Members: Archer, Barkin, Briggs, Courtney, Fuchs, Mills, McGill, Rosenblatt, Silverstein
Majority: Archer, Briggs, Mills, Rosenblatt, Silverstein
Dissenting: Barkin, Courtney, Fuchs, McGill

STATE OF MAINE
MAINE BOARD OF BAR EXAMINERS

IN RE: F. Lee Bailey	)	Decision of the Board
	)	Pursuant to M. Bar Admission R. 9(d)

F. Lee Bailey seeks admission to the Maine bar, contending that he has produced satisfactory evidence of good character and fitness to practice law as required by Maine Bar Admission Rule 9 and Maine Bar Rule 7.3(j). As discussed more fully below, this Board concludes that Mr. Bailey has not met his burden of demonstrating by clear and convincing evidence that he possesses the requisite good character and fitness necessary for admission to the Maine bar.

FACTUAL BACKGROUND

F. Lee Bailey had a long and brilliant legal career, which ended in disbarment in multiple jurisdictions. This decision does not attempt to recount all of his history but instead focuses upon those aspects of Bailey's history that are necessary to a full understanding of this Board's conclusions.

Bailey graduated from law school in May 1960 and was admitted to practice in Massachusetts in November 1960.[1] He moved to Florida in 1985 and was admitted to

[1] In 1970, the Supreme Judicial Court of Massachusetts censured Bailey for his conduct in connection with three separate cases between 1964 and 1969. The following year, 1971, the Supreme Court of New Jersey

the Florida bar in September 1989. Over the years, he had a successful legal practice with a mix of civil and criminal cases, including many high-profile clients.

In 1994, Claude Duboc hired Bailey to represent him in connection with federal drug smuggling and money laundering charges. In light of the strength of the case against Duboc, Bailey employed a strategy of cooperation to forfeit as many of Duboc's assets as possible "in the hope that the court would credit [Duboc] at sentencing for his cooperation." *In re Bailey*, 450 F.3d 71, 74 (1st Cir. 2006). *See also* Bd. Ex.[2] 21 at 3, ¶ 8. Duboc held significant real and personal property, including two estates in France that required "substantial infusions of cash for maintenance." *Id.* ¶ 10. Ultimately, Duboc's 602,000 shares of Biochem Pharma stock then valued at $5,891,352.00 were segregated and transferred to Bailey's Credit Suisse investment account "from which to market, maintain and liquidate the French properties and all other assets." *Id.* ¶¶ 12-13. *See also Florida Bar v. Bailey*, 803 So. 2d 683, 685, 687 (Fla. 2001). Duboc then pled guilty and awaited sentencing. *Id.* at 686.

Following the transfer, Bailey derived $4 million from selling shares of the Biochem stock and borrowing against them. *Id.* at 687. He transferred $3.5 million of those proceeds to his personal money market account, which was not a lawyer's trust account. *Id.* By December of 1995, Bailey had transferred all but $350,000 of those proceeds into his personal checking account. *Id.* From this checking account, Bailey

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suspended Bailey's privilege to practice *pro hac vice* in New Jersey for a one-year period for, as he described to this Board, writing and circulating "angry letters."

[2] Both the Board and Bailey submitted exhibits. For convenience, the Board's exhibits shall be referred to as "Bd. Ex." and Bailey's exhibits shall be referred to as "Bailey Ex."

paid personal expenses and used funds toward the purchase of a residence. *Id.* Bailey asserted his conduct was permissible because he believed he was permitted to pay himself attorney fees as the case progressed, subject to recapture in the event the Judge later disapproved any of the fees taken.

In addition to the Biochem stock transactions, Bailey sold Duboc's "Japanese Stock" in July of 1994 and deposited approximately $730,000 into his Credit Suisse account. *Id*. at 686. He then transferred those funds into his personal money market account and commingled those funds with his own. *Id*. In August of 1994, after the funds accrued interest to his personal account, Bailey paid the $730,000 to the United States Marshal. *Id.* At least at the time of the proceedings before the Florida Bar in 2001, Bailey had not accounted for the accrued interest. Bd. Ex. 21 at 5.

In the fall of 1995, Duboc expressed his intention to replace Bailey as counsel and requested that Bailey turn over all of Duboc's funds and assets to his new counsel. *In re Bailey*, 786 N.E.2d 337, 344 (Mass. 2003). By the end of the year, Bailey had not made the transfer and Duboc's new counsel filed a motion to substitute with the court. *Id.* Five days before the hearing on the motion to substitute, Bailey sent a letter to the presiding judge in the case, Judge Maurice Paul. *Id.*; Bd. Ex. 25. Even though Judge Paul had yet to sentence Duboc, Bailey's letter referred to Duboc as a "multi-millionaire druggie" and disparaged both Duboc and Duboc's new counsel. Bd. Ex. 25 at 2-3. The last paragraph of the letter admits it was sent ex parte, stating "I have sent no copies of this letter to anyone." *Id*. at 4. Bailey testified at the hearing before this Board that the ex parte letter was an attempt to warn Judge Paul about a possible future bribe attempt.

On January 12, 1996, Judge Paul removed Bailey as Duboc's counsel and ordered Bailey to give a full accounting of the "monies and properties held in trust by him for the United States of America." Bd. Ex. 26. That order also "froze all of the assets received by Bailey from Duboc and further prohibited their disbursement." *Florida Bar v. Bailey*, 803 So.2d at 687. Although Bailey referred to specific provisions of this order in a January 21, 1996, letter to Judge Paul, he maintained that he never physically saw the order until February 2, 1996. Bd. Ex. 21 at 10, 12.

