

IN RE: Michael J. Kelley
BBO NO. 567329

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. BD-2020-062

IN RE: MICHAEL JAMES KELLY.

RESERVATION AND REPORT

Bar counsel filed a four-count petition for discipline against the respondent attorney, Michael James Kelly, charging that the respondent: (1) improperly revealed confidential client information in an affidavit he filed in court, in violation of Mass. R. Prof. C. 1.6 (a), 1.9 (c)(1), and 8.4 (h); (2) failed to keep another client reasonably informed about the status of her matter, and to promptly comply with reasonable requests for information, in violation of Mass. R. Prof. C. 1.4 (a), (b); (3) failed to transmit within a reasonable time the file of two other clients to successor counsel, in violation of Mass. R. Prof. C. 1.15A (b) (effective Sept. 1, 2018), 1.16 (d), and 1.16 (e) (as in effect prior to September 1, 2018); and (4) failed to transmit another client's file to the client or successor counsel, in violation of Mass. R. Prof. C. 1.15A (b) (effective September 1, 2018), 1.16 (d), and 1.16 (e) (as in effect prior to September 1, 2018).

With respect to the first count, a hearing committee of the board concluded that the information acquired after the representation had concluded -- essentially that the client twice had been arrested -- was "confidential information," that it related to the representation, and that the disclosure violated Mass. R. Prof. C. 1.9 (c)(1) and 8.4 (h). Although the respondent suggested that he had read of the client's arrests on the internet and that they were reported in a local newspaper, the hearing committee reasoned that whether the information was "generally

known," or otherwise came within an exception to what constitutes "confidential information," was an affirmative defense, and that the respondent failed to carry his burden of proof. The hearing committee also found that bar counsel established the misconduct charged in counts two, three and four, and weighed certain factors in aggravation. It recommended that the respondent be suspended from the practice of law for ninety days, and that he be required to take and pass the Multistate Professional Responsibility Examination prior to reinstatement. Neither party appealed to the board.

The board accepted the hearing committee's findings of fact and conclusions of law with respect to counts two, three and four of the petition for discipline. With respect to count one, however, the board concluded that it was bar counsel's burden to show that the information disclosed was "confidential information" within the meaning of Mass. R. Prof. C. 1.6, including that it was not "generally known," and that bar counsel failed to carry that burden. After considering multiple factors in aggravation, and finding no factors to weigh in mitigation, the board voted to impose a public reprimand. Pursuant to section 3.57 of the Rules of the Board of Bar Overseers, bar counsel demanded that an information be filed with this court.

After a hearing, and upon consideration of the written materials submitted, I am persuaded that this case raises significant unresolved questions, including what are or are not affirmative defenses for purposes of Mass. R. Prof. C. 1.6 and 1.9 (c), the proper allocation of the burden of proof or burden of persuasion under those rules, and the standard to be applied to the determination whether information is "confidential" or "generally known." Because I conclude that this is a matter best decided by the full court, I exercise my discretion to reserve and report this matter. The record before the full court shall include all the papers filed in the county court in this case, the docket sheet for SJ-2020-062, and this Reservation and Report.

This matter shall proceed in all respects in accordance with the Massachusetts Rules of Appellate Procedure. The Office of Bar Counsel shall be deemed the appellant; the respondent, James Michael Kelley, and the Board of Bar Overseers, shall be deemed the appellees. The parties shall consult with the Clerk of the Supreme Judicial Court for the Commonwealth regarding the service and filing of briefs.

By the Court,

/s/ David A. Lowy

David A. Lowy
Associate Justice

Dated: July 16, 2021

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

_____)		
BAR COUNSEL,)		
)		
Petitioner,)		
)		
v.)	B.B.O. File Nos.	C1-17-248506
)		C1-18-255201
MICHAEL J. KELLEY, ESQ.,)		C1-18-256146
)		C1-18-256297
Respondent.)		
_____)		

BOARD MEMORANDUM

We publicly reprimand the respondent for misconduct in three separate matters, all arising out of his representation of clients in connection with Social Security or Veterans Administration disability claims. In doing so, we adopt some of the factual findings and legal conclusions of the hearing committee, but not all of them. In particular, we disagree with the hearing committee on Count One of the Petition for Discipline that the respondent violated Mass. R. Prof. C. 1.6(a) when he disclosed information about a former client.

