STATE OF MAINE
SUPREME JUDICIAL COURT DOCKET NO: BAR-10-5

BOARD OF OVERSEERS OF THE BAR
Plaintiff

v.

FINDINGS, CONCLUSIONS, AND ORDER

MICHAEL J. WAXMAN, ESQ.
Defendant

This matter is before the Court for decision, after a contested hearing, on an Information, filed by the Board of Overseers of the Bar, seeking that disciplinary sanctions be imposed upon Attorney Michael J. Waxman for allegedly acting "in a manner unworthy of an attorney." The Information was filed in this Court on April 21, 2010. In this matter, the Board is represented by Assistant Bar Counsel Aria Eee; Michael Waxman is represented by Attorney Peter E. Rodway.

I. INFORMATION AND INVESTIGATION

The Information was based on materials developed in a preliminary investigation of three grievance complaints filed by Lori Handrahan, and one grievance complaint filed by Mary "Polly" Campbell, a friend and supporter of Handrahan's. Handrahan is the ex-wife of Igor Malenko. Malenko has been represented in divorce, post-divorce, and related proceedings by Waxman.

After preliminary review of the limited record then available, *see* M. Bar R. 7.1(d)(1), (2), a panel of the Grievance Commission determined that there was

probable cause to proceed to a hearing before a separate disciplinary panel of the Grievance Commission regarding each of the four grievance complaints. *See* M. Bar R. 7.1(d)(5). After the preliminary probable cause determination regarding each of the four complaints, Waxman and Bar Counsel agreed to waive further proceedings before the Grievance Commission and allow the Information to be filed directly with this Court, without consideration by a Grievance Commission disciplinary panel. *See* M. Bar R. 7.2(b)(7). The waiver was approved by the Court, and the matter then proceeded to consideration before this Court.

In these proceedings, both parties developed and presented to the Court a substantial volume of evidence that was not before the preliminary review panel of the Grievance Commission that determined probable cause. Whether or not the matter had been presented, at the Board of Overseers of the Bar level, to a disciplinary panel of the Grievance Commission, the Court's review of any resulting disciplinary recommendation would have been de novo. M. Bar R. 7.2(b)(3). Thus, to promote a prompter resolution of the matter, the parties acted appropriately in waiving the disciplinary proceeding before the Grievance Commission and allowing the matter to come directly before the Court. Because of that approach, the Court's findings and conclusions, based on the evidence presented to it, should not be viewed as in any way reflective of decisions that a

disciplinary panel of the Grievance Commission might have made had the matter been fully presented to such a panel.

At several points in this proceeding, Waxman suggested that the Board should have investigated the grievance complaints much more thoroughly before filing the Information. Those suggestions misperceive the nature of the grievance complaint filing and preliminary review process. Grievance proceedings are initiated, as they were here, by individuals filing complaints with the Board. Bar Counsel conducts a preliminary review and investigation of the complaint and then either dismisses the complaint, M. Bar R. 7.1(c), or refers the complaint to a panel of the Grievance Commission for preliminary review, M. Bar R. 7.1(d).

Because of the volume of complaints that must be considered for dismissal or reference to preliminary review, Bar Counsel's initial investigation is necessarily a limited one that could not develop, before consideration of each complaint, the extensive and often conflicting evidence that is necessary for formal prosecution of some complaints. For that reason, the preliminary Grievance Commission review only decides whether or not, on the limited material available to it, there is probable cause to believe that a violation of the rules of ethics has been committed that is serious enough to warrant a sanction of a public reprimand, suspension, or disbarment. If such a determination is made, the matter then proceeds to consideration in a disciplinary hearing before a different panel of the

Grievance Commission than determined probable cause. A much more thorough investigation may be conducted before the disciplinary hearing, but such an investigation within the Board proceedings did not occur in this case, because the disciplinary proceedings within the Board were waived and the matter was brought directly before this Court. Thus, the Board cannot be faulted for the limited nature of its investigation prior to presentation of the grievance complaints for preliminary review.

The Board's presentation before this Court indicated a thorough investigation resulting in an extensive record of evidence, including evidence developed after the filing of some of the grievance complaints. Some of that evidence is favorable and some of it is unfavorable to the results the Board seeks.

The Information, reflecting the four grievance complaints, alleges misconduct occurring at various points throughout 2009 and early 2010. It thus alleges violations of the Code of Professional Responsibility in the Maine Bar Rules for conduct occurring before August 1, 2009, and it alleges violations of the Maine Rules of Professional Conduct for conduct occurring after August 1, 2009, when the Maine Rules of Professional Conduct took effect, replacing the Code of Professional Responsibility in the Maine Bar Rules.

II. VIOLATIONS ALLEGED

The Information or presentations at hearing allege violation of the following provisions of the Maine Bar Rules:

Bar Rule 3.1(a) stating that violation of the Rules is conduct "unworthy of an attorney" pursuant to 4 M.R.S. § 851 (2009).

Bar Rule 3.2(f)(4) prohibiting an attorney from engaging in conduct "prejudicial to the administration of justice."

Bar Rule 3.4(f)(1) prohibiting commencement of an attorney/client relationship if there is a "substantial risk" that any financial interest or significant personal relationship of the lawyer will "materially and adversely" affect representation of the client.

Bar Rule 3.4(g)(1)(i) prohibiting commencement of representation in litigation if an attorney knows or should know that he or she is likely to be called as a witness in the litigation.

Bar Rule 3.6(c) prohibiting a lawyer from presenting or threatening to present criminal, administrative, or disciplinary charges "solely to obtain an advantage in a civil matter."

Bar Rule 3.6(f) prohibiting a lawyer, during representation of a client, from communicating "on the subject of the representation with a party the lawyer knows to be represented by another lawyer in that matter."

Bar Rule 3.7(a) prohibiting a lawyer from filing a suit, asserting a position, delaying a trial, or taking other action on behalf of a client when the attorney knows or should know that "such action would merely serve to harass or maliciously injure another."

The Information also alleges violation of the following provisions of the Maine Rules of Professional Conduct:

Rule 1.7(a)(2) prohibiting representation of a client if there is a conflict of interest because there is a significant risk that representation of that client would be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by personal interest of the lawyer.

Rule 3.1 prohibiting a lawyer from bringing or defending a proceeding or asserting or controverting an issue in a proceeding "unless there is a non-frivolous basis in law and fact for doing so."

Rule 3.4(e) prohibiting a lawyer, in a trial, from alluding to matters that the lawyer "does not reasonably believe" is relevant, or will be supported by admissible evidence or asserting personal knowledge of facts in issue or stating a personal opinion "as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused."

Rule 3.7(a) prohibiting a lawyer from acting as an advocate at a tribunal in which the lawyer is likely to be a witness unless the testimony relates to an

uncontested issue, or the nature or value of legal services rendered in the case or disqualification of the lawyer would work a substantial hardship on the client.

Rule 4.2(a) prohibiting a lawyer, in representing a client, from communicating about the subject of the representation with a person that the lawyer knows to be represented by another lawyer in the matter without consent of the other lawyer.

Rule 4.4(a) prohibiting a lawyer, in representing a client, from using means that have no substantial purpose other than to embarrass, delay, or burden a third person or use methods of obtaining evidence that violate the legal rights of such a person.

Rule 8.4 prohibiting a lawyer from violating any provision of the Maine Rules of Professional Conduct or the Maine Bar Rules, or assisting another person in doing so or engaging in conduct that "is prejudicial to the administration of justice."

III. STANDARD OF PROOF

Pursuant to Bar Rule 7.2(b)(4), the Board of Overseers of the Bar has "the burden of proving by a preponderance of the evidence the charges specified in the Information." As discussed with counsel at hearing, for those ethical rules that necessarily require subjective interpretation and judgment for an attorney to determine if he or she is in compliance and for a judge to determine if a violation

has been committed, the evidence will be evaluated from the perspective of what a reasonable attorney in Waxman's position could or should have done if the facts were as he knew or reasonably believed the facts to be.

The Law Court has concisely framed this reasonableness standard as looking to what "a competent attorney acting rationally" would recognize as inappropriate, or appropriate, in the circumstances. *Board of Overseers of the Bar v. Campbell,* 539 A.2d 208, 210 (Me. 1988).

The standard by which claims of ethical violations must be evaluated is suggested in more detail in the Preamble from the Maine Task Force on Ethics that introduces the Maine Rules of Professional Conduct. Thus paragraphs 19 and 20 of the Preamble state:

> [19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.
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> [20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for

> regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

Analysis of the conduct of counsel at issue in this case is also usefully informed by an observation four years ago by the Massachusetts Supreme Judicial Court, referencing high conflict domestic relations litigation, stating:

> It need hardly be emphasized that the attorney's ethical duty zealously to represent the client in a custody or visitation matter is not a license to adopt strategies and tactics reasonably likely to create a situation of prolonged destabilization and uncertainty in contravention of the child's best interests.

A.H. v. M.P., 857 N.E.2d 1061, 1071 n.14 (Mass. 2006).

Thus, to demonstrate a violation of rules of ethics that involve subjective judgments, the Board has the burden to prove, by a preponderance of the evidence, that Waxman's actions, or failures to act, were violative of the indicated ethical rules, considering what a reasonable attorney in Waxman's position—"a competent attorney acting rationally"—could or should have done if the facts were as he knew or reasonably believed those facts to be. In this evaluation, the Court will have to consider "the facts and circumstances as they existed at the time of the

conduct in question," recognizing that the lawyer may have had to "act upon uncertain or incomplete evidence of the situation."

