

STATE OF MAINE

SUPREME JUDICIAL COURT
DOCKET NO. BAR-09-14

BOARD OF OVERSEERS OF THE BAR]
]]
v.]
MIKLOS M. PONGRATZ]

FINDINGS OF FACT and
CONCLUSIONS OF LAW

The evidentiary hearing on the information filed by the Board of Overseers of the Bar was held on February 26, 2010. The Board was represented by Jacqueline L.L. Gomes, Esq., and the respondent, Miklos M. Pongratz, Esq., was represented by Peter J. DeTroy, Esq. The Court has carefully considered the testimony of the witnesses and the exhibits received in evidence and makes the following findings of fact and conclusions of law.

Attorney Pongratz was admitted to the Maine Bar in 2004 and has since maintained a solo law practice in Raymond. In August 2007, Pongratz was retained by Darcie Bolduc to represent her in connection with a family matter filed in the Bridgton District Court by the father of Ms. Bolduc's young son. The father was largely uninvolved with the son, but his complaint sought to establish expanded rights of parent/child contact.

During the course of the representation, Pongratz and Bolduc participated in two court-sponsored mediation sessions at the Bridgton courthouse. The second was held on November 5, 2007, a Monday, and began at 9 a.m. Following the mediation session, Pongratz invited Bolduc to join him for breakfast, and the two then met at a diner in Bridgton. At the conclusion of breakfast, Pongratz invited Bolduc to join him for a beer that afternoon. She agreed. They returned to Raymond in their separate vehicles and subsequently left together in Pongratz's truck to travel to a bar in Gray. They were together at the bar for approximately 1.5 to 2 hours, and then returned to Raymond in Pongratz's truck.

In their testimony, Pongratz and Bolduc offer widely different accounts of what occurred during their time together after the mediation session. The Court resolves those conflicts in the factual findings that follow.

During their breakfast together at the diner in Bridgton, Pongratz and Bolduc discussed her case and matters unrelated to her case. Pongratz told Bolduc that he was attracted to her. At one point, he put his hand on her thigh. These actions made Bolduc feel uncomfortable, but she thought that Pongratz was kidding and she made light of his behavior.

Once at the bar in Gray, Pongratz and Bolduc each consumed two beers and discussed her case and matters unrelated to her case. While there, Pongratz took a photograph of Bolduc's buttocks with his cell phone when Bolduc was turned around and not facing him. He showed her the photograph and told her that she "had a nice ass." Bolduc objected to the photograph having been taken and insisted that Pongratz delete it, which he did.

During the ride from Gray to Raymond, Pongratz again expressed to Bolduc that he was attracted to her, and he proposed that they go to his home to have sex. Pongratz told Bolduc that if she wanted to have sex with him, "that would be fine." She responded, "You're my lawyer, you're not supposed to talk like this." Having refused Pongratz's invitation, Bolduc left for home in her own car as soon as they arrived in Raymond. The day's events left Bolduc confused and shaken.

Following November 5, Bolduc discussed events related to her case by telephone with Pongratz's legal assistant and, on at least one occasion, by telephone with Pongratz.¹ On December 4, 2007, Bolduc called Pongratz's legal assistant to inform her that she had retained Thomas Bell as her new attorney. Attorney Bell called Pongratz's legal assistant later that day and expressed his desire to pick up Bolduc's client file at Pongratz's office. Later that day, Pongratz, or his legal assistant, called Bolduc and told her that she would be required to appear in person to pick up her file and to sign a payment agreement for her outstanding fees.

On December 6, Bolduc and her mother appeared at Pongratz's office to pick up her file. Upon meeting with Bolduc and her mother, and before providing Bolduc her client file, Pongratz had his legal assistant prepare a document captioned "Termination of Services and Acknowledgement of Fees Owed," which memorialized that Bolduc owed Pongratz \$2204.25, and that she agreed to pay the balance at the rate of \$50 per month with interest accruing at the rate of twelve percent per annum. Based on what Pongratz stated, Bolduc understood that she

¹ Consistent with Bolduc's testimony and contrary to Pongratz's evidence, the Court finds that Bolduc and Pongratz did not meet in person at his office on November 19, 2007.

was required to sign the document as a condition to receiving her file. Pongratz gave Bolduc her client file after she signed the agreement.

