

NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

a committee of the attorney discipline system

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Piper, Joseph B. advs. Attorney Discipline Office - #20-004; #20-016; #20-020

Recommendation: Disbarment and Order on Costs

On June 15, 2021, the Professional Conduct Committee deliberated the Hearing Panel Report, as well as the Record in the above matter.

Having reviewed the Record, the Committee approved the Hearing Panel Report as to the facts by clear and convincing evidence. The Committee approved the findings of violations of the New Hampshire Rules of Professional Conduct as found by the Hearing Panel Report and to recommend Disbarment for violations of Rules 1.1; 1.2(a); 1.3; 1.4; 1.16(d); 8.1; 8.4(a).

The Committee orders Mr. Piper to pay the costs of the investigation and prosecution of this matter.

June 15, 2021

/S/ David M. Rothstein
David M. Rothstein
Chair

cc: Sara S. Greene, Disciplinary Counsel
Joseph B. Piper
File

NEW HAMPSHIRE SUPREME COURT

HEARINGS COMMITTEE

Piper, Joseph B. advs. Attorney Discipline Office - #20-004

Piper, Joseph B. advs. Attorney Discipline Office - #20-016

Piper, Joseph B. advs. Attorney Discipline Office - #20-020

REPORT OF HEARING PANEL

This Report sets forth the findings and recommendation of a hearing panel consisting of Richard C. Gagliuso, Esq., Chair; Mark T. Knights, Esq., Reporter; Amy H. Manchester, Esq.; Rudy Bazelmans; and Regina E. Cockerill (collectively, the "Panel") with respect to sanctions in the above-captioned matters.

Procedural History

On August 20, 2020, the Attorney Discipline Office ("ADO") issued a Notice of Charges against attorney Joseph B. Piper ("Piper") in Docket No. 20-004 pursuant to Supreme Court Rule 37A(III)(b)(2). Separately, on February 12, 2021, the ADO issued a Notice of Charges against Piper in Docket Nos. 20-016 and 20-020. These matters were consolidated for hearing.

In Docket No. 20-004, the Notice of Charges contained detailed allegations against Piper arising out of a complaint filed by a client who had retained Piper to represent him with respect to two trademark disputes and a matter before the U.S. Patent and Trademark Office ("PTO"). The Notice of Charges described Piper's alleged failures to send a cease and desist letter on behalf of the client, to take any action in the PTO matter after a certain point, to keep the client apprised of developments in the PTO matter, to communicate with the client or to respond to multiple communications from the client, to notify the client that he was no longer representing

him or otherwise take reasonable steps to protect the client's interests after effectively having terminated the representation, and to respond to the mediator who had been appointed to mediate the client's resulting complaint to the Fee Dispute Resolution Committee. *See generally* Notice of Charges, Dkt. # 20-004, at ¶¶ 5-47.

In Docket Nos. 20-016 and 20-020, the Notice of Charges contained detailed allegations against Piper arising out of grievances filed with the ADO by two different clients who had retained Piper to represent them with respect to trademark matters before the PTO. The Notice of Charges described Piper's alleged failures to respond to notices from the PTO (which resulted in the clients' trademark registrations being abandoned or cancelled), to complete the scope of the representations, to keep his clients informed about the status of their matters before the PTO, and to take reasonable steps to protect his clients' interests after effectively having terminated both representations. *See generally* Notice of Charges, Dkt. # 20-016 & 20-020, at ¶¶ 5-40.

In addition to the specific allegations concerning Piper's representation of these three clients, both Notices of Charges detailed the ADO's difficulty in communicating with Piper, his failure to provide the ADO with information it had requested, and his failure generally to cooperate with the ADO with respect to its investigation of the substantive grievances filed by his clients. *See generally* Notice of Charges, Dkt. # 20-004, at ¶¶ 48-70; Notice of Charges, Dkt. # 20-016 & 20-020, at ¶¶ 41-59.

Based on these factual allegations, the Notices of Charges alleged Piper had violated Rules of Professional Conduct 1.1, 1.2(a), 1.3, 1.4, 1.16(d), 8.1, and 8.4(a). *See* Notice of Charges, Dkt. # 20-004, at ¶¶ 71-91; Notice of Charges, Dkt. # 20-016 & 20-020, at ¶¶ 60-86. The Notices of Charges further advised Piper that he must respond within thirty days as required by Supreme Court Rule 37A(III)(b)(3), lest the allegations against him be deemed admitted,

among other rights and duties. *See* Notice of Charges, Dkt. # 20-004, at ¶¶ 92-97; Notice of Charges, Dkt. # 20-016 & 20-020, at ¶¶ 87-92.