Application of that standard of proof is particularly challenging in this case because all of the facts and events arise out of ongoing litigation in a high conflict divorce and post-judgment and related proceedings in which the facts, events, and trial court rulings material to this matter are viewed dramatically differently by Lori Handrahan, her attorneys and her supporters, than those same facts, events, and trial court rulings are viewed by Igor Malenko and his attorney, Michael Waxman.

The Board's claims regarding ethical violations focus on four discreet events or series of events related to the grievance complaints. If those events are each considered in isolation, Waxman's actions, statements and e-mails related to each event appear to be certainly intemperate and bad practice, and perhaps ethical violations. But the issues before this Court must be judged not within the narrow confines of the four events or series of events on which the Board focused its presentation. Instead, the Court's analysis must consider the entire context of the divorce and related litigation, and the challenges presented, and, to which Waxman was required to respond in that litigation. To present that context, the Court's findings that lead to its conclusions are stated below.

There is a separate appeal pending before the Law Court in which I am recused. Because of the recusal, I have no knowledge of the documentation supporting that appeal or the issues presented for consideration by the Law Court.

IV. CASE HISTORY

Based on the record developed for this proceeding, including the decisions of the District Court in the various matters presented to and decided by the District Court, hearing transcripts from some of those proceedings, and the opinion of the Law Court in *Malenko v. Handrahan*, 2009 ME 96, 979 A.2d 1269, the Court finds the following facts as material to the issues it must decide:

1. Igor Malenko has been represented throughout the divorce and related proceedings by one attorney, Michael Waxman. Much of Waxman's representation has been provided without compensation. A statement by Waxman indicating that he plans to commit his time and resources to continue representing Malenko pro bono is one of the bases for a claimed ethical violation. If Waxman withdraws or is disqualified from representing Malenko, Malenko does not have the resources to hire another attorney to represent him.

2. Lori Handrahan has been represented at various stages of the divorce, post-divorce, and related trial court proceedings, and on appeal by at least seven attorneys, including four attorneys at one time appearing in different proceedings that required Waxman's attention in late August and early September 2009.

Separately, an amicus brief was filed in support of Handrahan in the divorce appeal by two other attorneys. In addition, at times when she was represented by counsel, Handrahan has elected to be self-represented for various filings and events in the proceedings.

3. Throughout the divorce and related proceedings, there has been a dramatic disproportion of resources in favor of Handrahan to support her actions and legal representation in the divorce, post-divorce, and related proceedings against Malenko.

4. Lori Handrahan and Igor Malenko met in May 2005 in Macedonia, Malenko's birthplace. They continued their relationship in Budapest, Hungary and Holland.

5. After the couple began their relationship, Handrahan began asserting to Malenko that he was mentally ill. While the couple was living in Budapest, Handrahan, on at least one occasion, claimed that there was a medical emergency, summonsed a medical team to their residence, and sought to have Malenko committed to a hospital for his alleged mental illness. The medical providers apparently viewed these claims of mental illness as unfounded, and no commitment occurred.

6. The couple moved to the United States and began living in a home owned by Handrahan in Sorrento. They were married in Bar Harbor on May 30, 2006. Their daughter was born on November 29, 2006.

7. At the time that the child was born, and until initiation of the divorce, the couple lived at a residence in South Portland, though Handrahan traveled regularly to Washington, D.C., and other places in connection with her work for CARE International.

8. While living in South Portland and to the present, Malenko has been employed as a laboratory technician and is taking classes towards a college degree in biotechnology.

9. While the couple was living in South Portland, Handrahan regularly asserted to Malenko that he was mentally ill and required that he seek mental health treatment. She required Malenko to participate in several mental health evaluations. None of the evaluators found Malenko to be suffering from any mental illness. Despite these evaluations, Handrahan insisted that Malenko take medications she had researched, sometimes in amounts in excess of recommended doses. Malenko complied with these demands to avoid threats of various consequences Handrahan asserted could occur, including possible deportation, if Malenko did not comply with her demands.

10. Handrahan also continued unsuccessful efforts to have Malenko involuntarily committed for mental health issues and to have Malenko designate Handrahan as his healthcare power of attorney.

11. In late May 2008, Malenko filed a complaint for divorce asserting as grounds for divorce, irreconcilable marital differences and cruel and abusive treatment. At the filing of the divorce, Malenko was self-represented.

12. The day that the divorce complaint was served, May 23, 2008, Handrahan filed a complaint for protection from abuse and sought a temporary order for protection from abuse. In a statement in support of her complaint for protection from abuse, Handrahan alleged that Malenko "has a long history of violence, not just against me, but against others." Handrahan also alleged a history of mental illness, including "bi-polar disorder." Handrahan further stated that she was not certain whether there ever had been a formal diagnosis of Malenko's mental health problems. She did not disclose to the court that she had tried and failed on repeated occasions to have Malenko diagnosed as mentally ill, and had tried and failed, on at least two occasions, to have him involuntarily committed.

13. After making these generalized statements regarding Malenko's asserted mental health problems, Handrahan alleged several specific instances of conduct by Malenko, one that day, that, she alleged, caused her to be fearful of Malenko and be in need of a court order for protection.

14. The District Court (Portland, *Moskowitz, J.*) granted a temporary order for protection from abuse that same day and ordered a hearing on the merits for June 13, 2008.

15. In filing the complaint for protection from abuse and in the initial stages of the divorce proceeding, Handrahan was represented by Attorney Dori Chadbourne.

16. As a result of the temporary order for protection from abuse, Malenko was forced to immediately vacate the couple's residence in South Portland, and he was cut off from all contact with his daughter.

17. Shortly after the protection from abuse order was issued, and after Malenko had contacted other attorneys who would not represent him without payment of a substantial retainer, Waxman was contacted and agreed to represent Malenko in the divorce and protection from abuse proceedings.

18. Once Waxman appeared for Malenko, he contacted Chadbourne and agreed with Chadbourne on appointment of (i) a guardian ad litem (GAL), Elizabeth Stout, to evaluate and report regarding the child's interest in the proceedings; and (ii) a clinical psychologist, Dr. Carol Lynn Kabacoff, to perform evaluations of Malenko and Handrahan for use by the GAL and the court in the divorce proceedings.

19. The attorneys also agreed to a schedule of limited and supervised visitation through a children's service agency and limited telephone contact between Malenko and his daughter on days when there were no visits. These agreements were reflected in an agreed order for protection from abuse made without a finding of abuse that was approved by the court (*MG Kennedy, J.*) on June 6, 2008. This order governed contact between Malenko and his daughter until the date of the divorce judgment. Malenko agreed to the order without a contested hearing because he was concerned that if there was a finding of abuse he might be subject to deportation.

20. In August 2008, the GAL submitted a report to Waxman and Chadbourne expressing concern that Handrahan was severely limiting Malenko's access to the child and that there was a risk that even the limited supervised visits could be terminated because of Handrahan's refusal to pay for that service. The GAL also recommended that, with the information she now had regarding Handrahan and Malenko, Malenko be permitted to have some periods of unsupervised time with his daughter due to the importance of a young child having frequent contact with the absent parent because of "the child's limited ability to hold the absent parent in mind when that parent is absent." The GAL advised that Malenko would present no threat to the child in such unsupervised visits.

21. Handrahan, represented by Chadbourne, steadfastly opposed the GAL's recommendations for change and continued her efforts to limit contact between Malenko and the child. As a result, Waxman filed a motion to lift the protection from abuse action restrictions on visitation.

22. Waxman's motion was opposed by Chadbourne, in a lengthy memo that included many allegations of Malenko's alleged mental health problems, apparently reported to Chadbourne by Handrahan, and accusations that Malenko was "trying to manipulate the system" into being sympathetic to him. The statements in Chadbourne's opposition to Waxman's motion are similar in substance and tone to later e-mails sent by Waxman to counsel that form the basis for some of the Board's alleged ethical violations.

23. At about the same time, Chadbourne filed a motion to limit further disclosures of information by the GAL, based on assertions that the GAL had improperly disclosed to Malenko the identity of the child's daycare provider and other information that, in Handrahan's view, should not be disclosed. This motion also included references to Malenko's alleged mental instability, asserted that the GAL had engaged in a number of improprieties, and expressed concern that the GAL might turn over the child's passport to Malenko and be complicit in a scheme by Malenko to take the child out of the country.

24. The GAL's response to this motion asserted that some of the allegations in the motion were untrue and pointed out that a memorandum of understanding regarding the appointment of the GAL that had been signed by Handrahan included Handrahan's acknowledgment that information provided to the GAL could be shared with others or disclosed to the court.

25. As a result of the motion for change of visitation, the court (*MG Kennedy, J.*), issued an order on September 10, 2008, confirming that the visits then ordered, approximately three and one-half hours per week supervised at Connection for Kids, would continue. The order also provided other directions with regard to the parties' obligations to make payments relating to health insurance and psychological evaluations. The order did not significantly change the visitation schedule.

