

SUPREME COURT OF GEORGIA

In the Matter of Joseph A. Maccione

289 Ga. 17, 710 S.E.2d 745 (2011) · No. S10Y1960 · Decided March 25, 2011

SUMMARY

The Supreme Court of Georgia rejected Joseph A. Maccione’s petition for voluntary discipline arising from violations of Rules 5.3 and 8.4(a)(4) of the Georgia Rules of Professional Conduct. The Court concluded that a Review Panel reprimand was inadequate in light of the serious misconduct, Maccione’s supervision or acquiescence in an employee-contractor’s conduct, and his prior disciplinary history.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Georgia
DECIDED	March 25, 2011
DOCKET	S10Y1960
DISPOSITION	rejected
PROCEDURAL POSTURE	Attorney disciplinary matter arising from a petition for voluntary discipline filed after the State Bar filed a Formal Complaint. A special master recommended acceptance of a Review Panel reprimand with conditions.
STANDARD OF REVIEW	The Court reviewed the admitted facts and the record as a whole in determining whether the admitted ethical violations occurred and whether the recommended discipline was appropriate.
PRECEDENTIAL VALUE	published precedential opinion

TOPICS

remedies

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

QUESTIONS PRESENTED

1. Whether Maccione violated Rules 5.3 and 8.4(a)(4) of the Georgia Rules of Professional Conduct based on his supervision of and acquiescence in the employee or contractor's conduct.
2. Whether a Review Panel reprimand with conditions was an appropriate sanction for the admitted violations.

HOLDINGS

1. Maccione violated Rules 5.3 and 8.4(a)(4) because he supervised or otherwise acquiesced in the wrongful conduct of the employee or contractor to the detriment of his client.
2. A Review Panel reprimand was not an appropriate sanction under the circumstances; the Court rejected Maccione's petition for voluntary discipline.

KEY QUOTATIONS

"Although Maccione has ended his relationship with the employee/contractor, who the Bar believes to be the 'primary wrong-doer in this matter,' that does not change the fact that Maccione supervised or otherwise acquiesced in the wrongful conduct of this employee/contractor to the detriment of his client." (747)

FACTUAL BACKGROUND

Maccione permitted an unlicensed employee or contractor with no paralegal education and an extensive criminal history to use his firm's business cards and letterhead, communicate with clients, collect retainers, and represent that he worked on cases with the firm. He referred a client's civil matter to the employee or contractor without clearly informing the client, failed to supervise the preparation of the complaint, and did not assist with the civil suit. After the client was arrested for murder, the employee or contractor obtained a document purporting to authorize removal of the client's personal property to pay defense costs; Maccione notarized the document despite uncertainty that he had witnessed its execution. The employee or contractor later removed property from the client's home without an accounting or credit against the client's legal fees.

PROCEDURAL HISTORY

Joseph A. Maccione filed a petition for voluntary discipline admitting violations of Rules 5.3 and 8.4(a)(4) of the Georgia Rules of Professional Conduct. Special master James E. Patterson recommended that the Supreme Court accept the requested Review Panel reprimand with conditions. The Supreme Court agreed that the violations occurred but rejected the proposed discipline as insufficient.

DISPOSITION

rejected

OPINION

PER CURIAM.

710 S.E.2d 745 (2011) In the Matter of Joseph A. MACCIONE. No. S10Y1960. Supreme Court of Georgia. March 25, 2011. *746 Paula J. Frederick, Gen. Counsel State Bar, A.M. Christina Petrig, Asst. Gen. Counsel State Bar, for State Bar of Georgia. PER CURIAM. This disciplinary matter is before the Court on the Report and Recommendation of special master James E. Patterson who recommends that this Court accept the petition for voluntary discipline which was filed by Respondent Joseph A. Maccione (State Bar No. 462925) after the Bar filed a Formal Complaint.

In his petition, Maccione requests the imposition of a Review Panel reprimand with conditions for his admitted violations of Rules 5.3 and 8.4(a)(4) of the Rules of Professional Conduct, See Bar Rule 4-102(d). Although the maximum sanction for a single violation of either rule is disbarment, the State Bar has indicated that it has no objection to the requested discipline.

In his petition Maccione, who was admitted to the Bar in 1976, admits that he is a solo practitioner who for several years regularly used the services of an employee/contractor as an investigator and paralegal. Maccione was aware that the employee/contractor had no license as an investigator, no education in paralegal studies, and an extensive criminal history.

Maccione nevertheless allowed the employee/contractor to use business cards and letterhead that indicated he was an investigator and paralegal associated with Maccione's firm. Maccione also allowed the employee/contractor to prepare correspondence to clients and others, to communicate with clients, to collect retainer funds for Maccione's firm, and to generally represent to the public that he was working on cases with Maccione.

In early June 2005, Maccione agreed to represent a client on a drug charge and in a civil action the client wished to file regarding the death of his dog. After accompanying the client to a meeting with a county official about the civil matter, Maccione referred the client to the employee/contractor so that he could prepare the civil complaint which Maccione then had filed as a pro se complaint.

Maccione did not clearly inform the client that he would not be handling the civil matter himself; he did not monitor the employee/contractor's activities regarding preparation of the complaint; and he did not take any action to assist the client with his civil suit.

In mid-June 2005, the client was arrested and charged with murder. Maccione and the employee/contractor met with the client and advised him that Maccione and another attorney would defend the client for a flat fee of \$30,000, which included attorney fees for Maccione and the other attorney.

The employee/contractor then prepared a document titled "Affidavit" to be signed by the client. The affidavit authorized Maccione's law firm, generally, and the employee/contractor, specifically, to take all of the client's personal property from his home, to be applied to the cost of his defense.

Maccione signed the document as a notary notwithstanding the fact that the document had been left undated and that the signature line for the witness was blank.

Maccione admits that he cannot say with any certainty that he observed the client executing this affidavit. In late June 2005, while the client was confined in a mental hospital following a suicide attempt, the employee/contractor entered the client's home and took numerous items of personal property, purportedly pursuant to the above described affidavit (and apparently as payment for the employee/contractor's services).

Maccione had not discussed with the client any fee for the employee/contractor's work on his case, nor did he provide the client with any billing statements or accounting for the employee/contractor's *747 services.

The value of the property taken by the employee/contractor was not credited toward the client's quoted legal fees. The client subsequently discharged Maccione and during the course of these disciplinary proceedings, Maccione severed his relationship with the employee/contractor.

As a result, Maccione no longer uses the employee/contractor's services in any capacity and asserts that he will not use those services in the future. Based on these admitted facts and having reviewed the record as a whole, we agree with the special master that Maccione violated Rules 5.3 and 8.4(a)(4) Bar Rule 4-102(d).

However, we disagree with the special master that a Review Panel reprimand is the appropriate punishment under the circumstances presented here. In light of the serious nature of the facts presented in this case, and in light of Maccione's prior disciplinary history (he received an Investigative Panel reprimand in 1989), we conclude that a Review Panel reprimand is not the appropriate level of punishment to impose on Maccione for his actions.

Although Maccione has ended his relationship with the employee/contractor, who the Bar believes to be the "primary wrong-doer in this matter," that does not change the fact that Maccione supervised or otherwise acquiesced in the wrongful conduct of this employee/contractor to the detriment of his client.

Accordingly, we reject Maccione's petition for voluntary discipline. Petition for voluntary discipline rejected. All the Justices concur.