SJC-13062

LIONEL PORTER vs. BOARD OF BAR EXAMINERS.

April 22, 2022.

Board of Bar Examiners. Attorney at Law, Admission to practice. Supreme Judicial Court, Superintendence of inferior courts.

After the Board of Bar Examiners (board) reported that Lionel Porter was not qualified for admission to the Massachusetts bar because of certain character and fitness concerns, Porter petitioned a single justice of this court for review. The single justice dismissed Porter's petition and denied his application for admission to the bar. Porter now appeals. We affirm.

1. Procedural background. Porter graduated from an accredited law school in 1985. He has applied for admission to the Massachusetts bar multiple times, most recently in December of 2013, and, on the bar examination administered in February of 2014, he earned for the first time a passing score. Upon reviewing the information in Porter's application, however, the board determined that an inquiry into his character and fitness to practice law was necessary. The board first interviewed Porter informally, and later appointed a special counsel to conduct a more detailed investigation. After the special counsel submitted his report, the board held a formal evidentiary hearing to determine whether Porter "is of good moral character and sufficient acquirements and qualifications" to warrant a recommendation for admission to the bar. G. L. c. 221, § 37. See S.J.C. Rule 3:01, § 5.1, as appearing in 478 Mass. 1301 (2018); Rule V.2 of the Rules of the Board of Bar Examiners (2018).

Porter, who was represented by counsel at the formal

hearing, was the sole witness. The board determined that Porter had not met his burden of establishing that he was qualified for admission. It filed a report of nonqualification with this court containing its factual findings and recommendation that Porter's application be denied. See Rule V.2.7 of the Rules of the Board of Bar Examiners. Porter then petitioned this court for review. See S.J.C. Rule 3:01, § 5.3; Rule V.2.8 of the Rules of the Board of Bar Examiners. A single justice of this court considered the record and Porter's challenges to the board's report and rejected Porter's arguments. Accordingly, the single justice denied Porter's application for admission to the bar, dismissed his petition for review of the board's report, and denied his motion for reconsideration.

2. Factual background. The single justice accepted the board's factual findings. In summary, the evidence established that Porter earned a bachelor's degree in 1966, obtained a master's degree in 1970, and made progress toward a Ph.D. He entered law school in 1981, and graduated in May of 1985.

Following graduation from law school, Porter worked in a variety of capacities. For several years, he worked as a pro bono advocate for the National Association for the Advancement of Colored People (NAACP). While at the NAACP, he reviewed, drafted, and filed discrimination complaints at the Massachusetts Commission Against Discrimination (MCAD). See Matter of Hrones, 457 Mass. 844, 845 (2010). In 2001, Porter was introduced to attorney Stephen Hrones. As Porter described, the two reached a "mutually-beneficial business arrangement," whereby they would solicit prospective clients who had matters pending at the MCAD and share the fees that were generated by that work. But see Mass. R. Prof. C. 5.4 (a), as appearing in 430 Mass. 1303 (1999).

Although he had not been admitted to the bar, Porter represented that while he worked at Hrones's law firm, he handled all the discrimination cases himself, without assistance from Hrones.[1] He acknowledged that he was "perceived as a

[1] See Matter of Hrones, 457 Mass. 844, 845 n.1 (2010), citing 804 Code Mass. Regs. § 1.10(1)(c) (1999) (complaints with MCAD may be filed by nonprofit organizations "whose purposes include[] the elimination of the unlawful practice[s]") and 804 Code Mass. Regs. § 1.13(5)(b) (1999) (claimant may be accompanied to informal investigative conference "by his/her attorney or other representative"). Porter's work at Hrones's

'member of the firm' both perceptually and in practice." This arrangement, as well as other misconduct, eventually led to disciplinary proceedings against Hrones, as a result of which Hrones was suspended from the practice of law in the Commonwealth. See Matter of Hrones, 457 Mass. at 845. In 2003, a default entered against Porter's client in one of the cases that Porter was handling at the MCAD and, as a result, allegations of case mismanagement and the unauthorized practice of law were leveled against Porter. In addition, Porter missed filing deadlines in other cases and kept client retainer funds for his own personal use. After complaints were filed with the Board of Bar Overseers, Hrones terminated the arrangement with Porter. Porter, however, reported on his 2013 bar application that he had left the firm on his own volition.

