

STATE OF MAINE

Board of Overseers of the Bar

Grievance Commission  
File Nos. 03-255, 03-335

BOARD OF OVERSEERS OF THE BAR )  
)  
                                Petitioner                     )  
)  
       v.   )  
)  
ROBERT M. A. NADEAU, ESQ.                                     )  
   of Wells, Maine   )  
   Maine Bar No. 7460   )  
)  
                                Respondent                     )

REPORT OF FINDINGS  
OF PANEL D  
OF THE GRIEVANCE  
COMMISSION

On May 19 and May 20, 2005, pursuant to due notice, Panel D of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1(e)(2), concerning the Respondent, Robert M. A. Nadeau, Esq. This disciplinary proceeding was commenced by the filing of a Petition by the Board of Overseers of the Bar on October 20, 2004. Count I of the Petition (GCF # 03-255) alleged misconduct in connection with Respondent’s personal relationship with a client, in violation of M. Bar R. 3.1(a), 3.2(f)(3), 3.2(f)(4), 3.4(a), 3.4(b), 3.4(f)(1), 3.6(a)(2), and 3.6(a)(3). Count II of the Petition (GCF # 03-335) alleged misconduct in connection with Respondent’s communication with an adverse party that Respondent knew to be represented by counsel, in violation of M. Bar R. 3.1(a), 3.2(f)(4), 3.6(a), and 3.6(f).

At the hearing, Assistant Bar Counsel Nora Sosnoff represented the Board, and Attorney Karen Kingsley represented the Respondent, Attorney Robert M.A. Nadeau. The Board’s exhibits marked P1 through P20, and Respondent’s exhibits marked R1

through R15 and R 17 through R19, were admitted without objection.<sup>1</sup> The parties also submitted a joint exhibit marked J1, which was admitted. The Panel heard testimony from the following witnesses:

- [Maryann]
- [Witness Name]
- Robert M. A. Nadeau, Esq.
- [Witness Name]
- [Witness Name]
- [Witness Name]
- [Witness Name]
- [Witness Name]
- [Witness Name]
- [Witness Name]

Despite the lengthy testimony and voluminous documentary evidence, the material facts were not substantially disputed. Having heard the testimony and reviewed the evidence submitted, the Panel hereby makes the following findings:

**FINDINGS**

Respondent is, and 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.

Count I (GCF # 03-255)

Beginning March 3, 2003, Respondent commenced representation of [Maryann] in connection with her divorce from [Ex-husband]. In the course of that representation, Respondent gained substantial knowledge as to [Maryann's] finances, personal history, and state of mind.

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<sup>1</sup> Respondent's exhibit R16 was neither offered nor admitted. Respondent's exhibit R20 was offered, but was not admitted.

On June 20, 2003, Respondent prepared and filed with the court a Motion Pending Divorce on [Maryann's] behalf. Later that same day, [Maryann] came to Respondent's office. During that meeting, Respondent informed [Maryann] that he had personal feelings for her that would require him to terminate his legal representation of her and would require her to obtain other legal counsel.<sup>2</sup> He and [Maryann] then had a consensual sexual encounter.

On June 22, 2003, Respondent dictated a Notice of Withdrawal in [Maryann's] divorce matter. As a motion was pending before the court at that time, leave of court was required for Respondent's withdrawal pursuant to MR. Civ. P. 89(a).<sup>3</sup> However, Respondent did not file a motion with the court for leave to withdraw. Instead, he included the Notice of Withdrawal in the copy of her file that he sent to [Maryann], with a cover letter requesting that she have her successor counsel file it with the court together with successor counsel's entry of appearance. The Panel finds that Respondent's motive in proceeding in this manner was to conceal the sexual relationship between himself and his client. The District Court did not actually grant Respondent leave to withdraw as [Maryann's] counsel until July 14, 2003, and the Panel finds that Respondent remained [Maryann's] attorney until that date. [Maryann's] successor counsel withdrew effective October 7, 2003, at which time she retained a third attorney in her divorce action. As a

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<sup>2</sup> Respondent testified that he clearly informed [Maryann] at that time of his termination of his legal representation of her, and that she agreed. [Maryann] testified that Respondent told her that one of his partners or associates would represent her, but that he would continue to control her case, and in any event that she did not voluntarily consent to his termination of representation. The Panel does not find it necessary to resolve the factual dispute as to whether [Maryann] agreed to the termination of Respondent's representation of her prior to their sexual encounter.

<sup>3</sup> The provisions of M. Bar R. 3.4(a) were amended effective July 1, 2004, to articulate specifically the ethical requirements applicable to the termination of an attorney's representation of a client. However, Respondent argued, and the Panel finds, that these same requirements were implicit in the Maine Bar Rules that were in effect as of June and July 2003. Cf. M. Bar R. 3.5(a)(2) (reasonable steps on withdrawal).

result of Respondent's withdrawal, [Maryann] experienced disruption and additional expense in her divorce action, but it does not appear that her case was substantially prejudiced.<sup>4</sup>

On July 7, 2003, [Ex-husband] vacated the marital premises that he shared with [Maryann], and Respondent moved in with [Maryann] the following day. The relationship between Respondent and [Maryann] continued until August 13, 2003.

Count II {GCF # 03-3351}

Due in part to Respondent's relationship with [Maryann] and his ensuing actions, his then law partner, Amy McGarry, Esq., and their then associate, Pamela Holmes, Esq, decided to leave his law firm and establish a separate law practice together. Following that action, a dispute ensued as to the terms of that separation, including the appropriate disposition of certain client fees and retainer balances. In the course of that dispute, the parties exchanged increasingly acrimonious correspondence.

