

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR 17-10

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|--------------------------------|---|-------|
| BOARD OF OVERSEERS OF THE BAR, |) | |
| |) | |
| Petitioner |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| SCOTT G. ADAMS, ESQ., |) | |
| |) | |
| Respondent |) | |

Scott G. Adams, Esq. has petitioned, pursuant to Maine Bar Rule 13(f), for review of an order of a Grievance Commission panel determining that he violated several provisions of the Maine Rules of Professional Conduct and imposing the disposition of a public reprimand. On the petition, Attorney Adams challenges only the sanction. The parties have submitted the matter based on the record developed before the panel, *see* M. Bar R. 13(f)(3), (4), and oral argument was held at Attorney Adams' request. For the reasons stated in this order, I affirm the panel's decision.

A. BACKGROUND

The facts found by the panel are supported by the record and are at least nominally undisputed.¹

Attorney Adams is admitted to the practice of law in Maine and maintains offices in East Boothbay and Newcastle. In early December 2014, Supreme Judicial Court Associate Justice Andrew M. Mead issued an order appointing two attorneys to serve as receivers for Attorney Richard Salewski. Justice Mead's order clearly stated that Salewski's client files, both open and closed, were confidential and that only the receivers were authorized to inventory the files.

Salewski died five days after Justice Mead issued the receivership order. Shortly thereafter, Attorney Adams called Attorney Hylie West, who was one of the receivers, and asked if West planned to create a list of Salewski's clients because Attorney Adams wanted to compare that list with a list of his own clients. West told Attorney Adams that a list of Salewski's clients would be confidential and would not be mailed to him.

¹ Although in his brief and at oral argument, Attorney Adams stated that he does not dispute the facts as found by the panel, it is not entirely clear that this correctly characterizes his position on this appeal. He contests the disposition imposed by the panel, but, as I discuss below, the sanction is directly determined by the facts of the case. Therefore, a discussion of the salient facts and the application of those facts to sanctions that can be imposed in attorney discipline cases is material to my analysis.

Nearly a year later, in November 2015, Attorney Adams asked another attorney² to contact West on his behalf and ask for a list of Salewski's clients. West told the attorney that the list was confidential—something Attorney Adams already knew from his earlier conversation with West—but that Attorney Adams could provide the receivers with a list of his own clients.

On January 11, 2016, Attorney Paul Chaiken, serving as Special Assistant Bar Counsel, sent an email to a number of area lawyers, including Attorney Adams, asking for assistance on January 13 in “clearing out” Salewski's files.³ Chaiken's email provided the location of the building in Damariscotta where the files were being stored. Attorney Adams received the email but did not participate in the effort on January 13. The next day, however, Attorney Adams was able to enter the building, which was secured and listed for sale (only West and the listing broker were in possession of the keys), because a client asked Attorney Adams to accompany him during a showing.

When Attorney Adams entered the building in the company of a realtor, he saw boxes of Salewski's client files and a document entitled, “Rick Salewski Files Requests.” *See* Board Exhibit 11. The list had been prepared by the

² Although not specified in the panel's decision, the record indicates that the attorney was an associate in Attorney Adams' office. *See* Tr. 208; Board Exhibit 4 at 1.

³ Although not specifically addressed among the panel's findings, West testified that by January 13, quite a few of the boxes containing Salewski's client's files had been processed, leaving only the remaining ones that still needed work. *See* Tr. 83-84.

receivers. It was six pages long and contained 93 entries with corresponding notations of "Clients have all or some," and "Clients Notified-Still Looking." Some of the itemized entries are annotated with information about the legal matter involving that client, with references to such issues as estate planning, wills, and title matters.

When Attorney Adams saw the document, he told the realtor that he had been trying to obtain a list of Salewski's clients for a long time and would like to take that one. The realtor told Attorney Adams the self-evident point that items of personal property are not to be removed during showings. Nonetheless, within 20 minutes of entering the building, and when no one else was around, Attorney Adams took the list and returned to one of his offices.

He did not tell the realtor or West what he had done. Instead, on January 19—the Tuesday after a three-day holiday weekend—West discovered that the list was missing. After contacting the realtor, West came to believe that Attorney Adams had taken it. West notified Chaiken and Deputy Bar Counsel Aria Eee, and they promptly called Attorney Adams. During the resulting conversation, Attorney Adams eventually admitted that he had taken the list. He stated that he knew the list was confidential, that he did not have a proprietary interest in it, and that he knew that he was not

entitled to take it. He agreed to return the list immediately, and the next day he mailed the list to West but only after making an electronic copy, which he gave to the attorney representing him in this proceeding. The office manager in Attorney Adams' office has also seen the client list, but no one else has, according to him. Later, in two communications made in February of 2016, Assistant Bar Counsel Alan P. Kelley directed Attorney Adams to destroy any copy of the list, but Attorney Adams refused to do so, having given the electronic copy to his attorney.

