

STATE OF MAINE

CUMBERLAND ss.

SUPREME JUDICIAL COURT
DOCKET NO. BAR-03-4

BOARD OF OVERSEERS OF THE BAR)
Plaintiff)

v.)

PATRICIA DANISINKA-WASHBURN, ESQ.)
of SKOWHEGAN, Maine)
Me. Bar #1747)
Defendant)

**DISCIPLINARY
ORDER**

BOARD OF OVERSEERS OF THE BAR

This matter came before the Court on September 26, 2003 pursuant to disciplinary information filed by the Board of Overseers of the Bar on May 7, 2003. Bar Counsel J. Scott Davis, Esq. represented the Board, and William D. Robitzek, Esq., represented Defendant Patricia Danisinka-Washburn.

The factual allegations contained in the disciplinary information are generally admitted by the Defendant, and her ethical violations can be summarized as follows:

1. On or about January or February of 1999, Kimberly D. Ms. Crosson, f/k/a Kimberly Asher-Knights, retained Attorney Danisinka-Washburn to provide legal services for her concerning post judgment motions in a family law/domestic relations matter in the Somerset County Superior Court, involving the determination of parental rights and responsibilities regarding Brianna Marie Knights, being the minor child of Ms. Crosson and Jeffrey Keaten.

2. At that time and for that purpose, Ms. Crosson paid Ms. Danisinka-Washburn \$850.00, but there was no written fee agreement.

3. In 1992, Ms. Danisinka-Washburn had briefly represented Mr. Keaten in the original proceedings establishing parental rights and responsibilities with regard to Brianna.

4. Ms. Danisinka-Washburn had withdrawn from that earlier representation of Mr. Keaten due to Kimberly (then) Asher's claim that Ms. Danisinka-Washburn's earlier legal representation of her in a previous emancipation proceeding was a conflict of interest.

5. At the initial "hiring discussion" in January or February 1999, Ms. Crosson asked Ms. Danisinka-Washburn if those earlier representations and related conflict issues would be a problem again, to which Ms. Danisinka-Washburn responded that she did not believe they would be.

6. Ms. Danisinka-Washburn did not seek Mr. Keaten's consent prior to undertaking that representation of Ms. Crosson in early 1999.

7. Shortly after Ms. Danisinka-Washburn entered her appearance on behalf of Ms. Crosson, Mr. Keaten formally objected, claiming she had a conflict of interest under M. Bar R. 3.4(d)(1)(i).

8. By Amended Order of March 2, 1999, Somerset County Superior Court Justice Donald H. Marden agreed and ruled that Ms. Danisinka-Washburn's new representation of Ms. Crosson was in violation of the conflict of interest provisions of M. Bar R. 3.4(d)(1)(i) and that "plaintiff's

counsel (Ms. Danisinka-Washburn) should remove herself from representation of plaintiff (Ms. Crosson)".

9. As they left the courthouse after Justice Marden ordered Ms. Danisinka-Washburn's withdrawal from further representation of Ms. Crosson, Ms. Crosson claims that Ms. Danisinka-Washburn was going to retain all of the remaining balance of the \$850.00 retainer amount as an advance payment toward any future representation Ms. Crosson might need.

10. Ms. Danisinka-Washburn believes otherwise on this point, and claims that she then informed Ms. Crosson that there was no remaining balance of the retainer.

11. Thereafter, Ms. Crosson left several messages by telephone to request the return of her money or receipt of an accounting from Ms. Danisinka-Washburn, but received no response.

12. Ms. Danisinka-Washburn failed to provide an itemized accounting of actual time spent or fees earned on her case as requested by Ms. Crosson.

13. By letter dated January 8, 2002, Ms. Crosson wrote to Ms. Danisinka-Washburn confirming her complaint and disagreement with Ms. Danisinka-Washburn's failure since 1999 to return or account for Ms. Crosson's retainer balance.

14. As confirmed by Justice Marden's Order of March 2, 1999, Ms. Danisinka-Washburn should never have undertaken representation of

Ms. Crosson due to her earlier representation of Mr. Keaten, and her conduct in that regard was in violation of M. Bar R. 3.4(d)(1)(i) (Conflict of Interest: Successive Representation).

