

STATE OF MAINE

SUPREME JUDICIAL COURT

DOCKET NO. BAR 22-23

Board of Overseers of the Bar,)
 Plaintiff)
)
 v.)
)
 Kayla M. Alves, Esq.,)
 of Portland, ME)
 Me. Bar #006088)
 Defendant)

AMENDED SANCTIONS
ORDER

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BOARD OF OVERSEERS OF THE BAR

This matter came before the Court based on the parties' agreement. The Board of Overseers of the Bar (hereinafter referred to as the "Board") was represented by Bar Counsel, Julia A. Sheridan. The Defendant, Kayla M. Alves (hereinafter "Alves"), appeared and was represented by Walter F. McKee, Esq. The parties stipulated that Alves had violated the Maine Rules of Professional Conduct, Rule 3.4(a), Rule 8.4(a), Rule 8.4(b), Rule 8.4(c) and Rule 8.4(d).

Background and Factual Findings

Pursuant to the agreement of the parties, the Court finds the following facts:

1. On August 17, 2022, Attorney Alves was convicted after a guilty plea of Tampering with Documents, 18 U.S.C. § 1512(c)(1). Attorney Alves was sentenced to two years of probation and fined \$2,000.00. Pursuant to M. Bar R. 23(a), a certified copy of the conviction was submitted to Bar Counsel and a Petition for Interim Suspension was filed on October 12, 2022, by agreement of the parties. M. Bar R. 23(b), (d).

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2. 18 U.S.C. § 1512(c)(1) makes it a crime to “corruptly” destroy a record, document, or other object, or attempt to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding and the punishment for such action is a fine or up to 20 years of imprisonment, or both.
3. M. Bar R. 23(c) defines a “serious crime” as any felony or lesser crime that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the legal definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a “serious crime.”
4. The conviction of Tampering with a Document reflects adversely on Attorney Alves’s honesty, trustworthiness, or fitness as a lawyer in other respects and the crime has a necessary element of interference with the administration of justice. The conviction, therefore, a “serious crime.”
5. Pursuant to M. Bar R. 23(e) a certified copy of a conviction constitutes conclusive evidence that the lawyer committed the crime. For the purposes of a hearing on formal charges arising out of the finding of guilt, the sole issue in any such hearing shall be the nature and extent of the discipline to be imposed.
6. Based on the foregoing, Attorney Alves has violated the following Rules:
 - a. MAINE BAR RULE 23. Attorney Alves was found guilty after a plea of guilty to a “serious crime” that reflects adversely on her honesty, trustworthiness

or fitness as a lawyer in other respects and an element of the crime to which she entered a plea of guilty involves “interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a ‘serious crime.’;”

- b. MAINE RULE OF PROFESSIONAL CONDUCT 3.4(a). Attorney Alves unlawfully obstructed another party’s access to evidence or unlawfully altered, destroyed or concealed a document or other material having potential evidentiary value;
 - c. MAINE RULE OF PROFESSIONAL CONDUCT 8.4(a). Attorney Alves violated provisions of the Maine Bar Rules and the Maine Rules of Professional Conduct;
 - d. MAINE RULE OF PROFESSIONAL CONDUCT 8.4(b). Attorney Alves committed a crime that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects;
 - e. MAINE RULE OF PROFESSIONAL CONDUCT 8.4(c). Attorney Alves engaged in conduct involving dishonesty, fraud, deceit or misrepresentation;
 - f. MAINE RULE OF PROFESSIONAL CONDUCT 8.4(d). Attorney Alves engaged in conduct prejudicial to the administration of justice.
7. Given that Alves’s conviction establishes conclusively that Alves committed a “serious crime” involving interference with the administration of justice, the only issue before the Court is the determination of an appropriate sanction that reflects the seriousness of the conduct involved. The parties have recommended a suspension of Alves’s license to practice law for nine months.