The day after Attorney Adams' telephone call with Chaiken and Eee, Kelley filed a complaint against Attorney Adams. A panel of the Grievance Commission held a two-day hearing in May 2017. *See* M. Bar R. 13(e)(7). In a written decision issued the following month, the panel issued the findings of fact noted above and concluded that, by intentionally taking Salewski's client list without any permission or authority, Attorney Adams had violated Rule 4.4(b), and Rule 8.4(c) and (d) of the Maine Rules of Professional Conduct. The panel imposed the sanction of a public reprimand, which is a disciplinary sanction. *See* M. Bar R. 21(b)(5). Attorney Adams filed a petition for review by a Single Justice of the Supreme Judicial Court, *see*

M. Bar R. 13(f)(1), and by order of the Chief Justice, I was assigned to serve as the Single Justice in this proceeding.

B. DISCUSSION

Attorney Adams does not contest the panel's conclusion that he violated the Maine Rules of Professional Conduct. Instead, he challenges only the panel's imposition of a reprimand as a sanction for his misconduct. As he also asserted to the panel, he contends here that the appropriate disposition is an admonition pursuant to Maine Bar Rule 21(b)(1).

Because Attorney Adams' petition for review was not accompanied by a motion for a trial of the facts, my review of the panel's decision is based on the record of the panel proceeding. *See* M. Bar R. 13(f)(4). The panel's findings of fact are entitled to deferential consideration because they cannot be set aside unless clearly erroneous, *see id.*, which they are not. Rule 13(f)(4) does not prescribe the standard of review applicable to the sanction itself. I need not address that issue, however, because pursuant to Rule 21(b)(1), an admonition is not a sanction that can be imposed here against Attorney Adams, given the nature of his conduct that violated the Code of Professional Responsibility.

Maine Bar Rule 21(b) enumerates the types of sanctions that may be imposed based on attorney misconduct. Those sanctions include admonitions and reprimands. *Id.*

Rule 21(b)(1) describes an admonition as “a public non-disciplinary sanction” that can “be imposed *only* in cases of minor misconduct, where there is little or no injury to a client, the public, the legal system, or the profession, *and* where there is little likelihood of repetition by the lawyer.” (Emphases added.) The three circumstances authorizing imposition of an admonition are framed in the conjunctive, so that each must be present to permit an admonition.

Rule 21(b)(5) addresses reprimands and describes it as a “public disciplinary sanction.”

Here, the panel concluded that Attorney Adams violated two rules governing attorney conduct. The first is Rule of Professional Conduct 4.4(b), which is entitled “RESPECT FOR RIGHTS OF THIRD PERSONS; INADVERTENT DISCLOSURES” and provides in relevant part:

A lawyer who receives a writing and has reasonable cause to believe the writing may have been inadvertently disclosed and contain confidential information or be subject to a claim of privilege . . .

- (1) shall not read the writing or, if he or she has begun to do so, shall stop reading the writing;

- (2) shall notify the sender of the receipt of the writing; *and*
- (3) shall promptly return, destroy or sequester the specified information and any copies.

Id. (emphasis added).

Attorney Adams did not “inadvertently” acquire Salewski’s client list. Rather, it was a document he had wanted to obtain for more than a year, and he took it with full knowledge that doing so was wrongful because, at the very least, it violated the code of ethical conduct imposed on—and expected of—attorneys licensed to practice in Maine. The panel concluded that the obligations imposed on an attorney who obtains confidential or privileged information in the circumstances presented here are the same as when an attorney acquires that type of information in more benign circumstances, and Attorney Adams does not contest the panel’s application of Rule 4.4(b) to this case. Attorney Adams did not respond as the Rule required—he did not take steps to notify the person who *was* authorized to possess the document, namely, either of the receivers, that he had it, and he did not promptly return, destroy or sequester the information. Instead of Attorney Adams taking the initiative, members of Bar Counsel’s office had to contact *him* about the matter when they determined that he likely had taken the document. And although

Attorney Adams mailed the physical list to West the next day, he made an electronic copy, which at some point he provided to his own attorney.

The more significant of the breaches determined by the panel was of Rule 8.4. The aspects of that Rule that Attorney Adams violated provide:

It is professional misconduct for a lawyer to:

....

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice.

Id.

The record supports the panel's conclusion that Attorney Adams engaged in these forms of misconduct, a conclusion he does not challenge. Attorney Adams engaged in dishonest conduct by taking the client list fully knowing what it was and fully knowing that he did not have any authority to take it.⁴ Further, by wrongfully taking sensitive information without the knowledge and consent of those who had sought Salewski's legal counsel, Attorney Adams engaged in conduct that prejudiced the administration of justice.