15. Ms. Crosson also filed a related Petition for Fee Arbitration before the Fee Arbitration Commission, with that matter being heard by Panel 3 of that Commission on June 19, 2002.

16. By its Award and Determination dated July 18, 2002, Panel 3 found in favor of petitioner Ms. Crosson, stating that Ms. Danisinka-Washburn's \$850.00 fee charge was unreasonable and further ordered that \$700.00 be refunded by Ms. Danisinka-Washburn forthwith. Ms. Danisinka-Washburn was then so notified that pursuant to M. Bar R. 9(i) that refund was due to be made within 30 days of her receipt of notice.

17. Pursuant to M. Bar R. 7.1(e) a Grievance Commission disciplinary hearing took place before a Commission panel on November 5, 2002.

18. Ms. Danisinka-Washburn failed to comply with the Fee Arbitration Commission Panel's earlier refund order until full restitution was made by her to Ms. Crosson during that disciplinary hearing on November 5, 2002. Although she claims to have been financially unable to make that payment earlier, she also admits that she failed to request any extension of time to do so.

19. Ms. Danisinka-Washburn's retention for more than 3½ years of all or most of the \$850.00 retainer paid by Ms. Crosson was in

violation of M. Bar R. 3.3(a); 3.5(a)(3); 3.6(e)(2)(iv); and 9(i). See Advisory Opinion No. 68 (March 14, 1986) of the Professional Ethics Commission.

20. Ms. Danisinka-Washburn's failure to respond to Ms. Crosson's request for an accounting of work performed on her behalf was in violation of M. Bar R. 3.6(e)(2)(iii).

21. Ms. Crosson claims she was prejudiced by Ms. Danisinka-Washburn's initial failure to make that required refund because she remained without the necessary funds to hire replacement counsel for her court matter against Mr. Keaten.

22. Although this incident alone might not warrant the imposition of a significant sanction, the fact that Ms. Danisinka-Washburn has a prior disciplinary and sanction record on file with the Board involving instances of both neglect and failure to return another client's retainer causes serious concern and consideration by the Court as to Ms. Danisinka-Washburn's practice difficulties summarized as follows:

- a. The logistical difficulties inherent in managing a solo practice including litigation matters, with no support staff to help her competently manage and account to clients;
- b. Lack of objectivity about possible conflicts of interest involved in her prospective or actual clients' matters; and
- c. Inadequate record-keeping of accounts of and/or necessary return of unearned clients' monies.

DISPOSITION

“The purpose of bar discipline is not punishment, but protection of the public and the courts from attorneys who by their conduct have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties.” M. Bar R. 2(a). Ms. Danisinka-Washburn has admitted her misconduct and agreed that she is capable of changing her practice habits, and the recommendations of both her counsel and Bar Counsel recognize as much.

Accordingly, it is ORDERED that Patricia Danisinka-Washburn be suspended from the practice of law for one-year, but that suspension itself shall be suspended for a period of one year under the following terms and conditions:

1. Ms. Danisinka-Washburn shall submit her practice of law to the monitoring of Lawrence P. Bloom, Esq., of Skowhegan, Maine.
2. Mr. Bloom shall be a volunteer, shall receive no compensation and he shall not be expected to incur any substantial disbursements.
3. Ms. Danisinka-Washburn will meet with Mr. Bloom at Mr. Bloom's calling and convenience on a monthly basis, unless Mr. Bloom determines that more frequent meetings are appropriate.
4. Mr. Bloom shall have the right to withdraw and terminate his services at any time for any reason that he deems necessary. If he does so, Mr. Bloom shall notify the Court, Bar Counsel and Ms. Danisinka-

Washburn of his withdrawal, whereupon this matter shall then be scheduled for further hearing as deemed appropriate by the Court.

5. If any aspect of the monitoring procedures creates a situation, which is, or might be interpreted to be a conflict of interest under the Maine Bar Rules, Mr. Bloom then may adopt any one of the following courses with the proposed result:

- a. Mr. Bloom shall cease to act as monitor and a potential conflict is avoided.
- b. Mr. Bloom continues as monitor, but totally excludes Ms. Danisinka-Washburn's clients' matter(s) from the monitoring process, so that no conflict is deemed to exist.
- c. Mr. Bloom continues as monitor, but withdraws from the conflicted matter.
- d. Mr. Bloom continues as monitor, and obligates Ms. Danisinka-Washburn not to participate in the matter and to promptly obtain replacement counsel for his client(s).

