

JAN 10 2019

BOARD OF OVERSEERS OF THE BAR

STATE OF MAINE  
SUPREME JUDICIAL COURT

Docket No. BAR-18-5

BOARD OF OVERSEERS OF THE BAR, )  
Plaintiff, )  
 )  
v. )  
 )  
EUGENE McLAUGHLIN JR., Esq. )  
Defendant )

**Findings and Conclusions**  
**(PHASE 1)**

A hearing was held on September 20, 2018, at the Penobscot Judicial Center in Bangor on a complaint filed by the Board of Overseers of the Bar (the Board) against Attorney Eugene McLaughlin Jr. The Board was represented by Alan P. Kelly, Esq., and McLaughlin was represented by Leonard I. Sharon, Esq. The Court heard the sworn testimony of Jessica Parady Perry; Steven Parady; Corporal Lucas Hafford; James G. Mitchell Jr., Esq.; Kari Wells-Puckett, Esq.; Jefferson Ashby, Esq.; Francis Bemis, Esq.; and Eugene McLaughlin Jr., Esq. The Court also received (without objection) and considered Exhibits 1 – 13.<sup>1</sup>

**FINDINGS**

In February of 2016, Jessica Thompson Parady commenced divorce and protection from abuse proceedings against her husband Steven Parady. Her complaint for protection from abuse dated February 23, 2016, alleged, inter alia, that a treadmill (valued at \$500) was her personal property. The District Court (Presque Isle) issued a temporary order for protection from abuse on February 23, 2016, that prohibited Steven from (1) entering the premises at 12 Third Street in Presque Isle; and (2) taking, converting, or damaging property in which Jessica may have a legal interest.

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<sup>1</sup> Exhibit 13 is the transcript of the hearing before the Grievance Commission of the Board of Overseers of the Bar that occurred on January 26, 2018.

In the same action, the court issued a protection from abuse order, entered with the agreement of the parties, on March 11, 2016 providing that: (1) Jessica was awarded possession of the premises at 12 Third Street in Presque Isle; (2) Steven was "excluded forthwith and prohibited from entering" those premises; and (3) Steven was permitted to go to 12 Third Street in Presque Isle beginning on March 25, 2016, at 5:00p.m., through March 27 at 5:00 p.m. to pick up his personal property.

Steven went to the house on the designated dates and times to recover his personal property, but did not remove everything he wanted due to time constraints. He entered the locked house by using his driver's license to "card" the lock on the door. He was in possession of a list that Jessica had prepared itemizing property that she attributed to him and property (including the treadmill) that she claimed as hers.

During the time shortly prior to March 30, Jessica had undertaken to sell certain items of property, including a Nordic Track treadmill that she had purchased with her Nordic Track credit card. Steven became aware of the sales and was concerned and wanted to stop them. He contacted McLaughlin, whom he had retained to represent him in the divorce, and asked him what could be done to prevent further sales. McLaughlin told him that an injunction could be obtained, and Steven asked him start that process.

Steven awaited McLaughlin's arrival at his law office on the morning of March 30. He was very agitated and asked McLaughlin about obtaining an injunction and how he could retrieve personal property from the house. McLaughlin told Steven that he could return to the house even though the dates and times for the recovery of his personal property had passed. Steven expressed concern about reentering the property, but McLaughlin assured him it would be alright.

During the course of the conversation, the treadmill was discussed and McLaughlin indicated an interest in acquiring it for his paralegal. Steven expressed a willingness to participate in such a transaction.

Steven returned to the residence at 12 Third Street on March 30 and again entered the locked premises by carding the lock. He retrieved items of personal property including his daughter's books and other things. Later in the day, Steven returned to McLaughlin's office where he and McLaughlin agreed that they would retrieve the treadmill,<sup>2</sup> Steven would sell it to McLaughlin for \$200, and McLaughlin would then give the treadmill to his paralegal. Steven drove back to the residence, followed by McLaughlin, who was accompanied by his paralegal.

Once again Steven gained entry to the residence by carding the lock, and he and McLaughlin entered the residence and checked the treadmill to make sure that it worked properly. Upon satisfying themselves that it was operational, they removed it from the residence and loaded it into McLaughlin's vehicle. They then returned to McLaughlin's office where McLaughlin gave Steven a written receipt indicating a credit of \$200 toward his legal bill in return for the treadmill.

When Jessica returned to the house on March 30, she discovered the treadmill was missing and found Steven's license nearby. She contacted the police, who in turn spoke with Steven. He related the events noted above, including the fact that McLaughlin had told him it was alright to enter the house and take the treadmill.