Analysis

The purpose of lawyer disciplinary proceedings is to protect the public. Bd. of Overseers of the Bar v. Whalley, CV-20-01 (April 2, 2021). The Rules at issue are Rules of Professional Conduct 3.4(a) and 8.4(a), (b), (c), (d) and the Maine Bar Rule 23. The Court finds that Alves violated Rule 3.4(a) by deleting evidence in

the form of text messages at a time that she knew a criminal investigation was ongoing. For this conduct she was convicted of a violation of 18 U.S.C. § 1512(c)(1). This conduct also violated Rule 8.4(a) (violating the rules of professional conduct or the Maine bar rules), Rule 8.4(b) (committing a crime that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in other respects), Rule 8.4(c)(engaging in conduct that involves dishonesty, fraud, deceit or misrepresentation) and Rule 8.4(d (engaging in conduct prejudicial to the administration of justice).

Maine Bar Rule 21 governs the imposition of sanctions and requires consideration of: (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. M. Bar R. 21(c); Bd. of Overseers of the Bar v. Prolman, 2018 ME 128, ¶ 21, 193 A.3d 808, 814. Rule 21(c) refers to the ABA Standards for Imposing Lawyer Sanctions, ("ABA Sanctions Standards"). In Prolman, the Law Court came down equally divided on the issue of whether the ABA Sanctions Standards were incorporated into Rule 21(c), however, while application of the ABA Sanctions Standards is not mandatory, the ABA Sanctions Standards are important considerations when determining an appropriate sanction for misconduct. The ABA Sanctions Standards require consideration of: (a) the duty violated; (b) the lawyer's mental state; (c) the

potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating and mitigating factors.

Rule 21(c) Factors

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

In this matter, Attorney Alves violated duties to the public and to the profession. She knowingly destroyed evidence during the course of a criminal investigation, thereby committing criminal conduct. At the time she engaged in this conduct, she was an assistant district attorney and should have been well aware of the seriousness of her conduct.

The ABA Sanctions Standards recognize the commission of a crime that seriously adversely reflects on the lawyer's fitness to practice as a failure to maintain personal integrity. ABA Sanctions Standard 5.1

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation.

ABA Sanctions Standard 5.1

Standard 5.12 provides that "Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice." Standard 5.11 states that disbarment is generally appropriate when

a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or [] engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Standard 5.11.

Here, Alves deleted text messages which were evidence relevant to an ongoing criminal investigation. She was not charged with the substantive crimes which were the subject of that investigation, however, and she has no prior disciplinary history. Importantly, she also was not responsible as an assistant district attorney for the matter under investigation. Her conduct does not rise to the level of the conduct set forth in Standard 5.11, and, therefore, suspension is generally appropriate.

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

The ABA Sanctions Standards define states of mind:

"Intent" is the conscious objective or purpose to accomplish a particular result.

"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

"Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

Attorney Alves's conduct was at least knowing if not intentional.

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

The ABA Sanctions Standards define injury as harm to "a client, the public, the legal system, or the profession which results from a lawyer's misconduct." The level of injury can range from "serious" to "little or no injury." A reference to "injury" alone indicates any level of injury greater than "little or no" injury. ABA Sanctions Standards, Definitions. Here, the public and the legal system were harmed by Attorney Alves's actions in deleting evidence during the course of an investigation.

(4) The existence of any aggravating or mitigating factors

Aggravating factors under the ABA Sanctions Standards include prior disciplinary offenses, dishonest or selfish motive, multiple offenses, refusal to acknowledge wrongful nature of conduct and substantial experience in the practice of law. ABA Sanctions Standards 9.22. Mitigating factors under the ABA Sanctions Standards include absence of prior disciplinary history, cooperative attitude toward the proceedings and inexperience in the practice of law. ABA Sanctions Standards 9.32. Here, Attorney Alves has admitted her misconduct, has this one criminal conviction, no disciplinary history, has practiced since

2018 and there is no evidence that she was directly involved in the criminal activity to which the deleted text messages related.

After consideration of all the factors set forth above and the circumstances of this case, it is ORDERED that Kayla M. Alves is suspended from the practice of law for nine months, effective November 7, 2022.

Pursuant to M.R. Civ. P. 79(a), the clerk shall enter this Order on the docket.

Dated: 11-21-2022
Nunc pro tunc 11-7-2022



Judge Michael A. Duddy
Single Justice,
sitting by designation