

STATE OF MAINE

SUPREME JUDICIAL COURT
DOCKET NO: BAR-14-12

BOARD OF OVERSEERS
OF THE BAR,

Plaintiff

SANCTIONS ORDER

vs.

GARY M. PROLMAN
of Saco, Maine
Me. Bar No. 7253,

Defendant

INTRODUCTION

This matter is before the Court on remand from the Law Court with a mandate to reconsider and increase the sanction imposed by this Court's original order of September 14, 2017. *Board of Overseers of the Bar v. Prolman*, 2018 ME 128, 193 A.3d 808. The Law Court's opinion stated: "Unanimously, we vacate the judgment and remand the proceedings to the court for the imposition of a sanction that reflects the serious behavior of the attorney and that, at a minimum, would require Prolman to apply for readmission upon demonstration of a thorough understanding of the ethical obligations of a Maine attorney." *Id.* ¶ 26.

The “apply for readmission” directive, pursuant to Bar Rule 29(a), means that any actual suspension imposed must exceed the six months suspension originally ordered by this Court. Respecting the Law Court’s direction, the Court proceeds to reconsider the sanction.

FINDINGS AND CONCLUSIONS

To avoid an unduly long opinion, the Court at this point adopts and incorporates by reference the findings and conclusions, addressing both the facts and the ethical violations found, stated at pages 5 through 29 of its September 14, 2017, order. The findings and conclusions end, at page 29, with the finding that, “The injury caused by Prolman’s conduct essentially continued and confirmed the pattern of men victimizing and oppressing the client that she had endured for most of her life. He also placed his client at risk by providing her alcoholic beverages that could have caused her probation to be revoked.” The Law Court opinion appears to accept and affirm those findings and conclusions. 2018 ME 128, ¶¶ 2-17.

The Court also adopts and incorporates by reference the findings stated on the record at the conclusion of its April 23, 2019, hearing on Prolman’s motion for reconsideration. Referencing the testimony received that day, those findings indicated that if the client had been using and under the influence of drugs during some of her time at Prolman’s residence, as Prolman

had testified in 2017 that she had done, that evidence confirmed the Court's original #26 finding that on more than one occasion, while the client was residing at Prolman's apartment, Prolman engaged in sexual acts with her, perhaps without resistance or outward evidence of lack of consent from the client.

RECONSIDERATION OF SANCTIONS

The Law Court's opinion, when addressing the methodologies for determining the proper sanction, is split into two differing three-Justice opinions. The first of the two three-Justice opinions, *Board of Overseers of the Bar v. Prolman*, 2018 ME 128, ¶¶ 28-50, 193 A.3d 808, directed this Court to examine Bar Rule 21(c) together with the American Bar Association's Standards for Imposing Lawyer Sanctions (Am. Bar. Assoc. 1992) to determine a "presumptive sanction." *Id.* ¶¶ 31-35. With the presumptive sanction set, that opinion directed the Court to then apply aggravating and mitigating factors to set a final sanction and to determine whether any or all of that final sanction should be suspended with the attorney placed on probation with conditions. *Id.*

The first three-Justice opinion noted: "A review of the disciplinary framework and methodology set forth in the ABA Sanction Standards is helpful in understanding this issue." *Id.* ¶ 30. It further noted that the ABA

Sanction Standards had been developed after an examination of all reported lawyer discipline cases from 1980 to June 1984, were first adopted by the American Bar Association in 1986, and were most recently amended in 1992. *Id.*

The ABA Sanctions Standards provide no representative numbers to gauge the appropriateness of any particular sanction in 2018 or 2019, and likely did not cover many, if any, sex-with-clients cases in the 1980 – 1984 years surveyed. However, the three Justices indicated that the 1992 ABA Standards “comprise[] a comprehensive scheme that sets forth clearly developed standards for the imposition of attorney discipline.” *Id.*

As noted above, the three Justices indicated that Bar Rule 21(c) and the ABA Sanctions Standards should be utilized, in combination, to develop a “presumptive sanction” to which aggravating and mitigating factors would then be applied to determine the final sanction. In effect, the opinion suggested that, to determine and review sanctions for professional misconduct, the Court should adopt a process similar to the process for setting and reviewing criminal sentences imposed by *State v. Hewey*, 622 A.2d 1151, 1154-55 (Me. 1993).¹

¹ *Hewey* was not cited in the first three-Justice opinion, but the sanction determination process it recommends is virtually identical to the so-called *Hewey* formula adopted a quarter century ago, a year after the last revision of the ABA Sanctions Standards.