26. Sometime in the fall of 2008, Dr. Kabacoff, the clinical psychologist whom the parties had agreed could perform an evaluation of the parties, filed her report with the court. That report, a parental capacity evaluation, found, among other things, that Malenko was not mentally ill and that he would pose no threat to the child. Dr. Kabacoff's report further noted that Handrahan's efforts to have Malenko diagnosed as mentally ill had led several evaluators to suggest that Handrahan herself could be mentally ill and should seek mental health counseling. The report concluded that: "[f]urther assessment of Mr. Malenko's mental health is

not only unnecessary, but the request for such may be seen as emotionally abusive."

27. Handrahan indicated, through counsel, that she disagreed with the reports of the GAL and the clinical psychologist and did not believe that they were sufficiently credible to be used at trial. Instead, Handrahan offered a report by a social worker and purported domestic violence expert, Lesley Devoe. This report indicated that the facts of the case and the evidence regarding parental rights and mental health issues should not be evaluated by a "mental health paradigm," but instead should be evaluated by a "domestic violence paradigm."

28. Devoe's report, and subsequent testimony in several proceedings, indicated that Malenko posed a substantial risk of harm to Handrahan and to the child, although Devoe had never met Malenko. Devoe's position, in essence, was that since Handrahan had alleged that she had been abused by Malenko, her testimony should be believed and that actions by Malenko and Malenko's attorney, in the course of the judicial proceedings, that sought to counter Handrahan's efforts to cut off Malenko's access to his daughter, were a further perpetuation of the abuse of Handrahan by Malenko. Evidence during the course of the proceedings revealed that Devoe's opinions were primarily based on a "danger assessment questionnaire" completed by Handrahan.

29. In the fall of 2008, Chadbourne was replaced by Attorney Kenneth Altshuler as primary counsel for Handrahan in the various pending proceedings.

30. Recognizing the importance of resolving this very difficult matter in the best interests of the child, and without undue delay, the court scheduled the matter for hearing on the merits of the divorce for December 8 and 9, 2008.

31. In early November 2008, Altshuler filed a motion to continue the previously-scheduled trial. That motion was opposed by both Waxman and the GAL. The motion was denied.

32. Following denial of the motion, Altshuler filed a lengthy response to Waxman's and the GAL's opposition to the motion to continue. That response recognized that the motion had already been denied, but then went on for several pages attacking Waxman, Malenko, and the GAL. The response criticized the GAL as having "shown a tendency to believe the men that claim to be the victims, rather than the perpetrators, of domestic violence" and the GAL's "failure to comprehend how the past is the predictor of future violent behavior, and the guardian's seeming inability to avoid being charmed by the protestations of an abuser and the hyperbole of his counsel."

The response included a statement that: "[t]he plaintiff is an abuser. He is a danger to the defendant and the parties' child." The response also asserted that: [i]f Mr. Malenko's relationship with his daughter has been destroyed, it has been

destroyed by his violent behavior and nature, not by the victim of his violence, Lori Handrahan."

33. Many of the dramatic statements in Altshuler's response to the opposition to his motion to continue, a document that was filed with the court, have a tone very similar to the hyperbole of some of the statements in e-mails sent by Waxman to Altshuler and to other counsel in the case that, although not filed with any court, serve as a basis for the Board's allegations that Waxman has committed violations of the Maine Bar Rules and the Maine Rules of Professional Conduct.

34. Responding to Altshuler's statements, the GAL requested that the court "impose an appropriate sanction for filing these reckless, false, and defamatory claims." The record does not reflect any court action on that request, nor does it reflect any reference to the Board for consideration of disciplinary action.

35. Shortly before trial, the record reflects that Handrahan reached out to seek support from Mary "Polly" Campbell, a registered nurse who is the director of the SAFE program, part of the Criminal Division at the Maine Attorney General's Office. The SAFE program is a program designed to provide education and training to improve education and prosecution of physical and sexual abuse of children and to assist in minimizing the trauma to children from such prosecutions.

To this point, and during the subsequent divorce trial, there was no evidence that Malenko had physically or sexually abused his then two-year-old daughter.

36. The record is unclear as to why Handrahan elected to contact Campbell or why the head of the Attorney General's SAFE program would elect to involve herself in support of one side in a hotly-contested, high-conflict divorce. However, Campbell elected to do so, meeting with Handrahan and indicating that she would be supportive of Handrahan's position. In fact Campbell joined Handrahan to lend her emotional support during at least one-half day of the two-day divorce trial. After the trial, Campbell kept in contact with Handrahan on a weekly or biweekly basis until later in the spring when Campbell and Handrahan were in contact with each other almost daily.

37. The divorce trial was held as scheduled on December 8 and 9, 2008. The court heard a considerable volume of testimony, with the primary disputes focusing on the extent to which Malenko was or was not mentally ill and a threat to the physical safety of Handrahan and the child, whether Handrahan was mentally ill and needed to address mental health issues, and the extent to which, in a parental rights and responsibilities order, Malenko should have access to his daughter.

38. The trial testimony and relevant events and the trial court's decision three weeks after trial, are aptly summarized in the Law Court's opinion resolving

Handrahan's appeal from the trial court's decision. That summary, which is factually accurate, is incorporated by reference in this Court's findings as follows:

> The primary issue at the hearing involved parental rights and responsibilities relating to the daughter. This issue was hotly contested and focused on Handrahan's allegations that Malenko suffers from a serious mental illness, is violent and abusive, and poses a significant risk to the daughter's well-being.
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> Handrahan alleged that Malenko had engaged in at least five incidents of violent and abusive conduct: (1) a head-butting incident that occurred when Malenko was in high school, long before the parties met; (2) an incident when Malenko threw hot chicken at Handrahan when she was pregnant; (3) an incident when Malenko threw a sweater that hit Handrahan and their daughter while Handrahan was nursing their daughter; (4) an incident when Malenko slapped Handrahan's hand while she was nursing their daughter; and (5) an incident when Malenko threw a jar of peanut butter at Handrahan, striking her head. Handrahan also asserted that Malenko had weekly "rage attacks" in which he directed abusive language at her. Malenko did not deny that the incidents occurred, except for the chicken-throwing incident, but alleged that Handrahan had exaggerated and mischaracterized them.
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> [In a footnote, the opinion stated] For example, with respect to the alleged incident involving the jar of peanut butter, Malenko testified that in the midst of a heated verbal argument with Handrahan, he swept his hand across the kitchen table striking an empty plastic jar of peanut butter that landed between the fridge and the wall, that the jar was not thrown, and that it did not strike Handrahan.
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> During the marriage, Handrahan became convinced that Malenko was suffering from Post-Traumatic Stress Disorder (PTSD), and she insisted that he seek mental health treatment. Malenko complied and was evaluated by several providers, but none of the evaluators found him to be suffering from a mental illness. Despite the evaluations, Handrahan insisted that Malenko take medications that she had researched, and she unsuccessfully attempted to have Malenko

designate her as his health care power of attorney and to have Malenko involuntarily committed.

In the summer of 2008, Dr. Carol Lynn Kabacoff, a clinical psychologist, evaluated Malenko and Handrahan at the request of the guardian ad litem. Kabacoff submitted a comprehensive parental capacity evaluation that found, among other things, that Malenko was not mentally ill. Kabacoff also noted that Handrahan's efforts to have Malenko diagnosed with a mental illness had led several providers to suggest that Handrahan herself seek mental health counseling. She concluded, "Further assessment of Mr. Malenko's mental health is not only unnecessary but the request for such may be seen as emotionally abusive."

At the hearing, Kabacoff testified as to her evaluation of the parties, as well as to her opinion regarding a forensic report prepared by Handrahan's domestic violence expert, Lesley Devoe, L.C.S.W. that concluded that Malenko posed a substantial risk of harm to Handrahan and the daughter. Kabacoff testified that Devoe's report was unreliable because, among other things, Devoe did not meet Malenko, and Devoe placed great weight on only one test, a danger assessment questionnaire completed by Handrahan and administered by Dr. Jacqueline Campbell, a researcher and clinician in the area of domestic violence.

Devoe, who specializes in domestic abuse issues, testified at length regarding the basis for her opinion that Handrahan was a victim of domestic abuse perpetrated by Malenko, and that Malenko posed a risk of harm to both Handrahan and the daughter. Devoe took issue with the mental health paradigm that, she believed, the guardian ad litem and Dr. Kabacoff had employed. Devoe testified that she has trained judges, guardians, mental health professionals, and others on domestic violence, and she is writing a book "on how batterers manipulate mental health and legal professionals." She testified that because domestic abuse is different from mental health and medical issues, a domestic violence paradigm focusing on issues of coercive control, financial exploitation, emotional abuse, and other forms of abuse must be applied. Devoe explained that this was a particularly difficult case because Handrahan is a successful and assertive woman, and that "one of the myths [regarding domestic violence] is that

battered women are compliant, they're downtrodden, they're really . . . not angry." She continued, "Mental health professionals are known for not liking angry women."

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The guardian ad litem submitted two reports. In the first report, the guardian concluded that the episodes of domestic violence were attributable to "situational couple violence" arising from conflicts in the marriage, as opposed to "coercive controlling violence," which is characterized by power and control and often results in serious injuries. She wrote: "While I do not believe Lori is being intentionally misleading, I believe that her experience and perceptions are not the experience and perceptions that others may have of the same event." The guardian also observed, "This is not a typical domestic violence situation, in that the person with the power and control in the relationship was clearly [Handrahan, and that h]er actions in this case are not consistent with those of a battered wife." The guardian also reported that "[t]here is no evidence of [Malenko] being dangerous, abusive or even inappropriate with any child, let alone [his daughter]."