Corporal Lucas Hafford of the Presque Isle Police Department investigated the taking of the treadmill. McLaughlin contacted him to discuss the matter and directed him not to speak further with Steven. McLaughlin confirmed that he and Steven had entered the house and taken the treadmill, but said that the protective order didn't matter. Corporal Hafford contacted Assistant District Attorney James Mitchell to discuss the matter.

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<sup>2</sup> Apparently Steven's car was unable to accommodate the treadmill, but McLaughlin's vehicle was adequate for the task.

ADA Mitchell had already spoken with McLaughlin, who confirmed that he did advise Steven that he could enter the premises after the dates specified in the protective order to retrieve property, and that he had actually accompanied him on the second entry into the house. McLaughlin told Mitchell that his objective was to acquire the treadmill. Mitchell advised McLaughlin that he had no authority to violate the terms of the court order, and that he had no grounds to advise Steven that he could violate the court order.

Assistant District Attorney Kari Wells-Puckett spoke with Corporal Hafford regarding the unauthorized entry into the residence and the removal of the treadmill. Because of the professional interactions between the District Attorney's Office and McLaughlin, ADA Wells-Puckett referred the matter to the Penobscot County District Attorney's Office for review and possible prosecution. Following the referral, she had informal conversations with McLaughlin wherein he acknowledged that he had given Steven bad advice (i.e., he told Steven he could enter the house) and for that reason, in his opinion, Steven should not be prosecuted.

A criminal complaint was issued charging Steven with burglary (Class B); theft by unauthorized taking (Class E); violation of an order for protection from abuse (Class D); and criminal trespass (Class E). He ultimately entered a plea of guilty to the criminal trespass charge and was sentenced to pay a fine and to pay Jessica \$200 in restitution.

McLaughlin represented Steven in the divorce proceedings from mid-March until the criminal charges were filed on May 13, 2016.

McLaughlin's testimony at the September 20, 2018, hearing may be summarized as follows:

He knew that taking and disposing of the treadmill was a violation of the court's order, and a competent attorney would not have advised a client to disobey the protective order or to otherwise commit a crime. He maintained that he did not advise Steven that

he could return to the house, and stated that there was no way he ever would have advised him to do so. On the contrary, he said that he advised Steven that taking and selling the treadmill would subject him to criminal liability—if he went to the house and took it, he would be arrested. Notwithstanding that advice, McLaughlin testified that Steven said, “Let’s do it. Let’s do it.”<sup>3</sup>

McLaughlin acknowledged that he accompanied Steven to the house and assisted in taking the treadmill knowing that neither of them had the right to enter or remove anything. He gave Steven compensation for the treadmill in the form of a credit in the amount of \$200 toward his legal bill, and subsequently gave the treadmill to his paralegal as a gift. By paying for the treadmill he knew that he was participating in violating the terms of the order, but he asserted that he was under a lot of pressure. He admitted that he made a mistake and a stupid decision. He argued that the violation was *de minimus*.

Although most of the evidence is undisputed, the question of whether McLaughlin advised Steven that he could enter the house and remove the treadmill is the subject of differing testimony. After weighing the credibility of the witnesses, and considering the fact that McLaughlin expressly and impliedly conceded to Hafford, Mitchell, and Wells-Puckett that he *did* advise Steven that he could enter the house and remove the treadmill in violation of the court orders, the Court finds McLaughlin’s testimony on this point—specifically his denials that he did not so advise Puckett—to be not credible. The court finds the testimony of Hafford, Mitchell, and Wells-Puckett to be credible. Accordingly, the Court finds that McLaughlin did advise Steven that he could enter the house and remove the treadmill.<sup>4</sup>

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<sup>3</sup> Meaning go to the house and take the treadmill.

<sup>4</sup> In making this finding the Court has also considered McLaughlin’s active role in going to the house on March 30, entering it, and assisting in the removal of the treadmill.

## DISCUSSION

### A. Rule 1.1: Competence

Rule 1.1 of the Maine Rules of Professional Conduct provides:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

McLaughlin's patently erroneous advice to his client regarding the entry into the house and removal of the treadmill in violation of a court order, along with his active participation in the event, clearly constitutes a failure to provide competent representation as required by Rule 1.1.

### B. Rule 1.8: Conflict of Interest

Rule 1.8 of the Maine Rules of Professional Conduct provides, in part:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

....

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client . . . .

