

STATE OF MAINE

Supreme Judicial Court

Docket No. BAR-10-9

BOARD OF OVERSEERS OF THE BAR)	
	Plaintiff)
)
v.)
ANITA M. VOLPE, ESQ.,)
of Rockland, Maine)
Me. Bar #00913)
	Defendant)

ORDER
M. Bar R. 7.2(b)

Pursuant to the Court’s Order dated May 4, 2010, approving counsel’s waiver of further proceedings before the Grievance Commission, this attorney discipline action was commenced by the filing of an information dated June 25, 2010, by the Board of Overseers of the Bar with the Court pursuant to M. Bar R. 7.2(b)(1).¹

Defendant Anita M. Volpe, Esq., of Rockland, Maine was at all times relevant hereto an attorney admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules. Attorney Volpe was admitted to the Maine Bar in September of 1977, and is currently registered as an active Maine attorney with a small law office practice in Rockland.

Based upon factual stipulations presented by the parties, the exhibits presented, and upon testimony from Attorney Volpe during the July 28, 2010,

¹ As of August 1, 2009, all attorneys practicing law in Maine are subject to the Maine Rules of Professional Conduct. Because all of the behavior addressed in this Order occurred before the effective date for the Maine Rules of Professional Conduct, the Order cites only to the Maine Bar Rules.

hearing, the Court makes the following findings and conclusions concerning the misconduct by Attorney Volpe:

FINDINGS

1. From October 2, 2008, through December 17, 2008, Attorney Volpe represented Fiora Hamilton Watts in a divorce action filed against her by Brenton Hamilton. The divorce involved issues of contact with and residential placement of the couple's minor child, Chase.

2. Soon after Attorney Volpe commenced her representation of Ms. Watts in October of 2008, Attorney Volpe and Mr. Hamilton's counsel, Christopher Hardy, negotiated a schedule allowing Mr. Hamilton to see Chase, who was primarily living with Ms. Watts. That agreed-upon schedule was a private arrangement between the parties, with no formal court order supporting it. During the weeks the schedule was in place, there were several deviations to accommodate the parties' personal schedules.

3. Immediately after Attorney Volpe entered her appearance for Ms. Watts on October 24, 2008, the District Court had issued an order scheduling a case management conference (CMC) for November 25. Sometime in November of 2008, Ms. Watts informed Attorney Volpe that she was planning to take Chase to California to visit family over the Thanksgiving holiday, and would not be available to attend the CMC.

4. Ms. Watts and Attorney Volpe disagree about what was expected to occur or not occur at the CMC in Ms. Watts's absence, but Ms. Watts remains adamant that Attorney Volpe caused her to understand Attorney Volpe would request that the CMC be continued and rescheduled to a new date. Attorney Volpe did not file a motion to continue the CMC. Instead, on November 17, 2008, Attorney Volpe filed a motion to allow Ms. Watts to participate in the CMC by telephone. Family Law Magistrate Paul Mathews granted that motion the following day.

5. At the CMC, Attorney Volpe did not arrange for Ms. Watts to participate by telephone. During the conference, Attorney Hardy requested that the magistrate issue an interim contact order. Attorney Volpe maintains that she objected and requested the court delay any order establishing contact until after her client's criminal case was resolved. However, at the conclusion of the CMC, the

magistrate issued a Case Management Order that included a Schedule of Parental Rights and Responsibilities. The Schedule authorized Mr. Hamilton to pick up Chase at daycare on Friday and return him to daycare on Monday, on alternate weekends.

6. Ms. Watts had never authorized Attorney Volpe to agree to a court-ordered contact schedule, and certainly would not have agreed to an order involving that schedule. Attorney Volpe knew that Ms. Watts had not agreed to that schedule of contact and that she had no authority from Ms. Watts to agree to an order that included that schedule.

7. When Ms. Watts returned from California on December 4, 2008, she spoke with Attorney Volpe about the case. At that time, Attorney Volpe told Ms. Watts that nothing of any consequence had happened while she was away. She failed to tell her that the CMC had occurred, failed to tell her anything about the Case Management Order or the attached Schedule issued by the magistrate on November 25, 2008, and also failed to provide her with a copy of that Order.

8. On December 11, 2008, Attorney Volpe slipped on ice and injured her shoulder. She went to the emergency room at Penobscot Bay Medical Center and was diagnosed with a torn rotator cuff. She was told by the treating physician to put her arm in a sling, rest for two weeks, and was prescribed Vicodin.

9. On December 12, 2008, when Ms. Watts went to pick up Chase at his daycare facility, she discovered Mr. Hamilton had removed Chase from the daycare.

10. Because Ms. Watts did not know that Mr. Hamilton's action was authorized by a court order, she panicked. After attempting without success to contact Attorney Volpe by telephone, she was able to contact Attorney Christopher MacLean, who had once represented Ms. Watts in her criminal case.

11. At Ms. Watts's request, Attorney MacLean agreed to try to locate Attorney Volpe. He was successful in doing so, and spoke with Attorney Volpe by phone later that evening at her home.

12. During that discussion, Attorney Volpe misrepresented facts to Attorney MacLean. Specifically, she told him that she had no knowledge of why Mr. Hamilton would have taken Chase from daycare on that date. In addition, Attorney Volpe specifically told Attorney MacLean that no court orders had been

issued at the CMC concerning parental rights, contact with Chase, or anything else that would adversely impact Ms. Watts. Attorney Volpe also told Attorney MacLean that she was suffering from a variety of “significant distractions,” and that she could no longer capably represent Ms. Watts.