6. If in Mr. Bloom's judgment it is appropriate, he shall have the right to contact clerks of court, judges, or opposing counsel to determine the accuracy of Ms. Danisinka-Washburn's reports to him.

7. Mr. Bloom shall have no contact with any of Ms. Danisinka-Washburn's clients, Mr. Bloom's only contacts in the performance of his monitoring duties being with Ms. Danisinka-Washburn or other persons contemplated by this order.

8. Mr. Bloom's participation in the disposition of Danisinka-Washburn's disciplinary case and monitoring of Danisinka-Washburn's practice shall be deemed not to create an attorney / client relationship between Ms. Danisinka-Washburn and Mr. Bloom or between Mr. Bloom and Ms. Danisinka-Washburn's clients. Specifically, Mr. Bloom shall be deemed not to represent Ms. Danisinka-Washburn or any of Ms. Danisinka-Washburn's clients or to be represented by them in any capacity and Mr. Bloom shall not have any responsibility of any nature to them. Moreover, the attorney/client privilege shall not apply to Mr. Bloom's monitoring of Ms. Danisinka-Washburn's practice, and Mr. Bloom shall be immune from any civil liability (including without limitation, any liability for defamation) to Ms. Danisinka-Washburn or any of Ms. Danisinka-Washburn's clients.

9. Mr. Bloom will have the authority to review and examine any of ~~Ms. Danisinka-Washburn's files, if necessary, except those in which Mr. Bloom might have adverse interests under paragraph 5.~~

10. Ms. Danisinka-Washburn shall prepare and present to Mr. Bloom reasonably in advance of each meeting a list of all her current clients, showing each pending client's matter with a brief summary and calendar of the status thereof.

11. Within 90 days of this Order, Mr. Bloom will have Ms. Danisinka-Washburn establish a method of objectively identifying delinquent client matters and have her institute internal checks and

controls to make her practice appropriately responsible to the needs of her clients. Within that same time period and to Mr. Bloom's satisfaction, she shall also establish adequate time sheet, billing and accounting systems to monitor both her and her clients' respective financial obligations to one another to be able to properly account to clients and/or ensure the return to clients of advanced but unearned fee amounts in matters for which her legal services have been concluded.

12. Mr. Bloom shall file a confidential report with the Court every three months (or sooner if Mr. Bloom deems it necessary) with copies to Ms. Danisinka-Washburn and Bar Counsel concerning at least the following subjects or requirements:

- a. Measures Ms. Danisinka-Washburn has taken to avoid delinquencies.
- b. A description of any client matter identified as delinquent.
- c. Any professional assistance Mr. Bloom has provided to Ms. Danisinka-Washburn.
- d. As part of Ms. Danisinka-Washburn's compliance with the annual completion of the required 11 continuing legal education (CLE) credit hours under Maine Bar Rule 12(a) during the period of this "suspended suspension" of her right to practice law, she will attend at least five and one-half (5½) credit hours of live, i.e. not self-study, CLE presentations dealing with office practice management issues, including


attendance at least that portion of the Maine State Bar Association's "Bridging the Gap" presentation in November 2003 that relates to such matters.

14. Mr. Bloom shall have the duty to report to Bar Counsel and the Court any apparent or actual professional misconduct by Ms. Danisinka-Washburn of which Mr. Bloom becomes aware or any lack of cooperation by Ms. Danisinka-Washburn in the performance of this Order.

15. Mr. Bloom's monitoring of Ms. Danisinka-Washburn's practice will be for a period of one year from this date, unless terminated earlier as herein provided or by other Order of this Court.

16. Bar Counsel may file an information directly with the Court without any Grievance Commission review or hearing concerning any new complaints of professional misconduct allegedly committed by Ms. Danisinka-Washburn and received by the Board after the date of this Order.

Date: 9/26/03


Jon D. Levy, Associate Justice
Maine Supreme Judicial Court

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