⁴ At oral argument, the Board contended that one of the reasons why the panel concluded that Attorney Adams violated Rule 8.4 of the Maine Rules of Professional Conduct was that the panel found parts of his testimony to be "disingenuous." I am not persuaded by that reading of the panel's decision. The Disciplinary Petition filed against Attorney Adams alleged a violation of that Rule based on his act of taking Salewski's client list. Obviously, the Petition could not have foreseen any finding by a panel that Attorney's Adams' attempts to justify his conduct were not credible. Instead, in my view, the better reading of this part of the panel's findings, consistent with the Petition itself, is that it found that Attorney Adams acted dishonestly when he took the client list.

The remaining question is whether the nature of Attorney Adams' misconduct leaves any room for an admonition to be imposed as a sanction. As is noted above, three conditions *must* be present for a panel or a Single Justice to have the authority to impose an admonition. *See* M. Bar R. 21(b)(1). In my view, two of those three conditions do not exist here.

First, Attorney Adams' misconduct was not "minor." He took a document that, as he knew, contained some sensitive legal information. He had previously attempted to obtain that very type of document but was clearly informed by a person in authority, namely, Salewski's receiver, that the information he sought was confidential and that he could not have it. Attorney Adams did not orchestrate the circumstances that put him in the presence of the client list during the showing, because he was in the building at the request of a third person. Once he was there, however, and saw what was obviously the client list, he remarked to the realtor how he had wanted to obtain that information, and sometime shortly after, when no one was present to see, he took the list. This act was not substantially premeditated, but it was not spontaneous. And these factors demonstrate that it was not minor.

Second, Attorney Adams' acquisition of the client list resulted in more than "little or no injury to a client, the public, the legal system, or the

profession. . . .” See M. Bar R. 21(b)(1). As the panel correctly found, he engaged in an act of significant dishonesty within the context of his professional pursuits. This by itself resulted in material damage to the legal profession. Further, the act of taking another lawyer’s client list does damage to those clients. For some of the entries on the client list, there are references to the nature of the legal work that brought those clients to Salewski. As the panel correctly noted, absent some exception to the requirement of confidentiality, that information is entitled to be treated as “a confidence or secret” that had been entrusted to Salewski. See M.R. Prof. Conduct 1.6. Further, in some circumstances, even the *fact* of an attorney-client relationship can be a “confidence or secret.” See *In re Grand Jury Subpoenas*, 906 F.2d 1485, 1488-93 (10th Cir. 1990); *United States v. Saccoccia*, 898 F. Supp. 53, 58 (D. R.I. 1995) (discussing the “legal advice” exception to the general rule that the identity of a client is not confidential, and stating that the exception applies when “the threat of disclosure would deter the client from communicating information necessary to obtain informed legal advice”); see also *In re Advisory Opinion No. 544 of N.J. Sup. Ct. Advisory Comm’n on Prof’l Ethics*, 511 A.2d 609, 614 (N.J. 1986). Therefore, Attorney Adams’

unauthorized acquisition of even the limited information contained in the client lists cannot be taken lightly.

I recognize that several lawyers had access to this information—and more—as they assisted the receivers and representatives of the Board of Overseers in organizing and disposing of Salewski’s client files. Justice Mead’s order appointing the receivers, however, explicitly stated that the receivers “shall not disclose *any* information contained in any file listed in the inventory” absent the client’s consent or as necessary for the receivers to carry out their duties. *See* Board Exhibit 3 (emphasis added). Further, West testified that the attorneys who volunteered to assist him with the boxes of files worked under his direction as receiver; that none of those attorneys was authorized to take any files unless that attorney also represented the person associated with any such file; and that although the assisting attorneys used the client list while organizing the files, none of them could copy the client list or take it off site. Attorney Adams, on the other hand, acted on his own and without the supervision or authority prescribed in Justice Mead’s order appointing the receivers.

Given these circumstances, and even without clear evidence of Attorney Adams’ motive for taking the client list, the availability of an admonition for

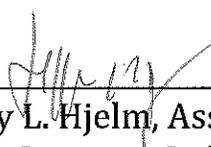
his misconduct is foreclosed because not all of the conditions necessary for that sanction are present. Further, even when the nature of the conduct underlying the violations is viewed without the restrictive language found in Bar Rule 21(b)(1), I conclude that the non-disciplinary disposition of an admonition is not a sufficient response and that a reprimand is the appropriate result.

For those reasons, I affirm the decision of the Grievance Commission panel.

The entry is:

Decision of the Grievance Commission panel affirmed.

Dated: March 29, 2018



Jeffrey L. Hjelm, Associate Justice
Maine Supreme Judicial Court