Then, on January 25, 1996, Judge Paul ordered Bailey to bring the shares of Biochem stock and/or any replacement assets to a February 1, 1996, hearing. Bd. Ex. 27. A copy of this order was served upon Bailey by "facsimile, mail and by the United States Marshal." *Id.* at 2; Bd. Ex. 21 at 12, ¶ 9(f). This was to "ensure[] that Bailey did indeed receive it." *In re Bailey*, 786 N.E.2d at 346 n.11. Despite this order, Bailey continued to use the funds from the Biochem stock. Bd. Ex. 21 at 10.

He testified before Judge Paul and later asserted under oath in the Florida Bar proceedings that he did not see either of the January 1996 orders until February 2, 1996. *Id.* at 10, 12. The Referee in the Florida Bar proceedings found Bailey's testimony on this issue both before Judge Paul and the Florida Bar to be "false" and determined that Bailey "lied" on multiple occasions. *Id.* at 12-13. Bailey testified before this Board that although he had not "physically seen" the January 25, 1996, order, it was read to him over the telephone. He believed that order to "supervene" the January 12, 1996, order freezing the stock, which he also claims not to have read.

After entry of the January 25, 1996, order, Bailey's attorney informed the Swiss government that the Biochem stock and proceeds was the result of drug trafficking, and Bailey's Credit Suisse account was frozen. *In re Bailey*, 786 N.E.2d at 345. Bailey was then held in contempt and jailed for 44 days. *Id.* at 346.

Bailey never made application to Judge Paul for attorney fees. *Id.* at 346 n.12. Instead, he brought suit in October 1996 against the United States for breach of contract, alleging that the Biochem stock was transferred to him "unconditionally and in fee simple" and that the government breached an implied-in-fact contract by seeking forfeiture of the stock. *Bailey v. United States*, 40 Fed. Cl. 449, 450 (1998). Following "an extensive opportunity to hear witnesses at trial and a continuing stream of post-trial filings," the United States Court of Claims held that there was no implied-in-fact contract between Bailey and the government that any appreciation in the Biochem stock would inure to Bailey's benefit and entered judgment for the United States. *Bailey v. United States*, 54 Fed. Cl. 459, 460, 508, *aff'd* No. 03-5044, 2004 WL 386593 (Fed. Cir. Feb. 27, 2004). Bailey believes that this decision was tainted because the Department of Justice delayed supporting Judge Horn's re-nomination to the bench in an attempt to improperly pressure her into ruling against him.

The Florida Bar filed a complaint against Bailey, alleging seven counts of misconduct in connection with the Duboc case. [3] A multi-day testimonial hearing was held before a referee in May and June of 2000, who then issued a 24-page decision

[3] Count VI was dismissed by the Florida Bar. Bd. Ex. 21 at 19.

detailing her findings of fact and conclusions of law. In sum, the referee found that Bailey (1) improperly commingled proceeds from the sale of the Japanese stock with his own personal funds, which conduct was aggravated by his attempt to minimize his "obvious intent" and his failure to account for the interest that accrued during the time he held the funds in his money market account, (2) misappropriated sale and loan proceeds from the Biochem stock and commingled those proceeds with his own money, (3) misappropriated Biochem stock sale and loan proceeds and continued to expend funds from his money market account after service and knowledge of Judge Paul's January 1996 orders, engaging in dishonest conduct and misusing money held in trust, (4) falsely stated under oath that he did not see Judge Paul's January 1996 orders until February 2, 1996, (5) deprived Duboc and the United States of the value and/or benefit of the Biochem shares in misappropriating those shares, and (6) engaged in self-dealing, disclosed client confidences and sent an improper ex parte communication to Judge Paul. Bd. Ex. 21.

The Supreme Court of Florida approved the referee's findings and ordered that Bailey be disbarred, with the right to reapply for readmission after five years.[4] *Florida Bar v. Bailey*, 803 So.2d at 695. Bailey was then reciprocally disbarred in Massachusetts. *In re Bailey*, 786 N.E.2d at 351 (affirming decision of single justice). In March of 2005, a three-judge panel of the United States District Court for the District of Massachusetts

[4] The Supreme Court of Florida specifically noted that Bailey would need to retake the Florida bar examination, comply with the "rigorous background and character examination," and demonstrate "knowledge of the rules of professional conduct required of all new admittees." *Florida Bar v. Bailey*, 803 So. 2d 683, 695 (Fla. 2001). Bailey has never reapplied for readmission to Florida.

held a hearing on an order to show cause why it should not impose reciprocal discipline upon Bailey. *In re Bailey*, No. M.B.D. NO. 02-10093, 2005 WL 2901885, at *1 (D. Mass. Nov. 1, 2005). Bailey then made a proffer in support of his request for an evidentiary hearing. *Id.* After reviewing the proffer, the District of Massachusetts ordered Bailey disbarred.[5] *Id.*, *aff'd* 450 F.3d 71 (1st Cir. 2006).

The Duboc case and resulting disbarments were not the end of Bailey's troubles. Starting in 1996, the Internal Revenue Service ("IRS") began conducting an examination of Bailey's tax returns. Between May 1997 and April 2002, the IRS issued Bailey 29 information document requests ("IDRs"), with respect to the airplane rental activity, yacht rental activity, and airplane remanufacturing activity that he conducted through two entities known as Palm Beach Roamer, Inc. ("PBR") and Bahamas Enterprises, Inc. ("BEI"). According to the Tax Court, Bailey "failed to fully comply with the IDRs, and he repeatedly failed to provide the IRS with requested information." *Bailey v. Comm'r*, Nos. 3080-08, 3081-08, 2012 WL 1082928, at *15 (U.S. Tax Ct. April 2, 2012). In 2002, Bailey did permit the IRS to review and copy BEI and PBR's records that he had been storing in an airplane hangar. Following the IRS's inspection, Bailey discarded the records. *Id.* at *16.

