

IN RE: JOHN C. BARTLEY**NO. BD-2014-065****S.J.C. Order of Term Suspension entered by Justice Cordy on July 31, 2014.[†]****(Page Down to View Memorandum of Decision)**

[†] 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-2014-065

IN RE: John C. Bartley

MEMORANDUM OF DECISION

This bar discipline matter is before the court on an Information filed by the Board of Bar Overseers. (Board) recommending that the respondent, attorney John C. Bartley, be suspended from the practice of law for two years. The respondent urges this Court to impose a lesser sanction, arguing that while the statements at issue were false, the falsity is a product of his negligence rather than knowing misrepresentation. After a hearing on the matter, I am persuaded that a suspension from the practice of law for a year and one day is the appropriate sanction.

1. Background. The misconduct at issue occurred in connection with a 2004 law suit by brought Angelo Todesca Corporation (ATC) against the Massachusetts Highway Department (Department) relative to a contract dispute between ATC and the Department. Respondent was hired as a lobbyist by ATC in 1996 and worked on matters relating to the contract dispute until

2002. In 2004, ATC filed suit against the Department. The Commonwealth argued that the company's claims were barred by the statute of limitations, and ATC argued that there was an oral agreement between ATC and the Department to toll the statute of limitations. In 2007, the respondent was asked by ATC's litigation counsel to sign an affidavit in opposition to the Commonwealth's motion for summary judgment. The affidavit, while signed by respondent under the penalties of perjury, was prepared by attorney David Bryan, ATC's litigation counsel. The Commonwealth's motion for summary judgment was subsequently withdrawn.

The respondent was deposed twice in connection with the litigation, first on July 12, 2007 and next on September 21, 2007. On the day of his second deposition, respondent submitted an errata sheet making changes to his July deposition testimony. On June 12, 2008, respondent submitted a second errata sheet seeking to correct errors in his affidavit, his deposition testimony, and first errata sheet.

On June 11, 2008, two days before the trial was set to begin, respondent met with attorney Jeffrey Karp (Karp), the attorney then tasked with trying ATC's claims. Respondent and Karp's accounts of this meeting differ. However, Karp understood that respondent was unable to testify to certain statements in his affidavit and deposition testimony. On June

12, Karp filed a Motion to Dismiss and Notice Regarding False Evidence.

On August, 31, 2012 bar counsel filed a petition for discipline against respondent, alleging three counts of making knowing misrepresentations of fact in his affidavit, in deposition testimony, and in his errata sheets. A Hearing Committee (Committee) held four days of hearings, which included testimony by respondent, Karp, and respondent's personal counsel. With respect to count one, the Committee found that certain statements made in his affidavit and in his first deposition testimony were made with reckless disregard for their truth or falsity in violation of Mass. R. Prof. C. 8.4(d) and (h). With respect to counts two and three, the Committee found that certain statements made in his affidavit, errata sheet, and second deposition testimony were knowingly false in violation of Mass. R. Prof. C. 3.3(a)(1) and 8.4(a), (c), (d), and (h). One member of the Committee dissented, finding the statements at issue in counts two and three were not knowingly false, but were made with reckless disregard for their truth or falsity. The Committee recommended a two-year suspension.

Respondent appealed the Committee's findings and recommendations to the Board, arguing that the false statements in the affidavit were due to the affidavit's drafter (Attorney Bryan), and that he was unaware of the requirements for an

affidavit¹ or the significance of this particular affidavit. The Board heard oral argument on April 28, 2014, and adopted the findings, conclusions, and recommendation of the Committee.

2. Discussion. The respondent does not contest the falsity of the statements at issue in his affidavit, deposition testimony, and errata sheets. Rather, respondent argues that his misrepresentations were not intentional but negligent, and based upon his memory being "refreshed" by ATC's counsel (Attorney Bryan) in pursuit of a specific trial strategy.² For these reasons respondent urges this Court to reduce the sanction to an admonition.

The Committee's findings were based largely on its assessment of witness credibility. The Committee is the sole judge of the credibility of witness testimony, and I accept the Committee's credibility determinations. See In re Murray, 455 Mass. 872, 880 (2010). In adopting the Committee's recommendation, the Board was correct that, absent mitigating factors, the usual sanction for false testimony under oath is a two-year suspension from the practice of law. See In re Finneran, 455 Mass 722, 731 n.13 (2010); Matter of Shaw, 427

¹ E.g. believing that it could be based on information and belief rather than personal knowledge.

² At his first deposition, upon cross examination by the Assistant Attorney General representing the Department, respondent repeatedly testified that the information in his affidavit represented his memory as refreshed by Attorney Bryan, the preparer of the affidavit.

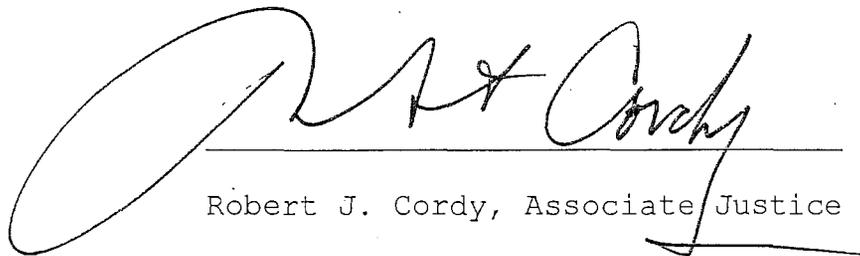
Mass 764, 769-770 (1998). However, "[e]ach case must be decided on its own merits and every offending attorney must receive the disposition most appropriate in the circumstances." In re Murray, 455 Mass. 872, 883 (2010) (quoting Matter of the Discipline of an Attorney, 392 Mass. 827, 837 (1984)). The Committee's findings were not unanimous and the Dissent gives me pause about the broader context in which the respondent's conduct occurred.

In determining the proper sanction, "it is appropriate to consider mitigating factors." In re Finn, 433 Mass. 418, 424 (2001). In this instance, I accept the mitigating circumstances offered by the respondent and credited by the Dissent. The respondent has worked primarily as a lobbyist throughout his career, and is not a practicing attorney with courtroom or litigation experience. Additionally, the respondent lacked any selfish or financial motive in signing the affidavit. Before the Committee, Bar counsel suggested that the Committee might find such factors in mitigation and recommended a one-year suspension from the practice of law. Given the specific circumstances of this case, I believe that a suspension of a year and one day is sufficient and appropriate to protect the public.

A suspension of a year and one day qualifies as a long-term suspension and imposes the significant requirements for

reinstatement contained pursuant to S.J.C. Rule 4:01, § 18 (2) (c) and (4). This requires a formal petition for reinstatement and that respondent obtain a passing score on the Multi-State Professional Responsibility Examination. Respondent will not be permitted to apply for reinstatement until three months prior to the expiration of his suspension.

Accordingly, I order that the respondent be suspended from the practice of law for one year and one day, effective as of the date of the entry of this judgment.


Robert J. Cordy, Associate Justice

Date Entered: July 31, 2014

A True Copy

Attest

Date

Assistant Clerk