

Board of Overseers of the Bar

v.

Robert A. Nadeau. Esq.

GCF #7-204

Decision of Panel B, following hearing on May 19, 2011

The Board of Bar Overseers presents a ninety-nine (99) numbered paragraph amended petition, dated November 10, 2010, detailing circumstances giving rise to Respondent attorney's alleged violation of Maine Bar Rules 3.1(a): 3.2(f)(1)(3)(4): 3.6(a)(e)(1)(2)(iii)(iv) and 3.13(c). The undersigned members of Grievance Commission Panel B conducted a hearing regarding this matter on May 19, 2011. The Board was represented by [Attorney's Name] and Respondent was represented by [Attorney's Name].

The amended petition in essence alleges errors and improprieties in attorney Nadeau's handling and administration of his law firm's client trust account, especially during 2007, when his practice and personal life were in considerable tumult. Nadeau was then a veteran attorney owning a diversified law practice with offices in three Maine towns in which he employed 6 or 7 other lawyers and a staff of 7 or 8 non-lawyers, including a bookkeeper, [Bookkeeper's Name] responsible for the firm's billings and financial records. [Bookkeeper] was hired in 2003, had prior bookkeeping experience and her job performance until 2007 was unremarkable.

In addition to his private law practice, attorney Nadeau devoted 40% of his professional time to his elected position as judge of probate in York County, a position he held for 12 years.

The panel has reviewed voluminous submissions by both parties, and considered testimony by attorney Nadeau and by his mother, [Name]. Nadeau has at all times conceded errors that were made in administering this bank account. He acted rapidly and effectively after learning of each of these mistakes to correct the improper actions of [Bookkeeper] and to insure that none of his clients experienced any loss or other harm. Other than [Name of Client filing the bar complaint], the original complainant, no clients even became aware of errors involving the handling of client funds.

Chronology of Events

On or about June 22, 2007, Respondent learned that his firm's bookkeeper, [Name], was transferring funds from the firm's IOLTA account to the firm's operating account, before actual bills were prepared and sent to clients. (Board Exhibit 24) She did this based on rough estimates of fees due from clients with IOLTA balances. Respondent emailed Ms. Hansen that these actions were wholly improper and had to be corrected. He arranged for her to meet with a C.P.A. to improve her understanding of proper bookkeeping practices, but never thereafter investigated whether she was performing her work properly, instead assuming that her erroneous practices had been corrected.

At about the same time the IOLTA problems were uncovered, Nadeau's former clients [Names] asked Nadeau's office to transfer funds from a recent real estate closing which Nadeau, with the [Client's] consent, had agreed to hold in escrow pending resolution of litigation. [Bookkeeper] told the [Clients] that no funds were available to them, because they had been transferred to the law firm as payment due for legal fees. These transactions were previously disclosed to the [Clients] in billing statements. Respondent discovered that a former associate failed to instruct [Bookkeeper] that the escrowed funds were not available to pay the firm's fees. He immediately replaced those funds in the firm's IOLTA account, but was unable to release them to the [Clients] as they had requested.

Delays in the [Client's] recovery of their escrowed funds resulted from circumstances beyond Respondent's control. First and foremost, the controlling escrow agreement precluded release of the funds until litigation was resolved, which did not occur until February, 2008. Within a day or two of that event, Nadeau and Associates filed for bankruptcy. The bank where the IOLTA account was maintained improperly seized the IOLTA account as security for its loan to the law firm. Nadeau vigorously contested this action, and was ultimately successful in regaining control of that account. While waiting for that litigation to conclude, Respondent voluntarily repaid [Clients] from his own funds, with interest. This exceeded what attorney Nadeau was required to do by law.

In late 2007 or early 2008 Respondent hired his mother, [Name], to learn his new law firm's billing system and scrutinize its bank accounts. [Nadeau's mother] was a C.P.A. with a master's degree in finance. After studying the billing system for a week, she discovered a significant discrepancy between the year-end bank statement for the IOLTA account and the firm's own record of IOLTA funds. She learned that [Bookkeeper] had continued taking fees from the IOLTA account and depositing them in the firm's operating account, based on estimates of what had been earned, rather than completed billing statements. Respondent promptly restored the overdrawn IOLTA funds from his own funds and loans he got from family members.

[Nadeau's mother] also discovered that Respondent's firm's IOLTA account was improperly used to pay credit card fees. Attorney Nadeau obtained sufficient funds to correct this discrepancy and protect his client deposits. He also terminated the employment of [Bookkeeper] and hired a C.P.A. vetted by [Nadeau's mother] to maintain the firm's future financial records.

Conclusions

The panel concludes that Respondent ultimately bears some responsibility for the mismanagement of his law firm's IOLTA account. Even though the mistakes were made by his bookkeeper, attorney Nadeau owned the law firm and had the responsibility to protect his client's assets by assuring that the various accounts were being managed according to accepted accounting practices. Although Nadeau apparently did not

understand the TABS billing system, he should have monitored the IOLTA account deposits regularly and more carefully. This could have been accomplished, for example, by regular reconciliation of the account transactions and balances with statements provided by his bank. Therefore, the panel finds there is probable cause that attorney Nadeau's supervision of his firm's IOLTA account and of his firm's bookkeeper violated Maine Bar Rule 3.13(0(1)).

There is no evidence, and the Board does not argue, that attorney Nadeau was personally aware of or sanctioned any of the errors involving the firm's IOLTA account. He responded immediately and effectively upon learning of each bookkeeping irregularity. There is no evidence of any harm suffered by any client of the firm, and no harm was otherwise experienced by the public, the profession or the judicial system by the Respondent's conduct. There is also no likelihood that these mistakes will reoccur, as Respondent has adopted improved bookkeeping and accounting practices. For these reasons we conclude that the petition shall be dismissed with a warning.

Maine Bar Rule 7.1(d)(4)(A)

June 2, 2011

Signed by Maurice Libner, Esq., Ann M. Courtney, Esq., and Susannah White (lay member)