In *Hewey*, the Law Court had directed that, based on the circumstances of the particular crime as committed, the court should identify a “basic sentence” and then, with the “basic sentence” determined, evaluate aggravating and mitigating factors to set the final sentence, and then determine whether all or any of the final sentence should be suspended and the defendant placed on probation with conditions. *Id.* at 1154-55.

In its Sanctions Order in *Board of Overseers of the Bar v. White*, BAR-18-03 (October 3, 2018), this Court attempted to apply the sanctions standards articulated in *Prolman* to its sanctions’ determination in *White*. Addressing the need to identify a “presumptive sanction,” this Court’s *White* opinion observed that:

Unfortunately, as with the “basic sentence” in *Hewey*, there is no available statistical or experiential basis in Maine practice for a judge imposing a sentence or a disciplinary sanction in any particular case to determine what that basic sentence or presumptive sanction ought to be. And, determination of the presumptive sanction, as suggested in the first separate opinion in *Prolman*, is far more difficult than the process for setting the basic sentence as directed in *Hewey*. Unlike a criminal sentencing where a sentence is imposed on each count of a charging document, here, the Court must consider an overall sanction for four separate instances of professional misconduct, with the appropriate sanction to be informed by the two prior Grievance Commission determinations regarding violations of the Rules of Professional Conduct.

Determination of the presumptive sanction according to the formula suggested in the first three-Justice opinion is also difficult

in the attorney discipline setting because many of the findings of violations of the Rules of Professional Conduct made in the violation determinations present issues identical or nearly identical to factors that would be considered as aggravating or mitigating factors in the later stages of the formula determination. For example, findings of dilatory conduct, violations of duties owed to a client, and the extent to which the lawyer did or did not plan or intend the ethical violation that support findings of specific ethical violations cannot be double counted when, later in the formula, the court is identifying aggravating and mitigating circumstances.

While separation of determination of the presumptive sanction from determination of aggravating and mitigating factors may conceptually sound simple, in practice it is very difficult. The heavily structured *Hewey*-type analysis suggested in the first separate opinion in *Prolman* is difficult if not impossible to apply in cases of multiple violations. As the second separate opinion notes, the formula suggested in the first separate opinion is “an unnecessarily cumbersome process.” *Prolman*, 2018 ME 128, ¶ 51.

White at pp. 7-8.

This Court’s sanctions order in *White* was affirmed in *Board of Overseers of the Bar v. White*, 2019 ME 91, ¶ 4, --- A.3d ---.²

The second separate opinion in *Prolman* indicated that, as a matter of discretion, the sanction of a six-month suspension was too low on the facts.

“All that needs to be said is this: When an attorney has been sentenced to

² The Law Court’s opinion in *White* stated that this Court “did not explicitly articulate its consideration of the American Bar Association’s Standards for Imposing Lawyer Sanctions (Am. Bar Ass’n 1992) (ABA Sanction Standards) in fashioning the sanction, because the sanction imposed nevertheless comports with the ABA Sanction Standards, we do not disturb the court’s decision on this basis.” 2019 ME 91, ¶ 4, --- A.3d ---. As noted and quoted above, this Court’s *White* opinion, at page 7, explicitly referenced the ABA Sanctions Standards and then discussed why application of those standards was difficult or impossible in the bar disciplinary context.

federal prison for using his legal talents to commit serious crimes, and upon reinstatement to the Bar engages in behavior that is abhorrent to the profession, including taking sexual advantage of a client he knew to have been the victim of sex trafficking, a six-month suspension, requiring no demonstration of rehabilitation in order to return to the practice of law, is plainly and compellingly insufficient.” *Prolman*, 2018 ME 128, ¶ 54, 193 A.3d 808.

HELPFUL PRECEDENTS

To determine how to properly exercise its discretion, or to determine the “presumptive sanction,” this Court must first identify relevant precedents that can guide its discretion in setting a proper sanction for a case involving an attorney with a prior disciplinary history who improperly engages in a sexual relationship with a client.

Respecting the second three-Justice opinion’s observation that the original sanction was “compellingly insufficient,” *id.* ¶ 54, it is important to look at other ethics violation sanctions imposed in cases involving sexual relations with a client. In this review it must be noted that at the time the acts at issue occurred in 2017, Maine had no professional ethics rule explicitly barring sexual relations with a client. Last fall, the Court adopted Rule of Professional Conduct 1.8(j) stating that: “A lawyer shall not have sexual

relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.” 2018 Me. Rules 18 (effective October 26, 2018).