Although the guardian recommended that the parties have shared parental rights and responsibilities with the child's primary residence assigned to Handrahan, the guardian expressed reservations about this arrangement, citing Handrahan's tendency to misperceive events, her unwillingness to consider views different from her own, and her reluctance to promote a relationship between the daughter and Malenko. The guardian also reported that Malenko's anxiety and his over-protectiveness of the daughter were "barriers to confidence in his abilities as a residential parent," and that "[h]is behavior is at times hard to understand." Accordingly, the guardian recommended that Malenko's rights of parent/child contact be subject to a graduated schedule during which Malenko could "demonstrate his ability to adapt and parent [the daughter] outside of [Handrahan's] control and . . . supervision." The guardian's recommendation that the contact schedule gradually increase was conditioned on Malenko securing a two-bedroom residence, and the assumption that the visits were "going well" and without "significant problems."

[In a footnote, the opinion stated that] The graduated schedule of parent/child contact, which was ultimately adopted by the court,

began with three days per week between the hours of 9:00 a.m. and 5:00 p.m. for six months, increasing to one overnight and one or two daytime visits for three months, increasing to two overnights and one daytime visit each week for three months, followed by three overnights each week once the child was three years old.

In the second report, which was written after the guardian learned that Handrahan intended to relocate to Washington, D.C., as desired by her employer, the guardian concluded that primary custody should be granted to Malenko if Handrahan relocated. The guardian premised her recommendation on a variety of factors, including the adverse effect a disrupted parent/child relationship would have on the daughter's developmental needs, and her expectation "that a relocation of the child would effectively sever the child's relationship with her father" based on her belief that Handrahan was not willing to facilitate the relationship.

The court's findings summarized the parties' conflicting versions of the five instances of domestic violence alleged by Handrahan, and Handrahan's "unwavering belief" that Malenko is mentally ill and incompetent, including two resulting instances, which the court described as "bizarre," in which Handrahan summoned a medical team and an ambulance to come to their residence. In awarding parental rights and responsibilities, the court's findings and conclusions are largely consistent with the opinions and testimony of the guardian ad litem and Kabacoff. The court found Kabacoff's testimony "very credible" and that "[h]er findings [were] corroborated by the fact that other mental health professionals have made similar findings regarding" Malenko and were further supported by Handrahan's "behavior and by her testimony at trial."

The court concluded that Malenko's testimony was credible while Handrahan's was not:

The court finds [Malenko's] testimony credible. His demeanor while testifying appeared appropriate and many of his assertions are corroborated by other evidence. On the other hand, the court does not find [Handrahan's] testimony to be very credible. This may be related to the observation made by both Dr. Kabacoff and the Guardian that [Handrahan] seems to perceive events differently than others. In any

> event, [Handrahan] maintained a very defensive demeanor while she testified, and her answers, particularly on cross-examination, indicated a lack of candor. Additionally, some of [Handrahan's] assertions are refuted by other evidence.[1]
>
> The judgment ordered shared parental rights and responsibilities and granted Handrahan primary residence of the daughter, but also ordered primary residence to be transferred to Malenko in the event that Handrahan relocated out of state as she intended.

Handrahan, 2009 ME 96, ¶¶ 4-9, 11-16, 979 A.2d at 1270-73.

39. The referenced provision addressing automatic transfer of primary residence if Handrahan relocated to Washington, D.C. was apparently sought in the event that Handrahan transferred residence either before trial or between the time of trial and the trial court's decision on the matter. In post-judgment discussions with Handrahan's appellate counsel, Waxman conceded that this provision should be inoperative because of the trial court's prompt decision while Handrahan remained in Maine. Waxman suggested to Handrahan's appellate counsel that the judgment be amended to eliminate this provision, and that the appeal should be dropped as there was no other valid basis for the appeal. Waxman's offer to resolve the appeal was rejected.

40. Provisions of the trial court's judgment that led to conflicts in 2009 included:

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[1] The District Court judgment references several instances of claims by Handrahan that were not supported by evidence from disinterested third parties. In one instance, Handrahan testified that Malenko suffered from "rage attacks," including one that occurred in a marital therapy session in the presence of a doctor. Handrahan testified that at that session Malenko had stated he would "finish me off and snap my neck." The doctor stated that no such incident had occurred.

A. A provision that replaced the limited, supervised visitation schedule that had been imposed through the protection from abuse process and with a schedule that granted Malenko a total of twenty-one hours of unsupervised visits with his child on three weekdays and one weekend day. This change was effective immediately on publication of the divorce judgment, with a provision for study and further recommendation by the GAL, looking towards a broader visitation schedule, including at least one unsupervised overnight visit a week, six months after the date of the divorce;

B. An award of shared parental rights and responsibilities with each party authorized to have access to records regarding, and to communicate and participate in, decision-making relating to, the child's healthcare, schooling, daycare, and other aspects of the child's life;

C. A standard requirement pursuant to 19-A M.R.S. § 1653(14) (2009) that any parent who intends to relocate a child's residence must provide the other parent prior notice at least thirty days before the intended relocation;

D. An injunction that prohibited each party from (i) threatening or arguing with each other or disparaging the other parent in front of the child; (ii) discussing the litigation with or in front of the child; or (iii) exercising undue influence over the child regarding the litigation, including coaching the child as to what to say in

court or orchestrating the child's actions regarding the court or the other parent; and

E. The trial court also imposed child support payments and health insurance provision requirements consistent with the resources of the parties, with Handrahan having primary responsibility for provision of health insurance.

41. Despite the high conflict nature of the divorce, and the continuing disputes about witnesses, issues, and evidence that the record reflects were presented to the trial court, the trial court performed commendably in reaching the matter for trial on the merits within six months after the divorce action was filed, and then publishing a carefully-considered and articulate judgment addressing all essential issues, approximately three weeks after the close of trial. The trial court's action was an important effort to provide a resolution to this dispute and to serve the best interests of the child by providing a plan for further consideration of issues relating to visitation and other parental rights matters in a manner that would not result in further resort to court with the inevitable trauma to the child that such disputes entail.

42. As was her right, Handrahan promptly appealed the trial court's judgment. As occurs in all parental rights cases, filing of the appeal did not stay the effects of the parental rights order in the divorce judgment that each party was obligated to respect and comply with pending further court order. M.R. Civ. P.

62(a). However, any efforts to change the provisions of the divorce judgment relating to parental rights would be stayed pending appeal.

43. Handrahan's principal contentions on appeal were that the court (i) should not have included the automatic change in primary residence provision if Handrahan relocated to Washington, D.C.; (ii) erred in excluding telephone testimony of two purported experts offered by Handrahan; (iii) erred in finding Malenko's testimony credible and in accepting the recommendations of the GAL and the clinical psychologist, and (iv) erred in finding Handrahan's testimony not credible and rejecting the opinions offered by the social worker who had opined that Malenko was an abuser and a continuing threat to Handrahan and the child.

44. Despite the direction of the shared parental rights provision of the divorce judgment that there should be a sharing of information regarding critical aspects of the child's life, Handrahan disregarded the court order and instead continued to refuse to provide Malenko, or his attorney, any information about the child, even including information about the child's daycare providers.

45. After the divorce judgment, Waxman received information that Handrahan, in violation of the injunction in the divorce judgment, was criticizing Malenko and the court order in statements to the child. At one point, when dropping the child off for time with Malenko, Handrahan reportedly stated to the child: "I know that you don't want to go to your daddy, sweetie, but I have no

choice. . . . The court ordered to bring you [*sic*], so I have to." Handrahan then stated to Malenko in front of the child: "[W]hat do you want to do? She doesn't want to come with you, you see. I have no say, so you have to make the decision. Do you want to force her?"

46. After the divorce judgment was issued, Handrahan, through counsel, proposed substituting a parenting coordinator for the GAL. In an e-mail to Altshuler on February 4, 2009, Waxman declined the suggestion that the GAL be replaced by a parenting coordinator.

47. In that e-mail, Waxman also requested that he be provided information about the child's daycare so that Malenko would be included "in the loop" of information about the daycare as required by the divorce judgment. Waxman also indicated that he would be contacting the daycare provider directly to get Malenko involved in the daycare information process.

48. That same day, February 4, 2009, Waxman sent an e-mail to the principal daycare provider asking that his client have a meeting with the daycare provider to get acquainted and to receive information about the daycare process, noting that the divorce judgment provided for Malenko to have access to such information.

49. This e-mail generated an immediate response from Attorney Neil Jamieson, representing the daycare provider, indicating that any contact regarding

the daycare provider should be through Jamieson and that the daycare provider had a policy of only engaging in contact with one parent in high-conflict parental rights situations. The letter also indicated that if Waxman provided Jamieson with a copy of the divorce judgment, Waxman would be entitled to receive, in response, information about the child's daycare arrangements, which information would be provided through Jamieson's office.

50. Waxman promptly mailed a copy of the divorce judgment to Jamieson, but he heard nothing from Jamieson for a period of several months.

51. During this time, Waxman was in communication with Altshuler regarding a motion to clarify, correct, and reconsider that Altshuler had filed and seeking to resolve a number of ongoing conflicts including access to the daycare and childcare information and adjustment of the visitation schedule so that Malenko would receive the full twenty-one hours of visitation with the child each week that had been ordered by the court. A lesser amount had resulted from an earlier agreement of the parties shortly after the divorce judgment that was necessitated by Malenko's work schedule. There were many e-mails, of similar tone and content, back and forth about the visitation issues.

