



**IN RE: PATRICK B. SHANLEY**

**PUBLIC REPRIMAND NO. 2011-25**

**Order (public reprimand) entered by the Board on November 4, 2011**

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

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BAR COUNSEL,	)
Petitioner,	)
	)
vs.	)
	)
PATRICK B. SHANLEY, ESQ.,	)
Respondent.	)
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**BOARD MEMORANDUM**

The respondent, Patrick B. Shanley, received a letter from the Office of Bar Counsel asking about his availability to testify at a scheduled disciplinary hearing regarding the conduct of Attorney John J. King. King and the respondent practiced personal injury law in the Lowell area, and they shared a long history of mutual animosity, principally over the sharing of fees when clients shifted their cases from the respondent to King. The respondent redacted the address and salutation of the letter and then anonymously distributed it and a printout of information about King's disciplinary proceeding to a number of chiropractors with whom the respondent did business. The respondent's redactions made it appear that the providers who received the altered letters were being asked to give testimony at King's disciplinary hearing.

Some of the providers telephoned the OBC and faxed the altered letters to the assistant bar counsel who was conducting the King hearing. She compared the signature on the altered letter with her signature on the witness letters she had sent out in the King

matter and determined that her signature on the altered letter matched that on the copy addressed to the respondent. She called him to ask if he had delivered the letters to the providers. He admitted that he had. Shortly thereafter, bar counsel sought to dismiss two of the counts pending against King because they arose from disputes with the respondent. Bar counsel cited proof problems concerning these counts, namely issues of bias, bad faith, and wrongful motive. Her motion to dismiss them was allowed.

A hearing committee found that the altered letter, as delivered by the respondent, was intentionally false, deceptive, and misleading because it made it appear to recipients that bar counsel had sent or delivered it to them and was asking them to appear and testify at the King disciplinary hearing or at least to call bar counsel about the matter. The committee ruled that the respondent's deceptive conduct violated Mass. R. Prof. C. 8.4(c) and (h) because it intentionally misled the recipients into believing that the letter was delivered to them by bar counsel and that bar counsel was interested in having them appear as witnesses in the King matter. It did not find misconduct in delivering a printout from the board's website, which is public information.

In mitigation, the committee found that the respondent never denied to bar counsel that he had altered and delivered the letters, and the committee determined that dismissal of the two counts against King did not constitute harm because it was a discretionary action on bar counsel's part and because it was conceivable that the same decision might well have resulted from the respondent's legitimate publication of information about the King hearing.

In aggravation, the committee found

- that the respondent still does not understand or acknowledge the nature of his misconduct.

- that the respondent had pursued a default judgment in a fee dispute against King even after learning that King had not received a settlement or fee; and
- that the respondent's testimony at the hearing lacked candor.

The hearing committee adopted bar counsel's request that it recommend a public reprimand for the misconduct.

On appeal, the respondent first challenges, as irrelevant and erroneous, the committee's findings regarding his prior dealings with King. We agree with the committee that it was appropriate to admit evidence on those dealings. The decision to accept evidence is entrusted to the sound discretion of the hearing committee, and we find no abuse of that discretion here. The respondent's prior dealings with King were not irrelevant. The respondent's misconduct – which targeted King, after all – did not occur in a vacuum. The respondent's motives require some explication, and it is within the context of his enmity against his target that one naturally searches for the motive underlying his actions. That motive and the bar discipline grievances he had filed against King provided a context that fatally undermines his contention that he was acting as a public-spirited professional who was only giving his "friends a 'heads up' regarding the charges against King." Respondent's Brief on Appeal at 5 (citing respondent's testimony). The findings were relevant, and it was for the committee, not the board, to weigh the testimony and decide whether to credit his own testimony regarding his professed motive.<sup>1</sup> See Matter of Barrett, 447 Mass. 453, 463-465, 22 Mass. Att'y Disc. R. 58, 70-72 (2006).

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<sup>1</sup> In his brief, the respondent mistakes the standard of review for the Supreme Judicial Court in reviewing the findings of the board (the substantial evidence test) for the scope of the board's review under S.J.C.

