

STATE OF MAINE

SUPREME JUDICIAL COURT  
DOCKET NO. BAR-06-4

BOARD OF OVERSEERS OF THE BAR )  
 )  
v. )  
 )  
PATRICIA DANISINKA-WASHBURN )

FINDINGS AND  
CONCLUSIONS

This matter is before the Court for decision, after hearing, on a disciplinary information filed by the Board of Overseers of the Bar. M. Bar. R. 7.2(b). The information asserts violations of the Code of Professional Responsibility, Bar R. 3, and requests disciplinary action by the Court. A hearing was held on June 27, 2007, on the issues of violation of the Code of Professional Responsibility. By agreement of the parties and the Court, presentation of any evidence and argument relating to the issue of sanctions was deferred pending ruling by the Court on whether, or not, any violations of the Bar Rules have been proven.

Based on the evidence presented, the Court makes the following findings:

Floyd Burton Jr. was indicted for arson (Class A), 17-A M.R.S.A. § 802, and attempted murder (Class A), 17-A M.R.S.A. § 201, in the Superior Court, Penobscot County, CR-95-261. Burton was convicted of both charges after a jury

trial in which he was represented by another attorney. On December 30, 1996, he was sentenced by the court (*Calkins, J.*) to concurrent terms of twenty-eight years, with all but twenty years suspended and four years probation. His trial attorney, on that date, filed a notice of appeal and an application for leave to appeal the sentence.<sup>1</sup> His trial counsel also filed a motion to withdraw, which was granted, conditioned on appearance of new counsel. At trial, Burton had been represented on a court-appointed basis. In early-January 1997, another attorney, not involved in this matter, was court-appointed to handle Burton's appeal.

After sentencing, Burton was incarcerated at Department of Corrections Facilities and remains incarcerated today.

Attorney Patricia Danisinka-Washburn had previously represented Burton in two civil matters. At some point in January 1997, Floyd Burton's mother, Hattie Burton, and Ms. Danisinka-Washburn spoke about the possibility of Danisinka-Washburn representing Floyd Burton on the appeal on a retained basis.

After several conversations, Danisinka-Washburn agreed with Hattie Burton that she would represent Floyd Burton in the appeal for a retainer of \$15,000.

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<sup>1</sup> The application for leave to appeal sentence was denied by the Sentence Review Panel on May 2, 1997.

Hattie Burton advised Danisinka-Washburn that she would have trouble paying that sum in one payment. Danisinka-Washburn advised Hattie Burton that Burton could pay gradual payments, but a large sum was needed early on. Hattie Burton then mortgaged her home, paid some other debts, and paid Danisinka-Washburn \$9,000 towards the retainer. She also began making monthly or bi-monthly payments of \$200 or \$250.

Danisinka-Washburn entered her appearance as counsel on the appeal on February 5, 1997. Danisinka-Washburn then undertook efforts to obtain the case file from Floyd Burton's trial attorney. Floyd Burton's trial attorney proved uncooperative until Danisinka-Washburn sought the assistance of the Board of Overseer of the Bar, after which the case file was obtained. The case file did not include the transcript. While the transcript had been ordered as part of the filing of the notice of appeal, payment arrangements had not been made. Thus, the transcript was not provided.

Because of delays in preparing the transcript, the State filed a motion to dismiss the appeal for want of prosecution. Danisinka-Washburn filed an objection to that motion. The Law Court (*Wathan, C.J.*) deferred ruling on the motion pending determination of Floyd Burton's indigency to secure court funds to

pay for the transcript. In an order docketed on May 23, 1997, the court (*Mead, J.*) found Floyd Burton indigent and ordered that the court pay the costs incurred on appeal, including costs for payment of the transcript. The docket entries and several exhibits in the file indicate that there was some confusion between the Court, the court reporter, and Danisinka-Washburn as to whether funds for payment for the transcript had been approved.

The transcript was ultimately received by the Law Court on December 2, 1997. It was received by Danisinka-Washburn at about the same time. The Law Court notified Danisinka-Washburn that her brief was due January 5, 1998. No brief was filed. Danisinka-Washburn received, from the Law Court, a notice of possible dismissal for failure to timely file the appellant's brief in late-February 1998. She filed a request for more time until May 6, 1998, to file her brief. Her request for an extension of time to May 6 was granted. The time she requested lapsed, and no brief was filed.