McLaughlin's active participation in taking the treadmill constituted a brief, but express, joint venture to acquire the item of property. Steven had no immediate means of transporting the treadmill or converting it to cash on March 30. McLaughlin's offer and acceptance of the terms of sale concerning the treadmill, and his actions in providing assistance and his vehicle to transport it, constituted a business transaction which was clearly adverse to Steven's interest—it placed him in jeopardy of criminal and civil sanctions. McLaughlin failed to satisfy any of the requirements established in Rule 1.8(a)(1)-(3) to excuse such a business transaction with a client. Accordingly, his behavior violated Rule 1.8(a) of the Maine Rules of Professional Conduct.

Additionally, because ownership of the treadmill was a disputed issue in the divorce, it was part of the "subject matter" of that litigation and McLaughlin was prohibited from acquiring an interest in it. His actions in doing so violated Rule 1.8(i).

#### C. Rule 3.4: Fairness to Opposing Party

Rule 3.4 of the Maine Rules of Professional Conduct provides in relevant part:

A lawyer shall not:

....

(c) knowingly disobey an obligation under the rules of a tribunal....

Although McLaughlin's conduct in advising his client that he could disobey orders of the court, and actively assisting in that disobedience, appears on its face to be a clear violation of the plain language of Rule 3.4, the Court is not convinced that the conduct necessarily falls within the larger objectives and spirit of this rule. Although the treadmill was lost to Jessica as a result of McLaughlin's and Steven's actions, any unfairness to her was mitigated by the restitution order that has been paid. Accordingly, the Court declines to find that McLaughlin's conduct constitutes a violation of Rule 3.4.

D. Rule 8.4: Misconduct

Rule 8.4 of the Maine Rules of Professional Conduct provides, in part:

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal or unlawful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or]

(d) engage in conduct that is prejudicial to the administration of justice.

....

McLaughlin's entry into the 12 Third Street premises on March 30 cannot be considered authorized under any circumstances. He had no permission or authority to enter the house. He knew that Steven's limited license to enter had expired days earlier and that Steven was specifically excluded from further entry by an order of the court; therefore, Steven could not authorize anyone else to enter as his proxy. McLaughlin's entry into the house constituted, at a minimum, a trespass. In addition, McLaughlin's active assistance in Steven's violations of the law are separately sufficient to implicate him as an accomplice. As such, McLaughlin's behavior violates the prohibitions of Rule 8.4(b). Further, as noted above, his actions constituted numerous violations of the Maine Rules of Professional Conduct, thereby also violating Rule 8.4(a).

Beyond these serious violations, McLaughlin's machinations in acquiring property that was clearly the subject matter of disputed claims in the litigation between Steven and Jessica constituted dishonesty, and thus violates Rule 8.4(c). Finally, McLaughlin's misappropriation of property that was the subject of disputed claims during the litigation of those claims is, by any definition, conduct prejudicial to the administration of justice, and violative of Rule 8.4(d).

E. Rules 8.1: Statements in Disciplinary Matters; and 3.3: Candor to Tribunals

As noted above, the Court, after weighing the credibility of the witnesses, has determined that McLaughlin's claims asserting that he correctly advised Steven not to return to the residence or take any property—which appear in his pleadings and are reasserted in his testimony—are not credible. His claims are fatally undermined by the testimony of other witnesses including Corporal Hafford and Assistant District Attorneys Mitchell and Wells-Puckett,

testimony that the Court found particularly credible and compelling. None of the three had any motivation to lie or testify falsely.

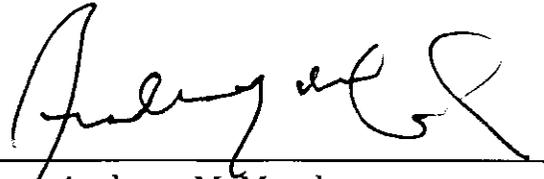
The Court finds, as it has in finding all of the violations discussed thus far, that McLaughlin's violations of Rules 8.1 and 3.3 are clearly and convincingly established by the record.

CONCLUSION

Eugene McLaughlin Jr., Esq., has violated Maine Rules of Professional Conduct 1.1, 1.8(a), 1.8(i), 3.3, 8.1, 8.4(a), 8.4(b), 8.4(c), and 8.4(d).

Unless the parties advise the Court by January 31, 2019, that they have agreed on a proposal for a sanction for these violations, the matter will be scheduled for Phase 2—a dispositional hearing at the Penobscot Judicial Center at a mutually-agreeable date and time.

Dated: January 3, 2019



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Hon. Andrew M. Mead  
Associate Justice  
Maine Supreme Judicial Court

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