

STATE OF MAINE

BOARD OF OVERSEERS OF THE BAR

Board of Overseers of the Bar

Docket No. GCF #18-364

Board of Overseers of the Bar	)	
Petitioner	)	STIPULATED REPORT OF
v.	)	FINDINGS AND ORDER OF
	)	PANEL B OF THE
Heidi M. Pushard (Drew)	)	GRIEVANCE COMMISSION
of Turner, ME	)	M. Bar R. 13(e)
Me. Bar No. 004704	)	
Respondent	)	

On November 8, 2019, with due notice, Panel B of the Grievance Commission conducted a public disciplinary hearing pursuant to Maine Bar Rule 13(e), concerning misconduct by the Respondent, Heidi M. Pushard (Drew), Esq. The Board of Overseers of the Bar (the Board) commenced this proceeding by the June 11, 2019 filing of a Formal Disciplinary Petition.

The initial sanction hearing occurred on August 28, 2019. While the parties were then in agreement, the Commission declined to accept their negotiated order, without the addition of a mentoring component. Following a period of time for further negotiation and scheduling, the final hearing was set for November 8.

At that hearing, Attorney Pushard appeared *pro se*. The Board was represented by Bar Counsel, Aria Eee. Although not present, the complainant Chad Nguyen was provided an advanced copy of the proposed order negotiated by the parties. Complainant submitted additional comments via email.

Prior to the scheduled hearing date, the parties notified the Clerk that they had negotiated a proposed settlement of the disciplinary matter. The proposed sanction report was submitted to the Clerk for the Commission's advanced

review and consideration. Mr. Nguyen was also provided with a copy of the parties' proposed Stipulated Report in advance of the hearing.

Having reviewed the agreed, proposed findings as presented by counsel, the Grievance Commission Panel makes the following disposition:

### **FINDINGS**

Respondent Heidi M. Pushard (Drew), Esq. of Turner, ME has been at all times relevant hereto an attorney duly admitted to and engaging in the practice of law in the State of Maine. As such, Attorney Pushard is subject to the Maine Bar Rules, and the Maine Rules of Professional Conduct (MRPC). Attorney Pushard was admitted to the Maine Bar in 2010 and she is currently a solo practitioner.

According to the parties' stipulations, the Panel finds the following relevant facts:

In February 2018 Mr. Nguyen hired Attorney Pushard to represent him in a family matter (contempt) and paid her one half of the \$1,000 retainer. By that time, the contempt proceeding was already scheduled for a March 13, 2018 hearing date. Following a postponed date, the hearing occurred on April 12, 2018. Mr. Nguyen paid Attorney Pushard the full retainer prior to that time. She has since repaid that full retainer, consistent with an award of the Fee Arbitration Commission.

Attorney Pushard engaged in minimal contact with Mr. Nguyen, thus violating MRPC 1.4 concerning communication. Unfortunately, Attorney

Pushard met only briefly with Mr. Nguyen prior to the hearing, and he felt nervous and uncertain about the outcome of his contempt hearing.

The District Court ruled from the bench on Nguyen's motion for contempt. The trial judge directed Attorney Pushard to prepare the order for his review and signature. Attorney Pushard did not do so, although she was successful in prosecuting the contempt proceeding on behalf of her client.

Within a few months, Nguyen's former domestic partner reportedly acted in violation of the April contempt ruling. There was no action Mr. Nguyen could take to enforce the court's order because Attorney Pushard had failed to submit a draft for the court's signature. In doing so, Attorney Pushard violated specific portions M. R. Prof. Conduct 1.3[diligence]; 1.4[communication] and 8.4.(d)[prejudicial conduct]. When Mr. Nguyen discovered that the proposed order had not been filed, he repeatedly contacted his attorney and the court.

On July 2<sup>nd</sup>, 2018 the court issued an order concerning Mr. Nguyen's lack of document filing. From the contents of that order, it is apparent that Nguyen's action could have been dismissed due to Attorney Pushard's failure to file the proposed order. The court subsequently scheduled a status conference for September 2018 which provided additional time for Attorney Pushard to file the order. Attorney Pushard apparently did not receive the court's notice and she failed to appear for the September 13, 2018 status conference. The judge noted her failed appearance and proposed to sanction Attorney Pushard if she did not file the draft order by September 28, 2018. Attorney Pushard filed the document on or about September 25, 2018.

