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JAN 29 2018

BOARD OF OVERSEERS OF THE BAR

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR-17-12

BOARD OF OVERSEERS OF THE BAR  
Plaintiff

v.

**DECISION AND ORDER**

HAROLD H. BURBANK II  
of Canton, CT  
Me. Bar #006813  
Defendant

Pursuant to M. Bar R. 13(g), the plaintiff Board of Overseers of the Bar has filed an Information alleging that defendant Harold H. Burbank II has violated multiple provisions of the Maine Rules of Professional Conduct. The Board seeks serious sanctions against Burbank, namely, his suspension from the practice of law in Maine.

This Information was filed in August of 2017, after a review of Burbank's conduct by the panel of the Grievance Commission. See M. Bar R. 13(e)(10)(E), (g).

The undersigned Active Retired Justice of the Supreme Judicial Court, sitting as a Single Justice, conducted a de novo testimonial hearing in this

matter on October 18, 2017. *See* M. Bar R. 13(g)(2), 14(b). The Board was represented by Bar Counsel J. Scott Davis. Harold Burbank represented himself.

This court finds that the Board has established the following facts by a preponderance of the evidence. *See* M. Bar R. 14(b)(4).

Burbank was admitted to the Maine Bar in 1989. He primarily resides in Connecticut and has practiced law very little in Maine. He is currently administratively suspended from practicing in Maine pursuant to M. Bar. R. 4(g).

The basis for the grievance complaint against Burbank, leading to the filing of the within Information, is the matter of *Lincoln v. Burbank*, 2016 ME 138, 147 A.3d 1165, decided by the Supreme Judicial Court, sitting as the Law Court, on August 30, 2016. This court takes judicial notice of and adopts the findings and conclusions set out in that decision.

The case of *Lincoln v. Burbank* involved an appeal of a Northport property dispute litigated in the Superior Court in Penobscot County, in which neighbors of property owned by the Burbank family filed claims against the Burbanks seeking a prescriptive easement over the Burbank property and a declaratory judgement, for conversion, and for punitive damages against Burbank himself. *Id.* ¶ 18. Burbank represented himself; his father, Harold Burbank I; his brother, David Burbank; and his sister, Lori Darnell. *Id.* ¶ 2. After a jury-waived

trial, the Superior Court found in favor of the neighbors and against Burbank's position. *Id.* ¶ 21. In addition, the Superior Court found in favor of other members of the Burbank family, who were co-owners of the Burbank property, on their cross-claim for partition by sale of the Burbank family property. *Id.* ¶¶ 19, 22. Only Harold Burbank II appealed the Superior Court's judgment. *Id.* ¶ 5 n.4.

The appeal was originally filed by Attorney Mariah A. Gleaton, who later withdrew as the attorney. Thereafter, Harold Burbank II represented himself.

By Order dated January 5, 2016, the Law Court rejected Burbank's brief, which was punched with three holes and bound with twine, *see* M.R. App. P. 7A(g)(3). The Law Court also ordered Burbank to show cause why he should not be sanctioned for failing to show why he should not be disqualified from representing three appellees—the family members he represented before the trial court—while representing himself as appellant. Burbank then moved to withdraw as counsel for the appellees.

The Law Court affirmed the Superior Court's decision, and also sanctioned Burbank for his serious misconduct in prosecuting the appeal.<sup>1</sup> *Id.* ¶¶ 61-64. In particular, the Law Court noted that Burbank stated facts not in

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<sup>1</sup> The Law Court imposed sanctions of \$5,000 toward the neighbors' attorney fees to defend the appeal, and \$5,000 toward the co-owners' attorney fees to defend the appeal.

the trial record, *id.* ¶ 24; raised issues without any further argument, *id.* ¶ 39; listed “meritless” and “frivolous” issues, *id.* ¶¶ 40-41; and made arguments “devoid of legal authority to support them,” *id.* ¶ 52. The Law Court ultimately determined that there was “no merit in any of Burbank’s arguments on appeal, including those raised in his reply briefs.” *Id.* ¶ 45. At the conclusion of its decision, the Law Court summarized,

