, 2006

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/s/  
Hon. Howard H. Dana, Jr.  
Associate Justice  
Maine Supreme Judicial Court