52. In April, Waxman again e-mailed Jamieson noting that he had been unsuccessful in attempts to contact Jamieson by phone. Waxman noted that, as of April 6, 2009, he had not received the information promised in the February 4,

2009, letter and that he needed the capacity to directly contact the daycare provider to determine what days per week the child was at the daycare and other information that a parent should have.

53. A further series of e-mails between Waxman and Altshuler, e-mails that were polite and direct, both ways, indicates that Waxman was getting no cooperation from Jamieson on access to the daycare center or information about the daycare and that Altshuler, on behalf of Handrahan, was resisting any efforts to achieve direct contact.

54. In mid-May, as a result of a change in Malenko's work schedule, Malenko and Waxman determined that it would be necessary to drop the child off and pick the child up at the daycare center on some days to facilitate implementation of the court order relating to Malenko's twenty-one hours per week of visitation. Waxman sent Jamieson an e-mail indicating this on or about May 12, 2009, stating "we need to make plans immediately." No response was received from Jamieson. On May 14, about 11:00 a.m., Waxman sent Jamieson another e-mail indicating that Malenko would have to appear at the daycare center to drop the child off the next morning. No response was received from Jamieson.

55. On May 15, 2009, Waxman and Malenko appeared at the daycare center with the child to drop the child off at the end of Malenko's visit with the child. Nobody appeared to be around the daycare center when Waxman, Malenko, and

the child arrived. After knocking on the door, the proprietor of the daycare center appeared, advised that she was ill, and that the daycare was closed for that day. Waxman, Malenko, and the child then left the area. This direct contact between Waxman and the daycare provider is the basis for the alleged violation of Bar Rule 3.6(f).

56. After that visit to the daycare center, the child's participation in that daycare was terminated and other daycare arrangements had to be made.

57. In April 2009, the GAL moved to withdraw, citing her inability to continue to exercise unbiased judgment as required by the standards of practice for a GAL. This motion was based on harsh criticism of the GAL in motions Altshuler filed with the court and statements that Handrahan apparently had made at a legislative hearing discussing the facts of her case and harshly criticizing the performance of the GAL.

58. The GAL's withdrawal and the difficulties relating to access to information about the daycare, along with other conflicts, led to increasingly harsh statements in e-mails between Waxman and Altshuler. Among other things, each blamed the other for the possibility of their respective clients losing their jobs if changes each sought in the visitation schedule were not accomplished. Also, each was filing motions with the court seeking amendments of the divorce judgment

based on alleged misconduct and noncompliance with the divorce judgment by the other party.

59. During April 2009, Waxman and another individual, in the course of implementing the child's visitation schedule, came into contact with another childcare provider retained by Handrahan apparently for use when Handrahan traveled out of town. One of the childcare providers at this meeting described her interaction with Waxman in later testimony as "friendly." The woman's husband, who was also present, described the meeting as confrontational. Apparently both persons refused to provide Waxman with any information about who they were or how they could be contacted.

60. On May 4 or 5, 2009, Waxman filed a motion to modify the child support order seeking amendment of the divorce judgment to shift primary residence of the child to Malenko. In support of that motion, Waxman argued, in an attached statement, that Handrahan continued to refuse any contact and refused to provide any information about the child, despite the requirements of the divorce judgment and that Handrahan was intentionally frustrating the court-ordered shared parental rights and responsibilities mandate, ignoring the best interests of the parties' child in doing so.

61. On May 13, 2009, Waxman filed an "emergency" motion asking that the motion to modify be considered promptly. The motion asserted that changes in

Malenko's work schedule necessitated a change in the visitation arrangements and argued that without court intervention, Handrahan was refusing to permit any adjustment in those arrangements, with the effect that Malenko would face the choice of either forfeiting his visitation rights or losing his job.

62. Shortly after this motion was filed, Handrahan filed her first grievance complaint against Waxman with the Board of Overseers of the Bar. The complaint referenced the contact between Waxman and the daycare provider and several e-mail exchanges between Waxman and Altshuler. The complaint also alleged improper "personal involvement in the case," a "threat to use improper influence," and "harassment and intimidation." There were no allegations of direct contact occurring or attempted between Waxman and Handrahan.

63. The complaint referenced one particularly strongly-worded e-mail sent on April 29, 2009, in the course of exchanges about adjusting the visitation schedule and improving Malenko's access to information about his child, in which Waxman had stated to Altshuler:

> Lori has clearly demonstrated her intention to freeze Igor out of [the child's] life as much as possible at every turn, and with your assistance, she has achieved some successes. I want you and Lori to understand that I have every intention of staying in this case . . . as long as it takes. Further, I have no compunction investing not only my time, but my resources, and the very substantial resources of my family, if necessary. But also rest assured that THIS time I am confident the judge will grant me my attorney fees when he hears how horrendous Lori and you have made this situation, how you have worked in tandem to deny a loving father his parental rights. I have

> never felt so strongly about a case in my life. This is personal for me at this point. You see, I care about [the child]. For me, this is not a game.

64. As the rhetorical battles in the e-mails continued, in early June 2009, Altshuler filed a motion to disqualify Waxman from further representing Malenko in the divorce and related proceedings. As grounds for the motion, Altshuler alleged harassment and intimidation in Waxman's contacts with the second childcare providers; improper direct contact between Waxman and the represented childcare provider; and improper personal and financial interest and financial assistance to a client in litigation (referencing the statements in the April 29, 2009, e-mail).

65. Waxman promptly filed an opposition to the motion that was ultimately scheduled for a contested hearing on August 26, 2009.

66. On July 7, 2009, the court sent a notice to the parties scheduling a hearing on the previously-filed motions by both sides to modify and/or enforce various provisions of the divorce judgment. The notice specified a July 29, 2009, hearing date.

67. Around the time that she would have learned that the pending motions to amend the divorce judgment had been scheduled for hearing, Handrahan alleged to Altshuler that her daughter was being sexually abused by Malenko.

68. Altshuler advised Handrahan that her making a report of sexual abuse directly would be unwise, as she might not be believed due to the highly-contentious nature of the divorce proceeding. Altshuler suggested that a report would more likely be believed if it was made by a third party.

69. Handrahan then contacted Campbell and asked that Campbell meet with Handrahan and her daughter.

70. At this meeting, the two-year-old stated to Campbell that Malenko had touched her "gina." Campbell testified that this statement did not seem to be rehearsed. She apparently assumed that such terms were part of a two-year-old's vocabulary. At the time that Campbell heard the statement, she was not aware that Handrahan had made a video of the child making a similar statement.

71. On July 10, 2009, Handrahan presented the child for examination at the Freeport Medical Center. Previously, a physician's assistant at the medical center had been contacted by a person who called herself Sarah Willette, described as a "naturopathic doctor," who had suggested that the physician's assistant question the child about possible sexual abuse by her father and that the physician's assistant document whatever the response was. When questioned, the child made a statement similar to the statement made to Campbell and the statement appearing on the video that her father "touched my gina."

72. On July 11, 2009, the child's statements to Campbell were reported by Campbell as possible sexual abuse to the Department of Health and Human Services (DHHS). In her report to DHHS, Campbell, the representative of the Attorney General's Office, requested that her name be kept confidential and indicated that she "considers herself a friend" of Handrahan's. Campbell also stated that it was her "sixth sense" that child pornography would be found on Malenko's computer. Campbell knew of no facts that would support her allegation of child pornography on the computer.

73. On July 10, after the child's visit to the Freeport Medical Center and the reported statement that her father had touched her vagina, Malenko received the child for a regularly-scheduled visit. No mention was made of the child's allegations of sexual abuse when Malenko received the child. However, as Malenko later e-mailed Waxman on July 10, Malenko thought it strange that when the child was provided to him, she was wearing a dress and no underpants. Malenko observed in the e-mail to Waxman that he was fortunate that he always carried extra clothing for the child, so that he was able to provide her immediately with a pair of underpants to wear.

74. In light of the subsequently-disclosed allegations of sexual abuse, Waxman and Malenko could have reasonably construed this action, providing the child to Malenko wearing a dress and without underpants, as an attempt to set up

Malenko to be observed engaging in activity that could be construed as improper or sexualized treatment of his child. Malenko's having immediately available the necessary clothing for his child avoided that possibility.

75. Campbell's child sexual abuse allegation temporarily achieved Handrahan's goal of suspending Malenko's access to his daughter. It also resulted in some strongly-worded e-mail exchanges between Waxman and Altshuler during which Waxman asserted that if Altshuler had been complicit in developing what Waxman asserted were the false sexual abuse allegations, Waxman might seek Rule 11 sanctions (M.R. Civ. P. 11), bar disciplinary action, a civil action for defamation, and perhaps even criminal charges.

76. Waxman also sent several strongly-worded e-mails to Campbell at her State e-mail address, asserting that the claims she had made were false and seeking the basis for her allegations, particularly the allegation that Malenko should be investigated for potentially having child pornography on his computer. Waxman even suggested that Campbell might lose her job as a result of her actions.

77. Campbell reported Waxman's e-mails to her supervisor, the attorney in charge of the Criminal Division. He then e-mailed Waxman, telling him that Campbell's actions reporting the sex abuse allegation were undertaken in Campbell's capacity as a private citizen and that Waxman should not contact Campbell at her State office or using the State e-mail to address concerns about

this dispute. The State attorney also advised that in her private capacity, Campbell was represented by a retained attorney, Pamela Lawrason, and that Waxman's contacts should be with Lawrason.

