

STATE OF MAINE

SUPREME JUDICIAL COURT
DOCKET NO: BAR-14-12

BOARD OF OVERSEERS
OF THE BAR,

Plaintiff

vs.

FINDINGS, CONCLUSIONS
and ORDER

GARY M. PROLMAN
of Saco, Maine
Me. Bar No. 7253,

Defendant

INTRODUCTION

This matter is before the Court on the Board of Overseers of the Bar's Petition for Immediate Interim Suspension. The petition, filed May 26, 2017, sought Gary M. Prolman's suspension from the practice of law following his reinstatement from a prior suspension that had resulted from his being charged and convicted of a federal crime. That reinstatement was effective July 1, 2016.

Gary M. Prolman's prior, relevant disciplinary history with the Board of Overseers of the Bar that led to his previous suspension from the practice of law and his reinstatement is recounted in this Court's order dated March 7, 2016, which, rather than being repeated, is incorporated by reference herein. That order stated restrictions and limitations that applied to Prolman's practice

of law and professional conduct following his reinstatement. Relevant to this proceeding, the March 7, 2016, order, at 24-25, stated:

(3) Reinstatement, and continuation of active practice of law is conditioned on Gary M. Prolman's:

(a) Compliance with all the terms and conditions of his federal sentence and community release.

(b) Continued engagement in substance abuse counseling and treatment, to the satisfaction of the Board of Overseers of the Bar, for a period of at least four years after the termination of any supervision pursuant to his federal sentence and community release.

(c) No excessive consumption of alcoholic beverages, and no possession or consumption of marijuana or illegal drugs, with this condition subject to monitoring and testing as determined by the Board of Overseers of the Bar, with Prolman to pay a reasonable fee for Board's monitoring and testing activities. If Prolman and the Board are unable to agree on a monitoring, testing and fee payment program, and such cannot be arranged through the Maine Assistance Program, the parties shall return to Court for further direction.

(d) Continued compliance with the terms and conditions stated in the Maine Bar Rules and the Maine Rules of Professional Conduct for a person to continue in active practice in the State of Maine.

Prolman's conduct is also subject to restrictions imposed by the terms of probation and supervised release pursuant to his federal sentence. The federal supervised release conditions, overseen by a federal probation officer, originally included requirements of no use or possession of "any controlled substance, alcohol or other intoxicant," no association with known felons, and, following his reinstatement to the practice of law, no representation of

individuals with criminal cases pending before the federal courts, and no representation of individuals charged with felonies or drug crimes.

After Prolman's reinstatement to the practice of law, and after he had been practicing for a few months, some of the restrictions were apparently modified to allow association with persons convicted of felonies, but for business purposes only, and to allow representation of individuals charged in state courts with felonies or drug-related crimes.

There is some uncertainty with regard to the nature of the restriction regarding individuals with criminal charges pending in the federal courts. From the evidence, it is uncertain whether this restriction barred Prolman from representing people on criminal charges before the federal courts or whether it barred Prolman from representing individuals who happened to have charges pending before the federal courts for any other purpose, even if Prolman was not representing the individuals on the federal charges.

Prolman was required to, and did, file monthly reports detailing his compliance with his conditions of federal probation, including listing the individuals he was representing and the purposes of his representation. He was also required to submit to random testing, at the request of his probation officer, for use of alcohol or illegal substances. And he was required, in the monthly reports, to list individuals living with him at his residence.

On April 17, 2017, a client of Prolman's filed a grievance complaint with the Board of Overseers of the Bar. Board Ex. 23. The client had been assisted in preparing the complaint by a Sagadahoc County Sheriff's Deputy who was supervising the diversion program in which the client was participating as part of her compliance with the terms of her probation on an Unlawful Trafficking in Scheduled Drugs (Class B) charge, 17-A M.R.S. § 1103(1-A)(A) (2012). Board Ex. 29. The Bar complaint alleged that while the client had been living at Prolman's residence in Saco in late March and early April, Prolman had engaged in sexual acts with her and had taken improper advantage of the client's vulnerability in his professional relationship with the client.

After a brief investigation, including contacting the client and obtaining an affidavit regarding Prolman's conduct from the client, the Board filed a Petition for Immediate Interim Suspension with the Court. The petition was based on the client's affidavit and other supporting materials. The petition alleged violation of several Rules of Professional Conduct as a result of Prolman's alleged taking advantage of his client's vulnerabilities and betraying his client's trust in engaging in a sexual relationship with the client, violation of the terms of the Court's March 7, 2016, reinstatement order, and violations of certain terms of Prolman's federal probation order. Prolman denied the allegations.

