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BOARD OF OVERSEERS OF THE BAR

STATE of MAINE

SUPREME JUDICIAL COURT

Docket No. Bar-17-9

BOARD OF OVERSEERS OF THE BAR)
Plaintiff)
v.)
JON P. PLOURDE, Esq.)
of Lewiston, ME)
Me. Bar #004772)
Defendant)

ORDER and DECISION
M. Bar R. 13(g)

This attorney disciplinary matter was initiated by the July 12, 2017 submission of a Stipulated Waiver of Grievance Commission Proceedings, signed by the Board of Overseers of the Bar's Bar Counsel, J. Scott Davis, and counsel for Attorney Jon P. Plourde, James M. Bowie, Esq. In an order dated July 26, 2017, the Court permitted Bar Counsel to file a disciplinary Information with the Court. On September 21, 2017, that Information was filed, pursuant to M. Bar R. 13(g). Attorney Plourde's response was submitted on October 10, 2017.

Upon appropriate notice, the Court conducted a disciplinary proceeding on January 26, 2018. The Board of Overseers of the Bar was represented by Bar Counsel Davis, and Attorney Plourde appeared with Attorney Bowie.

In advance of this proceeding, the parties' counsel had submitted an agreed-upon proposed Order for the Court's review. That proposed Order set forth the relevant underlying facts and admitted misconduct committed by Attorney Plourde. In addition, without objection by Attorney Plourde, Board Exhibits 1-9 were admitted at the hearing. The Court also received two confidential psychotherapeutic evaluation reports and, after review, accepted each of the reports as sealed and impounded.

After reviewing the proposed Order, those exhibits and two reports, and after hearing from Attorney Plourde and from each attorney, the Court issues the following Order:

FINDINGS

1. Attorney Plourde, currently of Lewiston, Maine, was at all times relevant hereto an attorney duly admitted to and engaged in the practice of law in the State of Maine and subject to the Maine Bar Rules and to the Maine Rules of Professional Conduct.
2. Attorney Plourde was first admitted to the Maine Bar in 2011 and, since that time, has engaged in private practice, initially in Presque Isle and most recently in Auburn, Maine. He has not engaged in the practice of law since March of 2017.

3. In December of 2015, and throughout the time of the events giving rise to this action, Attorney Plourde was employed as an attorney at a law firm in Auburn.
4. On December 4, 2015, Attorney Plourde filed an action in the York County Superior Court to collect money on a contract. On January 13, 2016, counsel for the defendant served Attorney Plourde with interrogatories and document requests.
5. On February 15, 2016, defendant's counsel served Attorney Plourde with a Notice of Deposition of his client with an incorporated request for production of documents.
6. On April 27, 2016, a Superior Court Justice issued a written order requiring Attorney Plourde to timely and correctly respond to the earlier discovery orders by June 1, 2016. Attorney Plourde failed to inform his client of that time-sensitive court order and also failed to comply with it.
7. On May 12, 2016, defendant's counsel notified Attorney Plourde that the new date for his client's deposition was June 14, 2016.
8. On June 8, 2016, defendant's counsel notified Attorney Plourde that, because Attorney Plourde's client had failed to comply with outstanding discovery requests, he was cancelling Plourde's client's deposition. As mentioned above, Attorney Plourde had never informed his client of the

need for particular discovery responses, and never told his client of the deposition's cancellation.

9. On June 14, 2016, Attorney Plourde and his client arrived for the deposition. For the first time, the client learned that the deposition had already been cancelled.
10. On June 16, 2016, the court held a second discovery conference. At the conclusion of the conference, the court imposed a \$250.00 sanction on Attorney Plourde for his failure to comply with the April 27, 2016 discovery order.
11. On July 1, 2016, the court levied sanctions against Attorney Plourde's client totaling \$2,276.56, to be paid "forthwith," to cover the defendant's attorney fees. Attorney Plourde did not tell his client about this sanction.
12. On August 22, 2016, at a separate deposition, another attorney informed Attorney Plourde's client that a monetary sanction had been imposed on him by the court.
13. On August 23, 2016, in a telephone call, Attorney Plourde told his client that the firm would consider paying the \$2,276.56. In fact, however, the firm did not even know of the court sanction.

14. On October 5, 2016, defendant's counsel filed a Motion to Show Cause regarding the unpaid sanction amounts. Attorney Plourde failed to inform his client of that motion, and failed to file any response to it.
15. On October 6, 2016, for the first time, Attorney Plourde informed his firm's Management Committee of the sanctions imposed against him and his client, and requested that the firm pay all of those sanction amounts.
16. On December 6, 2016, the firm's Management Committee approved payment of the \$250.00 sanction imposed against Attorney Plourde, but declined to pay the sanction imposed against the client. Attorney Plourde never told his client that the firm had declined to pay the sanction imposed against him.
17. On February 8, 2017, the court sent a Notice of Hearing to counsel, setting a hearing date of March 7, 2017, regarding defendant's counsel's motion to show cause. Attorney Plourde failed to timely notify his client of the hearing. The only notification he provided was an email sent at 6:58 a.m. on the same day of that hearing.
18. On March 7, 2017, after conducting the show cause hearing, the court issued an order confirming that defendant's counsel intended to file a motion to dismiss due to Attorney Plourde's client's failure to comply with the earlier discovery order. On that same date, Attorney Plourde

made misrepresentations to the court concerning the nature of that non-compliance and his related communications with his client.