With this background, the Court proceeds to review relevant precedents.

A. *Nadeau*, A Potential Sanctions Cap

On the treatment of a prior disciplinary history, which the Law Court’s opinions indicate is significant, one precedent involving a prior disciplinary history, including sexual relations with a client, was and is particularly pertinent. Just three months prior to the Court’s decision in this matter, the Supreme Judicial Court published what is perhaps the most significant professional misconduct sanctions opinion in recent memory, *In re Nadeau*, 2017 ME 121, 168 A.3d 746.

In *Nadeau*, the Court, acting de novo, found five violations of the Code of Judicial Conduct proved, including three violations that involved vindictive treatment of attorneys formerly associated with Nadeau in his private law practice. The Court noted that one of the violations, an order to destroy a public record, involved violation of the Freedom of Access Law, *see* 1 M.R.S. § 452 (2018), which could have subjected Nadeau to criminal penalties. *Id.* ¶¶ 25-29.

In considering the appropriate sanction, the Court also had to consider Nadeau's prior history of six other disciplinary violations. That history included:

- A 2016 opinion finding an ethical violation for using his judicial office to make threats to harm a law firm and its clients, for which a 30-day suspension from judicial office was imposed as a sanction. *In re Nadeau*, 2016 ME 116, 144 A.3d 1161.
- A 2011 Grievance Commission finding of insufficient supervision of staff in his private practice, leading to improper maintenance of and expenditure from his client trust account, which received a dismissal with a warning.³ *Board of Overseers of the Bar v. Nadeau*, GCF-07-204 (May 19, 2011).
- A 2007 opinion finding unethical judicial election campaign practices in which Nadeau, in a political advertisement, knowingly misrepresented conduct of one of his primary opponents for the office of Judge of Probate, for which Nadeau was censured and received a 30-day suspension from his judicial office, with all but seven days suspended on

³ Pursuant to Bar Rule 21(b)(3), a dismissal with a warning is "a private non-disciplinary sanction." However, when there is a subsequent disciplinary proceeding involving the same individual, Bar Rule 21(b), last paragraph, directs that sanctions "issued under this Rule shall be provided to tribunals in any subsequent proceedings in which the respondent has been found to have committed misconduct as evidence of prior misconduct bearing upon the issue of the proper sanction to be imposed in the subsequent proceeding."

the condition that Nadeau comply with certain requirements. *In re Nadeau*, 2007 ME 21, 914 A.3d 714 (finding misconduct); 2007 ME 35, 916 A.3d 200 (imposing sanctions).

- A 2006 Single Justice opinion, entered by agreement with the Board, finding three instances of professional misconduct: (i) initiating consensual sexual relations with a client, for which Nadeau received a dismissal with a warning;⁴ (ii) trying to seal Superior Court records to prevent the public disclosure of his affair with his former client and sending a “discourteous and degrading” communication to the judge who declined to seal the records; and (iii) communicating directly with parties who were represented by counsel as part of his effort to seal Superior Court records; the second two violations generated a public reprimand. *Board of Overseers of the Bar v. Nadeau*, 2006 Me. LEXIS 167.

Thus, the *Nadeau* Court in 2017 had before it, for its consideration of appropriate sanctions, a history of eleven ethical violations, five new violations and six previously-found violations, including sexual relations with a client. With this history, including a potential criminal violation and

⁴ In recommending a dismissal with a warning, the Board was suggesting that sex with Nadeau’s client was “minor misconduct, when there is little or no injury to a client” Bar Rule 21(b)(3).

violations of both judicial and attorney ethics rules, the Court imposed a sanction of a two-year suspension from the practice of law and a \$5,000 forfeiture.

The *Nadeau* sanctions order made no mention of the ABA Sanctions Standards, even though it imposed a suspension from the practice of law. Because of the history of the large number of ethics violations that preceded it, the 2017 *Nadeau* decision effectively served as a sanctions cap for all but the most serious and repeated violations—at least for those seeking comparable cases to guide exercise of discretion in determining appropriate sanctions for ethics violations being addressed in the latter part of 2017.

B. Comparable Maine Cases

Looking to comparable cases to guide the Court's exercise of discretion, the Court appreciates the parties' efforts to assist the Court in identifying comparable cases involving sexual relations with or sexual conduct toward a client arising in jurisdictions with no specific prohibition on sexual relations with a client and where there was no criminal conviction for the sexual conduct. What is surprising is that the parties, applying excellent research skills, identified only twenty-two such cases occurring since 2000, four in Maine and eighteen in other states. Those cases are listed, most recent to oldest, with Maine cases first, in Chart A, attached to this opinion.