The State filed another motion to dismiss in mid-May 1998. Danisinka-Washburn did not oppose this motion. Burton's appeal was dismissed for want of prosecution on May 28, 1998.

At hearing, Danisinka-Washburn asserted that she had extensively prepared and reviewed the file and researched potential issues on appeal and had decided that there were no meritorious grounds for appeal. Accordingly, she indicated she elected not to oppose the motion to dismiss.

This decision, that the appeal lacked merit and she would not oppose the motion to dismiss, was not communicated to Floyd Burton, Hattie Burton, or the Law Court.

By the time the appeal was dismissed, Danisinka-Washburn had been paid approximately \$14,000 through the \$9,000 payment from Hattie Burton, monthly or bi-monthly payments from Hattie Burton, and a payment to Danisinka-Washburn of \$3,000 from Floyd Burton's brother-in-law.

As is the Law Court's practice when an appeal is dismissed, the notice of dismissal was sent, not only to the attorneys appearing in the case, but also directly to the defendant, Floyd Burton. Mr. Burton received the notice that the appeal had been dismissed shortly after the order dismissing the appeal was entered on May 28, 1998.

Although Floyd Burton was Danisinka-Washburn's client, virtually all of the contacts regarding the appeal were between Danisinka-Washburn and Hattie Burton. Hattie Burton is an individual with limited education, who had difficulty understanding the significant legal matters involved in the appeal. Floyd Burton wrote Danisinka-Washburn a number of letters asking that she contact him directly, but she did not do so. She continued to maintain contact only through Hattie Burton.

The record contains only one letter from Danisinka-Washburn to Floyd Burton. It was written in June 1998, about one month after Burton's appeal was dismissed. The letter does not mention the appeal and addresses an issue about a request to transfer Burton to a different facility within the prison system. A month after that letter, Floyd Burton wrote to Danisinka-Washburn stating he had learned of the notice of dismissal of his appeal and asked, "I would like to know what is going on with my case." Danisinka-Washburn did not reply to the letter.

Danisinka-Washburn asserts that she did not engage in direct contacts with Floyd Burton because she encountered difficulty in making calls to or receiving calls from the Maine State Prison where Burton was incarcerated. However, by Danisinka-Washburn's own admission, she has significant experience dealing with

prisoners in the Maine State Prison, including the capacity for her to contact them and them to contact her. She testified that she worked virtually full-time as an advocate, connected to Pine Tree Legal Assistance, in dealing with matters for prisoners at the Maine State Prison in the early 1970s, and she has continued to receive and respond to correspondence and phone calls from a number of prisoners, both prisoners who were her clients and prisoners who were not, into the mid 1990s. Danisinka-Washburn knew how to engage in telephone contact with prison inmates, and could have done so with Floyd Burton, had she desire to have contact. The purported difficulties in telephone contact provide no excuse for failing to write to Mr. Burton about the decision that his appeal lacked merit, and the dismissal of his appeal, or to respond to some of his numerous letters asking about the status of his case.

After Floyd Burton received the notice from the Law Court that his appeal had been dismissed, he attempted to contact Danisinka-Washburn about the dismissal, and he also asked his mother to get information from Danisinka-Washburn as to why the appeal appeared to have been dismissed. When asked about the dismissal by Hattie Burton, Danisinka-Washburn informed her that she had received an extension of time, and the appeal was still being processed. This statement was false.

At hearing, Danisinka-Washburn testified that she spent extensive amounts of time reviewing and re-reviewing the file and researching legal issues connected with the appeal, such that she spent more time than would have been adequately compensated with the \$15,000 retainer that she had requested. Danisinka-Washburn testified that she believed that the appeal had no merit because, primarily, the trial involved factual determinations related to credibility of the witnesses. At the same hearing, she testified that her claimed extensive work on the appeal included twelve to fifteen trips to the State Law Library in Augusta, during which time she had spent between six and eight hours each time researching legal issues connected with the appeal. She has no paperwork related to this claimed research because, she asserts, it was destroyed when the area where she had the files stored was flooded in 2001. Danisinka-Washburn offered little explanation as to what legal issues, in a case that she viewed as primarily a credibility contest, required such extensive research.