Beyond her failure to file the proposed order, Attorney Pushard assured Mr. Nguyen that she would send a letter demanding the child's mother to comply with the court's directives. Unfortunately, she failed to send that letter.

### **CONCLUSION AND SANCTION**

The purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who, by their conduct, have demonstrated that they are unable to properly discharge their professional duties. Since the evidence supports a finding and Attorney Pushard agrees that she did in fact violate the Maine Rules of Professional Conduct, the Grievance Commission must now issue an appropriate sanction. Pursuant to M. Bar R. 13(e)(6)(8), prior to imposing a sanction, the Commission has considered the existence or absence of any prior sanction record.

The Commission relies on Maine Bar Rule 21(c) for guidance as to the proper factors to consider and apply in the issuance of an appropriate disciplinary sanction. Maine Bar Rule 21 states as follows:

- (c) Factors to be Considered in Imposing Sanctions. In imposing a sanction after a finding of lawyer misconduct, the Single Justice, the Court, or the Grievance Commission panel shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions:
  - (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
  - (2) whether the lawyer acted intentionally, knowingly, or negligently;
  - (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and
  - (4) the existence of any aggravating or mitigating factors.

In this matter, Attorney Pushard agrees that her misconduct violated duties that she owed to her client and to the profession. However, the

Commission does not find that Attorney Pushard acted with the intent to harm her client's interests. It is apparent from Mr. Nguyen's attempted contacts with Attorney Pushard that he was seeking to meet and plan for the court hearing. His expectations for contact with his attorney were reasonable and Attorney Pushard acknowledges that her lapse in this client communication was inconsistent with her professional obligations.

While Attorney Pushard previously contended that the contempt decision was effective as of the April hearing date, without a signed order, Mr. Nguyen would have been unsuccessful in pursuing additional relief. Accordingly, he was harmed by the delays resulting from Attorney Pushard's inaction.

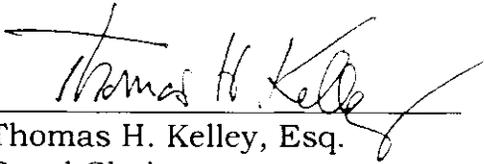
Regarding aggravating factors, Attorney Pushard engaged in a pattern of misconduct through the above-outlined events. In mitigation, Attorney Pushard has admitted that misconduct, has expressed remorse for the misconduct, and has been cooperative throughout the investigation and prosecution of this matter. Additionally, the Panel understands that at the relevant time of these events, Attorney Pushard was experiencing some difficult personal issues that affected her ability to properly monitor her client relations and some aspects of her practice management. Since that time, Attorney Pushard has received mentoring by a local attorney and undertaken additional, relevant ethics education.

Taking all of the above factors into consideration, and consistent with the analysis outlined in M. Bar R. 21(c), the Commission finds that a Reprimand is the appropriate sanction to address the misconduct by Attorney Pushard. The Panel also finds that a period of formal mentoring by Attorney James Howaniec

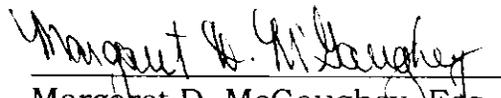
is appropriate, given the particular circumstances of this matter. The mentoring period shall last for six months from the effective date of this order.

Accordingly, the Commission accepts the agreement of the parties, including Attorney Pushard's separately executed waiver of the right to file a Petition for Review, and concludes that the appropriate disposition of this case is a reprimand to Heidi M. Pushard (Drew), Esq. which is now hereby issued and imposed upon her pursuant to M. Bar R. 13(e)(10)(C) and 21(b)(5).

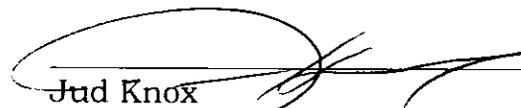
Date: November 8, 2019

  
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Thomas H. Kelley, Esq.

Panel Chair

  
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Margaret D. McGaughey, Esq.

Panel Member

  
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Jud Knox  
Public Member