Eventually, in 2007, the IRS issued Bailey two notices of deficiency in connection with the tax years 1993 through 2001. *Id.* at *2. Bailey petitioned for a re-determination of the deficiencies in early February 2008. Bd. Ex. 38 at 1. During the course of the Tax Court litigation, Bailey claimed that there was collaboration between the Florida Bar, the

[5] Bailey did not disclose the District of Massachusetts disbarment on his Maine Bar Applications.

Department of Justice and the Internal Revenue Service. According to Bailey, IRS Agent Tabor's erasures and revisions to his work papers were made after Judge Horn made comments favorable to him in the Court of Claims case and he testified before this Board that they were part of an "overall vendetta arising from the Duboc case." *See also Bailey v. Comm'r*, 2012 WL 1082928, at *18. Bailey also argued to the Tax Court that the PBR and BEI records he discarded "could have substantiated his profit motive for all three activities." *Id.* at *16. He then claimed that his lack of records was the IRS's fault "because it should have copied his records or should have warned him, before he discarded his records, that he might need them." *Id.*

In April 2012, the United States Tax Court held that Bailey realized income when he transferred sale proceeds of the Biochem stock to his personal money market and checking accounts, from which he made personal expenditures. *Id.* at *1. It also held that Bailey's yacht rental activity was not engaged in for profit but that the airplane remanufacturing activity was engaged in for profit. *Id.* Finally, the Tax Court identified numerous, substantial occurrences of understated or unreported income and overstated deductions by Bailey between 1993 and 2001. *Id.* at **38-49.

Bailey experienced other financial issues during the last 10 years. In early 2003, Bailey stopped paying his mortgage to Bank of America. This resulted in a foreclosure action in Florida that was dismissed upon the sale of the residence. After that time, Bailey did not own any property in Florida and lived in Massachusetts "much of the time," although he claimed Florida as his domicile for tax purposes.

Despite the disbarments, Bailey was able to support himself between 2001 and the present through various means. He wrote and published books for West Publishing Company, served as a consultant for New England Insulation in connection with asbestos claims against the company, lectured, consulted in the area of polygraph testing and investigation, and "rehabbed" a house in Massachusetts. Bailey also continued his lifelong interest in aviation and pursued a number of business concerns associated with that interest. At some point between 2009 and 2011, Bailey moved to Maine to reside with his partner, Deborah Elliott.

Bailey submitted an application to take the Maine Bar Examination on or about December 12, 2011, as amended by application dated January 4, 2012 (hereinafter collectively referred to as "Bar Applications"). Bd. Exs. 1-2. He sat for and passed the February 2012 Maine Bar Examination. Pursuant to Maine Bar Admission Rule 9, the Chair of this Board determined that a hearing was necessary to resolve doubt regarding Bailey's good character and fitness to practice law in light of the past disbarments. A full-day hearing at which Bailey testified and presented witnesses and exhibits was held on October 31, 2012, before the following members of this Board: Nathaniel M. Rosenblatt, Esq. (Chair), Jennifer A. Archer, Esq., Jeffrey Barkin, M.D. (Public Representative), C. Donald Briggs, III, Esq., Ann M. Courtney, Esq., Alfred H. Fuchs, Ph.D. (Public Representative), Linda M. McGill, Esq., Paul H. Mills, Esq., and Jeffrey M. Silverstein, Esq. Bailey was represented by Peter J. DeTroy, Esq., and the Board was represented by Assistant Attorney General Thomas A. Knowlton, Esq.

One of the exhibits proffered by Bailey was a Voluntary Oversight Agreement ("Agreement") between Bailey and Stephen J. Schwartz, Esq. Bailey Ex. 5. This Agreement provides that Bailey will confer monthly with Schwartz regarding case management and client funds and cooperate fully with Schwartz's recommendations and advice related to case management and client funds. The Agreement is effective for twenty-four months, commencing upon Bailey's admission to the Maine bar.

In addition to Attorney Schwartz, who testified to the content of the Voluntary Oversight Agreement, a number of other credible witnesses also testified in favor of Bailey's admission. Hon. Kenneth Fishman, an Associate Justice of the Massachusetts Superior Court, was previously one of Bailey's law partners and continues to maintain a friendship with Bailey. Justice Fishman testified to his perspective on the Duboc matter and opined that Bailey's conduct in that case was an "aberration." He further testified that Bailey's demeanor since Duboc is now less arrogant and "far more humble" than before.

In a similar vein, Marshall Jarvis of Jarvis Cutting Tools testified about his interactions with Bailey in connection with the World Presidents Organization ("WPO"), a nonprofit organization comprised of CEOs of which the two are members. Bailey has helped organize at least three events hosted by the WPO, and his primary responsibility was to execute the events within the budget and in a timely manner. He did not personally handle the funds for these events but instead submitted invoices to the treasurer for payment.