By letter dated November 1, 2003, Jack Hunt, Esq., notified Respondent of his representation of Attorney McGarry and Attorney Holmes in connection with that dispute. That letter was faxed to Respondent, and the Panel finds that Respondent was aware of Attorney Hunt's representation of Attorney McGarry and Attorney Holmes on or about November 1. At all times relevant to Count II, Respondent represented himself and his firm in the dispute with Attorney McGarry and Attorney Holmes.

On November 10, 2003, Attorney Hunt filed suit against Respondent on behalf of Attorney McGarry and Attorney Holmes, and served Respondent with process that same day. Later on November 10, after having received service, Respondent faxed a letter

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<sup>4</sup> Although Assistant Bar Counsel argued that future prejudice is foreseeable based on the risk of post-divorce litigation, the Panel does not find it necessary to make any finding on this point.

both to Attorney Hunt and directly to Attorney Hunt's clients. On November 17, 2003, Respondent sent a second letter to Attorney Hunt, which he again faxed directly to Attorney Hunt's clients.

At the time he sent that letter to Attorney McGarry and Attorney Holmes, Respondent was aware of the prohibition in M. Bar R. 3.6(f) against communicating directly with a party the lawyer knows to be represented by counsel; however, he testified variously that the communications were harmless because Attorney Hunt's clients were themselves attorneys, that the communications were intended as a courtesy to Attorney McGarry and Attorney Holmes, or that the urgency of the matter justified his violation of the rule because he was scheduled to leave on a business trip the following day.

### **CONCLUSIONS AND SANCTIONS**

The Panel concludes that Respondent has conducted himself in a manner unworthy of an attorney. The exact scope and nature of the Bar Rules violated by Respondent's conduct presents a more difficult question, due at least in part to the fact that the specific rules referenced in the Petition do not appear to align precisely with the conduct that was alleged in the Petition and supported by the evidence at the hearing. Respondent has conceded, however, that uncharged violations of the Bar Rules may be the basis of discipline as long as no unfair surprise results. The Panel concludes that, as no factual matters raised in the evidence presented at the hearing resulted in surprise to Respondent, the Panel is free to draw its own conclusions as to which Bar Rules were implicated on the basis of those facts.

### Count 1: Finding of Probable Cause for Filing of Information with Court

With regard to Count I, the Panel concludes that Respondent violated M. Bar R. 3.1(a), 3.2(f)(1) and 3.2(f)(4), 3.5(a), 3.5(b)(2)(ii), and 3.5(b)(2)(iii). Respondent also violated the requirements regarding an attorney's termination of representation of a client, now codified in M. Bar R. 3.4(a)(3), as implicit under the Bar Rules that were in effect at that time. Contrary to Respondent's assertion, his sexual relationship with [Maryann] occurred in significant part during a time when he was her attorney.

Respondent's misconduct was either knowing or at least negligent, in that Respondent either knew or should have known of the requirements of MR. Civ. P. 89 regarding leave to withdraw, and of the applicable requirements of M. Bar R. 3.4(a) and 3.5(a) regarding termination and withdrawal. Contrary to Respondent's assertion, his misconduct caused substantial injury to his client, the public, the legal system, and the profession. With regard to aggravating factors, the Panel concludes that Respondent was motivated by his own personal interests and relationships, that his misconduct materially and adversely affected his representation of his client, that he disclaimed personal responsibility for his violation of the Bar Rules, that he has failed to acknowledge the adverse consequences of his misconduct, that he was free of any impairment that would tend to excuse his misconduct, and that he abused his client's trust and confidence and used knowledge gained in the course of representation to his own advantage. See Board of Overseers of the Bar v. Mangan, BAR-99-5 (Feb. 28, 2000) (Saufley, J.) (slip op. at 20-21). With regard to mitigating factors, the Panel concludes that Respondent is unlikely to repeat the misconduct that gave rise to Count I.

In light of the foregoing factors, the Panel concludes that with regard to Count I, probable cause exists for Attorney Robert M. A. Nadeau's suspension or disbarment, and hereby directs Bar Counsel to commence an attorney disciplinary action with the Court by filing an information under M. Bar R. 7.2(b).

Count II: Public Reprimand

With regard to Count II, the Panel concludes that Respondent violated M. Bar R. 3.1(a), 3.2(f)(1), 3.2(f)(4), and 3.6(f). The Panel concludes that Respondent's misconduct was intentional or knowing, and was for the purpose of obtaining advantage in the dispute with Attorney McGarry and Attorney Holmes. While the injury caused by Respondent's misconduct was at worst minimal, Respondent violated a duty owed to the legal system and to the profession. With regard to aggravating and mitigating factors, the Panel concludes that Respondent showed no remorse for this misconduct, and that Respondent would be likely to repeat such misconduct in the future should he conclude that it was to his advantage to do so.<sup>5</sup>

In light of the foregoing factors, the Panel concludes that the appropriate disposition of Count II is a public reprimand to Attorney Robert M. A. Nadeau, and he hereby is so reprimanded.

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<sup>5</sup> In reaching this conclusion, the Panel takes into account the Respondent's prior history of dismissal with a warning, for conduct unbecoming an attorney in violation of M. Bar R. 3.1(a) and conduct prejudicial to the administration of justice in violation of 3.2(f)(4), based on intemperate communications with a former client. The Panel observed a continuing pattern of intemperate conduct on the part of Respondent in the course of the hearing.

[SIGNED AND DATED June 2, 2005]