13. As a result of his discussion with Attorney Volpe, Attorney MacLean believed that Mr. Hamilton had improperly and without any legal authority taken Chase from the daycare. Nonetheless, he convinced Ms. Watts not to involve law enforcement, as he was appropriately concerned that such an escalation would adversely affect Chase.

14. One or two days after his discussion with Attorney Volpe, Attorney MacLean learned that Mr. Hamilton’s removal of Chase from daycare had been legally authorized and completely proper.

15. Because Attorney Volpe could no longer properly represent Ms. Watts, Attorney Eric Morse agreed to assist Ms. Watts in trying to change the contact schedule. Attorney Morse discussed the matter with Attorney Volpe, and they agreed he would try to seek an emergency order vacating the Case Management Order issued on November 25, 2008.

16. In support of that action, on December 17, 2008, Attorney Volpe signed and swore to an affidavit that was filed with the court. In her affidavit she stated, *inter alia*, that she had “apparently agreed” to the Schedule of Parental Rights and Responsibilities as issued on November 25, 2008, and that she had had no authorization from Ms. Watts to do so.

17. In the course of responding to Bar Counsel’s investigation and processing of this grievance matter, Attorney Volpe claimed the affidavit she signed on December 17, 2008, was not factually correct with respect to her handling of the November 25, 2008, CMC or her communications with Ms. Watts. In that same document, however, Attorney Volpe acknowledged that she read that affidavit before she signed and swore to it, and she knew the affidavit would be used to support Attorney Morse’s emergency motion before the court.

18. During a Grievance Commission Panel Hearing on February 22, 2010, although Attorney Volpe appeared to be taking the position that her signed affidavit was true and accurate, she continued to maintain that she had not agreed to the entry of the Order imposing a contact schedule on the parties.

19. On the same date that she swore to and executed her affidavit, Attorney Volpe sent emails to Ms. Watts acknowledging the “massive mistake” she had made regarding Chase’s revised contact schedule that Attorney Volpe “certainly [knew] that [Watts] would not agree to . . .” and asked for Watts to “forgive [Volpe’s] mistake.”

20. At the December 23, 2008, emergency hearing (with Attorney Morse then representing Ms. Watts), with agreement of the parties, the magistrate vacated the previous Order and issued a new Order.

21. Pursuant to the Family Division Rules, a magistrate is only authorized to issue an order establishing parental rights and responsibilities after a hearing or by agreement of the parties. The Court finds that Attorney Volpe did agree that the magistrate could issue the Case Management Order, with its attached Schedule, on November 25, 2008.

CONCLUSIONS

Attorney Volpe failed to tell Ms. Watts what had happened during the CMC. In so doing, Attorney Volpe engaged in conduct involving dishonesty, deceit, and misrepresentation, in violation of then applicable M. Bar R. 3.2(f)(3); engaged in conduct that is prejudicial to the administration of justice, in violation of then applicable M. Bar R. 3.2(f)(4); and knowingly concealed information legally required to be revealed, in violation of then applicable M. Bar R. 3.7(b).

Attorney Volpe lied to Attorney MacLean by telling him there was no Order allowing Mr. Hamilton to retrieve Chase from daycare. In so doing, Attorney Volpe engaged in conduct involving dishonesty, deceit, and misrepresentation, in violation of then applicable M. Bar R. 3.2(f)(3); engaged in conduct that is prejudicial to the administration of justice, in violation of then applicable M. Bar

R. 3.2(f)(4); and knowingly made a false statement, in violation of then applicable M. Bar R. 3.7(b).

Attorney Volpe represented to the magistrate that she consented to the entry of the Case Management Order with an attached Schedule. In so doing, she implied that she was authorized to take that action, and engaged in conduct involving dishonesty, deceit, and misrepresentation, in violation of then applicable M. Bar R. 3.2(f)(3); and engaged in conduct that is prejudicial to the administration of justice, in violation of then applicable M. Bar R. 3.2(f)(4).

SANCTION

Because Attorney Volpe violated several Maine Bar Rules, discipline is in order. The only question is what form that discipline should take. On one hand, Attorney Volpe's actions here represent serious misconduct that, as she candidly acknowledged, cannot be explained as a result of any combination of stressors involving fatigue, physical pain, grief, or medication. She lied to her client, to another attorney and, by inference, to a court. Her actions caused her client a significant amount of trouble and worry, and necessitated both the introduction of another attorney into the divorce, and then a redundant court action.

On the other hand, Attorney Volpe has, for decades, practiced in an area of law replete with opportunities for missteps, misunderstandings, and disgruntled clients. Despite this, with the exception of one reprimand in 1983 involving a

conflict of interest, Attorney Volpe's professional record is unblemished. Her actions in this case appear to have been a complete aberration from her "normal" course of conduct and, although this does not exonerate her in any way, the harm that she caused was short-lived and reversible.

After review of all of these factors, the Court determines that Attorney Volpe's actions require that she be suspended from the practice of law for thirty (30) days, starting on September 1, 2010. However, because Attorney Volpe has acknowledged her misconduct and has accepted responsibility for her actions, because there is no evidence that her conduct here represents any pattern, and because the effects of her actions were limited, the Court hereby ORDERS that the suspension is to begin on January 14, 2011. However, if Attorney Volpe completes six hours of continuing legal education on the subject of professional ethics, approved by Bar Counsel, by December 31, 2010, the entire period of suspension shall, itself, be suspended. Attorney Volpe and Bar Counsel shall notify the Court on or before January 10, 2011, concerning Attorney Volpe's compliance with this Order.

DATED: August 10, 2010

FOR THE COURT,

/s/
Ellen A. Gorman, Associate Justice