After a conference with counsel, by a June 5, 2017, scheduling order, the Court scheduled a period for discovery and disclosure of evidence and anticipated witnesses, and scheduled a contested hearing in the matter. The hearing was conducted on August 30 and 31 and September 7, 2017.

At the hearing, the Court received testimony from Prolman, his former client and thirteen other witnesses, a stipulation as to testimony that would be offered by two other witnesses, and it admitted into evidence and has considered Board Exhibits 1-30 (except for Board Exhibits 3 and 4 which were withdrawn and have not been considered) and Prolman's Exhibits 1-12.¹

FINDINGS OF FACT

Based on the record developed at the hearing, the Court finds the following facts. Except as otherwise indicated, the facts are established to the preponderance of evidence standard of proof. M. Bar R. 14(b)(4).

1. In late 2016, the client who filed the complaint in this matter contacted Prolman and asked him to represent her in two separate matters.
2. In the first matter, the client had been charged with theft as a result of her failure to return a computer to a Rent-A-Center in Florida, during a time

¹ During the hearing, the parties agreed that exhibits identifying clients of Gary Prolman and the nature of his work for those clients, which were unrelated to the issues before the Court, could be redacted to remove the client identifications. The exhibits at issue are Board Exhibits 5, 8, 10, 11, 17, 18, & 20, and Prolman Exhibits 3 and part of 5. The redacted exhibits protecting the unrelated client information have been filed.

when she had been residing with a boyfriend in Florida. In this matter, there was an outstanding warrant from Florida for the woman's arrest.

3. Prolman agreed to represent the woman in this matter for a flat fee. He succeeded in resolving this matter by arranging for his client to repay the Rent-A-Center for the computer, at which point the theft charge was apparently dropped and the arrest warrant was withdrawn. This matter was successfully resolved before the facts which gave rise to this disciplinary action arose.

4. The client also sought Prolman's assistance in seeking to obtain early termination of the term of probation and participation in a closely supervised diversion program arising from the felony drug conviction that was supervised by probation officers in Sagadahoc County. A separate flat fee was paid to Prolman to resolve this matter.

5. In early March 2017, as a result of meetings with state probation officials, an assistant district attorney at the West Bath District Court, and Sagadahoc County law enforcement officers, Prolman was able to arrange an early termination of his client's probation, effective in June 2017, provided that the client complied with her terms of probation until that time.

6. Beyond the two matters for which he was retained, the client also discussed with Prolman whether he might be able to assist her with a third matter. At the time, criminal charges for sex trafficking women, including

Prolman's client, were pending against an individual in Massachusetts. Because Prolman's client was concerned about risks that might be associated with testifying against that individual, and because she wanted to put the sex trafficking events in her life behind her, the client asked Prolman to assist her in arranging to avoid testifying in the Massachusetts matter.

7. At the time the client had retained Prolman to assist her, she was living with a boyfriend in Topsham. The boyfriend's relationship with Prolman's client was controlling and abusive. The client gave her boyfriend the money she earned from her job in the Topsham area, and he in turn would pay her expenses, including the flat fees paid to Prolman for his representation. The boyfriend also paid for and controlled the client's cell phone.

8. On at least a couple of occasions in early 2017, the boyfriend had assaulted the client. However, although Sagadahoc County law enforcement authorities had indications that the assaults had occurred, because of their regular contact with the client, the assaults were not prosecuted because the client had indicated that she would refuse to testify against her boyfriend.

9. On the evening of March 26, 2017, the client's boyfriend savagely assaulted her at the apartment they shared in Topsham. Among other injuries, he broke bones in her face and attempted to strangle her, leaving marks on her throat. The client fled to another residence, the police were called, and the

boyfriend was arrested. The record does not disclose the exact charges on which the boyfriend was arrested and held. However, the broken bones in the client's face could have justified an aggravated assault charge, 17-A M.R.S. § 208 (2016).

10. On March 27, 2017, the Sagadahoc County authorities anticipated, correctly, that despite the serious injuries to the client and the boyfriend's prior record of assaultive behavior towards her, the boyfriend would soon be allowed to make bail and return to the Topsham apartment that he and the client shared. Accordingly, they believed it was necessary for the client to promptly get other accommodations where her boyfriend would not have access to her. At the time, the client had no money and no person in the community to whom she could turn for assistance.

