

Matter of Maguire
Del. Supr. No. 506, 1998 (3/2/99)
Board Case Nos. 8, 1996; 55, 56, 57, 98,
101, 102, 123, 1997; 11, 1998

Disciplinary Rules: 1.2(a), 1.4(a), 1.4(b), 1.5(c), 1.5(e), 1.7(b), 1.15(a), 1.15(d)
and I.G.2, 3.4(c), 8.1(a), 8.4(a), 8.4(c)

Sanctions Imposed: Disbarment.

On March 2, 1999, the Delaware Supreme Court, by *per curiam* opinion, ordered the disbarment of Michael P. Maguire, Esquire. Maguire had been a member of the Delaware Bar since 1968. Most recently, he had operated as a solo practitioner. On May 19, 1997, the Court placed Maguire on interim suspension in connection with findings that he had deposited \$6,000 in settlement funds belonging to a client into a personal bank account and then had used the funds, without the client's authorization, for several months prior to distributing them to the client. *See In re Maguire*, Del. Supr., No. 204, 1997, 1997 WL 328588 (May 19, 1997) (ORDER). In its March 2 opinion, the Court approved the findings and conclusions reached by the Board on Professional Responsibility (the "Board") that Maguire had committed numerous violations of the Delaware Lawyers' Rules of Professional Conduct (the "Rules"), including the misappropriation of clients' funds.

In addition to the matter that resulted in the interim suspension, the Court affirmed the Board's findings of violations of the Rules in seven other disciplinary matters. Most of the violations committed by Maguire (and which were admitted by Maguire before the Board) fell into five categories: (1) Maguire's misappropriation of client funds; (2) other forms of dishonest conduct, including false and misleading statements by Maguire to the Office of Disciplinary Counsel and to clients; (3) Maguire's failures to consult with clients about key litigation decisions or to properly communicate with clients; (4) Maguire's failure to provide full cooperation with the efforts by the receiver of his law practice to gain control over Maguire's law practice accounts; and (5) serious deficiencies in Maguire's law practice books and records.

In determining the sanction to recommend to the Court in these matters, the Board considered the following aggravating circumstances: Maguire's substantial experience in the practice of law; the fact that two of Maguire's violations resulted from his dishonest conduct with respect to client funds; the fact that Maguire has committed multiple violations in

the matters under consideration; and Maguire's prior disciplinary history.

Maguire had received sanctions in two previous disciplinary proceedings. In 1986, the Board had imposed a two-year public probation for violation of the following disciplinary rules: DR 6-101(A)(2) (lack of adequate preparation), DR 7-101(A)(3) (failure to satisfy government lien out of settlement proceeds), DR 9-102(b)(3) (failure to maintain complete records), DR 102(B)(4) (failure to promptly deliver to client funds that the client is entitled to receive) and DR 2-106(A) (excessive fee). In 1993, the Supreme Court had approved a one-year public probation for violation of Rules 1.5(a) (unreasonable fee), 1.7(b) (conflict of interest), and 1.8(a) (conflict of interest in business transaction with client). The Board also concluded that an additional aggravating circumstance in this case was the fact that some of the types of violations which Maguire admitted to in the instant proceeding were of a nature similar to those for which he had previously been sanctioned.

The Board also considered several mitigating circumstances. Maguire had a history of personal and psychological problems. First, Maguire was a recovering alcoholic who had undergone treatment for his condition since the early 1980s. In addition, Maguire was diagnosed in 1986 as having a bi-polar condition. Subsequently, he began to obtain some professional assistance in dealing with that condition. More recently, he had been diagnosed as suffering from a psychological disorder. Finally, Maguire suffered from diabetes, and the accompanying fluctuations in his blood sugar and medication have had a profound psychological impact on Maguire during the last several years as well.

The Board also considered in mitigation the fact that Maguire had cooperated with the Office of Disciplinary Counsel and had expressed remorse for his wrongdoing. As evidence of his willingness to cooperate, Maguire offered to make restitution with respect to one matter and submitted two promissory notes to the Board for its consideration.

Finally, at the time of his interim suspension in May 1997, Maguire submitted an irrevocable letter of resignation to the Supreme Court. The Court declined to act upon that letter until after disciplinary proceedings had concluded. At the Board hearing on August 27, 1998, Maguire submitted another voluntary irrevocable letter of resignation. As part of the decision concerning the recommended sanction, the Board considered this letter as well. The Board noted that Maguire understood that he would be receiving some form of public discipline and was not seeking to tender his letter of resignation to avoid that result.

The Board determined that if Maguire's letter of resignation was accepted by the Delaware Supreme Court, but accompanied by a serious form of sanction, the interests of the "integrity of the legal profession, the administration of justice, and the protection of

the public" would be served. Therefore, the Board recommended that the Court enter an order suspending Maguire from the practice of law for a three-year period. Alternatively, the Board recommended that the Court enter an order accepting Maguire's voluntary irrevocable letter of resignation and striking Maguire's name from the rolls of attorneys of the Court authorized to practice law in the State of Delaware and in the Courts thereof, without Maguire having any opportunity to reapply for membership. Finally, the Board recommended that the Court require Maguire to deliver and honor the promissory notes with respect to restitution in the underlying matters.

In reviewing the Board's report, the Delaware Supreme Court was satisfied that the record supported the findings of fact and the conclusions of law made by the Board in this case.

With regard to the determination of the proper sanction, the Court noted that at the May 1997 hearing on the petition for interim suspension, Maguire had tendered his letter of resignation. The Court does not permit members of its Bar to either resign or retire during the pendency of disciplinary proceedings and, accordingly, the Court declined to accept Maguire's resignation at that time. However, the Court did note at that time that it would "consider the letter in resolving the underlying disciplinary proceedings." *In re Maguire*, 1997 WL 328588, at*1.

In reviewing the Board's recommended sanction, the Court stated that whether a resignation or retirement during the pendency of disciplinary proceedings is ultimately accepted depends on the Court's assessment of the impact that the resignation or retirement will have on public policy interests such as the integrity of the legal profession, the administration of justice, and the protection of the public. The Court pointed out that it has not adopted a *per se* rule that disbarment is mandatory but has attempted to adopt a policy that is consistent with, and protective of, the public interest whenever a lawyer has converted a client's funds. Sanctions resulting from the misappropriation of a client's property have varied.

In this case, the Court noted that Maguire has a record of repeated professional misconduct. The Court also observed that the Lawyer's Fund For Client Protection had paid \$39,840 in claims by Maguire's clients that were attributable to either his defalcations or inability to refund unearned fees. Stating that "[t]he misappropriation of a client's funds is one of the most egregious acts of professional misconduct that any attorney can commit" and, basing its decision on an evaluation of the aggravating and mitigating factors, the Court concluded that disbarment was required to protect the public and to uphold the integrity of the legal profession in Delaware.

Accordingly, the Court ordered that Maguire be disbarred and his name immediately stricken from the roll of attorneys entitled to practice before the courts of this State.