

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2020-031

In Re: Carlton Vose

MEMORANDUM OF DECISION AND ORDER
ON BAR COUNSEL'S NOTICE OF CONVICTION AND
PETITION FOR TEMPORARY SUSPENSION

Bar counsel has filed a notice of conviction pursuant to S.J.C. Rule 401, § 12(4), notifying the court that the respondent, Carlton Vose, who was admitted to the bar of the Commonwealth on December 3, 2010, has been convicted in the Superior Court for Bristol County, Rhode Island, on six felony counts of neglect of an adult with severe impairments, in violation of R.I. Gen. Laws § 11-5-12 (e).¹ On March 16, 2020, a

¹According to the trial transcript provided by the respondent, the jury determined that on six occasions between February 9, 2015, and November 3, 2015, the respondent "committed the crime of willfully and knowingly neglecting an adult with severe impairments." (Dec. 12, 2019 Tr.: 546-548). According to the transcript, the adult in question is the respondent's mother, who was suffering from dementia. Id. Bar counsel describes evidence as establishing that the respondent neglected his mother. In general, the trial transcript indicates that the respondent's mother was found wandering around her neighborhood, disoriented, upset, lost and confused; that she looked disheveled and was wearing dirty clothes or clothes inappropriate for weather conditions; and that she was

single justice of the Rhode Island Supreme Court authorized the respondent's release on bail, with surety and other conditions, during the pendency of his appeal to that court.²

Because the respondent was convicted of "serious crime[s]," as defined in S.J.C. Rule 4:01, § 12 (3),³ this court issued an order of notice requiring the respondent to show cause why he should not be temporarily suspended from the practice of law pending the outcome of any disciplinary proceedings. See S.J.C. Rule 4:01, § 12 (4). See also Matter of DiMasi, 27 Mass. Att'y Discipline Rep. 193 (2011). The respondent filed materials acknowledging the convictions, and arguing that his appeal is meritorious: in general, he contends that no one has ever been charged with the crime for which he was convicted, that the evidence was insufficient to sustain the convictions, that there were errors at trial, and that the sentencing judge abused his

living in a disorderly, cluttered, unkept home smelling of urine.

² The Superior Court judge previously had denied the respondent's request to stay the sentence pending appeal, and also denied bail. A justice of the Rhode Island Supreme Court subsequently granted the respondent's release on \$30,000 bail pending appeal, and ordered that the respondent have no contact with his mother. (Submission of Additional Documents dated February 18, 2021, at ex. B).

³ "Serious crime" is defined to "include (a) any felony" The Rhode Island docket sheets indicate that the respondent's convictions under R.I. Gen. Laws § 11-5-12 (e) are felonies.

discretion in sentencing. The respondent asks that he not be temporarily suspended while his appeal is pending and bar disciplinary proceedings are ongoing.

Having reviewed the materials submitted by the parties, and after a hearing, I conclude that a temporary suspension is not warranted at this time, but the respondent must notify current and prospective clients of the convictions and that, as a result, he may face professional discipline that could affect his ability to continue to practice law. See Matter of Barkin, 1 Mass. Att'y Discipline Rep. 18 (1977) (declining to impose interim suspension during pendency of appeal from conviction for failing to file tax returns absent showing that "public may be harmed by the continued practice of law by the attorney;" considering likely duration of interim sanction relative to any disciplinary sanction). Should circumstances warrant, including disposition of the pending appeal in Rhode Island, a further hearing may be held on the question of temporary suspension.

Discussion. When an attorney has been convicted of a "serious crime," S.J.C. Rule 4:01, § 12 (4), authorizes a single justice to "make such order of suspension or restriction as protection of the public may make appropriate." The rule applies "regardless of the pendency of an appeal." Id. See Matter of Hyde, 27 Mass. Att'y Discipline Rep. 472 (2011) (pendency of an appeal alone does not warrant delay in

temporarily suspending an attorney); Matter of Norton, 3 Mass. Att'y Discipline Rep. 164 (1983). In making that determination, the key consideration is the public interest, i.e., "whether the public may be harmed by the continued practice of law by the attorney involved." Matter of Barkin, 1 Mass. Att'y Discipline Rep. at 18. Within that broad category, relevant factors include:

"(1) whether the sentence was stayed pending appeal; (2) whether the appeal is meritorious; (3) whether the attorney is pursuing the appeal diligently; (4) the seriousness of the crime and whether it is related to the attorney's practice of law; (5) the threat to the public interest should the attorney continue to practice; and (6) whether the temporary suspension would be longer than the sanction imposed after discipline."

Matter of DiMasi, 27 Mass. Att'y Discipline Rep. 193 (2011), quoting Matter of Bryant, 18 Mass. Att'y Discipline Rep. 91, 95 (2002). See also Matter of Scott, 3 Mass. Att'y Discipline Rep. 179, 179-180 (1982); Matter of Burke, 3 Mass. Att'y Discipline Rep. 25 (1982).

With respect to the first three factors, the record indicates that the respondent has been released from custody pursuant to an order of a single justice of the Rhode Island Supreme Court while his appeal -- both from the convictions and the denial of postconviction relief -- is pending. The respondent contends that his appeal has merit, and there is nothing to suggest he is not pursuing that appeal diligently.