11. On March 27, Prolman was in Florida, preparing to return, late that evening, from a ten-day vacation.

12. Prolman and the client spoke by phone on several occasions. During these calls, she apparently described the assault and the need to find other accommodations safe from the boyfriend who was anticipated to soon be released from jail.

13. Prolman also spoke with the Sagadahoc County Sheriff's Deputy who was the client's diversion supervision officer. Prolman indicated to the

Deputy that there was an apartment above his law office where the client could stay. The impression Prolman conveyed to the Deputy was that the apartment above his law office was an otherwise vacant apartment where the client could stay, by herself, until more permanent living arrangements could be found.

14. Because, in the Deputy's view, no other living arrangement was available and a living arrangement for the client was urgently needed, the Deputy agreed to placement of the client in the apartment above Prolman's law office.

15. The Sagadahoc County Deputy arranged for the client to get to the Saco address of the apartment where, by prior arrangement, Prolman's office assistant had left keys and directions available to the client to access the apartment.

16. The apartment above Prolman's law office was in fact occupied by Prolman in one bedroom, another individual, not present at the time, using a second bedroom, and a third bedroom where the client was placed. The apartment is easily accessible by two sets of stairs from Prolman's law office on the first floor and from a brewery and what witnesses described as a "tasting room"² in the basement.

² "Tasting room" appears to be the modern replacement for the term "saloon" or "tavern," a place where alcoholic drinks are sold and drunk, with, according to the record, little or no available

17. Occasionally and unpredictably, staff from the brewery would access the second-floor apartment to use the kitchen for cooking ingredients for the brew and to use the washer and dryer located in the only bathroom on the second floor, which was located next to Prolman's bedroom.

18. Prolman arrived home from Florida late in the evening of March 27 or very early in the morning of March 28.

19. During the day of March 28, Prolman and the client went out and Prolman purchased a cell phone for the client which was added, as a second phone, to Prolman's cell phone account. The purpose of acquiring a cell phone was to provide the client with a means of communication, and one that was not known or accessible to her abusive boyfriend.

20. Prolman also assisted his client in obtaining a job as a waitress at a local restaurant.

21. On March 29, Prolman and his client traveled to Sagadahoc County where they met with a number of law enforcement officials and probation officers to discuss the client's probation status and prosecution of the abusive boyfriend.

food service. See *The American Heritage Dictionary of the English Language*, at 1145 ("saloon" defined), 1319 ("tavern" defined) (1976 ed.).

22. At this meeting, the fact that the client was living in an apartment above Prolman's law office was discussed, but at no point did Prolman or his client indicate that Prolman was also residing at the apartment.

23. Had she learned that Prolman was living at the apartment, the Sagadahoc County diversion officer would have acted to terminate that living arrangement.

24. Because Prolman was barred from associating with felons, except for providing service as an attorney, Prolman's federal probation officer would have objected to Prolman allowing the client, with a felony drug conviction, to live with him.

25. When he arranged for his client to live in his apartment, Prolman was aware of his client's social and abuse history and was aware of her submissiveness to men and her vulnerability to abusive physical and sexual relationships.

26. On more than one occasion while Prolman and his client were residing at his apartment between March 29 and April 9, 2017, Prolman approached his client seeking sexual gratification and engaged in sexual acts with her.³ The client regarded Prolman's sexual acts as "gross." While she did

³ The client resided at Prolman's apartment beginning on the evening of March 27, 2017 and continuing to the morning of April 11, 2017. On one or two nights during that time the client stayed overnight in Westbrook with her six-year-old child and the father of the child. During the client's

not consent, she also did not object to Prolman's sexual acts, simply submitting to what Prolman demanded—"I went along with it"—as she had done in past relationships with men who had taken advantage of her vulnerabilities.

27. As part of the intensive supervision in the diversion program, the Sagadahoc County Deputy was in regular contact with the client while she was residing at Prolman's apartment. At no time did the deputy receive any indication that there was a problem in the relationship between Prolman and the client, until after the client had moved out of the apartment. This was consistent with the client's past practice of minimizing or not disclosing problems she had had with men abusing or taking advantage of her during the course of her probation supervision.