The Court finds that, after receiving the case file from the trial attorney, Danisinka-Washburn did not engage in the extensive file review, case preparation, and legal research claimed. At the time, her practice was disorganized and poorly



documented, issues that have been subject to a prior disciplinary proceeding and order. BAR-03-4

At hearing, Danisinka-Washburn testified that she believed her representation of Floyd Burton ended by November of 1998 after she completed consideration of whether it might be possible to obtain a new trial for Burton. This termination of representation was not communicated to Floyd Burton or Hattie Burton. In subsequent conversations with Hattie Burton and other family members, and in one telephone conversation with Floyd Burton, Danisinka-Washburn spoke of efforts for a new trial or a sentence reduction. These comments were in response to questions about the status of the case. They were calculated to give the impression that Danisinka-Washburn was still working on the matter that she knew, but did not tell her client, had ended with dismissal of the appeal.

The Court finds that, in this case, Danisinka-Washburn neglected to adequately review and prepare the appeal and neglected to communicate with her client regarding the status of the appeal and its ultimate dismissal.

The Court also finds not credible Danisinka-Washburn's claims that, after the appeal was dismissed, she engaged in further substantial work trying to develop evidence to file a motion for a new trial. The Court finds that such preparations to try to identify a basis for a new trial, if any, were minimal. The Court also finds that while Danisinka-Washburn may have briefly explored the possibility of obtaining a pardon or a commutation of sentence, her work on this issue was also minimal at best.

Throughout this time period, from late 1997, when she had claimed to be working on the appeal, through 1998, when the appeal was dismissed, and afterwards into 1999, Floyd Burton regularly wrote Danisinka-Washburn asking information about the status of the case and the appeal. She did not respond directly to Floyd Burton. In communications with Hattie Burton, Danisinka-Washburn misled Hattie Burton into believing that there were still issues to be explored, and that the appeal was taking a long time to be resolved.

In November 2001, Floyd Burton and Danisinka-Washburn spoke by telephone. This was their only direct conversation. At that time, Danisinka-Washburn advised Burton that she was still working on his case and trying to get his sentence reduced. She also told Burton that she would be sending him some

paperwork to sign relative to his case. No paperwork was ever sent. While Danisinka-Washburn claims that this conversation relates to her efforts to obtain a commutation of Burton's sentence, she did not advise Burton that this process was separate from the appeal that had been dismissed. Burton believed this conversation related to the appeal. Notably, the conversation occurred after the spring of 2001 when Danisinka-Washburn claims that part of the paperwork relating to Burton's appeal was destroyed. She did not advise Burton of the loss of the appeal paperwork in the November 2001 conversation.

### CONCLUSIONS

Based on the above findings and its consideration of the whole record, the Court concludes as follows:

1. Danisinka-Washburn neglected to prosecute the appeal for which she had been retained. Her failure to prosecute the appeal violated M. Bar R. 3.2(f)(4) and 3.6(a)(2) and (3).

2. She did not perform services reflecting the time and effort that would justify retention of the \$14,000 payment received from Hattie Burton and Floyd Burton's family. In relation to the work done, the fee charged was excessive pursuant to M. Bar. R. 3.3(a).

3. Danisinka-Washburn failed her obligation to communicate with her client, Floyd Burton, and particularly failed an obligation to consult with him prior to her decision to allow dismissal of the appeal, which he wished to maintain. Such consultation is a mandatory obligation of counsel on appeal. *Florida v. Nixon*, 543 U.S. 175, 187 (2005); *Smith v. Robbins*, 528 U.S. 259, 265-66 (2000); *Anders v. California*, 386 U.S. 738 (1967); *State v. Junkins*, 2001 ME 133, 779 A.2d 948. This failure to communicate violated M. Bar. R. 3.6(a).

4. Danisinka-Washburn misled Floyd Burton and Hattie Burton with respect to the status of the appeal, leading them to believe that she was still working on the appeal, and that the appeal still might be processed after she knew that the appeal had been dismissed. This misleading conduct, including false and misleading statements, violated M. Bar. R. 3.2(f)(3) and (4).

These findings of violation of the Bar Rules having been made, the Court will schedule a hearing to determine, after hearing from Bar counsel and Danisinka-Washburn, what sanction may be appropriate in light of the violations of Bar Rules found in this order. The final disposition order will incorporate the above findings and conclusions, plus the Court's determinations regarding the appropriate sanction.