Factual Background

The respondent is Michael J. Kelley, a member of the Massachusetts bar since 1994 with an office in Boston. The respondent focuses his practice on representing claimants before the Social Security Administration and Veterans Administration and in court on issues relating to disability benefits.

In Count One of the Petition for Discipline, bar counsel charged the respondent with misconduct when he represented Robert Brennan in Brennan's pursuit of Social Security benefits. In March 2014, the respondent was contacted by Robert Brennan's sister, Maureen

Brennan, who is a lawyer. Maureen sought the respondent's assistance in appealing the Social Security Administration's denial of her brother's claim. Such an appeal is filed in federal court.

At the time Attorney Brennan contacted the respondent, the time for appealing the denial was about to expire. So, on March 8, 2014, the respondent quickly filed the appeal without actually speaking with his client and without paying the federal court's filing fee. Two days later, March 10, 2014, the court ordered that Brennan pay the filing fee or file for leave to proceed *in forma pauperis*. Neither the fee nor the form was filed, and on May 19, 2014, the appeal was dismissed without prejudice. On May 22, 2014, the respondent wrote Brennan about the dismissal and wished him "the best of luck." This ended the respondent's active involvement with Brennan's case.

Almost two years later, on February 16, 2016, Maureen Brennan contacted the federal court and discovered the appeal had been dismissed. More than one year after that, on March 20, 2017, unable to find another lawyer, Maureen filed on behalf of her brother a motion to vacate the dismissal, asserting that the respondent had failed to zealously represent Robert Brennan.¹ The respondent received a copy of the motion by means of the federal court's electronic filing system.

On April 2, 2017 the respondent, on his own behalf and not on behalf of any party, filed a "Response" to the motion to vacate. Attached to the document was the respondent's affidavit, in which he disclosed:

On February 12, 2016, Mr. Brennan was arrested by the Marlborough Police for allegedly shoplifting and possession of Class A drugs.

¹ The hearing committee declined to find that the respondent had acted without diligence in the Brennan matter. Apparently, the respondent blamed Robert Brennan for not responding to requests for additional information, while Maureen Brennan blamed the respondent. In the end, and as we will discuss in more detail in connection with our discussion of aggravating factors, *post*, the evidence was inconclusive.

After the arrest, Mr. Brennan's sister, attorney [sic] Maureen Brennan and demanded an explanation why Mr. Brennan's appeal was not processed. An [sic] written explanation was provided to her on February 26, 2016.

No further contact has been made between myself [sic] and Mr. Brennan or Attorney Brennan.

On February 20, 2017, [Mr. Brennan] was arrested by the Marlborough Police for allegedly assaulting and battering a person 60 or older or disabled.

The only information before the hearing committee was that the respondent learned of Brennan's arrests by reading about them in his local newspaper.² He filed the response and affidavit because he believed he needed to reply to allegations that he had neglected the case. Attorney Brennan's motion to vacate the dismissal did not succeed. The case remained dismissed.

In a separate matter, charged in Count Two of the Petition for Discipline, bar counsel charged that the respondent failed to communicate with another client, Arlene Riendeau, an army veteran who had filed a claim with the Veterans Administration for service-related disability benefits. After her claim was denied, Riendeau hired the respondent to file a re-application with the VA on her behalf, and he did so. After the claim was again denied, the respondent filed an appeal in federal court and informed his client that he had done so. However, over the ensuing ten months, the respondent failed to communicate with his client, leading to his termination and the client's retention of a new lawyer, who successfully prosecuted Riendeau's claim for benefits.

² At the bar discipline hearing, the respondent represented himself. He did not testify on his own behalf, nor did bar counsel call him as a witness. In the respondent's opening statement (which was not sworn), he told the hearing committee that he learned about the arrests from the "Marlborough local paper. It was nothing that Mr. Brennan had told me or his sister had told me ... I Googled [sic] the name and it popped up. Arrested." (Tr. p. 26 and 27). There was no evidence to contradict the respondent's version of events.

As recited in Counts Three and Four of the Petition for Discipline, clients terminated the respondent's services and directed him to deliver client files to a successor counsel. One of the matters was the Riendeau case charged in Count Two. Another concerned a client by the name of Peter Jeffs, and yet another matter concerned a client named Glen Malo. In all of these cases, successor counsel was Attorney Deborah Butler. The charge in all three stemmed from the respondent's delay in turning over files to successor counsel. When he delivered the files, they were incomplete.

