

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

ORDER

The Court previously issued Findings of Fact and Conclusions of Law dated April 8, 2010, concluding that Attorney Miklos M. Pongratz engaged in violations of Maine Bar Rules 3.6(a) and 3.7(c)(1)(a)¹ in November and December 2007, while representing a client in an action for the determination of parental rights and responsibilities in the Bridgton District Court. Specifically, he failed to provide reasonable skill and care or apply his best judgment when he propositioned the client to engage in sexual relations during a day in which he was providing legal representation and counsel to her, and he wrongfully asserted a lien on her file by requiring her to sign an agreement to pay the fees that she owed him as a condition of receiving a copy of her client file.

At the Court’s request, counsel simultaneously filed written memoranda setting forth their positions regarding the appropriate disciplinary sanction for these violations. The Board has requested that the Court suspend Pongratz from the practice of law for a period of six months, with all but sixty days suspended subject to several conditions, including that he meet with and follow the directions of the Director of the Maine Assistance Program (MAP); personally apologize in writing to his client; pay the Board’s expenses in the amount of \$975.21; and refrain from any future misconduct. The Board also proposes that Pongratz be subject to monitoring by another attorney for one year, and that any new complaints of professional misconduct proceed directly to the Court pursuant to M. Bar R. 7.2(b)(7) without the opportunity for review by or a hearing before the Grievance Commission. Pongratz urges the Court to impose reprimands for each violation.

¹ Maine Bar Rule 3 has since been abrogated and replaced by the Maine Rules of Professional Conduct (effective August 1, 2009).

The purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who, by their conduct, have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties. *Bd. of Overseers v. Dineen*, 557 A.2d 610, 614 (Me. 1989). “The court in an attorney discipline action is by rule authorized to impose an admonition, a reprimand, [or] public censure, in addition to the stiffer sanctions of suspension and disbarment.” *Bd. of Overseers v. Ingeneri*, 440 A.2d 1039, 1041 (Me. 1982) (quotation marks omitted). Among the factors to be considered in imposing sanctions are: (1) the duty violated; (2) the lawyer’s mental state; (3) the actual or potential injury caused by the lawyer’s misconduct; and (4) the existence of any aggravating or mitigating circumstances. *See ABA Standards for Imposing Lawyer Sanctions* Standard 3.0 (2005). Each of these factors is considered in turn.

In this case, the duties violated—the duty to exercise reasonable care and skill and to exercise best judgment—were fundamental to the attorney-client relationship between Pongratz and his client. By interjecting his own needs and desires into their relationship while simultaneously providing representation and advice, Pongratz lost the trust and confidence of his client. A lawyer’s duty to maintain professional boundaries is a cornerstone on which a successful attorney-client relationship rests. Those boundaries are particularly critical in connection with a relatively young and inexperienced client in the throes of highly stressful litigation over the custody of a child. By his actions, Pongratz left his client confused, hurt, and upset. The breach of the duty violated in this case was serious.

Pongratz’s behavior reflects intentional conduct on his part. His motivation was self-interest. Throughout this proceeding, he has denied any wrongdoing and has not accepted responsibility for his actions.

The actual or potential injury caused by the misconduct in this case is primarily the psychic injury caused to his client, and her loss of confidence in the bar and the civil justice system. Because Pongratz has forgiven the outstanding legal fees that his client owed him, and she is represented by her current attorney on a pro bono basis, she has not suffered any monetary loss.

Pongratz is relatively new to the practice of law, having first been admitted to the Maine Bar in May 2004. This is the first disciplinary proceeding brought against him. However, this mitigating fact is substantially outweighed by circumstances that preceded his admission to practice. In 1996, Pongratz pled guilty to and was convicted of the federal felony charge of conspiracy to possess marijuana with the intent to distribute. 21 U.S.C.S. §§ 841(a)(1), 846 (2002). This

felony conviction created a presumption, at the time he applied for admission to the Maine Bar, that he did not meet the requirement of a good moral character. 4 M.R.S. § 805-A(2)(A)(1) (2009). After a lengthy proceeding, the Board found that Pongratz had “cleared the hurdle of overcoming the presumption against a finding of good moral character and shown that . . . a reasonable amount of time has passed since his conviction and completion of sentence and there is evidence of complete rehabilitation based on his subsequent history.” *In re: Miklos M. Pongratz*, Me. Bd. Bar Examiners decision (March 22, 2004). The Board also noted a reason for continuing concern regarding his ability to achieve the professionalism required of attorneys:

The Board also finds, however, that the Applicant almost missed that hurdle mostly due to his own overly technical efforts to keep licensing authorities and other lawyers from knowing the full truth about his background. The Applicant was almost too clever for his own good. Candor with courts and clients is a quality integral to professionalism at the bar.

Id.

By his more recent actions, Pongratz has called into question whether he is completely rehabilitated and whether he has the capacity to maintain the level of professionalism required of members of the Bar. For this reason, the Court concludes that the sanction in this case must be sufficiently severe to assure that Pongratz is deterred from further unprofessional conduct. The sanction is intended to make it clear that any similar future violations could lead to more serious sanctions, including the ultimate sanction of disbarment.

Accordingly, it is ORDERED that Attorney Pongratz is suspended from the practice of law for a period of eighteen months commencing September 1, 2010, with all but ninety days of that suspension suspended, subject to the following terms and conditions:

1. Prior to serving the suspension, he shall comply with all of the requirements of M. Bar R. 7.3(i)(1);
2. He shall meet with the Director of the Maine Assistance Program (MAP) within thirty (30) days of the date of this Order to evaluate whether there are any mental or emotional disorders that caused or contributed to his inappropriate conduct in this matter. He

shall follow all recommendations of the evaluation and, if requested by MAP's director, shall enter into a contract for services to be administered and monitored through MAP;

3. He shall apologize in writing to the complainant by September 1, 2010, and provide a copy of the same to Bar Counsel;
4. Pursuant to M. Bar R. 7.2(b)(8), prior to his return to practice Attorney Pongratz shall pay the reasonable expenses of the Board in the amount of \$975.21; and
5. He shall refrain from any misconduct in the future.

In addition, it is ORDERED that Bar Counsel shall bring to the attention of the Court any apparent violations of the conditions of this Order that might justify the imposition of all or a portion of the suspended period of the suspension. Bar Counsel is also authorized to file directly with the Court any new complaints of professional misconduct allegedly committed by Attorney Pongratz at any time before February 28, 2012, pursuant to Bar Rule 7.2(b)(7), without conducting any Grievance Commission review or hearing.

Date: June 8, 2010

/s/
Jon D. Levy, Associate Justice
Maine Supreme Judicial Court