According to Richard Hale, Bailey recently chaired the Wentworth Technology CEO search committee and provided numerous other services to the company without fee. John Nale, Esq. testified to Bailey's affiliation with the Prison Industries Advisory Council, whose purpose is to improve working conditions of inmates while they are incarcerated with the hope that the work experience and training will help them find employment upon release. Theodore Kirchner, Esq., explained Bailey's role as New England Insulation's representative at judicial settlement conferences and mediations. Finally, Deborah Elliott described the life that she has made with Bailey as his partner, living together in Yarmouth.[6]

Despite these witnesses' support for Bailey's admission to the Maine Bar, and as explained more fully below, this Board concludes that Bailey has not met his burden of demonstrating by clear and convincing evidence that he possesses the requisite good character and fitness required by Maine Bar Admission Rule 9.[7]

DISCUSSION

A disbarred attorney in any state "has once proved unworthy of membership in the legal profession." *Application of Hughes*, 594 A.2d 1098, 1100 (Me. 1991). Maine Bar Rule 7.3(h) treats such an attorney "as if the attorney had been disbarred also in Maine." *Id.* at 1101 (citing former Maine Bar Rule 7(m)); *see also* M. Bar R. 7.3(h). Accordingly,

[6] Bailey also submitted a number of affidavits and letters attesting favorably to his character, including from Kenneth Altschuler, Esq., Taras M. Wochok, Esq., Ellsworth T. Rundlett III, Esq., and Hon. John E. Baldacci. Bailey Exs. 2, 4, 6-7.

[7] Bailey is ineligible for conditional admission pursuant to Maine Bar Admission Rule 9A because he has been disbarred in multiple jurisdictions and has not been reinstated to the practice of law in those jurisdictions. M. Bar Adm. R. 9A(a).

in determining whether an applicant for admission to the Maine bar possesses "satisfactory evidence of good character and fitness to practice law," M. Bar Adm. R. 9(a), the Board is obligated to address and apply those factors relevant to an application for reinstatement to the Maine Bar. *Application of Hughes*, 594 A.2d at 1101-02. *See also In re Williams*, 2010 ME 121, ¶ 6, 8 A.3d 666, 669; M. Bar R. 7.3(j)(5).

An applicant for reinstatement to the bar bears the burden to present "'clear and convincing evidence demonstrating the moral qualifications, competency, and learning in law required for admission to practice law in this State.'" *Id.* ¶ 6, 8 A.3d at 668 (quoting M. Bar R. 7.3(j)(5)). In addition, an applicant for reinstatement must establish by clear and convincing evidence that "reinstatement will not be detrimental to the integrity and standing of the Bar, the administration of justice, or to the public interest." *Id.* (quoting M. Bar R. 7.3(j)(5)). The clear and convincing standard borne by an applicant for reinstatement is higher than a preponderance of the evidence and requires that he prove "to a high probability" that his "reinstatement in the legal profession despite [his] past misconduct will not be detrimental to the public interest in the future." *Application of Hughes*, 594 A.2d at 1101. This means the Board must be assured that an applicant will not engage in his prior wrongful conduct if he is permitted to again hold himself out as an attorney. *Id.*

Maine Bar Rule 7.3(j)(5) directs this Board to consider the following factors to determine whether an applicant's reinstatement "will not be detrimental to the integrity and standing of the Bar, the administration of justice, or to the public interest":

(A) The petitioner has fully complied with the terms of all prior disciplinary orders;
(B) The petitioner has neither engaged nor attempted to engage in the unauthorized practice of law;
(C) The petitioner recognizes the wrongfulness and seriousness of the misconduct;
(D) The petitioner has not engaged in any other professional misconduct since resignation, suspension or disbarment;
(E) The petitioner has the requisite honesty and integrity to practice law;
(F) The petitioner has met the continuing legal education requirements of Rule 12(a)(1) for each year the attorney has been inactive, withdrawn or prohibited from the practice of law in Maine . . . .

M. Bar R. 7.3(j)(5). An applicant must present clear and convincing evidence concerning each one of these factors.[8] *Bd. of Overseers of the Bar v. Campbell*, 663 A.2d 11, 13 (Me. 1995).

Because there were no conditions associated with Bailey's disbarment and he was not obligated to undertake continuing legal education requirements in Maine, factors A and F are plainly irrelevant. Factors B and D weigh in Bailey's favor, because he does not seem to have engaged in any other "professional" misconduct since disbarment and has not attempted to engage in the unauthorized practice of law, despite his consistent interaction with the legal system as a representative of New England Insulation. In the Board's view, however, these factors are far outweighed by not only his failure to recognize the wrongfulness of his prior misconduct but also by multiple instances of lack of candor and honesty before this Board, which establishes that he does not presently possess the necessary honesty and integrity to practice law in Maine.

[8] Even were Bailey to meet his burden with clear and convincing evidence, it is the recommendation of this Board that any admission be accompanied by such conditions imposed by the Court as it deems necessary to protect the public interest and as permitted by Maine Bar Rule 7.6(j)(6), including but not limited to a monitoring agreement.

A. Recognition of the Wrongfulness of Past Misconduct

It is clear that Bailey disputes many of the factual bases that led to his disbarment in Florida. He testified that he did not misappropriate funds because he believed that "in Florida in an estate case or other similar case, lawyers are allowed to draw down fees and then get court approval. . . . I had that from the head of the trust department in Florida." Of course, the Duboc case was not an estate case and Bailey has made it very clear throughout the years of litigation that he never believed he held the Biochem stock in trust. It has been his position over the years that he owned the stock "in fee simple." His staunch loyalty to the belief that he could "draw down fees" therefore is illogical.

Regardless, even though there can be no dispute that Bailey sent an ex parte letter to Judge Paul on January 4, 1996, he refuses to acknowledge that the conduct was unethical. When asked at the hearing before this Board, "Do you agree that it was unethical for you to write an ex parte letter to a judge in a case in which you are representing a client?" Bailey responded, that he would "never do it again." Later he testified, "Well, I'll concede that it wasn't appropriate because it has been adjudged as inappropriate."