28. On April 10, the client, with the assistance of her employer at the restaurant, acquired a motor vehicle.

29. Also on April 10, Prolman prepared for his client a lamb chop dinner which they shared along with some glasses of wine. The dinner was quite convivial, its purpose to celebrate the client's increasing independence with a job and a car.

later time at the apartment, when she became familiar with Prolman's schedule, she made herself unavailable to Prolman in the evening hours. With some of the evenings accounted for, the Court finds that the sex acts between Prolman and his client occurred on more than one occasion between March 29 and April 9.

30. Late in the evening of April 10, Prolman approached the client in her bedroom and attempted to initiate sexual relations with her. She refused, and he left the room.

31. The next day, April 11, the client moved out, obtaining accommodation at a local motel. She has since moved to another residence.

32. After she moved out of his apartment, Prolman and his client did not, again, have in-person contact. On one occasion, when the client saw Prolman coming to the restaurant where she worked, she went into the kitchen until he was gone.

33. After Prolman discovered that his client had moved out of his apartment, he contacted her by text messaging asking, in friendly sounding words, where she was and if she was alright. In responding to Prolman's text messages, the client indicated that she wanted to terminate the attorney/client relationship with Prolman and to handle the remaining pending matter, seeking to shorten her term of probation, on her own.

34. Approximately two weeks later, by a motion dated April 26, 2017, Prolman sought and was granted leave to withdraw from representing the client. The motion to withdraw asserted that the client had been in compliance with the terms of her probation, and that the early termination of probation

hearing, already agreed to, could proceed as anticipated, without further appearance of counsel.

35. The docket entries reflect that the early termination of probation was granted on June 9, 2017, as had been agreed to with the prosecutor in early March 2017, before failure of the attorney/client relationship.

36. Prolman denies that he had any sexual contact with his client while she was living at his apartment. Resolving issues such as are presented in this matter often involve making credibility determinations. The Court's credibility determinations that support the above findings, and, in the Court's view, support the findings, even to a clear and convincing evidence standard, include, but are not limited to, the following:

- Prolman is a very experienced criminal defense and family law attorney. He would have known well that taking a client into his home, with the history of abuse and vulnerabilities that his client had, could involve significant risks. He accepted those risks and did not disclose the fact that he was residing in the apartment to the Sagadahoc County officials or the probation officials who would have vetoed the arrangement had they known of it.
- Prolman testified that on the evening of April 9, he and the client had a "blow up." During this "blow up" Prolman testified that he accused

- his client of, and she admitted to, using illegal drugs while she had been residing at his apartment, and he testified that he then told his client that he was terminating the attorney/client relationship with her.
- Prolman testified that there was considerable delay from April 9 in getting the motion to withdraw filed only because his office assistant was on vacation and therefore the motion to withdraw could not be typed and properly prepared. However, the office assistant testified that she did not leave for vacation until Wednesday, April 12. Accordingly, she would have been available on two business days, Monday, April 10, and Tuesday, April 11, to prepare the motion to withdraw, had Prolman sought to promptly file a motion to withdraw, as he claimed he wanted to, following the alleged “blow up” on April 9.
 - It appears highly unlikely that the convivial lamb chop dinner, with shared consumption of alcoholic beverages, that occurred on April 10 would have occurred had the April 9 “blow up” and termination of the attorney/client relationship occurred as described in Prolman’s testimony.
 - The text messaging between Prolman and the client, beginning on Tuesday April 11, indicated in Board Exhibit 21, includes statements

by Prolman saying things that would not appear likely to have been stated if the “blow up” occurred as he claimed. The text messaging indicated that on Thursday, April 13 it was the client, not Prolman, stating that she wanted the attorney/client relationship terminated. It is only after this indication from the client that she wanted the attorney/client relationship terminated that the motion to withdraw was initiated and filed after Prolman’s office assistant returned from her vacation.

- The representation to the court made by Prolman in the motion to withdraw that the client had been compliant with the terms of her probation and thus, by inference, that she had not been using drugs, would have been, if the client was abusing drugs as Prolman testified she was, a false representation to the court and a serious violation of the Rules of Professional Conduct.
- At all times while she was at Prolman’s apartment, the client was subject to random drug testing, although it does not appear that such random tests were conducted while she was at Prolman’s apartment. The way random drug tests are conducted when a female is being tested include being observed in the stall by a female officer, which makes it improbable that clean urine could be substituted for the

client's urine during the course of the observed gathering for testing. Notably, one witness did testify that, at the request of another individual, he had provided "clean urine" to be used by the client in a drug test. However, this had occurred, the witness testified, "over a year ago," thus seven or eight months before the possible random drug tests at issue in this proceeding.

