

**IN RE: JOHN F. LAKIN**

**NO. BD-2019-050**

**S.J.C. Order of Term Suspension entered by Justice Lowy on October 25, 2019, with an effective date of November 24, 2019.<sup>1</sup>**

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<sup>1</sup> 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-2019-050

**IN RE: JOHN F. LAKIN**

**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. Bar counsel requests an identical discipline imposed by the Florida Supreme Court, which suspended respondent John F. Lakin from the practice of law for a period of two years. See The Florida Bar v. John Francis Lakin, SC17-542 (FL Apr. 29, 2019). Respondent has opposed the petition, claiming mitigating circumstances, and seeks a suspension of at most ninety days or an admonishment.

Background.

Mr. Lakin resigned from his position as an elected Florida circuit judge on March 7, 2016. On April 29, 2019, the Florida Supreme Court suspended the respondent from the practice of law for two years. It disciplined Mr. Lakin for violating the Florida Rules of Professional Conduct or the Rules of Discipline, namely for accepting baseball tickets from plaintiffs' counsel while their motion for a new trial pended before him without disclosing the gift to defense counsel. The Court found this behavior to violate Rules Regulating the Florida Bar ("RRFB") 3-4.3, which prohibits the "commission by a lawyer of any act that is unlawful or contrary to honesty and justice," and RRFB 4.8.4(a), which prohibits lawyers from "violat[ing] or

attempt[ing] to violate the Rules of Professional Conduct."<sup>1</sup> The Court also decided that Mr. Lakin's action undermined the public's belief in the judicial system's impartiality in violation of RRFB 4-8.4 (d), which prohibits lawyers from "engag[ing]" in conduct. . .that is prejudicial to the administration of justice." While the Florida Supreme Court adopted the Referee's fact-finding,<sup>2</sup> it ignored his recommendation of a ninety-day suspension and instead dictated its two-year suspension.

While a judge, Mr. Lakin presided over a trial that lasted from June 22, 2015 until June 25, 2015. On June 26, 2015, plaintiff's counsel offered Mr. Lakin tickets to the Tampa Bay Rays' home game against the Boston Red Sox and Mr. Lakin accepted. On July 2, 2015, plaintiff's counsel filed a motion for a new trial. Mr. Lakin held a hearing on that motion on August 21, 2015. On August 25, 2015, he requested and received two more tickets to the Rays game from plaintiff's counsel. On August 26, 2015, he granted plaintiff's motion for a new trial. Mr. Lakin asked for tickets on two more occasions before disclosing the gifts to defense counsel on October 9, 2015, and recusing himself on October 15, 2015. After becoming aware of a pending formal violation against him, Mr. Lakin self-reported to the Florida Judicial Qualification Commission, which filed formal charges against him on February 1, 2016.

Despite this behavior, the Referee found that Mr. Lakin exhibited no bias in ordering a new trial; the respondent had planned to do so anyway. Mr. Lakin's actions also resulted in no actual injury to the parties because an Appeals Court reversed respondent's order for a new trial based on the law, not on his misconduct. Mr. Lakin experienced severe stress during this period due to his son's mental illness. The respondent claimed that the tickets provided a way to spend

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<sup>1</sup> The Court also found that Mr. Lakin violated duties to the public as well as duties to the legal system.

<sup>2</sup> The Honorable Archie B. Heyward, Jr. served in this capacity.

time with his troubled son. Although the referee noted the son's mental health issues, he did not list it as a mitigating factor in his report.

"The judgment of suspension [by another jurisdiction] ... 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). The respondent has made no allegations of procedural failings or unfairness and therefore I take the facts underlying the suspension as found by the Referee to be true.

Violations. Mr. Lakin resigned from his judgeship prior to the investigation of his conduct and therefore, like the Florida Supreme Court, I examine his conduct under our 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).

Where the rules and procedures of another jurisdiction are "equivalent" in practical application and effect to ours in the Commonwealth, orders entered in that jurisdiction serve as the basis for reciprocal treatment here. See In re Dwyer-Jones, 470 Mass. 582, 586 (2015). RRFB 4-8.4 (a) and (d) mirror Mass. R. Prof. C. § 8.4. Section 8.4 (a) prohibits lawyers from violating or attempting to violated any rules of professional conduct, just like RRFB 4-8.4 (a). Section 8.4 (d) bars lawyers from engaging in conduct prejudicial to the administration of justice, especially when attorneys serve as public officials. Although Massachusetts does not have a precise equivalent for RRFB 3-4.3, Mass. R. Prof. C. 8.4 (h) does prohibit lawyers from "engag[ing] in any other conduct that adversely reflects on his or her fitness to practice law."

