



University of Baltimore Law Forum

Volume 25
Number 2 Fall, 1994

Article 9

1994

Recent Developments: Attorney Grievance Comm'n v. Joehl: Pattern of Deceit on Bar Application and in Subsequent Disciplinary Proceedings Violates Maryland Rules of Professional Conduct and Warrants Disbarment

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Recommended Citation

Gaillard, Robin Rucker (1994) "Recent Developments: Attorney Grievance Comm'n v. Joehl: Pattern of Deceit on Bar Application and in Subsequent Disciplinary Proceedings Violates Maryland Rules of Professional Conduct and Warrants Disbarment," *University of Baltimore Law Forum*: Vol. 25 : No. 2 , Article 9.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol25/iss2/9>

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*Attorney Grievance
Comm'n v. Joehl:*

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In *Attorney Grievance Comm'n v. Joehl*, 335 Md. 83, 642 A.2d 194 (1994), the Court of Appeals of Maryland ruled that Respondent's failure to fully disclose to the Character Committee of the Bar of Maryland ("the bar") all relevant details surrounding his driving infractions and certain criminal charges violated the Maryland Rules of Professional Conduct and warranted disbarment. This case makes plain that the court views a bar applicant's full disclosure to an admissions authority or to a disciplinary panel as a measure of honesty in the profession and that material omissions will result in the severest of sanctions.

Respondent Jeffrey Thomas Joehl applied for admission to the bar in 1991. During his examination, a character committee representative expressed concern about Joehl's extensive record. He attributed his numerous violations to immaturity and irresponsible exercise of his driving privileges. However, Respondent neglected to disclose citations for excessive speeding subsequent to filing his bar application; suspensions of his driver's license; his acquisition of an out-of-state license under questionable circumstances; a battery charge which was nol prossed but not expunged; and a possession of marijuana charge.

In April 1993, the Attorney Grievance Commission ("the Commission") filed a petition alleging professional misconduct by Joehl and violation of Maryland Rules of Profes-

sional Conduct 8.1, 8.4(b), 8.4(c), and 8.4(d). The allegations were based on omissions and misrepresentations made by Joehl on his 1991 application for admission to the bar and on circumstances surrounding a plea bargain for a possession of marijuana charge. The Circuit Court for Montgomery County heard the matter on September 2, 1993 and concluded that Joehl did not violate Rule 8.4(b), 8.4(c), and 8.4(d) but that he did violate Rule 8.1(b) in failing to fully disclose relevant facts about his traffic violations and about a battery charge upon request by a bar admissions authority. The circuit court's findings of fact and conclusions of law were filed in the Court of Appeals of Maryland on January 26, 1994. In reviewing the matter, the appellate court found that Joehl made several material omissions on his application and that in so doing, he violated Rules of Professional Conduct 8.1(a), 8.1(b) and 8.4(c). Having found misconduct, the appellate court also determined that disbarment was the proper sanction for Respondent's infractions.

Beginning its analysis, the court noted that it had original and exclusive jurisdiction over attorney disciplinary matters. *Joehl*, 335 Md. at 88, 642 A.2d at 196 (citing *Attorney Grievance Comm'n v. Powell*, 328 Md. 276, 287, 614 A.2d 102, 108 (1992); Rule BV9(b)). Further, the court pointed out that on appeal, the factual findings of the circuit court are given great deference and will not

be disturbed unless clearly erroneous. *Id.* (citing *Attorney Grievance Comm'n v. Goldsborough*, 330 Md. 342, 356, 624 A.2d 503, 509 (1993)).

Reviewing Joehl's testimony before the Commission, the court found that declarations that he was unaware that his driver's license had been suspended in 1990 were "false statements of material facts in connection with a disciplinary matter in violation of Rule 8.1(a)." *Joehl*, 335 Md. at 91, 642 A.2d at 198. The appellate court found that by making these false statements, "[Joehl] . . . engaged in conduct involving dishonesty and misrepresentation, in violation of Rule 8.4(c)." *Id.* Moreover, the appellate court found that Respondent also violated Rule 8.1(b) when he knowingly withheld material details about his driving record and battery arrest from his bar application and from an admissions authority requesting full disclosure on those specific matters. *Id.*

In *Joehl*, the court's finding of a Rule 8.1(b) violation turned on whether omission of information by Respondent could be characterized as material. An omission is deemed material if it "has the effect of inhibiting the bar from assessing an applicant's fitness to practice law." *Joehl*, 335 Md. at 94, 642 A.2d 199 (quoting *In re Howe*, 257 N.W.2d 420, 422 (N.D. 1977)). The court found that Respondent's failure to disclose information to the bar indeed constituted material omissions

because the bar's ability to assess Joehl's fitness was obstructed by his purposefully crafted misrepresentations. *Joehl*, 335 Md. at 94, 642 A.2d 199.