The most serious Maine case, *Board of Overseers of the Bar v. Mangan*, BAR-99-05 (2001), involved the sexual abuse of a client extending over many months or years and including threats of harm to the client if she reported Mangan. Separately, Mangan had been subject to several prior disciplinary proceedings including one that involved sexual harassment of an attorney, and others that involved failure to account for client funds and instances of misuse of client trust fund accounts. For these actions, Mangan was disbarred.

Another Maine case with a significant sanction, *Board of Overseers of the Bar v. Paul Letourneau*, BAR-16-17 (2018), involved several incidents of propositioning, text messaging, and sending sexually explicit images of himself to a vulnerable client. For these actions, which may have included acts of criminal harassment, 17-A M.R.S. § 506(1)(A) (2018), Letourneau received a twenty-month suspension of his license to practice law. The ABA Sanctions Standards, as referenced in the first three-Justice opinion, indicate that because Letourneau's acts were committed intentionally or knowingly, they should be subject to the most severe levels of sanctions. *See* 2018 ME 121, ¶ 32, citing ABA Sanctions Standard 4.11.

The third Maine case, *Board of Overseers of the Bar v. Pongratz*, BAR-09-14 (2010), involved an attorney telling a client he found her attractive, crassly referencing her figure, placing a hand on her thigh,

propositioning the client, and, after the client terminated his services, refusing to provide a copy of her file for her new counsel until she made arrangements to pay him the fees he claimed she owed him. Prior to his 2004 bar admission, in 1996, Pongratz had been convicted of a federal felony, possession of marijuana with intent to distribute. For these ethical violations, Pongratz received an eighteen-month suspension of his license to practice law, with all but ninety days of the suspension suspended. During the proceedings, the Board had recommended a six-month suspension with all but sixty days suspended, but the single justice imposed the more severe sanction.

The final identified Maine disciplinary case involving sexual relations with a client is *Board of Overseers of the Bar v. Nadeau*, 2006 Me. LEXIS 167, discussed above. In *Nadeau*, the Board recommended and the single justice, perhaps unadvisedly, accepted a dismissal with a warning on the undisputed claim of sexual relations with a client, along with a public reprimand regarding Nadeau's other ethics violations related to his unsuccessful efforts to keep court records regarding his affair confidential.

In sum, the record of Maine professional ethics cases involving sexual relations with a client from which determination of a "presumptive sanction" or the reasonableness of an exercise of sanctioning discretion could be measured is extremely limited—only two cases with sanctions at either end of

the sanctions spectrum: *Mangan*, a disbarment supported by significant aggravating factors not present here, and *Nadeau*, a dismissal with a warning recommended by the Board, with, at the time, no prior disciplinary history, other than the two concurrent ethics violations found, leading to the Board-recommended public reprimand.

The other two related Maine cases, *Letourneau* and *Pongratz*, involved propositioning clients for sex and other intentional, inappropriate and unethical acts, but no sexual relations with clients.

C. Comparable Cases from Other Jurisdictions

Turning to comparable ethics cases from other jurisdictions that the parties' research has identified, six of the cases from other jurisdictions identified in Attachment A resulted in a disbarment or an actual suspension from the practice of law in excess of six months. Of the three disbarments reported from other jurisdictions, two involved actions, over a longer period of time, with more than one client/victim, and the third involved taking advantage of a client with significant mental health issues and the attorney making significant misrepresentations throughout the disciplinary proceedings.

Twelve of the cases from other jurisdictions resulted in actual suspensions from the practice of law of six months or less and, of those, nine

involved actual suspensions of ninety days or less and two involved only a public reprimand or a suspension which, itself, was suspended or deferred. Three of the cases with suspensions of six months or less involved attorneys who had prior findings of ethical violations including one, *Morrison* (Iowa, 2007), who had previously been admonished for “making sexual advances toward another client.”

The most significant case from another jurisdiction did not involve a disbarment but a suspension of one year and one day. *In re Kretowicz*, BD-2018-106, Mass. S.J.C. Single Justice (March 6, 2019). In *Kretowicz*, the attorney-client representation in a family matter began in January 2011. From the beginning of the representation, the attorney’s communications with the client were “unusually personal in tone.” At some point, a sexual relationship with the client began. In April 2011 and again in June 2011, while the sexual relationship was ongoing, the client was hospitalized after overdosing on drugs and/or alcohol. In August 2011, “the client recognized the danger of being sexually involved with her divorce lawyer and spoke to him about obtaining new counsel.” The client’s effort to terminate the professional relationship was unsuccessful. Kretowicz continued to represent the client. On October 1, 2011, the client overdosed on drugs and alcohol and died.