37. During the time his client was residing at his apartment, Prolman consumed and provided to his client wine from one or more bottles of wine. Prolman's federal probation conditions barred his use or possession of alcoholic beverages. A violation of Prolman's federal probation conditions would be a violation of the Court's March 7, 2016, order requiring compliance with the terms and conditions of his federal probation.

VIOLATIONS OF THE MAINE RULES OF PROFESSIONAL CONDUCT

In its petition to the Court seeking an immediate suspension, the Board alleged that Prolman had violated Maine Rules of Professional Conduct 1.5(a), 1.7(a)(2), 1.16(a)(1), 2.1, 3.4(c), and 8.4(a) and (d), and had violated the Attorney's Oath. Before the beginning of closing arguments, the Court confirmed with Bar counsel that the violations of the Rules of Professional Conduct asserted in the initial petition were the violations of the Rules of Professional Conduct being asserted at the hearing. During closing argument,

Bar counsel argued that violations of Rules of Professional Conduct not indicated in the initial petition, specifically violations of Rules of Professional Conduct 4.3, 5.2, 6.1, and 6.3(1), were also being asserted.

The Court may consider whether violations of the newly asserted provisions of the Maine Rules of Professional Conduct have been proved only if it can conclude that the issues relating to these violations were tried by agreement or that the respondent, Gray M. Prolman, otherwise had adequate notice of these claimed violations and opportunity to present evidence and argument regarding them.

The Court now proceeds to consider whether the claimed violations of the Maine Rules of Professional Conduct, or any of them, have been proved. Initially it is important to note that, unlike the professional conduct rules of some other states and the ABA Model Rules of Professional Conduct, the Maine Rules of Professional Conduct do not explicitly prohibit a sexual relationship between an attorney and a client. Thus, comment number 12 to Maine Rules of Professional Conduct 1.7 states:

[12] Maine has not adopted the ABA Model Rules' categorical prohibition on an attorney forming a sexual relationship with an existing client because such a rule seems unnecessary to address true disciplinary problems and it threatens to make disciplinary issues out of conduct that we do not believe should be a matter of attorney discipline. However, the lack of a categorical prohibition should not be construed as an implicit

approval of such relationships. Attorneys have been disciplined under the former Maine Code of Professional Responsibility for entering into sexual relations with clients, and they may be disciplined for similar conduct under these rules. The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. In certain types of representations such as family or juvenile matters, the relationship is almost always unequal; thus, a sexual relationship between lawyer and client in such circumstance may involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the sexual relationship.

Comment 12 to Rule 1.7 is also incorporated by reference for Comment 17 to Rule 1.8 and Comment 6 to Rule 2.1.

The gist of those comments is that while, in Maine, a sexual relationship between an attorney and a client is not categorically prohibited, there are many situations where a sexual relationship between an attorney and a client will combine with other factors to cause a violation of one or more of the Rules of Professional Conduct.

Turning to the violations alleged by the Board of Overseers of the Bar:

Rule 1.5(a) directs that “a lawyer shall not make an arrangement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.” Any claim that the flat fees charged and collected here were unreasonable is not proved. Both of the endeavors for which the flat fees were charged were successful. The work to resolve the Florida charge was completed before the end of March, and the work to seek an early termination of the client’s probation was essentially resolved in early March, though it was not confirmed until early June, after Prolman had withdrawn from representing the client at the end of April.

Rule 1.7(a)(2) addresses conflicts of interests between different clients or between a client or former client and a third person or personal interest of the lawyer. No such conflicts of interest with other clients or third persons is proved here. However, Prolman’s personal interest in initiating a sexual relationship with his client certainly conflicted with the best interests of his vulnerable client. Violation of Rule 1.7(a)(2) is proved.

Rule 1.16(a)(1) requires that a lawyer not represent a client or, where representation has commenced, shall withdraw from representation of the client if the representation will result in violation of the Rules of Professional Conduct or other laws. The evidence here indicates that Prolman withdrew

from representation of the client within a reasonable time after their dispute arose. Violation of Rule 1.16(a)(1) has not been proved.

Rule 2.1 states that “in representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, emotional and political factors, that may be relevant to the client’s situation.”