The ADO asserts that Piper failed to respond to either of the Notices of Charges and that he is therefore deemed to have admitted the factual and legal allegations contained therein. *See* ADO's Memorandum on Sanction dated April 9, 2021 (the "ADO Memorandum"), at ¶¶ 6-10. Given Piper's failure to respond, the ADO requested that a hearing panel be appointed to consider appropriate sanctions against Piper for the violations alleged in the Notices of Charges. On April 14, 2021, the Panel held a hearing via Zoom videoconference, with all five members of the Panel participating. The ADO was represented by Disciplinary Counsel Sara S. Greene. Piper did not appear either *pro se* or through counsel, despite having been given appropriate notice of the hearing by e-mail at the e-mail address he previously had directed the ADO to use to contact him, and at which the ADO successfully had contacted him in the past. Accordingly, the Panel heard argument by Attorney Greene only.

The ADO has asked the Panel to recommend a sanction of disbarment. *See* ADO Memorandum ¶¶ 16, 35-36, 43-44. Based on the ADO Memorandum and Attorney Greene's argument at the hearing, and after considering the legal and factual allegations contained in the Notices of Charges, the Panel makes the following findings and recommendations.

Findings and Analysis

The Panel adopts the sanction analysis contained in the ADO Memorandum, including its reliance on the American Bar Association's *Standards for Imposing Lawyer Sanctions* (the "ABA Standards"), except as set forth below.

Specifically, the Panel finds that the factual allegations set forth in the Notices of Charges establish that Piper violated duties owed to his clients, to the legal system, and to the profession

under Rules of Professional Conduct 1.1, 1.2(a), 1.3, 1.4, 1.16(d), 8.1, and 8.4(a). The Panel further finds that Piper's mental state was "knowing," as defined by the ABA Standards and the Rules of Professional Conduct, with respect to the conduct described in the Notices of Charges. *See* Rule 1.0(f). The Panel further finds that Piper's conduct, as described in the Notices of Charges, caused serious actual and potential injury to his clients, the legal system, and the reputation and standing of the profession.

At least some of the violations alleged in the Notices of Charges lead to a baseline sanction of disbarment under the ABA Standards. The alleged violations of Rules 1.2, 1.3, and 1.4 implicate Section 4.4 of the ABA Standards. Section 4.41 of the ABA Standards advises:

Disbarment is generally appropriate when . . . a lawyer abandons the practice and causes serious or potentially serious injury to a client; or . . . knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or . . . engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

The Panel finds that Piper essentially abandoned his practice at some point in or around June 2019, that he knowingly failed to perform services for more than one client, and that he engaged in a pattern of neglect with respect to his clients' matters.

The Panel further finds that such conduct caused serious or potentially serious injury to these clients. Specifically, Piper's failure to act diligently on behalf of, and to communicate regularly with, his clients resulted in the cancellation, abandonment, or denial of their trademarks. Although at least one of the three clients who filed grievances against Piper with the ADO evidently retained new counsel to represent him, there is no evidence before the Panel that replacement counsel was successful in reversing the actual harm that Piper's ethical violations already had caused. The Panel finds that the deprivation of intellectual property rights that resulted from Piper's ethical violations constitutes "serious injury" within the meaning of Section 4.4 of the ABA Standards.

Accordingly, under Section 4.41 of the ABA Standards, disbarment is the appropriate baseline standard for Piper's violations of Rules 1.2, 1.3, and 1.4.

With respect to Piper's violations of Rules 1.16(d) and 8.1, the ADO asserts that Section 7.0 of the ABA Standards applies, and argues that the appropriate baseline sanction for those violations is disbarment. Section 7.0 of the ABA Standards, by its terms, applies "in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct."

