

Board of Overseers of the Bar

Docket No. GCF #18-349

BOARD OF OVERSEERS OF THE BAR)

Petitioner)

v.)

NICOLE L. GRAY, Esq.)

of Portland, ME)

Me. Bar #005259)

Respondent)

**STIPULATED REPORT OF
FINDINGS AND ORDER OF
PANEL D OF THE
GRIEVANCE COMMISSION
M. Bar R. 13(e)(7)(D)**

On November 25, 2019, with due notice, Panel D of the Grievance Commission conducted a public disciplinary hearing pursuant to Maine Bar Rule 13(e)(7)(D) concerning misconduct by the Respondent, Nicole L. Gray, Esq. The disciplinary proceeding had been commenced by the filing of a Disciplinary Petition by the Board of Overseers of the Bar (the Board) on August 27, 2019.

At the stipulated hearing, the Board was represented by Assistant Bar Counsel Alan P. Kelley and Attorney Gray was represented by Neal K. Stillman, Esq. Prior to the hearing, the parties had submitted a stipulated proposed sanction Report for the Grievance Commission Panel’s review and consideration. The Complainant, Attorney Steven J. Mogul, 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 the parties, the Panel makes the following findings and disposition:

FINDINGS

1. Attorney Gray was at all times relevant hereto an attorney duly admitted to and authorized to engage in the practice of law and in all events and respects subject to the Maine Bar Rules and the Maine Rules of Professional Conduct.
2. Attorney Gray was admitted to the Maine bar in 2013 and she is currently in private practice in Portland, Maine.
3. In May of 2016, a client retained Attorney Gray to represent him in a contested divorce proceeding which was ultimately concluded after hearing by a judgment entered on October 23, 2017.
4. Post judgment, the client retained Attorney Steven J. Mogul, who contacted Attorney Gray in January of 2018, providing a signed authorization from the client and requesting a complete copy of his file.
5. Attorney Mogul contacted Attorney Gray again in May of 2018 renewing his request for the client's file.
6. In June of 2018, Attorney Gray contacted Attorney Mogul through counsel, indicating that a copy of the file would be provided to him; however, when the file was not delivered, Attorney Mogul filed a complaint with the Board of Overseers of the Bar on October 1, 2018.
7. Counsel for Attorney Gray had the file delivered to Attorney Mogul on October 15, 2018 after being notified of the complaint against Attorney Gray.

8. Attorney Gray admits that she failed to promptly deliver her former client's file to Attorney Mogul as she was required to do by MRPC Rule 1.15(b)(2)(iv).

CONCLUSION AND SANCTION

Attorney Gray has explained that at the time of Attorney Mogul's initial request for her former client's file, she was confused by the fact that her client continued to maintain that she represented him, despite the retention of another attorney. In addition, Attorney Gray was undergoing a difficult time in her own personal life that likely caused her to underestimate the importance of complying with Attorney Mogul's request for the client file. Nevertheless, Attorney Gray has fully acknowledged that she was remiss in not putting together her former client's file and providing it to Attorney Mogul when it was initially requested. She has apologized to Attorney Mogul for the inconvenience caused by her delay, and stated her belief that her conduct was not characteristic of her usual or normal behavior. Finally, Attorney Gray has fully acknowledged that her failure to turn over her client's file resulted in her violation of MRPC Rule 1.15(b)(2)(iv).

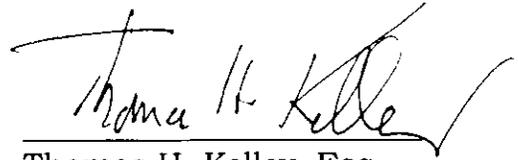
Among the factors to be considered in imposing sanctions are: the duty violated, the lawyer's mental state, the actual or potential injury caused by the lawyer's misconduct and the existence of any aggravating or mitigating circumstances. See ABA Standards for Imposing Lawyer Sanctions, 1991 (ABA Standards). See also M. Bar R. 21(c).

The first factor to be considered for sanctions under the ABA Standards is to determine what duty has been breached. The Maine Rules of professional conduct and the Maine Bar Rules require attorneys to uphold their responsibilities to clients and the courts. While Attorney Gray failed to recognize the importance of promptly delivering her client's file to new counsel, the judgment of divorce in the case had become final prior to Attorney Mogul's request, and there was no actual adverse effect upon the outcome of her client's case as a result of that failure. Of note, the current complaint was brought by Attorney Mogul as the result of his being unable to obtain his client's file, and it was not the result of any grievance filed by the actual client. Therefore, it appears that there was little or no actual injury to any client, or the public resulting from Attorney Gray's conduct.

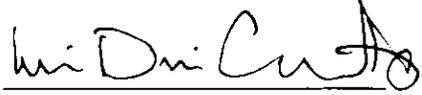
In sum, the evidence of misconduct supports the reviewing Panel's findings, and Attorney Gray agrees that she did in fact violate the Maine Rules of Professional Conduct. However, the Panel agrees that Attorney Gray's misconduct was minor; that there was little or no injury to a client, the public, the legal system, or the profession; and that there is little likelihood of repetition by Attorney Gray. Accordingly, the Panel concludes that an admonition is a proper sanction to impose upon Attorney Gray.

Therefore, the Panel accepts the agreement of the parties and concludes that the appropriate disposition of this case is the issuance of an admonition, which is now hereby issued and imposed upon Attorney Gray pursuant to M. Bar R. 13(e)(10)(B).

Date: November 25, 2019



Thomas H. Kelley, Esq.
Chair



L. Dennis Carrillo, Esq.



Tim Marks
Public Member