78. After that e-mail, Waxman did not immediately have any further direct contact with Campbell. About two months later, he began trying to determine Campbell's nurse registration number in order to file a professional misconduct complaint with the Nursing Board. When he was unsure of the number, he e-mailed Campbell directly asking what her registration number was and advising that the purpose of his inquiry was to file a professional misconduct complaint. Waxman did not attempt to learn this information through Lawrason. This contact, and the tone of Waxman's e-mails to her, formed the basis of Campbell's complaint to the Board of Overseers of the Bar and the allegation of violation of Rule of Professional Conduct 4.2(a).

79. In March 2010, Malenko, represented by Waxman, filed a civil action against Campbell alleging defamation and intentional and negligent infliction of emotional distress. The Superior Court (Cumberland County, *Cole, J.*) dismissed the action in August 2010. The filing of this suit is a basis for an alleged violation of the ethical rules.

80. As the DHHS investigation of the sex abuse allegation was proceeding, the parties met with the court on July 29, 2009, pursuant to the notice to consider

the various pending motions to amend the divorce judgment. Because the appeal to the Law Court had not yet been decided, the court advised at the time that it did not have the authority to consider the motions to amend the divorce judgment. However, the parties, with court direction, did develop a limited schedule for Malenko to resume some supervised visits with his daughter.

81. DHHS contracted with a private contractor, Spurwink, to investigate the sexual abuse allegations. In the course of the investigation, Spurwink representatives interviewed several persons, including Campbell and Handrahan. During the interview, Handrahan alleged that she was aware of several bizarre sexualized actions between Malenko and his daughter. The Spurwink information was provided to DHHS.

82. After reviewing the Spurwink report, Campbell's allegations, and the other information it had available, DHHS, in late August 2009, found that the sexual abuse allegations asserted by Campbell on Handrahan's behalf were "unsubstantiated."

83. On August 13, 2009, before this finding was published, Waxman was advised by DHHS that, based on their investigation, DHHS would not object to Malenko resuming unsupervised visits with his daughter. Waxman e-mailed this information to Altshuler early on the morning of August 14, advising that Malenko

should be allowed to resume unsupervised visits. The request to resume unsupervised visits was rejected.

84. A number of other significant events occurred in late August and early September 2009, making this time a particularly active and difficult time in the litigation. The exact order of these events is not entirely clear from the record. Among the actions that occurred in this time period were the following.

85. During this period, Handrahan was maintaining two residences, one in South Portland and one in Sorrento. At some point in August 2009, Handrahan switched her primary residence from South Portland to Sorrento. She began making arrangements to sell or rent the South Portland home, and she arranged for daycare and healthcare services for the parties' daughter in the vicinity of her Sorrento home.

86. Handrahan did not provide notice of this relocation to Malenko as required by the relocation provision of the divorce judgment. Nor did she provide information or consult about the child's new daycare or healthcare arrangements as required by the shared parental rights provision of the divorce judgment.

87. On August 14, 2009, the same day that Altshuler had learned of DHHS's position and rejected Waxman's request to resume unsupervised visits, Handrahan, representing herself, filed a protection from abuse action and obtained a temporary order for protection from abuse from the District Court (Ellsworth,

Staples, J.). Handrahan's complaint asserted the allegations of sexual abuse that were subject to the DHHS investigation. In support of her allegations, Handrahan asserted that she had been in contact with the Spurwink investigator, and, she alleged, the investigator had told her that when examined, the child "was very clear and consistently told several people that her father had sexually abused her." The "unsubstantiated" finding was published a few days after this statement.

88. The temporary order again had the effect of cutting off Malenko's access to his daughter. Waxman filed motions seeking to have the protection from abuse action dismissed or transferred to Portland for a hearing.

89. On August 26, 2009, the District Court (Portland, *Moskowitz, J.*) conducted an extended hearing on Altshuler's motion to disqualify Waxman as Malenko's counsel. After the hearing, which raised many of the same issues presented by the Board of Overseers of the Bar in this proceeding, the court ruled in favor of Waxman and Malenko, found that there was no impropriety to require disqualification in Waxman's representation of Malenko, and denied the motion, thereby allowing Waxman to continue to represent Malenko in the matter.

90. Following the decision on the motion to disqualify, Altshuler withdrew from further active participation in the case. However, he continued to receive e-mails about the case, including e-mails from Waxman, and was consulted by subsequent counsel regarding the case.

91. Attorney William Harwood was contacted by a lawyer whom he knew in Washington, D.C. This lawyer asked Harwood to begin representing Handrahan in the matters before the District Court in Portland. After consulting with Altshuler, Harwood filed an entry of appearance.

92. Attorney Sophie Spurr was retained by Handrahan and filed an appearance to represent her in the proceedings in the Ellsworth District Court. Consulting with Altshuler to improve her understanding of the background and issues of the case, Spurr learned that one of the purposes of the filing in Ellsworth was to judge shop and get the case away from the judges in the Portland District Court because of their rulings to which Handrahan objected.

93. On September 1, 2009, the Law Court affirmed the District Court divorce judgment in all respects except for the purported self-executing change of primary residence provision that Waxman had already conceded could be stricken from the divorce judgment.

94. A hearing on the Ellsworth protection from abuse action was scheduled for September 2, 2009. Waxman spoke with Spurr on that date to discuss the issues. He had also sent Spurr several strongly-worded e-mails addressing his belief that Handrahan was mentally ill and his view that Malenko was an excellent father and that he, Waxman, was committed to continuing to support Malenko in his efforts to maintain a proper relationship with his child.

95. In meeting and communicating with Waxman, Spurr advised Waxman that, in her judgment, he was too personally involved in the case, and as a result, was losing perspective and that this loss of perspective could wind up damaging his client. In these discussions, Spurr, acting on Handrahan's behalf, offered as a settlement agreement a visitation schedule for Malenko that was substantially less favorable to Malenko than the visitation schedule ordered in the now-affirmed divorce judgment. Waxman rejected the proffered settlement agreement or any arrangement for visitation that was less favorable than the divorce judgment.

96. The merits of the protection from abuse action were not heard on September 2, as the court transferred the action for hearing to the Portland District Court.

97. After Harwood entered his appearance, and the Law Court affirmed the divorce judgment, Waxman prepared and filed a motion for contempt, seeking to have the court order Handrahan to comply with various provisions of the divorce judgment, including the notice of relocation requirement, which he alleged Handrahan was violating. Waxman appeared with the motion at Harwood's law firm seeking to have Harwood accept service. When advised of Waxman's presence, Harwood advised that he would refuse to accept service, and Waxman was so advised by another lawyer with the firm after Waxman went into the office area of the firm looking for Harwood. This action by Waxman led to some angry

e-mail exchanges with Harwood and to some strong language used by both in filing or opposing motions to amend or enforce the divorce judgment.

98. Waxman began filing a series of five motions in the Portland District Court, each characterized as an "emergency motion," for a hearing to modify the divorce judgment. The motions cited Handrahan's continuing refusal to comply with the shared parental rights and relocation notification requirements of the divorce judgment, her filing of what Waxman characterized as "a bogus PFA," her efforts, documented by a clinical psychologist, to alienate the child from her father, and the child's need for stability and a continuing relationship with her father. A later motion cited angry behavior by Handrahan toward Malenko in front of the child at a point when the child was being dropped off after a visit. Each motion requested amendment of the divorce judgment to award Malenko sole parental rights.

99. Harwood, now representing Handrahan in the divorce, filed an opposition to the emergency motions to modify, contesting Waxman's claims, asserting that Handrahan was acting in compliance with the divorce judgment, except for its visitation schedule, maintaining that the claims of sexual abuse were soundly based, and asking that the emergency motions be denied.

100. Referencing Waxman's assertions that Handrahan was mentally ill, Harwood stated: "This type of scorched earth litigation should be soundly rejected

by this Court . . . this kind of personal attack should not be tolerated." Harwood then represented to the court that: "There is not one shred of credible evidence that [Handrahan] is mentally ill."

101. By the time he filed the opposition, Harwood either was or should have been aware that evidence presented prior to and at the divorce hearing indicated that Handrahan had a personality disorder that could be viewed as mental illness, that the divorce court had found this evidence credible and found that Handrahan's condition had sometimes resulted in her taking actions that the court characterized as "bizarre." At the time his opposition was filed, Harwood had also received a copy of a deposition transcript in which Dr. Kabacoff, the clinical psychologist, had stated, referencing Handrahan, that "I have never met or evaluated, in my extensive experience, anyone that had a more severe narcissistic personality disorder."[2]

102. The court denied Waxman's repeated requests for a hearing pending resolution of the pending protection from abuse action.

103. The protection from abuse action came on for hearing in the Portland District Court on October 6, 2009. After a hotly-contested hearing, Handrahan's request for a permanent protection order, barring Malenko from having contact with his daughter, was denied. Waxman then began e-mail exchanges with

[2] Dr. Kabacoff's deposition was not admitted for the truth of the facts or opinions stated therein, but only for its relevance as information that Waxman was aware of and others, including Harwood, might have been aware of if they had read the deposition.

Harwood seeking to resume the divorce court specified visitation schedule that had been suspended by the temporary protection from abuse order.

