

SUZANNE MACPHERSON-JOHNSON

Order (reciprocal public reprimand) entered by the Delaware Supreme Court on May 13, 2001.

Massachusetts reciprocal reprimand entered on June 14, 2001.

SUMMARY¹

BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF THE STATE OF DELAWARE

REPORT AND APPROVAL OF STIPULATION
AND JOINT RECOMMENDATION OF SANCTION

Pending before a panel of the Board on Professional Responsibility (the "Panel"), is a petition for discipline in Board Case No. 40, 2000 (the "Petition") involving Suzanne Macpherson-Johnson, Esquire (the "Respondent"), a member of the Board of the Supreme Court of the State of Delaware. The Office of Disciplinary Counsel ("ODC") and the Respondent have submitted a pre-hearing Stipulation and Joint Recommendation of Sanction (the "Stipulation") for the Panel's consideration. The Petition and Stipulation are hereby incorporated by reference into the record in this matter, and will be delivered to the Delaware Supreme Court (the "Court") as joint exhibits of the parties.

In the Stipulation, the parties submitted admitted findings of fact and admitted violations of the Delaware Lawyers' Rules of Professional Conduct (the "Rules") and jointly proposed that the Panel recommend that the Court impose the agreed upon sanction of a public reprimand and two-year period of probation, with designated conditions.

A hearing was held before the Panel on April 11, 2001. As a result of the Stipulation, and for the reasons otherwise explained in the Stipulation, the Respondent and the ODC agreed that the sole remaining issue to be determined by the Board at the hearing would be the appropriate disciplinary sanction.

At the hearing, testimony was presented by Mr. Martin Zukoff, CPA, the auditor for the Lawyers' Fund for Client Protection ("LFCP"). The Respondent also appeared and testified. Following the presentation of testimony, counsel for the Respondent and the ODC presented argument and urged that the Stipulation be approved by the Panel.

At the conclusion of the hearing, and after discussion among the Panel members, the Panel stated on the record that the Stipulation would be approved. The Panel members also stated that it was their intention to supplement that approval with a written memorandum.

In approving the Stipulation, the Panel is mindful of the fact that protection of the public is a paramount consideration in the disciplinary process. The annual certification process, as well

as other matters, are intended to serve this goal, and this factor weighed heavily in the Panel's determination to approve the Stipulation. Significantly, however, both parties have acknowledged that no client of Respondent was injured in any manner in this situation.

STATEMENT OF FACTS AND VIOLATIONS

Respondent was admitted to the Bar in 1996. During the times relevant to this proceeding, she was engaged in solo practice in Dover. As a result of a compliance audit which was conducted at Respondent's offices on June 21, 2000, it was discovered that Respondent's books failed to comply with the requirements of Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct. Subsequently, it was discovered that Respondent had not filed any returns or forms for or paid any federal and state payroll taxes owed for her law practice for the period from January 1, 1998 through July 25, 2000. Moreover, Respondent failed to file her 1998 and 1999 federal and state personal income tax returns in a timely fashion. However, in completing and signing the 1998, 1999 and 2000 certificates of compliance which all members of the Delaware Bar are required to file with the Delaware Supreme Court, Respondent incorrectly certified that "all federal, state and local payroll, gross receipts and income taxes have been filed and paid on a timely basis." As a result of the books and records problems and incorrect certification to the Delaware Supreme Court, Respondent admitted that she had violated Rules 1.15(b), 1.15(d), 8.4(c) and 8.4(d). After considering the facts set forth in the stipulation, the members of the Panel concluded that the facts supported a finding that those rules had been violated.

AGGRAVATING AND MITIGATING FACTORS

As an aggravating factor, the members of the Panel considered the fact that the Respondent had engaged in a pattern of misconduct over a two and one-half year period of time with respect to her failure to file any payroll tax returns and pay payroll taxes. An additional aggravating factor which was presented to the Panel was the fact that Respondent had practiced law since 1988, although the members of the Panel considered the fact that the Respondent had no prior experience in the administrative and accounting functions of law office management prior to the time that she entered solo practice.

In mitigation, the Panel considered several different factors. First, the Respondent had no prior disciplinary record. In addition, during a considerable portion of the relevant time period, the Respondent's husband had cancer and was required to undergo periodic treatment. Second, in light of the convergence of the timing of this medical problem and the fact that Respondent had just begun a solo law practice, the income from her practice was minimal and the economic hardship hindered her ability to meet her tax obligations. Third, there was no evidence submitted to the Panel that any client of the Respondent was hurt in any way by her misconduct. Fourth, Respondent provided full disclosure willingly to the ODC and was extremely cooperative throughout the disciplinary process. Fifth, the Respondent undertook remedial efforts to resolve her books and records and tax problems and has complied with her ongoing obligations. She also has worked closely with members of the Professional Guidance Committee of the Delaware State Bar Association to improve her law practice management. Sixth, Respondent has had penalties and interest imposed by the tax authorities and has incurred substantial costs in implementing the measures to address her books and records and tax problems. Finally, the Respondent took full responsibility for her own actions and did not attempt in any way to place blame on anyone else.

After considering the aggravating and mitigating factors discussed above, the members of the Panel concluded that the recommendation from the parties, as more fully set forth in the Stipulation, was supported by the facts and the applicable standards. Therefore, the Panel recommends that Respondent should be publicly reprimanded and should be subjected to a public two-year probation, the terms of which are set forth in the Stipulation.

With these considerations in mind, the Stipulation was approved by the Panel.

BOARD ON PROFESSIONAL RESPONSIBILITY

Edward P. Welch, Esquire (Chair)

Anne C. Foster, Esquire

Dr. Joan Mobley

Dated: May 30, 2001

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

Please direct all questions to webmaster@massbbo.org.

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