For this tragic outcome of a sexual relationship with a client, a relationship that may have exacerbated emotional difficulties of the client, and a relationship that the client tried to terminate, but that the attorney failed to terminate, ending with the death of the client during the relationship, the attorney received a suspension for only a year and a day.

APPLICATION OF THE OTHER SANCTIONS PRECEDENTS

Putting the Prolman case in context of the totality of the twenty-two analogous disciplinary cases identified by the parties in Maine and other jurisdictions, eight of those involved actual suspensions from the practice of law of more than six months, including four disbarments, one in Maine and three in other jurisdictions. All of the reported disbarments had aggravating factors not present in this case. One other sanctions case, leading to a suspension of a year and a day, involved a severe aggravating factor, death of a client, not present here. Eleven cases involved sanctions that included actual suspensions of ninety days or less and, sometimes, as in *Nadeau*, no actual suspension at all.

Thus, the six-month suspension originally imposed places the Prolman matter squarely in the middle range of the sanctions that have been imposed for initiating sexual relations with a client in Maine and the other jurisdictions identified by the parties. The sanction is lower than eight of the identified

cases, it is higher than the sanction imposed in eleven of the identified cases, and it is identical, or nearly identical, to the sanction imposed in three of the identified cases.

This case has one aggravating factor not shared by most of the other cases, which is the prior federal felony conviction and two-year suspension from the practice of law that involved violations of the Rules of Professional Conduct, which violations occurred outside of Prolman's work performing legal services and appearing before the courts.

With this background, the Court proceeds to consider the appropriate sanction that will meet the standards articulated in the Law Court's opinions remanding this matter for reconsideration. In making this determination, the Court will consider the evidence developed on the record that led to the September 14, 2017, order and, additionally, the evidence developed at the April 23, 2019, hearing on Prolman's motion for reconsideration, plus the evidence and arguments offered at the June 14, 2019, hearing on the sanctions issue.

To address the sanctions issue, the Court will use the analytical approach suggested by the second three-Justice opinion in this matter, noting that a similar analytical approach to determining sanctions has recently been affirmed in *Board of Overseers of the Bar v. White*, 2019 ME 91, ¶ 4, --- A.2d ---.

Application of this analytical approach is aided by the fact that for this reconsideration of sanctions, the Court has a range of sanctions precedents addressing ethical violations involving sexual relations with clients in jurisdictions that, at the time, did not prohibit sexual relations with clients in their professional ethics rules and where the acts involving sexual relations with the client did not result in a criminal conviction.

As it did in the original proceeding, the Court will consider the appropriate sanctions to comply with the Law Court's directive in accordance with the standards laid out in Maine Bar Rule 21(c).

Rule 21(c) provides,

(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.

Application of Rule 21(c) can be informed by portions of the ABA Sanctions Standards, as referenced in the first three-Justice opinion, which

stated: “Where the attorney acted intentionally or caused injury or potential injury to the client, Standard 4.11 provides for a presumptive sanction of disbarment. . . . Conversely, where the attorney acted negligently and caused little to no actual or potential injury to the client, Standard 4.14 provides that the presumptive sanction is an admonition.” (citations omitted). 2018 ME 121, ¶ 32.

The requisite state-of-mind determination referenced in both Bar Rule 21(c) and in the ABA Sanctions Standards, and cited in the two remanding opinions is important. In its original order, at page 28, this Court found that: “Prolman's actions in his treatment of his client and in his failure to disclose to her support team that she would be living with him was negligent and reckless, though probably not so well thought out or planned in advance sufficiently to be considered intentional.” Neither the Law Court’s opinion, nor the evidence and arguments presented at the subsequent reconsideration and sanctions hearings have caused this Court to change that finding.

Because Prolman acted negligently and recklessly and was not proved to have acted intentionally or knowingly, application of Bar Rule 21(c) and the ABA Sanctions Standards, as referenced in the first three-Justice opinion, could be read to preclude the disbarment sanction. This Court does not suggest that its finding of negligence invited a “presumptive sanction” of no

suspension and just an admonition as the referenced ABA Sanctions Standards language in the first three-Justice opinion, 2018 ME 121, ¶ 32, could be read to suggest. And this Court certainly does not suggest that sex with a client is “minor misconduct,” as the Board’s recommendation of a dismissal with a warning suggested in the 2006 *Nadeau* case. See Bar Rule 21(b)(3).

