

IN RE: JOHN PATRICK CONTINI

NO. BD-2018-102

S.J.C. Order of Term Suspension entered by Justice Cypher on April 5, 2019, with an effective date of May 5, 2019.¹

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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-2018-102

IN RE: JOHN PATRICK CONTINI

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, as appearing in 425 Mass. 1319 (1997), recommending that the respondent, John Patrick Contini, be suspended for a term of five years, the equivalent sanction to that imposed in Florida for violations of the Rules Regulating the Florida Bar. See Florida Bar v. Contini, No. SC18-1493 (Fla. Oct. 4, 2018). The respondent opposed the petition. After a hearing and review of both parties' submissions, I conclude that a suspension for a term of five years is appropriate in this case.

Background. On October 4, 2018, the respondent consented to disbarment by the Supreme Court of Florida for a term of five years in relation to misconduct alleged to have occurred while the respondent was serving as a circuit court judge for the 17th Judicial Circuit in Broward County, Florida.¹ In so doing, he stipulated that there was probable cause for further disciplinary proceedings as to the following allegations: (1) respondent caused inaccurate representations of his actual time spent in the performance of his judicial duties; (2) respondent utilized his judicial assistant to perform personal duties on his behalf which were excessive; (3)

¹ Under the Rules Regulating the Florida Bar, an attorney may surrender membership in the Florida Bar in lieu of defending against allegations of disciplinary violations by agreeing to disbarment on consent. See Rule 3-7.9(e).

respondent entered orders in certain matters without a sufficient basis to do so; and (4) respondent demonstrated a lack of sympathy toward some litigants, lawyers, and court personnel. He also admitted that the foregoing allegations, if proven, would constitute a violation of the Rules Regulating the Florida Bar, specifically, Rule 4.8-4(d), which essentially prohibits a lawyer from engaging in conduct "in connection with the practice of law that is prejudicial to the administration of justice."

Bar Counsel seeks reciprocal discipline in Massachusetts. On January 2, 2019, the respondent filed pro se a motion to dismiss and a response to the petition for reciprocal discipline wherein he argues that the allegations of judicial misconduct in Florida do not warrant sanction in Massachusetts because there are no corresponding rules prohibiting those actions for Massachusetts attorneys.

Violations. "A final adjudication in another jurisdiction that a lawyer has been guilty of misconduct or an admission in connection with a resignation in another jurisdiction may be treated as establishing the misconduct for purposes of a disciplinary proceeding in the Commonwealth." S.J.C. Rule 4:01, § 16 (3). Indeed, "[t]he judgment of suspension or disbarment shall be conclusive evidence of the misconduct unless the bar counsel or the respondent lawyer establishes, or 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 (5).

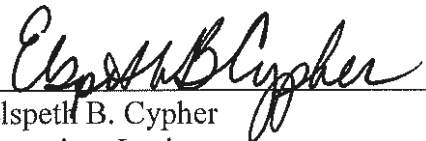
The respondent argues that the allegations of judicial misconduct in Florida do not warrant sanction in Massachusetts because "there are no corresponding rules prohibiting those actions for Massachusetts attorneys," and that allegations underlying a consented-to disbarment cannot be the basis for reciprocal discipline because those allegations are not proved conduct.

Neither argument is persuasive. First, Florida Rule 4.8-4(d) is analogous to Mass. R. Prof. Conduct Rule 8.4 (d), which states that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." In connection with his consented-to disbarment, the respondent admitted that the allegations levied against him, if proven, would violate Florida Rule 4.8-4(d). He cannot now argue that the same allegations would not also violate Mass. R. Prof. Conduct Rule 8.4 (d), which proscribes essentially the same conduct.

Second, in accordance with our rules governing reciprocal discipline, an admission in connection with a resignation in another jurisdiction may be treated as establishing the misconduct for purposes of a disciplinary proceeding in the Commonwealth, see S.J.C. Rule 4:01, § 16 (3), and a judgment of disbarment is conclusive evidence of the misconduct with limited exceptions. See S.J.C. Rule 4:01, § 16 (5) (judgment of suspension or disbarment shall be conclusive evidence of misconduct unless procedure did not provide reasonable notice or opportunity to be heard or there was significant infirmity of proof establishing the misconduct). The respondent has not alleged that he did not have reasonable notice or opportunity to be heard, only that his conduct was not "proven." In choosing to surrender membership in the Florida Bar in lieu of defending against the allegations of disciplinary violations, the respondent foreclosed the possibility that the alleged conduct would be "proven." In these circumstances, I conclude that his admissions in conjunction with the consented-to judgment disbarring him are sufficient to establish the respondent's misconduct, which violates Mass. R. Prof. Conduct Rule 8.4 (d) and warrants reciprocal discipline.

Accordingly, an order shall enter suspending the respondent for a term of five years.²
Because the nature of the suspension is long-term, the order shall specify that the respondent's eligibility for reinstatement is governed by S.J.C. Rule 4:01, § 18 (2)(b), 18(4), and 18(5).

By the Court,



Elspeth B. Cypher
Associate Justice

Dated: April 5, 2019

² 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).