Mr. Lakin's acceptance of and repeatedly seeking out baseball tickets from plaintiff's counsel while their motion for a new trial was pending violates the honest and upstanding ethics

requirements in Rules 8.4 (a) and (h). Rule 8.4 (d) is concerned about behavior that "undermine[s] the legitimacy of the judicial process." In re Discipline of an Attorney, 442 Mass. 660, 668 (2004), quoting Matter of the Discipline of Two Attorneys, 421 Mass. 619, 629 (1996) (emphasis added). Plaintiff's counsel delivered the baseball tickets to Mr. Lakin's judicial assistant in open court. Even though Mr. Lakin intended no wrong, his actions created the impression of a prejudiced judicial system, and we must protect the ideal of an impartial judiciary zealously.

Sanctions & Mitigation. It is the sanction more than the finding of violation that Mr. Lakin challenges. When I determine the appropriate sanctions for reciprocal discipline, I "may impose the identical discipline unless (a) imposition of the same discipline would result in grave injustice; [or] (b) the misconduct established does not justify the same discipline in the Commonwealth."<sup>3</sup> S.J.C. Rule 4:01, § 16 (3). The Rule thus does not require that I follow the Florida Supreme Court as I must set the appropriate sanction under our jurisdiction so that it does not markedly differ from punishments ordered in similar cases. See In re Burnbaum, 466 Mass. 1024, 1025 (2013). Although I do not consider the Florida Supreme Court's suspension wholly unreasonable, I find that the misconduct does not require the exact same punishment here.

Massachusetts has only recently needed to discipline former judges licensed in other states. First, in the Matter of Nadeau, (Docket Number BD-2017-077), Maine probate judge Mr. Nadeau kept attorneys off of the court-appointed attorney list, removed particular attorneys from cases to which they were appointed, and ordered the destruction of documents that would otherwise be evidence of his misconduct. Whereas Maine suspended him for two years, Mr.

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<sup>3</sup> Rule 4:01, § 16 (3) (c) is not at issue because, as noted supra, the Florida violations have corresponding rules in Massachusetts. The subsection reads: "the misconduct established is not adequately sanctioned by the same discipline in this Commonwealth."

Nadeau received an 18-month suspension from a single justice of this Court for violating Rules 8.4 (d), (c), and 3.4 (a).<sup>4</sup> Second, in the Matter of Contini, (Docket Number BD-2018-102), a single justice followed the Florida Supreme Court in handing down a five-year suspension to a former judge who admitted a litany of wrongdoings including entering orders without a sufficient basis, showing a lack of sympathy to parties, lawyers, and court personnel, and utilizing his judicial assistant for personal needs. Generally, we impose sanctions or suspensions of between twelve and eighteen months for conduct that is prejudicial to the administration of justice. See, e.g., In re Gross, 435 Mass 445, 449-450 (2001) (eighteen months for instructing a witness to impersonate a defendant and lying to the judge regarding this intentionally deceptive tactic), and Matter of Feeny, 29 Mass. Att'y Discipline Rep. 240 (2013) (twelve months for altering bank slips and other violations).

In assessing mitigation factors, I am limited to the evidence found by the Referee in Florida because it constitutes the Board's record in this case. See Mass. R. Prof. C. 4:08, §§ 6, 16 (3); cf. Matter of Corbett, 478 Mass. 1004, 1006 (2017) (following board's refusal to credit evidence supporting mitigation); Matter of Zak, 476 Mass. 1034, 1041 (2017) ("giving due deference to the board's recommendation"). Although Mr. Lakin undoubtedly experienced tremendous parental stress at the time he improperly accepted baseball tickets, the Referee did not mention this stress as a mitigating factor.<sup>5</sup> However, the Referee did note the tickets' importance as a tool for Mr. Lakin "to spend more time with his son, who had mental health issues," right before listing the mitigation and aggravation factors. As aggravating factors, the

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<sup>4</sup> He did not receive the same two-year suspension because Maine convicted Mr. Nadeau of five violations, two of which had no corollary in Massachusetts. See Rule 4:01, § 16 (3) (c).

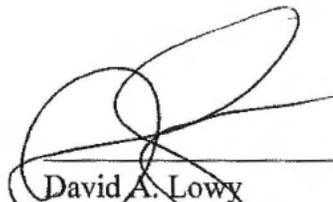
<sup>5</sup> The referee did list: (1) absence of prior disciplinary record; (2) good character or reputation; (3) interim rehabilitation through self-reporting; and (4) genuine remorse.

Referee noted the repeated acceptance of baseball tickets and Mr. Lakin's significant level of experience.

Although Mr. Lakin's conduct did, as the Florida Supreme Court found, significantly harm the public's image of an impartial judiciary, in accepting many of their conclusions, I do not impose an identical reciprocal discipline. Mr. Lakin's conduct resulted in no actual prejudice and he appeared to have no ill-intent, unlike Mr. Nadeau, see Matter of Nadeau (Docket Number BD-2017-077), or Mr. Contini, see Matter of Contini, (Docket Number BD-2019-102). His suspension should therefore not exceed those cases. I therefore conclude that a term of suspension of 15 months rather than two years is appropriate.

**ORDER**

Accordingly, an order shall enter suspending the respondent from the practice of law for 15 months.

  
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David A. Lowy  
Associate Justice

Dated: October 21, 2019