Rather than admitting his wrongdoing, Bailey claimed to this Board that the ex parte communication was sent to Judge Paul to "get a private audience with him so [Bailey] could warn him that . . . a bribe was afoot." Bailey explained that in 1997, after he wrote the ex parte letter, an attorney associated with Duboc named Penelope Shelfer attempted to bribe Judge Paul, was tried, and sentenced to 135 months in jail. Although the actual bribe apparently occurred three years before the Florida Bar proceedings,

Bailey testified that he felt he could not mention the bribe "until there was a conviction and it had been affirmed."

Penelope Shelfer's conviction was affirmed in 2001. *United States v. Shelfer*, 263 F.3d 169 (11th Cir. 2001). Henry Uscinski, the mastermind of the bribe according to Bailey, was convicted of money laundering in February 2003. Pursuant to his own theory, therefore, Bailey could have asserted this defense in connection with his reciprocal disbarment in Massachusetts. Instead, he attempted to "minimize the gravity of the violations stemming from his letters to Judge Paul by asserting that Judge Paul never read them" to support his argument that the ethical violation did not warrant disbarment. *In re Bailey*, 786 N.E.2d at 351 n.21; *accord In re Bailey*, 2005 WL 2901885, at *1. Bailey also had an opportunity to assert this explanation as part of his proffer in support of his request for an evidentiary hearing before the District of Massachusetts, in which he claimed a hearing was necessary to "undermine[] the factual predicate for the state court disbarment orders." *In re Bailey*, 450 F.3d at 73. In neither proceeding did Bailey contend that he was obligated to send an ex parte letter to Judge Paul in order to "protect [Judge Paul] and perhaps more importantly to protect [himself]" as he now asserts.

According to Bailey's 2009 Offer of Proof in the Tax Court litigation, the conspiracy between Duboc and Shelfer to bribe Judge Paul was "without [Bailey's] knowledge." Bd. Ex. 45 at 11, ¶ 15. It is therefore inconceivable that Bailey sent the ex parte letter to Judge Paul to warn him of a bribe that he, himself, had no knowledge of at

the time. This "bribe defense" appears contrived for the purposes of the proceedings before this Board.

Rather than accepting that he was disbarred because of his own misconduct, Bailey continues to place blame elsewhere. For example, in January of 2008, Bailey argued that the IRS's claim for deficiencies should be denied, in part, because of its "illegal and unjust conduct" related to the "ongoing conspiracy" between and among the Florida Bar, Department of Justice and the IRS. Bd. Ex. 38 at 7. In the 2009 Offer of Proof filed with the Tax Court, he asserted that the "Justice Department obstructed that preparation [in defense of the Florida disbarment proceedings] in every way it could and prevented [him] from presenting favorable evidence, resulting in a recommendation for disbarment from the Referee." Bd. Ex. 45 at 19, ¶ 30. Even during the hearing before this Board he testified that the Department of Justice "engineered" his disbarment.[9]

It is clear that Bailey does not recognize the wrongfulness of his past conduct. Justice Fishman described Bailey's past ethical lapses as an "aberration." It is certainly conceivable in other situations that misconduct could truly be aberrant behavior, particularly where the attorney understands and accepts the wrongfulness of his deeds, does not commit subsequent misconduct, and is forthright with this Board. But Bailey's creation of new explanations for his past wrongs and his lack of candor with this Board precludes the Board from reaching the conclusion that his conduct was an aberration.

[9] Bailey asserted recently in the Tax Court litigation that "the government took property from Petitioner in excess of fourteen million dollars by incarcerating him improperly and unjustifiably until he surrendered it." Bd. Ex. 44(A) at 1.

Bailey has failed to establish by clear and convincing evidence that he recognizes the wrongfulness and seriousness of his prior misconduct. Further, in light of this failure, Bailey has not convinced this Board that he will refrain from similar wrongful conduct in the future, should he again feel he has been wronged by others.

B. Honesty and Integrity to Practice Law

In addition to the issues related to the Duboc case that formed a basis for his disbarments, which reflect negatively on his honesty and integrity, Bailey was less than forthright with this Board throughout the admissions process. For example, he intentionally provided the Board with a confused picture of his residences in the last ten years. He testified that he resided with his current partner in Bath, Maine, from early 2009 to July of 2010, when they moved together to Yarmouth, Maine. In a July 2012, email to Attorney Knowlton, however, Bailey asserted that he did not move to Maine until July 2011. Bd. Ex. 17 at 1. On his Bar Applications, Bailey listed his residence in Yarmouth, Maine as starting in July 2010 but does not list any residence in Bath, Maine. It is unclear what information provided by Bailey is accurate.

Bailey's residence before moving to Maine is even more of a blurry picture. His Bar Application dated December 12, 2011, asserts that he resided at 120 Spoonbill Road in Manalapan, Florida, from September 1995 to May 2002.[10] The December Bar Application also lists that he resided at both 17 Prescott Road, Lynn, Massachusetts, from May 2002 to June 2010, and 65 Spoonbill Road in Manalapan, Florida, from May 2002

[10] Bailey's January Bar Application identifies the Spoonbill addresses as being located in Lantana, Florida. Bd. Ex. 2.

to July 2010. His 2001 federal income tax return lists his home address at 17 Prescott Road in Lynn, Massachusetts; however, despite that he claims on his Bar Applications to not have moved to Massachusetts until May or June of 2002. Bd. Ex. 3.