Throughout the various stages of this appeal, in his briefs, his Supplement of Legal Authorities, his request for oral argument, and his responses to opposing parties’ motions, Burbank has consistently disregarded standards of law and practice that govern appellate review. He has asserted legal arguments that are frivolous and baseless, and, contrary to governing precedent, he has sought to have us consider and decide the appeal on new facts and new evidence that were not part of the trial record on appeal. Burbank’s efforts have been disrespectful to the proper role of the trial court, unfair to and expensive for the other parties, and contrary to Maine appellate law. Burbank’s frivolous and baseless actions are egregious conduct that has confused the issues on appeal, delayed final resolution of this matter, and significantly driven up the costs to other parties. Although the actions taken by Burbank would be concerning if he were a litigant unschooled in law, we note that Burbank is not only an attorney, but an attorney who is licensed to practice in Maine. He is therefore, presumed to be familiar with our case law, our statutes, and our Rules; his actions demonstrate either a complete lack of understanding or an intentional flouting of these guides.

*Id.* ¶ 61.

Burbank’s actions continue to be problematic. In his Answer to the within Information in this case, Burbank has admitted to making errors in

applying and interpreting the applicable rules of court, but has asserted that some rules were not published, and thus he could not interpret or apply them; some rules were ambiguous; and his failure to file timely responses was due to his suffering a stroke. Burbank has failed to pay the \$10,000 in sanctions imposed on him by the Law Court, nor has he fully paid the \$20,000 judgment against him imposed by the Superior Court in the underlying litigation, and has since filed a Chapter 7 bankruptcy action in the Bankruptcy Court in Connecticut. Burbank also did not properly offer all the exhibits at this Bar Discipline Hearing that he made reference to in his post-hearing submission. In short, he does not appear to have a good grasp of the procedural rules of litigation.

Based on the findings and conclusions of the Law Court in *Lincoln*, in conjunction with the evidence presented at the hearing in this matter, this court finds and concludes that Burbank has violated the following Maine Rules of Professional Conduct.

- Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

- Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

- Rule 3.1 Meritorious Claims and Contentions

(a) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a non-frivolous basis in law and fact for doing so, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

- Rule 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.

....

- Rule 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; [or]

....

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

### SANCTION

Having found these violations of the Maine Rules of Professional Conduct, this court now addresses the appropriate sanction. Pursuant to M. Bar. R. 21(c), this court has considered the factors relevant to imposing sanctions.

There are *many* aggravating factors in this case. The misconduct at issue is very serious. Burbank's conduct in the underlying litigation, and especially in the appeal in *Lincoln*, has caused substantial injury to the parties involved in the litigation as well as a waste of judicial resources. Although this court does not find that all of Burbank's misconduct was deliberate, as a practicing attorney, he certainly should have known that his conduct was far afield from the standards expected of a reasonably competent attorney, and that his actions constituted misconduct.

There are *some* mitigating factors that the court feels compelled to consider. Burbank has no prior disciplinary record in Maine, he was under great stress due to his father's poor health, and he himself has suffered from a stroke and is not in good health. There is also evidence that Burbank provided competent legal representation in Maine in the past, namely, in the effort by

Ralph Nader to be placed on the Maine ballot as a presidential candidate in the early 2000s.

The main purpose of imposing a sanction in these disciplinary proceedings is the protection of the public. The sanction to be imposed must be significant because of the serious misconduct that is involved here, and must require that Burbank file a petition for reinstatement in order for him to be reinstated as an attorney in good standing.

Accordingly, pursuant to M. Bar R. 13(g)(4), and 21(b)(6), Harold H. Burbank II is suspended from the practice of law in Maine for a period of twelve months. The suspension is effective immediately.

To be reinstated, Burbank must petition for reinstatement in accordance with M. Bar. R. 29.

Date: *January 24, 2018*



Robert W. Clifford  
Active Retired Justice  
Maine Supreme Judicial Court

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**JAN 25 2018**

Clerk's Office  
Maine Supreme Judicial Court