Porter's 2013 application also disclosed that he has been a party to a number of civil and criminal matters. Among other things, in 2007, Porter pleaded guilty to operation of an unregistered motor vehicle and admitted to sufficient facts on a charge of assault and battery by means of a dangerous weapon arising out of an attempt to repossess Porter's motor vehicle; he also admitted to sufficient facts in another assault case in 1996. More recently, in 2012, a harassment prevention order was issued against him. In addition, Porter did not disclose a bankruptcy petition that he had filed while his most recent bar application was pending, notwithstanding a board rule that requires disclosures of that sort. See Rule V.1.2 of the Rules of the Board of Bar Examiners.

3. Discussion. While we give due deference to the board's determination, "this court retains ultimate authority to decide a person's fitness to practice law in the Commonwealth." Strigler v. Board of Bar Examiners, 448 Mass. 1027, 1029 (2007), quoting Matter of Prager, 422 Mass. 86, 91 (1996). Here, both the board and the single justice discussed their consideration of Porter's involvement in civil and criminal complaints against him, retention of client funds for personal use, and mishandling of client matters, as well as the incomplete and inconsistent disclosures on his multiple applications for admission to the bar. We, too, have carefully reviewed the record. The board concluded, the single justice accepted, and we agree that in the face of his history of misconduct, Porter has not met his burden

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"firm was not covered under the regulation regarding nonprofit organizations, as he was not acting on behalf of a qualified organization." Matter of Hrones, supra at 851.

of proving by clear and convincing evidence that he has sufficiently rehabilitated himself such that he "currently possesses the necessary moral character to be admitted to the bar of the Commonwealth." Matter of Prager, supra at 92.

To be clear, our focus is on Porter's present fitness to be admitted to the bar, and not his prior conduct. No history of misconduct "is so grave as to preclude a showing of present moral fitness." Matter of Prager, 422 Mass. at 91. The question is whether the applicant has "rehabilitated himself by 'lead[ing] a sufficiently exemplary life to inspire public confidence once again, in spite of his previous actions'" (citation omitted). Id. at 92. Thus, at this juncture, we focus on Porter's "current attitudes toward this past conduct." See Matter of an Application for Admission to the Bar of the Commonwealth, 431 Mass. 678, 679-680 (2000).

A significant focus of concern for the board, for the single justice, and for us is Porter's conduct while he worked as a paralegal at Hrones's law firm. As Porter points out, he was not a party to the disciplinary case against Hrones, and therefore he was not precluded from showing that he did not in fact engage in the unauthorized practice of law and other misconduct described in Matter of Hrones, 457 Mass. at 851, 853-854. That said, many of the central facts that were described in the Hrones decision were left undisputed by Porter after the hearing in this case. Porter affirmatively acknowledged, for example, that he signed Hrones's name on an affidavit, accepted clients, negotiated fees, filed complaints, drafted pleadings, conducted discovery, advised clients as to their legal rights, settled cases, and performed other legal work. See id. at 846. There was ample support for the board's determination that Porter's mishandling of clients' cases at Hrones's law firm led to adverse consequences for clients. In addition, on at least one occasion, Porter kept client retainer funds for personal use. In his testimony before the board, he explained that he kept portions of client retainers: "[B]ecause I was not getting a salary or anything else, there were times when I would use the retainer. I didn't have any money." He also did not dispute that he had engaged in the unauthorized practice of law. In short, Porter did not satisfy the board or the single justice, nor has he satisfied us, that he appreciates the wrongfulness of his earlier misconduct and presently has an understanding of the norms of professional conduct for Massachusetts lawyers and the ability and desire to conform to them.