He testified that he was "invited" by his neighbors to use 65 Spoonbill Road as his "domicile" without paying rent after Bank of America sold his Florida residence in May 2004, even though he admitted in an email to Attorney Knowlton that he lived "much of the time" in Lynn, Massachusetts, from 2002 to 2010. Bd. Exs. 2, 17. Bailey never filed a federal tax return claiming his home address to be 65 Spoonbill Road, although he maintained it is his "domicile" for 8 years for tax purposes. Contrary to this position, in a May 2003 Motion filed with the Middle District of Florida, Bailey asserted that he lived in Boston. Bd. Ex. 31. Likewise, his subsequent pleadings filed with the Tax Court identify his address as 17 Prescott Road, Lynn, Massachusetts. Bd. Exs. 38, 40-41. This is all consistent with his January 2012 Bar Application, which does not list that he ever resided at 65 Spoonbill Road. Bd. Ex. 2.

Finally, Bailey's 2007 and 2008 federal income tax returns list a home address in Punta Gorda, Florida, and a table of earned income he provided to the Board lists an address in West Palm Beach, Florida from 2004 to 2008. Bd. Exs. 13, 29-30. Neither of these residences were listed on his Bar Applications despite his obligation to identify "every permanent or temporary physical address where [he has] resided for a period of one month or longer."

The confused picture painted for the Board seems intentional in order to detract from Bailey's failure to file state income tax returns for a number of years. By

advantageously using his friends' room at 65 Spoonbill Road to claim he was "domiciled" in Florida, Bailey has avoided filing resident tax returns in Massachusetts and possibly Maine, depending upon when he actually moved to this State.

Coinciding with this failure to file state income tax returns and the mist surrounding his actual residence, Bailey also failed to list his United States Tax Court litigation on his Maine Bar Application. On May 10, 2012, Attorney Knowlton requested that Bailey provide copies of certain filings in the Tax Court. Bd. Ex. 5. Two hours later, Bailey sent an email to the Board's Executive Director with an attached copy of the Tax Court's April 2, 2012, decision but conceding that "it [was] clear that the Board already ha[d] it." In the same email, Bailey also informed the Board for the first time of his involvement in the Court of Federal Claims action between 1996 and 2004.

In addition to the civil litigation, Bailey did not provide the Board with a full picture of complaints and other administrative actions taken against him in his capacity as an attorney. Question 10 of the Bar Application requires applicants to provide information about all disbarments, suspensions, censures, and charges, complaints or grievances concerning one's conduct as an attorney. Bailey listed his Florida and Massachusetts disbarments, but did not identify his reciprocal disbarment in the United States District Court for the District of Massachusetts on his Bar Applications. He also failed to inform the Board that he was the subject of at least one grievance complaint in Florida, which was filed against him by a Hong Kong lawyer. Bd. Ex. 21 at 17.

Bailey was also not forthright on his Bar Applications as to whether he had ever defaulted on any debts, answering that question in the negative. He initially testified at

the hearing before this Board that he had never defaulted on his home mortgage in Florida. He admitted that Bank of America filed a foreclosure action against him when he stopped making monthly payments in early 2003, but claimed he did not consider his failure to pay his mortgage to be a "default" because Bank of America was ultimately paid in full after the property was sold. He later admitted that his mortgage was "technically in default" because he stopped making monthly payments in early 2003.

Question 16.C of the Bar Application requires the applicant to list "any businesses, including but not limited to corporations . . . which you now or previously operate(d) or control(led) or in which you have or had an ownership interest" Again in response to this question, Bailey was not forthright. The Board has been made aware of at least six businesses that Bailey failed to disclose on his application.[11]

First, Bailey failed to list his control over 17 Prescott Road, Inc., because he claimed it was not a "business." As Bailey described in the corporation's 2004 annual report, however, the "business of the corporation" was "[r]eal [e]state development." Bd. Ex. 36. In the 2009 annual report, Bailey described the business of the corporation "to buy and hold real estate." *Id*. This is supported by Bailey's own testimony that he was "rehabbing" the house and made money on its sale. Further, 17 Prescott Road, Inc.'s 2009 federal tax return identified gross rents in the amount of $61,291, and 2010 federal tax return identified gross rents in the amount of $26,819, further supporting that it was, indeed, a "business." Bd. Ex. 37.

[11] Bailey failed to list an additional business, Tel Share Publishing, but candidly admitted at the hearing, "that was an oversight."

Bailey also failed to list his ownership of and control over Heli-boss, LLC[12] on his Bar Applications because according to Bailey, it, too, was not a "business." Heli-Boss, LLC's 2006 Certificate of Organization lists that the business of the LLC was to "own, operate and maintain helicopter aircraft and in general, to engage in any activities directly or indirectly related or incidental thereto." Bd. Ex. 34. Bailey testified that he "created an LLC so that if someone else flew the helicopter, [he] might escape liability if they hit something." Consistent with its represented business objectives, Heli-boss acquired a helicopter and other individuals flew it. As with 17 Prescott Road, Bailey's claim that Heli-Boss was not a business in an attempt to explain away his failure to list his ownership interest in Heli-Boss on the Bar Applications is disingenuous and reflects an inability to take ownership of mistakes.

Bailey's interests in the remaining businesses have come to light through documentation and pleadings related to his Tax Court litigation, rather than Bailey's affirmative disclosures. First, Bailey did not list his ownership interest in BEI which, according to the Tax Court, was merged into PBR in 1994 and renamed "Roamer Aircraft Division." *Bailey v. Comm'r*, 2012 WL 1082928, at *8. To the extent Roamer Aircraft Division is a separate business, Bailey failed to list it on his Bar Applications. According to IRS Agent Tabor's April 5, 2002, Memorandum summarizing a meeting with Bailey, Bailey was apparently given shares of company called Biozone Scientific by a business associate. Bd. Ex. 18 at 2. Bailey failed to list his interest in that company, as well.

[12] In an email to Attorney Knowlton, Bailey referred to the company as "Heliboss, Inc." Bd. Ex. 17. According to Bailey, he sold the stock of Heliboss, Inc. for $55,000. The mention of stock indicates that Bailey understood that it was a corporation and not a limited liability company. It is therefore unclear whether there was yet another helicopter-related business that Bailey also owned but did not disclose to the Board.