In each instance, the respondent maintained that he could not deliver the files because the forms by which he was asked to do so did not comply with applicable regulations, including a HIPPA compliant release or a client-signed discharge of his services. After reviewing the regulations and form, the hearing committee concluded, as a matter of law, that the respondent's legal position was untenable. He had no basis to withhold the documents from successor counsel.

Conclusions of Law

Count One

Count One asserted a violation of Mass. R. Prof. C. 1.9(c) and 1.6(a) for revealing confidential information relating to the representation of a client, Robert Brennan. Bar counsel also charged that the respondent's conduct violated Rule 8.4(h) (conduct adversely reflecting on fitness to practice law). For the reasons that follow, we decline to hold the respondent in violation of the rules.

Rule 1.9(c) of the Massachusetts Rules of Professional Conduct provides as follows:

A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter: (1) use confidential information relating to the representation to the disadvantage of the former client, or for the

lawyer's advantage, or the advantage of a third person, except as Rule 1.6 ... would permit or require with respect to a client; or (2) reveal confidential information relating to the representation except as Rule 1.6 ... would permit or require with respect to a client

Rule 1.9(c)'s prohibition on "using" or "revealing" confidential information refers to Rule 1.6(a) of the Massachusetts Rules of Professional Conduct, which provides as follows:

A lawyer shall not reveal confidential information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Together, Rules 1.9(c) and 1.6(a) prohibit a lawyer from revealing or using confidential information about a former client. In the case before us, there is no dispute that Mr. Brennan was a former client of the respondent. In addition, there is no dispute that the information related to the respondent's representation of Mr. Brennan. Accordingly, the respondent was prohibited from using or revealing "confidential information" about him.

The critical issue is whether Mr. Brennan's arrests were "confidential."³ Comment [3A] to Rule 1.6 advises that information is confidential if it was, "gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the lawyer has agreed to keep confidential." Here, there is no dispute that the information about Brennan's arrests related to the respondent's representation and was likely to be embarrassing or detrimental to Brennan. But those facts do not end the inquiry. Comment [3A]

³ In his brief to us, bar counsel has asserted that the respondent disclosed in his federal court affidavit that Brennan had a history of drug abuse. (Memorandum in Support of Finding that Bar Counsel Met His Burden of Proof with Respect to Count I of the Petition for Discipline, at page 8). The affidavit disclosed nothing about alleged drug usage (which arguably would be confidential depending on the disclosed facts and their source). The only relevant facts in the affidavit were the arrests. While one of the arrests involved drug possession, there was no indication in the affidavit that Brennan had a history of drug abuse. Again, the only facts the respondent disclosed were those in the newspaper.

also advises that information is not “confidential” if it is “[g]enerally known in the local community, or in the trade, field or profession to which the information relates.”

Bar counsel concedes that he bears the burden of proof to show the information disclosed was “confidential” as defined in Rule 1.6. Indeed, Rule 3.28 of the Rules of the Board of Bar Overseers provides:

In all disciplinary proceedings, Bar Counsel shall have the burden of proof by a preponderance of the evidence, shall initiate the presentation of evidence, and may present rebuttal evidence. The Respondent shall have the burden of proof by a preponderance of the evidence on affirmative defenses and matters in mitigation.

As part of his burden to prove the information was confidential, bar counsel bore the corresponding burden to prove the information was not “generally known in the local community.” This is so because, under principles of statutory construction, where a statute contains exceptions in its enacting clause, the burden rests on the party seeking to enforce the statute to prove the exception does not apply. Sullivan v. Ward, 304 Mass. 614, 615 (1939). Exceptions in an enacting clause -- such as the carve-out for generally known matters -- are different than exceptions that appear elsewhere in a statute. Rule 1.6 contains several exceptions to the general prohibition on disclosure of confidential information, such as when disclosure is necessary to prevent reasonably certain death or serious bodily injury or when disclosure is necessary for a lawyer to establish a claim or defense in a controversy between the lawyer and client. These exceptions appear in a different part of the rule (section 1.6(b)) and would be asserted by a respondent as affirmative defenses, which the respondent must prove. The exceptions play no role in this case. The respondent has not asserted them as affirmative defenses. Rather, the litigation concerns the fundamental nature of the information itself. In the first instance, bar counsel must prove the information falls within the definition of

“confidential,” including that it was not generally known. According to the Restatement, Third, of the Law Governing Lawyers, § 59, comment d:

Information contained in books or records in public libraries, public-record depositories such as government offices, or in publicly accessible electronic-data storage is ‘generally known’ if the particular information is obtainable through publicly available indexes and similar methods of access. Information is not generally known when a person interested in knowing the information could obtain it only by means of special knowledge or substantial difficulty or expense.

