

STATE OF MAINE

BOARD OF OVERSEERS OF THE BAR

Docket No. GCF #17-177

BOARD OF OVERSEERS OF THE BAR)
) Petitioner
) v.
) JOSEPH R. SANCHEZ
) of Cumberland, ME
) Me. Bar No. 009469
) Respondent

**STIPULATED REPORT OF
FINDINGS AND ORDER OF
PANEL D OF THE
GRIEVANCE COMMISSION
M. Bar R. 13(e)**

On June 10, 2019, with due notice, Panel D of the Grievance Commission conducted a public disciplinary hearing pursuant to Maine Bar Rule 13(e), concerning misconduct by the Respondent, Joseph R. Sanchez. This disciplinary proceeding had been commenced by the filing of a Disciplinary Petition by the Board of Overseers of the Bar (the Board) on July 30, 2018.

At the hearing, Mr. Sanchez appeared *pro se* and the Board was represented by Assistant Bar Counsel Alan P. Kelley.

Prior to the scheduled hearing date, the parties notified the Clerk that they had negotiated a proposed settlement of the disciplinary matter, with that proposed sanction report being submitted for Panel D's review and consideration. The complainant, Harold D. Sandelin, had been provided with a copy of the parties' proposed Stipulated Report and was present at that proceeding and provided an opportunity to make comment to the Panel.

Respondent Joseph R. Sanchez of Cumberland, Maine and currently residing in Shanghai, China was admitted to the Maine Bar in 2003 but was administratively suspended by the Board effective October 16, 2015, and currently remains under suspension. Notwithstanding his administrative

suspension, Sanchez was at all times relevant hereto an attorney duly admitted to and engaging in the practice of law in the State of Maine and subject to the Maine Bar Rules.

On or about April 27, 2017 Harold D. Sandelin, of Topsham, Maine filed a grievance complaint against Mr. Sanchez. During the course of the Board's investigation, Mr. Sandelin and Mr. Sanchez were each afforded opportunities for response and rebuttal, resulting in a fully developed investigation, pursuant to M. Bar R. 2(b)(2) & 13(b).

On November 7, 2017 a panel of the Grievance Commission reviewed Mr. Sanchez's actions in this matter, and found probable cause to believe that he had engaged in misconduct subject to sanction under the Maine Bar Rules. Therefore, Bar Counsel was directed to prepare and present a formal charges disciplinary petition before a different panel of the Grievance Commission.

The parties have negotiated a final disposition of this matter. Although Mr. Sanchez has not admitted to the allegations made against him by the Board, he has voluntarily chosen not to contest those allegations, and has agreed to the proposed Stipulated Report of Findings and Order. With that understanding, the Panel makes the following findings:

FINDINGS

Mr. Sandelin's complaint involves serious and significant neglect and failures to communicate by his former attorney, Mr. Sanchez. With an effective date of September 12, 2014 (the date of Mr. Sandelin's signature) the parties entered into a contingency fee agreement (CFA) concerning Mr. Sandelin's claim

against the United States of America, Department of the Navy, “pertaining to environmental contamination to (Mr. Sandelin’s) property in Topsham, Maine.”

Mr. Sandelin alleged that in the 1970’s the Department of the Navy had operated a target shooting range on land adjacent to property owned by Mr. Sandelin’s corporation, resulting in lead contamination to that property from the lead bullets that fell upon his property.

That CFA contained the following language, directed to Mr. Sandelin: “It is further brought to your attention that your claim(s) may be limited or inapplicable for various reasons, including the expiration of applicable statute of limitations, your prior waiver of claims (or a waiver by your predecessors in titles), and/or the potential immunity of the United States to suit.”

Mr. Sanchez filed a Form 95 Notice of Claim with the U.S. Government on September 24, 2014, under the Federal Tort Claims Act (FTCA), alleging a “discovery of damage” date of October 2013. That Form 95 was signed by Mr. Sanchez and acknowledged as received by the Navy on October 22, 2014.

As a result, a Claims Attorney was assigned to the matter by the Navy. The government Claims Attorney notified Mr. Sanchez, as the “Claimant’s” (Mr. Sandelin’s) attorney, that the Notice of Claim had been rejected by the Navy on February 23, 2015, and requested Mr. Sanchez’s “perfection of claim.” Mr. Sanchez was asked to cure the defects and provide information that had been missing from the Notice of Claim that he filed on Mr. Sandelin’s behalf: 1) There was no attorney authorization; 2) There was no proof that the claimant (Mr. Sandelin) had authority to file on behalf of the corporation that owned the property; and 3) There had been no substantiation of damages.

Mr. Sanchez failed to respond to the U.S. Navy concerning their requests for information. Mr. Sanchez did not respond to the Claims Attorney or anyone else associated with the U.S. Navy, and failed to perfect Mr. Sandelin's claim. As a result of Mr. Sanchez's failure to perfect the claim, the statute of limitations as established by the October 2013 discovery date alleged in Mr. Sandelin's Notice of Claim, continued to run and subsequently expired to the detriment of Mr. Sandelin.¹

Mr. Sanchez failed to notify Mr. Sandelin of the initial rejection of his claim, and either directly or indirectly, through his spouse, Catherine Sanchez, or his legal assistant working at his Great Neck, New York office, caused Mr. Sandelin and his wife, Barbara Sandelin, to incorrectly believe that Mr. Sanchez was still working on the Sandelin's claim against the U.S. Navy.

In response to the Sandelins' inquiry, an email communication from Mr. Sanchez's assistant on May 16, 2016, informed the Sandelins that the investigation by the U.S. Navy of their claim "can take up to two (2) years to complete." The email further informed the Sandelins that Mr. Sanchez was continuing to pursue their claim against the U.S. Navy, and that "additional (requested) documentation was sent to the (U.S. Navy) claims department in July 2015."