Finally, Bailey's 2009 Offer of Proof states that "[i]n or about September, 1994, [he] became sole stockholder of two Hong Kong corporations Shaw Chen and Sai Yuk." Bd. Ex. 45 at 8. Neither of these businesses was listed on his Bar Applications, either.

All of these issues reflect negatively upon Bailey's honesty and integrity to practice law in the State of Maine. Bailey did present a number of witnesses who were supportive of his admission to the Maine bar and who credibly testified to their belief that he possesses good character. While the witnesses were firm in their beliefs, many have known Bailey for only a short time and in a limited context. Their testimony suggests improvement in Bailey's character, but that is insufficient to satisfy the requirements for reinstatement under the Bar Rules. *See Application of Hughes*, 594 A.2d at 1102. It cannot overcome Bailey's own conduct before this Board, including the number and type of omissions, the clear intentionality in either omitting or providing confusing information, and Bailey's word-smithing and hair-splitting rather than admitting mistakes. Accordingly, Bailey failed to establish by clear and convincing evidence that he possesses the requisite honesty and integrity to practice law in the State of Maine.

CONCLUSION

In light of the foregoing, the Maine Board of Bar Examiners hereby denies F. Lee Bailey's application for admission to the Maine bar.

November 30, 2012

By: Jennifer A. Archer, Esq.
C. Donald Briggs, III, Esq.
Paul H. Mills, Esq.
Nathaniel M. Rosenblatt, Esq. (Chair)
Jeffrey M. Silverstein, Esq.

McGILL, with whom BARKIN, COURTNEY, and FUCHS, join, dissenting.

The undersigned members of the Maine Board of Bar Examiners find that Applicant F. Lee Bailey (Bailey or the Applicant) has demonstrated by clear and convincing evidence that he has the moral qualifications, competency and learning in the law and has otherwise satisfied the factors established by Maine Bar Rule 7.3(j)(5). Accordingly we respectfully dissent from the majority and recommend that Bailey be admitted to practice in Maine. Our reasoning is summarized here.

Maine Bar Rule 7.3(h) treats an attorney who has been disbarred in any state "as if the attorney had been disbarred also in Maine." *Id*. While a disbarred applicant must satisfy the criteria for admission by clear and convincing evidence, the heightened burden is not for the purpose of punishing the applicant for past misdeeds. Rather the disbarred applicant must show that, notwithstanding the events that led to his previous disbarment, he has the moral qualifications, competence and learning in the law that will at present permit [him] to practice law as a credit to the profession and without risk to the public. *In re Application of Hughes*, BAR-90-17, 2 (February 6, 1991) (Wathan, J.) (emphasis added).

As the majority notes, there is no evidence that Bailey has failed to comply with prior disciplinary orders, engaged in any intervening professional misconduct or attempted unauthorized practice. See factors to be considered, M. Bar R. 7.3(j)(5). The factors at issue in this case are whether Bailey recognizes the wrongfulness and

seriousness of his misconduct, M. Bar R. 7.3(j)(5)(C), and whether he has the requisite honesty and integrity to practice law, M. Bar R. 7.3(j)(5)(E). The record demonstrates that Bailey has met his burden on each of these factors.

Relevant to the issue of his recognition of the wrongfulness and seriousness of his misconduct, Bailey testified at length about what he did wrong and what he should have done differently. When questioned generally whether he did anything wrong, Bailey responded "absolutely". Tr. 89. He then offered examples of his mistakes and failures in numerous aspects of the Duboc matter, including not getting co-counsel who could have acted as a sounding board or a "veto" on his actions, Tr. 90; making a wrong assumption – which he described as a "very bad idea" – as to "who owned what" regarding the Biochem stock, Tr. 91; not getting a written agreement from the government that would have spelled out the arrangement for the stock, Tr. 90-91; using poor judgment and bad decision-making in agreeing to act as an agent for the government in managing Duboc's assets, although at the time he believed that it was the best way to maximize forfeiture and therefore help his client avoid an onerous sentence, Tr. 91; not giving a regular accounting to Judge Paul, Tr. 101; not establishing a trust account in Switzerland for the asset proceeds, Tr. 101; commingling funds, Tr. 101; writing the inappropriate letter to Judge Paul, Tr. 102; and failing to identify the "bad conflict" with his client in the disposition of profits from the Biochem stock sale, Tr. 106. Bailey acknowledged that he used bad judgment, moved too quickly, was overconfident and "made some serious mistakes in very unusual circumstances." Tr. 93-94.

It is true, as the record reflects, that Bailey continues even today to dispute certain findings in the Florida disbarment decision and certain underlying circumstances of the Duboc matter. We do not find this fatal to his admission to the Maine bar. The essence of the issue before the Board is whether Bailey has demonstrated by clear and convincing evidence that he accepts responsibility for and has learned from his mistakes and has been rehabilitated. *In re Application of Hughes*, 594 A. 2d 1098 (Me. 1991) (*Hughes I*); *In re Application of Hughes*, 608 A. 2d 1220 (Me. 1992) (*Hughes II)*. A blanket admission of guilt – which would in Bailey's case be insincere – is not the touchstone for recognition of wrongdoing. "[F]undamental justice demands that a person who believes he is innocent, though convicted, should not be required to confess his guilt of something he honestly believes he did not commit." *In re Hiss,* 368 Mass. 447, 333 N.E.2d 429 (1975) (Reversing the Board of Bar Overseers, the Massachusetts Supreme Judicial Court held that Alger Hiss' insistence that he was innocent of perjury charges, even though he had been tried and convicted of that felony, did not justify denial of petition for admission and did not indicate lack of rehabilitation.) Bailey is entitled to his interpretation of events and his belief that certain of the adverse findings were wrong, so long as he accepts responsibility for his actions, appreciates the seriousness of his actions and the consequences, and has learned from his mistakes. *Hughes I*, *Hughes II*, supra.

