

IN RE: JOHN C. BRYSON, JR.

Public Reprimand No. 2012-21

Order (public reprimand) entered by the Board on October 25, 2012.

Page Down to View Board Memorandum

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL,

Petitioner

v.

JOHN C. BRYSON, ESQ.,

Respondent

BOARD MEMORANDUM

Bar counsel appeals from a hearing committee report recommending that the respondent receive an admonition. The committee found that the respondent had negligently misused a client's personal injury settlement funds without causing deprivation, withdrew fees from his trust account without required notices to the client, commingled personal funds in his IOLTA account, wrote checks payable to cash from the account, paid personal creditors from the account, failed to keep required trust account records, and failed to provide the statement required at the conclusion of a contingent-fee matter. In addition, the respondent signed his client's name to a release with the client's authority but without disclosing that he had done so.

The committee ruled that the respondent's misconduct violated Mass. Rules Prof. C. 1.5(c) (statement required at conclusion of contingent-fee matter) and various provisions of Rule 1.15 (segregation and payment of trust funds; records required for trust accounts). It also found that, in the circumstances, the respondent's signing his client's name to a release without disclosing same and notarizing the signature constituted "minor" violations of Rules 4.1(a) (false statement of material fact or law to a third party) and 8.4(c) (dishonesty, deceit, fraud, misrepresentation), which did not affect its recommended sanction.

In aggravation, the respondent received an admonition in 2003 for neglecting a matter and withdrawing without protecting the client's rights. AD-03-05, 19 Mass. Att'y Disc. R. 527 (2003). In mitigation, the committee found that the respondent was suffering from "very serious personal and family problems ... that were a substantial cause of his misconduct," and that the respondent was "very unlikely to repeat his misconduct."

The committee acknowledged that the presumptive sanction for the respondent's most serious misconduct – negligent misuse without deprivation, aggravated by record-keeping violations – is a public reprimand. It recommended that the respondent receive an admonition based on its findings in mitigation.

Bar counsel argues that the cumulative violations warrant a suspension and that the committee erred by relying on evidence of mitigation to recommend less than a public reprimand, the presumptive sanction for commingling and negligent misuse without deprivation. See Matter of the Discipline of an Attorney (Three Attorneys), 392 Mass. 827, 4 Mass. Att'y Disc. R. 155 (1984); Matter of Schoepfer, 426 Mass. 183, 13 Mass. Att'y Disc. R. 679, 685 (1997), and our decisions applying those cases. See Matter of Scola, Pub. Rep. No. 2011-06 (March 29, 2011) (public reprimand for negligent misuse; commingling; records violations; and using trust funds to pay personal obligations); Matter of Vacca, P.R. No. 2011-06 (May 25, 2011) (public reprimand for negligent misuse without deprivation, plus record-keeping violations).


We agree with the respondent that the committee's findings in mitigation could warrant departure from the presumptive public reprimand where the committee specifically found (1) a substantial causal connection between the mitigating facts and the misconduct, and (2) that it is highly unlikely that the respondent would repeat his misconduct. The respondent, however, has a history of discipline, and "in the absence of mitigating factors, discipline should proceed in increments of escalating severity." Matter of Chambers, 421 Mass. 256, 260, 11 Mass. Att'y Disc. R. 31, 36 (1995). In these circumstances, reducing the presumptive sanction to an admonition is not warranted.

Further, the appropriate sanction must be that "necessary to protect the public and deter other attorneys from the same behavior," with the primary focus not on punishment or specific deterrence of the respondent, but instead on "the effect upon, and perception of, the public and the bar." Matter of Balliro, 453 Mass. 75, 85-86, 25 Mass. Att'y Disc. R. 35, 47 (2009). While we might otherwise have adopted the committee's recommendation of an admonition based on the mitigating evidence, we return to the presumptive sanction because of the respondent's prior discipline. Cf. Matter of Glionna, 20 Mass. Att'y Disc. R. 164 (2004) (public reprimand for similar violations, mitigated by medical condition and steps to rectify accounting deficiencies, but aggravated by prior admonitions).

We are not persuaded by bar counsel's argument for suspension.

For all these reasons, we adopt the hearing committee's findings of fact and conclusions of law but modify its proposed disposition. The respondent, John C. Bryson, shall be publicly reprimanded.

Respectfully submitted,



Mary B. Strother
Secretary

Voted: October 15, 2012