104. Handrahan's relocation to Sorrento and the removal of the temporary restrictions on visitation made it apparent that the court would have to amend the divorce judgment in some respects, particularly to change the daily visitation schedule to something that was longer term to accommodate the seven- to eight-hour round trip travel time between Portland and Sorrento.

105. In early November 2009, Waxman and Harwood were able to negotiate a revised visitation schedule that permitted unsupervised overnight visits of three or four consecutive days. On November 2, the court amended the divorce judgment to adopt this schedule.

106. Over the Thanksgiving weekend in 2009, Malenko and his daughter spent the weekend with Waxman and other members of Waxman's family at a family gathering in Vermont and then in New Hampshire. In this action, Waxman may not have been exercising the best of judgment, as he should have recognized that the visit with the child would provoke an angry response from Handrahan.

107. Upon learning of the visit, Handrahan objected, asserting that any personal contact between Waxman and the child was inappropriate and should not occur.

108. Handrahan, again representing herself, then filed a protection from harassment action against Waxman in the Ellsworth District Court. By the action, she sought to bar any contact between Waxman and either her or the child. Following the filing of the action, Handrahan, self-represented, again retained Spurr to prosecute the action in the Ellsworth District Court.

109. As had occurred with the protection from abuse action filed in the Ellsworth District Court, the protection from harassment action was transferred to the Portland District Court, where it was heard in a contested hearing over two days before the court (*Bradley, J.*). At the hearing, Handrahan was self-represented. Many of the issues and evidence presented to the court in the protection from harassment hearing were similar or identical to the issues and evidence previously presented in the motion to disqualify hearing before the District Court, and subsequently presented in the disciplinary hearing before this Court.

110. During the hearing, Handrahan falsely stated that Waxman had been fired from the law firm where he was first hired, Verrill Dana, for personality problems, and that she had been so advised by attorneys with the firm. At a later meeting with Waxman, representatives of Verrill Dana confirmed that Waxman had separated from Verrill Dana on good terms and that Handrahan's statement was false.

111. After the close of the evidence, the court prepared a thorough judgment that denied the requested relief and rendered a judgment for Waxman. Addressing the voluminous e-mails between Waxman and her various counsel that Handrahan asserted constituted harassment of her, the court found that "the tone of the correspondence was often angry, sarcastic, and disparaging of the Plaintiff," and that many threatened her counsel with Rule 11 sanctions or professional liability claims. However, the court determined that these communications did not constitute harassment because, "given the context and content of these communications," they "directly addressed specific issues arising in the ongoing and highly contested litigation between Handrahan and Malenko and reiterated Waxman's commitment to vigorously and aggressively advocate for his client's parental rights in the pending judicial proceedings."

Addressing Waxman's harsh communications to and about Campbell, the court found that the encounters with Campbell "occurred in the context of litigation and investigations relating thereto in which Waxman was zealously defending his client against an allegation of sexual abuse of a child and a suggestion, admittedly made without factual basis, of possession of child pornography."

Addressing Handrahan's claim that Waxman was using the litigation process to frighten and intimidate her, the court recognized that "the litigation process,

because of its adversarial nature, may be difficult and anxiety-producing." The court further observed that invocation of the protection from harassment process "to bring about the cessation of vigorous, contentious litigation is not the vehicle to achieve that result."

Addressing Handrahan's objections to Waxman's contact with the child, the court found "nothing in the record to support any finding that Waxman has engaged in inappropriate conduct or conversations with [the child]." The court further observed that since "Malenko shares parental rights with Handrahan, his choice of social encounters the child has during his time with her is his decision to make."

112. As with the several previous contested District Court hearings in this matter, the court's performance was commendable, allowing the contending parties to be fully and fairly heard, listening patiently to sometimes confrontational statements and objections by both parties, maintaining appropriate judicial demeanor in the face of some statements and actions by both parties that were disrespectful of the court, carefully considering the matter, and then rendering a prompt and thorough judgment.

113. The District Court judgment denying the protection from harassment complaint issued on April 7, 2010. Handrahan filed a motion for further findings

that was denied on April 27, 2010. The Board's Information was filed on April 21, 2010.

114. The resolution of the protection from harassment action is the last matter in this ongoing litigation that is relevant to the issues presented in the Information filed by the Board of Overseers of the Bar.[3]

V. OVERVIEW FINDINGS

115. The record developed for this proceeding demonstrates that throughout 2009 and into early 2010, there was a large volume of pleadings filed in the various actions in the various courts by Waxman on behalf of Malenko and by several counsel representing Handrahan. Many of these pleadings, filed by both sides, contained strong language harshly critical of the opposing party and, sometimes, harshly critical of opposing counsel. The instances of "good practice" demonstrated by counsel for either Malenko or Handrahan were few and far between in this case. The Massachusetts Supreme Judicial Court's prescription for good practice in a high conflict domestic relations case: ["the attorney's ethical duty zealously to represent the client in a custody or visitation matter is not a license to adopt strategies and tactics reasonably likely to create a situation of prolonged destabilization and uncertainty in contravention of the child's best interests," *A.H. v. M.P.*, 857 N.E.2d at 1071 n.14], was often cast aside as both

[3] The exhibits presented by the parties include materials referencing events after April 2010. The only later exhibit referenced by the Court in this Order is the August 2010 order dismissing Malenko's complaint against Campbell.

sides viewed their obligation to their client as a license to adopt strategies and tactics that have certainly prolonged the destabilization and uncertainty for the child caught in the middle of her parents' on-going dispute.

116. Nothing in this Order should be viewed as indicating approval of communications that, in tone, the District Court found to be "often angry, sarcastic, and disparaging," or that threatened counsel with Rule 11 sanctions or professional liability claims. But finding an ethical violation proved by a preponderance of the evidence requires more than a showing that an attorney was uncivil, or used harsh words, or forgot good manners. It requires proof that a specific rule was violated, considering the entire context of the facts and circumstances as they existed at the time of the conduct in question, recognizing that a lawyer may have had to "act upon uncertain or incomplete evidence of the situation." M.R. Prof. Conduct, Preamble, ¶ 19.

117. In addition to the pleadings filed and actions by counsel, the difficulties between the parties, and the uncertainty and instability for the child were exacerbated by initiatives taken by Handrahan, including (i) refusal to comply with or respect the mandates in the divorce judgment regarding shared parental rights, sharing of information, and notice of relocation; (ii) filing a protection from abuse action which failed; (iii) filing a protection from harassment action which failed; and (iv) promoting allegations of sexual abuse, assisted by an

Attorney General's employee, that were found, after a DHHS investigation, to be unsubstantiated. Many of the communications that are the focus of the Board's allegations of ethical violations were generated during Waxman's impolite and sometimes angry reactions to these initiatives by Handrahan.

118. Rather than focus on the pleadings that were filed by counsel for both parties, or filed or promoted by Handrahan herself, the allegations of misconduct in the Information focused mostly on out of court actions by Waxman, primarily e-mails, sent and received by Waxman, and the strong language Waxman used and accusations he made in the e-mails and a few court filings. The e-mails, mostly written to opposing counsel, include: (i) many claims that Handrahan was mentally ill; (ii) many threats to seek sanctions or attorney fees if the attorney continued to promote or support false claims that, in Waxman's view, could not be supported by the evidence or the law; (iii) assurances by Waxman that he would continue to represent Malenko no matter what costs or complications were thrown in his way by Handrahan or her counsel; and (iv) statements reflecting Waxman's personal friendship with Malenko, his personal interest in the proceedings, and his satisfaction at having established some interpersonal relationship with the child.

119. The record also reflects that considering the history of the case and the facts known to him, Waxman could and did reasonably believe that (i) Handrahan was regularly violating the requirements of the divorce judgment addressing shared

parental rights, communication and information sharing about the child, notification of relocation, and prohibition on disparaging the other parent; (ii) Handrahan would do everything that she could to destroy any relationship between Malenko and his daughter, including making false statements in the various court proceedings; and (iii) Handrahan had substantial financial and legal resources and community support available to her to support her efforts to destroy the relationship between Malenko and his daughter. The Court makes no finding as to whether or not the facts as Waxman viewed them were true. The Court only finds that Waxman's belief that such facts were true was reasonable in the circumstances considering all of the facts in the case.

120. The Court also finds that Waxman reasonably believed that if he abandoned Malenko, or if he was removed from the case by court action, Malenko would be left without any advocate to defend his position. Should that occur, Waxman reasonably believed that the relationship between Malenko and his daughter would be destroyed by the actions of Handrahan and her supporters, and that Malenko might even be subject to deportation or jail based on false claims that Handrahan and her supporters might present. Again, the Court makes no finding as to whether or not this state of the facts was true. The Court does find that Waxman reasonably believed these facts to be true.

VI. CONCLUSIONS

With this background, including the findings of fact and the standards by which the evidence must be evaluated to support a finding of an ethical violation, the Court reaches the following conclusions with respect to each rule of ethics that the Board asserts was violated.

Bar Rule 3.1(a)

The Court finds that in the period prior to August 1, 2009, the Board of Overseers of the Bar failed to prove, by a preponderance of the evidence, any violation of the Bar Rules stated in the Code of Professional Responsibility that was sufficient to constitute conduct "unworthy of an attorney" as that term is addressed in 4 M.R.S. § 851. Waxman's actions certainly were not a model of good practice, but they do not support a finding of an ethical violation considering the totality of the circumstances outlined in the findings, and particularly findings 115 through 120, stated above.