Under this definition, Brennan’s arrests were “generally known.” Based on the respondent’s version of events, he learned of his former client’s arrests by reading about them in the local newspaper. It required no special knowledge for the respondent to obtain this information. It was accessible to any member of the public. Since the information was generally known, it was not confidential. Accordingly, the respondent did not violate Rules 1.9 and 1.6 by disclosing it in his federal court affidavit. Bar counsel offered no evidence to the contrary.

In concluding that the respondent violated Rules 1.6 and 1.9, the hearing committee noted the respondent’s statements (in his opening and when cross-examining Maureen Brennan) that he had read about the arrests in the newspaper. The hearing committee rejected the statements, because it found no “competent *evidence*” (emphasis in original) to support the assertion. (Hearing Report, ¶ 22(c)). In doing so, the committee misplaced the burden of proof. The respondent did not have to produce evidence that the facts were generally known in the community. As discussed earlier in this opinion, it was up to bar counsel, who bears the burden to prove each element of an offense, to prove that the information was not generally known and therefore confidential under Rule 1.6(a). The burden never shifts. The absence of such proof is fatal to Count One.

Count Two

The hearing committee concluded that the respondent failed to keep his client, Arlene Riendeau, reasonably informed about the status of her case, in violation of Mass. R. Prof. C. 1.4(a). This conclusion was correct. For a period of about ten months, the client tried without success to reach the respondent. He did not return her phone calls. Although the failure to communicate did not harm Ms. Riendeau and there was no activity on the case in which she needed to be involved, it is apparent that she was frustrated and troubled by the respondent's ignoring her. Clients are entitled to be kept reasonably informed about their legal matters. In the area of disability claims, the outcome of a case may have major consequences for clients, many of whom depend on government benefits for basic necessities. It is incumbent upon attorneys to recognize the significance of their work and be sensitive to the needs of clients to be kept informed.

Counts Three and Four

The remaining counts in the Petition for Discipline all involve the respondent's failure to timely transfer to clients or successor counsel, Attorney Deborah Butler, his complete files. The hearing committee concluded that the respondent's delays and incomplete transfer violated Mass. R. Prof. 1.15A (effective September 1, 2018) and 1.16(d) and (e) (as in effect prior to September 1, 2018). We agree.

The respondent defends his actions by claiming that successor counsel did not use the appropriate forms or documents to effectuate the transfer of the files. We agree with the hearing committee's rejection of this argument. First, he argued that successor counsel had not provided a proper discharge note nor a HIPPA-compliant release." But, Attorney Butler had filed an appearance/appointment form. The Department of Veterans Affairs considers the filing of this

form sufficient to effectuate transfer of a case to another lawyer. *See* 38 CFR Sec. 14.631(c) and (f)(1). In addition, after this contretemps with the respondent, Attorney Butler developed her own form for discharge of prior counsel with instructions for transfer of the file and her clients signed this form as well. Second, the respondent initially demanded that Attorney Butler come to his office to pick up the files, even though on five prior occasions he had delivered transferred files to the same lawyer's home office. On a separate matter (Jeffs), the respondent still has not sent successor counsel the client's medical records, insisting again incorrectly on a HIPPA-compliant release, even though counsel had sent him an appropriate form.

The respondent's justification for not turning over the files is incorrect. At the hearing, he pointed to nothing in the federal regulations that would prevent one lawyer from transferring a complete file to successor counsel. Accordingly, we affirm the hearing committee's conclusion that he violated the applicable rules by delaying without good reason the transfer of files to successor counsel.

Matters in Aggravation and Mitigation

Aggravation

The hearing committee considered the following aggravating factors with which we agree:

Most seriously, and as we alluded to above, the respondent's misconduct affected vulnerable clients: veterans with disability claims. As the respondent himself acknowledged in his closing, his clients present with a variety of challenges. Many suffer from addiction, and some have died because of it. Misconduct is aggravated when it affects vulnerable clients.

Matter of Lupo, 447 Mass. 345, 354, 357, 22 Mass. Att'y Disc. R. 513, 528, 531-532 (2006);

Matter of Pemstein, 16 Mass. Att'y Disc. R. 339, 345 (2000).