The respondent's assault on the committee's conclusions of law is also misdirected. It rests on his apparent belief that there can be no violation of the rules in question unless bar counsel makes a showing that he harbored an intent to deceive and that the recipients of his altered letter were in fact misled. Violation of the rules in question does not require a specific intent to deceive. In Matter of McCabe, 13 Mass. Att'y Disc. R. 501n 511-512 (1997), the board found a violation on evidence showing that a lawyer who had intentionally falsified a purchase and sale agreement was on notice that "someone, however unidentified, was meant to be misled by the document he falsified." Nor is it required that someone actually have been misled. In Matter of Nickerson, 322 Mass. 333, 334, 12 Mass. Att'y Disc. R. 367, 372 (1996), a lawyer was found to have violated the predecessor of rule 8.4(c) by making false statements to a mortgage lender even though there was no deception because the lender had instigated the conduct and was aware of the falsity. See also Matter of Donahue, 22 Mass. Att'y Disc. R. 122, 261-262 & n.18 (2008). For related reasons, the respondent was denied no constitutional rights by bar counsel's failure to call any of the letter's recipients to testify at the hearing. As we have noted, the violation could be (and was) established without witnesses, and bar counsel was thus under no obligation to call any. See Matter of Abbott, 437 Mass. 384, 391-392, 18 Mass. Att'y Disc. R. 2, 11 (2002) (due process rights not violated by bar counsel's failure to interview or call witnesses because she was not required to do so to prove her case), citing Matter of London, 427 Mass. 477, 481-482, 14 Mass. Att'y Disc. R. 431, 436-437 (1998). Further, the respondent could have called the

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Rule 4:01, § 8(3), which provides that the board shall review and may revise the hearing committee's findings of fact, giving "due deference to the hearing committee's role as the sole judge of credibility."

chiropractors as his own witnesses, "and his failure to do so is not an error on the part of bar counsel." Id., 427 Mass. at 422, 14 Mass. Att'y Disc. R. at 437.

In the end, there was sufficient evidence from which the hearing committee – and we – could find the misconduct charged. We have considered and rejected all of the respondent's arguments, including those that do not merit discussion here.

With regard to disposition, we join the hearing committee in taking as our starting point the result in Admonition No. 08-12, 24 Mass. Att'y Disc. R. 876 (2008). There a lawyer furnished information to the IRS and DOR that falsely appeared to have been submitted by his ex-wife (and former employee), who had failed adequately to report income on tax returns. While noting the similarity between the two cases, the hearing committee here rightly observed that the respondent's conduct warrants a stronger sanction than that given the lawyer in Admonition No. 08-12. Among other things, that lawyer's misconduct occurred solely in connection with his personal life and was unrelated to the practice of law. Here the respondent's conduct involved a rivalry with another lawyer and making misrepresentations to those with whom he did business as a lawyer. His actions also grew out of, implicated, and had the potential to interfere with the conduct of a pending disciplinary hearing.

Further, the respondent's case is burdened by aggravating factors absent from the facts underlying the admonition. His unwillingness or inability to come to grips with the wrongfulness of his conduct weighs heavily. See, e.g., Matter of Clooney, 403 Mass. 654, 657-658, 5 Mass. Att'y Disc. R. 59, 63-64 (1988). The same can be said about his lack of candor before the hearing committee, which "must" be weighed in aggravation.

Matter of Eisenhauer, 426 Mass. 448, 14 Mass. Att'y Disc. R. 251 (1998); Matter of Friedman, 7 Mass. Att'y Disc. R. 100, 103 (1991).

Nor can it be said that these aggravating factors are offset by the findings made in mitigation. Most are of the type the Court has characterized as "typical mitigating factors" that carry little weight: the absence of ultimate harm, an "unblemished record," and the isolated nature of the misconduct. See Matter of Alter, 389 Mass. 153, 156, 3 Mass. Att'y Disc. R. 3, 6-7 (1983). The respondent's "long standing as an attorney" actually weighs against him, for the Court views a lawyer's substantial experience as a lawyer as an aggravating circumstance: an experienced lawyer should know better. Matter of Luongo, 416 Mass. 308, 9 Mass. Att'y Disc. R. 199 (1993). Finally, and most telling in our view, the respondent did not just pass off to tax authorities a document as if it were one created by his ex-wife, as was the case in Admonition No. 08-12. Instead, he altered a public document, one that bar counsel had sent him in conjunction with proceedings intended to maintain the integrity of the profession. The other admonitions on which he relies turned on mitigating factors not present here, such as serious mental or physical health problems or inexperience in practice. When we balance the relevant factors in aggravation and mitigation here, and compare his conduct to that at issue in Admonition No. 08-12, we are led inexorably to the conclusion that public discipline is warranted. We also recommend that the respondent be required to take and pass the Multistate Professional Responsibility Examination.

### **Conclusion**

For all of the foregoing reasons, we adopt the hearing committee's findings of fact, conclusions of law, and recommendation that the respondent, Patrick B. Shanley, be

publicly reprimanded. We also order him to take and pass the Multistate Professional Responsibility Examination within six months after formal issuance of the reprimand.

Respectfully submitted

A handwritten signature in cursive script that reads "Lisa G. Arrowood". The signature is written in black ink and is positioned below the typed name.

Lisa G. Arrowood, Esq.  
Secretary pro tem

Voted: October 17, 2011