Accordingly, the Court proceeds to determine the appropriate sanction in excess of the previously ordered six-month suspension but short of disbarment. The Court will analyze the issues following the subheadings in Rule 21(c).

- (1) *Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;*

By negligently and recklessly initiating a sexual relationship with his client and by providing her alcoholic beverages to consume, Prolman violated duties owed to his client and to the legal system, including the officials supervising his client, as found in the 2017 order.

- (2) *Whether the lawyer acted intentionally, knowingly, or negligently;*

Prolman’s actions were negligent and reckless, but not intentional or knowing, as discussed above.

- (3) *The amount of the actual or potential injury caused by the lawyer's misconduct;*

Imposing oneself sexually on a vulnerable and submissive person inevitably causes psychological injury to the person subject to such advances and caused psychological injury to the client in this case. As stated in the finding at page 29 of the Court's original opinion, the injury caused by Prolman's conduct essentially continued and confirmed the pattern of men victimizing and oppressing the client that she had endured for most of her life. He also placed his client at risk by providing her alcoholic beverages that could have caused her probation to be revoked or caused her to be denied the early termination of her probation, one of the objectives of his representation.

The damage to the client caused by Prolman's acts must be put in context. The client encountered Prolman and sought his assistance in finding a safe place to live because of the previous degrading abuse and victimization she had suffered, perpetrated by other men, including her dangerous, assaultive boyfriend. Because she had just had her nose broken and been the victim of a Class B aggravated assault and a Class D domestic violence assault, the authorities sought a place for her to live far removed from her apartment. They did so because they anticipated, apparently correctly, that her lack of cooperation would render it unlikely that they could get bail conditions or a

conviction that would keep her boyfriend in jail or at least prohibit his contacting her and returning to their shared apartment. Thus, as found in the 2017 order, the authorities anticipated his prompt release and return to the apartment.

Prolman's conduct was damaging to the client and another instance of her being betrayed by men she encountered, but it could not have added greatly to her difficult condition already caused by the violent and degrading abuse she had suffered at the hands of others.

(4) *The existence of any aggravating or mitigating factors.*

In addition to the ethical violations found and the factors discussed in relation to headings 1-3 above, the Court finds the following aggravating or mitigating factors:

Among aggravating factors, first and foremost is the federal conviction and resulting two-year suspension addressed in detail in the Court's March 7, 2016, order. The Court recognizes that in its September 14, 2017, opinion it gave insufficient attention to this significant aggravating factor when setting the sanction for the ethics violations at issue here. Important factors that must be recognized in any revised sanction are the seriousness of that felony conviction and the fact that Prolman had been reinstated from his

previous suspension for less than a year when this new ethical misconduct occurred.

Another aggravating factor to consider in determining an appropriate sanction is Prolman's admitted consumption of alcoholic beverages in violation of his federal probation conditions, while the client was residing at his apartment.

Looking to mitigating factors, it is important to note that Prolman's professional services were successful in achieving the client's objectives in the two cases, one in Maine and one in Florida, for which he was retained. In addition, after the client moved into his apartment, Prolman became directly involved, beyond what his professional obligations would have required, in trying to help his client establish her independence and self-esteem after separation from her dangerously abusive boyfriend. In furtherance of this, he arranged for his client to obtain a new cell phone not controlled by the boyfriend and he arranged for her to get a job at a local restaurant. Unfortunately, this effort wound up further damaging the client's self-esteem as a result of Prolman's initiation of a sexual relationship with the client.

Because the changed sanctions order will be imposed in the present, consideration must be given to Prolman's current status, not the status that existed on or before September 14, 2017, the date of the original order. The

evidence presented at the recent hearings demonstrates that Prolman has a commendable record indicating that he represents a large number of clients, mostly in criminal and family matters, and that most clients are satisfied with Prolman's services and complimentary of his interactions with them. Particularly notable is the large number of communications received from female clients, none of whom indicate that Prolman has engaged in any improprieties with them or improperly crossed any boundaries in his dealings with those clients. Those communications indicate that the inappropriate actions with one client that led to this proceeding was an aberration, not a continuing pattern, in Prolman's dealings with his clients.

Separately, since being reinstated and continuing, Prolman has assisted an unusually large number of pro bono clients for which he has received recognition through the Katahdin Counsel program and otherwise. That representation, and representation of his regular clients in ways that are satisfactory to those clients, would be disrupted, causing significant harm to them should a further actual suspension be imposed.

