



IN RE: JOHN C. McBRIDE

NO. BD-2004-091

S.J.C. Order of Contempt entered by Justice Botsford on September 30, 2013.¹

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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
NO. BD-2004-091

IN RE: JOHN C. McBRIDE

MEMORANDUM OF DECISION AND ORDER

Bar counsel has filed a petition for contempt against the respondent, John C. McBride. She seeks an adjudication of contempt and an order that prohibits the respondent from filing an application for reinstatement before eight years thereafter. A hearing was held on bar counsel's contempt petition in July, 2013. For the reasons outlined below, I find the respondent to be in contempt, and conclude that in the circumstances presented, the respondent shall not be entitled to be reinstated for a period of eight years from May 9, 2013.

1. Facts. The respondent was disbarred effective September 5, 2005. See Matter of McBride, 449 Mass. 154 (2007). He has not been reinstated. On May 9, 2013, the respondent admitted to sufficient facts to warrant guilty findings in connection with five complaints that had issued from the Edgartown District Court in 2011 and 2012. The

charges to which he admitted included forgery of a check, G. L. c. 267, § 1, and uttering a promissory note falsely endorsed, G. L. c. 267, § 5; and two separate charges of practicing law as an attorney removed from practice, G. L. c. 221, § 41.

The forgery and uttering charges were both connected to one of the charges of practicing as an attorney removed from practice. The forged check was a \$5,000 settlement check intended for one of the individuals whom the respondent purported to represent as a lawyer; the respondent forged the individual's name and cashed the check, but it appears that restitution was made before the plea hearing. On each of the charges connected with this incident (forged check, uttering, practicing law as an attorney removed from practice), the respondent received a continuance without a finding (CWOFF) for a period of two years, until May 6, 2015.

With respect to the other charge of practicing law as an attorney removed from practice, the respondent represented himself to the individual as a practicing attorney, and was retained in connection with the possibility (that did not materialize) of criminal charges being brought against the individual; the respondent collected \$3,325 as a retainer. He received a concurrent

CWOF on this charge for a period of two years, with an order of restitution in the amount of \$3,325. It appears that as a condition of all the CWOFs, the respondent was ordered to be evaluated and to participate in mental health counseling.¹

Discussion. A finding of contempt requires proof, by clear and convincing evidence, Birchall, petitioner, 454 Mass. 837, 852-853 (2009), that there has been on the part of the alleged contemnor "a clear and undoubted disobedience of a clear and unequivocal command." Id. at 851, quoting Manchester v. Department of Env'tl. Quality Eng'g, 381 Mass. 208, 212 (1980). There is no doubt that an order of disbarment inherently includes a clear and unequivocal command to the disbarred attorney not to practice law. See Matter of Shanahan, 26 Mass. Att'y Discipline Rep. 582, 588 (2010). See also S.J.C. Rule 4:01, § 17 (1), (3), (5), (8). The respondent does not question this point.

¹ The charges also included larceny over \$250 (larceny of a credit card); and identity fraud. The respondent received a continuance without a finding (CWOF) for one year on the credit card larceny charge (until May 7, 2014), and a CWOF on the identity fraud charge for two years (until May 6, 2015).

The substance of these dispositions was presented to the judge by both parties as a negotiated plea proposal, although the parties proposed a continuance period of one year; the judge increased the continuance period from one to two years.

Given the respondent's admission to sufficient facts on the complaints charging him with practicing law as an attorney removed from practice, G. L. c. 221, § 41, and based on my reading of the respondent's statements during the May 9, 2013, plea hearing before a District Court judge, there also can be no real doubt that the respondent violated the order of disbarment. Cf. Commonwealth v. Villalobos, 437 Mass. 797, 801-802 (2002) (admission to sufficient facts generally treated as functional equivalent of guilty plea). Accordingly, I find by clear and convincing evidence that the respondent is in contempt of this court's order of disbarment dated August 5, 2005.

Under S.J.C. Rule 4:01, § 17 (8), "[a]ny lawyer who is disbarred . . . and who is found by the court to have violated the provisions of this rule by engaging in legal or unauthorized paralegal work prior to reinstatement under this rule may not be reinstated until after the expiration of a specified term determined by the court after a finding that the lawyer has violated the provisions of this rule." Bar counsel argues that because it has been established that the respondent engaged in legal work while he was disbarred, he clearly violated § 17 (8), and that he should not be permitted to apply for reinstatement until eight years have passed. The respondent argues in effect that

his disbarment has placed him in dire economic straits, that he has admitted his wrongdoing, that he has meant and means no disrespect to the courts or the bar, and that his reinstatement should not be precluded for as long as eight more years.

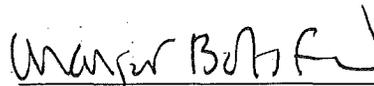
I agree with bar counsel that the respondent has violated rule 4:01, § 17 (8), by engaging in legal work while disbarred, and the respondent does not argue otherwise. As for the appropriate "term" to impose before the respondent may apply for reinstatement, I accept the respondent's representations about his respect for the courts and the bar, and that he has a very strong interest in returning to practice. Nonetheless, I cannot ignore the nature and seriousness of the respondent's misconduct underlying this finding of rule violations.² In bar discipline cases generally, the primary consideration when considering sanction is "the effect upon, and perception of, the public and the bar." Matter of Finneran, 455 Mass. 722, 737 (2010) (quotation and citations omitted). That same consideration is relevant here. In the circumstances

² To repeat, the misconduct included holding himself out as a lawyer able to represent the two different individuals in question and taking them on as clients, forging a signature and cashing a settlement check in one case, and obtaining a legal retainer in the other. The seriousness of the misconduct is underscored by the fact that it gave rise to criminal charges against the respondent.

presented,³ I conclude that eight years -- the same period of time that applies to disbarment itself -- is appropriate. The term is to run from the date of the respondent's plea, May 9, 2013.

ORDER

Based on the foregoing findings and conclusions, it is ordered that a separate judgment enter adjudicating the respondent, John C. McBride, in contempt of the order of disbarment entered in this matter on August 5, 2005. It is further ordered pursuant to S.J.C. Rule 4:01, § 17 (8), that the respondent may not be reinstated until after the expiration of eight years from May 9, 2013, and may not file a petition for reinstatement until three months prior to that date.


Margot Botsford
Associate Justice

Dated: September 25, 2013

³ I am mindful that the additional offenses on which the respondent admitted to sufficient facts (see note 1, supra), while not related directly to the practice of law and S.J.C. Rule 4:01, § 17 (8), also reflect serious misconduct on the respondent's part.