The Panel harbors some doubts as to whether Section 7.0 should be applied here. Of the varieties of misconduct it lists, the only one that arguably describes Piper's misconduct is "improper withdrawal from representation." Yet the specific Rule of Professional Conduct Piper is alleged to have violated in ending his representation of his clients, Rule 1.16(d), governs "termination of representation" rather than "withdrawal from representation." The latter term appears elsewhere in Rule 1.16. *See* Rule 1.16(a), (b). In the Panel's view, there is a difference (if a subtle one) between "terminating" and "withdrawing from" representation. While the former concept is broader than, and may encompass, the latter, the term "withdrawal" suggests some affirmative act on the part of an attorney to end the representation. But a representation can also be terminated without the attorney having taken any affirmative act, and that is what Piper did here, effectively terminating representations by ceasing to communicate with his clients and to take any further action on their behalf.

That is not to say Section 7.0 should *not* be applied in situations involving termination of, rather than withdrawal from, representation under Rule 1.16(d). Whether a representation is

terminated through the attorney's withdrawal or some other means, the net impact on the client or clients is likely to be the same. For that reason, it may make sense to apply the standard for improper withdrawal from representation expressed in Section 7.0 to improper termination of representation as well.

Ultimately, the Panel need not determine whether Section 7.0 applies. This matter presents a case of multiple rule violations, some of which potentially may call for different sanctions. In such a case, the most serious baseline sanction among the different alternatives should govern. *In re Morse*, 160 N.H. 538, 547 (2010) ("Where there are multiple misconduct charges, the sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations . . ."). As already discussed, Section 4.41 of the ABA Standards provides that disbarment is the baseline sanction for Piper's violations of Rules 1.2, 1.3, and 1.4. Thus, even if different sections of the ABA Standards might govern Piper's other rule violations, and even if those sections would call for a lesser sanction, disbarment is the appropriate baseline sanction for Piper's entire course of conduct.¹

The Panel considered whether a lesser sanction than disbarment would be appropriate. The Panel concludes that a lesser sanction would not reflect the seriousness of Piper's conduct and the injury it caused to his clients, the legal system, and the reputation and standing of the profession.

The ADO has identified significant aggravating factors in this case, including Piper's pattern of misconduct, the existence of multiple offenses, and his obstruction of disciplinary proceedings. Against these aggravating factors, the ADO has identified two mitigating factors:

¹ For the same reason, the Panel has not undertaken to determine what the appropriate baseline sanction would be under Section 4.5 of the ABA Standards, which applies to Piper's Rule 1.1 violation (and which was neither addressed in the ADO Memorandum nor discussed at the April 14, 2021 hearing).

Piper's relative inexperience, and his lack of a disciplinary history. In truth, these two factors may better be considered as a single factor, because Piper's lack of a disciplinary history can only be attributed to his relative inexperience—Piper was admitted to the bar in June 2017 and his misconduct began not long thereafter, culminating in his effective abandonment of the practice of law in or around June 2019.² Even accounting for these factors separately, though, they are outweighed by the aggravating factors and do not justify a downward adjustment in sanction.

The Panel also accords substantial weight to the fact that Piper did not see fit to contest the Notices of Charges or to participate in the sanctions hearing. As a result, the Panel is left without any explanation for Piper's conduct, aside from the insouciant one he gave to Attorney Greene: he "simply did not wish to be a lawyer." ADO Memorandum at 13, ¶ 42. That does not come close to justifying Piper's conduct. If anything, it underscores Piper's lack of fitness to practice law, as attorneys who wish to no longer practice regularly exit the profession without committing multiple Rule violations. Piper, instead of following this well-trod path, chose to abandon multiple clients, causing them serious injury in the process.


Conclusion and Recommendation

For the foregoing reasons, the Panel concludes that disbarment is the appropriate sanction for the violations alleged in the Notices of Charges, and respectfully recommends that the Professional Conduct Committee recommend such sanction to the Supreme Court.

² It is somewhat troubling to the Panel that for at least part of the time during which his misconduct occurred, Piper was employed by a firm with other, more senior attorneys. Though Piper's misconduct began before he joined the firm, it continued after his hire and evidently went undetected. Indeed, the bulk of the harm sustained by Piper's clients occurred after he joined the firm, and the Panel questions whether that harm might have been avoided through the exercise of more diligent supervision and oversight of a very junior attorney.

Dated:

May 24, 2021



Richard C. Gagliuso, Esq., Chair

Mark T. Knights, Esq., Reporter

Amy H. Manchester, Esq.

Rudy Bazelmans

Regina E. Cockerill