In addition to his work with his regular clients and the services he provides to pro bono clients, Prolman is also engaged in important community service work. One area of work is subject to particular note. He is a sincere and devout practitioner of his Jewish religion, regularly attending services at a

synagogue in Portland. Recent national visibility to voices of bigotry, including anti-Semitism, stated, with acceptance in some circles, in the name of freedom of speech or freedom of religion, has led to some tragic attacks on individuals and institutions, including synagogues. To address this concern, Prolman has taken it upon himself to assume responsibility and personal risk by providing security services during worship at the synagogue that he attends. While such services would not be deterred should Prolman receive a further actual suspension, the example of this service is offered as an illustration of service he provides, above and beyond what most individuals provide, in service to his community.

In addition, since the Law Court's opinions, Prolman has engaged, on his own initiative, in monthly counseling to aid his perception of boundary issues and how to stay within proper boundaries in dealings with clients and others in the community.

Considering all of the circumstances discussed above, including the ethical violations, the impacts on the client/victim, the services that Prolman provides to current clients and to pro bono clients, his work in the community, and his commitment to address, through counseling, an issue that led to this proceeding, and respecting the Law Court's opinion that as a matter

of discretion the sanction originally imposed was simply not enough, the Court would reimpose a sanction as follows:

In this Court's view, serving an additional suspension, beyond the six-month suspension that has already been served, could have a significant adverse effect on the many regular and pro bono clients that Prolman serves, generally commendably, and also on the courts where his services for those clients are provided. However, on the issue of a further suspension from the practice of law, this Court is not painting on a blank page. The Law Court has mandated that, with more attention given to the aggravating factor of the prior conviction and suspension, some additional suspension must be imposed and that once the suspension takes effect, Prolman must be required to petition to be reinstated before he would be allowed to resume the active practice of law.

Accordingly, to respect the Law Court's direction, the sanction that the Court believes necessary to meet the Law Court's standards for this single aberrational instance of sexual misconduct with a client and with consideration of Prolman's prior disciplinary record, is a suspension of two years with all but nine months suspended, with the suspended portion to be served subject to conditions to engage in counseling regarding boundary issues, and to engage in ethics training and counseling with particular

emphasis on issues regarding client communications and relationships and what the rules of ethics require in terms of those relationships. Further, respecting the Law Court's direction, once the additional three months added to the suspension from the practice of law takes effect, to accomplish the full nine-month suspension, Prolman could not resume active practice of law until the end of the suspension and such further time as is necessary to petition for and regain reinstatement to the active practice of law.

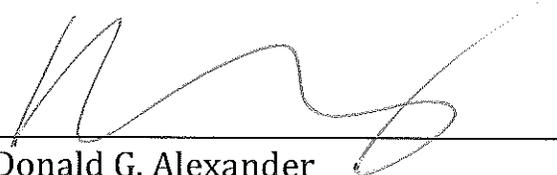
With the goal of minimizing harm to current clients and the courts, the Court requests that the parties meet and determine, if they can do so by agreement, the date when the additional three-month suspension from the practice of law shall begin.

The Court orders Gary M. Prolman shall be suspended from the practice of law for a term of two years with all but nine months of that suspension suspended, and six months having already been served. The suspended portions of the suspension shall be served subject to compliance with the terms and conditions stated above.

The additional three-month suspension will commence upon a date to be agreed by the parties or, if the parties cannot reach agreement, on a date to be set by the Court. If the parties do not advise the Court of the date they have

agreed the suspension may start by July 22, 2019, the Court will itself set the date for the suspension to start.

Date: July 8, 2019



Donald G. Alexander
Associate Justice
Maine Supreme Judicial Court

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JUL 08 2019

Clerk's Office
Maine Supreme Judicial Court

CHART A: Comparable Sexual Misconduct Cases (States with No Rule Prohibition)
Bar-14-12

Case Specifics	Consensual Acts Involving 1 Client	Consensual Acts Involving 2+ Clients	Case Outcome	Other Notes
<ul style="list-style-type: none"> • Board of Overseers of the Bar v. Paul L. Letourneau • Maine • 2018 	X		20-month suspension	Client subject to propositions, sexting, vulnerable client
<ul style="list-style-type: none"> • Board of Overseers of the Bar v. Pongratz • Maine • 2014 	X		18-month suspension, all but 90 days suspended, complete MAP evaluation, written apology to client, pay expenses and fees to Bar	Felony history prior to admission to Bar. Propositions, lewd cmnts, refusal of file
<ul style="list-style-type: none"> • Board of Overseers of the Bar v. Robert M.A. Nadeau • Maine • 2006 	X		Dismissed with a warning (case involved other, nonsexual misconduct that led to reprimand)	
<ul style="list-style-type: none"> • Board of Overseers of the Bar v. Thomas M. Mangan • Maine • 2001 	X		Disbarment (at least two incidents of nonconsensual sex occurred) Significant prior discipline history	
<ul style="list-style-type: none"> • In re Glenn Robinson • Vermont • 2019 		X - 2 women	Disbarment	1 client suffered from mental health issues

