IN RE: CHRISTOPHER J. BULGER

Public Reprimand No. 2013-24

Order (public reprimand) entered by the Board on December 4, 2013

Page Down to View Board Memorandum

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL,

Petitioner

vs.

CHRISTOPHER J. BULGER, ESQ.,

Respondent

BOARD MEMORANDUM

The respondent, Christopher J. Bulger, Esq., appeals from the report of a hearing committee that recommended he receive a public reprimand for disclosure of confidential client information. His argument is limited to the sanction, which he contends should be no more severe than an admonition. Oral argument having been waived, we considered the matter on the briefs at our meeting on September 23, 2013. We affirm the hearing committee.

The respondent was employed as counsel to the Office of the Commissioner of Probation by John O'Brien, then commissioner. O'Brien eventually promoted the respondent to chief legal counsel for that office. In May 2010, O'Brien was placed on administrative leave and instructed to leave his office, turn in his keys, and not appear at the probation department or courthouses except by special arrangement. The administrative leave was imposed pending an investigation, conducted by independent counsel, of politically motivated hiring within the probation department. An acting administrator was appointed to run the probation department.

During the investigation, the respondent spoke repeatedly with O'Brien. In these conversations, which occurred over the respondent's cell phone rather than his office telephone, he passed along to O'Brien information concerning the investigation,

including who had been served with subpoenas to give testimony to independent counsel and what they had been asked, as well as the existence on a probation department computer of one or more lists of political sponsors for job candidates. The respondent did not inform, or obtain the informed consent of, the acting administrator to have these conversations or to make these disclosures.

The committee credited the respondent's testimony that his conversations with O'Brien were not calculated to interfere with the investigation. The committee further found: that the respondent did not know what, if anything, O'Brien would do with the information; that the respondent did not solicit from others the information he gave to O'Brien; that he did not systematically act as conduit for the information, but merely shared random information he had passively received at the office; and that he continued to believe that both O'Brien and the department of probation were his clients during the investigation. The committee credited that the respondent expected O'Brien to be exonerated and to return to his office.

The committee rejected the more damning scenario portrayed in the petition: a lawyer's surreptitious disclosure to one whose interests conflicted with those of the lawyer's current client. Bar counsel does not appeal from the committee's rejection of all but one of the charges in the petition, including the charge that the respondent engaged in an unconsented conflict of interest. The respondent, in turn, does not appeal from the ruling that his conduct violated Mass. R. Prof. C. 1.6 (unconsented disclosure of confidential client information).

While noting that the typical sanction for an unaggravated breach of rule 1.6 is an admonition,[1] the committee recommended a public reprimand. This recommendation

[1] Contrast Admonition 04-47, 20 Mass. Att'y Disc. R. 750 (2004) (attorney who took over a tort case later sued the client for unpaid fees; when the attorney moved for summary judgment, he attached a letter from the client's prior counsel suggesting a positive test for the client's drug use after the accident); Admonition 99-52, 15 Mass. Att'y Disc. R. 746 (1999) (excess disclosure in motion to withdraw); Admonition 12-11 (the client had told the attorney not to disclose that an estate representative was proposing an erroneous distribution to the client's benefit; years later, when the client had already received the distribution, the attorney disclosed the error to the attorney for the estate representative) with Matter of Horrigan, 26 Mass.

was based primarily on four findings relating to the misconduct: the respondent was improperly motivated by concern for the person responsible for his own rise in the probation department; the impropriety of his disclosures was fairly obvious; the disclosures occurred repeatedly over an extended course of conversations with O'Brien; and the respondent seemed to the committee still to be wholly unaware of the impropriety of his misconduct. We find nothing exceptional in this reasoning or its outcome.

The respondent urges two main arguments on appeal. First, he argues, his good-faith mistake about the identity of his client deserves greater weight in mitigation. Second, he argues that the committee erred because, while following the methodology recommended in the ABA's Standards for the Imposition of Lawyer Sanctions (1992), it failed to take into account certain factors in mitigation under those standards.

We need not tarry over the respondent's appeal to his mistaken belief about the identity of his client. The Court has instructed that "[t]here have been, and will be, few cases of unethical conduct where we consider it relevant that an offending attorney was not aware of the disciplinary rules or their true import." Matter of the Discipline of an Attorney (Three Attorneys), 392 Mass. 827, 835, 4 Mass. Att'y Disc. R. 155, 165 (1984) (dictum). The respondent's failure to recognize that O'Brien obviously was no longer a "duly authorized constituent" of his client-entity, Mass. R. Prof. C. 1.13(a), borders on willful blindness and provides no basis for a lesser sanction.

The respondent's appeal to additional mitigating factors under the ABA's standards fares no better. Under section 4.24 of those standards, admonition is appropriate only when the disclosure of client information was negligent and resulted in

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Att'y Disc. R. 250 (2010) (public reprimand for disclosing client confidential information and engaging in a successive conflict where, having represented a husband in a personal injury and worker's compensation matter, the lawyer gave notice that he would represent the wife in a divorce, then retracted that notice while providing the wife with the husband's medical and treatment records obtained through his representation of the husband); and Matter of Hochberg, 17 Mass. Att'y Disc. R. 304 (2001) (in the course of defending new clients against a former client's civil claim, the attorney disclosed to the former client's new counsel that he had obtained a judgment against the former client for unpaid fees, and also indicated that the former client had sought to use fabricated evidence in defense of a criminal matter).

no harm or potential harm to the client. The respondent's conduct was not negligent. Further, the ABA's commentary on its standards relating to violation of the duty to preserve client confidences sets public reprimand as the usual minimum sanction: "Maintaining a client's confidence is so fundamental to the professional relationship that generally it is inappropriate to impose a private sanction."

The outcome is not changed by the additional factors the respondent argues the committee erred by not considering in mitigation: that he has no disciplinary record and had no dishonest or selfish motive (Standards, §§ 9.32(a), (b)); that he cooperated with bar counsel's investigation (§9.32(e)); and that he suffered other sanctions for his conduct (loss of employment with the probation department) (§9.32(k)).

The additional mitigating factors he cites constitute what the Court has termed "typical" mitigation that should be given little weight. Matter of Alter, 389 Mass. 153, 157, 3 Mass. Att'y Disc. R. 3, 6 (1983) ("typical" mitigating factors include excellent reputation, satisfactory record, and cooperation in disciplinary proceeding). See also Matter of Nickerson, 422 Mass. 333, 337, 12 Mass. Att'y. Disc. R. 367, 375 (1996) ("[t]he question is not whether the respondent has been 'punished' enough. To make that the test would be to give undue weight to his private interests, whereas the true test must always be the public welfare") (citation and quotations omitted). Moreover, the proposed mitigating factors are outweighed by the aggravating factors: that he engaged in a pattern of repeated misconduct (§§ 9.22(c), (d)); that he refused to acknowledge the wrongful nature of his misconduct (§9.22(g)), and that he had substantial experience at the bar at the time of his misconduct (§9.22(i)). The committee correctly gave little weight to the mitigating circumstances the respondent argues.

For all of the foregoing reasons, we adopt the hearing committee's findings of fact, conclusions of law, and recommendation that the respondent, Christopher J. Bulger, be publicly reprimanded.

Respectfully submitted,
BOARD OF BAR OVERSEERS,

By: Maureen Mulligan
Maureen Mulligan
Secretary pro tem

Voted: November 25, 2013