

IN RE: ROBERT MAURICE A. NADEAU

NO. BD-2017-077

S.J.C. Order of Term Suspension entered by Justice Budd on January 2, 2018, with an effective date of November 16, 2017.¹

Page Down to View Memorandum of Decision

¹ The complete order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET No. BD-2017-077

IN RE: ROBERT MAURICE A. NADEAU

MEMORANDUM OF DECISION

This matter came before me on bar counsel's petition for reciprocal discipline pursuant to S.J.C. Rule 4:01, § 16, recommending that the respondent, Robert Maurice A. Nadeau, be suspended from the practice of law in the Commonwealth for a period of two years, the same term of suspension imposed in Maine for violations of the Maine canons of judicial conduct. See *Matter of Robert M.A. Nadeau*, 168 A.2d 746 (Me. 2017). The respondent had opposed the petition. After a hearing and review of both parties' submissions, I concluded that a suspension of eighteen months was appropriate in this case.

Background. On June 20, 2017, the Supreme Judicial Court of Maine disciplined the respondent by suspending him from the practice of law in that State for violations for the Maine Code of Judicial Conduct by way of: (1) directing the Register of Probate not to include attorneys whom he disliked on a court-appointed attorney list¹; (2) removing one such attorney

¹ This behavior was found to be a violation of Maine Code of Judicial Conduct (M. Code Jud. Conduct) Canon 2(B), which states in pertinent part: "A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment"; and M. Code Jud. Conduct Canon 3(C)(4), which states in pertinent part: "A judge shall exercise the power of appointment impartially and on the basis of merit." *Id.* at 753.

from cases to which she had already been appointed²; (3) ordering an attorney to destroy a lawfully obtained document, which was evidence of the first violation³; (4) encouraging litigants to lobby local officials to increase court funding, which would have had the effect of increasing his own salary⁴; and (5) soliciting campaign contributions.⁵ *Id.* at 753-754, 759, 760.

"The judgment of suspension or disbarment shall be conclusive evidence of the misconduct unless . . . the court concludes that the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard or there was significant infirmity of proof establishing the misconduct." S.J.C. Rule 4:01, § 16 (3). As the respondent has made no allegations of procedural failings or unfairness, I take as true the facts underlying the suspension.

Violations. Although the Maine Supreme Judicial Court found five separate actions of the respondent to have violated four different judicial canons in Maine, the respondent cannot be disciplined for judicial misconduct in Massachusetts because he was not at the time of the conduct (or at any time) a Massachusetts judge. Instead, I examined his conduct under the Massachusetts Rules of Professional Conduct, which apply to attorneys barred in Massachusetts regardless of where the conduct occurs. See Mass. R. Prof. C. 8.5 (a).

² This behavior was found to be a violation of M. Code Jud. Conduct Canon 2(A), which states in pertinent part: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"; as well as M. Code Jud. Conduct Canon 2(B). *Id.* at 753-754.

³ This behavior was found to be a violation of M. Code Jud. Conduct Canon 2(A). *Id.* at 754.

⁴ This behavior was found to be a violation of M. Code Jud. Conduct Canon 2(B). *Id.* at 759.

⁵ This behavior was found to be a violation of M. Code Jud. Conduct Rule 4.2(C)(1), which states in pertinent part that candidates for election or reelection as a probate judge may not personally solicit campaign contributions. *Id.* at 760.

Two of the respondent's five violations, (1) urging litigants to lobby for increased court funds, and (2) soliciting campaign contributions for his own judicial reelection campaign, are not sanctionable here because there are no corresponding rules prohibiting those actions for Massachusetts attorneys. However, I concluded that three remaining violations, *i.e.*, causing certain attorneys to be left off of the court-appointed attorney list, removing a particular attorney from cases to which she had been appointed, and ordering an attorney to destroy a document that was evidence of the respondent's misconduct, were violations of the Massachusetts Rules of Professional Conduct.