Case Specifics	Consensual Acts Involving 1 Client	Consensual Acts Involving 2+ Clients	Case Outcome	Other Notes
<ul style="list-style-type: none"> • In re Adam A. Kretowicz • Massachusetts • 2018 	X		1 year and 1 day suspension	Client several overdoses in relationship, finally fatal.
<ul style="list-style-type: none"> • Attorney Disciplinary Board v. Paul K. Waterman • Iowa • 2017 	X		30-day suspension, plus costs	Self-reported, many mitigating facts listed
<ul style="list-style-type: none"> • Attorney Disciplinary Board v. Deborah L. Johnson • Iowa • 2016 	X		30-day suspension, plus costs	Self-reported
<ul style="list-style-type: none"> • Office of Lawyer Regulation v. Christopher S. Carson • Wisconsin • 2015 	X		90-day suspension (case also involved other, nonsexual misconduct)	Prior discipline history
<ul style="list-style-type: none"> • In re Randy J. Fuerst • Louisiana • 2014 		X - 6 females (some past clients, some consults only)	3-month suspension, 3 months deferred (found only 1 relationship with a current client), plus investigation costs and 1/8 of total litigation expenses	No prohibition against sexual relationships with past clients or consults
<ul style="list-style-type: none"> • In the Matter of William G. Mayer • South Carolina • 2012 	X		Public reprimand, CLE requirements, plus costs (case involved other, nonsexual misconduct)	

Case Specifics	Consensual Acts Involving 1 Client	Consensual Acts Involving 2+ Clients	Case Outcome	Other Notes
<ul style="list-style-type: none"> • Disciplinary Counsel v. Siewert • Ohio • 2011 	X		6-month suspension stayed, plus costs	Prior discipline aggravating factor
<ul style="list-style-type: none"> • Attorney Disciplinary Board v. Jesse M. Marzen • Iowa • 2010 	X		Indefinite suspension, not to exceed 6 months, plus costs	Marzen was appointed to represent client in mental health commitment hearing
<ul style="list-style-type: none"> • Attorney Disciplinary Board v. William R. Monroe • Iowa • 2010 	X		30-day suspension and proof of counseling	Several aggravating and mitigating factors listed
<ul style="list-style-type: none"> • In re Darrel D. Ryland • Louisiana • 2008 	X		90-day deferred suspension with CLE requirements, plus costs and expenses	Self-reported
<ul style="list-style-type: none"> • Attorney Disciplinary Board v. Morrison • Iowa • 2007 	X		Indefinite license suspension, no less than 3 months, plus costs	Prior admonishment "for making sexual advance toward another client"
<ul style="list-style-type: none"> • Disciplinary Counsel v. Sturgeon • Ohio • 2006 		X- 3 women	Disbarment	Engaged in sexual acts for fee with 1 client and propositioned 2 others

Case Specifics	Consensual Acts Involving 1 Client	Consensual Acts Involving 2+ Clients	Case Outcome	Other Notes
<ul style="list-style-type: none"> • Office of Lawyer Regulation v. Carlos Gamino • Wisconsin • 2005 		X - 2 females	6-month suspension, plus costs	Misrepresented activities in open court
<ul style="list-style-type: none"> • In re Robert T. DeFrancesch • Louisiana • 2004 	X		2-year suspension, all but 1 year and 1 day suspended, plus costs	Sex used as "punishment" for missed payments
<ul style="list-style-type: none"> • In the Matter of James V. Tsoutsouris • Indiana • 2001 	X		30-day suspension	Argued that such a relationship was not improper nor a violation of ethical rules
<ul style="list-style-type: none"> • In the Matter of Lowell K. Halverson • Washington • 2000 	X		1-year suspension	
<ul style="list-style-type: none"> • State ex rel Nebraska v. Gary D. Denton • Nebraska • 2000 	X		Disbarment	Client had mental health issues; misrepresented truth throughout disciplinary proceedings