In addition to Bailey's own testimony showing general and specific recognition of the bad mistakes and poor judgment that led to his disbarment, the testimony of Massachusetts Superior Court Judge Kenneth Fishman, Bailey's long-time law partner, was convincing on this factor. Judge Fishman has had a close personal and professional

relationship with Bailey for decades. He described the Duboc case as "highly unusual", especially with regard to the roles assumed by both Bailey and the federal authorities. Tr. 139-140. He testified that Bailey's conduct in the case was an aberration. Tr. 136. He referred to the hundreds of cases that Bailey had handled, with utmost devotion to clients, over the years. Tr.136-138. He spoke about the devastating effect that disbarment has had on Bailey. Tr. 145. In Judge Fishman's opinion, Bailey is a far more humble man than he was and has learned a very difficult lesson from the disbarment. Tr. 146.

Bailey presented an agreement for oversight and monitoring executed by him and Attorney Stephen Schwartz. Bailey Exhibit (Ex.) 5. Schwartz has practiced law for more than 25 years and is a member of the Maine Board of Bar Overseers. Tr. 191. He is more than willing to undertake the obligations in the agreement. Tr. 191-94. Under the agreement Bailey would confer monthly with Schwartz regarding case management and client funds and cooperate fully with Schwartz's recommendations and advice related to case management and client funds. The agreement would be effective for twenty-four months, commencing upon Bailey's admission to the Maine bar. While the agreement is voluntary, Bailey's willingness to enter into it is further evidence that he recognizes the wrongfulness and seriousness of his admitted past mistakes of being too confident, using poor judgment and acting in isolation in the Duboc matter.

In summary, taken as a whole, the evidence is clear and convincing that Bailey recognizes the wrongfulness and seriousness of his misconduct.

Bailey also produced clear and convincing evidence that he has the requisite evidence and integrity to practice law. Testimony and affidavits based on witnesses'

first-hand experience with Bailey in a variety of settings uniformly portrayed Bailey as having a high degree of honesty and integrity. He was described as " a man of his word", Tr. 163; a trusted representative in business dealings, Tr. 163-72; an inspiration and mentor to many lawyers, Tr. 196-97; characterized by humility, Tr. 196-97; forthright in disclosing his disciplinary matters, Affidavit (Aff.) of Wochok, Ex. 2; ethical in handling money, including substantial client funds, Ex. 2; a "moral compass", Aff. of Altshuler, Ex. 6; and living by a code of honor and truth in his personal life, Tr. 213. As noted above, Bailey's disagreement with certain factual findings concerning the Duboc matter and his testimony as to his version of the underlying events is not evidence of a lack of honesty or integrity. As to the deficiencies with his bar application that are cited by the majority, there is little or no evidence that Bailey made intentional or material misrepresentations or omissions on his application, especially in view of the substantial materials that he provided with the initial filing. Certainly it would have been prudent for Bailey to err on the side of over-disclosure rather than to be in a position of needing to supplement his application in response to the Board's requests for additional information.

Bailey has also produced clear and convincing evidence that the conduct that led to his disbarment will not occur again. *Hughes I*, supra. Unlike the applicant in *Hughes*, Bailey's multiple unethical acts arose from his engagement with a single case that took place more than 15 years ago. He had handled literally hundreds, if not thousands, of cases before Duboc, and he continued to practice without incident between 1996 and 2001 when the Florida disbarment decision was final, lending support to the testimony that his conduct in Duboc was an aberration. Moreover, there is ample evidence that

Bailey has been chastened and humbled by disbarment, an indication that he has learned a hard lesson.

Finally, Bailey's admission to the Maine Bar would not be a detriment to the public interest, the integrity and standing of the Maine Bar or the administration of justice. M. Bar R. 7.3 (j) (5). Since his disbarment eleven years ago Bailey has served the public interest by sharing his knowledge and experience with lawyers, law enforcement personnel, those involved in the correctional system and in service of business development. He has lectured, conducted trainings, organized fundraising and other charitable events and written articles and books on criminal law. He has pursued his commitment to improving the correctional system and increasing educational and job opportunities for inmates and releases, both in Maine and nationally. Bailey undertakes many of these activities on a *pro bono* basis. See Ex. 1; Testimony of Judge Fishman, Marshall Jarvis II, Richard Hale, John E. Nale, Esq., and Deborah Elliot; Aff. of John Baldacci. A number of prominent lawyers testified that Bailey would be an asset to the Maine Bar. See, e.g., Ex. 4, Aff. of Rundlett; Ex. 6, Aff. of Altshuler; Testimony of John E. Nale, Esq., Theodore Kirchner, Esq.

In conclusion, the undersigned members of the Board find that F. Lee Bailey has met his burden to show by clear and convincing evidence that he has the moral qualifications, competency and learning required by M. Bar R. 7.3 (j)(5) and recommend

that he be admitted to practice. [13]

November 30, 2012

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[13] We recommend Bailey's admission without condition because in our view he has met his evidentiary burden. However, Bailey testified that he would readily accept conditions for admission. Tr. 96-97. Me. Bar R. 7.3(j)(6) appears to authorize the Court to impose conditions for the readmission of a disbarred attorney. See *Board of Overseers v. Andrews B. Campbell*, BAR 98-1.