Compounding the above, the respondent has substantial experience in the practice of law. Matter of Luongo, 416 Mass. 308, 312, 9 Mass. Att’y Disc. R. 199, 203 (1993); Matter of Moran, 479 Mass. 1016, 1023, 34 Mass. Att’y Disc. R. 376, 387 (2018). Based on his experience, he should have known of the importance of timely file transfer and the need to keep clients informed about their cases, including the minimal task of returning phone calls. This factor was appropriately considered as aggravating.

The respondent had prior discipline, an admonition in 2011 for failing to act diligently and failing to supervise a non-lawyer assistant. AD 11-19, 27 Mass. Att’y Disc. R. 969 (2011). Again, this fact should be taken into account in fashioning a sanction.

We also agree that the respondent committed multiple rules violations involving multiple clients. Even putting aside the alleged misconduct in Count One (which we decline to adopt), the respondent delayed transferring files for at least three clients. The facts indicate a pattern of disregarding his ethical obligations to protect his clients. Matter of Strauss, 479 Mass. 294, 302, 34 Mass. Att’y Disc. R. 522, 531 (2018); Matter of Saab, 406 Mass. 315, 326-327, 6 Mass. Att’y Disc. R. 278, 289-290 (1989).

We agree with the hearing committee to not consider in aggravation the respondent’s lack of testimony at trial. (Hearing Report, ¶ 67). As the committee noted, and contrary to bar counsel’s argument, the respondent did not “evade” testifying. He attended the hearing and represented himself. Bar counsel was free to call him as a witness or to issue a subpoena for his testimony. As discussed above, bar counsel bears the burden of proof. The respondent is under no compulsion to help bar counsel discharge his responsibility.

Lastly, we agree with the hearing committee that the respondent’s alleged lack of diligence on the Brennan case should not be considered in aggravation as uncharged misconduct.

As discussed in footnote 1, the hearing committee held that the evidence to support this assertion was inconclusive. Bar counsel did not satisfy his burden of proving the charge by a preponderance of the evidence. We agree with the hearing committee at page 19-21 of its report that the respondent's handling of the Brennan matter raises complex issues concerning a lawyer's duties to an impaired client under Mass. R. Prof. C. 1.14, assuming *arguendo* that the client was impaired. Whether the respondent should have communicated with Brennan, Brennan's sister, or both of them presents a difficult question. These decisions are often left to a lawyer's professional judgment. The issues were not explored adequately for the hearing committee to decide. Accordingly, we decline to hold the respondent responsible for any alleged lack of diligence as uncharged misconduct.

On a related point on the same issue, while at times we may consider uncharged misconduct in aggravation, Matter of an Attorney, 448 Mass. 819, 825, n. 6 (2007), such circumstances should be the exception, not the rule. The Petition for Discipline did not charge the respondent with lack of diligence in the Brennan matter. Count One focused solely on the alleged disclosure of confidential information. As the hearing committee observed in rejecting lack of diligence as an aggravating factor, "[t]he respondent had no reason to know that he would have to defend against a charge that his client was so 'incompetent' that the respondent had a duty to contact Maureen when Brennan did not respond." (Hearing Report, p. 20). While respondents may not enjoy the full range of constitutional protections provided to criminal defendants, they are entitled to some, including, "fair notice of the charges and an opportunity for explanation and defense." Matter of Gargano, 460 Mass. 1022, 1024 (2011), *quoting* Matter of Kenney, 339 Mass. 431, 436 (1987). As the hearing committee observed, bar counsel did not notify the respondent that he would have to defend against a charge of lack of diligence. By

asserting uncharged misconduct as an aggravating factor, bar counsel potentially deprives respondents of the opportunity to marshal evidence in their own defense. If the misconduct is sufficiently serious to warrant a sanction, bar counsel should plead it in the Petition for Discipline.⁴

We disagree with some of the factors the hearing committee considered in aggravation.

First, we decline to adopt the finding that the respondent's misconduct was unsupported by the law and motivated by "vindictive" personal motives. (Hearing Report, ¶ 61). There was no evidence to support the inference. It appears to be based on the hearing committee's subjective antipathy toward the respondent. Matter of Wise, 433 Mass. 80, 88, 16 Mass. Att'y Disc. R. 416, 430 (2000), cited by the committee, did not involve the respondent's vindictive attitude as an aggravating factor.