Moreover, as the board found, Porter has been involved in a

number of criminal and civil matters that he did not fully and accurately disclose on his multiple bar applications, and the disclosures he has made in these applications have not been consistent. See Rule V.1 of the Rules of the Board of Bar Examiners ("There shall be a rebuttable presumption that nondisclosure of a material fact . . . is prima facie evidence of the lack of good character"). Nothing in the record assures us that Porter now eschews this lack of candor or would not repeat it in the future.[2]

We recognize that some, perhaps most, of the criminal charges appear to have been dismissed, and the underlying facts on which they were based are not entirely clear from the record. The incidents also are all more than ten years old at this point. Nonetheless, as the board found, Porter pleaded guilty to at least one crime and admitted to sufficient facts with respect to a charge of assault and battery by means of a dangerous weapon, involving an attempt to repossess his motor vehicle. In part because Porter described the victim as "contributing to his own harm," the board concluded that Porter did not fully understand and accept responsibility for the gravity of his actions in that case. The single justice agreed with that assessment, as do we. Porter's behavior at the time of those events, however, is inconsistent with the conduct expected of attorneys, who "must conduct themselves in such a way that they dedicate themselves to the peaceful settlement of disputes." Matter of an Application for Admission to the Bar of the Commonwealth, 444 Mass. 393, 398 (2005). See Rule V.1 of the Rules of the Board of Bar Examiners. Porter's recounting of the events in his testimony before the board provides no assurance that he has been sufficiently rehabilitated, casting doubt on his character in the present. See Strigler, 448 Mass. at 1028-1130.

In Porter's favor, we acknowledge, as did the board and the

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[2] The single justice also was troubled by Porter's failure fully to disclose on his applications for admission to the bar the circumstances surrounding his unauthorized practice of law. The single justice noted Porter's explanation on his 2013 application, i.e., that he referred to the fact that one of his earlier recommenders had retracted his letter of recommendation after the recommender read a newspaper account of the events described in the Hrones decision. In the circumstances, Porter's argument that the single justice improperly considered the newspaper article is misplaced.

single justice, his efforts to demonstrate rehabilitation. Those efforts included participating in continuing legal education programs and reading various treatises and appellate court decisions. Those steps, however, are not sufficient to tip the balance in this case. Only where an applicant establishes "by clear and convincing evidence his or her current good character and fitness to be admitted to practice of law in the Commonwealth," Rule V.2.2 of the Rules of the Board of Bar Examiners, can we "be confident that allowing an applicant to practice law would not be detrimental to the public interest," Matter of an Application for Admission to the Bar of the Commonwealth, 444 Mass. at 411. On the record before us, we are left with substantial doubt about Porter's present character and fitness to practice law. Because admission to the bar amounts to an "endorsement that the applicant is worthy of the public trust," Matter of Prager, 422 Mass. at 93, "[w]e resolve that doubt 'in favor of protecting the public by denying admission,'" Desy v. Board of Bar Examiners, 452 Mass. 1012, 1014 (2008), quoting Matter of Prager, supra at 100.[3]

4. Conclusion. The judgment of the single justice, dismissing Porter's petition for review of the board's determination of nonqualification and denying his application for admission to the bar, is affirmed. The single justice's denial of Porter's request for reconsideration likewise is affirmed.

So ordered.

Lionel Porter, pro se.
Matthew C. Welnicki for Board of Bar Examiners.

[3] Porter also alleges that the attorney who represented him at the formal hearing before the board provided ineffective assistance in various respects. There is no constitutional or statutory right to counsel, and hence no right to the effective assistance of counsel, in bar discipline cases. See Matter of Eisenhauer, 426 Mass. 448, 454-455, cert. denied sub nom. Eisenhauer v. Massachusetts Bar Counsel, 524 U.S. 919 (1998) ("the constitutional right to counsel has not been applied to bar disciplinary matters"). We see no reason to hold that any such right exists in bar admission matters.