Bolduc was advised by Attorney Bell of her right to file a grievance complaint regarding Pongratz's actions with the Board of Overseers of the Bar. Bolduc completed a handwritten complaint on March 17, 2008, and the allegations in the complaint resulted in a hearing before a panel of the Grievance Commission on August 25, 2009. By a decision dated August 26, 2009, the hearing panel found probable cause for Pongratz's suspension or disbarment from practice and directed Bar Counsel to file a disciplinary information with the Maine Supreme Judicial Court pursuant to Maine Bar Rule 7.2(b).²

The Court rejects Pongratz's suggestion that Bolduc's claims regarding his professional misconduct are a complete fabrication motivated by her dissatisfaction with the outcome of the mediation held on November 5th and her desire to avoid paying the money she owes for his services.³ In all but one respect that is addressed below, the Court finds that the inconsistencies between Bolduc's report of the events of November 5th in her handwritten complaint, her testimony before the Board, and her testimony before the Court, are largely the product of her lack of experience with the legal process and in providing testimony, the fact that she had not reread her handwritten complaint after she submitted it in March 2008, and the passage of time.⁴

There is one significant aspect of the Board's allegations against Pongratz that the Court concludes has not been established by a preponderance of the evidence. Bolduc's handwritten complaint asserted that Pongratz first expressed his interest in having sex with Bolduc when they were in the parking lot of the

² The Board of Overseers of the Bar alleged that Pongratz violated M. Bar R. 3.1(a); 3.4(f)(1), (2)(i), (2)(v); 3.6(a); and 3.7(c)(1).

³ For example, although Pongratz admits that he took a photograph of Bolduc's buttocks while the two were at the bar, he testified that he did so at her insistence and against his better judgment. The court does not accept this explanation.

⁴ Bolduc's claim that Pongratz propositioned her during the course of their time together on November 5th is consistent with the undisputed facts that it was Pongratz who pursued time alone with Bolduc by initiating their breakfast meeting and then proposing that the two meet later in the day to go to a bar. Further, her testimony is consistent with that of her mother, who explained that when Bolduc returned home the afternoon of November 5th, she was in a state of disbelief and was very upset. Bolduc's testimony is also corroborated by her actions in finding and retaining a new attorney and terminating Pongratz soon after November 5th. The Court's credibility assessments also rest on the Court's observation and evaluation of each witness's demeanor in open court.

diner, and that he told her that if she agreed to have sex, she would not have to pay her outstanding legal fees. Bolduc did not repeat this specific allegation in her testimony before the Court. She testified that at the diner “he said a few inappropriate things” that made her feel uncomfortable, but further testified, “I don’t really remember” the inappropriate things he said.

Pongratz’s proposal of a quid pro quo of sex in exchange for the forgiveness of legal fees is the most serious professional misconduct alleged by the Board. Although a factual finding that Pongratz proposed a quid pro quo at the diner could be based on the handwritten complaint itself (which was marked as an exhibit and received in evidence), the Court declines to do so. The most probative and reliable evidence regarding this critical fact is Bolduc’s testimony, under oath, that she could not recall what Pongratz said at the diner. The Court concludes that the allegation of a quid pro quo has not been proven by a preponderance of the evidence.

Based on the preceding findings of fact, the Court concludes as a matter of law that:

1. By propositioning Bolduc for sexual relations while also providing legal representation and counseling to her on November 5, 2007, Pongratz failed to “employ reasonable care and skill and apply the lawyer’s best judgment in the performance of professional services” in violation of Maine Bar Rule 3.6(a).⁵
2. By effectively conditioning the return of Bolduc’s client file on Bolduc’s appearance in his office and her signing of a contract to pay legal fees and interest in his presence, Pongratz “assert[ed] a lien on a client’s file in order to secure payment of a fee” in violation of Maine Bar Rule 3.7(c)(1).

The parties are directed to file written memoranda on or before April 23, 2010, setting forth their positions regarding the disciplinary sanction that should be imposed based on the Court’s findings of fact and conclusions of law.

⁵ The Maine Bar Rules were abrogated and superceded by the Maine Rules of Professional Conduct effective August 1, 2009.