Bar Rule 3.2(f)(4)

The Court finds that the Board failed to prove, by a preponderance of the evidence, that Waxman engaged in conduct that was prejudicial to the administration of justice. The record reflects that Waxman provided representation to Malenko to defend his fundamental parental rights to his child, *see*

Guardianship of Jewel M., 2010 ME 80, ¶¶ 4-5, 2 A.3d 301, 303[4] which rights, without Waxman's representation, may have been lost to the strident and well-resourced efforts by Handrahan and her supporters to brand Malenko as an abuser, destroy his relationship with his child, and have Malenko committed, incarcerated, or deported to serve their interest.

An attorney who engages in pro bono work in domestic relations cases, and we are fortunate that many Maine attorneys are willing to engage in such pro bono efforts in these difficult cases; acts consistently with the best interests of the Bar when that attorney, despite considerable vocal criticism and personal and professional attacks; continues to represent an unpopular client against a party who seeks to portray herself, with support from enablers, as one who is on the correct side of a popular cause.

Bar Rule 3.4(f)(1)

The Court finds that the Board has failed to prove, by a preponderance of the evidence, that Michael Waxman commenced representation of Igor Malenko when there was a substantial risk that Waxman had a financial interest or a significant personal relationship that would materially and adversely affect the lawyer's representation of the client. The Bar Rules do not prohibit development of a personal relationship with a client. In Maine practice, particularly in our smaller

[4] The cited paragraphs of *Jewel M.* address the constitutional importance of a parent's interest in and rights to parent a child.

communities, personal relationships with clients often co-exist with professional relationships to the mutual benefit of the lawyer, the client, and the community.

The only personal relationships that are barred, at the commencement of a representation, are those personal relationships that "will materially and adversely affect the lawyer's representation of the client." There is no evidence in this case that Michael Waxman's personal relationship with Igor Malenko materially or adversely affected his representation of Malenko in any way. Certainly his relationship and representation of Malenko cost time and resources, and the sacrifice here may be greater than occurs to many lawyers who provide pro bono representation. But sacrifice of time and effort to provide pro bono service to a client is something that the Maine Bar Rules and the Maine Rules of Professional Conduct seek to promote and do not prohibit.

Bar Rule 3.4(g)(1)(i)

The Court finds that the Board has failed to prove, by a preponderance of the evidence, that when Waxman commenced representation of Malenko, he knew or should have known that he was likely to or ought to be called as a witness. To the extent that Waxman was placed in a position where he might possibly be called as a witness, those events all occurred after commencement of his representation, and they occurred as a result of Handrahan's refusal to honor several of the parental

rights mandates of the divorce judgment, or Handrahan's initiatives to attempt to drive Waxman out of the case.

Bar Rule 3.6(c)

The Court finds that the Board has failed to prove, by a preponderance of the evidence, that Waxman presented or threatened to present criminal, administrative, or disciplinary charges solely to obtain an advantage in the civil matters in which Waxman was representing either Malenko or himself. The points when Waxman, in his e-mails, threatened to bring disciplinary charges or to seek criminal actions or other administrative sanctions or civil sanctions, were all in response to actions taken by attorneys, or by other individuals, that Waxman reasonably believed to be aiding and abetting violation of the divorce judgment, abuse of civil process, or false statements made in opposition to his client and intended to obtain an advantage in a civil matter. Pleadings filed by Waxman that are subject to complaint were justified for the same reasons. Again, the Court makes no finding that such actually was the case. However, the Court does find that Waxman reasonably believed those circumstances to be the case when he made such threats to seek sanctions in e-mails or pleadings.

It must also be noted that while most of Waxman's threats to engage in prosecution of disciplinary actions occurred in e-mails to other lawyers or to an employee of the Attorney General's Office, both he and his client were subject to

very strong criticisms, claims, and threats asserted directly against them in pleadings filed by or on behalf of Handrahan and in testimony before various courts in the proceedings in this matter.

Bar Rule 3.6(f)

The Court finds that the Board has failed to prove, by a preponderance of the evidence, that Waxman violated Bar Rule 3.6(f) in his appearance with Malenko to drop the child off at the daycare center on May 15, 2009. At this attempted drop-off, which was a necessity as a result of a change in Malenko's work schedule, and which was noticed, well in advance, to counsel for Handrahan and counsel for the daycare provider, no ethically-prohibited contact was planned and, considering all the circumstances, no ethical violation has been proved.

The contact occurred after many efforts by Waxman to allow his client, Malenko, to have direct contact with the daycare provider had been stonewalled or ignored, and after Waxman had given reasonable and fair warning to counsel for the daycare provider and counsel for Handrahan that direct contact with the daycare provider was a necessity to achieve the child drop off in the context of Malenko's difficult work and child visitation scheduling problem. Such an incidental contact, in the course of a planned child drop off, would not be any violation. It only became significant when the daycare provider refused to accept the child for drop off and maintained that the daycare center was closed.

Bar Rule 3.7(a)

The Court finds that the Board has failed to prove, by a preponderance of the evidence, that Waxman filed any suit, asserted a position in a suit, delayed a trial, or took other action on behalf of Malenko when he knew or should have known that such an action would merely serve to harass or maliciously injure another. As discussed above in relation to Bar Rule 3.6(c), the record reflects that while Waxman could reasonably believe that he and Malenko were subject to many baseless court filings by Handrahan and her supporters intended to delay proceedings or to harass or maliciously injure Waxman or Malenko, there is no pleading that Waxman filed that was not intended to promote compliance with a court order, assure that his client's fundamental rights to parent his child were respected, or was a necessary pleading to resist a position taken by or on behalf of Handrahan in proceedings before the court. Some of the statements Waxman made in his pleadings may have been strong, as were some of the statements in the pleadings filed by or on behalf of Handrahan. None of Waxman's filings were violative of Bar Rule 3.7(a).

Rule of Professional Conduct 1.7(a)(2)

The Court makes the same findings with regard to this Rule as the Court findings already stated referencing Rule 3.4(f)(1). The Court's findings with regard to Bar Rule 3.4(f)(1) are adopted as applicable to the alleged violation of

Rule of Professional Conduct 1.7(a)(2) and those findings are incorporated by reference at this point.

Rule of Professional Conduct 3.1

The Court's findings with regard to the alleged violations of Bar Rules 3.6(c) and 3.7(a) apply to the alleged violation of Rule of Professional Conduct 3.1, and those findings are incorporated by reference at this point. The suit filed against Campbell is not proved to be a violation of this Rule.

Rule of Professional Conduct 3.4(e)

The Court has reviewed the filings and arguments by the Board and does not find that the Board has identified any point, during a contested proceeding in front of the court, that Waxman made any such prohibited statement. Waxman, in argument in the several court proceedings, and in testimony during the motion to disqualify and protection from harassment hearings, made many statements regarding the justness of the causes he was involved in, credibility of witnesses, and responsibility of civil litigants, but all such statements were relevant to the issues at hand, and his testimony was within the range of what was necessary and appropriate considering that the issues in the proceeding related to his own integrity, competence, and quality of representation. The Board has failed to prove, by a preponderance of the evidence, any violation of Rule 3.4(e).

Rule of Professional Conduct 3.7(a)

The findings of the Court with respect to the alleged violation of Rule 3.4(g)(1)(i) are incorporated by reference at this point. The Court also finds that in this case, for events that occurred on or after August 1, 2009, disqualification of Waxman from representation of Malenko would indeed have imposed an extreme hardship on Malenko, as he would have been deprived of any advocate to protect and defend his fundamental rights to parent his child.

Rule of Professional Conduct 4.2

The only direct contact that Waxman had with a person whom he knew to be represented by counsel relating to the subject matter of the representation that occurred after the effective date of the Rules of Professional Conduct was the contact initiated with Campbell in late October 2009 to attempt to determine her registration number with the Board of Nursing. The Court finds that the Board of Overseers of the Bar has failed to prove, by a preponderance of the evidence, that this conduct was violative of Rule 4.2. The conduct was, in essence, similar to asking a police officer for the officer's badge number. Waxman knew that Campbell was an employee of the Criminal Division of the Attorney General's Office. He also believed that Campbell was attempting to initiate and promote a criminal prosecution of his client. Taken in that context, no violation of Rule 4.2 is indicated by the direct contact to attempt to learn her registration number, information that should have been available on the public record. While it may

have been advisable to contact Attorney Pamela Lawrason instead, to attempt to attain that information, the action taken here was not violative of the Rules of Professional Conduct.

Rule of Professional Conduct 4.4(a)

The findings regarding Bar Rules 3.6(c) and 3.7(a) are adopted and incorporated by reference at this point to address the allegations of violation of Rule of Professional Conduct 4.4(a).

Rule of Professional Conduct 8.4

The findings regarding Bar Rules 3.1(a) and 3.2(f)(4) are adopted and incorporated by reference at this point as the findings of this Court regarding the violation of Rule of Professional Conduct 8.4.

The Court having made its findings and conclusions, the Court ORDERS:

Judgment for Defendant, Michael J. Waxman, that the Board of Overseers of the Bar has failed to prove any violation of the Maine Bar Rules or the Maine Rules of Professional Conduct sufficient to warrant imposition of a disciplinary sanction.

Dated: December 2, 2010

FOR THE COURT

/s/
Donald G. Alexander
Associate Justice