Second, and somewhat similarly, the hearing committee was displeased with the respondent's use of the word "nonsense" in his opening statement to describe the disciplinary charges. The committee interpreted this word as evincing a lack of understanding of our rules of ethics and the nature of his own misconduct. We disagree. While we do not condone the rhetoric as a matter of advocacy, we do not interpret the word as negatively as the committee. Obviously, the respondent was emotional and defensive about the charges against him. This is not unusual in a bar discipline hearing. We do not agree that one word demonstrates some lack of understanding about legal ethics. It certainly should not provide the basis for a factor in aggravation. We have approved aggravating a sanction based on a lawyer's failure to appreciate the wrongfulness of his or her conduct, *see, e.g.*, Matter of Moran, 479 Mass. 1016, 34 Mass.

⁴ While a respondent must plead facts in mitigation, B.B.O. Rule, Sec. 3.15(f), the same rule does not apply to bar counsel with regard to facts in aggravation. Thus, a respondent approaches trial at a significant disadvantage. Under these circumstances, it is the rare case where bar counsel may assert uncharged misconduct in aggravation.

Att’y Disc. R. 376, 387-388 (2018), but the use of a single word during a hearing does not come close to the level of obtuseness required by our cases.

Third, the hearing committee considered in aggravation the potential harm to Robert Brennan due to the respondent’s revealing confidential information. Since we have concluded that the information disclosed by the respondent was not confidential, the potential harm to the client is not an aggravating factor. It’s a moot issue. The committee also considered the potential harm (but not actual harm, since there was none) to the clients whose files the respondent delayed transferring to successor counsel. (Counts Three and Four). Our case law does not support a finding of potential harm as a factor in aggravation when considering a delayed file transfer under Rule 1.15A (formerly Rules 1.16(d) and (e)).

Fourth and last, the hearing committee found in aggravation uncharged misconduct involving the failure to timely transfer files to Attorney Butler. This misconduct was charged in Counts Three and Four concerning the respondent’s clients Peter Jeffs and Glen Malo. In addition to those two clients, the hearing committee found that the respondent delayed transferring the file of Arlene Riendeau, whose case was the subject of Count Two. Count Two alleged only a failure to communicate with Riendeau, not an untimely file delivery. Again, if bar counsel sought to discipline the respondent for delaying the transfer of Riendeau’s file, he should have charged it. Moreover, we have considered in aggravation the multiple rules violations with multiple clients (*see* above). In effect, bar counsel asks us to consider the same set of facts again as a separate aggravating factor. This argument would penalize the respondent twice for the same misconduct, which was not even charged.

Mitigation

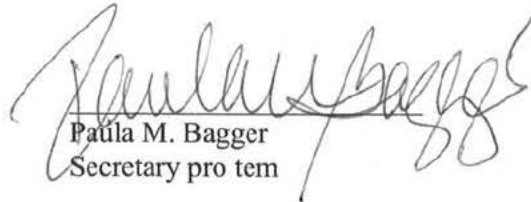
We agree with the hearing committee that the respondent presented no facts in mitigation.

Conclusion

We find that the respondent failed to adequately communicate with a client (Riendeau) and failed to timely deliver the files of two other clients (Jeffs and Malo) to successor counsel. None of his actions caused actual harm to the clients. The misconduct was aggravated by several factors.

Our precedent teaches that failing to communicate with a client typically results in a private admonition. The same pertains where a lawyer fails to timely deliver a file. AD17-29, 33 Mass. Att’y Disc. R. 596 (2017) (failure to communicate with client as trial of criminal case approached; no harm to client; prior admonition); AD 05-13, 21 Mass. Att’y Disc. R. 298 (2005) (failure to communicate about products liability case; failure to act with diligence; failure to turn over files on discharge); AD03-56, 19 Mass. Att’y Disc. 626 (2003) (same).

In this case, numerous aggravating factors lead us to recommend public discipline. The respondent displayed a disregard for the welfare of multiple vulnerable clients. Based on his experience in this line of work, he knew or should have known of the potential harm that could flow from the delays. He knew or should have known that failing to communicate with clients could cause anxiety about the status of their cases. The pattern of conduct concerns us. The sanction in this case must be more severe than the private discipline in cases involving isolated incidents without aggravation. Accordingly, we impose a public reprimand.


Paula M. Bagger
Secretary pro tem

Dated: August 10, 2020