All three incidents qualify as violations of Mass. R. Prof. C. 8.4 (d), 426 Mass. 1429 (1998), which prohibits conduct that is prejudicial to the administration of justice. In what was described as "vindictive" behavior by the Maine Supreme Judicial Court, the respondent used the authority of his position to prevent attorneys from being able to represent clients who needed representation; interfered with an attorney-client relationship; and attempted to cover up what he had to know was misconduct. See *In re Discipline of an Attorney*, 442 Mass. 660, 668 (2004), quoting *Matter of the Discipline of Two Attorneys*, 421 Mass. 619, 629 (1996) (rule 8.4 [d] bars conduct that "undermine[s] the legitimacy of the judicial process"). In addition to rule 8.4 (d), ordering the destruction of evidence also violated Mass. R. Prof. C. 8.4 (c), 426 Mass. 1429 (1998), which prohibits a lawyer from "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation;" and rule 3.4 (a), which bars lawyers from "destroy[ing] a document or other material having potential evidentiary value."

With these violations of the Massachusetts Rules of Professional Conduct in mind, I turned to the question of the appropriate sanction.

Sanctions. In determining the appropriate sanction to be imposed in a petition for reciprocal discipline, I "may impose the identical discipline unless (a) imposition of the same discipline would result in grave injustice; (b) the misconduct established does not justify the same discipline in the Commonwealth; or (c) the misconduct established is not adequately sanctioned by the same discipline in this Commonwealth." S.J.C. Rule 4:01, § 16 (3). Thus, notwithstanding the sanction meted out in another jurisdiction, I determined the appropriate sanction here in Massachusetts. *In re Steinberg*, 448 Mass. 1024, 1025 (2007). This includes ensuring that the sanction "is not markedly disparate from that ordered in comparable cases" in the Commonwealth. *In re Kersey*, 444 Mass. 65, 70 (2005). See *In re Watt*, 430 Mass. 232, 234 (1999) ("In reciprocal discipline cases . . . , we accord deference to the judgment of a sister State, but we look to Massachusetts law in determining the appropriate sanction, if any, to be imposed").

This court has not had the occasion to determine an appropriate sanction for facts identical to these. However, conduct that is dishonest or is prejudicial to the administration of justice has garnered a term of suspension between twelve and eighteen months. See, e.g., *In re Gross*, 435 Mass. 445, 449-450 (2001) (eighteen months), and *In re Foley*, 439 Mass. 324 (2003) (same), both of which involved schemes to deceive the court. See also *Matter of Feeney*, 29 Mass. Att'y Discipline Rep. 240 (2013) (altering bank slips, among other violations, resulted in one-year suspension); *Matter of Goodman*, 22 Mass. Att'y Discipline Rep. 352 (2006) (directing staff to alter medical report, among other misrepresentations and omissions, resulted in one-year suspension).

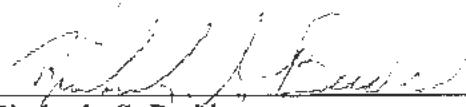
In imposing a two-year period of suspension, the Maine Supreme Judicial Court found that "[the respondent's] actions were often carried out in an intemperate and vindictive fashion

against former colleagues of his law practice and their associates" and that "[a]ttorneys' reputations were harmed" *Matter of Robert M. A. Nadeau*, 168 A.2d at 761-762.

Moreover, that court noted that "[the respondent] ha[d] not fully acknowledged the intemperate nature of his decisions." The court further recognized that "prior corrective efforts ha[d] not been effective in dissuading [the respondent] from engaging in intemperate conduct prohibited by the Canons . . . therefore, more severe sanctions [were] warranted." *Id.* at 762.

I adopted the conclusions of Maine's highest court, and would have imposed identical reciprocal discipline but for the fact that not all of his misconduct finds an analog in the Massachusetts Rules of Professional Conduct. I therefore concluded that a term of suspension of eighteen months rather than two years was appropriate. Accordingly, an order entered suspending the respondent from the practice of law for eighteen months.

By the Court,



Kimberly S. Budd
Associate Justice

DATED: January 2, 2018