19. On March 7, 2017, the firm learned that Attorney Plourde had created falsely-dated letters that he had attached to his March 7, 2017 email to his client. After being confronted, Attorney Plourde admitted that he had created the false letters and had made the above-referenced misrepresentations to the court. The firm then took possession of Attorney Plourde's office keys, wiped his cell phone of any firm email, cut off his access to the firm's server (including any telephonic access), and removed him from the firm's office.
20. On March 9, 2017, defendant's counsel filed a motion to dismiss based upon Attorney Plourde's continuing failure to comply with the court's discovery orders (see Board Exhibit #4).
21. This grievance matter was initiated by Attorney Plourde's self-report through his counsel, Attorney Bowie, of March 10, 2017 (see Board Exhibit #1) and his former firm's related complaint filing of March 16, 2017 (see Board Exhibit #2).
22. On March 29, 2017, Attorney Plourde executed an affidavit ("Affidavit of Jon Plourde"), in which he agreed and confirmed that he had engaged in

professional misconduct concerning his obligations to his client (see Board Exhibit #6).

23. On August 29, 2017, the Superior Court issued an order denying the defendant's motion to dismiss in that underlying litigation (see Board Exhibit #3). In that order, Justice Douglas found that "Attorney Plourde's (above-described) actions raise serious questions about potential violations of his ethical obligations as an officer of the court and member of the bar." On that same date, the court filed its order and other related documents with the Board, stating that he believed he was required to do so by Rule 2.15 of the Maine Code of Judicial Conduct (Disciplinary Responsibilities).

VIOLATIONS OF THE MAINE RULES OF PROFESSIONAL CONDUCT

Based on the facts set forth above, the Court finds and concludes that Attorney Plourde engaged in multiple violations of the applicable Maine Rules of Professional Conduct. Specifically, those Rules include M. R. Prof. Conduct 1.3 (diligence); 1.4(a)(b) (communication); 3.3(a) (candor toward the tribunal); 3.4(c) (fairness to opposing party and counsel); and 8.4(a)(c)(d) (misconduct) (dishonesty) (conduct prejudicial to the administration of justice).

SANCTIONS

The Court looks to Maine Bar Rule 21(c) for direction on the proper factors to consider and analyze in the issuance of an appropriate disciplinary sanction. That rule states as follows:

(c) Factors to be Considered in Imposing Sanctions. In imposing a sanction after a finding of lawyer misconduct, the Single Justice, the Court, or the Grievance Commission panel shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions:

(1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

(2) whether the lawyer acted intentionally, knowingly, or negligently;

(3) the amount of the actual or potential injury caused by the lawyer's misconduct; and

(4) the existence of any aggravating or mitigating factors.

In this matter, Attorney Plourde agrees that his misconduct violated important duties that he owed to his client, to the legal system—including the involved jurist and opposing counsel—and to the profession. There is also no dispute that he intentionally ignored Justice Douglas's discovery orders, including sanctions, and likewise intentionally failed to inform his client of important matters, including sanctions imposed against that client. The potential injury to that client was significant but, due to the willingness of

Attorney Plourde's former colleagues to step in as the client's counsel and to make full payment of the \$2,276.56 sanction imposed on the client, the actual injury to the client was minimal.

Finally, the existence of aggravating and mitigating factors must be reviewed and considered. There are two significant aggravating factors here. First, Attorney Plourde demonstrated dishonesty by failing to inform his client of significant court orders, including a monetary sanction that the court had issued against him, and by making misrepresentations to the court and to opposing counsel. Second, Attorney Plourde exhibited a pattern of misconduct by his continued noncompliance with the court's discovery orders.

In mitigation, Attorney Plourde has no prior disciplinary record, has been cooperative and remorseful throughout the processing of this matter, accepted full responsibility for his actions during the hearing, and is a relatively inexperienced lawyer.

After review of Attorney's Plourde's misconduct and the aggravating and mitigating circumstances discussed above, and with the agreement of the parties, the Court imposes the following sanction:

1. Attorney Plourde is hereby suspended from the practice of law in Maine for two years.

2. The order of suspension is effective retrospectively, to commence on March 8, 2017, the date he was immediately removed from practice at his former firm.
3. The second year of that suspension (March 9, 2018 through March 8, 2019) is itself suspended, subject to the conditions of a separate Monitor Order that is hereby incorporated and included by reference.
4. Because the second period of suspension is itself suspended, and because the Court is satisfied that he has met the criteria for reinstatement set forth in M. Bar R. 29(e), Attorney Plourde is reinstated to the practice of law, effective March 9, 2018, pursuant to M. Bar R. 29(a).
5. Due to Attorney Plourde's removal from practice effective March 8, 2017, the Court is satisfied that the requirements of M. Bar R. 31 have been met, i.e., that Attorney Plourde has no current clients of any nature or any matters with opposing counsel to so notify of his suspension from practice. Nevertheless, the Court orders that Attorney Plourde shall file an affidavit with Bar Counsel within 30 days after the date of this Order confirming the absence of any current clients. See M. Bar R. 31(h).

Date: February 1, 2018



Ellen A. Gorman, Associate Justice
Maine Supreme Judicial Court

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