On January 18, 2017 Mr. Sanchez's assistant responded to the Sandelins' inquiry for case status information, stating that "there has been no recent paperwork from the U.S. Navy," and that "Mr. Sanchez will be in contact with

¹ Mr. Sanchez asserted that the date of discovery alleged in Mr. Sandelin's Notice of Claim was not accurate, and that the Statute of Limitations had already expired prior to the filing of the Notice of Claim.

you soon.” However, Mr. Sanchez failed to contact the Sandelins as promised by his assistant.

Notwithstanding the assertion by Mr. Sanchez that Mr. Sandelin’s Notice of Claim was untimely filed, Mr. Sanchez’s failure to perfect Mr. Sandelin’s claim after receiving notification of its rejection, allowed the statute of limitations, as determined by the date of discovery alleged in Mr. Sandelin’s Notice of Claim, to run and expire, thereby defeating any claim by Mr. Sandelin against the U.S. Navy. Mr. Sanchez’s failure to notify Mr. Sandelin in a timely manner that he was no longer pursuing Mr. Sandelin’s lawsuit against the U.S. Navy prevented Mr. Sandelin from seeking new legal counsel to assist him with his claim prior to the expiration of the statute of limitations.

CONCLUSION AND SANCTION

Based upon the above, Mr. Sanchez agrees that the conduct as alleged by the Board and established by our above findings, violated Rules 1.3 [diligence]; 1.4(a) [communication]; and 5.3(b) [responsibilities regarding nonlawyer assistants] of the Maine Rules of Professional Conduct.

The Panel looks to Maine Bar Rule 21(c) for direction on the proper factors to consider and analyze in the issuance of an appropriate disciplinary sanction. That rule states as follows:

(c) Factors to be Considered in Imposing Sanctions. In imposing a sanction after a finding of lawyer misconduct, the Single Justice, the Court, or the Grievance Commission panel shall consider the following factors, as enumerated in the ABA Standards for Imposing Lawyer Sanctions:

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.

In this matter, Mr. Sanchez agrees that the misconduct, as alleged by the Board and established by our findings above, establishes a violation of important duties that he owed to his client, as well as to his profession. Mr. Sanchez's failure to diligently pursue his client's claims, and his failure to communicate with his client, were knowing violations of Mr. Sanchez's ethical duties, resulting in significant injury to his client caused by the expiration of the statute of limitations on his client's claim.

Pursuant to the ABA Standards for Imposing Lawyer Sanctions, Section 4.4, "Lack of Diligence", and Section 4.42, a suspension of a lawyer's license to practice is "generally appropriate" when a lawyer "knowingly fails to perform services for a client and causes injury or potential injury to a client." The agreed upon findings establish that Mr. Sanchez's conduct was knowing, rather than negligent or intentional.

The existence of aggravating and mitigating factors must be reviewed and considered by the Panel. Section 9.22 of the ABA Standards for Imposing Lawyer Sanctions list numerous factors which may be considered in aggravation and justify an increase in the degree of discipline to be imposed. Among those aggravating factors, several are present in Mr. Sanchez's case: Although Mr.

Sanchez has no history or prior disciplinary offenses in Maine, in 2015 he was subject to a one-year disciplinary suspension in Oregon, with a similar reciprocal suspension being imposed by New York in 2017. At the time of his misconduct, Mr. Sanchez was an attorney with substantial experience in the practice of law, and his offenses were not the result of his inexperience. Finally, even though Mr. Sanchez has entered into an agreement regarding the disposition of this matter, he continues to refuse to acknowledge the wrongful nature of his conduct.

In mitigation, Mr. Sanchez has been cooperative throughout the processing of this matter; however, no other mitigating factors appear to be present. As a result, the aggravating factors clearly outweigh the mitigating factors. Consequently, the Panel believes that there should be no reduction of the presumptive sanction for Mr. Sanchez's misconduct as determined by the ABA Standards for Imposing Lawyer Sanctions.

The purpose of bar disciplinary proceedings is not punishment, but rather the protection of the public from attorneys who, by their conduct, have demonstrated that they are unable to properly discharge their professional duties. Since the evidence supports a finding, and Mr. Sanchez agrees that the Board's evidence would establish, that he did in fact violate those referenced portions of the Maine Rules of Professional Conduct, the Panel has analyzed the appropriate factors as established by M. Bar R. 21.

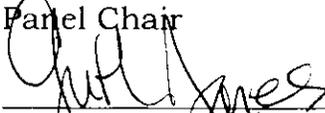
Therefore, the Panel accepts the agreement of the parties, including Mr. Sanchez's separately executed waiver of the right to file a Petition for Review, and concludes subject to the final approval or rejection of this Order by a Single

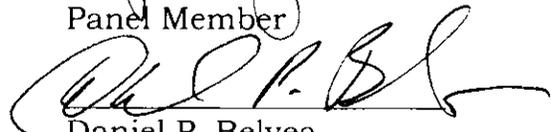
Justice as provided by M. Bar R. 25(a), that the appropriate disposition of this matter is the imposition of a **ONE YEAR SUSPENSION** of Joseph R. Sanchez's license to practice law, said suspension to commence upon approval by a Single Justice.

The Board Clerk is hereby directed to file this Stipulated Report of Findings and Order with the Clerk of the Law Court for submission to a Single Justice pursuant to M. Bar R. 25(a), and for entry of a final order thereon pursuant to M. Bar R. 25(c).

Date: June 10, 2019


Luis Louis D. Carrillo, Esq.
Panel Chair


Gretchen L. Jones, Esq.
Panel Member


Daniel P. Belyea
Public Member