Violation of Rule 2.1 is proved. Prolman committed professional misconduct in not advising his vulnerable client and her supporters that the apartment that he was making available to her would result in her living with him in a circumstance where she would have little or no privacy and be required to use a bathroom right next to his bedroom. Further, regardless of what information Prolman did or did not give to his client and her supporters about the living arrangements, he should have known that having such a vulnerable client with her unfortunate history living with him, particularly in light of the recent trauma she had suffered, and her history of physical and emotional abuse and victimization through sex trafficking, is something he absolutely should not have advised in the circumstances.

Prolman also violated Rule 2.1 by taking advantage of his client's vulnerabilities to initiate an intimate sexual relationship with her to which she submitted, despite her finding Prolman's sexual advances to be "gross."

Rule 3.4(c) prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists. No violation of an obligation to a tribunal before which he was appearing on behalf of his client has been proved here. Once a conflict arose between Prolman and his client, he withdrew from representation at a time after the issues before the tribunal had essentially been resolved by agreement subject only to confirmation that later occurred when the client appeared unrepresented.

Rule 8.4(a) indicates that it is professional misconduct for a lawyer to violate or attempt to violate the Maine Rules of Professional Conduct or the Maine Bar Rules. Essentially therefore, if violation of another rule is found, as violation of Rules 1.7(a)(2) and 2.1 has been found here, then Rule 8.4(a) has been violated.

Rule 8.4(d) states that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." Here the Board has proved that having a vulnerable client with a history of victimization and abuse come to live with him, was very damaging to his client, took

advantage of her, furthered her history of victimization and submission to abuse, and destroyed their previously good and successful attorney/client relationship. While the evidence would not support it as a finding, it also appears likely that the damaging relationship with Prolman caused the client to refuse to cooperate in the prosecution of her abusive boyfriend and may have caused her to seek to reestablish the relationship with the abusive boyfriend due to the abuse she suffered at Prolman's hands.

The Board also asserted in its petition that Prolman violated the Attorney's Oath which is often described as a concise summary of the professional ethical obligations of an attorney. The Attorney's Oath is stated in 4 M.R.S. § 806:

You solemnly swear that you will do no falsehood nor consent to the doing of any in court, and that if you know of an intention to commit any, you will give knowledge thereof to the justices of the court or some of them that it may be prevented; you will not wittingly or willingly promote or sue any false, groundless or unlawful suit nor give aid or consent to the same; that you will delay no man for lucre or malice, but will conduct yourself in the office of an attorney within the courts according to the best of your knowledge and discretion, and with all good fidelity, as well as to the courts, as to your clients. So help you God.

Prolman's actions (i) arranging for his vulnerable and submissive client to move into his apartment without disclosing to her, her diversion officer, or her other supporters that he also lived there; (ii) initiating a sexual relationship

with his client; and (iii) providing alcoholic beverages to be consumed by him and his client in violation of the terms of probation of each of them, violated his obligation, imposed by the Attorney's Oath, to conduct himself toward his client with the best of his knowledge and discretion and to act towards her "with all good fidelity."

Rule 4.3 cited in the Board's closing argument, relates to dealings with unrepresented persons. The Court finds that no improper dealings with unrepresented persons has been proved here.

Rule 5.2 addresses responsibilities to a lawyer subordinate to another lawyer. No violation of 5.2 is proved in this proceeding.

Rule 6.1 addresses and promotes providing voluntary pro bono services. There was an allegation here that Prolman violated the conditions of his federal probation by providing legal services, perhaps pro bono services, to individuals with matters pending before the federal courts. The representation at issue did not involve appearing on behalf of individuals on the pending federal criminal charges. Rather, one representation involved a protection from abuse matter and the other representation involved a social security disability claim. It is not apparent that Prolman's conditions of federal probation prohibit representation of individuals charged with federal crimes, in other forums,

unrelated to the criminal charges. Such representation has not been demonstrated to violate Rule 6.1.

Rule 6.3(1) relates to service to legal services organizations and prohibition of conflicts of interest between work for clients and work for legal services organizations. No violation of 6.3 has been proved here.

SANCTIONS

As sanctions for the professional misconduct proved here, the Board of Overseers of the Bar argues for a sanction of disbarment or a minimum suspension from the practice of law of three years. Prolman, through counsel, argues that if any violation is found, a maximum sanction of a public reprimand is appropriate.

