

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO. BAR-11-18

BOARD OF OVERSEERS OF THE BAR)
)
Plaintiff)
v.)
)
MIKLOS M. PONGRATZ, ESQ.)
of Raymond, ME)
Me. Bar # 9563)
Defendant)

ORDER

On November 28, 2011, the Board of Overseers of the Bar commenced this attorney disciplinary action by filing an information pursuant to Maine Bar Rule 4(d)(8). The Court held a status conference on February 6, 2012. Thereafter, the parties informed the Court that they had agreed to the entry of an order resolving this matter. Accordingly, on March 26, 2012, the Court conducted an uncontested hearing at which Assistant Bar Counsel Aria Eee appeared on behalf of the Board, and Attorney Pongratz appeared on his own behalf. The hearing was also attended by Donna Bruton, a former client of Pongratz who filed the grievance complaint that resulted in this proceeding.

I. BACKGROUND

Based on the representation of the parties and the proposed order they submitted, the Court finds and concludes as follows: Pongratz was admitted to the

Maine Bar in 2004. Since his admission, he has worked as a solo practitioner in Raymond, Maine. Pongratz maintains a general law practice with a concentration in criminal defense and family law. He was previously suspended from the practice of law by an order of this single justice dated June 8, 2010.

Bruton hired Pongratz in April 2008, following a very serious assault upon her by her husband. On April 25, 2008, Bruton executed a fee agreement with Pongratz to engage him to represent her in a divorce action. By the terms of the fee agreement, the two agreed on the scope of the representation and the costs associated with that representation. The scope of the representation was defined as “Divorce.”

As the months went by, Bruton realized that the divorce was not progressing as quickly as she anticipated. Both she and Pongratz became increasingly concerned with the rising legal fees she continued to incur. Throughout their discussions, it was agreed that Pongratz would request an “attorney fee award” from the trial court, thus obligating the husband to pay Pongratz’s fees. Bruton understood, however, that if her husband would not agree or was not ordered to pay attorney fees, the obligation was ultimately hers to pay. The husband never agreed to the divorce and the case did not progress to the point at which he would have been ordered to pay Pongratz’s legal fees.

On December 9, 2009, Bruton instructed Pongratz to stop the divorce proceeding. By December 15, 2009, the parties executed a stipulation of dismissal and Pongratz's representation of Bruton ended.

In December 2010, Bruton filed both a petition for fee arbitration and a grievance complaint with the Board. In both filings, Bruton alleged that she had retained Pongratz to prosecute a divorce action, and that Pongratz overcharged her for his work and failed to properly expedite her divorce. Pongratz filed a timely response to both of Bruton's submissions. In those responses, he explained the details regarding his representation of Bruton and his billing and fee charges. Pongratz denied failing to exercise due care and diligence in acting as Bruton's attorney.

Prior to Bruton's filings, Pongratz initiated a small claims complaint against Bruton due to her failure to pay the balance owed toward her legal fees. By then, Bruton was no longer Pongratz's client and the two had very disparate views of the quality and cost of the representation he provided. In March 2011, a Panel of the Fee Arbitration Commission conducted a hearing on the petition filed by Bruton. Thereafter, the Panel issued a decision that reduced Pongratz's legal bill by approximately \$3800, leaving a remaining balance of \$7900.

II. ANALYSIS

Based upon the stipulations reached for this proceeding, the Court finds that over the course of his time as her attorney, Pongratz broadened the scope of his representation without Bruton's explicit agreement that he do so. The fee agreement limited the scope of representation to the divorce action. However, the Fee Arbitration Panel found that in addition to the services provided to Bruton in connection with the divorce, Pongratz also represented Bruton in a protection from abuse proceeding and as a victim and witness in a related criminal proceeding. Pongratz charged Bruton for his expanded work and, by doing so, violated then-applicable Maine Bar Rule 3.2(f)(4), for his failure to adequately address his client's concerns that the divorce was not proceeding expeditiously, and Rule 3.3(a)(1), for inadequately communicating to his client the fee consequences of the expansion of the scope of his representation of her. Pongratz also violated Maine Rule of Professional Conduct 1.2, by expanding the scope of representation without adequate consultation with the client, and Rules 1.5(a)(9), (10) and 1.5(b), by failing to modify the fee agreement to address and reflect that he and the client agreed to the expanded scope of representation. The rising legal fees, combined with what Bruton perceived as unexplained delays in the finalization of her divorce, caused Bruton to distrust the legal process and ultimately Pongratz's commitment to advocate for her. While Pongratz believed that he provided Bruton