See Matter of Cohen, 27 Mass. Att'y Discipline Rep. 136 (2011) ("meritoriousness [for these purposes] . . . is to be distinguished from likelihood of success on the appeal"). While bar counsel contends that the appeal may not be successful, he does not argue that it is frivolous. These factors weigh in the respondent's favor.

With respect to the next two factors, the respondent has been convicted on six felony counts of "knowing and willful" neglect of a seriously impaired adult, namely, his mother. Although these are serious crimes, they did not arise out of the respondent's law practice, nor is it alleged that they involve interference with the administration of justice, "dishonesty, fraud, deceit or misrepresentation." Mass. R. Prof. C. 8.4 (c). See Matter of Scott, 3 Mass. Att'y Discipline Rep. 179, 180 (1982) (temporary suspension during pendency of fraud conviction appeal and bar discipline proceedings; convictions related to practice of law); Matter of Norton, 3 Mass. Att'y Discipline Rep. at 164. Without diminishing the seriousness of the convictions, the task before me is to balance the harm to the attorney if a temporary suspension is imposed "against the public interest in preventing harm to present and future clients." Matter of Eberle, 25 Mass. Att'y Discipline Rep. 181 (2009), citing Matter of Abrams, 436 Mass. 650, 654 (2002) and Matter of Ellis, 425 Mass. 332, 341-342 (1997). At present,

given the nature of the convictions and the context in which they arose, these factors weigh, if only barely, against a temporary suspension.

Finally, with respect to the sixth factor, if the respondent's felony convictions are upheld on appeal, the presumptive disciplinary sanction would likely be indefinite suspension or disbarment. See Matter of Concemi, 422 Mass. 326, 329 (1996). There may, of course, be mitigating or aggravating circumstances to consider. See Matter of Morgan, 20 Mass. Att'y Discipline Rep. 428 (2004) (four year suspension following conviction of felonies involving mother). While it is uncertain when the Rhode Island proceedings will conclude, or how long the Massachusetts disciplinary proceedings will take, it seems likely that any resulting disciplinary sanction flowing from the convictions will exceed the duration of a temporary suspension. While this factor might weigh against a temporary suspension if the opposite was true, I consider it to be relatively neutral in the circumstances present here.

I am mindful that, in determining whether to temporarily suspend a lawyer convicted of a serious crime, "the key consideration . . . is the public interest." Matter of DiMasi, 27 Mass. Att'y Discipline R. 193. Here, the respondent's multiple convictions of a serious crimes currently cloud his continued right to practice. Certainly, the public has an

interest in shielding current and prospective clients from the discontinuity of legal representation that could result either from execution of a sentence of incarceration, or professional discipline. In the circumstances of this case, I conclude that the public interest is served if the respondent makes full disclosure to his current or prospective clients of the criminal convictions, the pending bar discipline investigation or proceedings, and the possible consequences to the client or prospective client of his incarceration and suspension or disbarment from practice, should that occur. Id. See also Matter of Barkin, 1 Mass. Att'y Discipline Rep. at 18 ("[t]he situation seems to require disclosure to present and future clients of the threat of suspension from practice and assiduous attention to the question whether clients' interest (including their legal expenses) will be adversely affected by the attorney's representation of them").

Order. The petition for temporary suspension is denied without prejudice at this time. It is further ordered that:

1. Within fourteen days of the entry of this Order, the respondent shall:

a) provide notice to all current and prospective clients, and to all wards, heirs, and beneficiaries, that the lawyer has been convicted of six felony counts of neglect of an adult with severe impairments, in violation of R.I. Gen. Laws § 11-5-12 (e); and that, as a result of those convictions, he may face a sentence of incarceration, as well as professional discipline that could affect his

ability to practice law; and

b) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been convicted of six felony counts of neglect of an adult with severe impairments, in violation of R.I. Gen. Laws § 11-5-12 (e), and that, as a result of those convictions, he may face a sentence of incarceration, as well as professional discipline that could affect his ability to practice law.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

2. Within twenty-one days after the date of entry of this Order, the respondent shall file with the Office of the Bar Counsel an affidavit certifying that he has fully complied with the provisions of this Order and with bar disciplinary rules.

Appended to the affidavit of compliance shall be:

a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, and attorneys, to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this Order any client, trust or fiduciary funds; and

c) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice.

3. Within twenty-one days after the entry date of this Order, the respondent shall file with the Clerk of the Supreme Judicial Court for Suffolk County:

a) a copy of the affidavit of compliance required by paragraph 2 of this Order; and

b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice.

4. The matter is remanded to the Board of Bar Overseers for appropriate action, which may include investigation by bar counsel and commencement of formal disciplinary proceedings. See S.J.C. Rule 4:01, § 12 (4). Any further hearing on the question of temporary suspension pending the outcome of disciplinary proceedings will include the respondent's conduct in making the disclosures described above, and his conduct in ascertaining whether his continued practice of law has any adverse effect on his clients.

By the court,

/s/ Scott L. Kafker
Scott Kafker
Associate Justice

Date: August 13, 2021