

Board of Overseers of the Bar

Grievance Commission

GCF#14-143

BOARD OF OVERSEERS OF THE BAR)
 Petitioner)
)
 v.)
)
 JEFFREY PICKERING, ESQ.)
 of Houlton, ME)
 Me. Bar No. 1644)
 Respondent)

REPORT OF FINDINGS OF PANEL A OF THE GRIEVANCE COMMISSION

On April 24, 2015, at the Penobscot Judicial Center in Bangor, Maine, pursuant to due notice, Panel A of the Grievance Commission conducted a disciplinary hearing open to the public according to Maine Bar Rule 7.1(e)(2), concerning the Respondent, Jeffrey Pickering, Esq. This disciplinary proceeding was commenced by the filing of a Disciplinary Petition by the Board of Overseers of the Bar through Bar counsel on October 8, 2014, alleging violations of M. R. Prof. Conduct 1.1, 1.3, 1.4(a) and 8.4(a)(d).

At the disciplinary hearing, the Board was represented by Bar Counsel J. Scott Davis, Esq. and Respondent was present and represented by Kari A. Wells-Puckett, Esq. Joint exhibits #1 through #11 and #13 were admitted without objection. The Panel heard testimony from the following witnesses:

Jeffrey Pickering, Esq.
 Herbert M. Adams, IV
 Assistant District Attorney Carrie Linthicum

Having heard the testimony and reviewed the evidence submitted, the Panel hereby makes the following findings:

On October 21, 2011, Mr. Adams, who has a lengthy criminal record, was charged by a six-count indictment in Aroostook County Superior Court Docket No. CARSC-CR-11-443 with criminal threatening (Class C), two counts of assault (Class D), possession of revoked, mutilated, fictitious or fraudulent license/ ID card (Class E), disorderly conduct, offensive words, gestures (Class E) and unlawful sexual touching (Class D). Mr. Pickering was appointed as Mr. Adams' legal counsel on March 30, 2012. (He was also appointed to represent Mr. Adams on another

criminal matter which is not the subject of this proceeding.) As a result of plea negotiations, after a jury was selected, on February 8, 2013, Mr. Adams pleaded guilty to the two misdemeanor assault charges, but the felony and all other charges were dismissed. Mr. Adams was sentenced on February 26, 2013. One of the victims presented a compelling oral statement to the court and Mr. Adams was sentenced to two consecutive 9 month sentences and fined \$300.

Mr. Adams filed a Grievance Complaint as to the professional conduct of Mr. Pickering on March 4, 2014. Mr. Adams alleged that Mr. Pickering was ineffective, ignored the facts and evidence of the case, would not take appointments at his office and would not return documents. (Exhibit 1) Mr. Adams made other allegations in subsequent filings with the Board. (Exhibits #3, #6 and #8) The Panel found several discrepancies between Mr. Adams' testimony, his submissions to the Board and the transcripts of the plea (Exhibit #10) and sentencing (Exhibit #11). These discrepancies include the number of times he met with Mr. Pickering, his presence at the selection of his jury and the fact that he entered a guilty plea in the Aroostook County Superior Court.

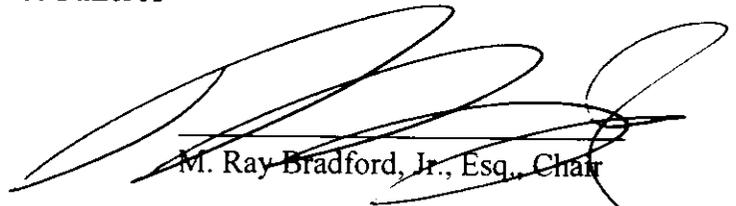
While the Panel heard testimony regarding office practices that could be strengthened (such as file organization, office coverage, phone issues and itemized bills for time spent on non-court appointed cases), the Panel is convinced from the testimony, including the testimony of Carrie Linthicum, the prosecutor in Mr. Adams' case, that Mr. Pickering provided competent representation to Mr. Adams and that he acted with reasonable diligence and promptness in that representation. Therefore, the Panel finds no violation of M. R. Prof. Conduct 1.1 and 1.3.

The Board further contends that the fact that Mr. Pickering did not give Mr. Adams a paper copy of the discovery produced in the case is a violation of M. R. Prof. Conduct 1.4(a). Although it may be a good practice in most cases, the Board did not cite a rule or any authority at the hearing which requires or even recommends that attorneys provide criminal defendants with actual paper copies of the discovery turned over by the prosecution. Mr. Pickering cited a good example of when providing such copies could be harmful to the criminal defendant. There was no evidence that Mr. Adams requested copies of the discovery prior to his sentencing. Nevertheless, it is clear to the Panel that Mr. Pickering reviewed the discovery with his client to prepare his theories and strengthen his ability to negotiate for a plea bargain during their conferences in Mr. Pickering's office and at the Caribou courthouse. Mr. Pickering would not have known of the absence of a knife when Mr. Adams was arrested without that review. He would not have known about Mr. Madore's wife's apology without that review. He would not have known the details set forth in the Alford plea had it not been for that review and those conversations. (Exhibit #10, p.7; Exhibit #11, pp. 8 - 15) Mr. Pickering's system of communicating with his client, while not perfect, resulted in Mr. Adams being present at the many court dates scheduled during the pendency of the case. It resulted in Mr. Pickering having the necessary information from his client to be able to negotiate a very favorable plea deal with the prosecutor. Although the sentence imposed was harsher than usual for the charges, the Panel is satisfied that Mr. Pickering's communication with his client was not in violation of M.R. Prof. Conduct. 1.4(a). Likewise, Mr. Pickering's conduct did not violate M.R. Prof. Conduct. 8.4(a)(d).

Based upon the evidence and arguments submitted, the Panel unanimously concludes that the Board has not proven by a preponderance of the evidence that Mr. Pickering has engaged in misconduct subject to sanction under the Maine Bar Rules or the Maine Rules of Professional Conduct. Accordingly, pursuant to M. Bar R. 7.1(e)(3)(A), the Disciplinary Petition is dismissed.

Grievance Panel A

Dated: 5/1/15



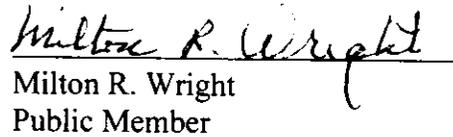
M. Ray Bradford, Jr., Esq., Chair

Dated: 5/1/15



Sarah McPartland-Good, Esq.

Dated: 5/8/15



Milton R. Wright
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Public Member