In support of its position, the Board has offered seventeen opinions from other states addressing attorney discipline for sexual activity with clients or with others, sometimes involving multiple victims and/or physical violence. Some of those opinions are from states that, unlike Maine, categorically prohibit sexual relationships between attorneys and clients, others involve multiple victims, physical violence, or the commission of criminal acts. Because of these differences, the offered opinions from other states are not directly analogous to this case, and not particularly helpful in determining the appropriate sanction.

The violations of the Rules and Professional Conduct upon which to base a sanction include:

1. Arranging for a vulnerable client, with a history of physical and sexual abuse by and submissiveness to men she was living with, to move in with him and not disclosing this living arrangement to the client's diversion officer and others supporting her effort to comply with her terms of probation. This action violated Rule 2.1 requiring any attorney to exercise independent professional judgment and render candid advice. Creating this living arrangement, with this client, was a serious error of judgment. Not disclosing to the client or her support team that the offered apartment involved moving in with him was a failure to render candid advice. Violation of Rule 2.1 was also a violation of Rule 8.4(a).

2. Initiating and engaging in a sexual relationship, including performing sex acts on more than one occasion, with a client he knew to be vulnerable and submissive. This action violated Rule 1.7(a)(2) by placing Prolman's personal interest over the best interests of his client. This action also violated the obligation imposed by the Attorney's Oath to act in the best interests of his client, or, to use the ancient language, to act "with all good fidelity" toward his client. In initiating the sexual relationship with his client, Prolman put his interest in obtaining sexual gratification ahead of his client's

interests. As Comment 12 to Rule 1.7 states, when a lawyer-client relationship is “unequal,” “a sexual relationship between lawyer and client . . . may involve unfair exploitation of the lawyer’s fiduciary role, in violation of the lawyer’s basic ethical obligation not to use the trust of the client to the client’s disadvantage.”

3. Consuming alcoholic beverages and providing alcoholic beverages for consumption to his client. While the Court’s March 7, 2016, order prohibited only “excessive” consumption of alcoholic beverages, that order also required compliance with the conditions of Prolman’s federal sentence. The federal probation conditions prohibited any possession or use of alcoholic beverages. Thus, Prolman’s consumption of alcoholic beverages violated this Court’s order, and violated Rule 8.4(d) prohibiting conduct “prejudicial to the administration of justice.” Providing alcoholic beverages to his client caused the client to violate her conditions of probation, placing her freedom and the early termination of her probation at risk. This also violated Rule 8.4(d). And providing alcoholic beverages in those circumstances certainly was not acting toward the client using the best of Prolman’s knowledge and discretion, as required by the Attorney’s Oath.

With these violations found, the Court must determine a sanction. In Maine, there are few comparable cases of professional misconduct, involving

sexual relations with a client, to gauge what an appropriate sanction might be.

Guidance on factors to be considered in determining a sanction is provided in

Bar Rule 21(c) which states:

(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.

Here, by initiating a sexual relationship with his client and by providing her alcoholic beverages to consume, Prolman violated duties owed to his client and the legal system as discussed above. Prolman's actions in his treatment of his client and in his failure to disclose to her support team that she would be living with him was negligent and reckless, though probably not so well thought out or planned in advance sufficiently to be considered intentional.

Imposing oneself sexually on a nonconsenting, vulnerable, and submissive person inevitably causes psychological injury to the person subject to such advances and caused psychological injury to the client in this case.

Considering aggravating and mitigating circumstances in addition to the factors discussed above, Prolman's professional services were successful in achieving the client's objectives in the two cases for which he was retained. And he did get involved in trying to help his client reestablish her independence after her necessary separation from her dangerously abusive boyfriend. He arranged for her to get a new cell phone, and he arranged for her to get a job. Unfortunately, his effort to help his client became misguided when he had her move into his apartment and then initiated the sexual relationship that took advantage of the living arrangement and his client's vulnerability.

The injury caused by Prolman's conduct essentially continued and confirmed the pattern of men victimizing and oppressing the client that she had endured for most of her life. He also placed his client at risk by providing her alcoholic beverages that could have caused her probation to be revoked.

Considering all the circumstances discussed above, the Court determines that a six-month suspension from the practice of law is the appropriate sanction in the circumstances. To allow Prolman time to provide the required notices, M. Bar R. 31, and make appropriate arrangements for his practice, the effective date of the suspension is deferred to November 1, 2017.

The Court ORDERS:

Gary M. Prolman shall be suspended from the practice of law for a term of six months, with the suspension commencing on November 1, 2017.

Dated: September 14, 2017

_____/S/_____
Donald G. Alexander
Associate Justice