To demonstrate that these omissions had inhibited the bar's assessment of Joehl's fitness, the court pointed to Respondent's failure to disclose events that had a direct bearing on his truthfulness. Specifically, Joehl did not mention that he had failed to appear at several driver's license suspension hearings or that he had acquired an out-of-state license under "questionable" circumstances. *Id.* Neither did he indicate that he had received three traffic convictions subsequent to his application to the bar. *Id.* As a result of these omissions, the bar was led to believe Joehl's assertions that his driving record was the result of "reckless youth . . . and that he had since matured." *Id.*

The court likewise considered Respondent's omission of his battery arrest and found that such an omission was also material as it "clearly inhibited the Board's ability to assess his moral character fitness to practice law." *Joehl*, 335 Md. at 95, 642 A.2d at 200. Although Joehl contended that the omission of the battery arrest was merely negligence, as a result of the omission, the bar was unable to investigate and to make its own determination in this regard based on the circumstances involved. *Id.*

The court clearly articulated that the linchpin of a find-

ing of misconduct for omissions made by the Respondent was whether those omissions were material. Thus, in weighing Joehl's case, the court did not emphasize the commission of certain acts by Respondent but emphasized the intentional omission of the details of these events from his application. *Id.* More importantly, the court considered the ultimate effect these omissions had on the bar's assessment of Respondent's fitness for the profession. *Id.* The lower court concluded that Respondent's omissions were of little consequence since Joehl would have been admitted to the bar despite his driving record and battery charge. *Id.* However, the appeals court dismissed this reasoning as irrelevant since it failed to focus on the materiality of Joehl's omissions. *Id.*

Having found Joehl in violation of Rules of Professional Conduct 8.1(a), 8.1(b), and 8.4(c), the court of appeals then ruled that disbarment was the proper sanction for Respondent's misconduct. To reach its decision, the court first relied on the truthfulness and candor of the party in violation noting that in many disciplinary matters, the court has often held "that no moral character qualification to practice law is more important than truthfulness and candor." *Id.* (quoting *Attorney Grievance Comm'n v. Myers*, 333 Md. 440, 449, 635 A.2d 1315, 1319 (1994)). The court noted that although several opportunities to clarify omissions regarding his record arose, Joehl neglect-

ed to inform the bar of certain information necessary to help it assess his fitness to practice law in Maryland.

In reaching its decision to disbar Joehl, the court also considered Standard 7.1 of the American Bar Association (ABA) Standards for Imposing Lawyer Sanctions. This standard specifically states that "disbarment is appropriate when a lawyer intentionally makes false material statements in [an] application for admission to the bar." *Joehl*, 335 Md. at 97, 642 A.2d at 201. Since the court found that Joehl's testimony before the Commission was replete with false material statements, the ABA standard clearly supported disbarment as the proper sanction in this case. *Id.*

Finally, in choosing the proper sanction for Joehl, the court considered whether there were any mitigating circum-

stances. In this regard, the court contemplated Joehl's assertion that his youthful age, current clean driving record, and the realization that his actions were wrong, were indeed mitigating circumstances making disbarment an inappropriate sanction. *Id.* at 97-98, 642 A.2d at 201. However, the court dismissed this assertion and underscored that the facts themselves demonstrated Joehl's "pattern of dishonesty over a prolonged period of time." *Id.* More importantly, the court found that the Respondent's pattern of untruthfulness "during both the application and disciplinary proceedings adversely reflected on his moral character fitness to practice law in Maryland." *Id.* Additionally, the court of appeals rejected the lower court's conclusion that Respondent had "matured and . . . [that he now] recognize[d] the importance of

candor []." *Id.* 335 Md. at 88, 642 A.2d at 196.

In ruling on *Attorney Grievance Comm'n v. Joehl*, the court of appeals clearly articulated the level of integrity and quality of character expected of an attorney practicing in Maryland. Potential applicants to the bar are on notice that legal professionalism is mandatory and that it begins with applying for admission to bar. Thus, *Joehl* demonstrates that material omissions by an applicant about his driving record and prior criminal charges, at any point during the bar application process or during subsequent disciplinary proceedings, will likely warrant disbarment if such omissions form a discernible pattern of intentional dishonesty and subterfuge.

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